

C-20536

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	GRIEVANT: Class Action
)	
Between)	POST OFFICE: Rochester, NY
)	
UNITED STATES POSTAL SERVICE)	CASE Numbers:
)	USPS: B94N-4B-C 98103846
and)	NALC: 9812
)	GTS: 17682
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO)	
)	

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Richard C. Francione, Labor Relations Specialist

For the Union: Gerald Vitto, Vice president Branch 210

Place of Hearing: 1335 Jefferson Road, Rochester, NY

Date(s) of Hearing: December 9, 1999

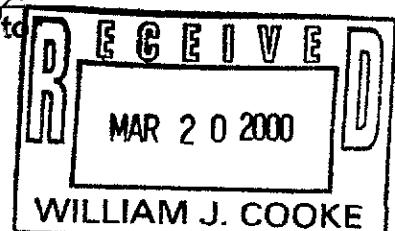
AWARD

I find that the Postal Service violated the Joint Statement on Violence and Behavior in the Workplace. The grievance is sustained.

For the remedy, Station Manager Angelini is directed to cease and desist from intimidating and verbally abusing Postal Service employees. Secondly, Station Manager Angelini is directed to issue a written apology to carriers Gatson and LaTragna for any intimidating or verbally abusive statements and behavior that occurred on December 3, 1997 and March 18, 1998, and for failing to perform his duties in a respectful and considerate manner in accordance with the Joint Statement on Violence and Behavior at the Workplace. A copy of this letter is to be posted for thirty (30) days by the Employer at all locations where employees normally congregate.

Date of Award: March 14, 2000

Sherrie Rose Talmadge
Sherrie Rose Talmadge, Arbitrator



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ISSUES¹

1. Did the Postal Service violate the Joint Statement Against Violence and Behavior In the Workplace?
2. If so, what shall the remedy be?

RELEVANT 1994-1998 CONTRACT ARTICLES and HANDBOOK 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 be continued in effect....

Joint Statement on Violence and Behavior at the Workplace, in part:

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.

FINDINGS OF FACT²

Gwendolyn Gatson, the Grievant, is a woman of color who has been a letter carrier for eighteen years with the Rochester Post Office. For six years she has had an inner city route. On March 18, 1998, after returning from her route, she had a discussion with Manager of Customer Services, Frank Angelini, and the Postal Service Inspector about her ongoing problems with three families, members of the Ku Klux Klan, who had moved to her route. She informed Angelini that they called her "nigger bitch" and that she did not feel safe on her

¹ The parties were unable to agree to the framing of the issue. Consequently, the arbitrator chose to adopt the broader issue offered by the Union.

² At the hearing both parties had an opportunity to question witnesses under direct and cross-examination, and to submit relevant documentary evidence. At the conclusion of the hearing the

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route. This was not the first time that she had discussed her safety concerns on the route. She had previously informed Angelini that one of the brothers had left a picture of "mambo" on his mailbox, and would say to her "Three niggers a week is all I want."

During the March 18 discussion, Angelini informed her that one of the brothers had called Angelini and stated that he wanted his mail delivered between 11:00 – 11:15 a.m. every day because he wanted to know what time to put his dog outside. Angelini directed her to deliver the customer's mail with a specified scheduled half-hour time slot. Gatson, who wanted protection if she had to be there at a specific time on a daily basis, had asked Angelini if he would walk with her on that part of the route and pointed out that she had personal knowledge about what the KKK could do. Angelini declined to accompany her. Angelini testified that he suggested to Gatson that if she wanted someone from management to walk with her she should call from the route. He also informed her that they had investigated the customer and had not found any problems.

Gatson became upset and told Angelini that the route was not safe and that he was not listening or trying to protect her. Both Gatson and Angelini became loud and heated. Gatson testified that Angelini began screaming and put his finger within inches of her face while yelling, "This is my fucking Post Office." In turn, Gatson twice yelled, "fuck it!" Gatson also testified that he yelled, "Get the fuck out of this building, or you could lose your job!"

Angelini testified that Gatson had become out of control, yelling and swearing, "Fuck you, fuck the Post Office". He testified that in order to be heard

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he spoke loudly directing her to stop swearing and five or six times directed her to "Leave the building now". He pointed out that she had previously engaged in outbursts at the post office. Angelini also testified that he never swore during the March 18 incident.

Jeff Tucker, a letter carrier for twenty-one years, who observed the incident from his work area five to six feet away, corroborated Gatson's version of the events. Tucker, concerned that the discussion was escalating, came by to calm Gatson down and suggested that she leave the building as directed. Gatson left the building and sat in her car for twelve minutes to regain her composure, and then went home.

On March 24, 1998, Angelini issued Gatson a seven-day suspension for disrespectful behavior towards a supervisor (i.e., yelling and swearing).

