

27954

REGULAR ARBITRATION PANEL

In the Matter of Arbitration

Between

UNITED STATES POSTAL SERVICE,

Employer,

-and-

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO,

Union.

Grievant: Class Action

Post Office: Oakland, CA

USPS Case No. F06N-4F-C 08237439

DRT Case No. 01-105488

BEFORE: Claude Dawson Ames, Arbitrator

APPEARANCES:

<u>For the Postal Service:</u>	Howard E. Gibbs, Labor Relations Specialist
<u>For the Union:</u>	Bryant Almario, Regional Administrative Assistant
Place of Hearing:	Civic Center Station, Oakland, CA
Date of Hearing:	September 19, 2008
Date of Brief:	October 27, 2008
Date of Award:	December 9, 2008
Contract Provisions:	Articles 15, 19
Contract Year:	2006 - 2011
Type of Grievance:	Contract

Award Summary

The Postal Service, through the conduct of Supervisor Alfonso Wright, did violate the National Agreement and Joint Statement on Violence and Behavior in the Workplace. The appropriate remedy is set forth in the Arbitrator's Decision. The Union's grievance is sustained.


CLAUDE DAWSON AMES, Arbitrator

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I

INTRODUCTION

This case involves a class grievance on behalf of Letter Carriers at the Eastmont Station, Oakland, California, and alleged unacceptable workplace behavior, bullying, and intimidation by Postal Service Supervisor of Customer Service (SCS), Alfonso Wright. The Union maintains that Supervisor Wright treated Carriers in a bullying, intimidating and threatening manner at the Eastmont Station, which constitutes a violation of the parties' National Agreement and Joint Statement on Violence and Behavior in the Workplace (JSOV). The Service denies any violation of the JSOV by Supervisor Wright or the Postal Service. According to Management, this is merely another attempt by the Union to expand and intrude upon Management's exclusive rights to manage its employees under Article 3 of the National Agreement.

The JSOV was jointly developed by the parties in response to a fatal shooting at the Royal Oaks Facility and other acts of extreme violence by postal employees and former employees who, rightly or not, felt themselves recipients of injustice and harassment at the hands of Postal Management or fellow employees. The JSOV was signed by the parties in February 1992 and consists of two paragraphs setting forth their intent in the treatment of all postal employees. The first paragraph refers to "Violence and Treatment" in the workplace. The second paragraph refers to "Dignity and Respect" in the workplace for all employees.

A hearing was held on September 19, 2008, at the Civic Center Station, Oakland, CA. Bryant Almario, Regional Administrative Assistant, represented the class grievants and NALC. Howard E. Gibbs, Labor Relations Specialist, represented the Service. The parties stipulated that the matter was properly before the Arbitrator. However, the Service has raised objections to the Union's requested remedy in this matter, as exceeding the Arbitrator's authority. The Arbitrator will address both the Union's requested remedy and the Service's objections in his Decision.

II

BACKGROUND

On the morning of February 11, 2008, SCS Wright checked the Sick Log Call-in Report and noticed that a Carrier had called in sick. Darrell Coleman, a Carrier at the Eastmont Mall Station, testified that SCS Wright stated loudly, "That muthafucker called in sick again," referring to a Carrier who was scheduled for work that day. During an interview with SCS Wright by the Union, Wright was asked who he was referring to when he made that statement on the floor. He is alleged to have responded, "I don't recall saying that." Sometime later that morning, SCS Wright was involved in an altercation with Carrier C. Lewis, a light or limited duty Carrier. Wright is alleged to have yelled out loudly on the work floor to Mr. Lewis and instructed him to case a second route. Wright then informed Lewis that if the Carrier refused to follow instructions, he would be thrown out of the building.

Carrier Rose Haymon observed the loud verbal altercation involving Wright and Lewis and testified that Wright pointed his finger at Lewis in a threatening manner. She then observed fellow Carrier Diane McKinney tell Wright that he needed to "calm down, you are out of control." According to the testimony of Rose Haymon, Wright was creating a hostile work environment and was intimidating Carriers. Ms. Haymon testified that later that morning, while on her break, she approached Wright to inquire about a CA-17 Medical Documentation Form that had not been received by Mr. Wright regarding her light duty status. She approached Wright for another copy to provide to her medical physician. Wright responded in a loud and threatening manner, "Get back to your case. Get back to your case. And take that jacket off." Ms. Haymon informed SCS Wright that she was not on the clock and on her break and that she needed the copy of the form. Wright responded, "Go and sit down." Ms. Haymon indicated that Wright was threatening, hostile, pointing his finger at her, and began yelling in a loud voice. She denies yelling at Mr. Wright, but admits she was wearing her ear plugs in her ears which may have accounted for her speaking loudly.

