

C-20990

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

Grievant: P. Reed
Post Office: Mandeville, LA
USPS Case No: G94N-4G-C 98112857
NALC Case No: 9803, GTS 014597

BEFORE: Elvis C. Stephens **ARBITRATOR**

APPEARANCES:

For the U. S. Postal Service: Ronald Dixon
For the Union: George Cooper
Place of Hearing: Mandeville LA
Date of Hearing: July 6, 2000
Date of Award: August 26, 2000

Relevant Contract Provision: Article 2, 14, 19

Contract Year: 1998 - 2001

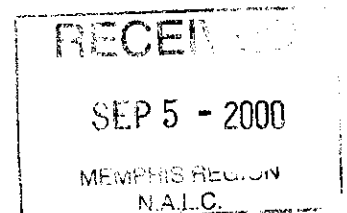
Type of Grievance: Request supervisor be removed from management, and for punitive damages to Grievant.

Award Summary:

The Union has not met the high burden of proof to justify punitive damages. However, the arbitrator will retain jurisdiction of the case until Management has supplied evidence of what corrective action/discipline it administered to Mr. Yates for his unprofessional and inappropriate remarks. The arbitrator also retains the right to issue appropriate corrective action/discipline for Mr. Yates if whatever he received is deemed inadequate.

Elvis C. Stephens

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ISSUE

Was the contract violated by the alleged remarks of the supervisor and the results therefrom, and is the remedy proper?

INTRODUCTION AND BACKGROUND

On July 6, 2000 there was an arbitration hearing on the above referenced grievance at the Mandeville, Louisiana Post Office. The arbitrator had been appointed to the case in accordance with the procedures agreed to by the parties. During the hearing the parties had opportunity to introduce evidence, and present and cross examine witnesses. Post hearing briefs were filed, and were received by August 11, 2000. In keeping with a desire expressed by both Management and Union officials in a joint training session for arbitrators in Coppell, Texas on March 16, 2000, the arbitrator will try to write this award in a concise manner.

The Grievant is a City Letter Carrier in Mandeville, Louisiana. On Monday, March 23, 1998 Mr. Donald Yates rode with the Grievant on Route 4812 as part of the route inspections for that office. According to the Grievant Yates exhibited a belief that women are inferior workers and should not be in the carrier craft. He told her that he had never seen a woman retire as a carrier. He also criticized her driving as too slow.

The Grievant claimed that Yates rode with other carriers the next two days, and made derogatory remarks about her.

On Friday, just as she was leaving for the street, another supervisor followed her out and rode with her on her route. Later that afternoon she began to hemorrhage, and could not have completed the route if it had not been motorized. She continued to loose blood on Saturday, and Sunday she went to the hospital where she was given blood. A month later she had a hysterectomy.

A grievance was filed on June 25, 1998 alleging that "Ms. Reed was singled out and criticized because she is a woman and apparently Mr. Yates does not appreciate women in the

workforce. Furthermore, the USPS jeopardized Ms. Reed's health by unduly subjecting her to abnormal levels of stress and demeaning remarks by Mr. Yates to and about her." The grievance contends that Yates made derogatory remarks about Reed to at least three other carriers.

The grievance requested that Yates be removed from any managerial position; Ms. Reed be reimbursed for all sick leave used; she be paid \$25,000 in punitive damages, and that such settlement be in writing. The parties could not resolve the grievance; thus it was advanced to arbitration.

POSITION OF THE UNION

The Union contends that the Postal Service has already admitted that the remarks made by Route Examiner Yates were unprofessional and unacceptable. This is shown by looking at both the Step 2 and Step 3 answer. Both answers admit that Yates' conduct was unacceptable.

The record is clear that such behavior was responsible for the Grievant's mental and physical trauma. Dr. Oscar Mendez's letter of April 7, 1998 states that the Grievant's traumatic stress was responsible for either the reoccurrence of a previous medical condition, or disruption of a present but controlled medical condition.

Arbitrator Carlton Snow held in case Q90N-4F-C 94024977 that the Violence in the Workplace joint statement can be the source of remedies for such behavior. Also Arbitrator Bajork (case H94N-4H-C95041405) held that action may be taken against a manager for misconduct toward an employee. A mere slap on the wrist for Mr. Yates is not sufficient for the trauma Ms. Reed has suffered.

The Grievant was treated different from other carriers. Such unequal treatment is addressed in Elkouri's "How Arbitration Works."

POSITION OF THE SERVICE

The Service contends that the Grievant claimed that she was singled out and criticized by a supervisor during a route inspection on March 23, 1998. However, she did not file a grievance until after the Shop Steward looked into her case and finally filed on April 28, 1998.

The Service contends that the Union has not produced any evidence to prove that any comments made by Mr. Yates precipitated any illness of the Grievant, which resulted in her surgery.

The Grievant testified that Yates told her, during the route examination, that he had never seen a woman retire from the Service as a letter carrier. However, when asked if she reported this to management, she agreed that she had not. She also testified that on Friday another examiner rode with her. She contends that she was singled out for this treatment because she is a woman. When her bleeding began during the day, the supervisor allowed her deviate from the route to secure personal items from a store. She called her doctor that night, and later checked in to a hospital since the bleeding had not stopped. She was out sick for several weeks. She believes that her extreme nervousness due to the route inspections caused her to experience the bleeding and the later surgery.

Shop Steward Gerald Strecker testified that he did not know why the Grievant was inspected twice, but agreed that one other carrier had also been inspected twice on the street. He also testified that the week of inspection is very stressful.

