BEFORE THOMAS F. LEVAK, ARBITRATOR

C# 11177

In the Matter of the Regular Western Regional Arbitration between:

W4C-5H-D 4152

U. S. POSTAL SERVICE
THE "SERVICE"

and

AMERICAN POSTAL WORKERS UNION
THE "UNION"

DISPUTE AND GRIEVANCE CONCERNING SUSPENSION FOR ABUSIVE LANGUAGE TOWARD A SUPERVISOR

ARBITRATOR'S OPINION AND AWARD

(G. Dominguez, the "Grievant")

This matter came for hearing before the Arbitrator at 9:30 a.m., November 19, 1985 at the offices of the Service, Stockton, California. The Service was represented by Louis E. Surles. The Union was represented by W. Daniel Boone. The Grievant appeared and gave testimony on his own behalf. Testimony and evidence were received. The Union closed its case through oral closing argument. The Service filed a post-hearing brief with the Arbitrator on December 26, 1985. Based upon the evidence and the arguments of the parties, the Arbitrator decides and awards as follows.

OPINION

I: THE CHARGE AND THE ISSUE.

This case concerns a Notice of Removal which was subsequently unilaterally reduced by the Service to a 21-day suspension. The Notice of Removal dated March 27, 1985 provides as follows:

> You are hereby notified that you will be removed from the Postal Service at the end of your tour of duty on April 26, 1985. The reasons for this action is:
>
> On March 6, 1985, at approximately 11:30 p.m. you came into the tour office and asked Acting Tour Superintendent Lee Morrison why the PTF clerks were not notified that they were working eight hours. I had already told the PTF's assigned to my machine that they would be working the eight hours. You then asked me if PTF Shoemaker had been notified. I told you that I did not know Shoemaker, but if he was like his father, he was independently wealthy. I said this because I had known his father and his father was always talking about how much money he had. I then left the

office.

Approximately fifteen minutes later I was in the 040 aisle and you approached me again. There were approximately twelve employees working in the aisle. In a very loud voice you said, "Liar, Liar, you're a Liar!" At that time I asked you to come into the office. I told you I had not lied and there must be a mis-understanding. You continued your loud remarks calling me a liar. As I got by the scales, I saw Mr. Rambonga, an acting supervisor, and I asked you if you wished to call me a liar in front of another supervisor. Raising your voice, you again yelled "Liar, Liar, Liar!"

When we arrived in the office, Lee Morrison and Wendi Sherman were there. You continued to be offensive. Neither Wendi nor I would respond and you then yelled to me stating "You're a shithead!" I then asked you what did you say and you again yelled at me "You're a shithead. Go ahead, send me home, send me home!" You then said, "Fuck you all!" and walked out of the room.

You have readily admitted to calling me a "shithead", "Liar", and stating "Fuck you all".

There is no requirement that PTF's be notified that they have to work eight hours. Management in the Stockton Main Post Office has notified PTF's by the public address as a matter of courtesy.

You have previously been admonished by eminent arbitrators that hyper, loud, disruptive, and overzealous conduct is improper.

The Postal Service cannot and will not condone this type of benavior from you any longer.

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

> Previous records of your discipline prior to this have been obtained and are now under the Trusteeship of Louis E. Surles, Labor Relations Representative, Stockton, CA. These records are under Mr. Surles' trusteeship based on a previous Title VII resolution dated August 16, 1984. (J2)

The Service unilaterally reduced the Letter of Removal to a 21-day suspension through a Step 2 decision letter dated May 8, 1985.

While the Notice of Removal does not state a specific charge, the Service's Step 1 response states that the Grievant was issued the Notice of Removal "for his loud and abusive language towards a Postal Supervisor," and that his past history of similar incidents warranted his removal. Further, the Step 3 decision letter stated that: "The grievant had exercised abusive and profane language towards a supervisor on March 6, 1985, and in front of several employees." That decision letter also detailed alleged similar past misconduct on six occasions between August 1980 and January 1984.

