

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

Between

UNITED STATES POSTAL SERVICE

And

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

) GRIEVANT: Jessica K. Vargas

) POST OFFICE: New Haven, CT

) CASE Numbers:

) USPS: B11N-4B-D 17337206

) NALC: 19-654-16-GPO

) DRT # 14-386516

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:

Rebecca Peperni, Labor Relations Specialist

For the Union:

Charles Carroll, Arbitration Advocate

Place of Hearing:

24 Research Parkway, Wallingford, CT

Date(s) of Hearing:

May 23, 2017

Date of Award:

July 7, 2017

Relevant Contract Provisions:

Article 16

Date of Contract:

2011-2016

Type of Grievance:

Discipline (NOR)

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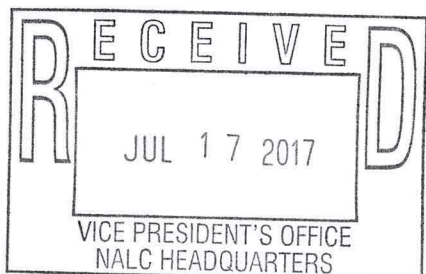
JUL 11 2017

John J. Casciano, NBA
NALC - New England Region**AWARD SUMMARY**

Management had just cause to issue disciplinary action to the Grievant for failure to properly discharge the duties of her position, however the issuance of the December 5, 2016 removal notice was excessive in violation of Article 16.1.

For the remedy, the Notice of Removal shall be rescinded, and the Grievant shall receive a thirty-day (30) non-duty, non-pay suspension. The Grievant is entitled to be made whole for back pay and benefits, consistent with the applicable provisions of ELM, Chapter 436. The arbitrator will retain jurisdiction, for the purpose of implementing this award, for a period of sixty (60) days from the date of receipt of this decision.

Accordingly, the grievance is sustained in part, and denied in part.



Sherrie Rose Talmadge, Esq., Arbitrator

STIPULATED ISSUES

1. Did Management violate Article 16 of the National Agreement when it issued a Notice of Removal to Carrier Vargas without just cause on December 5, 2016?
2. If so, what is be the appropriate remedy?

RELEVANT CONTRACT, HANDBOOK and MANUAL PROVISIONS

ARTICLE 3

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

ARTICLE 16 DISCIPLINE PROCEDURE

Article 16.1 Statement of Principle

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

FINDINGS OF FACTS¹

Letter Carrier Jessica K. Vargas, the Grievant, was hired as a City Carrier Assistant (CCA) at the New Haven GPO on March 5, 2016. When she was hired, the Grievant underwent orientation that was part of her City Carrier Academy training followed by three days of On-the-Job training. As part of her orientation, the Grievant signed PS Form 8139 on March 7, 2016, acknowledging her role in protecting the security of the mail from delay or other unauthorized acts.

On October 1, 2016, at the New Haven GPO, the Grievant, and four other carriers, placed deliverable mail from their assignments in the undeliverable bulk business mail (UBBM) area. The Grievant placed ninety-four deliverable pieces of addressed Hallocks and one hundred twelve deliverable pieces of addressed Woodbridge Town News in the UBBM area. At the conclusion of her assignment, the

¹ At the hearing, the parties had the opportunity to engage in direct and cross examination of sworn witnesses, and to submit relevant and material documentary evidence. At the conclusion of the hearing the parties presented oral closing arguments.

Grievant failed to complete a PS Form 1571, "Undelivered Mail Report". This form is used to report mail distributed to the route, but not delivered.

On October 2, at 2:30 a.m., Acting Supervisor Kelly Powell walked through the building observed the full relays of banded mail that was in the UBBM area and called Postmaster Sullivan, who said to take photos of the mail and to isolate the mail. Powell sent Manager Chris Rogers a text message informing him that there was mail in the UBBM area that had been left by five carriers. Powell put the mail on skids and placed it in an office, which was unsecured, with the door closed. The next day Powell, the Postmaster, and Manager Rogers counted mail, recorded the addresses and photographed the mail. Management identified the five carriers who had discarded deliverable mail into the UBBM, which included the Grievant. The Postmaster determined that the five carriers had acted independently.