Mr. Wallace testified that he rode with the Grievant on her route on Friday because management wanted additional information about her route to insure that it was properly adjusted. He testified that she had had female problems before, and that the Grievant had discussed this with him over a year earlier. She was selling a "Wild Yam Cream" to co-workers and used the cream herself to correct an irregular menstrual cycle.

Mr. Yates testified that it was not uncommon for route examiners to take notes during the examination, or to give instructions to carriers, especially where safety is concerned. He testified

that the Grievant was not going the speed limit and retraced the same territory. He did not recall making any derogatory remarks to the Grievant, nor to others about the Grievant.

Based on all of the documents and testimony presented at the hearing, it is clear that the Union did not prove that Yates made derogatory remarks to the Grievant which resulted in her female problems, and later surgery. The evidence shows that she has had a history of female problems. She corroborated this by her own testimony.

Yates rode with the Grievant on Monday, March 23, 1998. She did not complain of any illness at that time. If the claimed remarks upset her, why didn't she complain to management the same day. She had a casual conversation with Supervisor Wallace about Yates' attitude on March 27, when Wallace rode with her on the route. But she did not complain about such remarks by Yates then.

In fact, she did not even contact the Union about this incident until approximately one month later. Thus, all the evidence supports the conclusion that her problems were not caused by the Postal Service. Her grievance is merely an attempt to have the Service pay all her medical bills.

Even if Yates had stated that he had never seen a woman retire as a carrier, that is not a harmful error. Arbitrator Marlatt, in case S4C-3W-C 24292, stated that "In order to overturn an action which is the subject of a grievance, it must be shown by the Union that the procedural irregularities constituted 'harmful error.'" The Union has not show harmful error in this case.

DISCUSSION AND OPINION

The question of whether or not the remarks by Mr. Yates were unprofessional and inappropriate need not be decided by this arbitrator. That determination has already been made by the managers who handled Step 2 and 3. Postmaster Palisi wrote in his Step 2 decision "Management agrees that such statements are inappropriate and unprofessional." Labor Relations Specialist Ronald Dixon, in his Step 3 decision, wrote "It is the Postal Service's

position that the statements made by the supervisor are inappropriate and unprofessional. Comment concerning an employee's performance should be documented on the proper forms, during route examinations."

Thus, the question before this arbitrator concerning Mr. Yates is whether or not he was properly dealt with for such remarks. Postmaster Palisi stated in the Step 2 decision "Recommendation for appropriate corrective action/discipline for Mr. Yates improper comments has been addressed to his superiors. Along with these, it has been recommended that Mr. Yates not be allowed to conduct or participate in any route inspection at the Mandeville Post Office."

However, we do not know what corrective action/discipline was actually administered to Mr. Yates. Arbitrator Snow, in case No. Q90N-4F-C 94024977/94024038 holding that the Joint Statement of Violence and Behavior in the Workplace constituted a contractually enforceable agreement between the parties, that "...arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies...." (P. 22) Thus in keeping with Arbitrator Snow's award, this arbitrator will retain jurisdiction of this case and require management to furnish him with information as to what corrective action/discipline was actually administered to Mr. Yates. If such corrective action/discipline does not seem adequate, the arbitrator will formulate an appropriate remedy.

The next question which must be answered is whether or not the Service should pay the Grievant punitive damages and/or her medical bills.

The Union points to the letter of April 7, 1998 by Dr. Mendez as supporting the Grievant's claim. However, Dr. Memdez does not state a firm conclusion that the remarks by Yates caused her condition. He states that "Her diagnosis was Abnormal Vaginal Bleeding and severe anemia and possibly aggravated by stress." (Emphasis added.) The Grievant has a history of previous problems. On one of the medical documents in the file (p. 43, Joint Ex. 2) under the heading of Physician Findings" is noted: "Had this 1 ½ yrs ago & had D&C which helped x 3 mos. Put on BCP but side effects made her get onto Proresterone (spelling unclear) cream which did well until Fri." Also, Supervisor Wallace testified that she had discussed her problem with

her over a year prior to the grievance. She had been selling a Wild Yam cream to co-workers and was using it to correct her irregular cycle. Also, Wallace stated that her husband told him that on more than one occasion he had begged the OB/GN who had been treating her to do a hysterectomy, but he had refused.

We also have the testimony from Shop Steward Strecker that route inspections are always stressful. It is probably uncontested that his observation is correct. It is also true that when one accepts a position he or she accepts the normal stress which accompanies that position. Route inspections and the resulting stress which come from them are a fact of life in the job of a letter carrier. Whether or not Yates' remarks or the stress of that week caused her problems is unclear. Her problems did occur at the end of that week, but we also know that she did not complain of her treatment by Mr. Yates until almost a month later. She had the perfect opportunity to complain on that Friday when Supervisor Wallace accompanied her on another inspection of her route, but she did not.

She claimed to have been singled out because she was a woman, but there was testimony from Mr. Wallace that he rode with her to gather more information about her route – which, from the testimony of all concerned, appears to have needed some adjustment. Wallace also testified that another carrier was given a second route inspection.

Considering all of the above factors, the arbitrator holds there is insufficient evidence to warrant awarding punitive damages. To award punitive damages one needs to prove one's case with a high degree of certainty. That degree is lacking here.

In conclusion, the Union has not met the high burden of proof to justify punitive damages. However, the arbitrator will retain jurisdiction of the case until Management has supplied evidence of what corrective action/discipline it administered to Mr. Yates for his unprofessional and inappropriate remarks. The arbitrator also retains the right to issue appropriate corrective action/discipline for Mr. Yates if whatever he received is deemed inadequate.