The stipulated issue to be resolved by the Arbitirator is:

> Did the Employer violate Article 2 of the 1984 National Agreement when it unilaterally modified a Notice of Removal to a 21-day suspension to the Grievant, Gary M. Dominguez?
>
> And/Or
>
> Did the Employer violate Article 17, Section 1 & 3 of the 1984 National Agreement when it unilaterally modified a Notice of Removal to a 21-day suspension issued to the Grievant, Gary M. Dominguez?
>
> And/Or
>
> Did management have just cause to issue a Notice of Removal which was unilaterally modified to a 21-day suspension to the Grievant, Gary M. Dominguez?
>
> If not, what was is the appropriate remedy? (J3)

II. FINDINGS OF FACT.

The Grievant has been employed by the Service since September 10, 1977 and at the time the Notice of Removal was issued on March 27, 1985 was employed at the Stockton office as an LSM Clerk. For a number of years, the Grievant had continuously served as a Shop Steward, and since March 1984 had served as a Chief Steward. It was stipulated by the parties at the hearing that at all times relevant the Grievant was acting in his capacity as a Shop Steward.

On March 6, 1985, the Grievant was working on Tour 1. At

11:00 p.m., he clocked onto Shop Steward time. At about 11:15 p.m., he encountered two PTF's on the workroom floor, D. Shoemaker and T. Yarber.

Shoemaker and Yarber told him that they had just gone to the time clock at 11:00 p.m. to punch off their 6-hour shift, and that at that time they were told that they would be working an additional 2 hours. They told the Grievant that they believed they were entitled to 1 hour notice before having to work over 6 hours.

In fact, PTF's are not contractually entitled to notice; however, it was the unrebutted testimony of the Grievant that at the Stockton office the Service has followed the established custom and practice of giving PTF's 1 hour notice whenever they are required to work over 6 hours. Because the Grievant's testimony was unrebutted, the Arbitrator finds that it constitutes fact.

The Grievant told Shoemaker and Yarber that he would investigate the matter, and went to the Tour office to discuss the matter with Tour Superintendent Lee Morrison. When the Grievant arrived at the office, Morrison was there, as were two other supervisors, MPLSM Supervisor Charles Wilson and Wendi Sherman.

The Grievant approached Morrison and complained that PTF's had not been given the customary 1-hour notice. Morrison looked toward Sherman and Wilson, and both stated that all PTF's had been given the 1-hour notice. None of the three supervisors stated either (1) that the 1-hour notice was not an established custom and practice, or (2) that the Grievant, as shop steward, had no authority or right to protest non-compliance with the practice on the ground that it was not a right guaranteed by the National Agreement.

The Grievant told them that at least one PTF, Shoemaker, had not been given notice. Wilson responded that Shoemaker "was just like his dad and was probably independently wealthy." The evidence received at the arbitration hearing does not corroborate Wilson's claim that he stated at the time that he did not know Shoemaker, and the Arbitrator finds (1) that Wilson made no such statement, and (2) that Wilson's remark regarding Shoemaker was made in a sarcastic manner.

It should be noted at this point that it is clear from the evidence that Wilson and Sherman completedly misled the Grievant and Morrison. Tour Superintendent, Kathryn Long, who acted as an impartial investigator of the facts in this case, testified at the arbitration hearing that when she asked the PTF's who had been working at the time whether they had received 1 hour notice, she discovered that about 50% of the PTF's, including 50% of those under Wilson's supervision, had not been notified in any way that they would be working over 6 hours.

The Grievant returned to the workroom floor, and stopped to tell Shoemaker and Yarber what Wilson and Sherman had told him. At that point in time, Wilson approached the Grievant, and the Grievant asked Wilson in the presence of Shoemaker and Yarber whether he had in fact given them the 1-hour notice. Wilson looked at Shoemaker and said, "I don't know him."

