

: REGULAR ARBITRATION PANEL
CASE NO. N1C-1N-D17325

George Roukis 11/21/84 Modified
Removal - Misdirecting & Delaying the
Mail & Disruption of the
Work Unit

AIRS #4274

In the Matter of the Arbitration

- between -

AMERICAN POSTAL WORKERS UNION, AFL-CIO

- and -

UNITED STATES POSTAL SERVICE

- re -

CLERK SHARON FLETCHER, GRIEVANT

C 535
LOCAL ARBITRATION

OPINION AND AWARD

Before:

GEORGE S. ROUKIS
ARBITRATOR

HEARING HELD: October 1, 1984 at the United States Post Office,
Federal Square, Newark, New Jersey

APPEARANCES:

FOR THE AMERICAN POSTAL WORKERS UNION, AFL-CIO

Philip Dempsey, President, ^{North} New Jersey Area Local
Sharon Fletcher, Grievant
Edward Lanove, Union Steward, Newark G.P.O.

FOR THE UNITED STATES POSTAL SERVICE

Howard Wingard, U.S.P.S. Representative
Sarah George, MPLSM Supervisor, Newark G.P.O.

NOV 5 1984

Pursuant to the arbitration procedures set forth under Section 4B of Article 15 of the National Agreement between the UNITED STATES POSTAL SERVICE and the AMERICAN POSTAL WORKERS UNION, AFL-CIO, hereinafter referred to as the Postal Service and the Union respectively, the undersigned was appointed Arbitrator to hear and decide the instant disciplinary grievance. Accordingly, a hearing was held at the United States Post Office, located in Newark, New Jersey, at which time the parties were afforded ample opportunity to present evidence and testimony germane to their positions.

The adjudicative issues before the Arbitrator are:

Is the grievance arbitrable?

If so, was Clerk Sharon Fletcher removed from service on March 4, 1983 for just cause? ¹

If not, what shall the remedy be?

¹The Notice of Discipline cited the following reasons for her termination from service:

"You are hereby notified that you will be removed from the Postal Service on March 4, 1983. The reasons for this removal action are:

CHARGE #1 Unsatisfactory Performance of Duty (Misdirecting Mails)
On January 20, 1983 at approximately 7:53 P.M. while you were assigned to key mail on console #6, machine #2 you misdirected 51 letters:

47 letters were deliberately keyed to the Unfaced Bin
3 letters were keyed to the 400 bin
1 letter you failed to key

CHARGE #2 Disrupting the Work Unit and Delaying the Mail
On January 20, 1983, while you were assigned to the loading position on LSM #2 I instructed you not to talk to the Keyers while you were loading. However you continued talking and disturbing the Keyers each time you were assigned the loading detail letting some consoles run out of mail.
On October 7, 1982, October 17, 1982 and October 24, 1982 I observed you sitting at your assigned console, not keying with the console turned off. When I questioned you as to why you were not keying, you offered no explanation therefore delaying the mail. You then turned on the machine and started keying.
(Footnote #1 continued on next page)

PROCEDURAL ISSUE

The Grievant had been employed by the Postal Service since September, 1975. On January 24, 1983, she was issued the Notice of Removal which set forth three(3) disciplinary charges, but the Postal Service contends that her appeal of this action was untimely since it was brought to Step 1 of the grievance on February 25, 1983. It is the Postal Service's position that the Grievant did not comply with the unambiguous and explicit appeals procedures of Section 2, Article 15 of the National Agreement; and thus, the grievance should be dismissed. It argues that both the Union and the Grievant were fully mindful of the fourteen (14) days time limitations and the importance of adhering to Agreement specified procedures. It asserts that the Grievant never requested a Union steward at the time of the removal, nor instituted appropriate appellate action during the fourteen (14) day period. Instead, it avers that appealing the instant discipline on February 25, 1983, some thirty two (32) days after the issuance of the removal notice, the Grievant waived her Agreement rights by default.

