

C-20980

IN THE MATTER OF THE ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE) CASE NO: H98N-4H-D-00028816
) GTS NO: 015707

AND)
) GRIEVANT: JULIUS WILLIAMS
)

NATIONAL ASSOCIATION OF) PLACE: GULFPORT, MS
LETTER CARRIERS) DATE: JUNE 27, 2000
) POST-HEARING BRIEFS RECEIVED
) JULY 31, 2000

BEFORE: J. REESE JOHNSTON, JR., ARBITRATOR

APPEARANCES: FOR THE POSTAL SERVICE:
 CHARLEY GROSS, JR.
 Labor Relations Specialist
 Mississippi District
 Post Office Box 99410
 Jackson, MS 39205-9410

FOR THE UNION:
GEORGE CCCPER
Union Advocate
National Association of
Letter Carriers
Post Office Box 64624
Baton Route, LA 70896

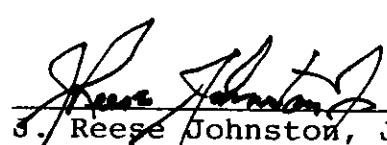
AWARD

The Postal Service is directed to immediately return the Grievant, Julius Williams, to the position he occupied prior to his removal from his employment with the Postal Service. He is to be paid any back pay due for the period of time he has been off, less any pay he has received during that period from other employment or unemployment compensation. His seniority is to be counted from the day of his removal from his employment to the date he is returned to his employment with the Postal Service, plus any benefits he may have been entitled to, such as sick leave, annual leave, and other rights. All notices of this discipline shall be removed from all files.

Since this AWARD requires calculation of possible back pay and the possible dispute in the calculations necessary to carry out this AWARD, I will retain jurisdiction of this matter for thirty (30) days from the date of this AWARD. If during that period of time I receive notice in writing from either party, with a copy to the other party, that the parties cannot mutually agree on the appropriate carrying out of this AWARD, I will set the matter down for a final determination of the back pay and other rights of the Grievant.

DATE OF AWARD:

August 14, 2000



J. Reese Johnston, Jr., Arbitrator
800 Shades Creek Parkway
Suite 325
Birmingham, AL 35209

BACKGROUND

By letter dated October 18, 1999, the Grievant, Julius Williams, was given Notice of Removal. This letter read as follows:

"October 18, 1999

MEMORANDUM FOR JULIUS WILLIAMS

Subject: Notice of Removal

Julius Williams
SSN: 587-34-3908
Carrier
Gulfport, MS 39501-9998

You are hereby notified that you will be removed from the Postal Service at the COB on Friday, November 18, 1999. This action is based on the following reason(s):

YOU ARE CHARGED WITH UNSATISFACTORY PERFORMANCE: Specifically, on June 18, 1999, at approximately 1:20 p.m., while in the performance of your official duties as a City Carrier, you were involved in a vehicle accident. My investigation revealed that you backed into a lamp post in the parking lot of the Mississippi Regional Housing Authority located at 2909 26th Avenue. As a result of your inattention your vehicle sustained approximately \$1,000.00 in damages. Fortunately, there were no injuries. Subsequent to the June 18, 1999 accident you went on military leave, therefore, the investigative interview could not be completed until you returned to duty. When questioned regarding the accident you admitted to backing into an object. It is your responsibility to obey all safety regulation(s) when operating your postal vehicle. Postal Service regulation(s) require you to avoid backing whenever possible; however, if it is necessary to back up, you should ensure that you have sufficient clearance prior to backing up. Moreover, you have previously been made aware through safety and/or service meetings of your responsibility to obey all safety regulation(s) when operating your vehicle. Safety is an integral responsibility of all postal employee(s). As a professional driver, you are

aware of the importance of observing safe driving practices. Safety rules and regulations are enacted not only for your personal safety, but also for the safety of the general public. Your action(s) on June 18, 1999, are unacceptable and will not be tolerated.

In addition, the following elements of your past record have been considered in arriving at this decision:

1. You were issued a letter of warning on October 27, 1998, for unsatisfactory performance.
2. You were issued a seven (7) calendar days suspension on December 18, 1998, for unsatisfactory performance.
3. You were issued a fourteen (14) calendar days suspension on March 30, 1999, for unsatisfactory performance and failure to be regular in attendance.

