

C# 10291

A+B

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of Arbitration)	GRIEVANT: R. Gillespie
between)	POST OFFICE: West Los Angeles, CA
UNITED STATES POSTAL SERVICE)	CASE NO. W7N-5D-D 22760
and)	GTS - 15872
NATIONAL ASSOCIATION OF LETTER)	
CARRIERS, AFL-CIO)	

BEFORE: JAMES T. BARKER, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Marian L. Taylor

For the Union: Harold Powdrill

Place of Hearing : 7001 S. Central, Los Angeles, CA

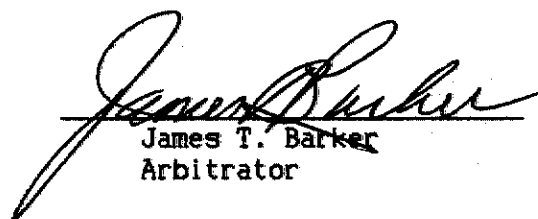
Date of Hearing : September 11, 1990

AWARD : The grievance is sustained.

The removal action shall be rescinded.

All references thereto shall be removed from the grievant's personnel file.

The grievant shall be made whole for all lost wages and benefits. No credit for AWOL charged for February 15 and February 16, 1990 is ordered.


James T. Barker
Arbitrator

Date of Award:

September 26, 1990

Case No. W7N-5D-D 22760
GTS No. 15872
(Grievant: R. Gillespie)

Opinion and Award

The Issues

The parties framed the issues as follows:

Was the emergency suspension and subsequent removal of the grievant for just cause?

If not, what is the appropriate remedy?

Pertinent Facts

I

The grievant is a full time letter carrier with seniority dating from January 31, 1987. At all relevant times he was assigned to the West Los Angeles station.

On March 26, 1990, the grievant was issued a Notice of Emergency Suspension and Notice of Thirty (30) Day Removal. The charges were:

1. Failure to Follow Direct Orders Resulting in Your Failing to Provide Security of the Mail and Delay of Mail.
2. Absence Without Official Leave.

The following recitation of facts was set forth in the Notice:

Charge No. 1: The Superintendent at West Los Angeles Station, Eugene Sutton, stated that on the morning of February 15, 1990 at approximately 10:30 AM, you reported to him that your two-ton vehicle No. 6503892 had broken down near Bundy Drive and Santa Monica Boulevard. At that time, Mr. Sutton instructed you to remain with the truck until the mechanic arrived. Instead, you failed to follow his direct order and deserted the vehicle, went back to the station, and said you would not work because of unsafe conditions. Superintendent Sutton stated he then instructed you to use another vehicle to finish delivering the mail, whereby you refused. At that point, you completed a Form 3971, Request for a Notification of Absence Form indicating "other leave" for the remainder of that day and the following day February 16, 1990 and left the station.

Mr. Sutton stated that upon his arrival at the vehicle, Garage Supervisor Emmett Davis and Mechanic Kasparian were already present. They

discovered that your vehicle was left unsecured with the driver's door unlocked. Inside your vehicle was approximately six (6) feet of First Class Mail, two (2) feet of flats, and six (6) pieces of parcel post.

* * * * *

Charge No. 2: You are charged with Absent Without Official Leave. Reference is made to your actions mentioned in Charge No. 1 regarding your PS Form 3971, Request for or Notification of Absence.

On February 15, 1990, when you submitted a PS Form 3971 requesting leave, your request was denied. However, you left the station anyway, without authorization. You were charged with Absence Without Official Leave from February 15, 1990 through 16, 1990 - Total AWOL - approximately 14.79 hours.

Listed as an element of past record was a Letter of Warning, dated June 21, 1989 for Absence Without Official Leave (AWOL) - Unsatisfactory Attendance.

II

The evidence establishes that on February 15, 1990 the grievant was using a two-ton truck in the delivery of his route. Emmett Davis, Gargage Supervisor testified that the diesel vehicles of this type in service had batteries not always capable of turning the engine over fast enough to achieve a start. He testified that over a period of weeks he had had two or three service calls due to this problem with the vehicle being used by the grievant.

Sutton testified that in the course of safety discussions with the grievant some weeks previous to February 15, the grievant had complained that the one-half ton vehicle he was using to deliver his route was not of sufficient size to safely handle the volume of mail generated by the route. Sutton further testified that some two weeks later the two-ton truck which the grievant was using on February 15 had been assigned to him. The grievant testified that he was, in fact, using the two-ton vehicle in question on February 15, but further testified that he had no vehicle assigned to him permanently. He had made known to management approximately

two months earlier that the 1/2 ton was not adequate to the needs of the collection function of his route.

