

C-25522

## **REGULAR ARBITRATION**

BEFORE: Philip Harris Arbitrator

## APPEARANCES:

For the U.S. Postal Service: Sonya F. Redding, Labor Relations Specialist

For the Union: Paul E. Barner, Local Business Agent

Place of Hearing: Lilburn, GA

Dates of Hearing: April 16 and July 9, 2004

**AWARD:**

Postmaster Jerry Wade and Supervisors Charles Ensminger and John Orr are suspended for three days. Appropriate leave banks may be charged in lieu of time off.

Date of Award:  October 13, 2004

## **PANEL** Southeast Area Regular Panel

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**Issues**

1. Is the grievance arbitrable?
2. Did Management violate the Joint Statement on Violence and Behavior in the Workplace? If yes, what is the appropriate remedy?

**Facts**

New Management came into the Lilburn Post Office and addressed the claimed problem of high overtime costs. The specifics to lower these costs are the basis for the Union's assertion of Joint Statement violations. The respective views are elaborated in the positions below.

**Relevant Binding Language**

The Joint Statement on Violence and Behavior in the Workplace.

**Postal Service Position on Arbitrability**

The grievance is not arbitrable because Article 1 of the National Agreement excludes Management employees. Also, Article 3 gives Management the right to manage and to discipline employees. Lastly, Article 15.4.a.6 confines Arbitrators to the terms and conditions of the Contract.

In support of its Position, the Service cited two awards, the first by Arbitrator Robert Foster, Case No. S1N-3P-C 16591. In his 1984 decision he said "the requested remedies proposed by the Union are not within the jurisdictional authority of the arbitrator to grant" regarding discipline of a Supervisor.

The other award is by Thomas Levak in Case No. W7N-5M-C 2028, 1991. He said the grievance was not arbitrable because he "does not have jurisdiction

and authority over the grievance, as appealed," and denied it.

#### Union Position on Arbitrability

Four cases were provided sustaining the Union's position. The first is Arbitrator Carlton Snow's National Award, Case No. Q90N-4F-C 94024977, 1996. He ruled that the Joint Statement "constitutes a contractually enforceable agreement between the parties. Accordingly, the Union shall have access to the negotiated grievance procedure set forth in the parties' collective bargaining agreement to resolve disputes arising under the Joint Statement."

In 1997 Arbitrator Kathleen Devine heard Case No. A90N-1A-C 95063232. She held for the Union's grievance being arbitrable "based upon the finding of National Arbitrator Carlton Snow - - - , " there being no evidence to deviate from it.

Arbitrator Leonard Bajork heard Case No. H94N-4H-C 95041405, 2000. He ordered the demotion of a Manager to a Supervisor, and not rewarded or promoted for five years.

Then in 2003 the United States Court of Appeals for the Sixth Circuit heard the matter of the Bajork award and sustained it.

#### Opinion

Evolution continues, and the U.S. Postal Service-National Association of Letter Carriers collective bargaining milieu is not excepted. Based upon the documents and related arguments submitted, this is an open-and-shut case favoring the Union. Management's two citations denying arbitrability are dated 1984 and 1991 respectively. The Union's Snow 1996 award addressed the new turf - - the Joint Statement dated 1992 - - and placed it within the four corners of the National Contract. This occurred in 1996, rewriting the history analyzed in the two earlier Postal Service submissions. The

development was immensely fortified by the U.S. Court of Appeals. The grievance is arbitrable.

#### Union Position on the Merits

1. There are 22 witnesses from 3 crafts asserting Joint Statement and other policy violations. There were constant threats, intimidation and bullying of employees throughout the station, and against Union officers exercising their contractual rights. Carrier Richards required time off as per her physician due to harassment. And when given permission to complete her deliveries, she would then be threatened with discipline for unauthorized overtime.

Carrier Conegan was told he was like "Holding Up a Store" when seeking overtime.

Carrier Caldwell was told by Supervisor Ensminger, "I'm going to watch you real close," and said it in an intimidating manner. It's a no-win situation to call in for authorization to complete deliveries, then later be threatened with discipline for using unauthorized overtimes, said Caldwell. "Pushing an employee to the point of near physical confrontation cannot be tolerated. Caldwell testified that he had to take stress leave due to the tactics of management."

Carrier King testified that Wade was abusive, ugly, and downright rude."

Carrier Pajewski was told by Wade "I'm gonna fix you up real good. I'm gonna have somebody ride with you." The Carrier felt threatened when Wade sat behind him when casing mail (Union Post-Hearing Brief pages 3, 4, hereafter styled U 3,4).

2. He also said numerous one-day counts were used to harass him.

OIC Wade said he was sent to Lilburn because of high penalty overtime. But the Joint Statement reads, "Making the numbers is not an excuse for the abuse of anyone."

It was harassment and bullying by Supervisor Ensminger to reprimand

Carriers for using personal time permitted by the National Agreement.

Mr. Wade refused to cooperate with the Union. He did not recognize grievances brought by Steward Pajewski until a grievance against the OIC required him to cease and desist, and included a monetary remedy.

Management still did not treat employees with dignity and respect (U 5,6).

Manager Wade and Supervisor Orr and Ensminger should be "removed from their administrative duties and that they are never allowed to supervise craft employees in any craft in the future" (U 8).