The Grievant and Wilson together walked away from Shoemaker and Yarber, with Wilson telling Grievant that they would go to the office and "straighten the matter out." On the way, the Grievant complained to Wilson that he had misled him. The Grievant was angry and upset, and Wilson ultimately asked the Grievant: "Are you calling me a liar?" The Grievant responded, "Yes, you're a liar."

Wilson alleges that these comments took place in front of Shoemaker, Yarber and other employees working in the area. However, it is clear from the evidence that the Grievant's comments were not made in the presence of other employees. Investigator Long testified that she interviewed numerous employees in the area, including Shoemaker and Yarber, and that none of them confirmed that the "liar" comment was made in the presence of employees. Indeed, Long testified that she was never aware prior to the arbitration hearing that the Service was alleging that the "liar" comments had been made in the presence of any other employees, and that it was her impression that the "liar" comments were made later after the Grievant and Wilson had returned to the Tour office.

The Grievant and Wilson continued walking, and Wilson asked the Grievant whether the Grievant would repeat his "liar" comment in front of a witness. The Grievant responded that he would. At that point, Wilson stopped the Grievant by Supervisor B. Rambonga, and asked the Grievant to repeat the "liar" comment. The Grievant stated to Wilson, in Ramgonga's presence, "You're a liar." No employees were directly present, however, the Grievant's statement was overhead by employee Lynn Emerson, who testified at the arbitration hearing. Emerson was working about 20 feet away from the Grievant, Rambonga and Wilson. Emerson testified that the Grievant made the statement in a normal tone of voice and that he was not screaming, waving his arms or acting in an abusive manner, and also testified that no other employees witnessed the statement and that neither she nor any other employees stopped work.

The Grievant and Wilson then proceeded directly to the Tour office. In accordance with Wilson's earlier remark concerning the purpose for going to the Tour office, the Grievant believed that he and Wilson had gone there to clear up the PTF situation. However, when they arrived at the Tour office, Wilson ignored the Grievant and went directly to a desk and began to write up an account of his altercation with the Grievant, including the "liar" remarks. It was apparant to the Grievant that Wilson had no intention of addressing the PTF matter, but instead was "writing the Grievant up."

The Grievant thereupon complained to Morrison that Wilson had been "playing a game," that Shoemaker had received no notice, and that Wilson was now denying that he even knew Shoemaker. Morrison did not discuss the matter the Grievant, and merely told him: "don't worry, the PTF's will be taken care of." What Morrison intended by that statement is not understandable to the Arbitrator. Morrison then went back to his work and ignored the Grievant.

The Grievant tapped Sherman on the shoulder and asked to speak to her about the PTF situtation. Sherman ignored the Grievant.

Thus, at that point in time, Morrison, Sherman and Wilson were all ignoring the Grievant and were rebuffing his attempt to speak to them about the PTF matter. As is specifically stated in the Notice of Removal, neither Sherman nor Wilson would respond to the Grievant.

The refusal of the three supervisors to discuss the PTF matter with him made the Grievant angry and upset, and he stated to Wilson, "You're a shithead!" Wilson asked the Grievant what he had said, and the Grievant yelled at him, "You're a shithead. Go ahead, send me home." The Grievant then stated to no one in particular, "fuck you all," and walked out of the Tour room.

Stockton Policy Governing Supervisor-Shop Steward Confrontations.

Jim Fayler, a Stockton shop steward since September 1981 testified regarding the policy at the Stockton office regarding confrontations between supervisors and shop stewards. Fayler testified that the policy had been explained to him by Manager of Mail Processing Owen Manning and also by Lou Surles. He described the policy as follows: First, there should be no conflicts of any kind on the floor. All arguments should take place off the floor in the Tour superintendent's office. Second, the Tour superintendent's office is the place "for getting mad or angry." Manning described the Tour office to him as a "no holds barred" location. Third, that if a confrontation starts on the floor, the supervisor and shop steward should immediately go to the Tour superintendent's office to carry on with it.

