

C# 01200

IN THE MATTER OF ARBITRATION BETWEEN UNITED STATES  
POSTAL SERVICE (TOLEDO, OHIO)

- and -

NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 100  
CASE C1N-4F-D 5368 (Nauden)  
ARBITRATOR'S FILE #82/109

BEFORE MARSHALL J. SEIDMAN, ARBITRATOR

Appearances:

For the Service: C. J. Lang, Labor Relations Representative

For the Union: Jerry N. Street, President Branch 100

OPINION AND AWARD

This is a removal case. On February 24, 1982, the installation head served upon James W. Nauden, II a notice of a proposal to remove him from the postal service upon a charge of making threatening statements concerning postal management and disrupting postal operations.

"On the morning of January 6, 1982, between approximately 9:00 A.M. and 10:00 A.M., you and Mr. Larry Burok, Acting Manager, Station C. had a conversation in his office concerning your performance on January 5, 1982. During the conversation Mr. Burok informed you that discipline would be necessary due to your actions involving a piece of express mail matter on 1-5-82. Your reaction and temperament at that time was calm and withdrawn. After a conversation with Supervisor Burok you returned to your duties.

At approximately 10:00 A.M. you became extremely upset and agitated, to the point that it was necessary for Mr. Edgar Parks, Superintendent of Station Operations with the assistance of Union Steward John Ruszkowski to calm you down and convince you not to leave the postal premises without authorization. It took approximately one (1) hour to calm you down and return you to your official duties.

In a statement to postal inspectors regarding the incident cited above, you admitted to being upset and that it was necessary for Supervisor Edgar Parks, Union Steward John Ruszkowski and Carrier Moreece Courtland to calm you down. You also indicated in your sworn statement to postal inspectors:

"I got my true feelings out in the open how I thought about this whole situation. I did say things in that back room that I feel at the time I meant. But, I felt that I was up the creek with no paddle at my work area prior to going to the back room to blow off steam. I told them I did not want to take fourteen (14) days and wait to get my time back. I was talking to myself and John Graves told me not to do anything I would be sorry for. I said, if it comes to that, that's the way it will be. I think this is the only time I got loud when everyone could hear me."

You also made the statement: "I admit that I have never in my life been this upset before."

Further investigation by postal inspectors evidences that the following employees heard you make threatening state-

ments concerning postal management:

Carrier Larry Nowicki.

"I heard Jay say that he was going to get a gun and get both of them, he was sick and tired of them always picking on him."

Carrier John R. Graves:

"J. Nauden: I am getting tired of all this bull-shit. I'm trying to do my job and I'm getting fucked over. They will leave me alone if I come in here and shoot up this place."  
["My thought at that time was that Jay was just letting off some steam as usual, so I told him "Let me know what day you're going to do it, so I won't be here, cause it will be just my luck to get shot," so we both started laughing. If you want my opinion, there was no harm done, just a lack of communication."]

Carrier Robert D. Williams:

"I heard J. Nauden say that he was going to get a gun and shoot somebody. He was very upset about getting the time off."

As evidenced by the foregoing, you did make threatening statements concerning postal management and disrupted postal operations.

The following elements of your past record will be considered in determining the disciplinary action to be imposed if the charges are sustained:

1. You were issued a fourteen (14) calendar day suspension dated January 26, 1982, for failure to make delivery of express

mail matter in a timely manner as required, thereby incurring additional expense to the U.S. Postal Service.

2. You were issued a ten calendar day suspension, dated May 4, 1981, for failure to account for registered mail article #R7. [Reduced to a seven day suspension at arbitration.]

3. You were issued a seven (7) calendar day suspension, dated March 9, 1981, for failure to be courteous to the public while on duty. [Rescinded at arbitration.]

4. You were issued a letter of warning, dated September 16, 1980, for absence without leave and failure to obey a direct order."

The Union responded on March 15, 1982 stating:

"The following occurred on January 6, 1982, the grievant was called in to the office of Station Manager Larry Burok, who discussed a piece of express mail, and that there was a problem over it. A probable disciplinary action was also discussed. The grievant was calm during the discussion. The grievant also spoke to Supervisor Ed Parks about the discipline. The grievant made no threat toward anyone or anything, he remained calm. The grievant did get upset while casing his mail and began to cry, he told the steward he was going home sick, the steward told him that he should stay at work. The steward and Supervisor Parks calmed the grievant down and told him going home sick would just compound the problem. The statement the grievant made to Mr. John Graves is correct but taken out of context, the griev-

ant never mentioned the gun, and did not say he would shoot anyone or anything. He was just blowing off steam. He did not threaten anyone, either verbally or physically. Postal inspectors arrived at the station, and the grievant was told to deliver the route and return to the station by 2:30 P.M. which he did.

The grievant was not apparently considered a danger to anyone since he was allowed to go out and effect delivery on his route. Supervisors Larry Burok and Edgar Parks have both stated that the grievant said nothing that made them fearful and showed no signs of violence at all. The grievant was at work the following day January 7, 1982 and there was no problem whatsoever, no remarks at all.

Corrective action requested: That James W. Nauden be placed back on the job immediately and all lost monies and benefits be restored and that he be made whole."

At the hearing Station Manager Larry Burok testified that when he advised Nauden that he would give him a fourteen day suspension for failing to handle express mail correctly, that Nauden became very withdrawn and apologetic concerning the matter. Nauden attempted to persuade Burok to withdraw the punishment but Burok indicated that he could not since he had already discussed the matter with the main office.

At this point Burok described Nauden as very upset with his eyes watering, having a glazed look and breathing heavily. Nauden

stated that he was overcome with emotion and in such an emotional state that he could not go out and deliver his route because he would be unable to face the people in his present condition.

