

C# 09670

In the Matter of the Arbitration)
between)
UNITED STATES POSTAL SERVICE)
and)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS, AFL-CIO)

GRIEVANT: S. King
POST OFFICE: Minden, LA
CASE NO: S7N-3Q-C 23838
GTS: 003634

BEFORE: Dr. J. D. Dunn, Arbitrator

APPEARANCES:

For the U.S. Postal Service: C. A. Meyer
For the Union: Collier M. James

PLACE OF HEARING: Minden, LA

DATE OF HEARING: 01-08-90

AWARD

The Postal Service violated the Collective Bargaining Agreement when they put the Grievant in a non-pay, non-duty status. The Grievant's status shall be restored immediately to the status he held when he reported to work on August 30, 1989.

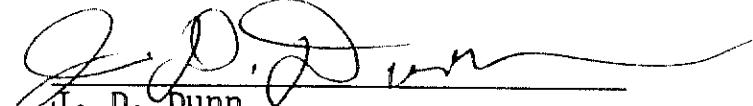
Grievant shall be made whole immediately, including back pay, restoration of sick leave and annual leave, full and unbroken seniority rights, and all other benefits the Grievant would have received but for the Postal Service's violation of the Collective Bargaining Agreement.

If the Grievant consents, the fitness-for-duty examination process recommended by Dr. Greve, including hospitalization for extensive psychological evaluation, shall be continued immediately, at Postal Service expense.

If the Grievant does not agree to a continuation of Dr. Greve's fitness-for-duty examination process, then a new fitness-for-duty examination shall be directed immediately by the Postal Service.

The Grievant shall be in a non-duty status, but with full pay and benefits, until the results of a fitness-for-duty examination have been received by the Grievant from the appropriate Postal Service authority. At that time, the Postal Service shall take appropriate action in accord with its policies, procedures, and the Collective Bargaining Agreement.

DATE: 02-05-90


J. D. Dunn

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THE ISSUE

At first the parties could not agree upon a specific phrasing of the issues. After some discussion of their respective positions, they did agree, however, to accept the Arbitrator's phrasing of the issue, as follows:

Did the Postal Service violate the Collective Bargaining Agreement when they put the Grievant in a non-pay, non-duty status?

If so, what is the appropriate remedy?

BACKGROUND

On August 30, 1989, the Grievant was scheduled to carry a particular route at the Minden, Louisiana Post Office. He reported to work that morning (near 6 a.m.) as he was supposed to do. Shortly thereafter, the Superintendent of Postal Operations instructed him to attend a meeting in the Postmaster's office. Unknown to the Grievant, the Postal Service had previously arranged for the following persons to be in attendance at this meeting: Postmaster, Superintendent of Postal Operations, Employee Assistance Program (EAP) Coordinator, and the Grievant. This meeting was held as scheduled.

The testimony of the four people in attendance at this August 30, 1989 meeting was not completely consistent in terms of exactly what happened. Certain critical facts, however, are not in dispute:

- 1) Neither the Grievant nor his wife had prior knowledge that the meeting was to take place.
- 2) The subject of the meeting dealt with the psychiatric evaluation of the Grievant conducted by Douglas W. Greve, M.D., on 08-22-89. Dr. Greve reported on the results of his evaluation in a letter dated August 22, 1989, addressed to the Postal Service.
- 3) Neither the Grievant nor his wife had any prior knowledge of the letter or its contents.
- 4) Dr. Greve had been designated by the Postal Service to conduct a fitness-for-duty examination of the Grievant.
- 5) The Grievant was cooperative during his fitness-for-duty examination by Dr. Greve and he was also cooperative at the August 30 meeting with the three Postal Service Employees.

As the phrasing of the issue, cited above, suggests, the question at hand involves a decision to change the Grievant's status with the Postal Service. What was his status when he reported to work on August 30, 1989? He was a full-time letter carrier at the Minden, Louisiana Post Office. There was testimony that earlier during the summer, he had requested Leave Without Pay (LWOP). Such leave was authorized, but he not taken the leave that had been granted. Thus, immediately prior to this meeting, the Grievant was simply reporting to work as he was scheduled to do in the normal course of performing his regularly scheduled letter carrier duties.

