

IN ARBITRATION

C#00054

UNITED STATES POSTAL SERVICE,) Case Nos. AC-C-24,104-D, *St. Louis*
and) AC-C-25,606-D, and *Tracy*
) AC-C-25,489-D. *Arbitration*
) Arbitrator's File 78-28-294;
AMERICAN POSTAL WORKERS UNION,) Date of Hearing:
AFL-CIO,) October 24, 1978,
BILLY THOMPSON, Grievant.) Omaha, Nebraska.

OPINION

Issues

1. Are the grievances herein arbitrable?
2. Was Grievant properly suspended under the National Agreement?
3. Was Grievant discharged for just cause?

Facts

Early in the morning on October 18, 1977, Grievant was observed speeding by a deputy sheriff in the vicinity of Omaha, Nebraska. He was stopped by the deputy sheriff, and was in the process of being searched when the deputy sheriff saw what he thought to be a gun in Grievant's possession. This caused a great deal of commotion, since the police feared that they were in jeopardy of their lives.

Grievant attempted to explain to the police that the so-called gun was actually a B.B. gun, and of no danger to anyone. However, the more he attempted to talk of "gun" or to hand it to the police, the more dangerous they considered the situation to be. The upshot of the whole affair is that Grievant was

forcibly and violently subdued.

Several charges were later levied against Grievant, among them felonious assault, a felony.

On May 5, 1978, all charges but one were dismissed by the prosecuting authorities, and the one remaining charge was reduced to simple assault, a misdemeanor. On April 28, 1978, Grievant pleaded guilty to a charge of simple assault of a police officer, and was fined \$100 and court costs.

After Grievant's arrest on October 18, 1977, the Postal Service took the following action against Grievant: On November 11, 1977, Grievant was sent a notice of indefinite suspension based upon the fact that there was reasonable cause to believe that Grievant was guilty of a crime for which a sentence of imprisonment could be imposed.

On May 23, 1978, Grievant was sent a notice of removal based on the fact that he had pleaded guilty to a charge of simple assault and had received a fine of \$100 and costs. The Postal Service stated that this conviction violated regulations which demand that employees be of good character and reputation, and that they must uphold the Constitution and the laws and regulations of the United States and not bring disrepute on the Postal Service.

Discussion and Opinion

The first grievance filed by Grievant is in connection with

his immediate indefinite suspension. The Postal Service has taken the position that the grievance regarding this indefinite suspension was filed beyond the period of time provided for in the National Agreement (15 days).

On November 21st, ten days after Grievant's indefinite suspension, his attorney wrote a letter to the local Postmaster concerning Grievant's indefinite suspension. In that letter, he stated that Grievant wished to appeal the decision, and that "this letter is to formally request an appeal of said adverse action pursuant to the Grievant's arbitration proceedings as outlined in ARTICLE XV of the National Agreement".

It should be noted that the first step of the grievance procedure, as outlined in ARTICLE XV of the National Agreement, provides that the employee must discuss a grievance with his immediate supervisor within fourteen days of the time that the employee or Union has learned of its cause. Therefore, a letter addressed to the Postmaster would be insufficient, since the Step 1 procedure requires contact with the grievant's immediate supervisor.

The Postal Service is therefore correct when it states that the Grievant has failed to follow the proper procedure for grieving his indefinite suspension. The grievance as to the indefinite suspension is, therefore, denied.

Because I dislike deciding grievances on procedural

grounds, I would like to add that had the grievance of Grievant's indefinite suspension been determined on the merits, the result would have been the same as my decision on procedural grounds; that is, it would have been denied. For an indefinite suspension to be valid, the Postal Service need only have reasonable cause to believe that the employee was guilty of a crime for which a sentence of imprisonment could be imposed. (See ARTICLE XVI, Section 3.)

It was very clear - and Grievant never denied - that the original charges levied against him were such charges as could have resulted in a sentence of imprisonment. As a matter of fact, the charge to which he eventually pleaded guilty could likewise have resulted in a jail sentence, even though none was ever handed down. It is true that Grievant was only assessed a \$100 fine, but a short jail sentence for simple assault was still possible. Under those circumstances, based on the Postal Service's investigation, it had a right to impose an immediate indefinite suspension.

As has been previously mentioned, Grievant was issued a letter of removal on May 23, 1978, based on his plea of guilty to the misdemeanor of simple assault. His grievance was rejected on June 20, 1978. In the letter of rejection, the Postal Service stated that Grievant had not answered personally or in writing within the allowable time limit so as to enable the Postal Service

to submit an answer. Based on that fact, and coupled with the opinion of the reviewing officer that the charges were fully supported by the evidence, Grievant's removal was confirmed.

I find, however, that on May 26, 1978, well within the fourteen-day period allowed in the National Agreement, Grievant had filed a formal grievance and thereby initiated the grievance procedure. Therefore, to the extent that the Postal Service rejected Grievant's grievance on procedural grounds, the rejection was erroneous.

However, it is still necessary to review the propriety of the discharge based on the merits of the case. It is clear that Grievant pleaded guilty to a misdemeanor. Generally speaking, misdemeanors are considered of minor importance. That being the case, the adverse effect on the reputation and integrity of the Postal Service would be minimal. Additionally, there appeared to be no publicity of any sort given to the matter, so that, again, the reputation of the Postal Service was not affected.

There is another factor to be considered: the nature of the occurrence involved. This incident arose out of the use of a motor vehicle, and was about on a par with a traffic violation. It did not involve in any way the basic function of the Postal Service, that is, the delivery of the mail. While assault could involve other aspects of the Postal Service in its relations with the public, the risk is minimal in this case because Grievant

was a ZMT operator. As such, he had no contact with the general public. Therefore, his conviction of simple assault would not raise any risk to the general public. It is true that he would have contact with fellow employees, but again, the incident arose out of a motor vehicle situation, and had little to do with intra-personal relationships. This means that the risk to fellow employees is likewise minimal.

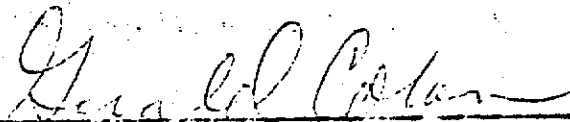
While the Postal regulations and manual specifically require employees to obey the law, nowhere is it stated that disobedience of the law, regardless of the circumstances, will result in automatic and inevitable dismissal. It is generally conceded that the nature and circumstances of a violation may be taken into consideration to determine whether the violation is such as to require dismissal. I would agree that there may very well be a presumption that violation of the law will result in dismissal - unless it can be shown that the presumption in the given circumstances is unjustified.

Under all of the circumstances, it is my view that Grievant's conviction of a misdemeanor arising out of an altercation connected with a motor vehicle would not justify discharge, and that the presumption in his case is rebutted by the circumstances. In other words, Grievant has sustained the burden that the regulations and manual seem to impose on him: that of disproving the correctness of his dismissal for a violation of the law.

The grievance as to Grievant's discharge is sustained, and Grievant is ordered reinstated with back pay. The Postal Service will be entitled to credit for any earnings by Grievant to the date of reinstatement. The Arbitrator will retain jurisdiction to determine back pay if the need arises.

The costs are assessed equally.

Dated this 23rd day of February, 1979.



GERALD COHEN

Arbitrator

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