

C# 08919

**REGULAR ARBITRATION PANEL**

<i>In the Matter of the Arbitration</i>	)	<b>GRIEVANT:</b>	Patricia A. Phillips
<i>between</i>	)	<b>POST OFFICE:</b>	Memphis TN
<b>UNITED STATES POSTAL SERVICE</b>	)	<b>USPS CASE NO:</b>	S7N-3C-D 16853
<i>and</i>	)	<b>NALC CASE NO:</b>	003177
<b>NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO</b>	)		

**BEFORE:** Raymond L. Britton, *Arbitrator*

**APPEARANCES:**

*For the U.S. Postal Service:* Charles H. Isabel

*For the Union:* J.A. Barnett, II

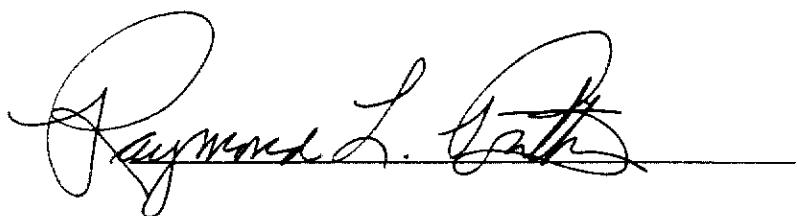
*Place of Hearing:* U.S. Post Office

*Date of Hearing:* February 2, 1989

**AWARD:**

For the reasons given, the grievance is sustained and the Employer directed to withdraw the removal action and make the Grievant whole for all time and benefits lost as a result of the removal.

*Date of Award:* April 10, 1989



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## ISSUE

*Was the removal for just cause? If not, what is the appropriate remedy?*

## 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.

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 the submission of Post-Hearing briefs.

## SUMMARY STATEMENT OF THE CASE

Patricia A. Phillips (hereinafter sometimes referred to as "Grievant") is a fulltime regular city letter carrier at the Post Office in Memphis, Tennessee. On July 11, 1988, Supervisor Catherine J. Parks issued to the Grievant a Notice of Removal that states in relevant part as follows (Joint Exhibit No. 2):

*You are hereby notified that you will be removed from the Postal Service effective August 15, 1988. The reasons for this action are:*

*Charge 1. You are charged with submitting two falsified medical statements to cover an unscheduled absence from work.*

*Specifically, on April 28, 1988, you submitted a PS Form 2591, Request for or Notification of Absence, requesting 24.33 hours annual leave in lieu of sick leave for your absence on April 25, 26, and 27, 1988, and reporting .33 late on April 28, 1988. You presented an Attending Physicians Statement, dated 4/26/88, from Health First Medical Group, as documentation for your absence. The supervisor questioned the medical statement, since you were returning to work on April 28, 1988, and the statement listed April 29, 1988, as the date you would be able to return to work. You subsequently submitted another Attending Physicians Statement, undated, from Health First Medical Group, as additional documentation for your absence. The second medical statement stated that you were able to return to work on April 28, 1988.*

*Because of the conflicting statements, an inquiry was made with Health First Medical Group. The first medical statement you submitted showed duration of limitations from 4/26/88 to 4/29/88, and date able to return to regular job as 4/29/88. Evidence reveals that the medical statement given to you by Health First Medical Group listed duration of limitations from 4/26/88 to 4/27/88, and date able to return to regular job as 4/27/88. The 7 in the date of both duration of limitations and date able to return to regular job was changed to a 9 after you received the statement from Health First Medical Group and prior to you presenting it to the supervisor.*

*The second medical statement you presented showed duration of limitations from 4-15 (or) 25-88 to 4-27-88. Evidence reveals that duration of limitation section was blank in the medical statement given to you by Health First Medical Group. The 4-15 (or 25) - 88 and the 4-27-88 in the duration of limitations from to section of the statement had been added after you received the statement from Health First Medical Group and prior to your presenting the form to the supervisor.*

*The evidence clearly shows that both medical statements were falsified after they were received from Health First Medical Group by you and prior to your presenting the statements to the supervisor.*