The Union contends that the Grievant immediately requested

¹(continued from previous page)

CHARGE #3 Failure to Obey Official Instructions & Observed Safety Rules.

You have been instructed that employees are not allowed to bring food or drink on the work floor. Yet on Oct. 12, Nov. 11, Nov. 24 and Dec. 1, 1982 you were observed with containers with drinks in the LSM area.

You have been told that there was no smoking allowed in the LSM area, however you were observed smoking in the LSM sweepside on Oct. 6, 1982.

On January 24, 1983 your official break was 7:30 P.M. to 7:45 P.M. At 7:30 P.M. you went on your official break, and returned at 7:50 P.M., 5 minutes late. You failed to offer a satisfactory explanation for returning from your break five minutes late."

In addition, it listed the past elements of her disciplinary record.

to see a Union steward on January 1, 1983, but was told by her Supervisor that no one was available that night. The Grievant testified that she left the work situs on January 24, 1983 because of her distressed condition and remained on sick leave for most of the time until February 24, 1983. Documentation was submitted at the arbitral hearing verifying that she was suffering from depression during the January 24, 1983 through the February 20, 1983 period; and it was the Grievant's position that her illness which was officially acceptable to the Postal Service on February 22, 1983, and her Supervisor's refusal to permit her to see a Union steward should not preclude a merits assessment of the grievance. (See Union Exhibits #4 and 5) Moreover, she avers that she was under the impression that the first step appeals time limit was de facto extended to thirty days when a person is ill; and notes that a formal grievance was filed against the Postal Service asserting that her procedural rights were violated.

The Postal Service argues that it has not been demonstrated that it denied her the opportunity to see a Union steward; and furthermore, the Grievant and the Union who received the January 24, 1983 removal notice were not estopped from any lack of knowledge from appealing the employment dismissal action.

In considering this question and based upon the arguments and evidence submitted at the hearing, the Arbitrator finds that the Grievant's illness provides sufficient mitigation for excusing her belated appeal. While there is no clear conclusive proof, other than partisan assertions that the Supervisor denied the Grievant the opportunity to see a Union steward, the Grievant

is certainly familiar with the appellate requirements of Article 15. However, because of her distress and the concomitant medical verification, the Arbitrator believes that reasonable extenuation exists to warrant the removal appeal arbitrable. The appeals delay did not prejudice the employer.

MERITS DISPUTE

POSTAL SERVICE'S POSITION

The Postal Service contends that the Grievant's removal was for just cause since she was totally oblivious and unresponsive to past progressive disciplinary action, and was pointedly aware that dismissal was an ever present reality for recidivist behavior.

Supervisor Sarah George testified that Ms. Fletcher misdirected 51 letters on January 20, 1983 when she was assigned to key mail on console #6, machine #2, and was disturbing the keyers on January 20, 1983 when she was assigned to the loading position on LSM #2. Supervisor George stated that the Grievant delayed the mail on October 7, 17 and 24, 1982 respectively, when she (Grievant) engaged in constant unnecessary talking and was not deying on the machine as her job required. The Supervisor testified that Clerk Fletcher was trained on the machines and never indicated that she was having difficulty with the equipment. She stated that on several previous occasions the Grievant failed to follow instructions or observe pertinent safety rules and regulations. She indicated that the Grievant brought food and beverages on the work floor on the dates

cited in charge #2 and was smoking in the LSM sweepside on October 6, 1982.

Supervisor George testified that in her judgement, despite the measured imposition of progressive discipline and the numerous discussions she had with the Grievant, it was apparent that the Grievant was not responsive to remedial actions. She indicated that she did not bear any personal animosity toward the Grievant, but asserted that the Grievant disregarded the Postal Service's Standards of Conduct. (See Postal Service Exhibit #3)

The Postal Service maintains that in view of the Grievant's past record and the seriousness of the present charges, her removal from service on March 4, 1983 was neither unreasonable nor an abuse of managerial discretion.

