

~~XIV~~ XV

UNION OFFICER

7/26/77

Feldman

NO RESPONSE
AT STEP 1

25 Day Susp.

Arb & Won +
Back Pay.

VOLUNTARY ARBITRATION PROCEEDINGS
CASE NO. AC-C-5118-D (D5)

C# 00603

UNITED STATES POSTAL SERVICE :

Employer :

-and- :

AMERICAN POSTAL WORKERS :

UNION, AFL-CIO :

NORTH SUBURBAN, IL. LOCAL :

Union :

OPINION AND AWARD

APPEARANCES

For the Employer:

D. J. Shipman, Regional Labor Relations Executive
Walt Besteda, Director, Employee and Labor Relations,
North Suburban Facility
C. C. Mitchell, Management Associate

For the Union:

Gerald "Andy" Anderson, Regional Representative
Louis R. Elliott, Grievant
Arlene Sanders, Witness

MARVIN J. FELDMAN
ARBITRATOR
1331 Terminal Tower
Cleveland, Ohio 44113

I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. A hearing was conducted in this matter at the conference facility of the North Suburban Mail Facility in Franklin Park, Illinois, on the 19th day of April, 1977, whereat the parties presented their evidence in both witness and document form. Thereafter the parties presented their post-hearing briefs. Upon the evidence as submitted and the arguments as submitted by the parties this arbitrator reached his decision evidenced by this Opinion and Award.

II. STATEMENT OF FACTS

The grievant is and was on the date in question a Union officer, who on January 30, 1976, participated in representation of a grievant at Step 1 hearing under the terms of the collective bargaining agreement. The Step 1 hearing was concluded in four minutes, with the supervisor refusing to continue the hearing and refusing to answer certain inquiries of the grievant. The hearing time had been prescheduled.

It appears from the evidence that after the Step 1 hearing was apparently concluded by virtue of the supervisor walking away from an "on the floor" meeting pursuant to contract, the grievant in this cause (the Union representative therein)

pursued the supervisor for additional conference time and made an additional request for an investigation in that matter.

The Employer stated that this grievant was loud, antagonistic, refused to obey a direct order and in general conducted himself in such a manner so as to bring about a twenty-one day suspension. This triggered a grievance to be filed, which grievance is under consideration herein.

The supervisor testified that she heard the remarks of the steward and grievant; that she had a dispatch that had to be attended to; that she made up her mind within the time element of four minutes including hearing time; that she didn't believe there was anything more to the hearing; that she denied a request for investigation then and there but directed the grievant in this cause to his supervisor for such a request; that the grievant in this cause (the steward therein) was directed back to work; that the grievant in that cause did go back to work; that the grievant in this cause became loud, but not abusive in his persistence; that there was an exchange of words and that the incident finally ended when another foreman came over to witness a direct order to return to work, to which this grievant obeyed.

This grievant testified that the supervisor in the Step 1 hearing heard the grievant in that case; that the supervisor refused to discuss answers to questions; that without discussion the prior grievance was denied on the spot; that the conduct of the supervisor brought tears to the eyes of the female grievant in the prior case; that the supervisor turned away from

the parties immediately after decision; that there was a refusal on the part of the supervisor to continue discussions beyond the four minutes; and that the supervisor generally acted in a manner disrespectful to the process and the people involved.

Evidence further revealed that the incident occurred in a noisy area of the facility; that all the letter sorting machinery was in operation; that it was not uncommon to talk loud; that the grievant was away from his station a total of eighteen minutes; that the grievant had received the prior disciplines:

1. 7/25/75 Letter of Warning for taking too much time for writing 2A appeals.
2. 4/29/75 Letter of Warning for conduct unbecoming a postal employee.
3. 4/28/75 Letter of Warning for failure to comply to a Written Order.
4. 1/4/75 Letter of Warning for AWOL.
5. 12/5/75 Letter of Warning for failure to support absence with medical certification.
6. 10/31/74 Seven day suspension for conduct unbecoming a postal employee.
7. 10/3/74 Letter of Warning for refusal to obey a Direct Order.
8. 3/19/74 Letter of Warning for refusal to obey a Direct Order.

Evidence further reveals that this matter in arbitration is a deferral under their letter order of March 30, 1976, which states in full as follows:

"Gentlemen:

In accordance with the National Labor Relations Board's decision in Dubo Manufacturing Corporation, 142 NLRB 431, and pursuant to

'Arbitration Deferral Policy Under Collyer Revised Guidelines' publicly issued by the General Counsel on May 10, 1973, I am declining to issue a complaint on the instant charge based on my determination that further proceedings on the Section 8(a)(1) and (3) charges concerning the suspension of Louis Elliott only should be administratively deferred for arbitration.