III

At approximately 10:30 a.m. on February 15, the grievant called the station and reported to Sutton that his two-ton truck had broken down. The grievant testified that the vehicle was "malfunctioning." Sutton instructed the grievant to stay with the vehicle and stated he would call the garage. The grievant was told to remain with the truck until the service personnel arrived.

The grievant testified that the vehicle was situated so as not to impede traffic. He testified further that he waited forty-five minutes for the mechanics to arrive. In the course of doing so he became very upset. Accordingly, he flagged down a passing letter carrier and got a lift to the West Los Angeles postal facility. The grievant testified that before leaving he locked all doors to the truck.

Davis and Mechanic Kasparian responded to the the service call which Sutton had initiated immediately following his telephone conversation with the grievant. According to the testimony of Davis, and his written statement dated February 15, he and Kasparian arrived at the service location at 11:05 AM. They found the door on the driver's side of the vehicle unlocked with mail in the rear of the truck. They searched for the grievant in a nearby Burger King and surveyed the adjoining two blocks to no avail. They returned to service the two-ton truck and found that it had a run down battery.

Davis further testified that as they were preparing to tow the truck from its location, Sutton arrived. Sutton found the door on the driver's side of the vehicle unlocked. Sutton testified that the mechanics did not have a key to the vehicle. That he had the only remaining key. He explained that when a service call

is made to the garage and the carrier is with the vehicle, garage personnel do not bring a key to the scene.

The evidence shows that in 1989 in West Los Angeles postal vehicles containing mail were taken and driven off by gangs. Local managers were made aware of this, and they, in turn, were responsible for making carriers aware of the dangers. Sutton testified that he responded to this by advising all the carriers and routers of the "rash" of incidents, and stressing the security of the mails.

IV

The testimony of the grievant and of Sutton shows that immediately upon the return of the grievant to the station he was confronted by Sutton. Sutton directed the grievant go back out on the route and continue his delivery. He offered the keys to a different vehicle. However, the grievant refused to accept them and requested leave.

The grievant testified that he was very upset and that he explained to Sutton that he was experiencing "stress, strain and turmoil". The grievant further testified that he felt that if he continued to work he would impose a safety hazard.

On the other hand, Sutton testified that in requesting leave the grievant stated that he was "going home until you get your act together." Sutton further testified that the only "problem" the grievant mentioned was the vehicle breakdown.

According to the grievant, in the course of obtaining and completing his 3971, he spoke with his steward. He testified further that the reason he was seeking leave was to enable him to prepare and EEO statement and to alleviate the stress and strain he was experiencing. He testified further that, as he was not taking leave because he was sick, and because the form did not encompass the

reasons for which he was actually seeking leave, he indicated "Other" as the type of leave being requested.

Sutton refused the request for leave, notating the disapproval, "Scheduled and needed. AWOL charged."

V

On February 15, Sutton contacted the Postal Inspection Service and summarized the nature of the offense which he believed had been committed.

On February 20, Postal Inspectors Chew and Robertson investigated the matter.

February 20 was the grievant's first day of duty following his absence on February 15 and 16. He testified that when he reported for duty he could not locate his time card. Accordingly, he spoke with Sutton who told him that he wanted to see him in his office. The grievant spoke with Chief Steward Richenbacher and they went together to Sutton's office. In approaching Sutton, according to the testimony of Richenbacher, which is consistent with that of the grievant, the grievant asked, "Do I need a shop steward?" Sutton replied that he didn't need one now, but "maybe later." Richenbacher said nothing in reply and the grievant did not press the matter.

Richenbacher testified that he would characterize the grievant's inquiry as a request for representation. He testified further that, after the meeting between the grievant and the Postal Inspectors commenced, he called the Union hall and then departed to deliver his route.

Sutton testified that he told the grievant that he was going to be meeting with the Postal Inspectors and the grievant asked if he needed a shop steward for the meeting. On direct examination, Sutton had testified that when the grievant asked if he would need a shop steward, he, Sutton, replied, "That's up to you." However, when asked later in his examination to recount what was said Sutton

testified he replied, "Not right now. Maybe later." Sutton introduced the grievant to the postal inspectors.

The grievant testified that when he was first called into Sutton's office he was not told that he was to meet with the Postal Inspectors.

