C# 05348

EXPEDITED ARBITRATION

In the Matter of Arbitration Between U.S. Postal Service Miami, Florida and Tropical Branch 1071 National Association of Letter Carriers AFL-CIO	Irvin Sobel Arbitrator

Hearing and Appearances:

The hearings for the cases cited below, were conducted at the General Mail Facility, Miami, Florida. Appearances; for the National Association of Letter Carriers (NALC, Union), Mike Gill, Treasurer, Tropical Branch 1071, Miami, Florida; For the U.S. Postal Service (Employer, Management) Daniel Smith, Labor Relations Assistant, General Mail Facility, Miami, Florida. No issues of timeliness, arbitrability or defect of form were raised at the hearings.

Case: # S4N-3W-D-9566----James Feagle, Grievant

Issue:

Did just cause exist for the seven (7) day suspension of James Feagle for insubordination? If not, what is the appropriate remedy?

Facts in Case:

On March 6, 1985 (received 3/15/85) the grievant was sent a Notice of Disciplinary Action signed by E. Vargas, Supervisor. It stated:

> You are hereby notified that you will be suspended for a period of seven (7) days,.....
> The reasons for this suspension are:
> On February 15, 1985 at approximately 9:00 AM you were away from your assigned case, near the Supervisor's desk. At that time, I said to you,"what are you doing?" You replied "looking for my vehicle." I said to you, "you know you are to notify your supervisor if you have a vehicle problem." I will take care of getting you a vehicle." You said to me, "I'm going to kick your ass, I'm going to flatten you out." Conduct of this nature cannot be tolerated. You will be charged with insubordination. (underlining by this arbitrator.)

The Union reduced the grievance to "writing" on April 6, 1985 in timely fashion after a first stage denial by the above cited supervisor. In its second stage appeal the Union alleged the following:

> The Grievant was issued a 7 day suspension for alleged insubordination. Investigation revealed no insubordinate action or attitude. The grievant felt threatened by Supervisor Vargas-Villa and expressed that if Vargas-Villa was to physical as he implied then Mr. Feagle would defend himself. The grievant denies that he made statement as outlined in the charges. Management thus far has been unable to substantiate the allegations. The suspension is disparaging (sic) and punitive in nature and is without just cause.

Arbitrator's Opinion and Award:

Since the Notice of Discipline and the 2nd Step Appeal response by the Union sum up the essential argumentation of each of the parties, no essential purpose would be served by reiterating them under separate headings titled "Position of the Parties".

Four key questions emerge from these differing versions of the facts. These are: 1) Did the grievant make the utterance attributed to him by Acting Supervisor Vargas? 2) If so, does this utterance, and other actions attributed to him, constitute insubordination? 3) If the grievant made the utterance and was provoked by the Supervisor, but was not found to be insubordinate, has any other actionable offense been committed by him? and; 4) If so, what is the appropriate discipline?

On the surface the Union's contention that the rather mild appearing and relatively taciturn grievant at least twenty-five years older and fifty pounds lighter than his Supervisor would not have been so irrational as to have threatened the Supervisor, would appear highly reasonable. But when given individuals feel that they have been humiliated and their sense of personality violated in the presence of others, it is not unusual that they will make menacing verbal statements even when awareness of their own physical inferiority means they have no intention of carrying out their threats.

When two opposing and countervailing versions appear, the arbitrator has to make reasonable inferences based on his judgement of probability emerging both from the circumstances of the situation and the testimony of the witnesses. Frequently the omissions from, and uncovered

points in the testimony are as revealing as what is actually said. Sandra Moser, who testified for the grievant, was present during the entire incident-actually the absence from the red tray she carried of the grievant's vehicle keys was the initiating cause of the quest for his vehicle which led to the verbal altercation-heard everything including what Villa Vargas said, yet she contended that she had turned aside and didn't, or couldn't, hear any response from the grievant. The grievant never directly denied the statement attributed to him, in fact, his explicit statement was that he "didn't remember saying what he was accused of saying." Thus, for the foregoing reasons, especially what was left unsaid, the grievant must be presumed to have made the utterance attributed to him.