On October 3, all five carriers were put on Emergency Placement. When Supervisor Powell walked the Grievant to her car, the Grievant said that she was sorry that she had placed the mail in the UBBM area and explained that another carrier had told her to place it there. The Grievant noted that her on the job training had been conducted by other carriers. Powell responded the Grievant should have come to her with any questions.

On October 3, Postmaster Sullivan contacted the USPS-OIG regarding delay of mail. Postmaster Sullivan informed the OIG that multiple carriers assigned to the New Haven GPO had discarded deliverable U.S. mail in to the GPO's UBBM. Reporting Agent Steven Coughlin and Special Agent Dawson met with Sullivan and Rogers and reviewed the mail that had been recovered from the New Haven GPO UBBM. The agents inspected the mail, verified the respective routes which the discarded mail belonged to, and took photographs for documentation purposes. Manager Roger provided the OIG agents with the mail counts that had been performed by Management. On October 4 Management had regular letter carriers deliver the mail. The carriers did not report that any of the addresses were not good.

On October 5, the Grievant was interviewed by the OIG. When interviewed by the OIG agents, the Grievant acknowledged placing the deliverable mail in the UBBM area. They showed her a picture of the mail she was alleged to have put in to the UBBM. The Grievant explained that on October 1 she had been assigned to "split" route 1139. She stated that there were four bundles of fliers assigned to the route. The Grievant explained that she had shown Supervisor Allen that there were too many bundles for the

allotted time and said the Allen told her to do the best she could. The Grievant brought back bundles from her route and placed the remaining mail in the UBBM. The Grievant explained that she did not believe that she was discarding mail; she thought the mail in the UBBM area was not trash. The Grievant added that she believed that the UBBM mail was reviewed and reassigned for delivery. She stated that she usually brought any undeliverable mail back to the case. When she saw the large amount of UBBM mail, she thought it was okay to put returned mail there. The Grievant also stated that she had not really received training on the UBBM procedures. The Report of Investigation was issued on October 14, 2016.

On October 27, 2016, Supervisor Powell conducted a pre-disciplinary interview with the Grievant and Union steward D'Aniello. At the PDI, when asked if she had discarded 94 pieces of Hallocks and 112 pieces of Woodbridge Town News into the UBBM, the Grievant responded that she did not discard any mail. The Grievant stated that she usually did get Hallocks on Saturdays or Mondays and, therefore, she had assumed that they were expired mail and placed them on the ground in front of UBBM case with all the other buckets. She explained that she did not know that there was a difference between UBBM areas and was not trained on where mail goes in the Amity section for Hallocks. The Grievant stated that she had been previously directed by 204B Supervisor Wanda Maldonado and other carriers to place the Hallocks in the UBBM area. The Grievant also explained that a regular carrier (S) had told her to deliver a handful of the Woodbridge Town News to the senior facility and place the remainder in the UBBM area. The Grievant stated that at no time did she think that she was discarding mail. She understood that the mail would be reviewed, and that other employees would determine its disposition. The Grievant asserted that she thought that she was doing everything correctly as she had been trained.

Supervisor Maldonado testified that she supervises the Amity Carrier Section, which does not get Hallocks; therefore, she did not, and would not, have told the Grievant to place the Hallocks in the UBBM area. Maldonado testified that she told the Grievant to put undeliverable mail into the UBBM.

After reviewing the OIG report and the PDI notes, Powell requested removal of the Grievant, for which she received concurrence from Manager Chris Rogers on November 4, 2016. The request for removal was reviewed by Labor Relations.

