C-22009

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Grievant: Charles H. Roberts
USPS Case No: D94N-4D-C 99281879
LOCAL #: 461-99-311
NALC GTS#: 48230

Post Office: Kernersville, NC

BEFORE:	Arbitrator Mark I. Lurie
APPEARANCES:	
For the U.S. Postal Service:	Clifton D. Wilks
For the N.A.L.C:	Jeff Granger
Place of Hearing:	Kernersville, NC Public Library
Dates of Hearing:	12/8/00, 12/19/00 and 1/8/01
Post-Hearing Briefs were received	3/14/01
Reply Briefs were received and the Hearing Declared Closed	3/27/01
Date of Award:	4/24/01
Relevant Contract Provision:	Article 19 and The Joint Statement on Violence in the Workplace
Contract Year:	1998-2000
Type of Grievance:	contract

Award Summary:

Supervisor Crutchfield has demonstrated a dangerous proclivity for provocation of a subordinate; he has violated the Joint Statement; and he should be removed from his administrative - meaning supervisory - duties for 1 year. After that time, if he is reinstated to those duties, he is instructed to cease and desist from similar egregious provocation of his subordinates. This adverse action can be undertaken with regard to Supervisor Crutchfield by means of a de novo proceeding in compliance with Title 5, Section 7513 of the U.S. Code.

Mark I. Lurie, Arbitrator

PREFACE

The Arbitrator has reviewed, at length, the many contentions of the parties in this case, the extensive evidence presented in furtherance of those contentions, and the many citations proffered with the parties' post-hearing briefs and reply briefs. This decision does not contain a reiteration of every assertion, citation and proof advanced by the parties, but rather is confined to those matters that the Arbitrator deems to have been the most credible, substantiated, relevant and material to the resolution of the grievance. Consequently, the omission of any evidence, whether documentary or testimonial, and the omission of any citations or contentions should not be construed as oversight, but rather as the conclusion of the Arbitrator that they are either of insufficient relevance, reliability or materiality to effect the outcome of this decision.

BACKGROUND

In the wake of fatal shootings at Royal Oak, and other acts of extreme violence by Postal employees or former employees who, rightly or not, had felt themselves the recipients of injustice and indignity at the hands of Postal management, on February 14, 1992, the United States Postal Service, the National Association of Letter Carriers, and other labor organizations signed a document entitled the JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE. That document (hereinafter the "Joint Statement") included the following paragraphs, the first of which will be referred to as the "Violence and Threat" paragraph; the second as the "Dignity and Respect" paragraph:

> We openly acknowledge that in some places, 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 by 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.
>
> We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to getting a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. *"Making the numbers" is not an excuse for the abuse of anyone.* Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.

In 1996, the Union brought two grievances dealing with the alleged harassment of letter carriers by supervisors, in which the remedy sought was that the supervisors not be allowed to direct the work of letter carriers. The cases were consolidated and were heard at the National Panel level by Arbitrator Carlton J. Snow in case Q90N-4F-C 94024977/038 (1996). The issues were whether the Joint Statement constituted a contractual agreement between the parties, and

whether it was enforceable by the Union through the grievance procedure of the National Agreement. Arbitrator Snow resolved both in the affirmative. In response to the additional issue of what the appropriate remedy should be for violation of the Joint Statement, Arbitrator Snow stated that

> "...arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties."

The instant grievance involves a claim that Kernersville, North Carolina Supervisor Ronald Crutchfield engaged in the close observation and micro-management of Letter Carrier Charles Roberts (the "Grievant") in a manner that constituted harassment, that Supervisor Crutchfield otherwise failed to treat the Grievant with requisite dignity and respect, that his conduct constituted harassment of the Grievant and was the proximate cause of his subsequent absence from work, and that Supervisor Crutchfield thereby violated the Joint Statement and Article 19 of the Agreement.

ISSUE

The parties stipulated that the following was the issue: Did Supervisor Crutchfield violate the Joint Statement on August 2, 1999 and, if so, what is the proper remedy?