VI

The investigatory meeting was conducted by Postal Inspector Chew. Postal Inspector Robertson was present. The record shows that the grievant was presented with and signed a warning and waiver of rights form. The grievant did not request Union representation during the course of his meeting with Chew. He testified that did not make the request because Sutton had said "no" to his request. He added that he felt the Postal Inspectors represented the Postal Service and he didn't need to make the request again; he was not aware that he could renew the request.. He declined Chew's request to provide a written statement.

In pertinent part, the Investigative Memorandum issued by Chew, dated February 22, 1990, contained the following:

Carrier Gillespie stated he left the mail and went home because he was upset about the unsafe working conditions and the lack of two-ton vehicles. He said he had complained constantly to management for a bigger vehicle because a half-ton vehicle was not big enough to hold his collection mail. Upon further questioning, he admitted he had been assigned a two-ton truck since February 12, 1990. In addition, he said the replacement vehicle keys Mr. Sutton tried to give him on February 15, 1990 were probably for a two-ton truck, but he did not want to deprive another employee of a vehicle. It was pointed out to Carrier Gillespie that a two-ton replacement truck had been available for him to safely finish his route, and he should not assume his supervisor's responsibility in managing vehicles and personnel. * * * *

Also during the interview, Carrier Gillespie admitted Mr. Sutton had instructed him to stay at the truck. He added there was a possibility he could have left the truck unlocked. In fact, once at home, he said he wondered if he had locked all the vehicle's doors, but he did not bother to notify the post office. Carrier Gillespie also admitted he did not provide adequate security to the mail and should have taken it back to the station when he caught a ride with another carrier.

In the course of their investigation, Chew and Robertson also interviewed Sutton who provided a sworn statement. Davis provided a written statement.

Chew testified that the investigators did not go to the scene of the break-down of the grievant's two-ton truck on February 15, and did not view the mail which was allegedly left in the vehicle on that occasion.

Chew further testified that she had obtained the grievant's personnel file prior to issuing her Investigative Memorandum, but that she did not remember anything unique about it.

The grievant denied admitting that he may have left the truck unlocked or conceding that he may not have provided adequate security for the mail.

VII

Sutton testified that when the grievant returned to duty on February 20, he had completed his investigation. Accordingly, did not ask the grievant if he had left the vehicle unlocked on February 15. Sutton explained that he had called the Postal Inspection Service, and he had made his own investigation by the time the grievant returned to work.

Sutton further testified that the emergency suspension was justified because the actions of the grievant may have resulted in a loss or depredation of the mails.

He further testified that determined removal was appropriate because of the "severity" of the grievant's conduct which could have resulted in a loss of the mail, including accountables. He had considered a lesser penalty but concluded that the grievant's conduct in leaving the vehicle unlocked and unattended warranted removal. The "gravity" of the conduct overrode the need to follow the outlines of progressive discipline.

VIII

The grievant testified that he suffers from diagnosed hyperactivity. He testified further that this does not affect his job performance or the manner in which he performs his postal duties. According to the grievant, his hyperactivity was made known to management.

In evidence is an article from the September 1987 issue of Los Angeles Postal Spectrum relating to the grievant's appearance as a feature on the television program 20/20. The article includes the grievant's photograph in postal uniform and a discussion of the symptoms and manifestations of hyperactivity.

Sutton testified that he was unaware that the grievant was hyperactive.

IX

The emergency suspension and removal action were timely grieved, with citation of alleged violation of Articles 2, 15 and 16 of the National Agreement. The Union alleged that the discipline imposed was not for just cause, was not progressive and was punitive and not corrective.

At Step 2 the Union cited as other grounds for challenging the disciplinary action: "Violation of Weingarten Rights".

At no point during the grievance process is it shown that the Union advanced the grievant's hyperactivity as a causative or mitigating factor to his conduct on February 15.

The Contentions of the Parties

1. The Position of the Postal Service

The Service contends that just cause exists for the issuance of the emergency suspension and the removal action taken.

In this respect, the Service asserts that the evidence establishes the failure on the part of the grievant to follow the instructions of his supervisor,

both to stay with his vehicle, in the first instance, and to return to his route and deliver the mail with another vehicle. In the view of the Postal Service, the M-41 was violated both respect to the obligation on the part of carriers to protect all mail entrusted to their care (112.31), to insure the security of the mail by keeping all mail locked in a relay box or vehicle (131.11), and to follow mandated procedures for maintaining postal security (820).