Burok stated that he had never before seen Nauden in such an emotional state. Burok further stated that it was not his idea to remove Nauden from the station or from the service but that he was instructed to do so by the main office. Finally Burok stated he was not personally threatened by Nauden and bore him no animosity.

In his testimony Nauden said that he never made any statement about having a bomb or a gun or tearing up the place. He told the inspectors that he did not have a weapon and knew no way to get a weapon. He denied ever making any threat to any supervisor in particular or supervisors in general. He said that when he returned to his case he was emotionally overwrought and was talking to himself and just blowing off steam with his remarks. Nauden admitted stating to no one in particular while at his case:

"I'm getting tired of people fucking with me. I've been trying to do my job and they still fuck with me. Maybe if I came in here and shot up the place they'll leave me alone."

Graves was the only person who heard this statement and indicated to Nauden that it was not meant to be taken seriously and that they both laughed about it. At this point in time Nauden was completely overwrought, crying, unable to function

and desirous of going home rather than meeting the people on his route in his existing condition. Both Union Steward Ruszkowski and Supervisor Parks attempted to persuade Nauden to abandon his announced intention of going home and were successful in doing so. Nauden finally calmed down to the point where he felt he could carry his route and did so. Supervisor Parks stated he never at any time felt personally threatened by Nauden.

The Union argued that Nauden was in a great emotional turmoil; that his statements were made not to anyone but to himself; that he was just blowing off steam; that when they were made he did not have the intent to carry them out; that they were not made to any supervisors; and that when the supervisors heard of them they themselves were not fearful and did not request that Nauden receive discipline for his actions.

The Service argued that certain threats were made and the Service cannot regard such threats as merely idle talk but must act upon them as if they would be carried out because no one could know whether they would or would not be carried out. Threats upon the life of supervisors must be taken seriously, must not be permitted to occur and when they do occur must be punished severely.

It is quite clear that no direct threats were made either to Manager Burok or Supervisor Parks. The only threats I find occurred were those admitted by Nauden and confirmed by Graves namely a threat to "shoot up this place". This is not a threat to shoot any person. Certainly no person was identified in these supposed threats of personal attack. The three statements quot-

ed in the notice of removal by Nowicki, Graves and Williams are not consistent. Nowicki reported Nauden as saying he was going to "get both of them" without indicating who that might be. Williams said Nauden would "shoot somebody" unidentified either as an employee or a supervisor or a patron. Graves quoted Nauden as stating that he intended to "shoot up this place" which doesn't indicate that a person was going to be the necessary victim of such activity. None of the three claimed that at the time he made the threat Nauden had a gun. None of them indicated that he had any ability to get a gun at that time and place. Graves felt he was excited and didn't intend to act upon his words.

Burok who was most vitally affected by the incident, since it was his discussion with Nauden which lead to Nauden's emotional state and subsequent statement, was not personally concerned for his own safety. He contacted the main office because he was an acting manager and wished the advice of the main office as to how he should react in this situation which was new to him. The pressure to severely discipline Nauden did not come from Burok but from the main office. Burok who was in the best position to evaluate the entire incident obviously did not regard it as seriously as the main office. But for the intercession of the main office he would not have recommended removal and did not concur in the recommendation as evident from his testimony at the hearing.

My decisions in other cases indicate that I am not insensitive to the problem of actual assaults on supervisors as well as threatened assaults on supervisors. In both instances I have sustained

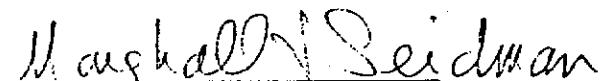
removal from the service. However, in those cases there was absolutely no doubt that in fact either an actual assault had taken place or that a threatened assault of a serious nature had been made by an employee to his supervisor. Here, no threat was made to any supervisor directly, or indeed indirectly, in view of my above fact findings. In any event the employee at the time was admittedly and observedly under the influence of great emotional trauma and was blowing off steam in the vernacular or venting his displeasure in more stilted language. The displeasure was directed at no person in particular. Burok indicated the main office required the ~~removal~~, not him. The activity was not conversation with any person but simply an internal explosion of thought by an emotionally distressed person talking to himself, and overheard by others who transmitted it to Burok.

Nauden has already received a fourteen (14) day suspension as a result of failing to make delivery of express mail which disciplinary action precipitated the matters in issue here. His reaction to that discipline, while understandable, cannot be condoned. I find that Nauden did not threaten to shoot either Acting Station Manager Burok or Supervisor Parks. I find that he threatened to shoot up the station which he had no right to do, even though the statement was the product of severe emotional state brought about as a result of his conversation with Manager Burok.

I further find that he had no intention of carrying out this threat. An additional fourteen (14) calendar day suspension would be adequate to punish for this dereliction. Removal was neither just nor fair nor equitable nor reasonable nor appropriate punishment in this case.

Under the above facts and circumstances, and for the above reasons, the removal action of the Service shall be rescinded.

In its place a fourteen (14) day disciplinary suspension for conduct unbecoming a postal employee shall be substituted. The grievant shall be reinstated to his former position in the Postal Service, with full seniority and full benefits, and shall receive back pay from the end of his fourteen (14) day disciplinary suspension to the date of his reinstatement, less all the usual payroll deductions therefrom. In the event that the parties are unable to agree upon the appropriate amount of back pay due under this award to the grievant the Arbitrator will retain jurisdiction to determine the same upon the written request of either party.



Marshall J. Seidman,  
Arbitrator

Dated at Indianapolis, Indiana this 16th day of July, 1982.