REGULAR ARBITRATION PANEL C#10245

In The Matter Of The Arbitration Between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS	GRIEVANT: Patricia Fisher POST OFFICE: Fremont, Ohio CASE NUMBER (USPS): E7N-2L-C 17358 CASE NUMBER (NALC): 76-C-88 CASE NUMBER (USPS): E7N-2L-C 17359 CASE NUMBER (NALC): 75-C-88

BEFORE: Robert J. Ables, Arbitrator

APPEARANCES:
For The U.S. Postal Service: Elaine Dombi, Labor Relations Assistant, Toledo, Ohio

For The Union: Robert T. Newbold, Local Business Agent, Toledo, Ohio

PLACE OF HEARING: Fremont, Ohio

DATE OF HEARING: May 14, 1990

POST-HEARING BRIEFS RECEIVED: June 4, 1990

AWARD: The grievance is sustained to the extent that the Postal Service, at its post office in Fremont, Ohio, shall cease and desist from embarrassing and humiliating the grievant, as it did on April 29, 1988 by forcing her to come to work when, clearly, she was not able to work, following an on-the-job injury.

DATE OF AWARD: July 10, 1990.

Robert J. Ables

ARBITRATION AWARD

United States Postal Service

and

National Association of Letter Carriers

Dispute Concerning Forcing
The Grievant To Report To Work Following
Injury On The Job

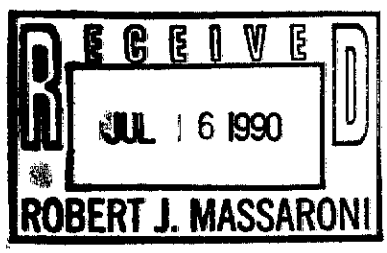
OPINION

I. ISSUE

If a postmaster being bull-headed and ultra-bureaucratic were a basis under the collective bargaining agreement of the parties to award the grievant $10,000 for the embarrassment and humiliation he caused her, that money award, requested by the union, would be granted.

The contract does not permit such money award -- for that reason.

The Postal Service, however, at its post office in Fremont, Ohio has lost much more than $10,000; it lost the respect of its employees.



The Postal Service, in the grievance and arbitration process, frequently complains -- often justifiably -- about employees who milk light duty assignments or who take advantage of sick leave, or who persuade medical doctors to give them expansive off-duty authorizations. But it takes only one insensitive postal service manager, in one incident requiring judgment, to even the score on whether labor or management does more harm to efficient operations.

This is such a case.

The case is about a postmaster -- and less than heroic lieutenants and an interloping functionary -- forcing the grievant to come to work after an injury on the job, when she clearly was not able to work, all to preserve some office record about injury-free operations.

At issue therefore is the appropriateness of management's actions.

II. FACTS

The grievant, Patricia Fisher, is a letter carrier. She has a walking route.

On April 28, 1988, leaving the post office carrying a full mail bag, the grievant was startled in a crosswalk by a motorist who made an abrupt and unexpected turn against the traffic light. The grievant's quick jerk around not to be hit by the car caused her to wrench her back.

She continued on her assignment. Her back stiffened. She was taken to the emergency room of the local hospital. The doctor there found that she was totally disabled for the day, prescribed pain-relieving and sleep-inducing medicine, specified light duty in her work for four days and told her to see her own doctor.

Postmaster G. W. Barlekamp, seeing the report from the doctor in the emergency room, called the grievant on the afternoon of the injury-resulting accident and told her to report to work the next morning.

The grievant's back stiffened further during the night. By the next morning, according to her and not otherwise contested, she was so sore she could not get out of bed.

At 6:45 a.m. on April 29, 1988, before her assignment, she called in, reported her physical condition, said she could not perform her duties and that she was taking sick leave.

According to supervisor Cindy Webel, she reported the grievant's call to postmaster Barlekamp. He decided the grievant had to report for work, based on the doctor's slip. Webel relayed this decision to the grievant, with advice she (the supervisor) would come to the grievant's home, help her to get dressed and drive her to work. The grievant insisted to Webel that she was a "mess" and could not do any work. Webel repeated she was coming out to get the grievant. The grievant concerned about her job, called the union office for advice. She was told to report for work, if given a direct order to do so.[1/]

1/ There is no evidence the grievant had prior discipline or was anything but a conscientious employee.

