

C# 17353

ARBITRATOR'S OPINION AND AWARD
for
USPS/ NALC REGULAR ARBITRATION

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| In the Matter of Arbitration | * | |
| Between: | * | |
| | * | |
| United States Postal Service | * | C94N-4C-D-97090118 |
| | * | Grievant: Brian Porvaznik |
| and | * | |
| | * | Post Office: Pittsburgh, PA |
| National Association of | * | |
| Letter Carriers | * | Case #: 97090118 |
| | * | Issue: Removal |
| | * | |

BEFORE: Lawrence Roberts, Arbitrator

FOR THE UNION: Mr. Michael Allen

FOR THE POSTAL SERVICE: Mr. Silverio Rubio

PLACE OF HEARING: Postal Facility, Pittsburgh, PA

DATE OF HEARING: September 4, 1997

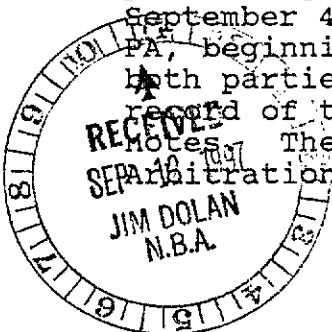
AWARD: The Grievance is sustained.

DATE OF AWARD: September 10, 1997

RELEVANT CONTRACT PROVISION: Article 16

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on September 4, 1997 at the postal facility located in Pittsburgh, PA, beginning at 9 AM. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a tape recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.



OPINIONBACKGROUND AND FACTS:

This case came to rise when the grievant was issued a "Notice of Removal" on January 6, 1997. The removal notice indicated the Grievant was removed for "Failure to Operate a Vehicle Safely".

The Grievant was hired as a casual employee in March of 1995 at the age of 19. The record shows he has never called off, had any complaints from customers or supervisors, nor is there any evidence of any other disciplinary action. The evidence show he was an excellent Employee. As a result of his excellent accomplishments he was promoted from the position of casual employee to the position of transitional employee. At the time of the hearing the Union indicated there were other postmasters who wished to hire the Grievant as a permanent employee.

On December 15, 1996 the Grievant was involved in a vehicle accident while driving a postal vehicle. It was that action that led to a removal notice being issued. It is the removal of the Grievant which is before me today.

THE ISSUE:

Did the Postal Service have just cause for removing the Grievant? If not, what is the proper remedy?

JOINT EXHIBITS:

1. 1994-1998 Agreement between the National Association of Letter Carriers, AFL-CIO and the US Postal Service.
2. Grievance Package
3. Stated Issue
4. PS Form 1769
5. Notice of Removal
6. M-41/ ELM Excerpts

UNION'S POSITION:

The Union insisted the accident was not the fault of the Grievant, and he could not prevent it from happening. The Union pointed out that the Grievant was not issued a traffic citation by the local authorities and the Postal Service did not conduct a proper investigation of the accident. The Union stated the Employer did not meet their burden of proof and asked that the Grievance be sustained and the Grievant made whole.

COMPANY'S POSITION:

The Employer stated that the evidence and testimony would demonstrate the Grievant did not use proper care while pulling away from the stop sign to make a left turn and this caused the accident which resulted in a great amount of damages to both vehicles as well as putting the lives of the vehicle occupants in jeopardy. The Employer asserted they will not tolerate unsafe driving acts which is their justification for the removal action. The Employer pointed out that the Grievant was properly trained and thus should have driven defensively and used greater care in order to prevent the accident. The Employer pointed out that Management is not required to follow the rules of Progressive Discipline for Transitional Employees and the Arbitrator is limited in his decision to determine whether or not there was just cause for discipline. If just cause exists the Arbitrator may not alter the Employer's action. The Employer requested the Grievance be denied in it's entirety.

PERTINENT CONTRACT PROVISIONS:

ARTICLE 16
DISCIPLINE PROCEDURE

SECTION 1. Principles

"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulation. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

APPENDIX C
NALC Transitional Employee
Arbitration Award

Paragraph 11:

11. Transitional employees may be separated at any time upon completion of their assignment or for lack of work. Such separation is not grievable except where the separation is pretextual.

Transitional employees may otherwise be removed for just cause and any such removal will be subject to the grievance-arbitration procedure, provided the employee has completed ninety (90) work days, or has been employed for 120 calendar days, whichever comes first. Further, in any such grievance, the concept of progressive discipline will not apply. The issue will be whether the employee is guilty of the charge against him or her. Where the employee is found guilty, the arbitrator shall not have the authority to modify the discharge.

DISCUSSION AND FINDINGS:

The record in this dispute was quite comprehensive. However, many of the facts in this case were in dispute.

