C# 08831



**REGULAR ARBITRATION PANEL**

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| In the Matter of the Arbitration between<br>UNITED STATES POSTAL SERVICE<br>and<br>NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO | **GRIEVANT:** S. Lleo<br>**POST OFFICE:** Miami, FL<br>**USPS NO.:** S7N-3S-D 18251<br>**NALC NO.:** GTS 011190 |

**BEFORE:** Dennis R. Nolan, Arbitrator

**APPEARANCES:**

**For the USPS:** Stephen Murray, Labor Relations Representative

**For the Union:** Donald Southern, Executive Vice President, NALC Branch 1071

**PLACE OF HEARING:** Miami, Florida

**DATE OF HEARING:** May 2, 1989

**AWARD:** The grievance is denied.

**DATE OF AWARD:** May 17, 1989

Dennis R. Nolan, Arbitrator

## OPINION

### I. Statement of the Facts.

Sandy Lleo filed this grievance on June 18, 1988 to protest a 14-day suspension given him for insubordination and leaving the workroom floor without permission. Although the parties originally put this grievance in the expedited arbitration channel, they later agreed to send it to regular arbitration.

Certain of the facts in this case are hotly debated. I begin with those that are not.

The Grievant is the elected coordinator of his facility's Employee Involvement (EI) Committee, which meets every Friday from 9:30 to 10:30 a.m. Although the record does not establish that anyone ever ordered the Grievant to attend the Committee's meetings, attendance was expected and thus was in some sense mandatory. Obviously the Grievant's attendance is particularly important since he coordinates the meetings.

The Grievant is also a letter carrier of some seniority. He carries an unusually large route and his co-workers generally regarded him as being fast and accurate in his work. Despite a number of disputes with his immediate supervisor, Carlos Arguelles, the two were able in the past to work out the Grievant's need to attend EI meetings. Typically the Grievant would submit a request for auxiliary assistance to Supervisor Arguelles and then case his route before the meeting. Arguelles would have someone else begin to deliver the route during the meeting, and the Grievant would relieve the substitute after the meeting.

On Friday, June 8, 1988, the arrangement broke down. Arguelles had brought in the Grievant an hour and a half early to account for the hour-long EI meeting. The Grievant nevertheless gave him several forms 3996. According to Arguelles, when he sought to question the Grievant about his need for assistance, the Grievant walked off. Arguelles followed and, for some reason he failed to disclose even on repeated questioning at the arbitration hearing, instructed the Grievant to pull down his mail and deliver the Southeastern Financial Center Bank even though he knew the Grievant was supposed to go to the EI meeting.

A heated discussion ensued, the details of which are disputed. The Grievant testified that he told Arguelles that he "could not" deliver the route then because of the meeting; Arguelles' recollection is that the Grievant simply said he "would not" deliver the route -- that he had nixies to do and would then "think of something else" to do. Although the issue is not without some doubt, I find it most unlikely that the Grievant

would not have mentioned the EI meeting, or that Arguelles would have forgotten about it. Indeed, at one point in his testimony Arguelles admitted that he had asked the Grievant why he needed assistance when he had reported early specifically to give him the extra time needed for the meeting. At another point, Arguelles said that he deliberately ordered the Grievant out before the meeting because "once he indicated he didn't want to work, I gave a direct order and felt it might as well be early."

I therefore conclude that Arguelles knew full well why the Grievant was reluctant to leave on his route, whether or not the Grievant specifically mentioned his reason. I also find it unlikely that the Grievant would have said that he would do only the work he wanted to do, although he may well have indicated that he had work to keep him busy until the meeting.

In any event, Arguelles then gave the Grievant a direct order to carry his route. When the Grievant still refused, Arguelles made some comment to the effect that if the Grievant did not obey, Arguelles would "go for the guillotine." At that the Grievant began shouting.

Eventually the two men left the floor and continued the discussion in an office. The record is strangely confusing as to how many meetings there were, where they took place, and who attended. As near as one can determine, however, Arguelles did make it clear that the "guillotine" remark referred to discipline, not a literal head-chopping device. Apparently in continuing to urge the Grievant to carry out the order, Arguelles also made a comment to the effect that he should either go back to work as ordered or go home.

