

C# 07300

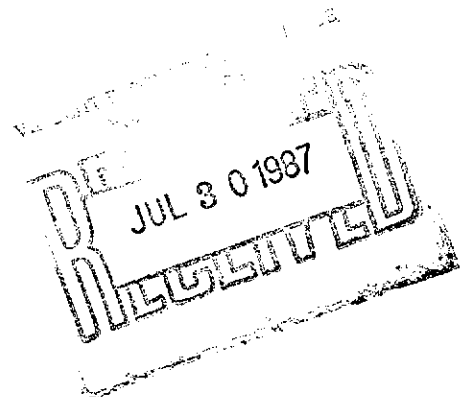
In the Matter of Arbitration Between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Case No. S4N-3S-D 42917
Cindy Sue Reilly
Hallandale, Florida



Before the Arbitrator Raymond L. Britton

APPEARANCES

Daniel Smith, Labor Relations Representative *for the Employer*
Matthew Rose, Local President *for the Union*

ISSUE

Was the discipline for just cause? If not, what should the remedy be?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution. Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for June 18, 1987, and the Hearing was held on that date in the Main Post Office, 101 SE First Avenue, Hallandale, Florida, commencing at 9:00 o'clock a.m. At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter. At the conclusion of the Hearing, both the United States Postal Service (hereinafter referred to as "Employer") and the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") agreed to present oral closing arguments in lieu of Post-Hearing Briefs.

SUMMARY STATEMENT OF THE CASE

Cindy Sue Reilly (hereinafter sometimes referred to as "Grievant") is a parttime flexible letter carrier at the Post Office in Hallandale, Florida. On October 9, 1986, Supervisor of Mails & Delivery James F. McDevitt issued to the Grievant a Notice of Suspension of 7 Days that states in relevant part as follows (Joint Exhibit No. 2):

You are hereby notified that you will be suspended for a period of 7 calendar days beginning on October 21, 1986, 1000. You are to return to duty on October 28, 1986, 1000. The reason for this suspension is:

On September 27, 1986, while distributing mail, you were involved in an industrial accident. My investigation of the accident showed that you failed to use proper procedures in moving the GPMC, resulting in a crushing injury to your right middle finger. You are charged with failure to work in a safe manner resulting in an accident with injury. Additionally, on May 22, 1985 a Safety Talk included proper handling of rolling equipment.

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

Letter of Warning April 30, 1985 - failure to work in a safe manner resulting in injury.

Letter of Warning March 30, 1985 - failure to comply with USPS safety rules and regulations.

Letter of Warning January 18, 1985 - failure to comply with USPS safety rules and regulations.

** * **

On or about October 18, 1986, the Grievant filed a grievance at Step 1 protesting the suspension, and after a Step 1 meeting on that date, the grievance was denied by Supervisor James F. McDevitt. Pursuant to Article 15 of the National Agreement, the grievance was appealed on October 24, 1986 to Step 2 of the grievance procedure alleging a violation of, but not limited to, Article 16 of the National Agreement, and stating in relevant part as follows (Joint Exhibit No. 2):

On October 9, 1986, PTF Carrier C.S. Reilly received a notice of Seven (7) days suspension for failure to work in a safe manner resulting in an accident with injury.

The Union feels that the 7 day suspension is both unwarranted and disparate. Management's responsibility is to provide all employees with a safe work environment and facility. Management also failed to comply with Section 115 of the M-39 Handbook and Section 374 of the E&LR Manual. The discipline is punitive, disparate and lacks the necessary just cause.

Corrective Action Requested: Rescind the 7 Day Suspension and remove from all files. Reimburse the grievant all lost wages and benefits plus an appropriate amount of overtime and interest.

After a Step 2 meeting, Postmaster D. Cummings denied the grievance, and on December 3, 1986, the Union appealed the grievance to Step 3 of the grievance

procedure. On February 9, 1987, in a letter to National Business Agent Wayne E. White, the grievance was denied by Labor Relations Assistant Michael Yagodnik, who stated in relevant part as follows (Joint Exhibit No. 2):

* * *

The grievant failed to follow proper safety procedure in moving the GPMC. Based on his past record of three Letters of Warning, all for safety violations, I find the Seven Day Suspension is progressive and for just cause.

* * *

On February 23, 1987, the grievance was appealed to arbitration.