#### Postal Service Position on the Merits

1. The Union produced no evidence of Joint Statements violations. "...the union created and orchestrated these false allegations toward management because they resented the supervision of the new management team that just arrived in the Lilburn Post Offices...charged with making improvements" (Postal Service Post-Hearing Brief page 1, hereafter styled PS 1).

2. "Lilburn had been identified as a poor performing office in the Atlanta District because overtime was high in comparison to the mail volume." Management did not violate the Joint Statement, and the Union did not cooperate as called for in the National Agreement and Joint Statement. Employees considered it violence when Management spoke of work performance deficiencies and enforcement of Postal rules.

Mr. Pajewski orchestrated statements from disgruntled Carriers. There was no evidence of a violent incident. Statements were opinion and not fact. Support was given to employees even when they violated rules (PS 2).

3. Much information was provided by Management as requested, but not always timely due to volume.

Carrier Richards had attendance problems. She often worked unjustified overtime regardless of mail volume.

Witness Caldwell was always on the phone (PS 3).

4. Management was addressing the deficiencies in his performance.

Witness Donegan frequently lunched at home, which was on his route. When Management rode with him, "he performed well in a timely manner."

Witness King became upset when confronted about her activities after punching in: "talking to other employees, attending to coffee, cups, cream, etc. to make sales to employees....She felt that is was totally ridiculous of management to address her for not working while on the clock."

Witness Marano was hostile to Management and did not include all the details of what was going on (PS 4).

5. He "did everything he could to dispute management, publicly create confrontations, defend poor performing employees and keep management tied up in the grievance process." Management behavior did not rise to a level of violence. Managers are charged with maintaining operational efficiency. The Union's requested remedy and the grievance have no validity (PS 5).

The Postal Service produced three cases supporting its stance on the merits, the first being heard by Arbitrator Hayduks, F94N-4F-C 99216421, 2001. He found no extraordinary or extreme circumstances to affect the promotion or demotion of a Supervisor. He also said "that the arbitrator is bound by the terms of the collective bargaining agreement and may not simply dispense his brand of industrial justice," quoting the Supreme Court.

Arbitrator Donald Olson, Case No. F94N-4F-C 98080218, felt the Grievant did not give any specific reason to feel threatened or intimidated by supervision. He denied the grievance.

Arbitrator Mollie Bowers had Case No. K01N-4K C 03019595. She said the Supervisor's behavior, as in the case at bar, did not rise to a violation of the Joint Statement.

The Union has not met its burden of proof. The grievance should be denied (PS 6).

### Opinion

Management would have been irresponsible to ignore the data that the Lilburn Post Office was one of the poorest performing in the Atlanta region based on high overtime costs versus mail volume. The newer realities of the marketplace put even more pressure on the Postal Service "to serve the public efficiently and productively," to quote the Joint Statement on Violence and Behavior in the Workplace. These newer forces include significantly increased competition and the world of electronics, as E-mail and FAX. They compel even more action to run the Postal Service as a business, which it is.

Given this forceful environment to institute change, the Service utilized a time-honored, standard strategy: bring in new leadership, one not wedded to the existing way of operating. By definition, this was a cause for concern among the employees about the impact on their work life. In particular, their earnings will diminish as overtime is brought into line with mail volume. This was not a joyous development for them, but the aforementioned efficiency and productivity are joint goals of the Parties.

That being said, there are right ways and wrong ways to achieve goals, and the Joint Statement provided a most commendable road map of do's and don't's in seeking peaceful change, a "more harmonious, as well as a more productive workplace. We pledge our efforts to these objections," the last paragraph of the Joint Statement.

What then happened at Lilburn was that the new Management moved in the direction of the wrong way to create change. The Joint Statement incorporates certain criteria for attaining desired relationships. "It is time for reaffirming the basic right of all employee to a safe and humane working environment (emphasis added) ... It is also the time to take action to show that we mean what we say."

The third paragraph of the Joint Statement says:

We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence to anyone at any level of the

Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats or bullying by anyone (emphasis added).

In the next paragraph we find, " We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect and fairness. Seeking a fair day's work "does not justify actions that are abusive or intolerant....those who do not respect those rights are not tolerated."

The new Management team sent to Lilburn to increase the efficiency and productivity was zealous to a fault and hence failed to meet the Joint Statement's lofty but mandated behavior toward subordinates. Twenty-two witnesses stated or documented a laundry list of violations by the Team of one or more sections of the Joint Statement. The Arbitrator hears one or another of the Team say to a Carrier, "I'm going to fix you good." Another one said to a Carrier requesting overtime that the latter was like holding up a store. And a Union official was intimidated and belittled when a Team member shook a request for information in the official's face and threatened to destroy it." Then there were two Carriers who consulted their physicians for relief from this kind of job stress.

There was some dispute by Management as to the exact words and circumstances involved in these and other incidents, but conceptually the bottom line remains that the Joint Statement violations occurred. The Team's behavior was unacceptable, especially considering the reason the Joint Statement came into being in the first place.

#### Award

Postmaster Jerry Wade and Supervisors Charles Ensminger and John Orr are suspended for three days. Appropriate leave banks may be charged in lieu of time off.