My reasons for deferring are as follows:

the dispute is being actively pursued and both the U.S. Postal Service and the North Suburban Sectional Center Local of the American Postal Workers Union have expressed the intention to arbitrate this matter and are waiting the appointment of an arbitrator.

It is my intention to inquire as to the status of this dispute periodically, and no later than 90 days hence, and to accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charge, for continued deferral of administrative action on the charge, or for issuance of a complaint.

When the disputes underlying the charge are resolved by arbitration, the Charging Party may obtain a review of the Arbitrator's final award by addressing a request for review to this office. The request should be in writing and contain a statement of the facts and circumstances bearing on whether the arbitral proceedings were fair and regular; whether the unfair labor practice issues which gave rise to the charge were considered and decided by the arbitrator; and whether the award is consonant with the purposes and policies of the Labor Management Relations Act. Spielberg Mfg. Co., 112 NLRB 1080.

Very truly yours,
/s/ Alex V. Barbour
Alex V. Barbour
Regional Director"

This matter rose to arbitration on these facts.

III. OPINION AND DISCUSSION

ARTICLE XV, Section 2 of the collective bargaining agreement states that an Employee must discuss a grievance with his immediate supervisor at Step 1. Of necessity, it also becomes

incumbent upon the supervisor to discuss the matter at Step 1 with the Employee and/or the representative of that Employee. The very nature of the matter demands an "on-floor" period of discussion concerning the grievance. The hearing and discussion and opinion occurred within four minutes and it appears from the record that the supervisor was not in a discussing mood. The supervisor did not refute the evidence of the Union that the supervisor stated that answers could be received at the hearing of Step 2A. The purpose of a Step 1 hearing is to, if possible, forego subsequent grievance procedures, by settling matters at the lowest level. It appears from the evidence that the result of incomplete meetings merely perpetrate protests and initiate new ones.

The form 7020 indicates a four minute conference and a total of eighteen minutes that the grievant in this case spent away from his regular work assignment. In neither event is the time element unreasonable.

The whole point of the discussion is this. If, in fact, a prescheduled meeting was arranged and the supervisor was pressed for time by virtue of her own supervisory duties, and could not properly effectuate a Step 1 meeting, pursuant to the contract, and a prolonging of meeting irritated her so as to order the steward and grievant back to work prematurely, then, in fact, the supervisor has some shared culpability in the creation of the alleged improper activity of the grievant in this case. Turning your back to discussants and refusing

to answer questions at a prescheduled meeting and merely continuing the prescheduled meeting for a few moments, all of which is undenied by the Employer is sufficient to create an irritating collective bargaining atmosphere, unfair to the contract and certainly antagonistic to the individuals involved.

By this, I do not mean to state that an endless meeting must in fact take place. However, a Step 1 meeting must be more than being present. It must of necessity be an open discussion concerning the event. Turning your back on the situation is creating more problems than it settles and quite frankly that is just what it did in this case.

On the other hand, Union representatives merely have a right to discuss, not yell, holler or be discourteous or belligerent or antagonistic during such meetings. Although the grievant in this cause stated that he did talk loudly in this area of the facility because of the moving equipment, it was not meant to be a "hollering" caused by anger or hostility but because of the machinery noise involved. I did visit the area and found it to be noisy and therefore inclined to agree with the grievant. The grievant denied that he was told three or four times to report back to work but that he did return to work when he, in fact, was told. The Employer has just not sustained its allegation of a refusal of the grievant to return to work, especially in light of the fact that the grievant was not charged with insubordination in the current charge.

A perusal of the contract, specifically ARTICLES XVII and XXXI, grant to stewards the right to represent, investigate and adjust grievances. This is their function and they, at that level, have the ability to discuss and resolve the problem. The stewards are not there merely to be heard.

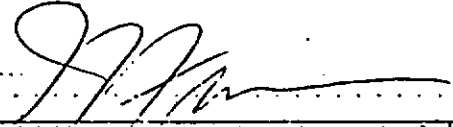
It appears therefore, under the facts of this case that the supervisor caused the problems that resulted in the grievant receiving the suspension. The grievant is therefore entitled to relief.

There was an objection made by the Union when the prior discipline record of the grievant was proffered into evidence. The objection was overruled. The contract demands progressive and corrective discipline. The determination of that discipline is impossible if in fact prior records are not a part of the testimony in the cause. A statement of charges does not have to contain the entire record of the grievant before that prior record may be admitted, and I so hold.

IV. AWARD

Grievance granted to the following extent:

1. The grievant's suspension of twenty days shall be expunged from the personnel file of the grievant.
2. The grievant shall be paid for all lost time.


MARVIN J. FELDMAN, Arbitrator

Made and Entered
this 27th day of
Oct., 1977.