Even so, in no way was the grievant insubordinate, given not only the accepted generic meaning of the term, but also when it is reasonably applied to the work situation. Insubordination means simply the "unwillingness(of a subordinate) to submit to authority."[1] As applied to the instant situation it would, judging by previous arbitral decisions, mean; a) a refusal by the grievant to comply with an order by his duly designated superior: and; b) that the order also must be one which is not only within the province of the work assignment of the subordinate but also one which he/she is capable of fulfilling. Despite his utterance the grievant complied with every legitimate order by Vargas. When ordered to do so by his Supervisor, he ceased looking for his vehicle and returned to his

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1 Webster's New College Dictionary, p.594

work station, and shortly thereagter when he was requested to come to Vargas' office he immediately complied. He not only waited as ordered for the Postal Inspector, but also when subsequently told by that Supervisor to request and take Administrative Leave for the balance of the day, he again promptly submitted. In short, no act by the grievant during the entire process, i.ei. from the alleged offending statement to his final departure on Administrative Leave, could even be vaguely construed as an insubordinate one.

The Employer inferred that the "threatening" speech could be construed as insubordination since the Supervisor felt threatened, thus altering the relationship between the subordinate and superior. That argument, however, disregards considerable evidence to the contrary. Very shortly after the allegedly threatening statement, the Supervisor called the grievant into his office, an act which is not indicative of Vargas feeling threatened since it placed him within very close physical proximity to the "angry" grievant. They remained in close proximity for a relatively long period of time, waiting for, and then conversing with the Postal Inspector for two to two and one half hours instead of the 35-40 minutes alleged by the Supervisor, and the continued in even closer proximity during the period in which Administrative Leave for the allegedly menacing grievant was being arranged. However, while Vargas-Villa cannot claim to have been threatened by the grievant there is no doubt that the grievant's utterances heard by fellow workers, were insulting and demeaning to the Supervisor.

There is also no doubt that in tone, language, and action Supervisor Vargas' behavior was highly provocative if not inflammatory. He

insultingly called the grievant back to his work station after the latter had been told by fellow Supervisor (Jose Franco), to find out if his vehicle was outside in the loading dock area. Sandra Moser testified that Vargas was loud, arrogant, belligerant, and "jumped on the grievant's case."

Such provocation, uncontradicted by Supervisor Vargas' testimony, neither rationalizes, nor excuses the grievant's behavior. The grievant, an intelligent, articulate veteran of over twenty years service fully knows that there exists ample opportunity both through channels established by the LRMA as well as those of an administrative nature, for redressing arbitrary actions and behavior by supervisory personnel. Given that above cited potential redress against provocative supervisory behavior employees are expected to respect the chain of command, regardless of their personal feeling towards particular individuals on that chain. The above constitutes a basic aspect of shop common law which is certainly understood by veteran employees.

Although certain types of language and actions may not be acceptable in more conventional circumstances, the same language in the shop situation may be tolerated and excused under the rubric of normal conversation in that environment. However, language which is insulting and demeaning to authority and the chain of command, cannot be tolerated if any pattern of work discipline is to be attained and maintained. In that context supervisory provocation may be mitigatory but can never be exculpatory.

The complete absence of insubordination, the charge upon which

a very severe penalty for the first instance of discipline incurred by the grievant in an over twently year period as a carrier with the Postal Service, means that the seven (7) day suspension originally imposed cannot be sustained. The only sustainable offense for which discipline can be imposed is for insulting and demeaning language towards a Supervisor. Accordingly the Notice of Disciplinary Action will be amended in the following manner; 1) A Letter of Warning will replace the Notice of a seven (7) day suspension. 2) The last sentence of the second paragraph will be amended to state; "You are hereby charged with using insulting and demeaning language towards a Supervisor."

Award:

The Notice of seven (7) day suspension of Full Time Carrier James F. Feagle is hereby to be removed and will be replaced by a Letter of Warning, dated March 6, 1985. The grievant is to be reimbursed for five (5) days or forty (40) hours of back pay at wage rates prevailing as of the above date. The charge in the rewritten Letter of Warning will be "insulting and demeaning language towards a Supervisor." The grievant's personell records will be altered to reflect this change.

This is a certified true copy
of Arbitration Award

Irvin Sobel

Case: # S4N-3W-C-2585----Carlos Del Valle, Grievant

Issue:

Did the Postal Service violate the National Agreement and related regulations, notably Section 513.361 of the Employment and Labor Relations Manual, when it required the grievant to provide medical certification for his illness of December 24, 1984?

Facts in Case:

Following a verbal altercation on the morning of December 24, 1984 between Carlos Del Valle and Supervisor Willis Plather, over the latter's mode of determining the former's volume of mail, the grievant complained of illness and requested permission to leave the mail room floor on sick leave. Plather, consonant with his interpretation of 513,361 of the E & L/R Manual notified the grievant that he would have to submit medical documentation before the request for sick leave with pay would be validated. In its second stage grievance appeal filed on January 31, 1985, the Union made the following contention:

> He was required to provide medical documentation. He would not have sought medical attention had he not been ordered to do so. The request for medical documentation was arbitrary and capricious and not in accordance with the E & L/R Manual. The grievant is not on RSL and has an excellent sick leave record.

