

NALC-USPS REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

Between Case No. B06N-4B-D 13035360
The National Association of 0114312
Letter Carriers DRT No. 14-257379

And

The United States Postal Service

Before: Marilyn H. Zuckerman, Esq., Arbitrator

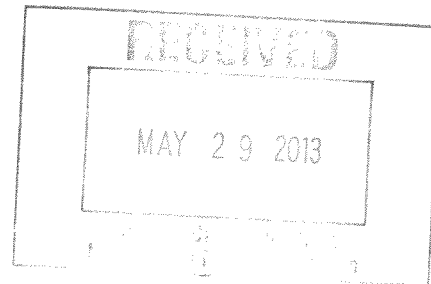
Appearances:

For the Union: Charles Carroll

For the Service: Marylou Millett

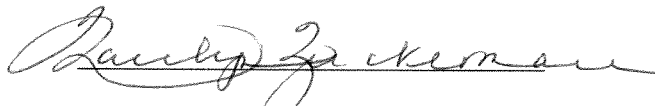
Dates of Hearing: April 9 and 16, 2013

Place of Hearing: Waterbury, CT

AWARD

Management did not violate the National Agreement, Articles 16 or 19 when it issued the Grievant a Proposed Notice of Removal dated November 20, 2012 and a Letter of Decision dated December 14, 2012 for an incident occurring on September 14, 2012. The grievance is denied.

May 22, 2013


Marilyn Zuckerman

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BACKGROUND

On November 20, 2012, the Service issued a Notice of Proposed Removal to the Grievant, Michael Pizzuto, Jr., a Letter Carrier of some twenty years. The Proposed Removal arose from an incident on September 14, 2012 in which the Grievant and Postmaster Marciniak of the Waterbury, CT office had an argument as part of a street observation during which the Grievant was not using a satchel to deliver mail. The argument escalated as will be described herein, and the Postmaster demanded the keys to the Grievant's van and told him that he was off the road. Pizzuto did not comply despite repeated requests from the Postmaster and said that he was going to complete his route. According to the Postmaster, he was standing a few inches from the Grievant's van in front of it in the street and the Grievant started it up and rolled into the Postmaster twice. The police were called. During the incident, the Grievant referred to Management as "Al-Qaeda." However, the Postmaster was not injured and decided to handle the matter internally. The present removal action followed. In the Notice of Proposed Removal, Pizzuto was charged with Unacceptable Conduct in Violation of the USPS Zero Tolerance Policy; Failure to Follow Instructions; and Failure to Work in a Safe Manner. The Letter of Decision on the Removal was dated December 14, 2012.

The Removal Decision was preceded by two 14 Day Suspensions for Insubordination/Failure to Follow Instructions and/or Unacceptable Conduct (pp. 56 and 63 of the Joint File). The May 21, 2012 Notice of 14 Day Suspension for Unacceptable Conduct states that the Grievant referred to Manager Kalahar and Supervisor Gelzinis as "two assholes" and asked a Union Steward to get the Manager "fucking out of my face". The June 28, 2012 Notice of Proposed Removal which was reduced to a 14 Day

Suspension by the B Team states that the Grievant failed to follow the instructions of Postmaster Marciniak and called him “a big fucking asshole” while he was walking away from the Grievant’s case. The two 14 Day Suspensions were preceded by two 7 Day Suspensions dated December 3, 2011 and January 9, 2012 for Unacceptable Conduct, Violation of the Zero Tolerance Policy and for Failure to Follow Instructions.

The subject of the present decision is the December 14, 2012 Removal. The case was heard in arbitration in two days and the parties submitted evidence which is summarized as follows.

Management’s case.

Postmaster Marciniak testified that he has thirty two years of postal experience and that he has been the Postmaster in Waterbury, CT since April 2012. The Grievant had a non-scheduled day on September 14, 2012. He was called in on overtime. At approximately 1:45 p.m. or 1:50 p.m., the Postmaster was talking to a supervisor about potential issues for that night. She said that the Grievant had put in a 3996, Request for Auxiliary Assistance. The supervisor told the Postmaster that the 3996 was not warranted because the carrier left for the street on time. The Postmaster said that he went home that way and could check on the Grievant on the street.

