C#16162

REGULAR ARBITRATION PANEL

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In the matter of the arbitration

between

UNITED STATES POSTAL SERVICE

And

BRANCH 34, NATIONAL ASSOCIATION OF LETTER CARRIERS

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Grievant: A. E. Morgan

Post Office: Boston, MA

B90N-4B-C

Case No: 96012210
96-566

Before Garry J. Wooters, Arbitrator

Appearances:

For US Postal Service: Dennis Shea
Labor Relations Specialist

For Union: Frederick Celeste
Editor

Witnesses:
For the Union
L. McLean, Letter Carrier
E. Morgan, Letter Carrier

For Management
E. Carson, Cust. Serv. Sup.

Date of Hearing: October 24, 1996

Place of Hearing: Boston, MA

Award: Management violated the Joint Statement on Violence and Behavior in the Workplace when Supervisor Carson treated Morgan in a disrespectful and abusive manner on August 5, 1995. Management is directed to counsel Carson relative to the policies in the Joint Statement.

Date of Award: December 10, 1996

OPINION AND AWARD

Statement of the Case

The undersigned heard the above-captioned matter on October 28, 1996 in Boston, Massachusetts sitting as a member of the Regular Regional Arbitration Panel. The arbitration arises out of a grievance filed by Branch 34, National Association of Letter Carriers, AFL-CIO ("Union") against the United States Postal Service ("Service"). Evidence was taken under oath, in the presence of the above-named advocates. The case was orally argued at the close of the evidence.

Issue

Did the Postal Service violate Article 2 and or 19 of the National Agreement on August 5, 1995? If so, what shall be the remedy?

Summary of the Evidence

E. Morgan is a regular letter carrier who is employed at the Roxbury, Massachusetts facility.

On August 5, 1995 there was an incident between E. Morgan and his Supervisor, Manager of Customer Services E. Carson.

Morgan's Account. Morgan testified that on that day he had just come from sweeping the mail for his route. He was heading back towards

his case when Carson followed him. As they were walking, Carson indicated he wanted Morgan to go to his office for a discussion. Morgan ask why not discuss it here and what's it about. Carson said it was about chanting "coo-coo." By this time the two had arrived at Morgan's case, He dropped the tray of mail and the two were walking towards the supervisor's office. Morgan asked about a steward and Carson said he did not need a steward. At this point, Morgan said he was not feeling well and wanted to go to the medical unit. He says that at the time they were in the area of Linda Mc's case. Carson said to him "You're a fucking coward." Morgan was taken aback by this and felt intimidated. He asked Carson" what are you calling me or what are you saying to me."

Morgan had problems with his ear at about this time. He left and went to the medical unit.

Morgan testified that on that day he had no discussion with Carson relative to "pivoting." Nor did he chant "coo-coo" on that or other days.

Carson's Account. Carson testified that on the morning of the 5th he had surveyed the mail for each route as he normally did. He had determined that he needed help on Route 25-17, where the regular carrier had a medical appointment and would be leaving after about an hour. He saw Morgan as he was coming from the areas where the clerks were working. He told Morgan that he wanted him to pivot onto route 17. Morgan declined and began to walk away. As Morgan went out of

sight in the area of the clerks, he heard a loud chant of "coo coo coming from that area. At the time,he could not identify it as being Morgan. As he rounded the corner he could see Morgan. He then saw Morgan say in a very loud manner "coo coo."

As the two were in the area near McLean's case, he asked Morgan why he had said "coo coo" and Morgan denied that he had done it. He then asked Morgan why he was acting like a coward, or words to that effect. He did not say Morgan was a "fucking" coward or call him a coward. At this point, Morgan said "Are you calling me a fucking coward." Carson said that he was asking why he was acting like a coward.

Shortly after this, Morgan indicated that he was ill and wanted to go to the medical unit. Carson did not have the forms usually used for this purpose. He called the MU to ask if he could send Morgan over without the form and if they could fill it out. The nurse asked what the nature of the problem was. Carson went back to Morgan to ask and he was told that it was a problem with his ear.