Arbitrator's Opinion and Award:

Inasmuch as the Union based its argumentation upon a somewhat different version of events than that cited by the Employer, the issue of which version is valid is fundamental to the grievant's case. But

even if the Union's version is valid do the facts warrant its conclusion of "capricious and arbitrary" behavior by the Employer's representative?

The Union's version of the events is far more tenable and this inference is reinforced by the time of the morning of the 24th in which the incident took place. It is doubly reinforced by the Service's inability to provide the documentation requested by the Arbitrator that would provide the date on which the grievant's request for four (4) hours of additional route time was filed.

In short, the first incident took place on the preceeding work day, on which the grievant, based upon his estimate of the "mail count", requested four (4) hours additional route time, and Plather disagreed arguing that the grievant had grossly overestimated the volume of mail. He, (Plather) finally signed a pair of two (2) hour requests. That would have explained the early incidence of the mail count on the morning of the 24th. According to the Union the mode in which the Supervisor conducted the mail count, was so exaggerated that it upset the sensitive grievant and brought about his illness. If the incident which brought about the Supervisor's minute scrutiny of the grievant's volume of mail, was subsequent to a request for route assistance it would have taken place later in the day. Thus, the Union's contention that Plather, either trying to head off a request for more route time on the morning of the 24th, or even to express his displeasure for the events of the preceeding work day, exaggeratedly measured the grievant's mail in a manner as to make the grievant believe his honor and integrity was being threatened. However, the extent to which Plather's movements were abnormal and exaggerated were also

overstated by the grievant and the Union.[1]

Assuming that the Union's version is valid, and even that the highly sensitive grievant felt himself humiliated by his Supervisor, does that render the Employer's request for certification violative of Section 513.361 of the E & L/R?

Since the grievant was not on restricted sick leave, and in fact had an excellent sick leave record, did those above cited facts render the Employer's request for certification based on its contractual right to "protect the interests of the Service," violative of the Agreement?

Given the nature of Plather's decision all that is required to sustain it is that, given the prevailing circumstances and knowledge, the request for verification was a reasonable one. In fact, in the absence of positive proof by the Union that the request was unreasonable, or in its own terminology "arbitrary and capricious", the Employer's action is presumed to be reasonable. Thus, for reasonableness to be established, the decision taken by the Employer does not have to be proven correct by subsequent events as the Union argued or consonant with the norms of equity or fairness, or even that which the arbitrator would have made under the same circumstances.

In general, the Service's interest would be threatened if all employees who are upset, even if some justification exists for their feeling, can leave the work floor for the balance of the day and still receive

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[1] The highly sensitive grievant, very conscious of any implied slight to his honor and integrity, interpreted all of Plather's moves in that context.

compensation. The need to protect the interests of the Service is even more acute on December 24th, the day before Christmas, when every absence is highly important, especially in a small station of limited size and reserves. In short, any absence on December 24th is especially detrimental to the interests of the Service.

Given that a general presumption for invoking 513.361 existed, did the particulars in this instant case justify them? The grievant came into work, did not complain of feeling badly, had the altercation with Plather, went back to work and shortly thereafter complained of feeling very ill. The very sudden onset of the illness, in the absence of any previous indication of health problems that day, made Plather's belief that the grievant was acting out of pique, sufficiently tenable to render his actions other than "arbitrary and capricious" (the terminology used by the Union). If, the grievant were as ill as he stated than a trip to a doctor, rather than self-diagnosis, would have seemed indicated in any case. Thus, the Union's secondary argument used as a basis for its request for restitution, namely that "he"(the grievant)"would not have sought medical attention had he not been ordered to do so," must also be rejected as conjectural.

Does Supervisor Plather's prior behavior, which was somewhat demeaning of the employee, make his subsequent request for verification unreasonable? The Union essentially contended that Plather's "causing the illness" automatically made his request for certification unreasonable. That argument must be dismissed. The grievant's very sensitive reaction, for a veteran employee, who should have been accustomed to the give and take and even

slights on the work floor, was neither normal nor could it have been expected by Plather. Given the grievant's seemingly abnormal reaction, his request for sick leave gave every appearance of a reaction of pique at his Supervisor's behavior. In short, Plather's behavior, which was somewhat below the standards expected of an experienced Supervisor, while worth noting, does not render his request for Medical Certification unreasonable.

Award:

The grievance of Carlos Del Valle is denied.

11-2-85

This is a certified true copy of Arbitration Award

Irvin Sobel

Irvin Sobel, Arbitrator