

C#18283

A-C

ARBITRATION DECISION AND AWARD

In the Matter of the Arbitration)
)
)
- between)
)
)
UNITED STATES POSTAL SERVICE)
)
and)
)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS.)
)
(Consolidated Cases)

GRIEVANT:

Class Action
Class Action
Donald Hynes

POST OFFICE:

Pomona, CA

Case Nos:

F94N-4F-C96018527
GTS 32955

F90N-4F-C94061448
GTS 27654

F94N-4F-C97010771
GTS 37739

BEFORE: Louis M. Zigman, Esq. - Arbitrator

APPEARANCES:

For the Postal Service:

Susan Johnson

For the Union:

Charlie Miller

Place of Hearing:

Pomona, CA

Date of Hearing:

March 6, 1998

Briefs Received:

May 6, 1998

Date of Award:

May 9, 1998

AWARD:

That the supervisor's conduct vis a vis the three grievants constituted violations of the collective bargaining agreement, although the violations were minor in nature. Because the conduct of the supervisor was not egregious in nature, the question of corrective action, if any, should be remanded to the Service.

Introduction

This matter was heard by Louis M. Zigman, Esq., neutral arbitrator on March 6, 1998, in Pomona, CA. The Postal Service was represented by Susan Johnson and the Union was represented by Charlie Miller.

Both parties were afforded an opportunity to present evidence and to examine witnesses. After the close the hearing both parties submitted written closing briefs and the matter stood as submitted on May 6.

thereafter. The matter stood as submitted as of May 1998.

Based on the evidence and contentions of the parties, I issue the following decision and award.

Statement of the Case

These three grievances all involve allegations of inappropriate conduct by supervisor, Ruth Walton.

According to the union, Walton acted in an inappropriate and in an abusive manner to three different employees, Sherrie Walker, Eddie Reed and Donald Hynes. The union asserted that Walton's conduct violated the Joint Statement on Violence and Section 1154 of the M-39.

The Service denied that Walton's conduct constituted a violation of either the joint Statement or of the M-39.

These grievances, which had been filed as separate grievances, on June 30, 1994; October 31, 1995; and September 24, 1996 respectively, were eventually consolidated for the purposes of the hearing.

Material Facts

Sher'rie Walker filed her grievance (F94N-4F-C96018527) on June 30, 1994 over an incident which occurred on June 16, 1994. After her allegations against Walton, the postmaster, Penny Stevenson, conducted an investigation. After she completed her investigation, Stevenson issued Walton a letter of warning. In the letter of warning Walton was informed that she had engaged in unprofessional conduct; that she spoke abruptly and discourteously to Walker; and that she escalated the situation into a confrontation. Walton was cautioned that the Service considered her conduct as a serious offense and that was the reason she was given the letter of warning. Apparently the union and/or the g. did not believe that this warning was sufficient inasmuch as the union continued to process the grievance through the grievance procedure.

On October 23, 1995, approximately sixteen months later, there was another incident between Walton and Carrier, Eddie Reed. Reed filed a grievance in which he alleged that when he and Walton were discussing his request for 45 minutes of overtime that she "got into his face" and that she yelled and berated him.

As a result of what he perceived was highly inappropriate conduct, Reed contacted his union and he filed a timely grievance against her.

Eleven months later, on September 24, 1996, Donald Hynes filed a grievance against Walton too,

According to Hynes, Walton yelled and berated him when he told her that he had to go home because he was not feeling well.

1 As noted above, these three grievances were eventually
2 consolidated and all three were heard on March 6, 1998.

3 The evidence also disclosed that in each of these three
4 grievances the union asserted that Walton's conduct
5 constituted a violation of the Joint Statement and of the
6 M-39, Section 1154.

7 Testimony

8 Testimony from the witnesses differed in certain
9 respects.

10 In regard to the Walker incident, Walker testified that
11 Walton yelled at her and that Walton pushed and struck her
12 with her hand. Walker's testimony was corroborated in certain
13 areas by Lynette Sue Keebler and by Louis Mir.

14 On the other hand, Walton denied pushing and/or
15 striking Walker. Walton's testimony was corroborated in part
16 by Margo Vasquez.

17 With respect to the incident involving Eddie Reed,
18 Reed's testimony was corroborated in part by Leo Martinez,
19 Adriana Santander and Thomas Padron. Walton, on the other
20 hand, asserted that Reed exaggerated and mis-characterized the
21 incident.

22 With respect to the incident involving Donald Hynes,
23 there were no percipient witnesses as to what occurred, other
24 than Hynes and Walton.

25 Issue

26 Did Ruth Walton's conduct constitute a violation of
27 either the Joint Statement on Violence in the Work Place or
28 in violation of Section 1154 of the M-39?

If so, what is the appropriate remedy?

Positions of the Parties

Union's Position

The Union asserted that Walton's conduct on three separate occasions, involving Walker, Reed and Hynes, constituted inappropriate conduct by a supervisor and furthermore that her conduct constituted a violation of the provisions of the Joint Statement and/or of the M-39 Section 1154.