FACTS

The instant grievance came to arbitration under the new Dispute Resolution Team process. The Step A grievance form charged that Supervisor Crutchfield violated the Joint Statement with regard to the Grievant, and identified the date of the incident as August 2, 1999. Between Steps A and B, the parties conducted what is termed "an intervention," in which representatives of Management and the Union informally discussed, among other things, perceived problems with Supervisor Crutchfield's managerial techniques. The grievance then proceeded to Step B, where the parties reached impasse. Their joint Step B statement, dated Dec. 9, 1999, set forth their respective positions :

> "The Union alleges that Supervisor Crutchfield treats employees without dignity or respect and intimidates them at every chance he gets."
>
> "Management states [that] this grievance stems from the one incident occurring on August 9, 1999 [this was a typographical error, August 2nd 1999 was intended] and [that] Supervisor Crutchfield performed his duties correctly."

The remedy sought by the Union at that point was that Supervisor Crutchfield no longer be permitted to supervise employees in the U.S. Postal Service. The following is an account of the salient facts underlying the grievance.

Pre- August 2, 1999 history

The Grievant and Supervisor Crutchfield had a working history that preceded their coming to the Kernersville Post Office. The history is relevant only insofar as it establishes a potential predilection in each for the conduct attributed to them in this grievance. However, this grievance, as filed, pertained solely to the events of August 2, 1999, and will not be construed by the Arbitrator as a referendum or judgment of Supervisor Crutchfield's career other than on that date.

According to Supervisor Crutchfield, when the two of them were serving as City Letter Carriers in High Point station, the Grievant advised Mr. Crutchfield that "he was running the mail to fast," meaning that the he was delivering mail too quickly and that he needed to slow down. This led to an argument between the two in which, according to Mr. Crutchfield, the Grievant came close to him and raised his voice, necessitating that a supervisor intervene. Also according to Supervisor Crutchfield, on a particular day while he was at High Point station, he was studying the forwarding cards on his own time - while off the clock. The Grievant told him not to do this, telling him "You're taking money out of my pocket." O.I.C. Kurt Barlow similarly testified that Mr. Crutchfield's speed, when he was a Letter Carrier, was perceived by Grievant Roberts as taking overtime work away from other Carriers. Kernersville O.I.C. Ronald L. White testified that, when it was announced that Supervisor Crutchfield would be coming to that station, he heard Grievant Roberts tell other employees in the station that they had better watch out because Crutchfield was going to fire them - that he was a Hitler.

The Union sought to introduce information regarding prior grievances pertaining to Supervisor Crutchfield while he was at the High Point station, as well as information about interventions pertaining to Supervisor Crutchfield at both High Point and Kernersville stations. NALC Local Business Agent, Jimmy Mainor and National Business Agent, Matthew Rose, each testified that they participated on these interventions, a purpose of which was to address Supervisor Crutchfield's purported difficulty in dealing with craft employees. The Service objected to the introduction of all of the foregoing, asserting that they were not citable. The Arbitrator concurs.

As of August 1999, the Grievant, a Letter Carrier since 1972, was on the 12-hour Overtime Desired List (the "OTDL"), and was the Shop Steward in the Kernersville Post Office. The Grievant testified that, during his career with the Postal Service, he had never been disciplined. Also as of August, Mr. Crutchfield had been a supervisor in Kernersville for approximately 1½ years, having previously served as a supervisor in High Point, North Carolina for six months. He came to Kernersville, initially, to supervise the Clerk and Rural Carrier craft employees. (There was some dispute as to whether Mr. Crutchfield's transfer from High Point was by reason of a voluntary bid, an involuntary transfer, or was a quasi-disciplinary demotion. The Arbitrator finds that a preponderance of the evidence shows that Mr. Crutchfield's transfer was a voluntary bid to a position within the same grade.)

Dispute over auxiliary assistance by a T-6 on overtime

On the morning of Monday, August 2, 1999, the Grievant requested 1 hour of overtime. Supervisor Crutchfield informed the Grievant that he wanted him to work only eight hours that day, and that the overtime work on his route would be assigned, instead, to a T-6.[1] (The Arbitrator finds that Management had a valid business purpose for this decision: it anticipated that the Grievant would work overtime later in the week, and sought to avoid the penalty overtime that would be incurred if the Grievant worked overtime on August 2nd as well.) The Grievant, who, again, was a Shop Steward, replied that the assignment of this work to a T-6 would violate a contractually-binding past practice.[2] Hearing this, Supervisor Crutchfield did not alter his decision. What ensued is in dispute.

