
IN THE MATTER OF ARBITRATION BETWEEN

THE UNITED STATES POSTAL SERVICE
Employer

and the

NATIONAL ASSOCIATION OF LETTER CARRIERS UNION.
Union

C# 01261
Re: Adam Urban - 14 Day Suspension

S1N 3W D 2205 Bradenton, FL

APPEARANCES

Advocate for the Employer: Mr. William Daigneault, Labor Relations Representative
Advocate for the Union: Mr. Robert M. Harkinson, Regional Administrative Assistant

At an arbitration on April 16, 1982 in Bradenton, Florida the Employer and the Union authorized the undersigned to decide whether or not the Employer had just cause to issue a 14 day suspension beginning October 31, 1981 to Adam Urban for a motor vehicle accident and for his failure to report the accident. A Hearing on the matter was held at the above written time and place. Both parties attended, presented witnesses, and offered evidence. All evidence offer was received, all witnesses were sworn, the parties stipulated this grievance was procedurally correct and properly brought to arbitration, both parties received the privilege of cross examination, and post Hearing briefs have been received from both parties and I have read and carefully considered those briefs. At the start of the arbitration I advised the parties that a 14 day suspension normally fell within the expedited arbitration procedures of the 1981-84 National Agreement and that I was not on the Florida Expedited Arbitration Panel. The parties were aware of the fact that I was not on the Florida Expedited Arbitration Panel, but they pointed out that this grievance involved an interpretation of the National Agreement and that they had agreed to arbitrate the grievance as a Regular Regional Level Arbitration.

In this grievance Urban was accused of hitting a metal garbage can with his Jeep while on delivery and failing to report the accident. I will relate the events leading up to this suspension as I believe those events occurred.

Preliminary Background Discussion

On August 3, 1981 Urban delivered the rural mailboxes on 48 Avenue Drive West.

The delivery began with the 4 mailboxes just ahead of 3204 48 Avenue Drive West. The delivery continues down the street with 3204 thence 3 additional mail boxes. After delivering the 8 boxes on one side of the street, Urban made a U turn and delivered the other side of the street. The last delivery was Mrs. Lucille Pope at 3114 48th Avenue Drive West. After delivering Mrs. Pope's mail, Urban immediately made a 2nd U turn to continue his deliveries.

At approximately 1 p.m. on August 3, 1981 Mrs. Pope was indoors washing the sliding glass doors at the front of her home. She saw Urban pull up to her mail box and make the delivery and she saw the Jeep make the U turn. She claimed that the garbage can directly across the street at 3204 48 Avenue Drive West was struck by the Jeep as the Jeep made the U turn but she admitted she did not see or hear the impact between the Jeep and the garbage can. She testified that the can was standing upright when Urban drove up to her mailbox and it was lying on its side after he made the U turn and drove away. The top of the can had been bent.

Mr. Spenyovics has the apartment complex at 3204 48 Avenue Drive West and Mrs. Pope was aware that Mr. Spenyovics had encountered difficulty with damaged garbage cans. Mrs. Pope notified Mr. Spenyovics that the Jeep had hit the garbage can so that the fault could be traced to the correct person.

On August 4, 1981 Mr. Spenyovics called the Post Office and spoke with Acting Manager Robert Johnson. He reported that the Jeep had run over his garbage can the previous day and that Mrs. Lucille Pope had witnessed the accident. Johnson notified

Boruff of the accident claim and both Johnson and Boruff inspected the Jeep that evening. They found a chunk out of the right front tire and a scratch on the right front bumper. There was no rust on the scratch. That same day Johnson and Boruff interviewed Mrs. Pope. She filled out a form SF-94 and stated she was washing windows at the front of her house when the Jeep hit the garbage can.

Carrier Urban was scheduled off on August 5 so on August 6, 1981 Boruff questioned Urban as to the events on August 3. Urban did not know anything about hitting the garbage can. Boruff completed an Accident Report Form 1769 and in the report Boruff

stated that he was requesting a letter of warning and that Urban's SF 46 would be suspended until he had remedial drivers training. Boruff signed and dated his signature on the Form 1769 on 8-6-81. On August 10, 1981 the Accident Review Board decided that Urban should have a 14 day suspension. The next day the decision of the Accident Review Board was entered on the Form 1769 that Boruff had signed 5 days earlier. The decision of the Accident Review Board was signed by D. Grant. The Board's recommendation was made after considering Urban's entire accident history as well as the incident of 8-3-1981. Mr. Grant was the Superintendent of Mail Processing.

