

REGULAR ARBITRATION PANEL

C# 09556

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

} GRIEVANT: Deborah A. Hobson
} POST OFFICE: BACON STATION,
} INDIANAPOLIS
} CASE NO: C7N-4G-D-15777
} GTS NO: 0005460

BEFORE: William F. Dolson, Arbitrator

APPEARANCES:

For the Union:

David L. Klein, Advocate

For the U.S. Postal Service:

Edgar W. Carter, III
Labor Relations Assistant

PLACE OF HEARING:

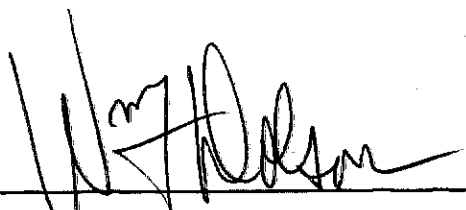
Indianapolis, Indiana

DATE OF HEARING:

November 14, 1989

AWARD: Within four days of receipt of this Decision, the Grievant shall be reinstated to her former position with full seniority and benefits, but without any back pay.

DATE OF AWARD: November 30, 1989



William F. Dolson
Arbitrator

RECEIVED

DEC 04 1989

Jack R. Sebolt

OPINION

BACKGROUND

The Grievant, Deborah A. Hobson, was a full-time T-6 Carrier Technician with eight years seniority at the time of her removal. She is assigned to the Bacon Station.

On the morning of January 12, 1989, the Grievant was interviewed concerning vandalism of a supervisor's personal vehicle which was parked at the Bacon Station. She was first interviewed by two postal inspectors. The Grievant told the inspectors that earlier that morning, she had a discussion of a personal nature with the supervisor who owned the vehicle. When asked if she did anything to the supervisor or anything to something that belonged to him, she responded, "I guess so." After the Grievant was given the Warning and Waiver Form (PS 1067), she stated she understood the Miranda warning but refused to continue with the interview. At that time, she requested that someone be with her during the interview. She indicated though that a Union steward would not be appropriate for the incident, and she stated she did not have a lawyer. The interview was terminated by the postal inspectors. The Grievant also declined to provide them with a statement.

Later that day the Grievant was interviewed by Bacon Station Manager Bernie Cole regarding the vandalism. Supervisor of Postal Operations, Edward Smith, was also present

during the interview. The Grievant's request that a Union representative be present during the interview was denied by Cole. He told the Grievant that he did not believe it was necessary or appropriate for her to have a Union representative at the interview.

During the interview with Cole and Smith, the Grievant admitted she was involved in the vandalism of the supervisor's vehicle. She stated she place moth repellent crystals in the gas tank of the vehicle for personal reasons. According to Cole, he placed her on administrative leave pending further investigation and informed her that the interview was over.

Before the Grievant left Bacon Station, Cole informed her it would be necessary to review the contents of her locker. She went to her locker and removed the contents from it while being observed by Cole and Smith. The contents were placed in a bag and taken to Cole's office where they were inspected. Four pieces of mail that were not personal items of the Grievant were discovered in this search. This mail was from four different addresses on four different routes on which the Grievant had served as a substitute. Three pieces were bulk rate third-class flats, and one piece was a second-class publication with a June 1988 issue date. All the items were addressed to good addresses. According to Cole, when he asked the Grievant why these four pieces of mail were in her locker, she re-

plied "they were no obvious value undeliverable mail and she was going to throw them away after she was done with them." She indicated that all the mail pieces were throw-aways. Cole then released the Grievant to leave the premises.

Before the Grievant's locker was searched by Cole and Smith, the Grievant had given the postal inspectors a box containing moth crystals. The Grievant was never disciplined for her vandalism of the supervisor's vehicle. Cole testified the Postal Service could not consider the vandalism incident because he failed to provide the Grievant with a Union steward during his interview with her.

On February 17, 1989, the Grievant was interviewed by Station Manager Cole in the presence of a Union steward regarding the mail found in her locker. The Grievant was evasive in answering Cole's questions as to why the mail was in her locker, what were the procedures for delivering and forwarding mail, whether it was proper to place second-class mail in her locker, and if she put the mail in her locker. After the interview, Cole requested that the Labor Relations Manager take appropriate disciplinary action against the Grievant for the obstruction of mail and removal of mail from the mail stream.

On February 23, 1989, a Notice of Removal was issued to the Grievant. It states as follows:

You are hereby notified that you will be removed from the Postal Service on March

31, 1989. The reason for this action is:

You are charged with obstruction of the mail/removing mail from the mailstream/violation of the Code of Ethical Conduct.