Ms. Haymon approached Wright shortly thereafter and again requested a CA-17 Medical Documentation Form. The two argued and, at some point, SCS Wright maintains that Ms. Haymon

said, "Fuck you, N_____. You ignorant son of a bitch." However, Ms. Haymon denies ever making any such statements or comments toward Mr. Wright. Her testimony is that these are all statements that have been fabricated by Mr. Wright which ultimately led to proposed disciplinary action of a 14-day suspension. That 14-day suspension initiated by Mr. Wright was served, but subsequently dismissed after Mr. Wright was reassigned from the Eastmont Station.

Ms. Haymon testified that the next morning on February 12, 2008, as Ms. Haymon clocked in, Mr. Wright immediately approached her at the clock pointing his finger and saying loudly, "I got something for you today. I got something for you today." Wright appeared to be angry and was acting in a threatening manner. Ms. Haymon responded that if SCS Wright did not stop his misconduct and intimidation of her, that she would call the police. Ms. Haymon was injured on the job and suffers from a torn rotor cup. She indicates that the conduct by SCS Wright was clearly demeaning and intimidating which really upset her, because Mr. Wright had a history of being demeaning and nasty to female employees.

Darrell Coleman also testified that he observed Wright yelling at Ms. Haymon on the morning of February 12 as he followed her pointing his finger saying, "I got something for you today. I got something for you today." According to Carrier Coleman, Wright appeared angry, retaliatory, and intimidating. Wright is also alleged to have told Mr. Coleman on February 12, "That black bald headed MF called in sick again today," referring to Carrier Charles Lewis, who was on limited or light duty. Carrier Katrina Outlan testified that, on February 11, she observed SCS Wright say loudly, "That muthafucker called in sick again," referring to Charles Lewis and, further, Wright saying loudly on the work floor, that if Charles Lewis did not put up the two routes, "I'll kick his ass out of the building." Ms. Outlan indicated that when Wright made the comments of kicking Mr. Lewis' butt out of the building, Mr. Lewis was walking away and his response to Wright was, "Do it. Do it." Mr. Outlan testified that Mr. Wright's conduct was demeaning, abusive, unpredictable, and uncontrollable.

Shop Steward Anthony D. Lowe testified that, while out sick on February 11, 2008, he received a phone call at his home from SCS Wright complaining about the problems he was having

that day with Mr. Lewis and also with Ms. Haymon. According to Mr. Lowe's testimony, Wright called and stated that he was "tired of all these muthafuckers telling me what they were going to do and what they were not going to do. I'm going to call the police and have them all thrown out of the building." Lowe responded by telling Mr. Wright to calm down and that he would speak to the Carriers about what had occurred. SCS Wright continued, according to Mr. Lowe, by saying that it all started with Charles Lewis, who serves no purpose in the postal service. Wright is alleged to have then told Lowe that Rose Haymon causes him many headaches and he, "must put her out of the building. Whatever it takes, I'm going to get rid of this bitch because she had done nothing for me. So why should I keep her around? By Friday, I want that little bitch across the street looking at the building." Wright is further alleged to have said, referring to Ms. Haymon, "She's a crook and I'm tired of her stealing my money. I'm not going to rest until she's out of my building."

The Union filed the instant grievance based on a series of incidents involving SCS Wright at the Eastmont Station and upon prior incidents in which he has a history of violating the parties JSOV, according to the Union. Supervisor Alfonso Wright was not called by the Service to testify in this proceeding.

III

ISSUES PRESENTED

The issue in this dispute, as framed by the DRT, is as follows:

Did SCS Alfonso Wright violate the National Agreement, Articles (including but not limited to) 5, 15, and 19 and the Joint Statement on Violence and Behavior in the Workplace (JSOV) by the manner in which Mr. Wright treated Oakland Post Office, Eastmont Station, employees from February 11, 2008 through February 14, 2008?

If so, what is the appropriate remedy?

IV

RELEVANT CONTRACT LANGUAGE

ARTICLE 3 - MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted.

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, 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.

HANDBOOK M-39

115.4 Maintain Mutual Respect Atmosphere

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE

"... We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.

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."