Gatson testified that although she is not a pushover, she felt threatened by Angelini because she did not know whether he would hit her or fire her, based on her prior observations of his behavior. Three months earlier, on December 3, 1997, carrier Pete LaTragna had a disagreement with Angelini on the workroom floor. LaTragna, after becoming upset, went into the swing room followed by Angelini. The Manager yelled at him to get back to his case. Gatson, Tucker and Steward Thomas Palmiero had observed Angelini challenge LaTragna to go outside with the words, "Come on you fucking punk". Because the situation had become heated, Steward Palmiero had suggested to Pete's supervisor that he accompany Angelini home. Palmiero testified that when the supervisor took Angelini home he had stated, "Why do I have to leave, this is my fucking place?"

In contrast, Angelini testified that during the incident with LaTragna, Pete had come to his office with the Union steward and supervisor. While in the Manager's office, with the door closed, Pete stated that he wanted to hit Angelini, and Pete had to be restrained by the others. Angelini told him that if he hit him Pete would lose his job. Angelini noted that throughout this incident the Manager's door was closed, and thus neither Gatson nor Tucker witnessed it.

Station Manager Angelini pointed out that throughout his seventeen-year career as a supervisor, he had consistently received good evaluations and two that were outstanding.

POSITIONS OF THE PARTIES

UNION'S POSITION

The Union argued that the Station Manager's behavior on March 18 violated the provisions of the Joint Statement on Violence and Behavior. Gatson approached Angelini to request assistance to make an unsafe situation safer. Both Gatson and the Station Manager used profanity. He approached her with his finger in her face. He bullied her in this case when he told her that she would do what he told her, or it would be her job. Even if he disagreed with the extent of the problem, it did not negate his responsibility to deal with an employee in the appropriate fashion. Tucker and the steward supported Gatson's version of events.

The Union contended that Angelini's testimony was inconsistent. Although he disciplined Gatson for disrespectful behavior towards a Manager, he testified that he told her five to six times to leave the building and stop swearing,

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however there was no discipline for failure to leave the building. Moreover, this was not an isolated incident for this Manager. Three months earlier he engaged in similar behavior against a carrier in front of the workforce. Angelini's testimony that the December 3 incident took place behind closed doors was not credible, in face of the three Union witnesses who testified that it took place in the swing room in front of many of the workforce.

The Union expects Management to adhere as strictly to the rules and Agreements as does the Union. Gatson admitted that she was wrong for raising her voice, and was quickly disciplined. The Union asked that there be equal treatment for those who represent Management. The Union contended that Station Manager Angelini failed to treat Gatson with dignity, respect and fairness. Consequently, the Union requested that Angelini be removed from his administrative duties and that he not be allowed to supervise letter carriers. In support of its position the Union cited the decision of Arbitrator Bajork, NALC and USPS, [Case No. G94N-4G-C 96018834, 96018758 (June 23, 1997)], who sought to remedy a class action against a supervisor with documented ongoing hostilities with many members of the letter carrier craft that he supervised.

POSTAL SERVICE POSITION

The Service asserted that the Union did not carry its burden of proving that Station Manager Angelini violated the Joint Statement. Although Gatson testified that she believed that a customer on her route was a threat, her failure to contact the Inspectional Service, local police, management or a Union representative to address her concerns call into question her assertion that she

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feared for herself. Management testified that the customer wanted to know when he would regularly get his mail to find out what time he could put his dog outside. There was no evidence that the situation described by Gatson ever existed.

Through the testimony of both parties, the March 18 incident began by the simple instruction of Management informing Gatson when to deliver the mail to the customer. The answer did not satisfy Gatson, and her voice escalated through the incident. The witnesses testified to Gatson's temper. Due to her vulgarities directed at the Manager discipline issued. This is a retaliation grievance by Gatson. Even if Management told her to "Get the fuck out of the station" his words did not violate the Joint Statement. Angelini, whose evaluations ran from good to outstanding, is experienced and knows self control.

The Union's requested remedy, removing the Station Manager from his administrative duties and not allowing him to supervise carriers, is inappropriate. To relieve him of administrative duties conflicts with the language of Section 650 of the ELRM, providing managers with due process rights. The National Agreement covers protections for letter carriers. Article 1 identifies the NALC as exclusive bargaining representative of carriers, and excludes managerial and supervisory personnel. Thus, the Union's requested remedy is outside the confines of the National Agreement. The Service argued that the Union failed to meet its burden, and requested denying the grievance in its entirety.

DISCUSSION

At issue is whether Station Manager Angelini's actions on March 18, 1998 and December 13, 1997 violated the Joint Statement on Violence and Behavior

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at the Workplace. I conclude that the Station Manager violated the National Agreement and the Joint Statement when he intimidated and verbally abused letter carriers on those dates.