In this regard, the Union asserted that Walton's actions in yelling and berating these individuals constituted abusive and bullying conduct and therefore inappropriate conduct by a supervisor. More particularly, the Union asserted that this conduct not only violates the "mutual respect" provisions in the M-39 but it constitutes harassment and intimidation in violation of the principles as set forth in the Joint Statement on Violence.

While noting Walton's explanations and characterization to the effect that she had done nothing wrong and it was the three carriers, not her, who had engaged in inappropriate conduct, the Union pointed out that the Service itself concluded that Walton had engaged in misconduct with respect to Walker's situation. In this regard, the Union noted that Walton received a letter of warning for her misconduct.

While acknowledging that the Service did act properly in disciplining Walton, nevertheless the Union maintained that given the seriousness of Walton's actions that the letter of warning was not sufficient.

As support for this position, the Union pointed out that despite this letter of warning Walton continued to engage in similar misconduct; i.e. conduct vis a vis Reed and Hynes.

1 While also noting Walton's explanations as to her
2 conduct involving the Reed and Hynes incidents, the Union
3 maintained that her recollection and characterization of her
4 conduct was inconsistent and in conflict with both Reed and
5 Hynes as well as the testimony of other bargaining unit
6 employees.

7 In view of the foregoing, and in noting that there were
8 other incidents of yelling by Walton at other carriers, the
9 Union maintained the other witnesses did support and
10 corroborate Reed and Hynes' recollections as to what had
11 occurred. As such, the Union asserted that Reed and Hynes
12 testimony was more credible than the denials by Walton.

13 Furthermore, in noting that there were at least three
14 incidents along with other similar complaints, the Union
15 asserted that it is evident that Walton's conduct was not
16 isolated and/or taken out of context.

17 The Union also asserted that Reed and Hynes'
18 credibility should also be enhanced by their very positive
19 record of service and by their tenure.

20 In view of the foregoing, the Union maintained that the
21 evidence demonstrated that Walton's conduct constituted
22 violations of the Joint Statement and of the M-39 and
23 therefore a finding of misconduct should be made along with an
24 appropriate remedy.

25 In terms of remedy, the Union withdrew the corrective
26 action which it requested in each of the individual grievances
27 and left the question of remedy to the arbitrator.

28 In asserting that the arbitrator does have authority to
issue remedial action, the Union requested a finding that the
Service violated the collective bargaining agreement, postal

1 regulations and the Joint Statement, in the manner in which
2 Walker treated these grievants. The Union also requested a
3 directive that the Service cease and desist from allowing its
4 supervisors to harass and/or abuse their subordinate
5 employees.

6 For all of these reasons the union maintained that each
7 of the grievances should be sustained.

8 Service's Position

9 The Service denied that Walton's conduct on any of the
10 dates in question constituted a violation of either the Joint
11 Statement and/or of the M-39.

12 While acknowledging that Walton was given a letter of
13 warning with respect to the incident with Walker in June,
14 1994, the Service maintained that her conduct did not rise to
15 the level of a violation of either the Joint Statement or of
16 the M-39. In this regard, the Service asserted that Walton
17 was reprimanded because she allowed the situation with Walker
18 to escalate instead of her having taken professional action in
19 mollifying Walker's conduct.

20 With respect to the incident involving Reed and Hynes,
21 the Service asserted that both Reed and Hynes exaggerated and
22 mis-characterized the incidents. Even assuming arguendo that
23 Walton raised her voice, the Service maintained that those
24 incidents were rather minimal and that they did not rise to
25 the level of inappropriate conduct.

26 As support for this position, the Service pointed to
27 Walton's testimony and to the Stevenson's testimony as to the
28 fact that there is often some degree of conflict when
supervisors and their carriers are "negotiating" overtime.
According to the Service, both Reed and Hynes were upset by

1 Walton's decisions and they argued with Walton. And, the
2 Service acknowledged that while there may have been some
3 arguing on both sides, the Service maintained that Walton's
4 actions did not rise to the level of violence as contemplated
5 by the Joint Statement nor did her conduct constitute a
6 violation of Section 1154 of the M-39.

6 In this respect, the Service stated:

7 "Some level of conflict occurs in the work place on a
8 daily basis, the incident at issue did not rise to the level
9 to violate the Joint Statement or any contractual violation.
10 Supervisors must have latitude, within the bounds of
11 reasonableness to supervise and direct employees. Clearly
12 Article 3 gives management the right to direct employees and
13 to maintain the efficiency of the operations entrusted to it."

11 In view of the foregoing, the Service maintained that
12 the Union failed to establish it's burden of proof in
13 demonstrating that Walton's conduct constituted a violation of
14 the Joint Statement and/or of the M-39. Moreover, with
15 respect to the incident involving Walker, the Service asserted
16 that it took appropriate action to correct that situation.

16 For these reasons, and in noting that Walton is no
17 longer assigned to the Pomona Post Office and is not
18 supervising craft employees, the Service maintained that the
19 three grievances should be dismissed; citing awards of
20 arbitrators Axon, Eaton, Rehms and one of the previous awards
21 of the undersigned.