Later in the afternoon, the Postmaster went out to find the Grievant. The Postmaster drove around on his route and could not find him. The Postmaster went to another delivery point and found him delivering mail. The Postmaster pulled up behind the Grievant who pulled away to his next stop which was a funeral home. Marciniak followed Pizzuto to that point and parked one to two feet behind his vehicle. The Postmaster saw the Grievant get out, go in the funeral home and drop off mail. The

Grievant went back to his vehicle, so the Postmaster followed him there. Marciniak assumed that Pizzuto was going to move his vehicle somewhere else. But Pizzuto was at his van getting his next loop of mail. The Grievant said to the Postmaster, "Don't you people have anything better to do than watch me do my job?" Marciniak asked the Grievant why he did not take this mail at the same time that he went into the funeral home.

Pizzuto walked across the street and yelled back: "I forgot my scanner. I have a package to deliver. What do you want me to do?" The Postmaster did not respond because he was talking on his cell phone. The Grievant repeated his question. The Postmaster did not respond. So the Grievant walked back to his vehicle. The Postmaster asked him why he did not have his satchel. Pizzuto said that he does not use a satchel. The Grievant came back to his vehicle, got the scanner and went back to where he was. The Postmaster then crossed the street. These events took place near the intersection of Bank and Washington Streets in Waterbury, CT.

The Grievant had approximately two inches of mail in his hand and one small parcel. The Postmaster observed him delivering the small parcel and a unit of boxes. Pizzuto did a store and a restaurant and walked up the street where he had a few more deliveries. The Grievant then came across the street to the same side that the vehicle was on. He made one or two deliveries and then came back to the vehicle. He grabbed another couple of inches of mail.

Marciniak again asked the Grievant about the satchel. Pizzuto said, "Don't you people get it, I don't use a satchel." The Postmaster said that a satchel is not only for the mail because it also holds dog spray which the carrier is supposed to have with him.

After Pizzuto made a few more deliveries, Supervisors Dave Gelzinis and Paul Bianca drove by. They asked the Postmaster if they should continue on and he said Yes. The Postmaster asked the Grievant what time he would be back. He said when he was finished. Marciniak asked Pizzuto how much time? He said two or two and a half hours.

When the supervisors drove by, the Grievant got very upset. He said, "Don't you people have anything better to do than watch me work." He was screaming in the Postmaster's face. Marciniak told him to continue to deliver the mail. According to the Postmaster, the Grievant kept screaming. Marciniak told Pizzuto that he was taking him off of the route. Marciniak told Pizzuto to give him the keys to his vehicle. The Grievant refused to give up his keys. He continued up the street to deliver mail.

The Postmaster called the supervisors who had left the scene and asked them to come back because he thought that he might have difficulty taking the Grievant off of the street. The Grievant kept going and walked back to his vehicle. The supervisors arrived and parked in front of Pizzuto's van. The Postmaster testified that the supervisor parked ten to twelve feet in front of the Grievant's vehicle. The Postmaster's vehicle was still behind the Grievant's. The supervisors were driving a white postal vehicle, while the Postmaster had driven his personal vehicle which is a beige Honda Accord. As the Postmaster was speaking to the supervisors, he could see the Grievant walking back to his vehicle.

The Postmaster again asked the Grievant for his keys. Marciniak told Pizzuto that he was taking him off of the road. He refused. He said that he was going to continue to deliver the mail. The Postmaster had been standing on the sidewalk, but he went into the street in front of the Grievant's vehicle. Then Pizzuto came back to the van, got in and

placed it in drive. He did not accelerate, but his vehicle rolled into the Postmaster and bounced him back six inches when the vehicle hit his legs. Marciniak looked over at the supervisors and asked, "Did you see that?" They said "Yes." The Postmaster asked them to call 911. Supervisor Bianca was screaming at the Grievant to shut the vehicle off. Then the Grievant's vehicle rolled into the Postmaster a second time pushing him back.

The police came a couple of minutes later. They asked the Postmaster what happened. They asked him if he was hurt and he said No. The bumps from the Grievant's vehicle startled him, but didn't hurt him. The Postmaster could not believe, however, that the Grievant rolled into him a second time. Marciniak did not press charges. He wanted to handle the matter administratively.

The Postmaster testified at arbitration that he did not jump in front of the Grievant's vehicle from the curb. Marciniak was standing in the street in front of the Grievant's vehicle. A Union Steward arrived after the Postmaster was hit. A Police Officer went to the Grievant's window and asked him to give over the keys which he did. He said that he would listen to the police and to the union rep, but not to Management because they are Al Qaeda.