Article 19, Handbooks and Manuals, incorporates into the National Agreement "all handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or working conditions. ..." In the Joint Statement the parties have further codified the importance of treating all employees with mutual dignity and respect. In his 1996 national arbitration award Arbitrator Snow held that the Joint Statement is a contractually enforceable agreement between the parties and may form the basis for a grievance. USPS and NALC, [Case No. Q90N-4F-C 94024977]. The Joint Statement specifies "We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness." As regular panel Arbitrator Leonard Bjork noted, the Snow award enforces the Employer's promise to the Union that it will "take action" against supervisory and other non-bargaining unit personnel who demonstrate abusive and intolerant behavior with others. USPS and NALC, [Case No. G94N-4G-C 96018834, 1997].

I find that the Union has met its burden of proving, by a preponderance of the evidence, that the events and conversations, more likely than not, took place as described. I credit the testimony of Union members Gatson and Tucker, and Steward Palmiero who was present during the December 3 incident, all of whom testified similarly to loud, abusive and intimidating language used by Angelini

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towards the carriers on the workroom floor, both in the case of Gatson and LaTragna. I do not find persuasive Angelini's testimony, without corroborating witnesses, that he refrained from using profanities and did not behave in a verbally abusive manner towards either carrier.

I find that Angelini's conduct towards Gatson exceeded the bounds of mutual dignity and respect. On March 18, 1998, Gatson, a woman of color and long-time postal employee, sought assistance from her Station Manager because she felt justifiably threatened by customers on her route who were believed to belong to the KKK. When informed by the Station Manager that one of these brothers had called the office to establish a regular time for her to deliver mail, she became further alarmed and sought assistance for her safety during that portion of her route. Admittedly, Gatson became loud and shouted profanities. However, Station Manager Angelini, who represented the Service in the position of authority, pointed his finger close to Gatson's face, and in a loud and threatening tone used profanities while ordering her out of the building. Gatson was distraught and frightened by what had occurred and had to be calmed down by her co-worker. Having witnessed an occasion three months prior further exacerbated her distress at his behavior when the Station Manager had become loud and enraged against another carrier, and had challenged the carrier before other members of the workforce.

Consequently, I find that Angelini's verbally abusive and intimidating behavior towards Gatson and LaTragna violated the Joint Statement when the

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Station Manager failed to act in a respectful and considerate manner towards the carriers.

Under the facts of this case, Station Manager Angelini is directed to cease and desist from intimidating and verbally abusing the employees. Secondly, Station Manager Angelini is directed to issue a written apology to Gatson and LaTragna for any intimidating or verbally abusive statements and behavior that occurred on December 3, 1997 and March 18, 1998, and failing to perform his duties in a respectful and considerate manner in accordance with the Joint Statement on Violence and Behavior at the Workplace. A copy of this letter is to be posted for thirty (30) days by the Employer at all locations where employees normally congregate.

There is precedent for such a remedy in Arbitrator Thomas F. Sharkey's decision USPS and NALC, [Case No. A94N-4A-C 96064384 (1998)] in which he ordered a Manager to issue a face-to-face and written apology to the grievant, to be posted for 30 days, for the supervisor's inappropriate conduct. Arbitrator Kenneth McCaffree issued a similar remedy in USPS and NALC, [Case No. E90N-4E-C94 054971(1996)].

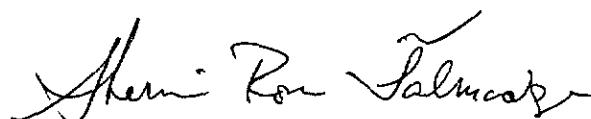
Although, in this case, the Union requested that the Station Manager be prohibited from supervising members of the letter carrier craft, I do not order disciplinary action against Station Manager Angelini. I find that Angelini's actions do not rise to the level of ongoing hostilities with the members of the carrier craft that Arbitrator Bajork found in his previously cited 1997 decision.

AWARD

I find that the Postal Service violated the Joint Statement on Violence and Behavior in the Workplace. Accordingly, the grievance is sustained.

For the remedy, Station Manager Angelini is directed to cease and desist from intimidating and verbally abusing the employees. Secondly, Station Manager Angelini is directed to issue a written apology to Gatson and LaTragna for any intimidating or verbally abusive statements and behavior that occurred on December 3, 1997 and March 18, 1998, and for failing to perform his duties in a respectful and considerate manner in accordance with the Joint Statement on Violence and Behavior at the Workplace. A copy of this letter is to be posted for thirty (30) days by the Employer at all locations where employees normally congregate.

Respectfully submitted by:



Sherrie Rose Talmadge, Esq., Arbitrator