By this time the Grievant had decided to leave, at least partly on the advice of his Union representative, Derek Sands. He requested that he be put on administrative leave, but Arguelles and later Charles Young, the Manager of Stations and Branches, denied his request. They warned him that if he left, he would be charged AWOL, but he nevertheless clocked out after trying to telephone the Union office. True to their word, they put him down as AWOL. The Grievant arbitrated the AWOL in the expedited procedure before the hearing in this case, but lost.

A few days after this incident there was another meeting between Management and Union officials. The sole topic was the "guillotine" remark; Arguelles again explained his meaning and this time apologized for any misunderstanding.

There is no doubt that the Grievant knew the general rule of "obey now, grieve later." He has been a carrier for a long time and had previously been disciplined for insubordination. Moreover, his shop steward, Melvin Bratton, testified that when the Grievant complained to him about inconsistent orders, he

advised the Grievant "to follow the last order, even if it doesn't work out." Both Bratton and Sands were absolutely clear that employees must obey orders if there are no safety factors involved.

## II. The Issues.

A. Is the grievance arbitrable?

B. If the grievance is arbitrable, did the Employer have just cause to suspend the Grievant for 14 days? If not, what shall the remedy be?

## III. Pertinent Contractual Provisions.

### ARTICLE 15. GRIEVANCE-ARBITRATION PROCEDURE

**Section 2. Grievance Procedure - Steps**

**Step 1:**

(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. Detailed statement of facts;
2. Contentions of the grievant;
3. Particular contractual provisions involved; and
4. Remedy sought.

### 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. . . .

Employee and Labor Relations Manual

**Section 666.5 Obedience to Orders**

**.51 Protests**

Employees will obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual will nevertheless carry out the order and immediately file a protest in writing to the official in charge of the installation, or appeal through official channels.

## IV. The Employer's Position.

The Employer first argues that the grievance is inarbitrable because it did not receive the appeal within the required ten days. As to the merits of the case, the Employer argues that discipline was proper because the Grievant failed to follow a direct order and left the workroom floor without permission. If he felt the order was improper, he should nevertheless have obeyed it and then filed a grievance. It is absurd for him to claim that he felt his life was threatened when Arguelles made the "guillotine" remark, but even if he did, Arguelles cleared the matter up in the meeting before the Grievant left work. The 14-day suspension was the appropriate level of discipline because he had recently received a 7-day suspension for the same offenses

## V. The Union's Position.

The Union claims that the case is arbitrable because it posted the appeal within the ten days allowed under the Agreement. Discipline was not proper because his supervisor gave the Grievant an order he "could not obey" due to his prior obligation to the EI Committee. Leaving the work room floor was proper in the circumstances because he believed his supervisor had threatened him. Finally, the discipline was not timely, since his supervisor waited several weeks to investigate and almost two months to impose discipline. The Union asks that the Grievant be made whole for his losses during the suspension.

## VI. Discussion.

### A. Arbitrability.

Article 15, Section 2 requires that appeals to Step 2 be made within ten days after receipt of the Step 1 decision. It does not specify whether the appeal must be received within ten days or only posted during that time. The Step 1 decision in this case came on June 18, 1988. The appeal is dated June 23, well

within the ten day period, but it was not logged in by Management until July 5, well outside the ten day period. The Union presented photocopies of its log showing that it made the appeal in this case, along with several others arising at the same station, on June 23. It also presented the credible testimony of its secretary to the effect that she mails all appeals on the same day she types them. Management did not challenge any of this evidence but simply argues that it received the appeal after the stated deadline.

The critical question about arbitrability is thus whether posting the appeal meets the requirement of Article 15. The only authority on point is an award by Arbitrator Lennart Larson (S8C-3W-D 14968, Hollywood, Florida, November 3, 1980) which Management introduced for another purpose. Arbitrator Larson did not face the issue directly, but did say in his conclusion that the grievance was untimely because it was not "put in the mails within the required ten days." That interpretation also fits well with a general rule of contract interpretation that ambiguities should be resolved to avoid forfeitures. That rule is particularly appropriate where, as here, the party complaining about the delay suffered no specific harm from it.

For these reasons I conclude that the Union satisfied the contractual obligation by posting its appeal within ten days. The grievance is therefore arbitrable.

B. The Merits.

There are two charges against the Grievant, insubordination and leaving the floor without permission. The Union also claims that the discipline was unduly delayed. I deal with each issue in turn.

1. Insubordination. The Grievant does not deny that he failed to carry out Arguelles' order to deliver his route. His sole explanation is that he "could not" do so because of his prior commitment to the EI meeting. "Could not" is hardly an accurate way to put it. What he meant is that the new order conflicted with what he believed to be an existing order.

