

## REGULAR ARBITRATION

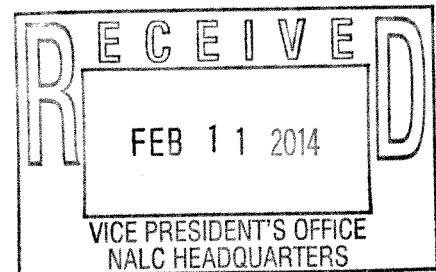
In the Matter of the Arbitration	)	Grievant: Marquis Johnson
Between	(	
	)	P.O.: Palms Central Station
UNITED STATES POSTAL SERVICE	(	
	)	USPS#: G11N-4G-D 13315076
And	(	
	)	DRT#: 09-283652
National Association of Letter Carriers,	(	
AFL-CIO	)	Union#: PC201381

BEFORE: Arbitrator Kathryn Durham, J.D., P.C.

## APPEARANCES:

For the USPS: Andrew M. Potawsky, Labor Relations Specialist  
 For the NALC: Rick Abbarno, NALC Advocate

Place of Hearing: West Palm Beach, FL  
 Date of Hearing: December 13, 2013  
 Date of Award: January 18, 2014  
 PANEL: South Florida District



## AWARD SUMMARY

The grievance is sustained. Management lacked just cause to issue this CCA a Notice of Removal dated August 9, 2013 for Unsatisfactory Performance. Discipline was not corrective and is reduced to a suspension.

*Kathryn Durham*

Kathryn Durham, J.D., P.C.



EXEC. VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

Judith R. Willoughby, NALC  
National Business Agent

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## **I. ISSUE**

Did Management have just cause to issue the Grievant, Marquis Johnson, a Notice of Removal dated August 9, 2013? If not, what is the appropriate remedy?

## **II. FACTS/POSITIONS OF THE PARTIES**

The Grievant, Marquis Johnson, was hired as a City Carrier Assistant ("CCA") on March 11, 2013. He was assigned to the Palms Central Station in Palm Beach, FL. CCAs are a new classification of non-career employees under the 2011-2016 National Agreement. Article 16 of the contract specifically states that Management may discipline CCAs "in a corrective manner," but that the concept of progressive discipline does not apply.

On August 3, 2013, the Grievant was assigned to collect mail, which he completed before his scheduled shift was over. A supervisor then instructed him to relieve another carrier to collect and deliver mail on Route 1503, a route that requires use of an Arrow Key to open boxes for delivery in communal mailrooms. An Arrow Key is an accountable item, which carriers are normally required to sign in and out. The Grievant did not sign for the Arrow Key on August 3<sup>rd</sup>, but he acknowledges taking and using an Arrow Key which was attached to a key for a two-ton vehicle (the Grievant did not need the two-ton key, but merely had it in his possession because it was attached to the Arrow Key).

While he was delivering mail in a communal mailroom on Crosley Drive, the Grievant received a phone call from relief carrier Wanda Hernandez, who told him that she had been sent to finish delivering Route 1503 so that the Grievant could clock out on time. The Grievant stepped outside of the mail room, leaving the Arrow Key in the box, and undelivered mail, inside the mail room. He removed undelivered mail from his LLV and placed in it Ms. Hernandez' LLV, then drove off at approximately 6:15 p.m.

The Grievant acknowledges that he left the Arrow Key, along with the two-ton key, in the mail room at 2884 Crosley Drive East. He testified that he left the key in the box so that the relief carrier could finish distributing the mail in the mail room, and said that he told Wanda Hernandez that there was still mail to be distributed there. However, the Grievant acknowledges that he did not tell Wanda Hernandez that the Arrow Key was still in the mail room. Ms. Hernandez provided a statement to Management during the investigation into this matter, stating that she never went inside the mailroom at 2884 Crosley Drive East.

At approximately 10:00 p.m. on August 3, 2013, a customer of the mail room on Crosley Drive notified the Palm Beach County Sheriff about the presence of the Arrow Key, two-ton key and undelivered mail in the mail room. A Sheriff's Deputy retrieved the items and returned them to the Postal Service. Management initiated an investigation into the matter. Supervisor Tina Blount held an Investigative Interview ("II") with the Grievant on August 5, 2013, during which the Grievant acknowledged leaving the Arrow Key in the mail room for the carrier who was sent to relieve him, but said that he did not tell the relief carrier that he had left the key for her.

