

C - 22146

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration *

*
between:
*
United States Postal Service *
*
and *
*
National Association of *
Letter Carriers, AFL,CIO *

Grievant: J. Morell
Post Office: Youngstown, OH
USPS Case No: C94N-4C-C 98100429
NALC Case No: 385-97-355

BEFORE:

Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Nancy J. Walters

For the Union: John Dyce

Place of Hearing: Postal Facility, Youngstown, OH

Date of Hearing: April 18, 2001

Date of Award: May 18, 2001

Relevant Contract Provision: Article 19

Contract Year: 1994

Type of Grievance: Contract

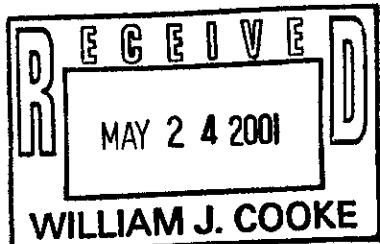
Award Summary:

The Grievant in this case experienced an anxiety attack after his Supervisor confronted him about his work habits. The Grievant's stressful condition also caused him to miss several weeks of work. The Union claimed the Supervisor harassed and intimidated the Grievant by abusing his authority. The Arbitrator found for the Union and sustained the Grievance in part.

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VICE PRESIDENT'S OFFICE
N.A.L.C. HQTRS., WASHINGTON, D.C.



Lawrence Roberts
Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 18 April 2001 at the postal facility located in Youngstown, OH, beginning at 9 AM. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a tape recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION**BACKGROUND AND FACTS:**

The Grievant in this matter is a Letter Carrier at the Poland Station in Youngstown, OH.

On 16 October 1997, there was a confrontation between the Grievant and a Supervisor.

The instant grievance was filed protesting the conduct of the Supervisor. The Union claims the incident caused the Grievant to be absent from work for several months. The Union requests the Grievant be reimbursed for his sick leave time.

The Union asks that punitive damages also be awarded equal to the Grievant's sick leave. Furthermore, the Union requests the Supervisor be removed from his duties.

The record shows this dispute was properly processed through the previous steps of the Grievance-Arbitration Procedure set forth in Article 15.

The grievance could not be resolved at the lower levels of the Grievance procedure and the matter is now properly before the undersigned for final resolution.

JOINT EXHIBITS:

1. Agreement between the National Association of Letter Carriers, AFL-CIO and the US Postal Service.
2. Grievance Package
3. Joint Statement on Violence and Behavior in the Workplace
4. Methods Handbook, Series M-41
5. Methods Handbook, Series M-39

UNION'S POSITION:

According to the Union, this is a very difficult case to present. The Union states there was no physical confrontation between the Supervisor and the Grievant.

The Union agrees the Employer has the right to supervise the work force.

It was asserted by the Union that supervisors must be held to a higher standard of conduct given their position.

The Union suggests the evidence in this matter will show the Grievant was yelled at, called names, and belittled by a Supervisor.

The Union points out both Parties agreed to the Joint Statement on Violence for the purpose of ensuring that every Employee is treated fairly and with respect.

The Union insists the Joint Statement was violated by a Supervisor. And the Union claims the Postal Service condoned the conduct of the Supervisor.

The Union concludes the situation placed the Grievant in a stressful situation.

In settlement, the Union asks that the Grievant be reimbursed for all sick leave used between the period of 16 October 1997 and December 1997. The Union also seeks a punitive award equal to the sick leave used by the Grievant. Furthermore, the Union asks the Supervisor be removed.

COMPANY'S POSITION:

According to the Employer, the Postal Service claims there was no violation of the Parties Agreement or the Parties Joint Statement on Violence.

The Service suggests the Grievant has addressed this same issue in other forums. Management insists this grievance involves similar claims.

According to the Employer, the Grievant filed a worker's compensation claim with the Department of Labor that was denied. The Service also mentions the fact the Grievant filed a discrimination claim with the EEOC that was also denied.