Per Supervisor Crutchfield, O.I.C. Barlow and Customer Services Supervisor Norman

The Grievant became agitated and, in a loud voice, insisted that Crutchfield accompany him to the Postmaster's office, whereupon O.I.C. Barlow and Supervisor Crutchfield attempted to show the Grievant a relevant provision in the JCAM. According to Supervisor Crutchfield, O.I.C. Barlow, and Customer Services Supervisor James Norman, who was also

1. Supervisor Crutchfield assigned the overtime on the Grievant's route to another carrier, T-6 Donna Norris and, because Ms.Norris' route was itself over 8 hours, assigned a PTF carrier to carry a portion of Ms. Norris' route. Supervisor Crutchfield testified that he had done this because he wanted to utilize the Grievant on overtime on another day during that same week, but that he did not want to exceed the 60-hour weekly ceiling that would result in paying penalty overtime.

2. The Grievant told Supervisor Crutchfield that a T-6 carrier could not work a route other than the particular route assigned her that day, unless the OTDL carriers had first been maximized. Supervisor Crutchfield replied that he could use a T-6 carrier to handle the overtime on any route on her brace of routes.

present, the Grievant refused to read the proffered JCAM, and asserted the existence of a past practice. The Grievant became visibly upset. The meeting ended with Grievant Roberts stating that he would remove his name from the OTDL, would request a special route count, and would spend the remainder of the day in the office filing grievances.

Supervisor Crutchfield subsequently ran a report to determine whether Grievant Roberts qualified for a special count and inspection; the report indicated that he did not qualify. Supervisor Crutchfield posted this report at Grievant Roberts' case.

Per Grievant Roberts

In his testimony, Grievant Roberts testified that, during the meeting, he asserted the existence of a binding past practice precluding the use of a T-6 working overtime on his route. When the Managers nonetheless persisted, the Grievant indicated that he would file a grievance on the issue, and that he intended to remove his name from the OTDL. He then left the office and returned to his casing duties.

Street supervision

After this meeting, the Grievant requested an hour's auxiliary assistance. (In the Arbitrator's judgment, the question of whether his estimate of an hour's assistance was reasonable is not relevant to resolution of this dispute, and arguments pertaining to the estimate will therefore not be addressed.) Supervisor Crutchfield discussed this estimate with O.I.C. Barlow, and both agreed that it appeared to be excessive. (The Grievant testified that no one had ever previously questioned the reasonableness of his time delivering a route. On the other hand, O.I.C. Barlow testified that the Grievant would become upset whenever his request for overtime was questioned and that he - Barlow – therefore dreaded challenging Mr. Roberts' requests.)

With O.I.C. Barlow's concurrence, Supervisor Crutchfield undertook street supervision of the Grievant; that street supervision began at 12:30. While the Grievant was on Oak Forest Drive, Supervisor Crutchfield pulled alongside the Grievant's vehicle and looked at the Grievant.

> According to the Grievant, Supervisor Crutchfield turned and glowered at him, a charge that Supervisor Crutchfield denies.
>
> According to Supervisor Crutchfield, he pulled alongside to confirm his observation that the Grievant was not wearing his shoulder harness. He confirmed that such was the case, but that Grievant Roberts was wearing his lap belt and, for that reason, he - Crutchfield - did not stop and correct Grievant Roberts.

Supervisor Crutchfield also noted in his report that Grievant Roberts had failed to curb the tires of his Postal vehicle properly. Again, Supervisor Crutchfield did not attempt to correct Grievant Roberts while on the street; instead, he wrote up the safety violations in the report of the street supervision. Supervisor Crutchfield testified that he did not undertake to correct these safety violations while on the street because he did not consider them to be "major safety violations"; this included the observation that the Grievant had driven a short distance with his door open. Supervisor Crutchfield completed PS Form 4584, noting that the Grievant had violated 3 major safety violations, but did not attempt to correct those violations while observing the Grievant on the street, in violation of Section 134 of the M-39 Handbook.

The Grievant testified, in response, that he had been wearing his chest harness when Supervisor Crutchfield pulled alongside him on August 2nd, that he knew of no other instance in which a Carrier had been written up for not wearing his chest harness, and he denied having curbed the wheels of his LLV improperly or having driven with his door open.

Lunch period encounter

Supervisor Crutchfield and Grievant Roberts returned to the station at 1:00 p.m. Approximately 25 minutes later, Grievant Roberts, having found the report, placed at his case by Supervisor Crutchfield, showing that his route did not qualify for a special count and inspection, approached Supervisor Crutchfield at his desk and asked why his route did not so qualify. As described by Supervisor Crutchfield, the Grievant was both loud and visibly upset. The following ensued immediately thereafter.

