

C-19778

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration
between

UNITED STATES POSTAL SERVICE

-and-

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

GRIEVANT: D. Butler

POST OFFICE: South Annex

CASE NO.: H94N-4H-D 99047262

LOCAL NO.: 1477550019

BEFORE: Carol Kyler, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Gerald Keegan, Labor
Relations Specialist

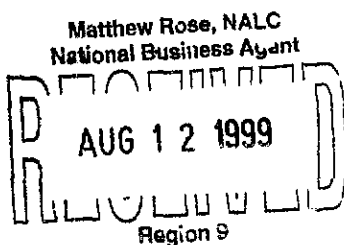
For the Union: Les Stroup, Executive VP, Branch 1477

PLACE OF HEARING: St Petersburg, FL

DATE OF HEARING: July 7, 1999

AWARD: Management had just cause to issue the Grievant the Notice
of 14-Day Suspension, dated October 9, 1998. Accordingly, the
grievance is, hereby, denied.

DATE OF AWARD: August, 7, 1999



Carol Kyler
Carol Kyler

PRELIMINARY STATEMENT

The Grievant, a Letter Carrier, has been employed by the Postal Service since September 15, 1984. On October 9, 1998, the Grievant was issued a Notice of 14-Day Suspension for Continued Unsatisfactory Attendance - Absence Without Leave (AWOL). The reasons for this action, as set forth in the notice, were as follows:

Previous efforts to correct your attendance deficiencies have not been successful. An analysis of your record reveals the following unscheduled absences:

9/2/98	.25 units LWOP/7.75 hrs AWOL	9/17-19/98	24 hrs AWOL
9/16/98	.20 units LWOP/7.80 hrs AWOL	9/26/98	8 hrs AWOL

Employees are required to be regular in attendance and report to work as scheduled. Your actions are inconsistent with Part(s) 666.81 and 666.82 of the Employee and Labor Relations Manual and will not be tolerated. Although some of the above absences were approved for pay purposes, unscheduled absences are considered grounds for discipline.

A review of your previous record indicates the following:

You received a Notice of Suspension (7 days) dated July 7, 1998, for Continued Unsatisfactory Attendance - AWOL

You received a Notice of Suspension (3 days) dated May 7, 1998, for Continued Unsatisfactory Attendance.

You received a Letter of Warning dated October 14, 1997, for Continued Unsatisfactory Attendance.

A grievance was timely and properly processed through the various steps of the grievance procedure and was denied at each step by Management. The Union, subsequently, appealed the grievance to arbitration. After the presentation of testimony and evidence, the parties elected to present oral closing statements in lieu of filing post-hearing briefs. The parties stipulated at the start of the hearing that the grievance was arbitrable. Accordingly, the matter is proper for resolution in these proceedings.

ISSUE

The parties stipulated at the start of the hearing that the issue to be resolved is as follows:

1. Did Management have just cause to issue the Grievant the Notice of 14-Day Suspension, dated October 9, 1998? If not, what is the proper remedy?

MANAGEMENT'S POSITION

1. Management had just cause to issue the Grievant the Notice of 14-Day Suspension, dated October 9, 1998.
2. During the month of September 1998, the Grievant incurred six instances of AWOL and 2 of LWOP.
3. Despite having previously been issued a Letter of Warning (LOW), dated October 14, 1997, a 3-Day Suspension, dated May 7, 1998 and a 7-Day Suspension, dated July 7, 1998, just two months prior to the issuance of the present discipline, all for continued unsatisfactory attendance, the Grievant's attendance continues to be unsatisfactory.
4. The issuance of the 14-Day Suspension was not punitive; it was progressive and corrective.

POSITION OF THE UNION

1. Management did not have just cause to issue the Grievant the Notice of 14-Day Suspension, dated October 9, 1998.
2. The Grievant's actions were not inconsistent with Sections 666.81 or 666.82 of the Employee and Labor Relations Manual (ELM).
3. The Grievant testified that on both September 2, and September 16, 1998, he had car problems.
4. The Grievant presented documentation for his absence from September 17th through the 19th.
5. The absence on September 26, 1998 was due to the fact that the Grievant lived in evacuation A zone and had evacuated his home due to Hurricane Georges.
6. The discipline is punitive and not corrective.

DISCUSSION AND OPINION

The Union contends the Grievant's actions are not inconsistent with Sections 666.81 and 666.82 of the ELM.

Section 666.82 states:

Absence without Permission. Employees failing to report for duty on scheduled days, including Saturdays, Sundays, and holidays, will be considered absent without leave except in actual emergencies which prevent obtaining permission in advance. In emergencies, the supervisor or proper official will be notified as soon as the inability to report for duty

becomes apparent. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or fails to provide satisfactory evidence that an emergency existed will be placed in a nonpay status for a period of such absence. The absence will be reported to the appropriate authority. [Emphasis added].

The Grievant's scheduled report time was 8:00 a.m. According to the record, which was not disputed, on September 2, 1998, at approximately 7:45 a.m., the Grievant called the South Annex Station to report that he would be approximately 20 minutes late due to car trouble. At around 8:15 a.m., after the Grievant had failed to report for work, the Grievant's supervisor called and left a message on his answering machine advising him that as of 8:15 a.m. the Grievant would be considered AWOL until he either reported to work or telephoned. The Grievant, however, neither reported to work, or call his supervisor back that day.