During the meeting the Grievant learned about the report (i.e., letter) that Dr. Greve had sent to the Postal Service. The last

two paragraphs of this August 22 letter are highly relevant. They are cited, as follows:

I think that a delusional disorder must be very seriously considered. I am seeing him a month or two after he was treated with a strong medication by Dr. Hayes so that he may have reintegrated. If he has a delusional disorder it would be of the persecutory type. These people on occasion can be dangerous to others.

My recommendation is that this man be hospitalized for a relatively short period of time, like one to two weeks, so that I can do more extensive evaluations. This would include getting a detailed social history from his wife, his boss in Minden, and then doing extensive psychological evaluation. From this I may be able to make a much clearer diagnosis and with that the prognosis and recommendations regarding work.

The Grievant also learned during the October 30 meeting that the EAP Coordinator had previously contacted Brentwood Hospital and was prepared to accompany him to that facility just as soon as he could go to his home and get certain personal belongings. The Grievant was unaware until the meeting that such action had been taken.

At the conclusion of the meeting, the EAP Coordinator followed the Grievant's car in her car as he drove to his home. Upon their arrival at the Grievant's home, some discussion with his wife took place. At that time, the EAP Coordinator mentioned that the Grievant should be sure and take his insurance card with him when checking in at Brentwood. Up until this time, the Grievant had thought that the cost of his visit to Brentwood Hospital would be

borne by the Postal Service. When he learned that the cost would be his responsibility, he refused to go.

The Postmaster testified that upon learning of Grievant's decision not to enter Brentwood, a judgment was made on that same day to place the Grievant in a non-pay status. The evidence did not establish with certainty just exactly when that decision was implemented. There was testimony that the Grievant was granted Administrative Leave for the "remainder of the day" (i.e., the day of August 30). There was testimony that he was at first placed in a non-pay, non-duty status for three days. Then, later, in accord with a decision of a higher-level MSC manager, the Grievant was permitted to utilize his accrued Annual Leave and his accrued Sick Leave. There was still further testimony suggesting that the Grievant was in an Absent Without Leave (AWOL) status at the time of this arbitration hearing.

The weight of the evidence shows that the Grievant was placed in a non-pay, non-duty status on August 30, 1989. That decision was in fact later rescinded. Grievant was then permitted to utilize his accrued Annual Leave and his accrued Sick Leave. At some point after he had exhausted his benefits, a point in time not established with certainty by the evidence presented at this hearing, the Grievant's status was apparently changed to AWOL. The decision that was made on August 30, 1989 is the critical decision that must be examined in the light of the issue that the parties have submitted to the Arbitrator.

**FURTHER DISCUSSION OF THE CRITICAL
EVENTS OF AUGUST 30, 1989**

The Union does not challenge the Postal Service's authority to require a fitness-for-duty examination. In the instant case, the Union contends that the Postal Service violated the Agreement by refusing to bear the cost of a complete fitness-for-duty examination. In contrast, Management contends that the Employee, not the Postal Service, is responsible for any "medical treatment" that he might receive once his fitness-for-duty examination had been made by Dr. Greve. The Postal Service contends that it pays for only one fitness-for-duty examination office visit.

The Personnel Operations Handbook contains the following language which is highly relevant to the present issue:

343 Fitness-for-Duty-Medical Examination.

343.1 Authority to Administer. Fitness-for-duty examinations are always performed by a USPS medical officer or contract physician. If necessary, the medical officer or physician may obtain a consultative specialist opinion from a local source. Contact the region and request that they designate a medical officer or contract physician for this purpose if one is not available.

343.2 Cost. Fitness-for-Duty examinations are taken at the direction of the Postal Service at no cost to the employee. This includes any travel expenses incurred.

x x x x

343.34 Failure to report. Failure to report for a fitness-for-duty examination without acceptable reasons is just cause for disciplinary action. Repeated refusal is grounds for separation.