V

POSITIONS OF THE PARTIES

A. Union's Position:

The Union has shown that Supervisor Alfonso Wright has harassed, berated, bullied, humiliated, and threatened Letter Carriers at the Eastmont Station for a considerable length of time. Postal Management is well aware of the problems and the mistreatment of Carriers by Supervisor Wright, but has failed to take appropriate action as required under the Joint Statement of Violence and Behavior in the Workplace to protect these Carriers. Supervisor Wright has created, and continues to create, a hostile work environment by his managerial style of retaliation, intimidation, and threatening Carriers with disciplinary action, and even "kicking them out of the building." During a series of incidents beginning February 11 through February 14, 2008, Supervisor Wright clearly engaged in unacceptable conduct through the harassment of Carriers C. Lewis and Rose Haymon. He not only yelled at both of these employees, but treated them with disrespect and violated their right of dignity and respect that is accorded to all postal employees. He further engaged in unacceptable and retaliatory conduct by issuing a proposed 14-day suspension on Carrier Haymon for alleged unacceptable conduct. There is no evidence presented by Management or even testimony of Mr. Wright to support the alleged statements that were attributed to Ms. Haymon. Carrier Haymon has denied making any such statements and the 14-day suspension was correctly rescinded by the Agency. Supervisor Wright has engaged in unacceptable behavior and has not demonstrated that he can change his conduct even after entering into a series of cease and desist orders based on prior grievances filed against him. Supervisor Wright continues to violate the National Agreement and the parties' JSOV by his mistreatment and demonstrated lack of respect of postal employees. The Union is therefore requesting that Supervisor Wright be permanently barred from any direct or indirect supervision of Letter Carriers any where, and at any time in the Postal

Service.

B. Agency's Position:

The Union has the burden to show that a violation of the Joint Statement of Violence and Behavior in the Workplace existed from February 11 through February 14, 2008 at the Eastmont Station. The Union has not met its burden of proof as to a violation of the JSOV. The Agency has shown that the contentions made by the Union, even if true, did not raise to the level to meet the requirements of a violation of the JSOV during the period in question. The Agency has also shown that this is simply another attempt by the Union to inappropriately use the JSOV to remove supervisors and to intrude upon the exclusive authority of Management to determine the appropriate methods and actions to take against personnel. Moreover, the Agency has shown by way of testimony given at the hearing, that Eastmont employees were never threatened, intimidated or harassed by SCS Wright on the work room floor.

The Agency has also shown that the one comment that should not have been made by SCS Wright, when objectively viewed in the context in which it was made and how it was made, does not support the Union's position. SCS Wright's alleged violation is insufficient to have this managerial employee permanently barred from future supervision of Carriers. In a further attempt to bolster its position, the Union has dredged up issues that allegedly happened as far back as 1996 involving Supervisor Wright, including cease and desist orders that were not violated or even relevant to their grievance. This must be viewed as a clear example that the Union has no case for the dates of February 11 through February 14, 2008, which are the dates at issue in this grievance. At no time during the period of February 11-14 was a threat made to anyone by Supervisor Wright, nor did he bully or harass any of the employees at the Eastmont Station. The Arbitrator lacks both the authority and jurisdiction to grant the remedy as requested by the Union to bar a supervisor from ever supervising City Carriers at any postal installation throughout the system. To do so is tantamount to an adverse action and a denial of a management employee's right to due process. It also substantially impacts upon Management's ability to manage its employees, including supervisors obligated to supervise more than one bargaining craft in a postal facility. Barring a supervisor from

supervising a specific bargaining unit places unnecessary burdens on Management to determine the appropriate personnel necessary to maintain its postal operations. This is also a clear violation of Article 3 of the National Agreement.

VI

DECISION

A. SCS Wright Did Violate the JSOV by his Conduct or his Actions

It is well settled by the National parties' intent in their Joint Statement of Violence and Behavior in the Workplace and, as set forth in Handbook M-39, "that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone." The parties further affirmed in their Joint Statement that "every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. ... 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."

As previously stated by this Arbitrator (Case No. E90N-4E-C 94051426):

"Postal manuals, rules, regulations and statements are equally binding upon management personnel and supervisors, as they are upon bargaining unit employees. Equal dignity and respect equates to reciprocity and civility in the workplace. These well established postal principles are formally restated and incorporated in the Joint Statement of Violence and Behavior in the Workplace and are applicable to all parties under Article 19 of the National Agreement."

The JSOV is not only applicable to bargaining unit personnel such as the Carrier Craft, but also enforceable against Management supervisors, such as Mr. Wright.