The Grievant's scheduled lunch period was 1:30 to 2:00. Supervisor Crutchfield asked Grievant Roberts why he was taking lunch at 1:00 rather than at his scheduled time of 1:30. Grievant Roberts said it was the law: that on Mondays he reported to work at 7:00 a.m., 1/2 hour earlier than the rest of the week, and that under state law, he was to take his lunch within 6 hours of reporting, or by 1:00 p.m. Supervisor Crutchfield told Grievant Roberts to depart for his next delivery point. The Grievant replied that the hot case was his next stop. Supervisor Crutchfield told the Grievant that it was almost 1:30 and that he should leave for the street and not over-extend his lunch period. The two then argued; what happened during that argument is disputed:

Supervisor Crutchfield testified that Grievant Roberts got "close up in his face," and yelled that he wasn't going to be intimidated by Crutchfield and repeatedly asked "What's my next assignment?" Supervisor Crutchfield told Mr. Roberts that he was not acting in his capacity as a Union Steward, nor had he – the Grievant – requested time to act in that capacity, and that he should calm down. Supervisor Crutchfield testified that Grievant Roberts was very upset, had his fists balled up, and that he started to walk away but then turned back, with his fists still clenched, and shouted "I am not going to let you run this place like Adolph Hitler." Supervisor Crutchfield testified that he feared for his safety and told Grievant Roberts to calm down or he would be placed on emergency suspension. At that point, according to Mr. Crutchfield, the Grievant completely lost control, turned a "funny color," was shaking and appeared about to have a seizure.

The Grievant announced that he felt ill and had to leave the premises. Supervisor Crutchfield prepared the form for Grievant Roberts to leave while, according to Mr. Crutchfield, the Grievant paced behind him with his fists still balled. Mr. Roberts was shaking when Mr. Crutchfield presented the form to him, and the Grievant signed the form with the assistance of a fellow employee.

Grievant Roberts testified that Supervisor Crutchfield told him that he (the Grievant) was about to extend his lunch period and that if he failed to arrive at his next stop within 30 minutes of the time he left his previous delivery point, he'd be put on emergency suspension "so fast, it would make your head swim." The two then "got in each other's faces." [quoting the Grievant]

Regarding Supervisor Crutchfield's comment that the Grievant had not requested Union time, the Grievant testified that he had served as a Shop Steward for the past fifteen years, and had never been required to ask for Union time in order to perform his steward's duties.

Grievant Roberts and Ms. Kim Christy, a witness called by Management, testified that Supervisor Crutchfield told Grievant Roberts that "You are awfully close to losing your job," a claim that Mr. Crutchfield denies.

The Grievant left the premises, was hospitalized for stress, and subsequently applied for workers compensation benefits. His application was denied.[3] The Grievant appealed and the appellant hearing officer ruled against him.[4]

3. The claims examiner concluded the following:

> "The factors you have presented in your claim are not considered to have occurred during the performance of duty because they are either self generated or unsubstantiated. There is no evidence of error or abuse on the part of Mr. Crutchfield toward you. The agency has the right to assign work as needed and there is no substantiation that Mr. Crutchfield yelled that you. The evidence does not establish that you sustained an injury in the performance of duty."

4. The Hearing Representative for the Office of Workers' Compensation Programs ruled, inter alia,

> "[The] claimant has failed to establish that he sustained a psychiatric condition while in the performance of duty." "[There] has been sufficient evidence... to establish that there are major problems in employee/management relations in the Kernersville Post Office that have led both sides to submit statements of innuendo, suspicion, and outright false statements." [Underlining added]
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> "In this case it is apparent that the claimant was angry over not being awarded overtime on that day, and any emotional reaction to such an incident would be considered outside the scope of the performance of duty. This is an administrative matter and there is no evidence the agency erred or acted abusively in the administration of this matter. [CONTINUED]

This was not the first time that the Grievant's dealings with a supervisor had so agitated him that he had to leave the premises and seek medical attention. In 1988, a different supervisor had caused him to seek medical attention when, in the Grievant's words, the supervisor had "tried everything he could think of to belittle me and the union for which I was serving as Shop Steward." An ensuing OWCP filed by the Grievant in 1989 was approved.