The Union Steward brought the Grievant back to the Post Office in the same vehicle that the Grievant was driving. A Manager drove the Union Steward's vehicle back.

Marciniak testified that the Grievant had a pattern of failing to follow instructions. Management had tried to correct his behavior. Marciniak called Felicia Adamski from Labor Relations and she said to put the Grievant on Emergency Placement. That was done, but it was later resolved by the B Team.

Manager, Customer Services, David Gelzinis testified at arbitration that he has worked for the Service for fourteen years and has been in Waterbury, CT for three years. He was the issuing supervisor on Pizzuto's Notice of Removal. When Gelzinis arrived at the scene on September 14, 2012 after Marciniak called him, the Postmaster told him that he had asked for the Grievant's keys to take him off of his route and that Pizzuto refused. The Grievant then started his van and rolled into the Postmaster who was standing in front of the vehicle. Gelzinis witnessed this because he was standing in the road about 10 feet behind Marciniak. Supervisor Bianca was standing on the sidewalk. Gelzinis testified that the Postmaster did not jump up at the Grievant's vehicle. The Grievant rolled into the Postmaster twice with the van. The Postmaster asked Gelzinis if he saw that and he said Yes. The Postmaster said call 911 and Gelzinis did. The Police came within minutes and a Union Steward came.

The Police Officer asked the Grievant for the keys. He got out of his vehicle and gave them to the police. The Grievant said that he would give the police the keys or that he would give them to the Union Steward, but not to Management because they were Al Qaeda.

Gelzinis was interviewed by the Postal Inspection Service. He also conducted the PDI with the Grievant on October 19, 2012. According to Gelzinis, Pizzuto never acknowledged responsibility for the September 14, 2012 incident. He did not show remorse. He asked the Service to consider Financial Hardship, Emotional Distress, Public Humiliation, Slander, Management Serial Bullying and Harassment. (See Notice of Proposed Removal, November 20, 2012, p. 30, Joint File.) Gelzinis asked the Grievant in the PDI how Management could be reassured that he would not repeat the incident of

September 14. According to Gelzinis, Pizzuto said that he could not give that reassurance. He said that he would never strike a customer or a carrier, but Management was asking for trouble. Gelzinis thought that this was a threat. He felt that he would always have to watch his back.

Gelzinis wanted to make sure that he had all the facts before issuing discipline. He considered that the Grievant was a veteran of the Marines. Gelzinis was also. But in deciding on the removal, Gelzinis felt that the Grievant was not going to correct his behavior. He had two prior 14 Day Suspensions. In the second one which was reduced from a removal by the B Team, he was urged to correct his behavior and he didn't. He showed no signs of correcting his behavior during the incident of September 14, 2012 or the PDI of October 19, 2012.

Postal Inspector Matthew Morrison testified at arbitration that he interviewed the Postmaster, the two Supervisors and the Grievant in the present case. The Grievant said that he entered his vehicle, started it up and then the Postmaster stepped in front of the vehicle. The Postmaster and both Supervisors said that there was a second contact. When Morrison interviewed the Postmaster, he did not say that he was in fear for his life. None of the Managers felt an immediate threat. There was no injury to the Postmaster during the September 14, 2012 incident and the situation was diffused.

At arbitration, Senior POOM Theodore Goonan testified that he is the final concurrence on all removals in the Connecticut District. He considered that Pizzuto struck the Postmaster twice. The Grievant had two prior fourteen day suspensions in the same calendar year. The Grievant's aggression was a major concern. The Postmaster's wife is afraid of further aggression from Pizzuto and is bolting the family doors at night.

Goonan felt that Management was going to pay down the road for any problems that the Grievant had. Goonan therefore concurred in the removal.

Union's case.

Steward David Adeyemi testified that he handled the informal Step A and the formal Step A of the present grievance. He was also present at the PDI on October 19, 2012. According to Adeyemi, the Grievant did not say that Management was asking for trouble. He did say that he would never roll his vehicle into or strike anyone, customers, Management or anyone else. The Grievant had never had an accident nor was he unsafe. Based on what the Grievant told Adeyemi and the police report, the Steward does not believe that the Grievant hit the Postmaster with the van. These vans are not clean. There was no dirt on the Postmaster's light colored pants after the September 14, 2012 incident.