Also between the time the grievant called taking sick leave and Webel telling the grievant she had to come to work, Webel talked to an injury compensation specialist, Stan Godwosky (phonetic) in Toledo, Ohio, who knew of the accident the day previous. That specialist "instructed" Webel (and, through her, the postmaster) to get the grievant to work.[2/]

The detail of what Webel did at the grievant's home to get the grievant to work does not exactly match, as between the grievant's and the supervisor's reports, but there is no dispute that Webel: went to the grievant's home; let herself into the grievant's home; helped the grievant to get dressed; answered the telephone for the grievant, including a call from the grievant's family doctor who was responding to the grievant's earlier call that morning seeking additional medical documentation to be off work; got the grievant's medicine after she helped the grievant in her car; and she drove the grievant to work (during which the grievant fell asleep in the car).

At the post office, the grievant was assigned only to answer the telephone while sitting in a certain meeting room. The chair at the desk was swivel (with a bad tilt), without arms, and was decidedly uncomfortable, even for a person not in physical distress.[3/] It becoming apparent that

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2/ In his denial letter at Step 2, on December 2, 1988, the postmaster gave as reason for the denial that the injury compensation specialist in Toledo had "instructed" supervisor Webel to put the grievant on the clock in a limited duty status.

3/ Whether or not the union engineered the event, it happened that the arbitrator's chair at the hearing was the chair used by the grievant.

the grievant could do no work because, among other things, she continued to fall asleep (accepted by management officials as resulting from prescribed medicine), a sofa was ordered to be brought up from the basement of the building for her use. The grievant lay on the sofa, first placed on the workroom floor and then in the meeting room to which she was first assigned.

In mid-afternoon, another supervisor took the grievant to the office of her family physician. That physician cleared the grievant to work on April 30, 1988, with light duty, through May 3, 1988.

III. ARGUMENTS

On this evidence, the union argues that the Postal Service created a safety hazard by forcing the grievant to work against her wishes, while heavily sedated, which could have caused serious injury, and which did cause her "irreparable embarrassment", in violation of Article 14, Section 1 of the National Agreement which places responsibility on management to provide a safe working place.

Arguing that an arbitration decision was needed "to send a message to management" that its arbitrary, cavalier and unrealistic action in forcing the grievant to come to work after an injury on the job will not be tolerated in the future, the union asks not only that postal officials at Fremont, Ohio "cease and desist" such "inhuman" treatment of carrier Patricia Fisher, but that she be compensated "for hardship, embarrassment and inconvenience in the amount of $10,000 by the Postal Service and its involved supervisors".

The essential case of the Postal Service that the grievance[4/] should be denied is that the National Agreement does not support the request for remedy in the amount of $10,000 for alleged hardship, embarrassment and inconvenience.

On the merits, the Postal Service accepts that the grievant was injured on duty on April 28, 1988, but argues that the examining doctor found her to be totally disabled and unable to work only on April 28, 1988, after which she was able to perform limited duties. The agency maintains it only provided the grievant transportation to get to work and that, when it became apparent at the post office that the grievant could perform no work, she was taken to her family doctor who determined only that the grievant had a partial disability, with restrictions on weights to be lifted through May 3, 1988, and that, under all circumstances, the grievant's health or safety was not in jeopardy.

On post-hearing brief, the Postal Service emphasizes that the money award requested by the union cannot be granted under the provisions of Article 15.4.A.6., which limits arbitrator's decisions to the terms and provisions of the National Agreement, arguing in this respect that there is no contractual provision for compensation "for alleged (or real) hardship, embarrassment and inconvenience". The agency also cautions the arbitrator against awarding compensatory or punitive damages which are not authorized by the contract.

4/ The parties agreed that the two grievances should be consolidated for decision.

Further, the employer argues that the grievant had choices, including refusing to report for duty, making an appointment with her own doctor to get medical documentation to be off on April 29, 1988 or that "[s]he could have gone into work", which "is what she did", and therefore that the grievance should be denied, without exception.

