

C-25401

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	Grievant: <u>Rhonda K. Wilkes</u>
Between)	
)	P.O.: <u>Grand Crossing Station</u>
)	<u>Chicago, Illinois</u>
UNITED STATES POSTAL SERVICE)	
)	USPS #: <u>JO1N-4J-D 04144840</u>
And)	
)	NALC #: <u>03-043180</u>
NATIONAL ASSOCIATION OF)	
LETTER CARRIERS, AFL-CI)	

BEFORE: Vicki Peterson Cohen, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Maria Zamora, Labor Relations Specialist

For the Union: James McCoy, Regional Administrative Assistant,
Chicago Region

PLACE OF HEARING Chicago, Illinois

DATE OF HEARING: August 4, 2004

DATE OF AWARD: August 16, 2004

**RELEVANT CONTRACT
PROVISION(S):** Article 12, Section 1.A

CONTRACT YEAR: 2001-2006

TYPE OF GRIEVANCE: Arbitrability During Probationary Period

Award

The grievance is sustained. The Postal Service did not provide the Grievant with written notice that she was being discharged prior to the expiration of her 90 day probationary period. The grievance is arbitrable under the terms of the National Agreement.

Vicki Peterson Cohen

RECEIVED

August 16, 2004

AUG 30 2004

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

I. STATEMENT OF THE CASE

The Grievant, Rhonda K. Wilkes, was appointed to the position of Part-Time Flexible City Carrier on February 9, 2004. The Grievant's 90 day probationary period was scheduled to terminate on May 12, 2004.

On May 21, 2004, the Postal Service Labor Relations Department prepared a letter which notified the Grievant that her services were being terminated "effective immediately". The letter was sent to the Grievant by regular and certified mail. The Grievant received the copy of the certified letter on May 28, 2004. The Union contends that the Grievant did not receive written notice of her termination within the 90 day probation period. Therefore, the Union filed a grievance on May 22, 2004 which contested the discharge. The Postal Service held a Formal Step A meeting with the Union on May 22, 2004, but the grievance was not resolved.

II. ISSUE

Is the grievance arbitrable under the terms of the National Agreement? Did the Postal Service provide the Grievant with proper written notice of her discharge prior to the expiration of her 90 day probationary period?

II. RELEVANT CITED REGULATIONS

National Agreement Between United States Postal Service and National Association of Letter Carriers, AFL-CIO

Article 12. Section 1. Probationary Period

- A. The probationary period for a new employee shall be ninety(90) calendar days.
The employer shall have the right to separate from its employ any probationary

employee at any time during the probationary period and these probationary employees shall not be permitted access to the grievance procedure in relation thereto.....

ELM 365.23 Probationary Period

365.326 Procedure in Separating

....., the employee's services are terminated by notifying the employee in writing why she or he is being terminated and the effective date of the action.

365.327 Effective Date

.....The notice of separation must be given to the employee before the end of the probationary or trial period.

TESTIMONY AND EVIDENCE SUMMARY

Lee Wells, Supervisor of Customer Service at the Grand Crossing Station testified that he gave the Grievant her 60 day evaluation on April 12, 2004. During the 60 day evaluation, Supervisor Wells told the Grievant that her services may not be retained by the Postal Service or there was a possibility that she would be terminated during her 90 day probationary period.

Delgraces Clemons, Acting Manager of the Grand Crossing Station, testified that on April 29, 2004, she told the Grievant she was terminated and then removed her from the schedule. On or about May 20, Manager Clemons requested that Labor Relations prepare a letter of termination for the Grievant. According to Manager Clemons, she held the Step A meeting on May 22, 2004, as a courtesy to the Union.

Alexis Knighton, Manager of Labor Relations, testified that the intent of the letter she sent to the Grievant on May 22, 2004, was to provide her with written notice that she was being terminated. Manager Knighton was not aware that the Grievant was given verbal notice of her discharge on April 29, 2004. According to Manager Knighton, the words "effective immediately"

in the termination letter meant the discharge was effective as of the date on the letter.

Alvin Charleston, a letter carrier and Union Steward testified that he filed the grievance in this case. On April 29, 2004, the Grievant first approached Steward Charleston while he was on his route to report that she was sent home that day. Steward Charleston told the Grievant he would talk to the Station Manager and find out why she was sent home. Subsequently, during the month of May, the Grievant asked Steward Charleston to file a grievance. Union Steward Charleston could not remember if the Grievant had received the notice of the termination by the time she asked him to file a grievance. Steward Charleston did recall having the Step A meeting with the Station Manager on May 22, 2004. According to Steward Charleston, the last day the Postal Service had to notify the Grievant in writing that she was terminated was May 12, 2004.

