

C-24171 A+B

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration Between) Grievant: Perez
UNITED STATES POSTAL SERVICE) Post Office: Waterbury, CT
AND) USPS Case No: B01N-4B-D03033662 14-041642
NATIONAL ASSOCIATION OF) and B01N-4B-D03054207 14-041940
LETTER CARRIERS, AFL-CIO) NALC Case No: 014602

BEFORE: Kevin S. Sullivan, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Charles J. Corso

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For the Union: Glen M. Aeschliman

APR 14 2003

Place of Hearing: Waterbury, CT

JOHN J. CASCIANO, NBA
NALC NEW ENGLAND REGION

Date of Hearing: March 21, 2003

Date of Award: April 11, 2003

Relevant Contract Provision: Article 16.7 and Article 19 (ELM 666.2) (M-41 112.28)

Contract Year: 2001-2006

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Type of Grievance: Discipline

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Award Summary

VICE PRESIDENT'S
OFFICE
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Award Summary-Emergency Placement

The Postal Service received a telephone complaint concerning the Grievant. That complaint placed the Postal Service on notice that the Grievant may have placed his fingers inside a fourteen-year old girl's shirt and rubbed his fingers back and forth on her chest area. Those allegations provided the Postal Service with just cause to believe that the Grievant *may* be injurious to others. Therefore, the Postal Service had just cause to make the Emergency Placement.

Award Summary - Discharge

The Grievant violated Section 666.2 of the Employee and Labor Relations Manual and the Postal Service's Policy on Sexual Harassment. He did so by making unwelcome physical contact of a sexual nature with a fourteen year old girl in the course of his duties; by those actions the Grievant provided the Postal Service with just cause to remove him from employment.

Issue(s)

Did management have just cause to issue the Grievant an Emergency Placement Procedure and a subsequent Notice of Removal?

Facts and Arguments

USPS Contentions: The grievance should be denied in its entirety because the Postal Service had just cause to issue the Emergency Placement and the subsequent Notice of Removal.

Union Contentions: The Emergency Placement was made before a full, fair and impartial investigation and is punitive in nature. In addition, the Postal Service failed to prove it had just cause to terminate the Grievant's employment. The allegations are a result of a conspiracy against the Grievant.

Discussion/Findings

Emergency Placement:

On November 1, 2002, the Postal Service made an Emergency Placement of the Grievant in off-duty status. The Postal Service took that action based upon a customer's telephone complaint. That complaint came from a mother. The complainant explained that her fourteen (14) year old daughter alleged that the Grievant commented on her necklace, looked down her chest, asked to see the necklace, held the necklace in his hand, pulled her towards him, placed the necklace down her shirt, and then rubbed his fingers on her chest area. Those alleged actions took place while the Grievant was making a delivery to the complainant's and alleged victim's residence.

In relevant part, Section 7 of Article 16 of the 2001 National Agreement, entitled Emergency Placement, states:

An employee may be immediately placed on off-duty status (without pay) by the Employer, but remain on the rolls...where the employee *may* be injurious to ... other. (emphasis added).

In other words, the Postal Service is permitted to make such a placement if the possibility exists that the employee may injure others. Based upon the above-referenced allegations, the Postal Service was justified in its assessment that the Grievant may pose a threat to the alleged victim or others similarly situated. Further grounds for the Emergency Placement come from the fact the Grievant had been involved in a similar prior incident involving another teenage girl.

Removal:

On December 3, 2002, the Postal Service issued a Notice of Removal to the Grievant citing two charges:

Charge #1: Unacceptable Conduct in Violation of the Postal Service Code of Conduct and the USPS Policy on Sexual Harassment.

Charge #2: Failure to Perform Your Duties

Those charges will be addressed in chronological order.

As to the first charge the alleged victim gave creditable testimony that on November 1, 2002 the Grievant came to the door of her residence. The Grievant had a letter to deliver that required a signature. The alleged victim called her mother for permission to sign, which she received. As she was signing for the letter the Grievant was looking at her chest area. The Grievant commented on the necklace she was wearing and she lifted it up in front of her face so he could look at it. Next, the Grievant took the necklace in his hand and looked at it. The Grievant then placed the necklace inside her shirt and rubbed his two smallest fingers back and forth on her chest area. At that point, she pushed him away, shut the door and told her upstairs neighbor about the incident.

The alleged victim's mother testified that the Grievant, on most days, parked across the street from their home for hours. In response to Complaints, the Postal Service explained that the Grievant was on a lunch break.

The alleged victim also testified creditably that, on an earlier occasion, the Grievant had offered her a ride home in his postal vehicle. Even though she declined the offer, the Grievant repeatedly asked her if she wanted a ride. Of note, and lending credence to her testimony, is the fact that the alleged victim's testimony at the hearing was consistent with the many statements she previously made to her mother and to Postal Inspectors.

I find the Grievant's conspiracy theory to be baseless. The alleged victim, the teenage girl involved in the alleged previous similar incident, and their mothers credibly testified that the families did not know each other. There is no evidence of a conspiracy.

The Grievant's only other defense is that the alleged victim is lying. I find no facts to support that defense. The evidence presented at the hearing was devoid of any motivation for her to lie. Juxtaposed to the alleged victim's creditable testimony, is the Grievant's incredible unsupported testimony that he never held the necklace, never touched the alleged victim and never conversed with her previously. I also lend no credence to the Grievant's testimony that he saw another (male) person ten feet away from the door at the time of the alleged incident.

By his above-described actions, the Grievant violated Section 666.2 of the Employee and Labor Relations Manual, which states:

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...

His conduct also violated the Postal Service's Policy on Sexual Harassment. In relevant part that policy states that:

Sexual harassment is against the law. Employees will be subject to disciplinary action, up to and including removal, for engaging in sexually harassing behavior such as, but not limited to:

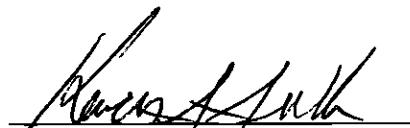
Deliberate or repeated unsolicited remarks with a sexual connotation or physical contacts of a sexual nature which are unwelcome to the recipient.

The Grievant's physical contact with the alleged victim's chest area was unwelcome and sexual in nature. It was also offensive to the victim and reflected unfavorably upon the Postal Service. In short, the physical contact gave the Postal service just cause to terminate the Grievant, despite the lack of any prior disciplinary infractions by the Grievant.

Having so found, there is no need to discuss the second charge.

Conclusion

The Postal Service had just cause to issue the Emergency Placement and Letter of Removal. Both grievances are denied.



Kevin S. Sullivan, Arbitrator