

C - 20955

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) Grievant: R. Bennett (Removal)
between)
UNITED STATES POSTAL SERVICE) Post Office: Garland, TX
"EMPLOYER")
and) USPS Case No.: G94N-4G-D00070214
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO) NALC Case No.:
"UNION") D4299C012 [GTS #31697]

BEFORE: JAY D. GOLDSTEIN, Arbitrator

APPEARANCES:

For the U.S.P.S.: J.D. McAlester, Labor Relations Specialist

For the N.A.L.C.: Dana R. Culpepper, Local Business Agent

Place of Hearing: Garland, Texas

Date of Hearing: July 21, 2000

Date of Award: August 14, 2000

Relevant Contract Provision: Articles 3, 16.1, 17.3; M39 Section 661.53

Contract Year: 1994-98

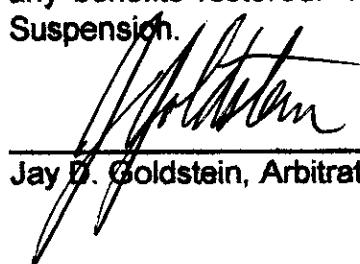
Type of Grievance: Discipline

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Award Summary:

The grievance is denied in part. Management had cause to prefer the charges of Unsatisfactory Conduct since the evidence was clear that Grievant submitted an altered document. However, the Union was thwarted from effective representation by a number of factors which clearly deprived Grievant of her due process rights.

Accordingly, Grievant shall be returned to her position; but without back pay or any benefits restored. Also, the record shall reflect the Removal being reduced to a Suspension.



Jay D. Goldstein, Arbitrator

INTRODUCTION

This a grievance challenging the Postal Service's action in issuing a Notice of Removal to the Grievant, dated October 28, 1999 (Joint Exhibit #2; Pages 15-17) charging, "Unsatisfactory Conduct-Submission of an Altered Document in Support of a Request for Paid Leave"; as a result of an incident occurring on or about May 24, 1999.

At the hearing, the parties stipulated that the Postal Inspector's Investigative Memorandum [Joint Exhibit #2, pgs 18-29] would remain in the record however; would be given only limited consideration since the Postal Inspector was not available to testify nor, be cross-examined.

The grievance was filed on or about "11-17-99" and processed through Step 3. Failing to resolve same, it was appealed to arbitration. The parties disputed that the procedural steps for the grievance procedures had been complied with, due to a lack of Step 2 Answer. However, they agreed that the issue as stated is properly before the undersigned neutral Arbitrator.

A Hearing was held on July 21, 2000; which was postponed from July 7 at the request of the parties due to the unavailability of key witnesses. It was held at the Postal Facility in Garland, Texas and conducted properly in accordance with established standards set forth in the parties' National Agreement and policies. Both parties were ably represented. Each side had full opportunity to present written and sworn oral testimony and exhibits. Each party's representative was afforded broad opportunity to cross-examine. The Grievant was present at the Hearing, and did testify in her own behalf. The parties elected to close on oral argument and the Hearing was declared closed on July 21, 2000.

ISSUE

Was there just cause for removal of Grievant? If not, what shall be the remedy?

FACTS AND BACKGROUND

The background to the incident resulting in the grievance actually occurred on or about May 17, 1999. It went unreported until May 18, 1999, yet no one disputes that Grievant, while delivering mail on Route 80, apparently slipped, lodging her foot in a hole while delivering mail. She alleges that she cut her right leg but got up and started back delivering the mail from the point where this injury occurred; between No.s 410 and 416 Melo Park.

Consistent with those facts, Grievant apparently reported to her Supervisor Yvonne Hayes that she had injured herself on May 17th; that Grievant's back was starting to hurt and, when the Supervisor asked how it happened, Grievant told her the details, as above. Further, the Supervisor testified that Grievant refused treatment, refused to see a doctor, and refused [that day, i.e. May 18th] to fill out any forms detailing the accident. The above occurred at start time, approximately 7:10 a.m.

Subsequently, but on the same day of May 18th, Grievant went to Union Steward Ron Felder and reported to him what had occurred. Testimony bears out that the Steward advised Grievant she may need to fill out an accident report and that they should go to speak with the Supervisor. There was some dispute about what occurred next, however, the Supervisor's version is that she insisted on an accident report being filled out and that Grievant again refused to do same. The Grievant's version is that she was told by the Supervisor that, "there was 30 days from the date of the accident," to fill this out. In either event, Grievant was allowed to work that day on a driving route.

On May 19th, both sides acknowledge that Grievant phoned in at 06:20 seeking

to speak with Supervisor Hayes; who apparently does not typically report in until later. Testimony from [then 204B] Supervisor Henry Thomas indicated that Grievant advised Thomas she would not be in until the following Monday and, that she had documentation from her doctor giving her the right to report at that time.

