

C# 17589

NORTHEAST REGIONAL REGULAR ARBITRATION PANEL

IN THE MATTER OF ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE

Employer

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Union

GRIEVANT:
CLASS ACTION

POST OFFICE:
YORKTOWN HEIGHTS, NY

CASE NO.:
A94N-4A-C 97029875

BEFORE: ROGER E. MAHER, Arbitrator

APPEARANCES:

For The USPS: Karl Seidel.....Labor Relations Specialist
Steven Spost.....O.I.C. Croton on Hudson

For the NALC: Nicholas Citino.....Business Agent
Jerry Grady.....Carrier
Michael Triano.....Carrier
Charles Ortner.....Carrier

Place of Hearing: 1000 Westchester Avenue, White Plains, N.Y.

Date of Hearing: November 17, 1997

AWARD:

On the substantial and credible evidence of the case as a whole, the Arbitrator finds the USPS violated Article 14.1 of the National Agreement, and the Joint Statement on Violence in the Workplace and District Policy on violence in the workplace when supervisor Spost failed to treat carrier Ortner with dignity, respect and fairness causing the USPS to fail to provide a safe working environment for carrier Ortner.

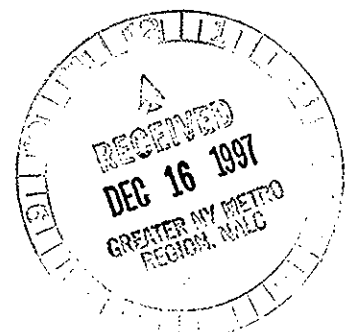
As and for the remedy, the USPS, within ten (10) days of receipt of said Award, shall issue, on behalf of supervisor Spost, a letter of apology to carrier Ortner for his behavior towards Ortner on 11/16/96. The USPS shall post a copy of this letter for ten (10) days on the bulletin board of the subject post office. The USPS shall also reinstruct supervisor Spost as to proper conduct when supervising subordinate employees in accordance with the Joint Statement on Violence in the Workplace, as well as other relevant service and District policy directives.

Date of Award: December 13, 1997

Arbitrator:



Dated: 12/13/97



Pursuant to the arbitration procedures set forth under the National Agreement between the United States Postal Service and the National Association of Letter Carriers, (hereinafter referred to as the "USPS" and the "NALC" respectively) the undersigned was appointed arbitrator to hear and decide the issues herein and to render a final and binding award.

A hearing was held before the undersigned Arbitrator at the office of the Postal Service at 1000 Westchester Avenue, White Plains, N.Y., on November 17, 1997.

The evidence adduced and the position and arguments set forth at the hearing have been fully considered in preparation and issuance of this opinion and its accompanying award. The parties were afforded ample opportunity to present evidence and testimony germane to their positions on the following disputed issue:

ISSUE:

"Whether the USPS violated Article 14 of the National Agreement and the Joint Statement on Violence in the Workplace and District policy? And if so, what shall be the remedy?"

BACKGROUND

This instant arbitration is the result of NALC contention the USPS violated Article 14 (safety and health) of the National Agreement as well as the Joint Statement on Violence and Behavior in the Workplace and district policy on violence in the workplace when supervisor Spost, who was temporarily assigned to the Yorktown Heights, New York, Post office on 11/16/96, acted in an unprofessional and confrontational manner towards carrier Charles Ortner (Grievant), in the parking lot and platform of this station in front of employees and customers.

The NALC asserts, via the testimony of the Grievant and eye witness carrier Triano, that Spost at the end of the tour on 11/16/96, yelled and used disparaging and demeaning comments

toward Ortner. The Grievant and eye witness contend Spost, during his tirade, was banging on a tub the Grievant was pushing into the facility.

The Grievant testified that as a result of Spost's tirade towards him he felt threatened and intimidated. He said Spost's uncalled for actions toward him caused him to be mentally stressed and emotionally injured.

As and for the remedy the NALC argues the Arbitrator has the authority to order supervisor Spost to make a public apology to carrier Ortner on the work floor in front of the carrier craft for his violative behavior on 11/16/96.