Fayler was not cross-examined regarding the confrontation policy. Neither did the Service call any witnesses in an attempt to refute Fayler's testimony. Accordingly, the Arbitrator finds that Fayler's unchallenged and unrefuted testimony concerning the policy constitutes fact, and that the policy exists at the Stockton office as described by Fayler.

The Past Elements.

The parties stipulated at the arbitration hearing that no incidents of past discipline exist in the Grievant's official

personnel file.

The Arbitrator received into evidence a written Settlement Agreement between the Service and the Grievant in EEOC Case No. 091-82-X0077, dated May 8, 1982. The Settlement Agreement specifically provided that the August 18, 1980 warning letter was to be removed from the Grievant's official personnel file along with all the evidence of it being purged from that file. The Service has attempted to rely upon that letter of warning in this case in its July 10, 1985 Step 3 decision letter.

The Arbitrator also received into evidence a written Settlement Agreement between the Service and the Grievant in EEOC Case No. 5-1-1042-3, dated August 16, 1984. In that Settlement Agreement, the Grievant agreed to withdraw an NLRB complaint concerning a June 28, 1983 suspension, and also to withdrew EEOC Case No. 091-81-X0110, No. 5-1-1042-3, and No. 5-1-031901. For its part, the Service agreed that the 7-day suspension of June 28, 1983 would be modified on PS Form 50 to LWOP, and that all documents concerning the matter, as well as a decision by arbitrator R. W. Smelley on March 5, 1984, would be placed in trusteeship by Louis Surles. The Service also agreed that the earlier May 5, 1982 EEOC settlement would be "executed," in that the letter of warning would be removed from the Grievant's official personnel file. Apparently, the Service had not complied with that earlier settlement.

At the arbitration hearing, the Service attempted to offer into evidence arbitration decisions and evidence covered by the August 16, 1984 Settlement Agreement. The Arbitrator refused to receive such evidence on the grounds that the Settlement Agreement had finally disposed of those matters. The Arbitrator ruled that the Settlement Agreement specifically provides that matters contained therein may be used only as evidence in a subsequent proceeding in which either of the parties alleges a breach of the Settlement Agreement. The Service contended that it was its intention that any subsequent abusive action by the Grievant would constitute a "breach" of the Settlement Agreement, allowing the Service to take all of the past elements out of the trusteeship, rely upon them in disciplining the Grievant, and offer them into evidence in any arbitration hearing. The Grievant testified that it was his understanding of the Settlement Agreement that it was intended to finally dispose of all the past elements.

The Arbitrator agrees with the Grievant that the August 16, 1984 Settlement Agreement can only be construed to have finally resolved all of the then-existing disputes between the parties. A breach by the Service would have been a failure or refusal to execute its earlier promise regarding the 1982 warning or a failure or refusal to place subsequent disciplinary actions in trusteeship. A breach by the Grievant would have been a failure or refusal by him to withdraw the pending charges. A breach cannot legally be construed to be a subsequent infraction by the Grievant, had the Service intended such to be a breach, it was

incumbant upon it to draft language to evidence such intent. It did not do so. The Settlement Agreement is clear and unambiguous on its face, and the "breach" language is "form" language that must be given its ordinary meaning.

Even assuming some ambiguity in the Agreement, it must be noted that the Agreement was drafted by the Service, and any ambiguity must therefore be construed against the Service. It should also be noted for the record that the only testimony regarding the parties' intentions was that of the Grievant. Surles did not testify. His failure to testify can only create the inference that his testimony would not support the Service's assertion.

Based upon the unambiguous language of the August 16, 1984 Settlement Agreement, as well as the Grievant's unrebutted testimony concerning the intent of the Agreement, and the fact that the language of the Agreement was drafted by the Service, the Arbitrator finds that the Settlement Agreement effectively foreclosed the Service from relying upon any discipline imposed upon the Grievant up to and including August 16, 1984.

III. SERVICE CONTENTIONS.

First, there was no testimony indicating discrimination for any violation of the Grievant's civil rights.