Although the two 3971's, for September 2, 1998, and the Grievant's 3972, reflect he was charged .25 units LWOP and 7.75 hours AWOL for his absence that day, Ms. Lolita Dash, the Grievant's immediate supervisor, testified that upon bringing certain documentation from Foreign Auto verifying that the Grievant had had repair work done on his car, she granted him a leave of absence for pay purposes only. This, however, does not excuse the fact that the Grievant failed to report for duty as scheduled, on September 2, 1998, in accordance with Section 666.82 of the ELM.

On September 16, 1998, the Grievant telephoned his supervisor at approximately 8:00 a.m. and stated that he would be about 20 minutes late. Apparently, the Grievant had taken his girlfriend and her mother to the airport and had been held up in traffic. The Grievant, however, failed to report for duty that day, or to call back to the station. As such, he was charged .20 units LWOP and 7.80 hours AWOL. Accordingly, the evidence is sufficient enough to support a finding that the Grievant failed to report for duty as scheduled on September 16, 1998, in violation of Section 666.82 of the ELM.

The Grievant called in sick and was absent from September 17th through the 19th, 1998. Although under Section 513.361, a supervisor may accept an employee's statement explaining an absence of 3 days or less, a supervisor may deem documentation desirable for the protection of the interests of the Postal Service. In this regard, Dash testified that despite having received prior discipline for unsatisfactory attendance, his attendance continued to be unsatisfactory, thus, she requested documentation from the Grievant to substantiate his absence from September 17, 1998 to September 19, 1998.

Under Section 513.364 of the ELM, when an employee is required to submit medical documentation, such documentation should provide

an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was incapacitated and unable to perform his normal duties for the period of the absence.

At some point in time, the Grievant submitted documentation from the Bayfront Convenient Care Clinic, dated September 18, 1998 indicating a diagnosis of "carbon monoxide poisoning." The documentation, however, is deficient in several respects. Although the document indicates a diagnosis of "carbon monoxide poisoning," it does not specifically state that the Grievant was incapacitated and unable to perform his duties from September 17th through September 19th. The only date stated on the form is September 18, 1998, which indicates the day that a Dr. M. Buete referred the Grievant to the Bayfront Emergency Room. Nor does the document indicate a date when the Grievant would be able to return to duty. Accordingly, the documentation did not meet requirements, under Section 513.364 of the ELM, for acceptable documentation.

Section 513.365 states that if acceptable proof of incapacitation is not furnished the absence may be charged to annual leave, LWOP, or AWOL.

In this case, Dash testified that she gave the Grievant until the end of pay period 20 to bring in additional documentation. The Grievant, however, failed to bring in additional documentation to substantiate his absence from September 17, 1998 until September 19, 1998. Specifically, the Grievant testified, "...I got, what I felt was, what they gave me from the doctor, so I gave it to her." When asked if he had gone back to the doctor to obtain additional documentation, the Grievant stated, "No, why would I?" Since the Grievant failed to provide acceptable documentation, he was charged 24 hours AWOL for his absence from September 17, 1998 until September 19, 1998.

According to the Union's Step 2 Appeal Form, on September 26, at 5:00 a.m., the Grievant called the station and spoke with Clerk Joe Stephens. The Grievant, apparently, asked Stephens to inform his supervisor that he could not report for work that day, because he had to evacuate his residence due to Hurricane Georges. Accordingly, the Grievant did not report to work as scheduled on September 26, 1996, and was, subsequently, charged with 8 hours AWOL for that day.

As I understand from its Letter of Additions and Corrections, dated December 14, 1998, the Union contends the Grievant's absence on September 26, 1998 should not have been cited in the Notice of 14-Day Suspension since it is subject to a Class Action. According to the Union, while other carriers were granted annual or LWOP for September 26, 1998 due to Hurricane Georges, the Grievant was charged with AWOL.

Accordingly, the grievance is a contract grievance concerning, among other things, the type of leave carriers should have been charged with on September 26, 1998 who did not report for duty due to the hurricane. The case at bar, however, is a disciplinary case to determine whether or not management had just cause to issue the Grievant the Notice of 14-Day Suspension.

In this regard, Dash testified, without refute, that Acting Supervisor Anthony Long, called the Grievant's residence at 6:00 a.m. and advised him that the evacuation warning had been lifted and, therefore, the Grievant would be expected to report for duty as scheduled. The Grievant then told Long that he would be into work that day. The Grievant, however, never reported for duty as instructed by Long. Nor did he call the station back and advise anyone that he would not be coming into work. Accordingly, the evidence supports a finding that the Grievant failed to report for duty as scheduled, in violation of Section 666.82 of the ELM.

Dash testified that even if she had not considered the Grievant's absence on September 26, 1998, she would still have issued the discipline.

Finally, the Union contends the Notice of 14-Day Suspension is punitive and not corrective.

Section 666.81 of the ELM states:

Employees are required to be regular in attendance.


The evidence, however, indicates that despite having been issued a LOW, dated October 14, 1998, a 3-Day Suspension, dated May 7, 1998, and a 7-Day Suspension, just two months earlier, dated July 7, 1998, all of which were for continued unsatisfactory attendance and AWOL, the Grievant continued to fail to be regular attendance as required under Section 666.81 of the ELM.

After careful consideration of the evidence and arguments of the parties, and based on the reasons set out above, Management did have just cause for issuing the Grievant the Notice of 14-Day Suspension, dated October 9, 1998.

AWARD

The grievance is denied.

August 7, 1999



Carol Kyler
Arbitrator