On August 28, 1981 Urban was notified that he was to have a Fitness For Duty Examination to evaluate his ability to perform his duties without hazard to himself or others. The examination was scheduled for October 13, 1981 with Dr. Jay Reese. The examination disclosed that Urban was physically qualified to do his job except that he needed to wear corrective lenses.

On August 25, 1981 a 14 day suspension letter was written for the accident of 8-3-1981. The letter was held in abeyance pending the outcome of the Fitness For Duty Examination. On September 19, 1981 the Employer attempted to serve the suspension upon Urban but he refused to sign an acknowledgement that he received the letter. The letter did not state the dates that Urban would be suspended. On October 27, 1981 the Employer issued a 2nd letter affirming that Urban would be suspended for 14 days beginning October 31, 1981. Urban signed an acknowledgement that he received the 2nd letter.

There were 4 questions raised in this arbitration:

Point 1. The question of whether Urban's Jeep actually struck Spenoyovics garbage can.

Point 2. The question of whether the disciplinary action taken was unduly delayed thus violating the introductory paragraph of Article 16 and Article 16 Section 4 of the National Agreement.

Point 3. The question of whether or not the discipline was a "rubber stamp" action by a 1st level supervisor thus violating Article 16 Section 8

of the National Agreement

Point 4. The question of whether or not the Accident Review Board's recommendation violated Article 19 of the National Agreement.

The National Agreement contains the following:

ARTICLE 3
MANAGEMENT RIGHTS

The employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

B. 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.

ARTICLE 16
DISCIPLINE PROCEDURE

Section 4. Suspensions of 14 Days or Less

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended after two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

In associate post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken. *** (Triple asterisk *** denotes that language immaterial to this grievance has been omitted.)

The Employer's Position

The Employer's contentions were:

1. Mrs. Pope testified that she was looking through her front windows when Urban delivered her mail and made a U turn. She did not see the impact between the Jeep and the garbage can, but the garbage can was standing upright when Urban drove up and it was dumped over after he made the U turn. Furthermore, Urban did not report the accident.
2. The serving of the suspension was not unduly delayed. The suspension was held in abeyance pending the outcome of Urban's Fitness For Duty Examination, that the report from Dr. Reese was received on or about October 13, 1981, the report did not furnish a medical reason for the accident, and the decision to put the suspension into action was made within a 2 week period after receiving Dr. Reese's report.
3. Supervisor Boruff did not have access to Urban's file on August 6, 1981 when Boruff completed the Form 1769 and recommended a letter of warning and remedial training for Urban. A subsequent review of Urban's file disclosed that the accident of 8-3-1981 was Urban's 4th accident in his 43 months of employment, and Boruff admitted that he recommended the 14 day suspension after receiving a report from the Accident Review Board. Boruff also testified that he held the suspension in abeyance until Dr. Reese's report was received to see if there was a medical reason for the accident.
4. The Employer pointed out that the purpose of the Accident Review Board was to investigate all accidents to determine if carelessness or failure to follow the Safe Driving Rules for Postal Drivers were causal factors in an accident and to assure that defensive rules and safety regulations were emphasized and enforced at all times so that each driver was aware of his responsibilities while operating a motor vehicle. The Board convened on August 10, 1981 to review Urban's

accident on 8-3-1981. The Employer maintained that, after reviewing all available data and Urban's accident history, the Board recommended the 14 day suspension.

The Employer maintained that Dr. Reese's report revealed no extenuating or mitigating circumstances that justified the accident on 8-3-1981, or Urban's failure to report the accident, consequently the suspension was ordered to be served after considering that report. The Employer pointed out that Urban had considerable training for defensive driving and the Safe Driving Rules for Postal Drivers. Initially Urban received training on January 7, 1978. He received remedial training on January 9, 1980 for an accident and that remedial training included 2 hours of instruction on Safe Driving Rules. As a result of the accident on 8-3-1981 Urban received another 1.15 hours of instruction on Safe Driving Rules. Prior to the remedial training on January 9, 1980 Urban had 4 separate training sessions on the various types of equipment he was to operate and general instructions on dismount procedures.

The Union's Position

The Union's contentions were:

1. There was no accident on 8-3-1981 therefore there was no accident to report. The Jeep was checked 2 days after the alleged accident and no damage was found on the Jeep to support an accident claim. The testimony from Mrs. Pope and other witnesses that had examined the garbage can was that the top of the can was bent, but the Union pointed out that the ground clearance of the Jeep went as low as 8 inches and that the can would have been crushed if the Jeep passed over the can. The Union argued that the National Agreement was clear in requiring that discipline be administered promptly and no supervisor was able to explain why the delivery of the suspension letter was delayed from August 25 to September 19 and the suspension was finally served starting October 31. The Union's argument was that the suspension was intended to be punitive and not corrective, and that

was the reason for the delay.