By letter dated December 5, 2016, Supervisor Powell issued the Notice of Removal, by certified and express mail, to the Grievant. The Notice of Removal states, in pertinent part:

You are hereby notified that you will be removed from the Postal Service on January 7, 2017. The reason for this action is:

Charge: Failure to Properly Discharge the Duties of Your Position

Specifically, on Saturday, October 1, 2016, you failed to deliver all your assigned mail and, upon your return to the New Haven Post Office, you placed this deliverable mail in a location that has been designated for undeliverable bulk business mail (UBBM). The UBBM area is for undeliverable mail destined for destruction. Approximately ninety four (94) deliverable pieces of addressed Hallocks from your assigned split on Route 1139 and approximately one hundred twelve (112) deliverable pieces of addressed Woodbridge Town News from your assigned Route 26004 were located in the UBBM area.

Due to your actions, on October 5, 2016, you were interviewed by the United States Postal Service, Office of Inspector General (USPS-OIG). You stated to the OIG that you placed the undelivered mail in the UBBM area. You further stated you were aware to bring undelivered mail back to your case.

I conducted a Pre-Disciplinary Interview (PDI) with you on October 27, 2016, with your NALC union steward Stephanie D'Aniello, present. You stated you were under the assumption these flyers were expired and you thought it was "ok" to place them in the UBBM area. When asked why you stated to the OIG that you "usually bring any undelivered mail back to the case", but did not with the Hallocks, you stated, "I did bring back undeliverable mail to the case and the Hallocks I placed in the UBBM because I thought they were expired." You offered no plausible explanation for your actions.

Your actions on October 1, 2016, and the subsequent interviews with you make clear you cannot be trusted to work for the Postal Service. You created a lack of trust in your ability to perform your duties when you intentionally placed deliverable mail, for which you were responsible, in an area that is destined for destruction. This misconduct is a serious threat to the core responsibility of a letter carrier to deliver all mail. Mailer and customer expectations along with the Postal Service standards are reliability are impacted by actions such as this. There is simply no excuse for this type of behavior.

All Postal Service employees are expected to put forth an honest work effort. No employee has the unfettered discretion to ignore their work responsibilities in order to do as they please. Your failure to satisfactorily perform your duties, in a broad sense, constitutes a serious challenge to my authority and demonstrates a poor level of cooperation. Your actions are unacceptable.

Your actions are in violation of the following sections of the Employee & Labor Relations Manual (ELM):

Section 661.2a

"Prohibition against delay or destruction of mail or newspapers. (18 U.S.C. 1703)"

Section 665.13 states: "Employees are expected to discharge their assigned duties conscientiously and effectively."

Your actions also violate the M-41 Handbook City Delivery Carriers Duties & Responsibilities which state in pertinent part:

Section 112.1

Provide reliable and efficient service. Federal statutes provide penalties for persons who knowingly or willfully obstruct or retard the mail. The statutes do not afford employees immunity from arrest for violations of the law."

Section 131.14

"Do not...throw away or improperly dispose of mail..."

Section 131.33

"Unless otherwise instructed by a unit manager, deliver all mail distributed to your route prior to leaving time for that trip and complete delivery within scheduled time. It is your responsibility to inform management when this cannot be done."

While you have no prior discipline, the severity of your actions on October 1, 2016, warrant this level of discipline to be issue to you.

Union Steward Stephen Malinowsky, who investigated the grievances of all five carriers, including the Grievant, testified that in their interviews and written statements, they had all stated that they had not been trained on the UBBM. The steward testified that he approached Postmaster Sullivan about providing new carriers training in this area and indicated that Postmaster appeared to agree. The carriers who were issued the removal notices were not retrained about the appropriate use of the UBBM prior to the issuance of discipline.

The Steward also testified that the Grievant's Module 4, Certificate of Completion for City Letter Carrier On-the-Job Training, that is supposed to be completed by the on the instructor and signed by the supervisor, the Union steward and the Grievant to indicate that the training was complete, was not signed or dated by either the steward or the Grievant. The Grievant testified that she had two instructors for her On-the-Job training.