On December 15, 1996 the Grievant was involved in a motor vehicle accident. While driving his LLV postal vehicle, he

stopped at a stop sign on E. Pike Street while waiting to make a left turn. After observing that traffic was stopped at a light for an intersection to his left, the Grievant pulled out onto Morganza Street which is a four lane highway. He crossed over the first lane and as he approached the turn lane to go left his vehicle was struck on the left front corner by another vehicle.

The record shows the POV that struck the postal vehicle had made a right turn onto Morganza from a nearby intersection just to the left of the intersection where the Grievant entered onto Morganza.

The postal vehicle sustained little damage to the front corner of the vehicle and there was some evidence of minor scratches to the left side. The privately owned Ford Escort sustained major damage to the entire front end extending from the front left corner to the front right corner.

The Employer investigated the accident and based upon that investigation, it was determined that the Grievant failed to operate his vehicle safely by not looking both ways before pulling out into the intersection and that he could have prevented the accident. However, I was not convinced that the accident was preventable by the Grievant. There was no evidence to support the Employer's claim that the Grievant did not look both ways. To the contrary, there was evidence to suggest he did look both ways and that the roadway was clear when he proceeded

from the stop sign.

Upon review of the pictures taken at the scene, it was questionable as to whether all the damage to the Ford Escort was sustained in this particular accident. It was also undeterminable as to which part of the POV struck the postal vehicle's front corner. When asked whether there was any previous damage to the Ford Escort, the supervisor who investigated the accident stated he did not know. When asked to reconstruct the accident the supervisor was unable to do so. He was also unable to speculate as to how or in what manner the privately owned vehicle struck the front corner of the postal vehicle or how the Ford Escort could have sustained so much damage. With only minor damage to one small area of the corner of the postal vehicle and major damage to the front end of the Ford Escort, it seems logical that the accident should have been reconstructed to determine how the accident occurred, who was at fault, and whether or not the Grievant would have been able to prevent the accident.

The Union advocate asked each of the Employer's witnesses a number of specific questions about the accident including distances and whether or not either of the drivers were cited. The employer's witnesses stated there were no measurements taken at the scene of the accident. Other questions could not be answered. Being unable to answer many of the questions about the accident, the testimony of the Employer's witnesses cast a shadow

of doubt as to whether or not a thorough investigation of the accident was conducted.

The Union steward testified that he went to the cite of the accident and measured the distance between the two intersections where the postal vehicle and the POV entered onto Morganza Street. This witness testified he measured roughly 20 to 30 feet between the two intersections and suggested the postal vehicle traveled a greater distance from where he proceeded from the stop sign than did the Ford Escort travel from the point where he entered onto Morganza Street. The point being that the Ford Escort may not have been anywhere in sight of the postal vehicle when the Grievant cleared his way to enter onto Morganza Street. The Union also pointed out that once the Postal Vehicle had traveled over half the distance to where the impact took place, it was impossible for the Grievant to see the oncoming vehicle because the postal vehicle is right hand driven and there are no windows on the left side of the postal vehicle.

Taking all this into consideration, it is my considered opinion that the Grievant was not responsible for the accident and I also believe there was nothing the Grievant could do to avoid the accident.

The Employer's witnesses testified that disciplinary action is justified for any accident even if the employee is not at fault or if the accident was not preventable. I disagree.

Simply being a party to an accident where that person was not at fault and moreover could not have prevented the accident is not just cause for discipline.

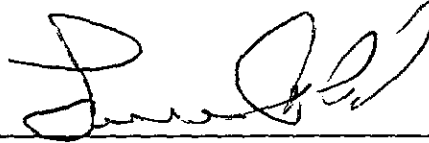
To support their position, Management also submitted eight arbitration decisions dealing with the removal of TE's. After reading all eight, I could find none which had any relevancy to the issue at hand. In each of those cases the Arbitrators had to deal with a situation where the drivers were either at fault for an accident, could have prevented the accident and in one case failed to report an accident. Each of those situations were much different than the instant case before me today.

Having reviewed all the evidence and testimony, there is very little to support the Employer's position. Therefore, the burden of proof has not been met. Accordingly, it is my finding the Employer did not have just cause to discipline the Employee.

The Grievance is sustained and the Grievant shall be made whole.

AWARD

The Grievance is sustained. The Grievant shall be made whole in accordance with the Wage Agreement.

A handwritten signature in dark ink, appearing to read 'Lawrence Roberts', is written over a horizontal line.

Lawrence Roberts, Panel Arbitrator

Dated: September 10, 1997
Fayette County
Uniontown, PA