

ARBITRATION ✓M

OPINION AND AWARD  
JOHN P. KEEGAN

BOSTON, MASS.

RA-72-53

C#2340

UNITED STATES POSTAL SERVICE

: SUSPENSION OF JOHN P. KEEGAN

and

: AWARD ISSUED:

NATIONAL ASSOCIATION OF  
LETTER CARRIERS

: October 6, 1972

BACKGROUND

This grievance from the Quincy Branch of the Boston Post Office protests a 3-day suspension imposed on Part Time Flexible Carrier John P. Keegan for alleged failures to perform his duties properly on January 20, 1972. Both parties had full opportunity to present their evidence and argument at a hearing held in Boston on September 28, 1972. There was no transcript. The parties waived post-hearing briefs in order to obtain an expedited decision by the undersigned Arbitrator.

Much evidence was presented at the hearing which had not been developed in earlier consideration of the grievance. There thus is unusual confusion as to certain critical facts: some credibility problems emerged for the first time at the hearing.

The substance of the charges against Keegan appear in the Notice of Disciplinary Action prepared by Assistant Superintendent Noe, as follows:

2.

Keegan

"At 11:30 AM, on January 20, 1972, I left the office to find Harvey RANKIN, who had failed to take some CODs, dues, etc. On my way, I noticed a Postal truck parked in front of 1025 Hancock Street, at the curb. I noticed that the right door was opened, and no driver was in sight.

"I closed the door of the truck, and saw a carrier's fur hat and outer jacket, on the truck tray.

"I went into the lobby of the apartment and saw Mr. John KEEGAN, out of uniform, wearing a jacket liner, and no hat, delivering Parcel Post into the Mail Room at 1025 Hancock Street, this city.

"Counseling Dates:

October 06/1971	Advice & Counsel	No hat or tie Out of uniform
-----------------	---------------------	---------------------------------

November 02/1971	Advice & Counsel	Same as above
------------------	---------------------	---------------

December 09/1971	Advice & Counsel	Same as above
------------------	---------------------	---------------

"Letter of Warning was issued on August 25, 1970 - for the following charge:

3.

Keegan

"Monday, August 24, 1970, you were assigned to Route 69035 and were instructed to clean up everything by Supervisors, Mr. V. P. NOE, and Mr. A. NAPOLITANO. You left to deliver the route and it was found that in spite of instructions, you left behind 160 pieces of second and third class mail, which was delayed 24 hours."

Assistant Superintendent Vincent Noe testified at length in support of the discipline and largely substantiated the above quoted statements. In addition, however, he brought out that the inner cage door (inside the truck behind the driver) had been left open. Noe also said that when he spoke to Keegan at 1025 Hancock Street, the latter was in the small mail room to the right of the vestibule from where it was impossible to see the truck out on the street. 4

Noe also testified that (during early processing of the grievance) Branch President Vernon Harris had telephoned him to advise that Keegan was saying that he had not previously been counseled despite the contrary assertion in the Disciplinary Notice. Noe later called Keegan into his office for a lengthy discussion about whether this was true. At the beginning of this discussion Keegan protested that he was entitled to have his Steward with him but Noe did not permit this. Subsequently the Steward and Keegan came to Noe's office to complain about this incident. While Noe's action on this occasion is open to some question, it is not the subject of this grievance and apparently occurred before the new grievance procedure became effective. 5

Keegan testified that he had not yet finished carrying packages into the building at 1025 Hancock when he was accosted by Noe. In fact, he claimed that he was emerging from the front door of the building, returning to the truck to pick up more packages, when Noe approached him. He also asserted that the cage door inside the truck was shut, and so automatically locked, at this time. 6