Other

The Service offered the testimony and written statements of employees to the effect that Supervisor Crutchfield treated them with dignity, had never been loud or combative in their presence and was generally a good supervisor, albeit one who supervised his Carriers closely and demanded good performance. O.I.C. Barlow testified that, in his experience, Supervisor Crutchfield had never mistreated anyone, but that his manner upset and "pissed off" some employees. Mr. Barlow described Supervisor Crutchfield's management approach as "the military style" and he observed that a lot of people "didn't go for just obeying orders." Mr. Barlow also observed, however, that the Grievant "would get angrier than most employees." Supervisor Crutchfield testified that he believed that he had neither provoked Grievant Roberts, nor had intentionally agitated him, nor had made matters worse by reason of his actions.

In rebuttal of the foregoing, the Union offered the testimony of Rural Carrier Janet Harrison (who also serves as a Union representative). Ms. Harrison testified that Supervisor Crutchfield's management technique was to "keep pushing your buttons until you're reduced to tears, agitating you - like you're in the military." According to Ms. Harrison, such a confrontation with Supervisor Crutchfield had left her in tears, with Mr. Crutchfield berating her by assertively asking "Do you hear me? I will use discipline if you don't understand me." According to Ms. Harrison, when she replied that she had to leave, Supervisor Crutchfield told her "You are not going anywhere." Supervisor Crutchfield denies having made any of these statements to Ms. Harrison. The Service sought to undermine Ms. Harrison's credibility by noting the inconsistency between her testimony regarding the disposition of a workers compensation claim that she had filed, and its actual disposition. The Union also submitted the written statements of employees, indicating that Supervisor Crutchfield had bullied and harassed them.

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4. CONTINUED

It is also accepted as factual that the claimant's supervisor, Ron Crutchfield, observed him on his route but, again, there is not evidence that the supervisor acted in error or abusively. The claimant has noted that he [Supervisor Crutchfield] had an intimidating look on his face when he observed the claimant; however this is the claimant's own interpretation of the offense and it has not been established as factual..."

"Finally, it is accepted that the supervisor and the claimant had a discussion regarding his lunch hour and again, eyewitnesses noted that the claimant was upset and the supervisor remained calm."

THE UNION'S POSITION

Supervisor Crutchfield has a history of mistreating employees and, especially, Union representatives. In this case, he ignored a valid past practice in order to deny the Grievant overtime to which he was entitled; performed street supervision without good reason as delineated in Section 134.3 of the M-39 Manual[5]; unreasonably contested the Grievant's choice of a lunch break period; maliciously threatened him with emergency suspension if he failed to immediately return to the street; and then further provoked him with threat of the loss of his employment. This misconduct on the part of Supervisor Crutchfield was consistent with his history of harassing employees, a management trait which the parties had repeatedly sought to redress and correct in the past, without success.

Supervisor Crutchfield bullied and intimidated the Grievant on August 2, 1999, in retaliation for the Grievant's claim of his past practice right to work overtime on his own route:

> The street intimidation consisted of Supervisor Crutchfield's giving the Grievant a menacing look, and then writing him up for 3 purported major safety violations while, at the same time, failing to immediately advise the Grievant of the safety violations, and correct those violations. Had Supervisor Crutchfield truly observed any of these driving violations, his first obligation would have been to immediately stop the Grievant and assure that these high-risk conditions were corrected. The Grievant denies having committed any of the 3 safety violations.
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> Supervisor Crutchfield then harassed the Grievant over the starting time and duration of his lunch period, both of which were proper, and threatened the Grievant with suspension when the Grievant sought to collect his hot case mail, which was his right and responsibility.

Supervisor Crutchfield's hostility so upset the Grievant, that he became unable to work, was required to seek protracted medical attention and, as a direct result of Supervisor Crutchfield's harassment, was thereafter unable to work and used 2800 hours of leave.

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5. When overtime or auxiliary assistance is used frequently on a route..., when a manager receives substantial evidence of loitering or other actions or a lack of action by one or more employees, or when it is considered to be in the interest of the Service, the manager may accompany the carrier on the street to determine the cause, or meet the carrier on the route and continue until such time as the manager is satisfied. No advance notice to the carrier is required.

