

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	Grievant: M. Lotto
between)	
The U.S. Postal Service)	Post Office: East Haven CT.
and)	Case Number: B11N-4B-D 14270554
The National Association of)	Union Number: 1954614FH
Letter Carriers, AFL-CIO)	DRT Number: 14-318434
_____)	

Before: Donald J. Barrett, Arbitrator

Appearances:

For the U.S. Postal Service: Thomas J. O'Keefe, Labor Relations Specialist

For the National Association of Letter Carriers: Vincent Mase, President Branch 19

Place of Hearing: New Haven CT Postal Facility

Date of Hearing: January 6, 2015

Award: This grievance is sustained

Date of Award: January 7, 2015

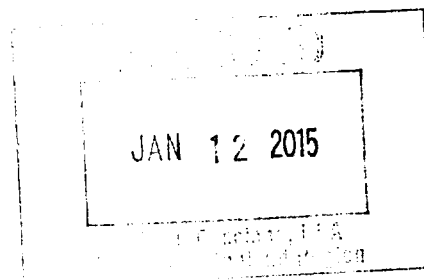
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**VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS**

AWARD SUMMARY

The Union was able to present convincing evidence that the Service failed to establish just cause for the issuance of the suspension.



STATEMENT OF PROCEEDINGS

This grievance was presented at a hearing held on January 6, 2015 at the New Haven CT Post Office pursuant to the grievance-arbitration provisions of the 2011-2016 Collective Bargaining Agreement, also known as the Contract, or Agreement between the US Postal Service, also known as the Service, or Management, and the National Association of Letter Carriers, also known as the Union.

The advocates in this matter were afforded a full, fair, and objective opportunity to be heard, to present evidence, argument, and witnesses on behalf of their respective positions. Counsel for each party were fully prepared, professional, articulate, and presented their respective positions with confidence, and apparent ability.

The Service provided both written and oral Opening and Closing Statements, and the Union provided oral statements. At the conclusion of this hearing, the Service provided the arbitrator with five (5) previously issued regional arbitration decisions for his consideration.

At the request of the parties, witnesses were to be duly sworn prior to offering their testimony.

The Service called one witness on their behalf; Ms. Nyshika Drumgo, Customer Service Supervisor at New Haven CT. The Union did not call any witnesses.

The parties submitted Joint Exhibits consisting of the following:

Joint 1 – The National Agreement, inclusive of the Joint Contract Administrative Manual. (J-CAM)

Joint 2: Moving Papers, consisting of Pages 1-74.

The parties did not agree to any STIPULATED FACTS NOT IN DISPUTE.

ISSUE AS FRAMED BY THE PARTIES AT HEARING

The parties offered that the Issue as stated by the parties Step B Team would stand.*

“Did management violate the National Agreement, Article 16, and arbitration decision # C-15657 (the principle of double jeopardy) when it issued the grievant a notice of indefinite suspension dated 7/22/14 and the exact same letter of indefinite suspension they issued the grievant 4/10/14 without just cause and if so, what is the proper remedy?”

(* The Service took exception to the words, “exact same letter” offering that it was not the ‘exact’ letter. This is duly noted.)

BACKGROUND

The grievant, a city letter carrier at New Haven CT was arrested on March 19, 2014 and charged with a number of drug related crimes. The Service issued a Notice of Indefinite Suspension dated April 10, 2014 to the grievant.

On July 9, 2014 the parties Step B Team rescinded this suspension, finding that management at New Haven failed to have just cause for issuing the grievant the April 10th suspension.

On July 22nd, Management at New Haven issued another “Notice of Indefinite Suspension”, this time offering a more detailed reasoning for its issuance.

After issuing this notice, the Union filed a grievance claiming the doctrine of “double jeopardy” was imposed by Management when issuing this second suspension, and also claiming that Management had no “just cause” to impose this suspension. As a result, the Union moved this grievance through the parties established process, ultimately resulting in an appeal to arbitration.

4.

CONTRACT PROVISION(S) CITED

“Article 16.6 – Indefinite Suspension – Crime Situation”

- A. The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed. In such cases, the Employer is not required to give the employee the full thirty (30) days advance notice of indefinite suspension, but shall give such lesser number of days of advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.
- B. The just cause of an indefinite suspension is grievable. The arbitrator shall have the authority to reinstate and make the employee whole for the entire period of the indefinite suspension.”

POSITION OF THE PARTIES

“The US Postal Service”

The Service argues that the grievant, with over six years of postal employment prior to his arrest, must reasonably have understood that a basic condition of his continued employment was to be honest, trustworthy, and reliable, and that he abide all rules, regulations, policies, and applicable laws for on duty, as well as off duty conduct. By the arrest of the grievant on eight felony charges, and one misdemeanor charge, all related to drugs while off duty the grievant rendered himself untrustworthy of continued employment with an agency that must be able to fully trust its employees, especially a letter carrier who works for long periods of time unsupervised.

The Service argues further that there was nothing included in the subject Step B decision that prevented the Service from reissuing to the grievant an indefinite suspension, with enhanced information – arguing that this does not represent “double jeopardy” in any recognized manner whatsoever.

5.

The Service maintains that there was just cause for the issuance of the suspension to this grievant, that the Service, due to the seriousness of the criminal charges brought against this grievant has the right, and responsibility to protect its interests, and those of the public it serves by suspending the grievant in this manner. The Service pleads that this grievance be denied in total.