IV. FINDINGS

The Postal Service could have defended against the claim for money award without attempting to defend its actions on the merits adding, instead, an apology for its boorish decisions at the local level.[5/]

The legal question raised by the Postal Service in this case whether the reach of the collective bargaining agreement includes compensatory or punitive damages, notwithstanding the kind or degree of violation of the contract, is deferred to other proceedings. The claim here for $10,000 in damages is denied because, on the facts, the union presented no evidence that the grievant's back sprain was aggravated by any action taken by postal officials.

Webel, in testimony, put a spin on the facts to suggest that actions taken to get the grievant to work were reasonable. However, from circumstances reported at the time by the grievant and other union witnesses,

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5/ One supervisor even tried to shift responsibility to the grievant for her injury, stating, officially, that the grievant should have made eye contact with the motorist who almost knocked her down, although the grievant had the right of way.

the supervisor clearly was embarrassed doing what she was ordered to do.

Also, Webel, trying to explain bringing up the sofa as a sympathetic gesture to the grievant's distress, is more in keeping with witnesses rationalizing operational decisions while testifying in litigated cases than a considered attempt to duck responsibility for a bad decision to bring the grievant to work.

A functionary in Toledo, not on the scene where local judgments were required, instructing line personnel to get the grievant to work, is not a textbook example of good management technique.

Barlekamp (now retired) did not testify at the arbitration hearing. He thus was not subject to cross examination. Testimony by union witnesses however ring true that he was worried about the grievant breaking an accident-free record at his post office.

His decision to bring the grievant into work is incredible. She had every right to claim a sick day. Upon that request, the time off would have been charged against her. If management had reason to question the basis for the request for sick leave, it had the usual means, under the contract and practice, to request appropriate documentation. At the point the grievant declared she was unable to work, on April 29, 1988, the doctor's slip from the day before was irrelevant as permission, or not, to be off work that day. The true relevance of the doctor's slip in the emergency room of the hospital is solid evidence of injury and cautious action about future events following the acknowledged injury, leaving it to the grievant's regular doctor to provide required treatment and to decide about future work restrictions.

The postmaster knew all these circumstances. His super-literal application of a doctor's slip was not realistic. The grievant went from the hospital to her home. She did not ask for limited duty. It can be accepted that a literal reading of the doctor's slip supports a finding he concluded the grievant had "Total Disability" only on April 28, 1988. But, according to this doctor, the grievant was expected to have "Partial Disability" for several more days. Further, the grievant was cautioned to "Beware of Sedation". She was referred for further medical and physical treatment to her own doctor. A diagnosis by the first doctor that the grievant had "Twisted back delivering mail" does not require a medical degree -- certainly not for a postmaster -- to know that carrying mail is out of the question for some period of time. And it was the grievant, not the doctor nor the postmaster, nor anyone else, who could decide whether she could work, to any extent, on April 29, 1988. She had a right to take a sick day. If abused, the Postal Service had the authority to challenge that decision. It did not.6/

Plainly, the postmaster forgot, if he ever knew, how to make a reasonable decision in the circumstances. It is he -- and other officials in line who did not at least attempt to talk him out of his very ill-advised decision to bring the grievant to work -- who should be embarrassed. The many union witnesses who testified or submitted statements

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6/ The Postal Service has not argued, during the grievance or arbitration procedure, that the grievant was able to perform any work, including answering the telephone. Indeed, the evidence is clear she could not do any work. She fell asleep on the way to work. She repeatedly fell asleep at the desk at which she was to "work". A sofa bed had to be provided. She did no work. She was not disciplined for not working.

supporting the grievant and criticizing postal officials made clear that the grievant was not lowered in their esteem; rather, they show lost respect for their managers. In its overall operations, the Postal Service can afford loss of respect less than paying $10,000 on a money claim.

Two years having passed since the event leading to pending grievances and the postmaster, who was at the heart of the irresponsible action taken forcing the grievant to come to work, having retired, a cease and desist order against like conduct, as requested by the union, is largely academic, but it will be granted for the sake of impressing management that employees should not be expected to tolerate such management decisions.

V. DECISION

The grievance is sustained to the extent the Postal Service, at its post office in Fremont, Ohio, is ordered to cease and desist the kind of action taken against the grievant on April 29, 1988.

All other requests for remedy are denied as not authorized under the contract and attendant circumstances.

Robert J. Ables

Dated: July 10, 1990

Washington, D.C.