Pursuant to the Snow decision, a Regional Panel arbitrator has the authority to discharge a supervisor or take other disciplinary action, as appropriate, for violation of the *Joint Statement*. Regional Panel arbitrators have acted upon that authority:

> In E90N-4E-C94054971 (1996), Arbitrator Kenneth McCaffree ruled that a Postmaster had improperly berated an employee on the workroom floor, causing that employee emotional distress and ensuing illness. Arbitrator McCaffree directed Management to cease and desist, directed the Postmaster to write a letter of apology to the employee, and awarded the payment to the employee of that portion of her sick leave attributable to the Postmaster's conduct.
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> The following year, Arbitrator McCaffree again issued a decision in which he found that a supervisor had violated the Joint Statement. In F90N-4F-C95065124 (1997), he instructed the Service to admonish a supervisor verbally, and instructed the supervisor to cease and desist from threatening an employee with termination (as opposed to advising the employee that poor performance could lead to discipline).
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> In A90N-4A-C95008050/99111494 (1996), Arbitrator Rose Jacobs addressed the verbally abusive and threatening conduct of the supervisor toward a Letter Carrier on the workroom floor. Arbitrator Jacobs found a violation of the Joint Statement as well as a local "zero tolerance" directive, and observed, inter alia, as follows:
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> > "The Joint Statement on Violence and Behavior in the Workforce is intended for Supervisors as well, as Supervisors should speak to fellow employees as they desire to be spoken to themselves, i.e., in a respectful and positive manner, as assaults do not necessarily involve physical contact."
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> In a class action grievance, G90N-4G-C96018834, 758 (1997), Arbitrator Leonard C. Bajork found that a supervisor had "perpetrated... abusive and intolerant behavior." His remedy was an instruction to the Service to restrict the supervisor "from performing the duties of any position which includes the core activity of dealing or working with carrier employees."
>
> In D940N-4D-C98005421 (2000) Arbitrator Keith Poole found that a supervisor had improperly reprimanded a Letter Carrier, following her into the break and, while knowing that she was on break, telling her to "quit bitching and get out of the post office" [meaning that she should return to her street delivery duties]. Based upon this, Arbitrator Poole concluded that the supervisor had "abused, harassed, bullied and intimidated" the employee and had thereby violated the Joint Statement. Arbitrator Poole ordered that the supervisor be barred from working in a supervisory capacity for so long as the affected employee remained at the same Postal location, and that a copy of this decision be attached to any application for promotion that the supervisor would make during the ensuing three-year period.

In sum, Supervisor Crutchfield has violated the *Joint Statement* as well as a Kernersville zero-tolerance policy. The Union seeks, as remedy, that the Grievant be made whole of the leave he used following his mistreatment by Supervisor Crutchfield (an aggregate of 2,800 hours), attributing the need for the entirety of that leave to Mr. Crutchfield's misconduct, and further seeks that Mr. Crutchfield no longer serve in a supervisory capacity.

THE SERVICE'S POSITION

The Service contests each of the Union's claims that Supervisor Crutchfield's actions and admonitions to the Grievant were for other than valid business purposes, or that they were not reasonable under the circumstances. In the Service's view, Supervisor Crutchfield was performing the legitimate and necessary functions of his position.

The Service further contests the remedies sought by the Grievant. The Grievant's claim for reimbursement of his annual and sick leave is objected to as a new issue, not previously raised in the grievance process and, therefore, not properly before the Arbitrator. However, even if the claim had been timely made, the Arbitrator lacks jurisdiction over the subject matter. The Grievant's filing of a claim for Workers Compensation (which claim was denied) gave the Department of Labor exclusive jurisdiction over the issue of whether the Grievant's illness was job-related. The Grievant's choice of that forum thereafter preempted subsequent jurisdiction by an arbitrator to determine the causality associated with the remedy of restoration of annual and sick leave. In this regard, the Service cites Arbitrator John F. Caraway in SIN-3U-C191 (1982):

> "The United States Department of Labor Workers' Compensation Programs has exclusive jurisdiction over this dispute. Article 21, Section 4 provides that employees covered by the National Agreement shall have their Workers' Compensation claims governed by Chapter 81 of Title 5.... This means that the authority of the arbitrator under the National Agreement in this specific area is subordinated to that of the Secretary of Labor. This is the clear intent of Article 21, Section 4. The grievant in fact recognized the authority of the Secretary of Labor to decide his claim... once the employee has filed a CA-1 with the Department of Labor, that Agency has sole authority to decide the merits of [the grievant's] claim. The arbitrator is divested of jurisdictional authority."