Provisions of the National Agreement effective July 21, 1984, to remain in full force and effect to and including 12 midnight July 20, 1987, (hereinafter referred to as "National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 16

DISCIPLINE PROCEDURE

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

Provisions of the Employee & Labor Relations Manual, dated August 29, 1980 (Union Exhibit No. 5), considered pertinent to this dispute are as follows:

374 Discussing Performance with Employees

The supervisor is responsible for discussing performance with each employee. If the employee's performance is unsatisfactory, the supervisor discusses constructive measures which employees should follow to improve their performance to a satisfactory level.

Provisions of Management and Delivery Services, M-39, dated January 30, 1981 (Union Exhibit No. 4), considered pertinent to this dispute are as follows:

115 Discipline

115.1 Basic Principle

In the administration of discipline, a basic principle must be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. The delivery manager must make every effort to correct a situation before resorting to disciplinary measures.

POSITION OF THE PARTIES

The Position of the Employer

It is the position of the Employer that the Grievant was properly issued a seven-day suspension for failing to work in a safe manner resulting in an injury to her finger. The Employer contends that the Grievant had been cited for unsafe work on three prior occasions. The Employer maintains, therefore, that the discipline was progressive and corrective in nature, and that in administering the discipline, no violation of the National Agreement occurred.

The Position of the Union

The Union takes the position that the Employer failed to follow correct procedures in the administration of the discipline. The Union contends that the Grievant did not act in an unsafe manner, that the imposition of a seven-day suspension was not for just cause, and that the Grievant should be reimbursed for the seven days that she was suspended. The Union additionally maintains that when the Employer imposes discipline as it did in this instance, employees are intimidated and discouraged from reporting accidents.

OPINION

In resolving this matter, the Arbitrator is primarily called upon to determine whether the Grievant's conduct justified the imposition of a seven-day suspension.

The Employer maintains that it has shown by the evidence and testimony that the Grievant was properly issued a seven-day suspension for failing to work in a safe manner resulting in an injury to her finger. The Employer points out that this is not the first such instance and that the Grievant has, on three prior occasions, violated Postal Service procedures. According to the Employer, in keeping with the principles of progressive discipline, the supervisor was required to suspend the Grievant for seven days in light of her three previous letters of warning. Further, the Employer contends that something had to be done to impress upon the Grievant the need for safety and to correct her manner of work. For the reasons hereinafter given, the Arbitrator cannot agree.

The record in this matter reveals that the Grievant had, indeed, received three letters of warning for safety-related incidents, although the last such letter was dated April 30, 1985, nearly eighteen months prior to the incident made the basis of this grievance. With respect to this incident, the Grievant testified that she was pushing a cart, and that she had used such carts two or three thousand times without a problem. When the cart became blocked, she requested the assistance of two other employees, but they were too busy to assist her, and she was unable to move the cart with the safety bar. She further stated that she had never been told what to do if a cart became stuck, so she used common sense in her effort to free the cart, and in so doing, she unintentionally injured her finger.

It is further revealed by the record presented that the Employer disciplined the Grievant because she "... failed to use proper procedures in moving the GPMC, ..." and she was therefore "... charged with failure to work in a safe manner resulting in an accident with injury." While the suspension letter goes on to state that "... on May 22, 1985 a Safety Talk included proper handling of rolling equipment, ..." nowhere does the Employer explain what the Grievant was expected to have done under the circumstances. Nor is there any reference in the notice of suspension to indicate what rule or regulation, if any, the Grievant violated. According to a statement made by Senior Assistant Postmaster General Carl C. Ulsaker in his memorandum to regional directors dated April 7, 1980 (Union Exhibit No. 9), in a disciplinary action based upon a safety-related incident, "What must be cited ... are the actions of an employee in a specific situation which are violations of a Postal Service safety rule or regulation." Seemingly, therefore, the procedure used by the Employer in this instance conflicts with the requirement that management state with specificity the rule or regulation that the employee failed to follow. It follows therefrom that the imposition of a seven-day suspension upon the Grievant fails, in the considered judgment of the Arbitrator, to satisfy the just cause requirements of Article 16, Section 1 of the National Agreement.

In light of the above findings, it is deemed by the Arbitrator to be unnecessary to the resolution of this matter that he further address the contention of the Union that by disciplining employees involved in accidents, management may be intimidating or discouraging employees from reporting accidents.

AWARD

For the reasons given, the grievance is sustained and the Employer directed to rescind the seven-day suspension and remove references thereto from all files, and reimburse the Grievant for all wages and benefits lost as a result of the seven-day suspension.

July 20, 1987

Original Signed
RAYMOND L. BRITTON

Raymond L. Britton, Arbitrator