In addition, contends the Service, the grievant violated postal rules (ELM 666.51) when he refused to work after his leave request had been denied and he had been directed to return to his route. He failed to follow instructions and then grieve.

The Postal Service notes that Article 3 of the National Agreement gives management the right to manage, including the right to discharge employees for just cause. The Service asserts that the sum of the grievant's ^{testimony} supports the version of the facts given by Sutton and as recorded in the Investigative Memorandum of Postal Inspector Chew.

In this latter respect, the Postal Service contends that the grievant's testimony as to how long he waited at the scene of the breakdown is refuted by the document in evidence reflecting time rings on February 15. Moreover, the Postal Service avers that the grievant's denial of admissions recorded in the Investigative Memorandum should not be credited.

The Postal Service further asserts that considerations relating to the grievant's hyperactivity should not be weighed, noting that this was not raised at any step in the grievance process.

The Postal Service requests the grievance be denied.

2. The Position of the Union

The Union contends that the discipline imposed was not for just cause.

Initially, the Union notes that the grievant testified that he did not leave the door to the postal vehicle unlocked and denied the admissions in this regard attributed to him by the Postal Inspector. In addition, it notes that Sutton did not question the grievant concerning this and did not arrive at the scene of the breakdown until after the garage personnel.

Further, the Union contends that the discipline imposed was not in accordance with policy of progressive discipline imposed for corrective purposes pursuant to Article 16 of the National Agreement. The Union asserts that the grievant's only past element of record was a Letter of Warning for AWOL-Unsatisfactory Attendance.

Additionally, the Union notes that, with respect to the incident in question, the Postal Service incurred no loss or injury, and the mail was delivered the same day. Mere delay of the mail, in the view of the Union, is not a removable offense.

Moreover, the Union contends that the grievant has an existing condition of hyperactivity, known to the Postal Service, which he attempted to articulate to Sutton upon his return to the station on February 15. In the view of the Union, under established Postal Service policy, management has a responsibility towards its employees, and that if Sutton had demonstrated sensitivity, and had conducted a proper investigation of the matter, it would not have been necessary to involve the Postal Inspection Service. Again, notes the Union, nothing was stolen and the mail was not disparaged.

Finally, and importantly, the Union contends that Article 16 and Article 17 of the National Agreement provide this grievant the right to fair representation, a right with which Sutton interfered and impeded. The Union avers that the grievant may not have shown sophistication with respect to his procedural rights, including his rights to Union representation during the investigatory interview conducted by Postal Inspectors, but this does not expose him to being excluded

from the protective umbrella of the National Agreement, or being subjected to disparate treatment, as compared with employees more attuned to their rights.

In furtherance of this contention, the Union cites the evidence showing that the grievant requested a Union steward when he spoke with Sutton. It avers further, (1) that this constituted a request for representation at all stages of the investigation, and that, (2), contrary to requirements, Sutton did not give the grievant an insight into when representation would be provided or be made available. It submits in support a Fourth Step decision issued in 1978, and NLRB and Court case precedent dealing with the Weingarten principal.

The Union requests the grievance be sustained, the discipline expunged, and the grievant be made whole for any loss of wages, benefits or time.

Analysis

The grievance must be sustained because the grievant was denied his Weingarten rights, thus depriving him of a fundamental due process. However, in the nature of this case, consideration of the merits and the hyperactivity defense is believed justified in furtherance of arbitral objectives.

I

The record, as a whole, supports the factually recitation set forth within the Notice of Emergency Suspension and Notice of Thirty (30) Day Removal.

The Arbitrator is unable to credit the grievant's testimony that he locked the doors of his assigned postal vehicle before he departed the scene and returned to the station. Nor does the record support the grievant's estimate of the length of time he stayed at the scene after the breakdown of the vehicle - a consideration relevant only to the extent the claimed delay in the arrival of the garbage personnel may have contributed to the frustration of the grievant, a man with hyperactivity. Because he left the vehicle unattended, and failed to comply

with Supervisor Sutton's instructions to remain with the vehicle and await the arrival mechanics from the garage, the elapse of time, at least to the degree and extent claimed by the grievant, could not become exculpatory or excuse the grievant's disobedience of a clear, mandatory instruction possessing all the essential elements of a direct order. The Union splits hairs when it seeks to distinguish Sutton's instruction from a direct order.

Nor does the record leave room for doubting that the grievant disobeyed a directive of supervision when he left work in mid-shift on February 15, and absented himself from duty the following day, February 16, all without permission and after being instructed by Sutton to return to the street, in a truck to be provided, and complete delivery of the mail.