Management suggests the Union will be unable to show the Supervisor acted inappropriately toward the Grievant.

The Employer insists the Supervisor has a contractual right and regulatory obligation to manage the operation.

The Postal Service claims the evidence will show the Supervisor performed his duties by simply managing the operations at the Poland Station.

Management suggests the Union alleges discrimination yet the EEOC disagreed with their perception.

The Agency points out that Article 3 extends certain rights to Management. The Service also suggests the various Handbooks and Manuals are binding as per Article 19.

Furthermore, the Employer insists the remedy requested by the Union is absurd. Based upon the evidence in this matter, the Employer requests the instant grievance be denied.

THE ISSUE:

Did the Supervisor violate the Contract by harassing and intimidating the Grievant? If so, what is the proper remedy?? If so, what is the proper remedy?

PERTINENT CONTRACT PROVISIONS:

**ARTICLE 19
HANDBOOKS AND MANUALS**

"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.

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 the National 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.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement."

DISCUSSION AND FINDINGS:

In their opening statement, the Employer suggested the same issue presented before the undersigned has already been reviewed and considered by both the Equal Employment Opportunity Commission as well as the Department of Labor. In each case, according to the Employer, the Grievant's requested relief was denied. This may be so.

However, I would like to point out that arbitration is a separate and distinct forum of different parameters. Article 15 requires any Arbitrator to base their findings solely on the evidence presented with respect to the language of the Agreement.

Therefore, the findings by any other agency or third party will not be given the weight desired by the Employer in my consideration of this matter. My determination was derived solely on the relevant facts presented at the hearing. My findings are based on the comparison of those facts with the language of the Parties Wage Agreement.

My reasoning is two-fold. First, an arbitrator retains only limited discretion based only on the language of the Wage Agreement. Secondly, the rules of evidence differ vastly between forums. In arbitration, the moving Party is required to prove their claim through the preponderance of evidence. Should that evidence show a violation of an Article or Section of the Agreement, the grievance would be sustained, regardless of the

findings of another agency or third party.

Also, I would like to point out that even though other agencies may have ruled in this matter, the burden of proof required is neither lessened or increased. With that said, the burden of proof in this matter rests with the Union. That burden must be satisfied through the preponderance of evidence presented at this hearing.

One thing for sure is that both Parties have agreed that neither will condone any type of workplace violence. And according to the **"Joint Statement on Violence and Behavior in the Workplace,"** violence is not limited to a physical nature.

All Employees are required to treat others with dignity and respect. In my view, words can sometimes cause more harm than certain physical acts of violence.

It was agreed that both Parties fully support the various workplace Statements and Policies of the Postal Service. In fact, most are nothing more than common sense. In short summary, all support the old adage of treating everyone in the same manner that you would like to be treated.

In this grievance, the Union claims the actions of a Supervisor on 16 October 1997, were violative of several Articles of the Agreement. I find it unnecessary to discuss the

application of each of these Articles to the facts of this case.

Rather, I found that Article 19, through it's acceptance of the various Statements and Policies, to be applicable to the facts of this case.

More specifically, the following paragraph extracted from the "Joint Statement on Violence and Behavior in the Workplace," was found relevant in the instant dispute:

"We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. The need for the USPS to serve the public efficiently 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 that 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."

The Grievant's Carrier Route consisted of one of several nine hour routes at the Poland Station requiring a one hour "hand off." The evidence indicated the Grievant never experienced problems with work duties until a new Supervisor was assigned to the Poland Station.

The evidence also suggested the Supervisor believed that route adjustments needed to be made and often expressed his feelings to other Carriers as well as the Grievant.

Testimony shows that on 16 October 1997, the Supervisor observed the Grievant conversing with a Clerk while casing his mail. Accordingly, the Supervisor felt the Grievant was simply wasting time.

Shortly after observing the Grievant talking with the Clerk, the Supervisor confronted him about the matter in the parking lot of the Post Office. The Supervisor later termed it as a work related discussion. The Union claims that such a matter should have been conducted in a private forum. In that regard, the Union's point is well taken.