In response to the Postal Service's directions, the Grievant went to Dr. Greve for a fitness-for duty examination. Dr. Greve's letter of August 22, 1989 states that he saw the Grievant on 08-22-89 for one hour. Dr. Greve recommended that the Grievant be hospitalized "so that I can do more extensive evaluations." The last sentence of his letter is highly relevant and is repeated for emphasis: "From this I may be able to make a much clearer diagnosis and with that the prognosis and recommendation regarding work." (underline added)

The letter does not speak of "treatment." It mentions "extensive psychological evaluation." The letter does not state that the Grievant has a delusional disorder. It states that "If he has a delusional disorder it would be of the persecutory type."

In my judgment, Dr. Greve did not complete the fitness-for-duty examination. The Postal Service's refusal to follow through and pay for the psychological evaluation that was recommended by Dr. Greve was not within its discretion once it had subjected the Grievant to the process. Demanding that the Grievant pay for the remainder of Dr. Greve's fitness-for duty examination was a violation of the Personnel Operations Handbook. It states clearly: "Fitness-for-duty examinations are taken at the direction of the Postal Service at no cost to the employee."

**THE GRIEVANCE
AND SUBSEQUENT EVENTS**

According to the Step 2 grievance appeal, the Step 1 decision was rendered on 09-06-89 at 10 a.m. On September 07, 1989, the Superintendent of Postal Operations (SPO) in a letter addressed to the Grievant stated as follows:

As a result of the Fitness of Duty examination by Dr. Greve on August 22, 1989, it has been determined that you are incapable of performing your duties at the present time.

It is your responsibility to seek necessary treatment and provide me with a medical report indicating your ability to return to duty. In the interim, you are required to provide this office with a progress report, and or, your inability to return to duty every two weeks. You will be granted LWOP/AL/SL at your discretion. To accomplish this please submit a Form 3971 indicating your preference.

You must advise this office within 10 days of your receipt of this letter regarding the type of treatment you are receiving and the status of that treatment.

Subsequent to the date of this letter, the Grievant offered various documents in an effort to satisfy the demands of the Postal Service. None of these were accepted by the Postal Service as meeting its criteria of acceptability (i.e., the Postal Service did not accept the Grievant's documentation as being an acceptable "medical report" submitted by a medical doctor). Although these documents refer to events following the August 30, 1989 decision they have some relevance in terms of a possible remedy. They do

establish, too, that the Grievant has continually attempted to comply with the Postal Service's requirements.

CONCLUSION

Whether the Grievant was fit for duty on August 30, 1989 was a decision the Postal Service previously had decided was a medical decision. They had even selected a medical doctor to make that judgment. The Grievant had no choice in deciding that Dr. Greve would perform the fitness-for-duty examination. Even so, Dr. Greve reported that, "He seemed relaxed, was friendly and very open with me. He gave a clear history of what was going on."

Instead of following through with the process and then obtaining a medical judgment, and paying for it, the Postal Service adopted the position that it was only obligated to pay for "one visit" when it requires an employee to take a fitness-for-duty examination. At that point, the Postal Service was in violation of the Collective Bargaining Agreement.

Article 19 of the Agreement specifies that handbooks, manuals and published regulations of the Postal Service "shall continue in effect." As discussed above, paragraph 343.2 of the Personnel Operations Handbook states clearly that fitness-for-duty examinations are taken at the direction of the Postal Service at no cost to the employee.

Dr. Greve recommended "extensive psychological evaluation", but the Postal Service, in effect, refused to pay for this part of

the fitness-for-duty examination. Then, in a September 7 letter, the Postal Service on its own made a judgment that the Grievant was not fit for duty, and they cited Dr. Greve's examination on August 22, 1989 as support for this decision.

The Postal Service now contends that its actions were taken in accord with the Emergency Procedure of Article 16, Section 7; however, if this were the case, why was Dr. Greve's evaluation rather than the Collective Bargaining Agreement cited in the Postal Service's September 07, 1989 letter to the Grievant? There is simply no objective evidence that the Postal Service made a reasoned judgment to utilize the Section 7 Emergency Procedure.

When the record in its totality is reviewed, only one judgment can be made. The Postal Service violated the Collective Bargaining Agreement. It was violated when the Postal Service refused to follow through, at no cost to the Grievant, with the fitness-for-duty examination to which the Postal Service had directed the Grievant to subject himself.