The Postmaster testified that of the five carriers at issue, one was a regular, military veteran with no prior discipline. The removal issued to that carrier was reduced to a fourteen-day suspension, and that carrier was returned to work with the cooperation

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of the Union. The other four carriers, including the Grievant, were CCAs. Two of the CCAs resigned and Arbitrator Barrett (B11N-4B-D 17337198, 1965516GPO, May 8, 2017) reduced the removal of the third CCA to a thirty-day suspension without back pay. The Postmaster testified that, after this incident, the Union asked for more training for CCAs about the use of UBBM, which Management held jointly with the Union.

POSITIONS OF THE PARTIES

POSTAL SERVICE POSITION

Management had just cause to issue the Grievant the Notice of Removal for Failure to Properly Discharge her duties on October 1, 2016 when she disposed of deliverable mail into the UBBM. All the mail was deliverable. The Postal Service has reasonable rules and regulations requiring carriers to protect the security of the U.S. mail from delay or other unauthorized acts. At orientation, the Grievant signed PS Form 8139 on March 7, 2016, acknowledging her role in protecting the security of the mail. The M-41 directs carriers to not improperly dispose of the mail. At the City Carrier academy and on the job training, Management explained what the carrier is to do with undeliverable mail. Postmaster Sullivan testified how this rule is consistently and equitably enforced in his installation.

Management investigated the Grievant's actions before taking disciplinary action. While the Grievant had no prior discipline, her egregious failure to discharge the duties of her position warranted this level of discipline. All five of the letter carriers who were engaged in the same behavior were issued the same discipline by Management. Subsequently, one of the carriers was returned to work. The Service gets paid to deliver the mail. It was the Grievant's responsibility to understand what she is trained to do. Management has proven that the Grievant failed to follow the rules and regulations.

The discipline was timely. On October 1, the Grievant disposed of deliverable mail. On October 3, the OIG was called to investigate and interviewed the Grievant on October 5. On October 14, the OIG report was issued. On October 27, a PDI was held with the Grievant. On November 4, the concurrence was received for the removal. A request for removal was sent to District Labor Relations where it was thoroughly reviewed before the Notice of Removal was issued on December 5.

The Service maintained that there was just cause to issue the Notice of Removal to the Grievant, and requested that the grievance be denied.

UNION'S POSITION

Management has not met its burden of proving that there was just cause to issue the removal notice to the Grievant. There was no documentation of training the Grievant how to handle this kind of returned mail. There is no documentation of a clearly communicated rule or clearly conveyed consequences from violating this rule. The letter carriers involved, including the Grievant, believed that they were following the instructions from their supervisors. The Union has shown that the carriers were not trained in the proper placement of returned mail and what should be placed in the UBBM area. As evidence of the lack of training in this area, all five carriers, who were found to be acting independently, placed mail in the UBBM area on October 1st and provided the same explanation that they believed they were following directions. Moreover, Training Module 4 for the Grievant was never completed or initialed by the Grievant or the Union. The Union twice brought the issue of the carriers' lack of training in the use of the UBBM area to management, but no action was taken to train new carriers.

There was no attempt by Management to determine which mail was deliverable. The Service identified mail from the UBBM cart, failed to secure it, failed to ascertain if the mail was deliverable. The regular carrier never reviewed it, and no effort was made to catalog the mail. Powell testified that the mail went back on the route and must have been delivered.

The Grievant testified credibly about her actions. She cooperated fully with the investigations. At no time did she think that she was discarding mail. She understood that the mail would be reviewed and that other employees would determine its disposition.

Management did not engage in a thorough investigation, and relied primarily on the OIG report. Also, the disciplinary action was not timely.