Next, the Service asserts that the Snow decision cannot mean that an arbitrator can order any adverse or other actions toward a supervisor. Rather, the most an arbitrator can do is to order the Postal Service at a given place to cease and desist violating the Agreement:

> Article 1, Section 2 of the Agreement states, in part, that the employee group covered by the Agreement excludes managerial and supervisory personnel. Article 15, Section 4.A.6. limits an arbitrator's decision to the terms and provisions of the Agreement, and prohibits the arbitrator from altering, amending or modifying those terms and provisions. Arbitrator Snow's award did not address this ramification of Article 15, and his decision cannot provide jurisdiction to an arbitrator to order an adverse action against a manager where the Agreement plainly states otherwise.

While an arbitrator may "consider" removing a supervisor from his administrative duties, the National Agreement does not provide authority for the arbitrator to effect any such remedy. The grievance procedure neither provides the required notice and opportunity for a manager to respond to charges, nor allows the Union to initiate any administrative actions or charges against a non-bargaining unit employee. For this reason, in Regular Panel decision F94N-4F-C98080218 (2001), Arbitrator Donald E. Olson, Jr. observed that

> "This Arbitrator has no authority or jurisdiction to issue an award that would involve disciplinary action against supervisory employees, or cause the Employer to change a given supervisor's assigned duties, since these are rights retained exclusively by the Employer. Unquestionably, Article 1, Section 2 of the National Agreement expressly states that the Agreement does not apply to managerial and supervisory personnel."

Supervisor Crutchfield is covered by Title 5 of the U.S. Code (Subchapter II, Chapter 75) and any adverse action taken against him is subject to the procedural safeguards afforded by that Act.[6] The Arbitrator is precluded from issuing an order directly and adversely affecting the career of Supervisor Crutchfield, because doing so would circumvent these Title 5 protections. The only contractually appropriate remedy available to the Arbitrator is an order for the Postal Service to cease and desist.

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6. The Act states in relevant part as follows:
   Title 39, Section 1005 (a)(4)(A)
   Subchapter II of chapter 75 of title 5 shall apply –
      ii. To any individual who –
         (I) is in the position of a supervisor or a management employee in the Postal Service... and
         (II) has completed one year of current continuous service in the same or similar positions.
   Title 5, Section 7513, Cause and procedure
      (b) An employee against whom an action is proposed is entitled to
         (1) at least 30 days' advance written notice...;
         (2) a reasonable time, but not less than seven days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
         (3) be represented by an attorney or other representative; and
         (4) a written decision and the specific reasons therefore at the earliest practicable date.
      (d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.
      (e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefore, and any order affecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

DECISION

As its caption indicates, the Joint Statement addresses, respectively, (1) violence and (2) behavior in the workplace. The Violence and Threat paragraph addresses "violence or any threats of violence" and then prohibits

> harassment,
> intimidation,
> threats, or
> bullying.

The listing of these four activities relates to the prohibition against violence or threats of violence - physical harm or the threat of such harm; not harassment for solely the purpose of engendering indignity or submissiveness. On the other hand, the Dignity and Respect paragraph prohibits actions that do not entail the threat of physical harm but that are nonetheless "abusive" in that they demean or humiliate. This paragraph is aimed primarily at managerial misconduct; for example, it discounts "Making the numbers" as a rationale for engaging in unacceptable behavior, and admonishes that "Those whose unacceptable behavior continues will be removed from their positions." Generally, a single violation of the Violence and Threat provision of the Joint Statement, i.e. a threat of imminent injury, whether by a manager or line employee, warrants serious response, including possible removal. However, individual violations of the Dignity and Respect provision are patently less egregious.[7] The harm that can arise from such violations lies in their repetition, and in the rage that can be engendered by the perception of persistent injustice and denigration. The obvious purpose of the Dignity and Respect paragraph is to prohibit the repeated exercise of managerial authority for the primary purpose of subjugating the ego of an employee; i.e., for the primary purpose of showing the employee who is boss, rather than for the primary purpose of accomplishing a bona fide operational task. This is a methodology that is well-suited for the military, but that has no place in civilian life.