THE NATIONAL ASSOCIATION OF LETTER CARRIERS

The Union argues that issuing the first indefinite suspension, and then having to rescind it due to the Step B decision, and then re-issuing an exact same indefinite suspension to the grievant violates the grievant's right against "double jeopardy", being charged twice for the same offense, and that even if this doctrine cannot be applied using the strict legal definition, it clearly falls within the "reasonable person" concept that there is no new evidence submitted to substantiate the issuance of a second, same set of charges.

The Union argues further that the Service failed to investigate the charges prior to issuing the second notice of suspension, simply expanding upon the same reasoning used to issue the first suspension when issuing the second suspension.

The Union argues that the Service has failed to demonstrate any harm to the Service or its customers by the grievant's arrest – that his arrest was at home, while off duty, and not in uniform, and the newspaper article concerning the arrest did not identify the grievant as an employee.

The Union pleads that the grievance be sustained, and the grievant be made whole.

OPINION OF THE ARBITRATOR

The matter before this arbitrator is only the legitimacy of the July 22, 2014 Notice of Indefinite Suspension, as challenged by the Union. The question of guilt or innocence related to the charges cited within the subject July 22, 2014 Notice of Indefinite Suspension are not properly before me, and shall in no way be addressed, nor influenced by this decision.

The Service, rightfully carries the burden to establish just cause for the action they have taken in this matter. While there is no dispute that the criminal charges leveled against the grievant are serious, the Service nonetheless carries the responsibility to respond appropriately.

Article 16.6.A of the parties Agreement allows the Service, if they have “reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed” to indefinitely suspend the employee. However, this allowance is immediately followed by Article 16.6.B, which states, in relevant part, “The just cause of an indefinite suspension is grievable.” The parties immediately recognize that any discipline, including one issued under circumstances of alleged criminal involvement must still meet the provisions of just cause. (Underlines added) (See J-CAM, Page 16.8, subject Arbitrator Garrett states, (indefinite suspension is) “reviewable in arbitration to the same extent as any other suspension to determine whether ‘just cause’ for the disciplinary action has been shown.” (Underlined added)

Further, Article 16.8, Review of Discipline states in relevant part, “In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.”

Further still, Article 16.1 Principles establishes the preamble that, “No employee may be disciplined or discharged except for just cause...” (Underline added)

Therefore, there can be little doubt that the provisions of just cause must be established, and met before issuing any discipline, including an indefinite suspension for a crime situation.

7.

The Service's advocate - a learned, experienced, and fully qualified representative, to this arbitrator's observation, attempted mightily to build a castle with only the sand he was provided in this case. No doubt this hearing would not have progressed as far as it did were it not for his ability to articulate an ill-conceived action taken by others. However, try as he might, the Union's advocate was equally articulate, with convincing evidence on his side.

The Service called one witness, Supervisor Drumgo – she was a credible witness who tried to defend an indefensible position which it appears to this arbitrator she was thrust into upon coming to the New Haven office very shortly before issuing the subject suspension.

On cross examination, the Union was able to establish that the supervisor did not know the grievant, had not met him, did not prepare the notice of suspension, and was instructed to sign it, and most damaging to the position of the Service, she did not conduct any form of investigation prior to issuing the subject notice, nor was she aware of one being conducted or having been conducted.

The J-CAM, Page 16.1&2 outlines the provisions to consider for the establishment of just cause – one of which is, “Was a thorough investigation completed? – Before administering the discipline, management must make an investigation... must insure that its investigation is thorough and objective.”

While one could argue that, given the immediate circumstances of an indefinite suspension for a crime situation, the Service may not be adequately allowed to determine if the employee is guilty of violating a rule, regulation, or law, and that the purpose of the indefinite suspension is to indefinitely remove the employee until such guilt or innocence is determined by a competent court of adjudication, as offered above this does not then allow the Service to abdicate its administrative responsibilities to establishing just cause, in any issuance of discipline prior to issuing the discipline.

Clearly, this burden was not met by the Service, their advocate's valiant efforts notwithstanding, to identify any form of investigation.

8.

This supervisor, who appears to the arbitrator to have been thrown to the sharks was the Service's identified responsible management official, and she acknowledged, through the Union's qualified cross examination that she did not conduct any investigation, ne, she did not even know the grievant. She was instructed to do something and she did it, but it is apparent that she had no other involvement other than to sign her name, and then answer a call to testify at hearing.

It is not difficult to understand the Service's apparent desire to suspend the grievant from active service after learning of the criminal charges leveled against him, however just as the grievant enjoys legal rights and privileges, no matter the severity of the charges, he also, as an employee of the US Postal Service is provided administrative protections under the parties' National Agreement. In the Service's haste to issue the second notice, they failed to address the just cause provisions, thus denying the grievant his due process.

For these reasons, I cannot support the Service's actions, and find that the Union has established convincingly that the Service violated Article 16.6.A&B of the Agreement.

AWARD

This grievance is sustained. The subject Notice of Indefinite Suspension shall be rescinded, and the grievant made whole, subject to those applicable provisions related to back pay/wages.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Don Barrett", written in a cursive style.

Donald J. Barrett, Arbitrator

Date Jan. 7, 15