Carson had some performance issues with Morgan. In Carson's view, Morgan was slow and used improper techniques in casing his mail. He had instructed Morgan on proper technique but had not initiated any formal or informal discipline. Carson testified that he would have sent Morgan for retraining.

Morgan is a Vietnam veteran, who served 15 months in Vietnam.

Following this incident, he went to the VA. He attended at least one group session to deal with the stress he said he felt over this incident. It is not clear that Morgan has any out of pocket losses due to this incident.

Positions of the Parties

The Management Case. Management argues that the Union has the burden of proof in this case. The burden has not been carried.

First, it is contended that under Article 2, the Union must show that Morgan falls into one of the categories protected by the language of the section. There has been no evidence that Morgan's difficulties with Carson were due to race, sex, religion, national origin or any other reason prohibited by Article 2. Thus, there has been no showing of any violation.

Under Article 3, management has the right to counsel employees about problems and discuss performance issues. In this case, Carson tried to do this as he had in the past. He attempted to have a "discussion" with Morgan, who refused.

Morgan's testimony that he did not refuse the discussion is in contrast with that of the Union steward who got his information from Morgan. Why would the steward say in the Step 1 grievance that Morgan

had refused a discussion if Morgan did not tell him this?

The Union witnesses cannot establish that it was Carson who said "fucking coward." McLain can only testify that she heard someone use those words. She could not identify Carson as the person who used them.

There was a problem on the floor relative to employees chanting "coo-coo." Carson had identified two such employees the day prior to this incident and counseled them. He had a right to take similar action with Morgan when he saw him do the same thing.

Morgan took proper steps to try to correct problems he found in the workplace. He was entitled to do this under Article 3.

The remedy requested by the Union is not appropriate. First, there is no evidence of any out of pocket expenses by Morgan. Second, to the extent that the Union seeks back pay, this issue is covered by the OWCP ruling. The arbitrator should not award any pay when it has been denied by OWCP.

There is no evidence that Morgan ever filed Form 3971s or other requests for leave which were improperly denied.

On the totality of the evidence, the grievance should be denied.

The Union Case. The Union argues that the case presented by

management is not persuasive. The defense is based on the testimony of a Captain Queeg like supervisor who watches the eyes of employees as they case mail.

Carson was under a lot of pressure, including the new DPS system, checking counts, the "coo-coo" chanting, and having to pivot carriers to cover routes. When all is said and done, however, there is still no excuse for calling someone a "fucking coward."

Management tries to soften the issue by contending that Carson only asked Morgan why he was acting like a coward. McLain, however, heard the words "fucking coward" and when she tuned, saw Morgan asking whether Carson was calling him a "fucking coward.?" Why would he ask that question if it were not Carson who used the words.

Even if Carson only used the word coward, it is far over the line. Nothing in Article 3 permits supervisors to use such abusive language to employees. In the atmosphere where management is supposedly trying to create a stress free and violence free workplace, such conduct is clearly inappropriate. If Morgan had called Carson a fucking coward, he would be out of work trying to get his job back in all likelihood.

Article 2 must prohibit this kind of conduct. Without any specific reference, it is clear to the Union that Morgan's civil rights were violated when he was subjected to this abuse. The Joint Statement on violence clearly prohibits such conduct and it was signed

by all parties. Nothing in article 3 gives supervisors the right to be abusive.

The Union argues that there has been a violation and that the arbitrator should find an appropriate remedy.

Relevant Contract Provisions

2.1 Statement of Principles
Section 2.1
The Employer and the Union agree that there shall be no discrimination by the Employer or the Union against employees because of race, color, creed, religion, national origin, sex, age, or marital status. In addition, consistent with the other provisions of this Agreement, there shall be no unlawful discrimination against employees, as prohibited by the Rehabilitation Act of 1973, or the Vietnam Era Veterans Readjustment Act of 1974, and the Labor-Management Relations Act of 1947.