Supervisor Blount submitted a Request for Disciplinary Action, specifically for removal, which was concurred in by Station Manager Cyndy Mercy. On August 9, 2013, Ms. Blount issued the Grievant a Notice of Removal, which stated in relevant part:

[O]n Saturday, August 3, 2013, you failed to properly perform the duties of your position. You were assigned to deliver mail on Route 1503. At approximately 18:15, you left your Arrow Key and the keys and clicker to a 2 Ton Vehicle at 2884 Crosley Drive, West Palm Beach, Florida 33415. On Monday, August 05, 2013, a Sheriff's Deputy returned the keys to the West Palm Beach Processing and Distribution Center indicating that a call was received on Saturday, August 03, 2013 at approximately 10:00 PM from a customer at Crosley Drive E informing that the keys were hanging in the mail box.

Postal employees are expected to discharge their assigned duties conscientiously and effectively. As indicated above, you have failed in that regard. Your actions are considered a serious offense, and your inappropriate and unprofessional conduct violates postal policies and is a legitimate reason for this action.

The Notice also cited that the Grievant had been issued a 14-day suspension for unsatisfactory performance – for failing to report an accident – on July 12, 2013.

### **Management's Argument**

The Grievant's action of leaving an Arrow Key hanging out of a mailbox is an extremely serious security issue, and violation of Postal policies and regulations. An Arrow Key can open any mail cluster box, condo lobby box, or collection box in the city. It can also open condo lobbies and gated communities. The Grievant was required to protect all mail and equipment issued to him, particularly the sanctity of the mail. His actions violated the trust placed in him, because they created a risk of theft of mail and/or of a Postal vehicle.

There was no reason for the Grievant to leave his Arrow Key for the relief carrier. Each carrier signs and is responsible for his or her own key. The Grievant was aware of his responsibility for the Arrow Key, and he was the only person responsible for this incident.

Although the concept of progressive discipline does not apply to CCAs, the Grievant had already been issued a 14-Day suspension for unsatisfactory performance during his short time of employment with the Postal Service.

### **Union's Argument**

The removal of the Grievant was punitive and without just cause. The incident involving the Arrow Key was a miscommunication between the Grievant and relief carrier Wanda Hernandez, and was not intentional. The Grievant told Ms. Hernandez that there was still mail to be distributed in the mail room at 2884 Crosley Drive East, and left the Arrow Key because it was not yet appropriate to lock up. The Grievant did exactly as he was instructed to do, which was to turn

over his undelivered mail to the relief carrier for completion. The Grievant has been made into a scapegoat. Ms. Hernandez received no discipline for this incident.

It was unreasonable for Management to discipline the Grievant for failing to return his Arrow Key, because the supervisors in the Palms Central Station did not enforce the policy regarding carriers signing the keys in and out.

The Grievant's procedural due process rights were violated because the concurring official, Cyndy Mercy, also acted as the Formal A representative for Management.

The prior discipline issued to the Grievant was unfair because, while the Grievant received a 14-day suspension, another carrier only received a written warning for the same incident.

The Grievant was only employed by the Postal Service for five months, which was not enough time to be fairly evaluated. The removal was not corrective.

### **III. OPINION**

The facts are not in dispute. Even though the Grievant did not sign for the Arrow Key on the date of this incident, he acknowledged that he had the key, an accountable, and that he was responsible for it. The Grievant left the Arrow Key hanging in the mailbox in the Crosley Drive mail room because he assumed the relief carrier would go in to finish distributing the mail. However, he did not make clear to Ms. Hernandez that he had left the key, and the mail room, unsecured. While he told Ms. Hernandez that she needed to finish distributing mail at that location – he drove off while she was still at her LLV in the parking area of that location and did not ensure that she did so.