Second, the evidence does not establish a violation of Article 17, Sections 1 and 3 of the National Agreement. It has been established through various arbitral decisions that a steward is not held any less accountable than an employee in a non-protected status. As such, the Grievant was accountable for his behavior first as an employee and secondly as a steward. Even though the Grievant was a steward, he had no valid reason to call Wilson a liar in front of his peers and Wilson's subordinates. Neither was the Grievant justified in calling Wilson a shithead in front of other supervisors in the Tour office or in stating "fuck you all" to all three supervisors.

On the issue of just cause, the testimony of all witnesses established that the discipline satisfied the just cause standard. First, Robert Hanner, the Step 3 designee for management, testified concerning his knowledge of the Grievant as an employee and steward at the Stockton office. Hanner's Step 3 decision letter speaks for itself.

Wilson's testimony established that the Grievant behaved in an improper manner.

The investigation of Kathy Long satisfied the just cause standard and demonstrated that the Grievant engaged in the improper activity alleged in the charge.

Employee Emerson also supported the facts contained in the

charge.

The Grievant's own testimony established that he called Wilson a liar, a shithead and that he stated, "Fuck you all."

Mr. Surles was not called because of the difficulty encountered in calling a management advocate at a hearing, particularly where an advocate is involved in the proceedings prior to the arbitration hearing.

IV. UNION CONTENTIONS.

The Grievant is a chief shop steward and has been active for a period of time in carrying out Union tasks. As a shop steward, the Grievant functons as an equal to management representatives.

The Grievant has no disciplinary record. His personnel file is clean, and all matters have been removed from his record pursuant to the EEO Settlement.

There is no dispute as to how the problem arose. While functioning as a shop steward, the Grievant investigated the matter legitimately and appropriately. He initially deferred to Wilson's statements that said that FIP's had been informed. Long's testimony verified that Wilson's statement was untrue. However, the Grievant did not argue at the time with Wilson.

When the Grievant and Wilson later began to discuss the matter, they did not stay among employees but walked away from them. Wilson's testimony regarding the Grievant's use of the word "liar" is not credible. Clearly, the Grievant only used the word when Wilson asked the Grievant whether he was calling him a liar. Also, Wilson's questioning of the Grievant in front of Kambonga constituted a clear provocation.

There was no disruption of any employee's work on the workfloor.

In the context of being a shop steward, the Grievant was only responding to Wilson's question as to whether he was a liar, and was not making a statement of disrespect.

After Wilson and the Grievant returned to the office, the only evidence is that Wilson there refused to talk to the Grievant, even though Wilson claimed that he had taken the Grievant to the office to clear up the FIP matter. Wilson, Sherman and Morrison all put their heads in the sand and ignored the Grievant. The Grievant became very exasperated as is understandable.

The Grievant's statements in the Tour office were all within the "no holds barred" policy described at the facility, and the Grievant cannot therefore be disciplined for those statements.

Given the no holds barred policy and the refusal of all three supervisors to deal with the matter at hand, discipline is clearly not justified.

The Arbitrator should also consider the fact that Wilson's testimony was a total product of leading and suggestive testimony. Even in the face of repeated admonishments from the Arbitrator concerning leading and suggestive testimony, Surles continued to ask leading questions. All of Wilson's answers were "yes" or "no" answers in response to those leading questions. Moreover, on cross-examination, Wilson's testimony varied from his direct testimony. Wilson admitted asking the Grievant, "Are you calling me a liar," and it is most logical that that question occurred as the Grievant testified.

The Service did not call many witnesses that were in its capacity to call, such as Sherman or Rambonga. Neither did the Service call any employee witnesses.

The Service did not dispute the Stockton policy regarding shop stewards, and even if the Arbitrator should find that the Grievant overstepped that policy, the discipline imposed should at most be reduced to a discussion peralty in light of the fact that the Grievant has no prior disciplinary record.

In the instant case, the Arbitrator should place in writing the finality of the EEO Settlement finality, and order the Service to remove from the OPF and the "discipline tracking system" all evidence relating to the improperly imposed discipline.