3. The Union maintained that 204B Boruff decided to suspend Urban only after the Accident Review Board and the Postmaster made the decision to suspend Urban, and that Boruff was unduly influenced by the higher level authority when he made his decision. The Union pointed out that Mr. Grant, the Chairman of the Accident Review Board, held the 3rd highest level at the Post Office, and Mr. Grant made the decision to suspend Urban on 8-10-1981 in a decision rendered by the Accident Review Board, but that Boruff's had earlier decided on 8-6-1981 to issue a letter of warning. The Union argued that when Boruff finally reached a decision on the disposition of this discipline he was influenced by the decision that top management had already reached. The Union argued that supervisor's should be able to independently decide on the appropriate discipline an employee should receive, and that the decision process in the Bradenton Post Office violated Article 16 Section 6 of the National Agreement.
4. The Union argued that the Accident Review Board never did meet to consider the evidence on this accident, and that the decision of the Board was essentially Mr. Grant's decision. The Union pointed out that Mr. Downes was a member of the Accident Review Board and in his testimony he could not remember if the Board interviewed Urban. Downes could not recall the date of the Board meeting or any details of the meeting. The Union challenged the authority for the existence of the Board and the Union argued that the Board did not have authority to recommend discipline for an employee. The Union pointed out that the Board existed through the sole authority of the Sectional Center Manager/Postmaster and the existence of any rules, handbooks, manuals, etc. must be in accordance with Article 19 of the National Agreement.

Opinion

In this Opinion I will rule on each of the 4 Points that were listed under the Preliminary Background Discussion. In order for the Employer's position to be upheld, the findings of fact on Point 1, Point 2, and Point 3 must be in favor of the Employer. I will make a ruling on Point 4 and in that ruling I will discuss whether or not the existence of the Accident Review Board violates the National Agreement.

After carefully considering all the evidence I find that on Point 2 and Point 3 the Employer violated the National Agreement and this discipline was not for just cause. I will explain my reasons for this ruling.

Point 1 - The question of whether Urban's Jeep struck Spenyovics garbage can.

Mrs. Pope's testimony and her written statement to the Employer (Management Exhibit 1) did not say that the Jeep "ran over the garbage can." Her statement was:

Letter Carrier was traveling west on 48th Av Dr. W. After delivering mail to 3114 48th Av Dr. W. made a U. turn in middle of st. striking - garbage can in front of 3204 48th Av. Dr. W. and continued on east - without stopping.

Furthermore, Mrs. Pope's testimony was that the can was upright before Urban drove up to her mail box, but it was lying on its side after he made the U turn. I believe Mrs. Pope was telling the truth and from her testimony I find that the Jeep struck the garbage can as Urban made his U turn. The motion of the Jeep was a circular turning motion and the blow knocked the can away from Jeep so that the Jeep did not run over the can. There was nothing in Mrs. Pope's statement that would lead me to believe that she meant the Jeep ran over the can, and there was nothing in the letter of charges alleging the Jeep ran over the can. I appreciate the Union's statistics on the height of various parts of the Jeep above the ground; but, if the Jeep did not run over the can, the statistics were without merit. After considering all the testimony

I find that Mr. Urban hit a garbage can at 3204 48th Avenue Drive West on August 3, 1981.

Point 2 - The 2nd question was whether the disciplinary action was unduly delayed so as to violate the introductory paragraph of Article 16 and Article 16 Section 4 of the National Agreement. The undisputed facts were that the alleged accident occurred on 8-3-1981, the letter of suspension was dated 22 days later on August 25, 1981, and Urban was handed the suspension letter on September 19, 1981 which was 47 days after the alleged occurrence. The introductory sentence in the letter read, "This notice of suspension for 14 days is to be held in abeyance pending your fitness-for-duty examination." That sentence clearly meant that the suspension was to be delayed pending the outcome of the examination. In the usual grievance a delay in presenting charges can mean the loss of evidence to an aggrieved. Memories fade with the passage of time, witnesses become difficult to locate so as to reconstruct the events in question, a photograph of the scene taken weeks later may be inaccurate as to the conditions that prevailed on the date of occurrence. In my opinion a delay of 47 days in presenting a letter of charges is too long and I find that the Employer has violate Article 16 of the National Agreement by delaying the delivery of the letter of charges. I have no disagreement with the Employer in delaying the serving of the suspension pending the outcome of the fitness-for-duty examination, but a delay in presenting charges damages an employee's right to prepare to defend himself against the charges and that is where I disagree with the procedures the Employer followed.