At arbitration, Steward Edward Alarcon testified that he received a phone call from Supervisor Dave Gelzinis on September 14, 2012 and went to the scene. Alarcon was told that the Grievant tried to hit the Postmaster twice. Alarcon looked at Marciniak and didn't see any dirty stains on his khaki pants. Steward Alarcon drove the Grievant back to the office in the van which Pizzuto had been driving.

A bystander, Jorge Rojas, testified at arbitration. He said that he did not see the events of September 14 unfold. He was at the scene, but he wasn't paying any attention. All of a sudden the cops came down. Rojas knows from being in the neighborhood, however, that Pizzuto was a good letter carrier.

On September 14, 2012, Jose Caravarro was working in his Spanish restaurant at the intersection of Bank and Washington Streets where the incident occurred. He saw four guys talking on the sidewalk. Then Pizzuto got into his vehicle. There was no one in

front of the van at that time. The Grievant started his van and it did not move. Someone walked in front of the van, but did not stay there. Caravarro did not see anyone hit.

Michael Pizzuto testified that he has been a Letter Carrier for over twenty years. On September 14, 2012, he pulled up in his van to make a delivery to 932 Bank St. He parked the van and went to make the delivery. The Postmaster pulled up behind him in his own personal vehicle. The Postmaster got out of his vehicle and stood by the Grievant's while he was making the delivery. Marciniak approached Pizzuto upon his return to his van. The Postmaster asked him what time he would be back and Pizzuto said, when I am done with my route. The Grievant then got back in his vehicle. He grabbed his next loop from the mail trays and did the next loop. Marciniak stood next to the Grievant's vehicle and was talking on the cell phone. The Grievant forgot his scanner. He called over to the Postmaster and asked whether he could go back and get his scanner. The Grievant asked twice, but the Postmaster was on his cell phone. He didn't answer, so the Grievant went back and got his scanner. He made delivery at 951 Bank St. which is a tenement building. The Postmaster crossed the street to the corner while Pizzuto was standing in front of 945 Bank St. The Grievant made delivery to 945B which is a restaurant. Pizzuto proceeded to 929 Bank St. The Postmaster was still on the corner of Bank St. and Washington St.. The Grievant made delivery to 929 Bank St. and to a tenement building at 901 Bank St. He then went to 904 Bank and then back to the postal truck to grab his next loop. The Postmaster got back in his vehicle. Pizzuto got the necessary mail from his truck and the Postmaster followed behind him.

Pizzuto went to 971 Bank to make a delivery and to 978 Bank which is a tenement building. The Grievant had keys to these buildings. Pizzuto saw a postal government car

pull up. The Grievant said to the Postmaster, "I can't believe that you have three guys watching me work." Pizzuto went into 995 Bank, made delivery and came back out. The Postmaster asked for the Grievant's keys. Pizzuto said for what? The Postmaster said that I am giving you a direct order. Pizzuto said that he was delivering the mail and proceeded to do that. Pizzuto turned left and continued up the street delivering mail. The Postmaster went back to his vehicle at 932 Bank St. Pizzuto made delivery to 1057 Bank and 1063 Bank which is a large tenement building. There was a postal vehicle parked in front of the Grievant's van. As Pizzuto was walking back to the van, he saw the Postmaster and the supervisors together on the sidewalk. The Postmaster asked Pizzuto for his keys at least eight times. According to Pizzuto, the Postmaster asked for the fucking keys and he was the aggressor in the situation. The Grievant said that he was delivering the mail. Pizzuto went back to his van. He got in the vehicle and started it up. According to Pizzuto, the Postmaster left the sidewalk and stood in front of the Grievant's van. Pizzuto testified that Marciniak's hands hit the hood of the vehicle. Pizzuto uncurbed his wheels, depressed the brake and put the vehicle in drive. The vehicle window to Pizzuto's van was half down. Pizzuto asked the Postmaster to move so that Pizzuto could deliver mail. Marciniak said, "Shut the vehicle off and give me your keys." The vehicle went into drive and Pizzuto noticed a white flash which was the Postmaster. Pizzuto put the vehicle in park. The Postmaster said something to the supervisors who were on the curb. Pizzuto heard a siren. Then a police cruiser pulled up next to Pizzuto's van. The vehicle was still on, but it was in park. Two officers got out of the police cruiser and went in front of the van to speak with the Postmaster. Officer Desena said to Pizzuto, "Shut down your vehicle and hand me your keys. Pizzuto did.