Management acted in an arbitrary manner when it removed the Grievant. There was no rule that had been clearly communicated to the Grievant about placing the mail in the UBBM area, and no awareness that this could lead to discipline. The Grievant believed that she was following the directions of a supervisor. Each removed employee was new to the Postal Service and had received little or no training on this matter. Moreover, Management did not treat the carriers equitably. The long term regular letter carrier was returned to work with a 14-day suspension because the carrier showed remorse, but the new carriers, who believed that they were acting under the direction of Management, were fired. Management did not meet its burden of proving that there was

just cause to issue the Notice of Removal to the Grievant. The Union asked that the grievance be sustained, the discipline expunged and the be returned to work and awarded back pay and benefits.

DISCUSSION

At issue is whether there was just cause for the removal of the Grievant for "Failure to Properly Discharge the Duties of Your Position". Management met its burden of proving that there was just cause to issue discipline to the Grievant, but the disciplinary action was excessive and not corrective.

The just cause standard requires the Postal Service to prove that the disciplinary action was issued after an objective pre-disciplinary investigation resulting in proof of an employee's infraction of a clearly communicated, consistently applied work rule. The Postal Service must communicate the disciplinary consequences of the employee's infraction. The administered discipline must be consistent with the charged offense and the employee's past record. Furthermore, the Postal Service must establish that its discipline was imposed in accordance with the procedural requirements of the parties' National Agreement.

The Postal Service established that on October 1, 2016, the Grievant, a City Carrier Assistant who had been employed for seven months, had placed ninety-four deliverable pieces of addressed Hallocks and one hundred twelve deliverable pieces of addressed Woodbridge Town News in the UBBM area. Only mail classified as "undeliverable mail" is to be placed in the UBBM area, and is eventually intended for destruction. Furthermore, the Grievant failed to complete the PS Form 1571, "Undelivered Mail Report" at the end of her assignment.

The Grievant had attended the City Carrier Academy and, as part of her orientation, the Grievant had signed PS Form 8139 on March 7, 2016, acknowledging her role in protecting the security of the mail from delay or other unauthorized acts. The Grievant also underwent the required three-day On-the-Job training with two different instructors. However, the Union asserted that the absence of the steward's and the Grievant's signature on the training certification indicated that there was no validation that all items on the check list had been reviewed with the Grievant, especially the use of the UBBM area.

Management performed a thorough investigation. In the early morning of October 2, 2016, Supervisor Powell observed the large piles of banded deliverable mail left in the

UBBM area on October 1. Powell placed in the mail in another office, and Management photographed the mail and determined that the banded ninety-four pieces of Hallocks and the one hundred and twelve deliverable pieces of Woodbridge Town News had been assigned to the Grievant for delivery. On October 3, Management placed the Grievant, and the four other carriers who had also placed substantial amounts of deliverable mail in the UBBM area, on Emergency Placement pending investigation. Management determined that the five carriers acted independently of one another. The Postmaster contacted the OIG, whose agents investigated and issued a Report of Investigation dated October 14. Powell reviewed the ROI, and held a pre-disciplinary interview with the Grievant and her steward on October 27. At the PDI the Grievant provided her version of events and explained, as she had at to the OIG agents, that she had not intended to discard mail, but believed that she had been following the directions of more senior carriers and supervisors that expired mail was to be placed in the UBBM area for further review and disposition by others. Powell, after consideration of the Grievant's responses, determined that the Grievant had violated the rules and regulations concerning not discarding deliverable mail. Although the Grievant had no prior discipline, Powell determined that a removal would be appropriate because of the egregious nature of the Grievant's actions. Powell sought and received concurrence from Manager Rogers on November 4. After review by Labor Relations, the Notice of Removal was issued on December 5, 2016.

The Union asserted that the discipline was untimely issued and, thus, a due process violation. Although the thirty-day period from the date concurrence was received until the issuance of the removal notice appears to be an unreasonable delay, there was no evidence to show that the Union or the Grievant had been prejudiced in their ability to defend against the charges because of the delay. Thus, I find that there was no due process violation.