If this action is reversed or modified on appeal, back pay may be allowed, unless the appropriate award or decision specifies otherwise, only if you have made reasonable efforts to obtain alternate employment during the potential back pay period. The documentation which you must maintain to present to support a back pay claim is described in Section 438 of the Employment and Labor Relations Manual (copy attached).

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

/s/ J. Kyle Wieck
J. Kyle Wieck
Supervisor, Dustomer Services

/s/ Robert P. Mincks
Reviewing/Concurring Official

I received the original of this letter on _____
Signature _____
Mr. Williams refused to sign. 10-18-99

cc: Postmaster
Station Manager
Labor Relations
Official Personnel Folder
Time Keeping"

The Grievant is in the United States Army Reserve and was called to active duty and left the day after the accident occurred on, to-wit, June 18, 1999. He was on active duty for approximately 90 days. At the Step One meeting the grievance was denied and on November 16, 1999, a written Standard Grievance Form was filed. Under the section entitled FACTS: WHAT HAPPENED, the Grievance Form stated as follows:

"Grievant was issued a Notice of Removal on 10/18/99 for unsatisfactory performance, (specifically, a vehicle accident on 6/18/99). Article 41, Section 3P, clearly states the employer shall promptly notify the Local Union President of any job related vehicle accident."

The Union Contention is that discipline was issued without just cause. The Corrective Action Requested was:

"Grievant be made whole. Grievant be paid all back pay and benefits and discipline be removed from all files."

Management filed a Step Two Decision which read as follows:

"December 27, 1999
MEMORANDUM FOR: Pete Moss
SUBJECT: Step 2 Decision

Pete Moss	USPS#H98N-4H-D-00028816
Branch President	Local NALC#10-25-99-1374
P. O. Box 1374	Local USPS#0E501DN009
Gulfport, MS 39502-1374	

On December 9, 1999, I met with you and discussed the above-captioned grievance at Step 2 of the grievance/arbitration pro-

cedure. Time limits were extended by both parties.

ISSUE:

I understand the issue(s) of this grievance to be whether Management violated Article 16 and 41, section 3p of the National Agreement.

UNION'S POSITION:

1. Grievant was issued a notice of removal on October 18, 1999, for a vehicle accident without just cause.

DOCUMENTS/REQUEST FOR INFORMATION EXCHANGED BEFORE/DURING STEP 2:

1. Request for reassignment from the grievant, dated November 10, 1999.
2. Request for disciplinary action for grievant dated October 4, 1999.

REQUESTED REMEDY:

1. Make grievant whole.
2. Grievant be paid all back pay and benefits.
3. Remove discipline from all files.

MANAGEMENT'S POSITION/DECISION:

On October 18, 1999, the grievant was issued a Notice of Removal for unsatisfactory performance. The union at step 2 alleges that management did not have just cause for the removal. Additionally, the union president stated that he was not notified of the vehicle accident.

After considering all elements of this grievance file, the following is management's position.

The grievant has long tenure as a city carrier. He is aware of his responsibility that he should avoid backing a postal vehicle whenever possible. If it is necessary to back up, he is to ensure that he has sufficient clearance prior to backing up. In this instant case he failed to do so. He has attended many

safety talks concerning postal vehicle safety and the hazardous results of poor driving practices.

Fortunately, no patron was struck and injured during his improper driving. The accident was restricted to property damage. (See attached PS Form 1769 and police report)

Additionally, the grievant has previously been issued disciplinary action concerning poor performance. One of these previous charges included an unsafe driving practice. Attached is the recent arbitration decision awarded to management upholding a fourteen (14) day suspension against the grievant.

The union's contention of management's violation of article 41 section 3p is without merit. There was common knowledge of the grievant's vehicle accident.

Additionally, shortly after receiving the removal notice, the grievant applied for disability retirement. OPM has not approved his request as of this date. The grievant is presently working for the Harrison County Sheriff Department.