By leaving his assigned postal vehicle containing mail unlocked and unattended, the grievant engaged in a serious breach of postal rules and regulations, warranting a severe form of discipline not delimited by concepts of progressivity and/or protective discipline. The safety and security of the mail, as well as postal property in the form of the vehicle itself, was seriously jeopardized by the conduct in which the grievant engaged. It is irrelevant that no theft or depredation of the mails resulted. The risk was present and the danger clear.

The misconduct above was coupled with further disobedience of supervisory instructions resulting in the assessment of AWOL.

The discipline imposed must be measure against the background of the two separate infractions of postal rules.

II

The Union would find an absence of just cause in the failure of the Postal Service to fully consider the grievant's hyperactivity before settling upon a

penalty for his conduct. At a minimum the Union would find mitigation arising from his condition.

Careful consideration of the grievance file fails to disclose any reference to hyperactivity as a causative or mitigating factor in the grievant's conduct. The Union claims that when confronting Supervisor Sutton upon his return to the office, the grievant attempted to explain that the "stress, strain and turmoil" he was experiencing was due to his hyperactivity. The testimony of record fails to disclose utterances on the part of the grievant, which would give texture and support to this point of view. Rather, the testimony indicates that the grievant's frustration arose from the breakdown of the two-ton truck and from being assigned a vehicle inappropriate to his needs. The credited testimony indicated that he stated he was leaving "until you get your act together."

Moreover, the record in this arbitration is barren of any showing or suggestion that management had been put on notice by reason of any previous aberrant or impulsive behavior on the part of the grievant that his judgment or behavior was being influenced or clouded by the impact of hyperactivity. Sutton denies having been aware of this aspect of the grievant's emotional profile, and the Union adduced nothing to document the grievant's testimony that his hyperactivity was recorded in his personnel records. If such references exist, the Union had both the avenue and the responsibility of bringing this into focus at Step 2. It did not do so.

In sum, and contrary to the Union, in the factual context of this case, the grievant's hyperactivity is unavailing as a defense to his removal.

III

Upon careful consideration, this Arbitrator finds meritorious the Union's procedural challenge involving the Weingarten principal. He further concludes the

failure of the Postal Service to honor the grievant's request to be represented the investigatory meeting conducted by the Inspection Service deprived him of fundamental due process. Accordingly, the emergency suspension and subsequent removal of the grievant must be set aside.

Initially, it is concluded, for reasons discussed below, that the grievant made a timely request for Union representation upon being summoned to Sutton's office preparatory to the meeting with the Postal Inspectors.

It is clear that the grievant was sufficiently aware of his rights to have first searched out his Union steward before reporting to Sutton's office, as directed, and to have then inquired of Sutton as to the need for a steward.

The evidence suggests that those initial discussions at which the question of representation was raised were prefatory and transitory to the investigatory meeting with the Postal Inspectors which followed immediately. In reality, the meeting between Sutton and the grievant, with Chief Steward Richenbacher present, was but the opening phase of a virtual continuum, which included immediate introduction of the Postal Inspectors to the grievant and commencement of the investigatory meeting that followed. In effect, by telling the grievant that the need for a Union steward would arise "maybe later" Sutton was guilty of dissembling. He knew the purpose of calling the grievant to the office, he knew that the meeting with Postal Inspectors would follow hard upon the heels of the introductions, and in the nature of things, he knew that the meeting was to be an investigatory one. In choosing to separate his own preliminary, introductory role from the main feature, which was the investigatory interview with the Postal Inspectors, Sutton gave an unduly restrictive interpretation to the grievant's inquiry.

The inquiry posed by the grievant must realistically be construed as a request for representation during the course of any meeting that might result directly from his being called to Sutton's office. His question may not reasonably be viewed as a manifestation of idle curiosity. The grievant had brought his Chief Steward. He suspected that Sutton's directive to report to his office related to matters of a serious nature having to do with the events of February 15 and 16. By asking "Do I need a steward", the grievant in words or substance, was making a request for representation by a steward should the meeting be of a character where such representation would be appropriate under the terms of his employment.