The Grievant's error occurred when he left the Arrow Key unsecured in the mail room, and drove off, without explicitly advising the relief carrier of the status of the key and ensuring that she went into the mail room to finish and lock up. The

Postal Service is correct that this was a serious event, because it jeopardized not only the mail in the Crosley Drive mail room, but also mail in any other location in the city that could be accessed with the Arrow Key.

The difficult part of this case is whether the undisputed facts warrant discharge for a CCA who is entitled to corrective discipline based on traditional just cause principles. Under the NALC-USPS National Agreement progressive discipline does not apply to CCAs, but discipline must be corrective in nature. The standard for discipline of a CCA is akin to that of just cause in the private sector where progressive discipline of a lock-step nature is not necessarily the norm.

The Undersigned is persuaded that discharge of the Grievant does not meet just cause standard for the following reasons. First, the Grievant was previously disciplined for failing to report an accident, an issue involving integrity and honesty. In the present situation the Grievant demonstrated truthfulness. He admitted that he did not tell his replacement carrier that the arrow key was left in the room. This fact demonstrates that he is correctable. When in a tight spot, he told the truth.

Second, there was apparently a reasonable misunderstanding between the two carriers. Grievant understood that the replacement carrier would immediately go in and finish the delivery based on what he told her during the transition. Had she done what was discussed, she would have retrieved the key. Grievant was not asked/required to sign out for the key, so someone else turning it back in seems reasonable given the laxness which, according to our record, was the norm at that station.

The relief carrier never denied that the Grievant told her there was still mail to be distributed in the Crosley Drive mail room; she simply said she did not go inside that mail room. The matter of the reason why she did not go in the mail room is unresolved.

Finally, the lax enforcement suggests that carriers were not specifically trained that, in the event of being relieved by another carrier before distribution of mail within a mail room is complete, they must lock up in order to release the Arrow Key at that station.

The fact that there was lax to no enforcement of the sign in/out policy at this station does not totally excuse the Grievant's failure to be accountable for the key that he took into his possession. For this reason, the discharge is mitigated to be corrective, to a time - served suspension.

It was reasonable for Management to decide not to discipline Ms. Hernandez for this incident, because never took responsibility for that Arrow Key.

The undersigned does not recognize a due process violation arising out of Cyndy Mercy's serving as both Concurring Official and Formal A Representative in this case. There is nothing in the National Agreement that prohibits a Management official from acting in such dual roles. In the award submitted by the Union on this point, Case No. H06N-4H-D 09237061, Arbitrator Lawrence Roberts sustained the Union's claim of a due process violation where the Concurring Official also acted as Formal A Representative, stating "This action, in and of itself, proves fatal to the Employer's case. For that Manager acted as judge and jury and the Grievant was not provided fair consideration."

Arbitrator Roberts did not cite any authority for his conclusion in this regard. However, the opinion makes clear that he was also deeply troubled by the thoroughness (or lack thereof) of Management's investigation into whether the Grievant had committed the charged misconduct. Curiously, he also resolved that there was in fact no concurring official because the "Reviewed By" line on the request for disciplinary action was left blank. Thus, it is unclear how he came to the conclusion that there was a Concurring Official, and that the same manager also acted as Formal A Representative.

In any event, it is clear that Arbitrator Roberts had a host of concerns about the validity of the charges, and whether Management conducted a fair investigation. Under such circumstances, where the underlying facts are contested by the parties, it might be unreasonable for the same person who was involved in the underlying investigation to also be the Formal A reviewer, rather than a "fresh set of eyes."

In our case, however, there are no such concerns about the underlying facts, or whether Management conducted an investigation sufficient to prove the charged misconduct. The undersigned therefore declines to follow Arbitrator Roberts' holding regarding the propriety of the Concurring Official acting as Formal A Representative.

#### **IV. AWARD**

The grievance is sustained. Management lacked just cause to issue the Grievant a Notice of Removal dated August 9, 2013 for Unsatisfactory Performance. The Grievant shall be reinstated no later than one week from the date of this Award. In accord with the reasoning set forth in the Opinion, there shall be no back pay or benefits awarded and the discipline shall be recorded as a time served suspension.

A handwritten signature in cursive script that reads "Kathryn Durham".

Kathryn Durham, JDPC, Arbitrator