V. ARBITRATOR'S CONCLUSION.

The Arbitrator concludes that the Service has failed to establish by clear and convincing evidence that the Notice of Removal and unilaterally modified 21-day suspension were issued for just cause. Accordingly, the grievance is sustained. The following is the reasoning of the Arbitrator.

Preliminarily, the Arbitrator notes that absolutely no evidence was presented that would support a finding of any violation of Article 2 of the National Agreement. Accordingly, to that extent, the grievance is denied and dismissed.

As a second preliminary matter, the Arbitrator notes that there was no evidence presented that could lead to a conclusion that Article 17, Sections 1 or 3 were violated. Accordingly, to that extent, the grievance is denied and dismissed.

Turning to the just cause issue, the first point is that the Service's case must rise or fall on the facts of March 6, 1985. In light of the August 16, 1984 EEO Settlement Agreement, the Service cannot rely upon past disciplinary action taken against the Grievant. For purposes of this case, no past disciplinary

record exists.

In that regard, the Arbitrator feels compelled to comment that he is acutely disturbed by the Service's continued reliance upon matters disposed of by the settlement agreements. Indeed, as shown by the July 10, 1985 Step 3 decision letter, the Service has continued to rely upon the August 18, 1980 letter of warning, even though that letter of warning was deleted from the Grievant's record by the May 8, 1982 Settlement Agreement, and was later "re-deleted" by the August 16, 1984 Settlement Agreement. It is simply incomprehensible to the Arbitrator how the Service can continue to dredge up and rely upon a warning letter that it has expressly agreed would be removed from the Grievant's personnel file along with all other evidence of the warning. The Service's continued reliance upon matters abrogated and purged by settlement agreements renders its entire case suspect. Indeed, the Service's failure and refusal to treat matters covered by the Settlement Agreements as finally resolved both prior to and at the arbitration level, must be deemed a violation of the Grievant's basic right to fair treatment and due process under the just cause clause of the National Agreement.

The second point is that at all times relevant the Service clearly failed to accord the Grievant treatment due him within his status as a Union representative. The evidence established that the Service totally ignored the Grievant's protected and privileged status as an employee acting as a Union steward.

The subject of a steward's protected status has been dealt with in detail by arbitrators. The parties are referred to paragraph 118.6527 of the BNA Labor Arbitration Cumulative Digest and Index, entitled Insubordination - Union Representatives.

Regarding the specific subject of "personal abusiveness toward a supervisor," arbitrators generally hold that during any closed discussion (i.e., one where no employees are present), the employer-employee relationship is temporarily suspended, and a steward possesses a special immunity. The parties meet as equals, and the steward is entitled to the same deference and latitude as his supervisor. The steward is permitted to discuss union business as though he were not an employee. He may display a heightened temper, raise his voice, and even use profanity, even though such profanity would otherwise be deemed to be personally abusive. Such is the rule both when a union matter is being discussed at a formal, contractual grievance meeting or when it is being discussed informally during a one-on-one basis between the steward and his supervisor. Only where a grievance meeting or discussion is not closed, but is observable by other employees, does the steward lose total immunity. A steward who directs profanity at a supervisor in front of other employees is not merely attempting to maintain employer-union parity, he is attempting to degrade and belittle the status of his supervisor, and thereby achieve superiority over him at the expense of the supervisor's status and reputation.

A steward also loses special immunity status when he engages in conduct which interferes with the employer's ability to operate, or is intended to interfere with that right or ability. Thus, disruptive conduct on the workfloor is totally outside the collective bargaining relationship and is therefore unprotected. Similarly, threats of harm or assaults are never protected activities, whether or not accompanied by profanity.

The Service's own policy at the Stockton office generally conforms to the aforestated general principles. Under the facts of this case, the Service ignored both the general principles and its well-established policy.