There were no violations of the National Agreement and/or applicable handbook(s) as alleged by the Union. The Union's contention(s) are without merit. The union failed to support their allegations of management violating the national agreement. The facts and circumstances of this grievance indicate that the grievant had been issued a Notice of Removal for just cause.

For the above stated reason(s), this grievance is denied. If you disagree with the decision and decide to appeal this decision to Step 3, please provide this office with a copy of your appeal in accordance with Article 15.2, Step 3(a).

/s/ Timothy B. Machen
Timothy B. Machen
Step 2 Official

cc: East Station Manager
Downtown Station Manager."

The Union filed a Letter of Additions and Corrections which read as follows:

"January 3, 2000

Timothy Machen
Postmaster
U.S.P.S.
1110 Highway 49, N.
Gulfport, MS 39503-9998

Dear Tim:

In accordance with Article 15, Section 2 (Step IIg); of the 1994-1998 National Agreement; the following corrections and additions are submitted concerning NALC Branch 1374's grievance #10-25-99-1374.

Under DOCUMENT(S)/REQUEST FOR INFORMATION EXCHANGED BEFORE/DURING STEP 2:

- 1.) Request for reassignment from the grievant, date November 10, 1999.
- 2.) Request for disciplinary action for grievant date October 4, 1999.

The union has not received these documents or seen them. In fact, in your Step II decision you attached a copy of the accident report and an Expedited Arbitration Award. None of these documents were exchanged at Step II, in fact they are not listed under documents exchanged at Step II.

In the third paragraph you stated 'He has attended many safety talks concerning postal vehicle safety and the hazardous results of poor driving practices.'

At no time during the Step II did you provide any training records about postal vehicle safety to support your allegations.

In the next paragraph you mention PS Form 1769 and a police report. If you will look under the documents exchanged these were not exchanged at Step II and when the Union received your Step II decision this was the first time the Union had seen these documents.

In the next paragraph you mention an arbitration award. Again this was not exchanged at Step II and it is an expedited award -- See Article 15 Section 4C4 of the National Agreement clearly states 'No decision by a member of the Expedited Panel in such a case shall be regarded as a precedent or be cited in any future proceeding, but otherwise will be a final and binding decision.' Therefore, this expedited Award from Mr. Molina has no bearing on this case.

The next paragraph - see Article 41 Section 3P 'The Employer shall promptly notify the local Union President of any job-related vehicle accidents involving city letter carriers.' At no time did the Postal Service notify the Branch President and to this day they still have not notified the Branch President.

In the seventh paragraph you mention the grievant applied for disability retirement. This has nothing to do with this case. In fact it is not cited in the letter of removal.

Therefore the Union is appealing this Grievance to Step III.

Sincerely,

/s/ Pete Moss
Pete Moss
President
NALC Branch 1374
Gulfport, MS 39502"

The Union also appealed the grievance to Step Three and on the form under the section VIOLATIONS, stated:

"Including but not limited to National (Article and Section) 16, 41 Section 3P."

The Union gave as its Reason for Appeal:

"Discipline was issued without just cause, and denied due process. Branch President was never notified of action."

The Corrective Action Requested was as follows:

"Grievant be made whole and be paid all back pay and benefits, and discipline be removed from all files."

The Postal Service's Step Three Decision read as follows:

"DATE: February 11, 2000

OUR REF: SE41:JLEAHY:JWL:38166-0841

SUBJECT: STEP 3 GRIEVANCE DECISION

TO: Mr. Ben Johnson National Business Agent National Association of Letter Carriers	Southeast Area Grievance H98N-4H-D00028815 DIST 390 07-JAN-00 1025991374 WILLIAMS, GULFPORT, MS 39503- 9998
--	---

Provisions Allegedly Violated: 16.5000/65.2260

Dear Mr. Johnson:

This is to confirm the disposition of the subject Step 3 grievance appeal that was recently discussed.

Based on the information presented and contained in the grievance file, the grievance is DENIED.

In the instant case, the grievant was issued a Notice of Removal dated 10-18-99. The notice was issued as a means of notifying the grievant of the intention to sever the employee/employer relationship.