*There is just cause to believe you changed or were aware that the two medical statements had been changed subsequent to your receiving the statements from Health First Medical Group and prior to your presenting the statements to the supervisor.*

*Employment in the U.S. Postal Service is based on trust. Submitting a falsified medical statement violates the trust placed in you and warrants your removal.*

\* \* \*

On July 25, 1988, the Grievant filed a grievance protesting the removal and after a Step 1 meeting on that date, the grievance was denied by Supervisor Catherine J. Parks. Pursuant to Article 15 of the National Agreement, the grievance was appealed on August 4, 1988 to Step 2 of the grievance procedure alleging a violation of, but not limited to, Articles 15 and 16 of the National Agreement, and stating in relevant part as follows (Joint Exhibit No. 2):

*Grievant received Notice of Removal for allegedly submitting falsified medical statements to cover an unscheduled absence from work. Grievant vehemently denies altering any documentation.*

*The union contends that without proof that the grievant changed the dates on the documents, there is no just cause for removal.*

*Corrective Action Requested: Withdraw removal action and make grievant whole for all time and benefits lost as a result of this unwarranted action.*

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On August 25, 1988, a Step 2 meeting was held, and on August 26, 1988, in a letter to Union Vice President Larry Jackson, Labor Relations Representative George Whitten denied the grievance, stating in relevant part as follows (Joint Exhibit No. 2):

\* \* \*

*The grievant, P. Phillips, was removed from the Postal Service for submitting two (2) falsified medical statements to cover an unscheduled absence from work. The grievant was off work April 25, 26, 27, and was late on April 28, 1988. She presented a physician's statement dated April 26, 1988, as documentation for her absences. The supervisor questioned the documentation since the statement listed April 29, 1988, as the date she could return to duty. The grievant subsequently submitted another physician's statement, which stated she could return to duty on April 28, 1988. Because of the conflicting statements, an inquiry was made with the Health First Medical Group. According to their records, the first medical statement given to her should have listed her limitations from April 26, 1988, to April 27, 1988, and was able to return to duty on April 27, 1988, instead of April 29, 1988. The second medical statement also had been changed. The evidence is clear that the medical statements were changed after she was given them and before she presented them to her supervisor.*

*Chapter 666.2 of the Employee & Labor Relations Manual requires a postal employee to be honest, reliable, trustworthy, courteous and of good character and reputation. Based on the facts in this case, the grievant is not honest or trustworthy. The grievance is denied.*

On September 7, 1988, the Union appealed the grievance to Step 3 of the grievance procedure, and on October 5, 1988, in a letter to Regional Administrative Assistant G.E. Cruise, the grievance was denied by Labor Relations Representative Donald J. Cowan, who stated in relevant part as follows (Joint Exhibit No. 2):

\* \* \*

*Based on information in the grievance file and your presentation, it is my decision to deny the grievance.*

*Grievant's removal was for just cause. Upon inquiry by the Postal Service, it became clear that medical documentation supplied by the grievant had been falsified. Contact with the doctor's office refuted dates on medical documentation supplied by the grievant. The grievance is denied.*

On October 7, 1988, the grievance was appealed to arbitration.

Provisions of the National Agreement effective July 21, 1987, to remain in full force and effect to and including 12 midnight November 20, 1990, (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 5. Suspensions of More Than 14 Days or Discharge*

*In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days 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.*

Provisions of the Employee & Labor Relations Manual dated June 15, 1982 (Management Exhibit Nos. 6, 7, and 8) considered pertinent to this dispute by the parties are as follows:

#### *513 Sick Leave*

\* \* \*

#### *.36 Documentation Requirements*

\* \* \*

*.362 Over 3 Days. For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work.*

\* \* \*

*.364 Medical Documentation or Other Acceptable Evidence. When employees are required to submit medical documentation pursuant to these regulations, such*

*documentation should be furnished by the employee's attending physician or other attending practitioner. Such documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his normal duties for the period of absence. Normally, medical statements such as 'under my care' or 'received treatment' are not acceptable evidence of incapacitation to perform duties. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.*