Section 2.2
Non-Discrimination and Civil Rights are proper subjects for discussion at Labor-Management Committee meetings at the national and regional levels provided in Article 38.

Section 2.3
Grievances arising under this Article may be filed at Step 2 of the grievance procedure within fourteen (14) days of when the employee or the Union has first learned or may reasonably have been expected to have learned of the alleged discrimination, unless filed directly at the national level, in which case the provisions of this Agreement for initiating grievances at that level shall apply

MANAGEMENT RIGHTS

ARTICLE 3

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent

with applicable laws and regulations:

To direct employees of the Employer in the performance of official duties;

To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

To maintain the efficiency of the operations entrusted to it;

To determine the methods, means, and personnel by which such operations are to be conducted;

To prescribe a uniform dress to be worn by designated employees; and

To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Section 19.1
Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions. as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Section 19.2
Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate this Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly

relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Discussion

Insofar as this grievance is based on Article 2, it must be denied.

Article 2 of the National Agreement prohibits only certain kinds of discrimination. Management cannot discriminate on the basis of "race, color, creed, religion, national origin, sex, age, or marital status." Morgan's race or color do not place him within any protected category. On this record, there is no reason to find that any of Carson's actions were based on Morgan's religion, national origin, age or marital status.

Article 2 also prohibits discrimination within the meaning of the Rehabilitation Act, the Vietnam Era Veteran's Re-employment Act and the National Labor Relations Act. The evidence does not reveal any violation of these statutes relative to Morgan. Although Morgan is a Vietnam Era veteran, the evidence does not support a finding that Carson was hostile towards Morgan for this reason. Nor is there evidence of animus towards Morgan based on activities protected under the National Labor Relations Act.

The Union has also cited and relied on the Joint Statement on Violence and Behavior in the Workplace. In a recent national level

arbitration award, Arbitrator Snow held that the Joint Statement is a contract between the parties and may form the basis for a grievance. USPS and NALC, 94024977 (Snow 1996).

I believe that Carson's conduct towards Morgan was a violation of the Joint Statement. Asking Morgan if he was a coward or calling him a coward is abusive and disrespectful conduct. Such conduct contributes to an atmosphere of hostility and stress in the workplace. It should be no more tolerated from supervisors than from rank-and-file employees.

In the Joint Statement, the parties agreed as follows:

> We also affirm that every employee at every level of the Postal Service shall be treated at all times with dignity, respect and fairness. The need for the USPS to serve the public effectively and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay does not justify actions which are abusive or intolerant. "Making the numbers" is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.

Whether Carson used the term "coward" or "fucking coward" is not material. Both references were unnecessarily abusive and insulting. Either statement is a clear violation of the letter and spirit of the Joint Statement.[1]

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[1] For this reason, I need not consider McLain's testimony in any detail.

Supervisors should be models for the kinds of behavior management expects from craft employees. When disrespectful and abusive behavior by supervisors is condoned, management sends a clear message to rank and file employees that it is not serious about the commitment to appropriate conduct in the workplace.

I find, therefore, that Carson violated the Joint Statement when he used the term coward in reference to Morgan.

Morgan would be entitled to compensation for any out of pocket losses attributable to the violation. The record indicates that there are no such losses.[2]

I do not believe that I have authority under this grievance to issue any discipline to Carson, including a requirement of an apology. I believe that I do have the authority to direct management to counsel Carson relative to the policies in the Joint Statement. If there are repeated or more serious violations, an arbitrator in such a case has the right to impose a remedy which might include "removing a supervisor from his or her administrative duties." Snow Award at 22.

Award

Management violated the Joint Statement on Violence and Behavior

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[2] This case does not deal with and should not be read as implying any decision relative to other claims by Morgan, including any claims with OWCP.

in the Workplace when Supervisor Carson treated Morgan in a disrespectful and abusive manner on August 5, 1995. Management is directed to counsel Carson relative to the policies in the Joint Statement.

12-11-96
December 11, 1996

Garry J. Wooters, Arbitrator