On January 12, 1989, you were interviewed concerning the vandalism of a supervisor's personal vehicle at Bacon Station. At the conclusion of the interview, you were instructed to empty your locker and bring the contents to the superintendent's office for inspection. You were observed removing mail from your locker as you cleaned out your locker. The contents of your locker were inspected in the superintendent's office and it was noted that you had a second class magazine and three BBM pieces of mail in your locker. The following mail was recovered from your locker:

1. Second class addressed to Amy W. MacDonell, 1824 E. Kessler Blvd, Route 2004 (4-28-88 with a current change on file)
2. BBM addressed to Beth A. Silvarman 2130 Douglas Rd. endorsed (or current resident) Route 2029
3. BBM addressed to Roland Hamilton 4014 Monaco Dr #A Route 2020
4. BBM addressed to Jacob Reinbolt 6207 Haverford Route 2023

You stated that the mail was no obvious value undeliverable mail and you were going to throw them away after you were done with them. You were placed in an administrative leave status and escorted from the building pending further investigation. The Inspection Service was notified and a Supplemental Investigative Memorandum was completed.

On February 17, 1989, you were interviewed by Manager Bernie Cole after you received the contents of the Investigative Memorandums. You were provided a union steward upon your request at the outset of the interview. During the course of the interview you declined to answer why you had the second class magazine and the three BBM pieces of mail in your locker. When asked the proper procedures on handling the

classes of mail, you were very evasive in your answers and responded that you didn't know or weren't sure. You did state that you sent undeliverable second class mail with a change of address on file through mark-up. When questioned why you didn't send the magazine to mark-up to be forwarded you responded that you didn't know. You declined to make any further statements concerning the mail recovered from your locker.

Obstruction of mail/removing mail from the mainstream is a very serious violation of the Code of Ethical Conduct. Such actions violate the sanctity of the mails and justify your removal from the Postal Service.

You have the right to file a grievance under the Grievance/Arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

A grievance was filed by Ms. Hobson at Step 1 on March 13, 1989. The Union's Step 1 position was that the removal should be rescinded because there was no Union steward during the initial interview on January 12, 1989. Management's Step 1 position was that the action was justified and the remedy requested was not appropriate.

A grievance form was filed at Step 2 on March 14, 1989. It was denied at Step 2 and ultimately taken to arbitration where it is before me for a decision on the merits.

POSITION OF THE POSTAL SERVICE

The Notice of Removal was issued for just cause in accordance with Article 16 of the Agreement. The Grievant has obstructed mail, removed mail from the mailstream, and violated the Code of Ethical conduct in doing so. The fact

that the mail was recovered from the Grievant's locker is not in dispute. As a T-6 Carrier Technician, she is required not only to know the rules and regulations on the proper handling of mail, but is also paid a higher wage level to instruct others on proper procedures.

POSITION OF THE UNION

The Grievant was originally charged with vandalizing a supervisor's vehicle. In its effort to leave the supervisor out of the matter and yet punish the Grievant, management found mail in the Grievant's locker. It is unknown at the Bacon Station for management to order an employee to empty his or her locker on a supervisor's desk even in drug or theft cases. The known method is merely to search the suspected locker. Management knew in advance that mail would be found. It also knew that the Grievant was upset and would make statements that could be misrepresented as long as she was denied a representative.

CONTRACT PROVISIONS

ARTICLE 16 DISCIPLINE PROCEDURE

Section 1. Principles

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.

DISCUSSION

The parties agreed that the issue in this case is as follows: Did the Postal Service have just cause to issue a removal action to Deborah A. Hobson under the charge of obstruction of the mail/removing mail from the mailstream/violation of the Code of Ethical Conduct? If not, what is the appropriate remedy?

The Postal Service contends the Grievant obstructed the mail, removed mail from the mailstream and violated the Code of Ethical Conduct. Section 661.53 of the Employee and Labor Relations Manual provides:

661.53 Unacceptable Conduct. No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. . . .

Section 665.2 of the Employee and Labor Relations Manual provides:

665.2 Application to Postal Employees

The following statutes and regulations are applicable to all employees in the Postal Service. In addition to these statutes, Executive Order No. 11222 of May 8, 1965, as made applicable to the Postal Service by Executive Order No. 11590 of April 23, 1971, prescribes standards of ethical conduct for officers and employees of the government.