Thereafter, the 204B Supervisor reached Supervisor Hayes. Testimony from Hayes indicated that she telephoned the Grievant at her home and, unable to reach her advised Grievant's boyfriend that Grievant needed to come in to the office as soon as possible asking where the Grievant was, how long she would be gone and, receiving no replies, let that go.

Grievant testified that on May 20, 1999, she telephoned Supervisor Hayes to say that she would not be in; that she was "still hurting" and that Supervisor Hayes stated "she needed for Grievant to come in to the office right now to fill out an accident report and other documentation". Grievant acknowledged she advised the Supervisor, "no, I am not because I am on medication and have a document indicating that I can come back on Monday". Both sides acknowledge and agree that the Supervisor insisted on coming to Grievant's house to fill out the form and that Grievant replied, "you are not coming to my house". Also, both sides agree that the Supervisor stated that if Grievant did not come in, she would be listed as AWOL for every day that she missed. Both sides also acknowledge that Grievant asked to speak with Steward Ron Felder, then hung up and Grievant thereafter called back, whereupon the Supervisor asked where she was.

Grievant acknowledged that she was not willing to respond to the Supervisor and instead wished to speak with her Steward. Further, that the Supervisor advised her that Steward Felder was not in that day and that Grievant would have to speak with another Steward named "Ben". Grievant acknowledges that when she was put on hold, she

hung up, again. In yet another conversation whereupon Grievant called back to ask Supervisor Hayes if she was going to let her speak with the Union, that Ms. Hayes again asked where Grievant was and that the Grievant hung-up the phone.

Both sides acknowledge that on May 21, 1999 Grievant called-in but spoke to a Clerk. Further, that the Clerk was advised to tell Supervisor Hayes that Grievant would not be in that day; that she was still hurting and that the Clerk advised "o.k".

The evidence is clear that on May 22, 1999, Grievant again phoned in, this time speaking with Supervisor Bennett telling her she would not be in, that she was still hurting and that when the Supervisor questioned where the Grievant was calling from, Grievant hung up the phone again. From that conversation, it is clear from Grievant's notes that when she was asked where she was, "she indicated that she was not going to put up with this" and insisted that she was going to non-schedule for the following day, May 25th.

On May 25th at 4:35 p.m., Grievant came to the Postal facility to give Supervisor Hayes her medical documents; handed them to her and then left.

On May 27th, Grievant acknowledges she phoned the office to speak to Supervisor Hayes and that Hayes indicated that she needed to go and speak with the Post Master. The Grievant apparently refused, testifying to "being off the clock."

On August 31st, there was a meeting between the Grievant, her Union Steward and the Post Master, Mr. Weatherford. There was a difference of opinion regarding what occurred, however, both sides agreed that a copy of the Postal Inspectors Investigative Memorandum was shown to the Union Steward and Grievant at that time. There were clear indications from the testimony of former Post Master Weatherford; the Grievant and her Union Steward that the Steward was relegated to a position of witness only and was told to, "sit still and read the papers".

SUMMARY OF POSITIONS

It is the Employer's Position that this is a clear case of just cause for the Removal. That the charge of Unsatisfactory Conduct relied on facts totally proven; that Grievant had submitted a document which had been altered by someone and, which had supported a request for extra paid leave. Accordingly, she was charged with the above and removed for all the reasons stated which essentially amounted to dishonesty. The Postal Service asks that you deny the grievance in its entirety.

It is the Union's Position that extreme harm resulted from the denial of due process here; that those rights were not afforded to either the Union or the Grievant. Further, that the Removal action was delayed and not timely done; that Arbitrator's Awards indicating that a six month delay from the time of the incident to the date of the Removal is highly questionable.

In addition, contends the Union, the absence of the Postal Inspector is also a procedural error; since the whole case against Grievant relied upon by Management for her Removal was based upon the Postal Inspector's investigation. The Postal Inspector was not called to testify by the Employer and there is no evidence to support any altered documents; outside of the Postal Inspector's investigative Memo, which cannot be cross-examined.

The Union argues that based on all of the procedural arguments raised above and the fact that there was no proof that Grievant altered this document; that the grievance should be sustained and the Grievant returned to work and made whole.

FINDINGS AND OPINION

I have carefully reviewed all of the evidence presented, including all documents and my notes of the testimony given; taking into account the positions taken and arguments advanced by both parties. The relevant portions of the National Agreement between the parties dated 1994-1998 are reproduced in pertinent part, as follows:

**ARTICLE 3
MANAGEMENT RIGHTS**

The Employer shall have the right, subject to the provisions of this agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To . . . assign and retain employees in positions within the Postal Service and to suspend, demote, discharge or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;

**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, . . . failure to perform work as requested, violation of the terms of this Agreement, . . . Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement. . .