After careful review and examination of the evidence record, arguments of the parties and review of prior arbitral decisions (National and Regional) as presented, the Arbitrator finds for the Union. The Union has come forth with a preponderance of evidence to sustain its grievance and a finding that Supervisor Wright did violate the National Agreement and the Joint Statement of Violence and Behavior in the Workplace by his treatment of Carriers at the Oakland Eastmont Station from February 11 through 14, 2008. The evidence is un rebutted that, on the dates in question,

Supervisor Wright did engage in unacceptable, intolerable conduct constituting harassment, intimidation, verbal threats and abuse, and bullying against Carriers while on the work room floor. Not only does the evidence record support and indicate the Supervisor's use of inappropriate profanity on the work room floor, but also his intolerable reference to fellow postal employees as "muthafuckers" and "bitches." His unacceptable behavior and conduct creates a hostile working environment. Threatening to kick an employee "out of his building" if the employee does not put up two routes and/or putting the "bitch" out of the building because he is tired of her is not only disrespectful but also conduct clearly unbecoming of a postal manager and supervisor. Moreover, the actions of Supervisor Wright were retaliatory and vindictive in the issuance of a proposed notice of 14-day suspension which he issued and directed a lower supervisor to serve on Carrier Rose Haymon.

In the notice of 14-day suspension, with no time off, Supervisor Wright accuses Ms. Haymon of unacceptable conduct, by yelling, "Fuck you, N_____, that's why I can't get my medical", or something to that effect. The evidence record indicates that Ms. Haymon has denied ever making such despicable comments or statements, and no other witnesses who testified ever heard Ms. Haymon make such a statement to Supervisor Wright. Supervisor Wright was not called to testify by Management, nor did Management present any un rebutted testimony to Carrier Haymon's denial of ever making the statements.

Based upon the evidence provided to the Arbitrator, I find Supervisor Wright's accusations to be untrue, retaliatory, and were vindictive towards Carrier Rose Haymon. His subsequent actions and issuance of the 14-day suspension, even after he had been removed from the Eastmont Station, is a clear illustration of his intent to continue his harassment, intimidation, threats and bullying of Carriers at the Eastmont Station. This is exactly the type of work place behavior that the JSOV was intended to prevent. Supervisor Wright has clearly shown himself to be in direct violation of the parties' Joint Statement of Violence and Behavior in the Workplace. Notwithstanding the Agency's position that evidence does not support the allegations or rise to the level of a JSOV violation, the Arbitrator does not concur. The overall record presented before the Arbitrator,

including a history of cease and desist orders involving Supervisor Wright at stations throughout the Bay-View Postal District in Oakland, Richmond and Piedmont Stations, indicate a pattern and practice of disrespect, intimidation and harassment by this postal supervisor. In the absence of any rebutting or credible testimony that Supervisor Wright did not engage in the misconduct, acts of intimidation, threats and bullying of these Carriers occurring on the work room floor at the Eastmont Station, the Arbitrator finds that Wright's actions were in direct violation of the Joint Statement of Violence and Behavior in the Workplace. Further, that the Bay-View District was aware of SCS Wrights' Violation of the JSOV and Carrier complaints against him, but failed to take appropriate action.

B. Remedy

In determining the appropriate remedy in this matter, the Arbitrator is guided by the National decision by Professor Snow (Case No. Q90N-4F-C 94024977-2408) in which he reviewed and considered similar arguments (as presented here) by the Agency, alleging lack of arbitrable jurisdiction, authority, and a violation of Article ; and held as follows:

The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and Arbitrators have available to them the flexibility found in arbitrable jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties.

In the case before me, the Union has presented, without rebuttal by Management, a pattern, practice and history by Supervisor Wright in failing to manage and supervisor employees under his supervision with the requisite dignity and respect as required not only under the M-39 Handbook, but also the JSOV. The evidence record is littered with prior settlement agreements, JSOV training classes, cease and desist orders and suspension of supervisory duties by Supervisor Wright, over the Letter Craft bargaining unit for a period of two years, with no corrective or lasting effect. As such, the Arbitrator finds that the appropriate remedy in this matter is to instruct and Order the Postal Service to bar Supervisor Wright from any future supervision of members of the Letter Carrier Craft in the Pacific Area Region.

The remedy imposed by the Arbitrator is carefully crafted and specifically tailored to be carried out and implemented by the Postal Service. Nothing in the Arbitrator's Decision or Remedy, impacts upon the right of due process of Supervisor Wright or his continued employment status with the Postal Service. Accordingly, based on the reasons stated above, the Union's grievance is sustained.

AWARD

The Postal Service, through the conduct of Supervisor Alfonso Wright, did violate the National Agreement and Joint Statement on Violence and Behavior in the Workplace. The appropriate remedy is set forth in the Arbitrator's Decision. The Union's grievance is sustained.

Respectfully submitted,

Dated: December 9, 2008



CLAUDE DAWSON AMES, Arbitrator