A review of the case file reveals prior corrective disciplinary measure for unsatisfactory performance and unsatisfactory attendance. The grievant also has an apparent unwillingness to abide by the rules of the Postal Service as they relate to safe driving. The grievant was involved in a backing accident in which the Postal vehicle sustained approximately \$1000 in damages.

In light of the short term of employment, there are no

extenuating circumstances that might tend to balance out the shortcomings of the grievant. Just cause existed for removal of the grievant.

The time limit for processing at Step 3 was extended by mutual consent.

In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

/s/ Joseph W. Leahy, Jr.
Joseph W. Leahy, Jr.
Labor Relations Specialist

cc: District Office Mississippi District
Postmaster Gulfport, MS 39503-9998"

The testimony at the arbitration hearing further disclosed that the Supervisor immediately went to the scene and the testimony also disclosed that no one notified the Branch President on that day or any subsequent day that the Grievant had been in a vehicle accident. It was the testimony of the Grievant that as he was pulling into the parking lot by the Mississippi Regional Housing Authority building, a vehicle parked in front of the building started backing out of a parking place without looking to see if any other vehicle was coming. This action resulted in the Grievant immediately slamming on the brakes of his vehicle and immediately backing his vehicle away from a possible

collision with the vehicle backing from the parking space. That in the process of backing away, Grievant's vehicle struck a lamp pole causing approximately \$1000 damage to the Postal vehicle. It is further the testimony of the Grievant that the skidmarks made by his vehicle in his emergency stop and emergency backing were clearly identifiable on the pavement in the parking lot of the Regional Housing Authority. That he asked the Supervisor who came to the scene to investigate the accident to take pictures of these skidmarks. No pictures purporting to be skidmarks were introduced into evidence at the hearing before me. To further complicate matters, the Grievant had been called to active duty with the military and was scheduled to leave on the morning of June 19, which was the day following the day of the accident on June 18, 1999.

It is the contention of the Union that the failure of the Postal Service to comply with Article 41, Section 3.P., resulted in the Union not being able to immediately or promptly go to the scene of the accident, interview witnesses or do any other investigation into the grievance until October when the Grievant returned from his active duty service with the military.

The Union Advocate requested permission to file a brief, which request was concurred in by the Advocate for the Postal

Service, and post-hearing briefs were received from the parties postmarked July 31, 2000.

Article 41, Section 3.P. of the National Agreement reads as follows:

"The Employer shall promptly notify the local Union President of any job-related vehicle accident involving city letter carriers."

ISSUE

Did the clear violation by Management of the Postal Service, to-wit, failing to follow the requirement of Article 41, Section 3.P., deny the Grievant his due process rights so that this resulted in a failure of just cause in the Service's action in removing the Grievant, Julius Williams, from his employment by the Postal Service? If so, what should the remedy be?

DISCUSSION

I have reviewed my tapes of the testimony of the witnesses, examined the exhibits introduced into evidence by the parties, and read and studied the excellent post-hearing briefs filed by the representatives of the parties.

Based on all of the above, it is my finding that the Postal Service did not comply with the requirements of Article 41, Section 3P, in that it did not promptly notify the Local Union

President of the vehicle accident that the Grievant, Julius Williams, was involved in on June 18, 1999. This failure to comply with the clear language of the above-cited Section 3P of Article 41 is, in my opinion, under all the circumstances in this case, a material failure on the part of the Postal Service to give to the Grievant his due process rights. This failure on the part of the Postal Service results in it not having just cause for the removal of the Grievant, Julius Williams, from his employment with the Postal Service.

The above failure, coupled with the fact that in its Notice of Proposed Removal and in the citing of past elements the Postal Service cited as a past element, a charge that had been grieved and appealed to arbitration and had not at the time of the hearing of this matter before me been resolved. This action by the Postal Service did materially deny the Grievant his due process rights and together are sufficient reason to sustain the grievance filed on the Grievant's behalf.

The failure by the Postal Service to notify the Union President and the fact that the Grievant left the next morning for extended active duty in the United States Military service resulted in the Union not being able to immediately go to the scene of the accident and observe and take pictures of the

skidmarks that the Grievant testified were present at the scene. These skidmarks would, if present, sustain Grievant's version of what caused the accident.