Nonetheless, I am persuaded by the Union's argument that there were mitigating circumstances. The Union established that the Grievant, a new employee with a clean record, did not have a clear understanding of how the UBBM area was intended to be used and mistakenly placed the deliverable Hallocks and Woodbridge Town News in the UBBM area. The Grievant acknowledged that she was on notice that carriers are not to discard any deliverable mail. She credibly testified that at no time did she intend to discard deliverable mail. Rather, the Grievant explained that she believed that she was following directions given by a supervisor and a senior carrier by placing the Hallocks,

which she incorrectly believed were expired, and the Woodbridge Town News, intended for a senior facility, in the UBBM area. The Grievant further explained that by placing, what she thought was expired mail, in the UBBM area, the mail would be reviewed by other employees who would determine how its disposition. As further evidence of her credibility, the Grievant maintained the same position to the agents of the OIG and at the pre-disciplinary interview as she had at the hearing. Although the Grievant misunderstood the appropriate use of the UBBM area, the Grievant did not intend to discard deliverable mail in violation of Postal rules and regulations. Fortunately, the error was caught by Supervisor Powell in a timely manner and the mail was subsequently delivered.

Consequently, I find that although the Service was warranted in issuing discipline to the Grievant for her violation of Postal rules and regulations by placing deliverable mail in the UBBM area, the issuance of a removal notice was arbitrary and excessive rather than corrective in nature, in violation of Article 16.1. As noted by Arbitrator Barrett (B11N-4B-D 17337198, 1965516GPO, May 8, 2017) in the companion case of CCA Donaldson-Bellamy, who was also removed for placing deliverable mail in the UBBM area on October 1, 2016:

As stated earlier, and applied by most arbitrators, the usual circumstances whereby an arbitrator will set aside a penalty imposed by Management are when it is determined that the decision was discriminatory, unfair, arbitrary, or capricious.

In the matter before me, I find that the Service acted arbitrarily in making their decision to remove the grievant. I find the penalty unfair given the open questions concerning whether the employees, the grievant included, were given adequate training regarding the handling of UBBM mail, the question of why five letter carriers, acting independently acted in the same manner, on the same day, why more deliberation was not given to the numerous statements voluntarily offered by the other letter carriers, and relied solely on the one supervisor, and on the unblemished two year record of the grievant, a part of which he enjoyed the confidence of the Service by acting as supervisor.

Accordingly, I find that Management had just cause to issue disciplinary action to the Grievant for failure to properly discharge the duties of her position, however the issuance of a removal notice was excessive in violation of Article 16.1. For the remedy, the Notice of Removal shall be rescinded, and the Grievant shall receive a thirty-day (30) non-duty, non-pay suspension. The Grievant is entitled to be made whole for back pay and benefits, consistent with the applicable provisions of ELM, Chapter 436. The

Arbitration decision continued.

arbitrator will retain jurisdiction, for the purpose of implementing this award, for a period of sixty (60) days from the date of receipt of this decision.

AWARD

Management had just cause to issue disciplinary action to the Grievant for failure to properly discharge the duties of her position; however, the issuance of the December 5, 2016 removal notice was excessive in violation of Article 16.1.

For the remedy, the Notice of Removal shall be rescinded, and the Grievant shall receive a thirty-day (30) non-duty, non-pay suspension. The Grievant is entitled to be made whole for back pay and benefits, consistent with the applicable provisions of ELM, Chapter 436. The arbitrator will retain jurisdiction, for the purpose of implementing this award, for a period of sixty (60) days from the date of receipt of this decision. Accordingly, the grievance is sustained in part, and denied in part.

Respectfully submitted by:

A handwritten signature in cursive script, reading "Sherrie Rose Talmadge".

Sherrie Rose Talmadge, Arbitrator