ARTICLE 17 REPRESENTATION

Section 3. Rights of Stewards

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted.

E.L.M.

661.53 Unacceptable Conduct

No employee will engage in . . . dishonest . . . conduct, or other conduct prejudicial to the Postal Service . . .

This was a very well documented case for which Management clearly had spent considerable time and effort to demonstrate how the Grievant defied instructions generally and, more specifically, engaged in a pattern of instances where her refusal to cooperate resulted in delay, distrust of her motives and denial of her claim for injury compensation. More to the point of her Notice of Removal; was the alleged conduct of her submitting a document, materially altered, in order to support a Request for Paid Leave.

While Management distanced itself from the point about who altered the document; the evidence was clear that someone had altered it and neither the Doctor who issued this return to work form, nor anyone connected to his office, had anything to do with the date change. It was left to determine who then had motive to extend a date for return to work.

On the other hand, the documentation and other hard evidence was tainted, mishandled and generally speaking, of little value to support a finding of just cause.

JUST CAUSE:

Management, as in any other discipline case, has the burden of proof to establish it had just cause to issue the Notice of Removal ending this Grievant's tenure as a

postal employee. Not that her less than one year tenure should be discarded; but her offenses are serious. A long term employee might be given consideration for a lapse in an otherwise clear record but here, this short-term employee has demonstrated callous disregard for authority. Also, regardless of who altered her return to work form; Grievant is ultimately responsible for what she communicates to her employer.

Here was a case that cried out for Removal; except that both the Grievant's rights to due process and Union's rights of representation were trampled, not just stepped upon. To begin with, the Employer's entire case rested upon the efforts of the Postal Inspector's Investigative Memoranda, yet, he was unavailable for testimony.

In addition to the fact that all allegations regarding the altered document were hearsay; there were instances of "Weingarten" type abuse, as well. Aside from testimony of the Shop Steward and Grievant, it was the testimony of the former Post Master which convinced me that union representation in his office was far less than anticipated. The evidence was clear and convincing that the Union Steward was, in effect, prohibited from any form of representation during at least one disciplinary meeting before the then Post Master of Grievant's facility.

There were other, lesser abuses of due process rights, including the right of the Union to obtain information. These, in conjunction with the grossly heavy-handed treatment of the Union Steward interfered with Grievant's right to effective representation. While I do not excuse Grievant's behavior regarding her uncooperative and defiant conduct; nor condone her part in the delivery, albeit delayed, of an altered document in support of her request for paid leave, I am still required to rule on whether the principles of a just cause Removal were followed. I think not.

While this matter did reach out, initially, for removal there is no excuse for gross interference with the Union's contractual right of representation. Indeed, no matter the anticipated outcome based upon Management's view of the evidence; Grievant has certain rights, afforded to every employee under the concept of due process. The examples in the Facts above are blatant violations, where those rights were

disregarded. Accordingly, while I believe Management was justified to severely discipline Grievant for her actions; removal was not justified under the circumstances described above.

TIMELINESS OF REMOVAL

Based upon the facts presented, I gave no credence to the Grievant's argument that she was unfairly treated due to the lengthy period of time between the incident of May 24, 1999 and the Notice of Removal, dated October 28, 1999. The rationale for that length of time was explained away adequately due to the need for a full and fair investigation. Ironically, substantial delay occurred due to Grievant's refusal to cooperate, i.e. when she allegedly, "lost the original" document.

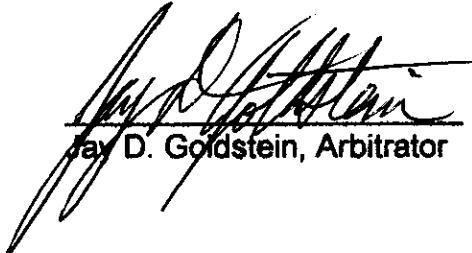
In conclusion, Management did have reasonable basis to severely discipline this employee for her behavior generally, in regard to unsatisfactory conduct surrounding her request for injury related leave; including her action in delivering an altered document in support of that leave. The evidence in support of the charges was clear.

However, the handling of this matter was marked by serious procedural error; which, like the Grievant's judgment, cannot be condoned either. For that reason, the Removal must be converted to a long term suspension, without back pay. Accordingly, my Award follows.

AWARD

The grievance is denied in part. Management had cause to prefer the charges of Unsatisfactory Conduct since the evidence was clear that Grievant submitted an altered document. However, the Union was thwarted from effective representation by a number of factors which clearly deprived Grievant of her due process rights.

Accordingly, Grievant shall be returned to her position; but without back pay or any benefits restored. Also, the record shall reflect the Removal being reduced to a Suspension.



Jay D. Goldstein, Arbitrator

DATED: August 14, 2000
Jenkintown, Pennsylvania