\* \* \*

*660 Conduct*

*661 Code of Ethical Conduct*

\* \* \*

*661.53 Unacceptable Conduct*

*No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. Conviction of a violation of any criminal statute may be grounds for disciplinary action by the Postal Service, in addition to any other penalty imposed by or pursuant to statute.*

\* \* \*

*666 USPS Standards of Conduct*

\* \* \*

*666.2 Behavior and Personal Habits*

*Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, courteous and of good character and reputation. Employees are expected to maintain satisfactory personal habits so as not to be obnoxious or offensive to other persons or to create unpleasant working conditions.*

\* \* \*

## **POSITION OF THE PARTIES**

### **The Position of the Employer**

It is the position of the Employer that the Grievant submitted falsified medical documentation to cover unscheduled absences. The Employer contends that, as a result, the Grievant received pay fraudulently. The Employer maintains, therefore, that it had just cause to remove the Grievant.

### **The Position of the Union**

The Union takes the position that the Employer has failed to prove that it was the Grievant who changed the information on the medical documents that she submitted. The Union contends that, contrary to the requirements of the National Agreement, management did not make the Postal Inspector's Investigative Memorandum available to the Union until the Hearing. The Union maintains, therefore, that the removal action is procedurally defective and that the grievance should therefore be sustained.

## **OPINION**

In the resolution of this matter, the Arbitrator is required to determine whether management complied with the provisions of the National Agreement by making all information pertinent to the removal action available to the Union during the grievance procedure and, if so, whether the Employer had adequate proof that the Grievant submitted falsified medical documentation to justify removing the Grievant from employment with the Postal Service.

Initially, it is urged by the Union that the Employer violated Article 15 of the National Agreement by its failure to make a copy of the Postal Inspector's Investigative Memorandum available to the Union during the grievance process. According to the Union, the Memorandum in question, introduced over the Union's objection as Management Exhibit No. 9, was not provided to the Union either during the steps of the grievance procedure or in advance of the Hearing. Supportive of this allegation, according to the Union, is the uncontradicted testimony of Union President George Gossett that he did not receive the Memorandum.

While the Employer maintains that it properly supplied the Union with a copy of the Memorandum, a careful examination of the record submitted fails to disclose any probative evidence that would support management's claim. In this regard, it is observed by the Arbitrator that the Notice of Removal, although alluding to "an inquiry" regarding the two medical statements here in question, does not specifically reference an Investigative Memorandum prepared by the Postal Inspection Service. Nevertheless, according to the testimony of Supervisor Catherine J. Parks, she relied on the Memorandum in reaching her decision to remove the Grievant. It is additionally noted by the Arbitrator that the Memorandum is not mentioned in either the Step 2 or the Step 3

responses of management. Thus, it appears that the Union may have been unaware of the existence of the Memorandum until it was offered by the Employer at the Hearing. In light of the unrebutted testimony of the Union President that he never received the Memorandum, the Arbitrator is required to conclude that the Memorandum was not made available to the Union as is required under the grievance procedure.

As read by the Arbitrator, Article 15, Section 2, Step 2(d) requires the Employer to ". . . make a full and detailed statement of facts and contractual provisions relied upon. . ." and to ". . . cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31." In the matter at hand, it cannot be said with certainty that the Union was aware that the Postal Inspection Service had prepared an Investigative Memorandum with respect to the Grievant. Under this circumstance, the Union cannot reasonably have been expected to request a copy of the Memorandum, and it therefore seems to the Arbitrator that the Employer had an obligation to ensure that the Memorandum was made available to the Union so that the latter could adequately prepare its case. The inability of the Employer to rebut the Union President's testimony through the presentation of probative evidence or credible testimony that the Memorandum was supplied to the Union requires that the Arbitrator find the case against the Grievant procedurally defective and, as a result, the removal lacking in just cause. This finding necessarily forecloses further consideration by the Arbitrator as to the merits of the Employer's contentions that the Grievant submitted falsified medical documentation to cover unscheduled absences and, as a result, received pay fraudulently.