22 Analysis and Conclusion

23 In analyzing grievances where the Union essentially
24 alleges misconduct against supervisors, I believe that it is
25 appropriate to hold the Union to much the same standard with
26 respect to the burden of proof as the Service has when the
27 Service takes disciplinary action against a bargaining unit
28 employee. In other words, when weighing the quantum of proof,

1 the Union must establish by a preponderance of the evidence
2 that the manager/supervisor's conduct constituted a violation
3 of either the Joint Statement and/or of the M-39.

4 In assessing the first incident involving Walker, in
5 June 1994, the evidence is undisputed that after management
6 completed its investigation that it did conclude that Walton's
7 conduct constituted a violation of the supervisory standards.
8 Because of that conclusion the Service did issue disciplinary
9 action.

10 In reviewing the level of discipline, I note that
11 arbitrators generally refrain from substituting their judgment
12 for management except in situations when the arbitrator
13 concludes that the discipline constituted arbitrary and/or
14 capricious action.

15 In viewing the situation in the Walker incident and in
16 noting that there is a dispute amongst the witnesses as to
17 whether Walton actually pushed and/or struck Walker, I cannot
18 find that Stevenson's decision to impose the letter of
19 warning, instead of more severe discipline, constituted an
20 abuse of her discretion. In other words, I accept Stevenson's
21 conclusion that the evidence was not sufficient to establish
22 that Walton struck or pushed Walker. I reach this conclusion
23 not only from considering Stevenson's analysis, but also from
24 my own review of the evidence in this hearing. In my view, if
25 the shoe were on the other foot with Walton accusing Walker of
26 having hit her, with witnesses on both sides, the Union would
27 surely argue that the Service failed in their burden of
28 proving such a serious charge.

The fact that Stevenson did find some basis for
Walker's grievance and the fact that Walton was disciplined

1 for her conduct did weaken the Union's contentions that a
2 stronger disciplinary action should have been applied.

3 Because I didn't find the evidence sufficient to
4 establish that Walton pushed and/or hit Walker, I do not find
5 nor conclude that Walton's conduct vis a vis Walker was so
6 serious as to have constituted a violation of the Joint
7 Statement.

8 Therefore, in considering Walker's grievance on its
9 own terms, separate and apart from the other two grievances,
10 I cannot find nor conclude that the failure to have given
11 her more discipline constituted a violation of the collective
12 bargaining agreement, postal regulations and/or the Joint
13 Statement.

14 Turning next to Eddie Reed's grievance, I note that the
15 evidence seemed to indicated that Walton did inappropriately
16 raise her voice to Reed. On the other hand, I was not
17 persuaded that her conduct was as serious as characterized by
18 the Union.

19 In this regard, I note that while I do not necessarily
20 condone supervisors raising their voices when speaking with
21 their subordinates, I acknowledge that at times disagreements
22 between supervisors and carriers occur when negotiating
23 additional time for purposes of over-time. While I agree that
24 carriers and/or supervisors should not be disrespectful to
25 each other, nevertheless one must view the words and actions
26 in each situation in order to determine the inappropriate
27 nature and/or the seriousness of this conduct.

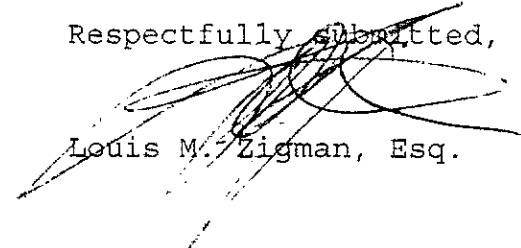
28 Again, while I understand the Union's arguments that
their members should not be subjected to being berated and
yelled at by their supervisors and that such conduct might

1 possibly lead to serious consequences in the work place,
2 nevertheless, in having viewed the evidence in this particular
3 case, I did not find that Walton's conduct constituted so
4 serious misconduct which requires affirmative relief by the
5 undersigned. Here again, while I agree that Walton spoke
6 harshly to Reed and Hynes, and inappropriately so,
7 nevertheless, I did not find that the harshness in her voice
8 and/or the body language that she used rose to the level as
9 outlined in the Joint Statement as particularly egregious
conduct.

10 In arriving at this conclusion, I have also considered
11 the awards cited by the Union by arbitrators Hutt, McCaffree
12 and Jacobs. From my review of their awards, it is evident
13 that the conduct engaged in by the supervisors in those cases
14 was considerably more serious and more egregious than the
conduct in this case.

15 As noted above, while I agree that Walker's conduct was
16 not as serious as characterized by the Union, nevertheless, I
17 am persuaded that Walker could have, and should have exercised
18 better judgment in her actions vis a vis these three
19 individuals, Walker, Reed and Hynes, and therefore I agree
20 that while there was a violation of the collective bargaining
21 agreement the violation was minor in nature. Because I did
22 not find Walton's conduct as egregious, calculated and
23 intentional but rather as a transitory emotional outburst, I
24 shall remand the question of corrective action, if any, to the
Service.

25 Respectfully submitted,

26 
27 Louis M. Zigman, Esq.
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