Grievant Keegan also explained that there were quite a few packages to be delivered at 1025 Hancock, and he began to sweat because the weather had turned warm and so found it necessary to remove his fur cap and outer heavy jacket. He put them on the tray in front of the truck. Keegan added that about a month before the incident had occurred, Noe had told him not to report for work on a Friday after he had completed 38 hours of work in the week on Thursday, whereupon Keegan had filed a grievance protesting that he should have been permitted to work overtime, because other Carriers were doing so. Keegan also said that Noe later had threatened to make him regret having filed such a grievance. Keegan felt that this incident provided the real reason for imposition of the discipline now under review. While he agreed that Noe earlier had told him on several occasions to wear a hat and tie, Keegan felt that this was not "counseling" because not so characterized by Noe and not conducted in private. Keegan did recall one incident in December of 1971 when he came to work without his hat and had to go home to get it before starting to work. He denied having been counseled on or about November 2, 1971 and the payroll records show that he was on annual leave at this time. 7

The Union now urges that there was no warrant for discipline, since (1) Keegan really was not out of uniform on this occasion, (2) the truck at all times was in his view, and (3) the cage door was locked. It stresses that on one of the earlier occasions when Keegan allegedly was counseled, for being out of proper uniform, he actually was not at work. It also notes that Assistant Superintendent Noe's "counseling" frequently consists of no more than a casual statement to an employee that he should put on his tie, made while observing the employee performing his duties. Such action, says the Union, does not constitute counseling within the meaning of the parties' Agreement and applicable practices.

The principal thrust of the Union argument, however, is that the Disciplinary Notice purports to state the charges against Keegan "in toto" but does not spell out that the cage door (as distinct from the right-hand door of the truck) was unlocked. The truck itself was locked at least to the extent that the motor had been shut off and the ignition key removed.

#### FINDINGS

Grievant Keegan technically was out of uniform when accosted by Noe but there were extenuating circumstances and this infraction hardly would have been the occasion for imposing a substantial suspension. Indeed, it is doubtful that any suspension would have been in order for this single infraction, under the evidence here.

The more serious charge, then, is the failure to protect the mail by closing the cage door. Despite the serious conflict in the testimony, the weight of the evidence sufficiently

establishes that Keegan was in the mail room when first approached by Assistant Superintendent Noe. Indeed, at one point in his testimony Keegan said that after Noe had left, he "completed" putting notice cards in the patrons' mail boxes in the mail room. From inside the mail room he clearly could not have kept his truck in view. While the Disciplinary Notice does not spell out specifically that the cage door was unlocked, in addition to the right front door, there seems no real doubt that from the beginning Noe had asserted that it was. Indeed, he prepared a fuller written statement, including this fact, shortly after the incident. It would have been better if all of the evidence on this point had been developed by both parties in the grievance procedure, but the Arbitrator now must reach a decision on the evidence provided at the hearing. This sufficiently establishes that the cage door in fact was not locked.

These findings do not necessarily mean, however, that the 3-day suspension originally imposed in this case should be sustained. Considerable weight was placed on the claim that Keegan was out of uniform in setting the suspension at three days. There also was specific reliance on an earlier counseling which in fact could not have taken place as claimed by the Postal Service. 12

Giving due weight to all of the evidence, it appears that a one-day suspension would have been proper. The penalty here thus will be reduced. 13

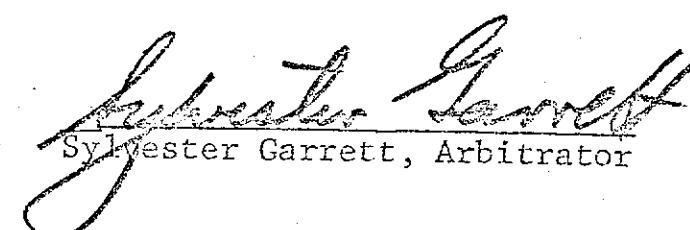
7.

Keegan

AWARD

The grievance is sustained only to the extent that a suspension of one day, rather than three, is found warranted under the available evidence. Grievant Keegan shall be made whole for lost earnings accordingly.

14

  
Sylvester Garrett, Arbitrator