- q. Prohibition against obstruction of correspondence (18 U.S.C. 1702).
- r. Prohibition against delay or destruction of mail or newspapers (18 U.S.C. 1703).
- s. Prohibition against theft of property (18 U.S.C. 1707).

t. Prohibition against theft of mail
(18 U.S.C. 1709).

Section 666.2 of the Employee and Labor Relations Manual
provides:

666.2 Behavior and Personal Habits

Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, courteous, and of good character and reputation. Employees are expected to maintain satisfactory personal habits so as not to be obnoxious or offensive to other persons or to create unpleasant working conditions.

The following responsibilities of carriers and delivery and collection rules are set forth in the M-41 City Delivery Carriers Handbook:

Section 112.1 Efficient Service

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 law.

Section 112.3 Security

.31 Protect all mail, money, and equipment entrusted to your care.

.33 Do not place mail in your pockets or clothing, lockers or desks, or in parcels, hand grips, lunch containers, or other luggage.

Section 131.1 Security of Mails

.14 Do not remove stamps from mail or throw away or improperly dispose of mail. . . .

Section 242.2 Second-Class Mail

.32 Place No Obvious Value mail
in No Obvious Value Mail separation
in throwback case. (Markup employee
will review prior to disposal as
waste.)

The following provisions govern the forwarding of second-class and third-class bulk business mail. Section 159.23(b) provides:

159.23 Postage for Forwarding. Mail forwarded may be subject to additional postage as noted below. Compute this postage as if the piece had been originally mailed at the office from which it is forwarded:

- b. Forward second-class publications without charge for 60 days when postage has been fully prepaid by the sender.

Exhibit 159.151(c) and 159.151(d) of the Domestic Mail Manual provide:

Exhibit 159.151c

Treatment of Undeliverable Third-Class Bulk Business Mail--Weighing 1 Ounce or Less (Forwarded up to 12 months)

Mailer

<u>Endorsement</u>	<u>USPS Action</u>
No Endorsement or Do Not Forward	No forwarding or return service is provided.

Exhibit 159.151d

Treatment of undeliverable Third-Class Bulk Business Mail--Weighing Over 1 Ounce (Forwarded up to 12 Months)

Mailer

<u>Endorsement</u>	<u>USPS Action</u>
No Endorsement or Do Not Forward	No forwarding or return service is provided.

The record shows four pieces of mail were discovered in the Grievant's locker during a search by management and that

this mail had addresses which she served. Although the Grievant testified that her locker was sometimes open, testimony by Postal Service witnesses Cole and Smith indicated that she unlocked her locker to get into it. The Grievant testified that she could not recall whether her locker was locked at that time.

The Grievant further testified that she did not know how the mail got in her locker. The Union suggests that it may have been placed there by the supervisor who had his vehicle vandalized, but there is no evidence to support that claim. The Grievant also testified that when she told Cole at the January 12, 1989 interview that she was going to throw the four pieces of mail away, she actually meant to say she was going to put the mail on the throw-off case. This is the proper method of handling this type of mail. The fact remains, however, that the mail was in her locker instead of being placed on the throw-off case.

The Union raised the question of whether the Grievant knew what to do with the pieces of mail. The Grievant was a T-6 Carrier Technician, and as such, was required not only to know the proper handling of mail but to convey this knowledge to other employees. In her testimony, she described the proper way to forward second-class mail and how to handle undeliverable bulk business mail. She admitted that the four pieces of mail, comprised of one piece of second-class and three pieces of bulk business mail, did not belong

in her locker. Another Union witness, Chief Union Steward Ollie Brown, testified that she does not put any class of mail in her locker unless it is addressed to her.

Based on the above, I find the Grievant violated the above-mentioned Postal Service standards and regulations. She obstructed the mail by removing it from the mailstream. Moreover, she violated the trust placed in her by the Postal Service as well as patrons, to act responsibly in the handling of mail. Her conduct was of a serious nature for it strikes at the very heart of the Postal Service and those it serves.

The Union argues that the grievance must be sustained, because the Grievant was denied her Weingarten rights to Union representation during the interview of her by management on January 12, 1989. The Postal Service argues that the interview on January 12, 1989 in which the Grievant requested Union representation involved only the vandalism investigation. It maintains that the questioning of the Grievant regarding the mail found in her locker took place in a second meeting which was not an investigatory interview. Even assuming it was, argues the Postal Service, the Grievant did not request Union representation at the second meeting. The Postal Service points out that an investigatory interview regarding the mail took place on February 17, 1989, and the Grievant had Union representation at that interview.