Article 17, Section 4 of the National Agreement provides:

If an employee requests a steward or Union Representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

In NLRB v J. Weingarten, Inc., 420 U.S. 276 (1975), the U.S. Supreme Court held that, unless they are allowed union representation, employees have a right to refuse to submit to investigatory interviews in circumstances where they reasonably expect the interview will result in discipline. The Court, in Weingarten, made clear that the right to union representation in an investigatory interview arises only if the employee requests such representation. Evolving from Weingarten is the further principal that once a request is made, the employer must (1) grant the request; (2) discontinue the interview; or (3) offer the employee a choice between continuing the interview unaccompanied by a union representative or avoiding any interview altogether. See Lennox Industries, Inc., 244 NLRB 607, 610 (1979).

In practical effect, the Weingarten right has been absorbed into the National Agreement at Article 14.2, Step 3 (b) and Article 15.2, Step 4 (a). And at Article

17.3 it has been made a matter of contract. See Case No. H4C-3W-C-28547, decided at National Level Arbitration by Arbitrator Carlton Snow, January 8, 1990. Moreover, concepts of open disclosure as an aid to the bargaining relationship are imbedded in the language and intent of Articles 15.3 and 31.3. Further, recognition of the status and importance accorded the Weingarten principal by Congress, is evidenced by a provision of the Civil Service Reform Act of 1978 requiring each Federal agency to annually inform its employees of their Weingarten rights. See Case No. ^HW4C-3W-C-28547, supra.

The contractual and public policy underpinnings of the Weingarten principal converge with the concepts of full disclosure in the application and administration of the National Agreement, so as to form a convincing caveat to an overly restrictive application of the term "requests", as it appears in Article 17.4 of the National Agreement. Weighed in to the balance is the Step 4 Decision in Case No. NC-C-16045, dated November 22, 1978, cited by the Union and holding:

If management must delay a steward from investigating or continuing to investigate a grievance, management should inform the steward involved of the reasons for the delay and should also inform the steward of when time should be available.

Chief Steward Richenbacher testified that he construed the grievant's question posed to Sutton as a request for representation by a Union steward. The grievant testified had interpreted Sutton's response as a denial of his request and felt it was not necessary to make the request again. Indeed, parenthetically, so did Richenbacher for he left and covered his route. While the grievant lacked optimum sophistication with respect to his rights, it was Sutton and not the grievant or Richenbacher who had created the circumstances that resulted in the short-circuiting of procedural proprieties.

On the basis of the evidence of record, it is clear that Sutton was deferring the grievant's implicit, if not explicit, request for representation. The spirit of the understanding reached by the parties as to the applicability of the Weingarten principal to their ongoing collective bargaining relationship, required more of Sutton than the "hear nothing/comprehend nothing/say nothing" approach he took. While the Step 4 decision referenced above is distinguishable on its face from the instant case, it is nevertheless instructive of the agreement struck by the parties to the National Agreement in their Step 4 deliberations imposing an affirmative obligation on the part of management to be cooperative and forthcoming in grievance processing. Equally integral to the bargaining relationship is the involvement of a steward in the important aspects of contract administration, an element of which is accessibility of an employee to the services of a Union representative in the context of an investigatory interview.

In the factual circumstances of this case, a valid request was made by the grievant to Sutton for representation by a steward during the course of the imminent investigatory meeting with the Postal Inspectors, which request was not granted. Neither did Sutton follow offer any of the Lennox Industries options discussed above.

Accordingly, the grievant was denied fundamental procedural due process rights and the disciplinary action imposed was not for just cause.

AWARD

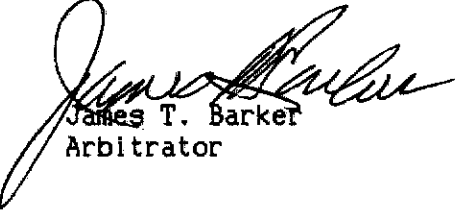
The grievance is sustained.

The Postal Service is directed to rescind the removal notice and expunge all references thereto from the personnel files of the grievant.

The grievant shall be made whole for any loss of wages and benefits he may have suffered as a result of the removal action.

The grievant's leave records shall not be credited for the AWOL charged for absenting himself without permission on February 15 and February 16, 1990, as the merits of this personnel action were not tainted by the deprivation of fundamental due process rights which subsequently occurred.

The grievant must understand that the resolution of this matter on procedural grounds in no manner signals a justification for the conduct for which he was charged, and which the proof at the hearing establishes was attributable to him. In his own best future interests as an employee the grievant must understand that his conduct on February 15, 1990 is not condoned by this Arbitrator; nor is it condonable in the work environment of the Postal Service.


James T. Barker
Arbitrator

September 26, 1990