UNION'S POSITION

The Union asserts that the charges are insubstantial and weak since the Grievant had not been charged with misdirecting mail since 1978.² The Grievant does not dispute that it was possible she had an off day keying on January 20, 1983, but notes that her average on the position for her past eight (8) work years was very good. She stated that Supervisor George probably told her to stop talking on January 20, 1983, but opined that Ms. George was usually snappy toward her. The Grievant testified that she did not remember being addressed

²The Arbitrator takes judicial notice that the Grievant had been disciplined on three (3) separate occasions for misdirecting mail in 1978. The subsequent disciplinary impositions were for attendance infractions.

for the elements cited in charge #2 on October 7, 14 and 24, 1982, and did not remember any discussions for the elements cited in the third charge. While not denying that she might have been five (5) minutes late from an official break on January 24, 1983, Ms. Fletcher indicated that she had never been counseled or disciplined for a similar type purported infraction.

The Union avers that the Postal Service has not proffered the qualitative proof necessary to sustain the charges; and requested the Grievant be restored to service with make whole restitution.

ARBITRATOR'S OPINION

In considering the merits issue herein, the Arbitrator finds sufficient credible evidence to support the first charge set forth in the January 24, 1983 Notice of Removal and that part of charge #2 asserting the disruption of the work unit on January 20, 1983. Both incidents occurred on January 20, 1983 and are unmistakably indications of the Grievant's apparent unconcern for work floor discipline. The Grievant attempted to minimize their significance by arguing that she had an off day and was subject to "snappy" directions from Supervisor George, but this after-the-fact rationalization is no defense.

In a similar manner, the Arbitrator finds that the Grievant was guilty of that part of the specifications in charge #3 wherein she was charged with five (5) minutes lateness from an official break. While, by itself, this charge is probably

DeMinimus, at least for a first offense long term employee, this lateness typifies Ms. Fletcher's indisposition to regulations.

On the other hand, the Arbitrator does not find substance to any of the other specifications since they ostensibly occurred in the past and no formal record of them was submitted into evidence. While the incidents might have been the subject of discussions and the Grievant denied and/or did not remember their occurrence, it would be difficult at this late juncture, when they reflected more of an afterthought to strengthen the more recent charges to ascertain their substantive tenability.

Yet, however, upon this record, the Arbitrator does not believe that dismissal was justified under these circumstances. Instead, dismissal without back pay to date, and reinstatement would be more in accordance with the nature of the demonstrated offenses and the Grievant's past background. Her disciplinary record is horrendous, to say the least, and dismissal would have been upheld herein if the other specifications were validated.

From the record, it appeared quite strongly that the Grievant is unaware of the necessity for work place discipline and has been permitted, perhaps unwittingly, to be too independent and assertive at times. Moreover, her attendance record does not indicate that she is overly enthused about protecting her job. She was last assessed a fourteen (14) day suspension for AWOL on August 18, 1982, effective September 18, 1982. Her reinstatement in this instance is predicated solely upon the weakness of the specifications in the charges and not upon a complete vindication. She is admonished that misconduct,

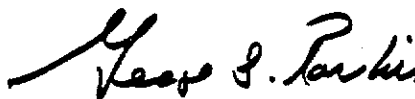
malperformance, and poor attendance will not be tolerated.

AWARD

The grievance is arbitrable.

The Grievant, Clerk Sharon Fletcher, was not removed for just cause on March 4, 1983. She is to be reinstated without back pay for the reasons given in the opinion.

Respectfully submitted,



George S. Roukis
Arbitrator

GSR/mr

Issued in Newark, New Jersey
October 31, 1984

STATE OF NEW YORK)

: ss.

COUNTY OF NASSAU)

On the 31st day of October, 1984, before me personally came and appeared GEORGE S. ROUKIS, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged that he executed the same.

MARIA E. ROUKIS
Notary Public, State of New York
No. 30-4672617
Qualified in Nassau County
Commission Expires March 30, 1986