Conversely the USPS argues the burden of proof lies with the NALC to establish which section of Article 14 was alleged violated. It submits supervisor Spost did not violate any article of the National Agreement or the Joint Statement and district policy on violence in the workplace in connection with his supervision of carrier Ortner on 11/16/97.

The USPS asserts via the testimony of Spost that he approached carrier Ortner, in the parking lot on 11/16/96, upon Ortner's return to the office, about his extension of street time, but did not verbally abuse or demean Ortner. Spost maintains the Grievant was not on the OTDL and he had given the Grievant assistance in casing his route on the morning in question to ensure that the Grievant would complete his route within his eight hour tour.

Spost said he felt it necessary to question the Grievant as to why he was delayed given the fact the Grievant had not called the office to indicate there were difficulties on his route. Spost maintained he merely made the Grievant aware that his street time was unsatisfactory and that he, Spost would be conducting street supervision of the Grievant the following week to determine if the additional half-hour of work was warranted.

Finally the USPS argues, without admission of any wrong doing by supervisor Spost, that the NALC sought remedy of a public apology by Spost to the Grievant is inappropriate. It asserts there is no contractual basis for an Arbitrator to give instruction to a supervisor who is not covered by the terms of the National Agreement.

For all of these reasons the USPS requests that this grievance be denied in all respects.

OPINION

The Arbitrator having heard the testimony of all the witnesses regarding the alleged incident of 11/16/96, finds supervisor Spost did exceed normal and customary instruction to subordinate, carrier Ortner. The Arbitrator is convinced Spost did yell, scream, jump around the Grievant and bang on the outside of the tub the Grievant was pushing at the time of the incident, and that Spost's tirade continued into the facility. This incident was witnessed by craft employees and customers.

The Arbitrator finds Spost's actions equate to an unjust and unwarranted exercise of his supervisory powers and were meant to embarrass and degrade the Grievant and resulted in emotional injury and stress to the Grievant.

The Arbitrator finds Spost's actions towards the Grievant are violative of Article 14 Section 1 (14.1), "It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force..." The Arbitrator finds Spost's method in dealing with the Grievant and the resultant stress and harassment the Grievant felt as a result of Spost's actions were unwarranted and thereby created an unsafe working environment.

Further the Arbitrator finds the actions of supervisor Spost towards the Grievant were in conflict with the Joint Statement on Violence and Behavior in the Workplace. Same in relevant part states, "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 Arbitrator finds Spost's unprofessional behavior toward the Grievant failed to provide him with dignity and respect.

The Arbitrator respectfully disagrees with the USPS's position that he is without arbitrable authority to direct a supervisor found in violation of the National Agreement and Joint Statement on Violence to issue a public apology. The Arbitrator believes he has the clear authority to remedy a grievance upon a finding there was a violation of the National Agreement.

This Arbitrator also holds, as did arbitrator Snow in his 1996, arbitration decision, that the Joint Statement of Violence in the Workplace constitutes an enforceable agreement between the parties wherein the NALC may use the negotiated grievance procedure to resolve disputes arising under the Joint Statement.

This Arbitrator finds consistent with arbitrator Snow's interpretation and contract construction relevant to enforcing the terms of the Joint Statement, Article 15.1 (grievance and arbitration procedure) that the negotiated grievance procedure is not limited to disputes under the National Agreement. Article 15.1 defines a grievance as "a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the unions which involves the interpretation, application of, or compliance with the provisions of this agreement or any local memorandum of understanding not in conflict with this agreement. Hence

the Arbitrator holds the Joint Statement on Violence falls within the definition of the National Agreement's grievance and arbitration procedure.

The Arbitrator holds the USPS's position in this arbitration is unique in that it seeks to prevent the Arbitrator from applying the terms of the Joint Statement in this instant matter. However, the application of the Joint Statement in arbitration is not new. The USPS in many instances before this arbitrator, has relied upon the Joint Statement as a basis to sustain removal of carriers who exhibited behavior contrary to the Joint Statement. Accordingly the Arbitrator finds the NALC's grievance in this instance is contractually enforceable and the remedy ordered is within his remedial authority.