The Officer said, "Step out of your vehicle" which the Grievant did. A Union Steward pulled up to Washington and Bank. He came over to Pizzuto who said, "They're harassing me and trying to fire me." The Steward asked the Postmaster what had happened and he said that the Grievant would not give us his keys and he assaulted me. The Postmaster mentioned the issue of the satchel. Officer Strahan asked what a satchel was. Officer Desena said that's a mail bag. Desena said, "You called us down here for a satchel?" The Postmaster said "No, I called you down here because I was assaulted by a mail truck."

The Steward asked the Postmaster what happened. The Postmaster said that he was hit by the mail truck. Officer Strahan asked Marciniak if he was hurt and if he needed medical attention. The Postmaster said No. Officer Strahan said, "Were you knocked down?" The Postmaster said No. According to Pizzuto, the Officer then said, "I don't think that you were hit because you would have been knocked down". The Officer asked Marciniak what he wanted to do. Do you want us to write him up? The Postmaster said "No, we'll handle the matter internally."

Officer Desena handed the keys to the Union Steward who drove Pizzuto back to the post office in the Grievant's van. At arbitration, Pizzuto testified that he definitely did not strike the Postmaster twice. The Grievant testified that he made a mistake in not giving over the keys to the Postmaster at the site. However, the Grievant did not say this at the PDI on October 19, 2012. Pizzuto testified that he said at the PDI that he would never strike a customer or anyone. He maintains that he did not say that he would not strike a carrier or a customer, but that Management was in trouble.

STATEMENT OF THE ISSUE

Did Management violate the National Agreement, Articles 16 or 19 and did just cause exist when it issued the Grievant a Proposed Notice of Removal dated November 20, 2012 and a Letter of Decision dated December 14, 2012 for an incident occurring on September 14, 2012? If so, what is the appropriate remedy?

POSITIONS OF THE PARTIES

Management.

The Service takes the position that it had just cause to issue the present Notice of Proposed Removal and Letter of Decision upholding the Removal.

Management maintains that on September 14, 2012, the Grievant struck the Postmaster with his LLV, not once but twice. During the PDI, he admitted that he refused to follow repeated instructions from Postmaster Marciniak to turn over his vehicle keys. All the Grievant had to do was turn over his keys. He was forewarned from two prior 14 Day Suspensions that he had to change his pattern of unacceptable behavior and he did not. He also admitted during the PDI that he referred to Management as "Al Qaeda." When Supervisor Gelzinis questioned him how Management could be reassured that he would not be injurious to himself or others if he became angered while operating a postal vehicle, he responded, "I wouldn't ever strike a customer or a carrier, but Management, you are asking for trouble."

The Service argues that the Grievant has verbalized his malicious intent towards management employees. The investigation revealed that the Grievant made a clear threat against Postmaster Marciniak at the incident on September 14, 2012 and at the subsequent PDI on October 19, 2012. The verbal threat at the PDI was directed against

all of Management. At arbitration, both Postmaster Marciniak and Supervisor Gelzinis testified that they were afraid of Pizzuto. The Postal Service has an obligation to protect all of its employees, both union and management. The Service maintains that retaining the Grievant as an employee of the Service would pose a threat to others.

The Connecticut District Zero Tolerance Policy is very clear as to what is unacceptable workplace behavior. It states:

There will be Zero Tolerance of Acts or Threats of Violence at Our Workplace. This includes, but is not limited to:

Any act of physical violence;

Any actual, implied or veiled threat, made seriously or in jest;

Any type of vulgar language which would lead to a hostile workplace.

The Zero Tolerance Policy further warns employees that “each and every act or threat of violence ...will elicit an immediate response that could, depending on the severity of the incident, include removal from the Postal Service.”

The Service argues that the Grievant’s actions would not be tolerated in the private sector and will not be tolerated in the Postal Service. The Service concludes that it had just cause to issue the Grievant the Notice of Removal and asks that the Arbitrator deny the present grievance in its entirety.

The Union.