The Grievant testified that on April 29, 2004 she was told by the Manager Clemons and Supervisor Jones that she was too slow. The Grievant was then asked to turn in her badge and leave. The Grievant denies that she was specifically told she was terminated. According to the Grievant, she was not presented with or asked to sign her 80 day evaluation when she was sent home on April 29, 2004. After the Grievant left the station on April 29, she went directly to see Union Steward Charleston who was delivering his route. The Grievant explained to Union Steward Charleston that she had just been told to go home. The Grievant subsequently called the station to find out if she was on next week's schedule which was posted the following day, April 30, 2004. The Grievant was not on the schedule.

On or about May 15, 2004, the Grievant prepared a written statement to give to the Union Steward which reflected her account of events. The Grievant later notified the Union Steward when she got the letter of termination in the mail. The Grievant believes that she received the

letter sent by regular mail on Tuesday, May 25, 2004. Finally, the Grievant testified that she never received a 30 day evaluation or a 80 evaluation.

The Employee Evaluation and/or Probationary Report was submitted into evidence by management. The 30 day evaluation report is completed, but not signed by the Grievant. The 80 day evaluation report is also completed, but not signed by the Grievant. Only the 60 day evaluation report is signed by the Grievant. The date upon which the final or 80 day evaluation was completed, which recommends that the Grievant not be retained, is unclear. First, for the month the 80 day evaluation was completed there is a number five (5) with a number four (4) superimposed over it. Second, for the day of the month the 80 day evaluation was completed, it appears that the first digit is a number two (2) indicating it was a date of 20 something.. However, the second digit of the day appears to a number (1) and a number nine (9) superimposed on each other. It is difficult to determine which number was written first. In rebuttal, Manager Clemons stated that Supervisor Eddings was completing the 80 day evaluation as she left the her office on April 29, 2004, and made several mistakes on it which were corrected at the Manager's direction.

IV. POSITION OF THE PARTIES

Postal Service

This Grievant was terminated during her probationary period. The Union is now claiming that the Grievant did not get verbal or written notice of her termination. The Grievant was told on April 29, 2004, that she was being terminated. The letter sent to the Grievant on May 21, 2004, was just confirming her termination. The grievance is not arbitrable under the National Agreement.

Union

The Grievant was not even given verbal notice that she was being terminated. Manager Clemons never stated that the Grievant was given anything in writing on April 29, 2004. The Grievant did not receive written notification of her discharge until after her grievance was filed. The Grievant's evaluation document appears to be altered. The notice of termination letter sent the Grievant on May 21, 2004 states that her termination is effective as of that date. After the Grievant's probationary period expired on May 12, she was instructed by the Union to file a grievance and that is why she prepared her grievance statement letter on May 15, 2004.

V. DISCUSSION AND DECISION

This case is simple. The Postal Service's regulations dictate that a probationary employee must receive written notification of termination and the reasons for the termination within his/her 90 day probationary period. The Grievant did not receive written notification of her termination until after her probationary period expired. Therefore, the grievance is arbitrable.

Whether the Postal Service told the Grievant in person on April 29, 2004, that she was terminated, is irrelevant. Postal Service regulations require that the notice be written. The Employee Evaluation Form is totally unreliable as proof that the Grievant received written notice of her termination prior to the expiration of her 90 day probationary period. First, the Grievant never signed it and denied ever seeing it. Second, the bottom half of the evaluation, which designates the date the 80 day evaluation was presented to the Grievant, reasonably appears to be altered or at least unclear. Finally, the witnesses presented by the Postal Service never

alleged that the Grievant refused to sign the 80 day evaluation.

Since the PS Form 50, Notification of Personnel Action, was not processed until July 7, 2004, it is clear that the Grievant did not receive written notification by this form either. In addition, contrary to the Postal Service's argument, the May 21, 2004 letter sent to the Grievant by Labor Relations, notifying her of the termination, was not just sent to confirm the termination. This is the only written notification the Grievant received of her termination and it was peculiarly sent in close proximity to the time the grievance was filed. However, since the Grievant's probationary period had expired as of May 12, 2004, this letter was too late to invalidate the grievance.

Once the Grievant was retained beyond her probationary period, the terms of the National Agreement govern her tenure with the Postal Service. The Union was correct in waiting until after the Grievant's probationary period expired to file a grievance. Once the Grievant failed to receive any written notice of her termination by May 12, 2004, she automatically gained all of the rights of a career service Letter Carrier under the National Agreement.