The Grievant took offense to the Supervisor's tone and accusations. The Grievant believed he was being harassed and intimidated by his Supervisor.

The record shows the Grievant immediately went to the Supervisor's office to further discuss the matter. He then left to carry his route. But shortly afterward, he returned to the Post Office in tears and in need of medical attention. He was taken to the hospital by the Postmaster.

There is some dispute about the exact content of the two discussions. But there is no doubt the Grievant was seriously affected by the Supervisors actions, regardless of the exchange

of verbatim.

The real issue in this matter is whether or not the Supervisor acted improperly. To that end, it is my considered opinion that the Supervisor's action during that exchange was clearly violative of the previously mentioned paragraph cited from the Joint Statement.

There are many different management styles and Supervisors have a significant amount of latitude, via Article 3, in fulfilling those responsibilities.

In addition, Arbitrators are usually reluctant to question the Supervisory styles of Managers. However, the Joint Statement and the M-39 Manual both address the fact that individuals must be treated with mutual respect and dignity. The evidence in this case shows the Supervisor failed to follow proper protocol in this instance.

While the Supervisor may not have intended to intimidate the Grievant, there is no doubt his actions were both intimidating and threatening. I was convinced the Grievant's anxiety attack of 16 October 1997 was a direct result of the Supervisor's actions.

The Grievant testified that he is obsessive compulsive about doing his work perfectly and conscientiously. In that regard he

expected to be praised, rather than chastised and criticized. Under normal circumstances or between two different persons, the action of the Supervisor may have been accepted or tolerated to a different degree.

Significant is the fact the Supervisor testified he knew the Grievant was obsessive compulsive regarding his work performance. Furthermore, the Supervisor acknowledged he knew the Grievant became easily upset when his work style was criticized.

The Supervisor testified that he still did not understand why the Grievant became so upset on the day in question. However, given the evidence in this case, the Arbitrator feels the supervisor was unnecessarily threatening, intimidating and harassing toward the Grievant on more than one occasion.

In my view, it was incumbent upon the Supervisor to adjust his management style given the fact he was fully aware of the Grievant being obsessive compulsive and overly sensitive to criticism.

The Employer advocate suggested the Supervisor was simply asking the Grievant to do his job. But the evidence clearly shows the Supervisor's comments were accusatory rather than directive in nature or corrective in purpose.

The Employer also insisted that Supervisors should not be required to treat employees with kid gloves. I agree. However, the fact remains that all Employees should be treated with respect and dignity. Clearly this did not occur in this instance.

The record also shows there was extensive references to the hand off routes and the Supervisor's perceived need for adjustments to those routes. Even the Employer's testimony corroborated this claim made by the Union. However, there was no indication that the Supervisor took any action to have the routes inspected and adjusted. Instead, the record shows the Supervisor continued with a pattern of badgering those employees who had the hand off routes.

Article 3 of the Agreement extends to the Service the inherent right to manage the Poland Station. That language is very clear.

On the other hand, the Joint Statement on Violence and Behavior in the Workplace, via Article 19, is of equal contractual weight and deserving of the same consideration.

In this matter it is clear the Supervisor exceeded the authority of Article 3 by clearly violating the Joint Statement on Violence and Behavior in the Workplace.

Accordingly, the instant grievance will be sustained, but only in part. The Grievant shall be made whole for his lost sick leave. Punitive damages are only warranted in matters of blatant proportion. Given the facts of this case, the Service cannot be held punitively responsible for a one time act of this Supervisor.

Furthermore, the Union's request to have the Supervisor removed is simply not an appropriate remedy. Furthermore, the Supervisor has moved to another Station making the possibility of a future confrontation with the Grievant a moot issue.

Therefore, the instant grievance will be sustained in part and the Grievant will be made whole in accord with the above.

AWARD

The Grievance is Sustained in part.

Dated: May 18, 2001
Fayette County, PA