7. History has shown that a hostile work environment can provoke deadly response, and so a pattern of such violations cannot be permitted to persist. Nonetheless, a "bad day" or two, in which a manager and an employee have a run-in resulting in the employee's suffering indignities, is inevitable. While such a lapse in judgment by a manager violates the precept in the Joint Statement that every employee should "be treated at all times with dignity..." and, under Arbitrator Snow's award, is grievable, it is obvious that resorting to the grievance process for such infractions is a costly, inefficient and, most importantly, ineffective means of remediation, and one probably not intended by Arbitrator Snow when he rendered his decision. Generally, such grievances have resulted in the Manager being instructed by the Arbitrator to issue an apology to the employee, months or years after the fact, which apology has not been credible because it has been coerced. It would be better to reserve the grievance process for redressing those violations of the Dignity and Respect paragraph to those circumstances which the Joint Statement was intended to redress – those which might engender violence – and, in such cases, to accelerate the grievances to arbitration in order to quickly staunch the possibility of employee reprisal.

It is the Arbitrator's finding that, in the instant case, both parties – Grievant Roberts and Supervisor Crutchfield – were at fault. Theirs was a test of wills, but in the vernacular of the peculiar relationship that had evolved between them: The Grievant had an obvious sense of self-importance that, when challenged, was a hair-trigger for anger. And Supervisor Crutchfield, recognizing this, persistently and deliberately charged the Grievant with relatively unimportant violations, pulling that trigger. Supervisor Crutchfield used the Grievant's character flaw to defeat him and, in so doing, violated the Dignity and Respect paragraph of the Joint Statement.

Supervisor Crutchfield was the person in charge; he should have stopped this test of wills when the Grievant manifestly started to lose control of his emotions. He, and O.I.C. Barlow, who shares responsibility for what ensued, should have stopped the cycle of provocation and response. At some point, the emotional loss of control evidenced by the Grievant should have been recognized as a more important operational factor than whether his seat restraint had been properly set, his wheels properly curbed, or his lunch time properly observed. At that point, a competent supervisor would have taken a step back and either calmed the Grievant down, or asked for help from a supervisor with better communications skills. Instead, Supervisor Crutchfield did not relent. Instead, he persevered in this test of wills and ostensibly prevailed when the Grievant walked out the door. But this is the very kind of employee response that the Joint Statement was intended to avoid. Would it not have been within the realm of possibility that the Grievant might have vented his outrage and sense of futility by coming back to the Kernersville Station armed?

This Arbitrator is mandated to follow the decision of Arbitrator Snow and the National Panel. The Arbitrator finds that Supervisor Crutchfield has demonstrated a dangerous proclivity for provocation of a subordinate; that he has violated the Joint Statement; and that he should be removed from his administrative - meaning supervisory - duties for 1 year. After that time, if he is reinstated to those duties, he is instructed to cease and desist from similar egregious provocation of his subordinates.

As for enforcement of this decision, a word about the nature of this grievance is in order. To the Union, this has been a contract dispute – violation of the Joint Statement – for which the standard of proof has been a preponderance of the evidence. For Supervisor Crutchfield, whose career will be adversely affected, this case is a disciplinary action for which the burden of proof must be, at least, clear and convincing evidence. The finding by the Arbitrator that the Joint Statement has been violated and his issuance of the above remedy - entailing an adverse action against Supervisor Crutchfield – is binding upon the Postal Service; however, it is not

dispositive of Supervisor Crutchfield's rights under Title 5. When the Joint Statement was executed, no supervisory personnel waived their procedural appellate rights, and no inference of such a waiver can reasonably be deduced from its text. Rather, Title 5 procedural rights persisted. Consequently, before the Service endeavors to implement the remedy prescribed in this award (which, as a signatory to the Joint Statement, it must do in good faith), the Service must give Mr. Crutchfield notice of this adverse action and an opportunity to contest the action on the merits, de novo, pursuant to the procedures prescribed under Title 5, Section 7513.

The Arbitrator rejects the Service's argument that he is precluded from issuing a decision entailing such an adverse action by reason of the exclusion of supervisors from the employee group governed by the Agreement. This adverse action arises not under the Agreement, but under the Joint Statement, which Arbitrator Snow has ruled is enforceable under the grievance procedure of the National Agreement. For that same reason, the Service's reliance upon Arbitrator Olson's award, cited above, is inapt: Arbitrator Olson expressly found no violation of the Joint Statement in the case before him.

Finally, the Arbitrator agrees with the Service that once the Grievant invoked the jurisdiction of the Department of Labor to determine whether the cause of his ailments was work-related, jurisdiction by the Arbitrator was precluded. Therefore, no award of a restoration of leave can be considered in this decision.