The Union argues that the Service lacked just cause for the present removal. According to the Union, it was the Postmaster who created the situation with Pizzuto on September 14, 2012. Through the Postmaster’s actions in doing the slow drive by the carrier, parking inches from his rear bumper, silently following and watching, talking on the cell phone, bringing other supervisors to the scene, having them drive by, creating tension and then escalating it by demanding the vehicle keys, further escalating the

tension by placing the employee off duty, not answering his questions, placing a combat veteran in a fight or flight situation and when the employee went to his van and started it up and placed the vehicle in drive, the Postmaster left the sidewalk and placed himself in front of the van thereby endangering himself. The Union argues that the Postmaster controlled this entire situation and that at any time, he could have stopped it and the situation would have ended. The Union maintains that all of these actions display at best bad judgment by the Postmaster and at worst a deliberate set of actions designed to bait the carrier and discipline him.

The Union maintains that when the carrier failed to deliver his keys to the Postmaster, he did fail to follow an instruction, but it was more like an angry demand than an instruction. The Union argues that it was the Postmaster who set the angry tone for the whole encounter and that the retroactive terror that the Postmaster and Supervisor Gelzinis described at arbitration were new and not present in their statements in the Joint File. This Management fear was not described to the Postal Inspector who testified at arbitration that the incident on September 14 was diffused by the local police and that no follow up was required.

The Union next argues that the Grievant suffered by the 90 day delay between the incident of September 14 and the Decision on the Removal dated December 14. According to the Union, the Grievant's opportunity to get more eyewitness accounts suffered as did the opportunity to defend himself from the actual charges.

There were three charges against Pizzuto in the present removal. The Union maintains that as to the alleged violation of the Joint Statement on Violence, the Service has failed to meet its burden of demonstrating how the Grievant violated the Joint

Statement other than maintaining that he ran the vehicle into the Postmaster twice.

According to Pizzuto, his vehicle never moved. As to the failure to follow instructions, the Union maintains that the Grievant did not have a satchel and that the Service failed to produce one for him. The Grievant admitted that he did not hand over his keys and that he made a mistake in failing to give them over to the Postmaster. Pizzuto testified at arbitration that he made a mistake and wishes that he had acted differently. But the Union argues that one mistake can not rise to the level of a removal. As to the charge of failing to work in a safe manner, Management's only contention is that the Grievant hit the Postmaster with the vehicle. The Grievant's testimony at arbitration demonstrated that the Postmaster stepped or jumped to the front of the vehicle to prevent its movement and that the contact was from the Postmaster's momentum and not that of the vehicle.

The Union asks the Arbitrator to find that the Service has failed to show just cause for the removal and that if the Service's version of events is credited that the Grievant's actions did not rise to the level of a removal. It is Management's obligation to conduct fair and above board road observations, to communicate clearly to the employee regarding expectations and consequences, to treat everyone equally and not to escalate situations that could be better handled later or back at the office. According to the Union, Management had the ball on September 14, 2012, called all the plays and set the pace for what happened. The Grievant made a mistake, but it was not a mistake that should cost him a twenty year career.

The Union concludes that the Arbitrator should sustain the present grievance and make the Grievant whole for all losses to include missed hours and overtime and all other losses that can be demonstrated.

DISCUSSION AND DECISION

The Arbitrator concludes that the Service did not violate the National Agreement, Articles 16 or 19, because just cause existed for the Proposed Notice of Removal dated November 20, 2012 and the Letter of Decision dated December 14, 2012 as a result of the incident with Carrier Pizzuto on September 14, 2012.

The weight of the credible testimony at arbitration established that the incident took place as described by Postmaster Marciniak and Supervisor Gelzinis. Marciniak was standing in the street in front of Pizzuto's van, the Grievant got in the van, started it, and put it in gear. The van rolled forward hitting the Postmaster twice, probably in quick succession, and thrusting him backwards twice. He asked Supervisor Gelzinis who was standing several feet behind him if he saw the first hit from the van and Gelzinis said Yes. The Postmaster asked Gelzinis to call the police which he did. The van rolled forward the second time hitting the Postmaster again. The Union's argument that the Postmaster had no dirt on his pants afterwards is not persuasive. The Grievant's van rolled into the Postmaster twice and thank goodness, he was not hurt. Pizzuto's account that the incident was caused by the Postmaster's momentum and not by the motion of the van was not credible. Neither was Pizzuto credible when he testified that there was no second impact. The Postmaster was hit twice and felt it twice and Supervisor Gelzinis witnessed both events. It seems very unlikely that a police officer would have said that if the Postmaster did not fall down, he was not hit. The Postmaster was hit twice and thrust backward twice, but he managed not to fall.