Point 3 - The question of whether or not the discipline was a "rubber stamp" action by a 1st level supervisor. Article 16 Section 8 of the National Agreement requires that the proposed discipline or discharge of an

employee be reviewed and concurred in by the installation head or designee. In my opinion this provision requires that each supervisor or manager must independently arrive at a decision to discipline an employee after reviewing the employee's file. This means that the initial decision to discipline must be an independent decision to discipline after a careful consideration of all the evidence and applying sound managerial rules. The decision to discipline must be the supervisor's own decision and the true test of a successful supervisor is a person that has made many major decisions correctly.

In my opinion, the final decision to suspend Urban was influenced by the actions taken by higher level management. The decision to suspend Urban was made after the Accident Review Board decided that Urban should be suspended. Urban was not offered the opportunity to tell the Board his version of what happened, and the Board's decision was known by the 1st level supervisor many days prior to the date the supervisor decided that Urban should be suspended. Buroff's testimony on this point was quite clear. The Board made its decision, then Buroff concurred in the Board's decision. In my opinion the procedure followed was a clear violation of Article 16 Section 8 of the National Agreement.

It is my understanding that Accident Review Boards (or Committees) usually make findings of fact as to the probable cause of an accident. Usually the findings are "operator error," "equipment malfunction," "signal lights failed to operate properly," etc. Boards make recommendations so as to prevent another accident, but this has been my first experience where a Board recommended that a driver be suspended. I believe my views of the Accident Review Board is in accordance with the Safe Driver Award Rules (Union Exhibit 7). In carefully reading through those rules I noted that page 1 under 1.2

PERFORMANCE contains the following sentence:

These rules should not be used for disciplinary purposes. Discipline should be a separate consideration and action covered by specific postal regulation.

Furthermore, page 4 of the Safe Driver Award Rules provides for an Accident Review Committee for the purpose of rendering a fair decision on accidents. I noted that on page 5 the Committee is to reach a decision on accidents covering the following items, to wit:

1. Do we feel that the driver could have prevented this accident.
 - a. Did the driver notice the danger as soon as he should have?
 - b. Did he take proper defensive actions early enough?
2. What USPS policies have a bearing on the decision? Is this policy defined in written instructions or a manual?
3. Did driver comply with these policies?

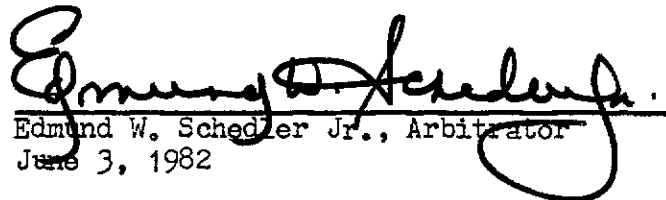
Article 19 of the National Agreement provides that certain manuals, handbooks, and published regulations that directly relate to wages, hours, or working conditions shall contain nothing that conflicts with the National Agreement and those handbooks, manuals, and published regulations shall continue in effect. The Safe Driver Award Rules contained the decal of the U.S. Postal Service on the front cover and within the document there were numerous references to USPS Forms to be used with the rules. In my opinion the Safe Driver Award Rules is a part of the National Agreement as provided in Article 19.

Mr. Urban was faced with defending himself against a nebulous faceless Board that rendered a decision to suspend him without allowing him to be present or represented by a Union representative. The procedures followed by the Board were very nearly a "star chamber proceedings" and I find that the 14 day suspension was not for just cause.

Point 4. The question was whether or not the Accident Review Board's recommendation violated Article 19 of the National Agreement. This particular point was covered in the latter paragraphs of Point 3. In my opinion, the Employer can have any kind of board or committee the Employer wants so long as the function of the board or committee does not violate the wages, hours, or working conditions as found in the National Agreement. Under Article III the Employer has the exclusive right to take disciplinary action against an employee. Discipline of an employee is solely a management function. A supervisor that disciplines an employee should do so after following sound management rules and, when a supervisor follows the recommendations of a board to impose discipline, the supervisor merely uses the recommendations as a shield against the hard realities of making an independent decision. I do not agree with such a practice.

Award

After a careful consideration of all the evidence and upon the foregoing findings of fact I find that the Employer did not have just cause to suspend Adam Urban on October 31, 1981. The Employer will immediately offer to expunge this discipline from the personnel file of Adam Urban and pay Adam Urban the wages he lost by the suspension.


Edmund W. Schedler Jr., Arbitrator
June 3, 1982