Even leaving aside the question of whether he was under any order to attend the EI meeting, the Grievant had several options short of insubordination when Arguelles told him to carry his route. The easiest option was simply to obey the last order. He could not have been disciplined for missing the meeting if he merely followed a contrary order. That was the very advice one of his Union representatives, Melvin Bratton, had given him on an earlier occasion: "follow the last order, even if it doesn't work out."

The second option was the time-honored one of "obey now, grieve later." Not only does the Employee and Labor Relations Manual impose that rule (in Section 666.51), it was well known to the employees, according to the testimony of two Union representatives. If that were not enough, the Grievant's own prior discipline must have demonstrated to him the importance of following orders.

If he really felt himself to be in an impossible bind, there were still other things he could have done. He could have called over a Union representative to talk to Arguelles about the conflict, or he could have himself gone up the chain of command. The one thing he was not allowed to do was to refuse the order. Unfortunately that was the one thing he did do -- and no amount of word-play about his not being able to comply can disguise his disobedience.

In short, the Grievant disobeyed a direct order to carry his route. That the order might have been a bad one and might have interfered with the EI program does not excuse his insubordination. While he has the right to protest questionable orders, he has no authority to choose which ones he will obey. An erroneous or even a stupid order does not excuse insubordination, at least not where the employee had other ways to question the order. The Grievant's insubordination thus justified some discipline.

2. Leaving Work Without Permission. The Grievant had two explanations of his departure on June 8. The first is that he felt threatened because Arguelles had said he was "going for the guillotine." On examination the Grievant admitted that he knew the Postal Service did not keep a guillotine to chop off the head of insubordinate employees, but he insisted that he took the remark as a threat. Even allowing for his excited state at the time, I find that assertion preposterous. In the context of the discussion, the only thing Arguelles could have meant was that he would seek serious discipline. Significantly, that is the way the only other employee to hear the remark interpreted it. If there were any doubt, Arguelles' clarification in the meeting a few minutes later must have eliminated it. It simply is not believable that the Grievant really believed that Arguelles would attack him.

The Grievant's second explanation was that Arguelles had given him an option to work or go home, and he chose the second path on the advice of a Union representative. No doubt Arguelles said something of the sort, but an ambiguous comment could hardly justify his departure. Even if he thought "work or go home" meant that he was free to leave, Arguelles and Young quickly eliminated his doubt when they denied his request for administrative leave and warned him that they would record him as AWOL if he left. At that point he had no "option" other than the

possibilities of working as ordered or leaving without permission. He chose the second, and thereby chose the consequences as well. It is unfortunate that he received bad advice from his Union representative, but once his supervisors made it clear that he was not free to leave, he should have ignored the contrary advice.

It is not even necessary to go this deeply into the dispute, for the parties have already taken the AWOL question to arbitration. The Grievant made the same arguments to another arbitrator, who rejected them. If Management properly charged him AWOL after his departure, as the other arbitrator held, then by definition he left work without permission, and leaving work without permission obviously justifies some discipline.

3. **Timeliness of Discipline.**

It took Management a few weeks to investigate the incident and almost two months to impose discipline. The Union now argues that the delay was impermissibly long.

Although the Agreement does not impose any time limit on Management's decision to discipline an employee, it must do so with reasonable promptness. Unduly delayed discipline causes the same problems that stale grievances do -- faded memories and lost evidence. In addition, delay undercuts the corrective objective of discipline enshrined in Article 16 of the Agreement. In an extreme cases, discipline may be so tardy as to be effectively punitive; in others, delayed discipline may impair the employee's ability to defend himself or herself.

That is hardly the situation here. The investigation was a bit slow, but not so late as to interfere with its accuracy. Discipline imposed two months after the incident is not likely to be as corrective as discipline imposed in two days or two weeks, but two months is not so long as to make the suspension punitive. Finally, the Union did not suggest any way in which the delay hampered its ability to mount a defense.

Absent any contractual limitation or binding past practice on the imposition of discipline, and absent any claim of procedural harm, I cannot find that the delay made the discipline improper.

4. **Conclusion.**

I find that the Grievant disobeyed an order and left work without authorization. His actions merited some discipline and, considering his relatively recent 7-day suspension for almost identical offenses, a 14-day suspension was hardly unreasonable. I will therefore deny the grievance.