The first point at which the Service ignored the Grievant's protected status was when Wilson became angry and upset with the Grievant for questioning his word, and asked the Grievant whether he was calling Wilson a liar. By so doing, Wilson ignored the Grievant's protected status, removed his attention from the PTF issue, and provoked the Grievant into responding to a loaded question. When the Grievant responded affirmatively, Wilson totally and finally suspended the supervisor-shop steward relationship and thereafter treated the discussion as strictly a supervisor-employee matter.

Even had Wilson not provoked the "liar" affirmation, the Grievant's statement would have to be construed as protected, because no employees were present, the statement caused no disruption of the work force, and the Grievant neither threatened nor assaulted Wilson.

As soon as the Grievant made the "liar" statement, Wilson immediately looked for a supervisor that he could use as a witness. Wilson was apparently treating the matter in the same way that he might treat an insubordination incident, that is by getting a supervisor and having the employee receive and disobey a direct order in front of a second supervisor.

However, what Wilson did makes no sense at all. Having a shop steward repeat a provoked and protected statement in front of a witness does not render the statement unprovoked or unprotected. Further, since another supervisor was involved, the statement continued to be protected.

The second way in which the Service disregarded the Grievant's protected status was to completely ignore him in the Tour superintendent's office. The Grievant came to the Tour office with Wilson to discuss a specific Union matter, a matter clearly within his domain; yet he was completely ignored by all three supervisors. None of the three supervisors felt that they owed any explanation to the Grievant.

While the written charge against the Grievant states that there is no requirement that PTF's be notified that they have to work, there was absolutely no evidence that the Grievant was

given such an explanation at the time he was attempting to resolve the matter. Further, the evidence established that the 1-hour notice was an established custom and practice at the Stockton office. The evidence further established that Wilson and Sherman both initially told the Grievant that the notice had been given, when in fact about 50% of the PTF's had not been notified. It is obvious to the Arbitrator that all three supervisors simply considered the Grievant to be a nuisance and treated him as such by totally ignoring him.

The next important point is that the Grievant's angry outburst at the three supervisors was made in a closed condition; that is, no employees witnessed it. It makes no difference that the Grievant addressed three supervisors, rather than only one. Because all three were supervisors, his status remained protected.

Further, it cannot be emphasized too strongly that the Grievant's statements in the Tour office were not unprovoked outbursts, but rather were statements made in frustration to supervisors who were totally ignoring him at the time he was attempting to discuss a legitimate Union concern. The evidence firmly established that as soon as Wilson went into the Tour office, he ignored the Grievant's complaint, and his only concern was writing up the "liar" incident so that he could institute discipline against the Grievant. And that was most certainly the Grievant's belief when he became frustrated and angry with Wilson. Further, neither of the other two supervisors would address the issue.

In summary, although an altercation did occur between the Grievant and Wilson on March 6, 198[illegible], (1) it was Wilson rather than the Grievant who was responsible for the altercation, and (2) statements made by the Grievant were within his protected capacity as a shop steward. Accordingly, the just cause portion of the grievance is sustained.

AWARD

The Service did not have just cause to issue the Notice of Removal, nor did it have just cause to issue the unilaterally invoked 21-day suspension. To that extent, the grievance is sustained.

The Grievant shall be immediately reimbursed all wages and benefits lost because of the suspension.

The Service shall immediately remove from all of its files, including but not limited to the Grievant's OPF, and also including but not limited to the Service's discipline tracking system, the Notice of Removal and Suspension Letter, together with all evidence and writings concerning the Notice of Removal and Suspension. The Service may retain a copy of this Opinion and Award, provided it is not retained in the Grievant's official personnel file or any discipline tracking file.

Neither this Opinion and Award nor any discipline previously imposed upon the Grievant shall be considered by the Service in imposing any subsequent discipline upon the Grievant. Neither shall this Opinion and Award, the Notice of Removal, the Suspension nor any previously imposed discipline be offered into evidence by the Service in any subsequent disciplinary proceeding involving the Grievant.

DATED this 5th day of January, 1986.

Thomas P. Levak, Arbitrator.