The crux of the problem was Pizzuto's failure to follow the repeated instruction to give over his keys to the Postmaster. It is undisputed that the Postmaster asked him for

the keys at least eight times and that Pizzuto refused saying that he was going to finish his route. Pizzuto had a history of not following Management's instructions as evidenced by the two prior 14 Day Suspensions in May and June 2012. Like any other employee in the Postal Service or in any workplace, the Grievant had to follow the instructions of Management and grieve later if he was dissatisfied. See the ELM, Section 665.15, Obedience to Orders, cited in the Removal. The only exception to this rule is if following the order would jeopardize the employee's safety. Following the instruction in the present case would not have jeopardized Pizzuto's safety, and, in fact, not following it jeopardized his safety and the safety of the Postmaster.

Pizzuto failed to operate the van in a safe manner. All of this could have been avoided if he just gave over the keys as instructed. His failure to give over the keys meant that he failed to follow instructions, failed to operate the vehicle in a safe manner and threatened the Postmaster's safety.

The weight of the credible evidence also established that Pizzuto verbally threatened Management at the PDI on October 19, 2012 by stating that he would never strike a customer or a carrier, but Management was asking for trouble. This was a verbal threat to all of Management and was taken as such by Supervisor Gelzinis and Postmaster Marciniak.

Therefore, the Arbitrator concludes that their fear was reasonable and not some kind of "retroactive fear" developed for arbitration. Perhaps the Postmaster was not as fearful directly after the incident of September 14, 2012 and when he spoke to the Postal Inspector. The Postmaster did what he had to do to handle the incident. But after the incident set in and after the verbal threat on October 19, 2012, the Postmaster and his

wife might have become more fearful. And Supervisor Gelzinis was afraid after the October 19 comments by the Grievant because he took them as a threat.

The Union makes a good argument that perhaps the Postmaster could have handled the encounter with Pizzuto differently on September 14, 2012 by allowing the Grievant to finish his route and then talking with him when he got back to the office. But the Postmaster saw that the Grievant was agitated and chose to ask for his keys and take him off the road. This was the Postmaster's choice to make. The Grievant had to follow the instructions and didn't. He did not show remorse for his actions during the PDI on October 19, 2012. He did not say to Management that he made a mistake until he testified at arbitration. He had failed to follow the instructions of Management several times before resulting in active 7 Day and 14 Day Suspensions.

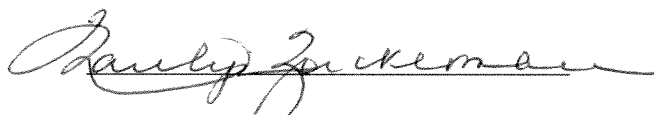
As to the 90 day delay between the September 14, 2012 incident and the December 14, 2012 Decision on the Removal, the Arbitrator finds that this was not an excessive delay on the facts of this case. The PDI did not take place until October 19, 2012. The Service wanted to consider all the facts and arguments. If Management had "rushed to judgment," this would not have been in the Grievant's interest. The Arbitrator does not find that the Grievant was prejudiced by the delay because he knew what the charges were. He had lined up two eyewitnesses who testified for him at arbitration, but these civilians did not see enough to be in a position to say what actually happened. Witness Jose Caraballo had given a written statement on December 19, 2012 (p. 108 of the Joint File) which stated that "the tall man just jump to the front of the van. I did not see my mailman hit him." However, at arbitration, Caraballo testified that the written statement was prepared for him because his English is limited and that someone walked in front of

the van but did not stay there. Caraballo testified that he did not see anyone hit, but it was not clear how long he was watching.

Based on the weight of the credible testimony, the Service has established that it had just cause to remove the Grievant based on the September 14, 2012 incident. The Grievant failed to follow instructions, operated his vehicle in an unsafe manner and violated the Zero Tolerance Policy by his threatening behavior on September 14 and by his verbal threat to Management during the PDI on October 19. Since the Grievant had repeatedly failed to follow instructions and had engaged in unacceptable behavior in the recent past (the two 14 Day Suspensions), the penalty of removal in the present case was not too severe.

The Service had just cause to remove the Grievant as a result of the September 14, 2012 incident. The grievance is denied.

May 22, 2013



Marilyn Zuckerman