In NLRB v. Weingarten 420 US 251, 88LRRM2589(1975), the United States Supreme Court agreed with the NLRB that

an employee has the right to union representation at an investigatory interview that an employee reasonably believes will result in disciplinary action. This right exists even where such right is not explicitly provided in the agreement and is supported by well-established current arbitral authority. It arises, however, only where the employee requests representation.

Hill and Sinicropi in Evidence in Arbitration, 271 (BNA, 2nd Ed, 1987) state: "In general a review of cases following Weingarten indicates that arbitrators view union representation at the investigatory stage as important to any fair grievance procedure. . . ." The record shows that the Postal Service in Indianapolis recognizes that the Weingarten rights principle is applicable to postal employees. Station Manager Cole testified that during his review of the Grievant's vandalization of the supervisor's vehicle with Labor Relations, he was informed by Labor Relations that the Grievant's conduct could not be considered for discipline because he denied her request for Union representation during the investigatory interview of her on January 12, 1989. Cole stated that Labor Relations furnished him with a document on Weingarten rights at that time.

It is undisputed that on January 12, 1989 during the meeting in which Cole questioned the Grievant about the vandalism incident, she requested, and was denied, Union representation. It is also undisputed that when Cole met with the Grievant shortly thereafter and questioned her about

the mail discovered in her locker, she did not again request Union representation.

Station Manager Cole testified that the questioning of the Grievant about the vandalism and about the mail discovered in her locker constituted two separate interviews. He testified that at the end of the questioning on the vandalism, he stated the interview was ended and placed the Grievant on administrative leave and told her to clean out her locker. In contrast, the Grievant testified that it was not until after she was questioned about the mail, that Cole told her the interview was terminated and that she was being placed on administrative leave.

After a careful review of the evidence, I find that the meeting on January 12, 1989, at which the Grievant was questioned about the mail found in her locker, was a continuation of the meeting which began when she was questioned about the vandalism. Even if Cole did say at the end of questioning the Grievant about the vandalism, that the interview was over, I find the meeting in which the Grievant was questioned on that matter, and the later meeting in which she was questioned about the mail discovered in her locker, were parts of a single, interrelated episode.

Testimony by Union witnesses convince me that it is not routine for management to require an employee to clean out her locker and bring the contents to an office for inspection when she is being placed on suspension. Moreover,

Cole not only told the Grievant to do this, but he accompanied her to the locker room. Smith was also present in the locker room when she cleaned out her locker.

It can only be concluded that Cole had the Grievant empty out her locker because it was important to his investigation of the vandalism incident. Thus, the interview was not in fact ended when Cole told the Grievant it was over, rather the interview was continued while management inspected the contents of her locker. It then was expanded to include questions about the mail found in her locker.

There is no question that the Grievant requested Union representation early in the meeting in which she was interviewed regarding the vandalism incident. Cole should have known that the Grievant still desired, and definitely needed, a representative present when the scope of that meeting was expanded to include a new subject matter -- the discovery of the mail in her locker. The risk of discipline was just as great, if not greater, when that subject matter was discussed.

As enunciated by United States Court of Appeals for the Fifth Circuit in Lennox Industries v. NLRB, 637 F.2d 340, 106 LRRM 2607 (1981), Cert. denied 452 US 963 (1981):

The rationale of Weingarten does not require an employee to repeat his request for union representation each time the subject changes during a meeting with company officials. Such a rule would be both burdensome for the employee and tedious for the company officials. As long as one or

more company officials are aware of the employee's desire and request for the presence of a union representative, a single request will suffice for the multiple subjects of a single meeting, or for multiple meetings which are part of a 'single, interrelated episode,' as here. The union representative's admission ticket gained by the employee's original request entitles the employee to representation during both ends of the doubleheader. (106 LRRM 2611)

Based on the above, I conclude the interview of the Grievant by management during the meeting on January 12, 1989 was investigatory and of the nature that it might reasonably result in discipline. The Grievant requested Union representation during this interview and that request was denied by management. This request sufficed for the entire interview which included the questioning of the Grievant regarding the vandalism incident, the inspection of the contents of her locker, and the questioning of her regarding the four pieces of mail discovered in her locker. Management, in denying the Grievant's request for Union representation, violated her Weingarten rights, and therefore her removal was flawed.

Accordingly, I conclude that the Postal Service did not have just cause to remove the Grievant. Recognizing, however, the gravity of the offense which the Grievant committed, her reinstatement shall not include back pay.

AWARD

Within four (4) days of receipt of this Decision, the Grievant shall be reinstated to her former position with full seniority and benefits, but without any back pay.