

C-26993

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REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	GRIEVANT: Hallmark
)	POST OFFICE: Crockett, TX
between)	USPS Case No.: G01N-4G-D 06233688
)	092606-2
UNITED STATES POSTAL SERVICE)	
)	
and)	GRIEVANT: Reed
)	POST OFFICE: Crockett, TX
NATIONAL ASSOCIATION OF)	USPS Case No.: G01N-4G-D 06233682
LETTER CARRIERS)	092606-1

GRIEVANT: Morgan
POST OFFICE: Crockett, TX
USPS Case No.: G01N- 4G-D 06233667
 092606-3

BEFORE: Louise B. Wolitz, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Constance R. Flowers

For the Union: Vorris Malveaux

Place of Hearing: 600 E. Goliad Ave., Crockett, TX 75835

Date of Hearing: January 30, 2007.

Date of Award: March 2, 2007.

Relevant Contract Provisions: Article 16, 5, 15 and 19.

APR 06 2007

Contract Year: 2001 - 2006

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

Type of Grievance: Discipline

OKAY

Award Summary:

The arbitrator finds that this grievance is arbitrable. The grievance is sustained. The Postal Service egregiously violated Articles 16, 5, 15 and 19 when the grievants' employment was terminated via retirement and resignation. The grievants are to be returned to their positions as letter carriers if they wish to resume their positions and be made whole for all pay and benefits lost.

Louise B. Wolitz, Arbitrator

RELEVANT PROVISIONS:

NATIONAL AGREEMENT, 2001 - 2006

ARTICLE 5

PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

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 regulations. 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.

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Section 5. Suspensions of More Than 14 Days or Discharge

In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure....When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable

and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

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Section 6. Indefinite Suspension - Crime Situation

A. The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed. In such cases, the Employer is not required to give the employee the full thirty (30) days advance notice of indefinite suspension, but shall give such lesser number of days of advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from pay status at the end of the notice period.

B. The just cause of an indefinite suspension is grievable. The arbitrator shall have the authority to reinstate and make the employee whole for the entire period of the indefinite suspension.

C. If after further investigation or after resolution of the criminal charges against the employee, the Employer determines to return the employee to a pay status, the employee shall be entitled to back pay for the period that the indefinite suspension exceeded seventy (70) days, if the employee was otherwise available for duty, and without prejudice to any grievance filed under B above.

D. The employer may take action to discharge an employee during the period of an indefinite suspension whether or not the criminal charges have been resolved, and whether or not such charges have been resolved in favor of the employee. Such action must be for just cause, and is subject to the requirements of Section 5 of this Article.

THE HEARING:

The hearing on this matter was held on January 30, 2007 at 600 E. Goliad Avenue, Crockett, Texas. The Postal Service took the position that the matter is not arbitrable because Carl Hallmark, Arnold Morgan, and Samuel Reed were no longer Postal employees as of August 31, 2006 when Mr. Morgan and Mr. Hallmark filled out Postal Service form 2574, by which they resigned from the Postal Service, and as of September 1, 2006 when Mr. Reed submitted the same resignation form. The Postal Service argued that these actions were voluntary on the part of Mr. Hallmark, Mr. Reed and Mr. Morgan. They therefore severed their connection with the Postal Service and their rights under the National Agreement. They therefore had no standing to grieve or to arbitrate this dispute. The Union argued that the resignations were coerced and were disciplinary in nature, not voluntary. The grievances and arbitration requests were processed through the system, with the Postal Service preserving its rights to argue that the case was not arbitrable. After some initial discussion about whether this was a contract case or a

discipline case, the parties agreed to proceed with the hearing. Each party had a full opportunity to present its witnesses and arguments and to cross examine each other's witnesses. All three grievants testified at the hearing. The witnesses were sequestered and were properly sworn. The parties also agreed to combine all three cases in one arbitration award. The hearing proceeded in an orderly fashion. The parties closed orally on the day of the hearing and presented their arbitration citations to the arbitrator. The record was closed on January 30, 2007.

THE ISSUE:

The first issue is: Are these grievances arbitrable? The substantive issue, as defined by the Step B team in all three cases is: Did management violate Article 16, 5, 15 and 19 of the Joint Contract Administration Manual (JCAM) and the Employee and Labor Relations Manual (Veteran's Rights) when the grievant's employment was terminated via forced resignation on August 31, 2006? If so, what is the appropriate remedy?

BACKGROUND:

There is no disagreement between the parties about the underlying facts of this dispute. Sometime in early April, 2006, Postmaster Gary Lynn McShan, who had been Postmaster of Crockett since October 15, 2005, discovered discrepancies between the information in his vehicle scanners which record miles and the clock rings entered by Arnold Morgan and Butch Hallmark. He spoke with three carriers: Arnold Morgan, Butch Hallmark and Sammy Reed. Mr. Morgan told him that he had left early, and Sammy Reed had clocked his time out. Butch Hallmark admitted that he had left early a few times. Sammy Reed clocked him out. Mr. Morgan said that he had left an hour early. Mr. Hallmark admitted that he had done it 3, 4 or 5 times. Sammy Reed said that he knew that he should not have done it but he did it to be a good old boy. Mr. McShan spoke to all three employees and explained the seriousness of the offense. They all said that they had done wrong and promised never to do it again. They all testified that they thought that was the end of it. They had had a discussion, admitted wrongdoing, promised never to do it again, and would not do it again. Postmaster McShan said that he never promised them that no further action would be taken. He had said that he hoped that it could remain in the office. The employees continued to work without incident through April, May, June, July and August. Mr. McShan, meanwhile, testified that he contacted his MPOO and Labor Relations. When he first contacted his MPOO, Jennie Hand, they were discussing suspensions. Then another MPOO took over, Mr. Holder. Mr. Holder told him that it was a removable offense, that others had been removed for such an offense, and that they all needed to stay on the same page. Mr. McShan concluded that he needed to take some action. He contacted the OIG on April 10. Mr. Gene Smith was assigned to investigate. The investigation took place on August 31. Mr. McShan testified that it took so long because the OIG wanted all three employees and himself there at the same time and because of vacations of the employees, himself and the inspector, that did not occur until the end of August. When Mr. Smith came, he interviewed the employees. Mr. McShan was not in the room. After interviewing each of the three employees, Mr. Smith told Mr. McShan that he concluded that they were guilty. Then Mr. McShan spoke to

each employee, told them that he was prepared to seek termination for stealing, and offered them the chance to resign instead. Mr. McShan handed each employee a resignation form. Mr. Morgan and Mr. Hallmark decided to sign the resignation form on the spot and were escorted out of the building. Mr. Reed asked for a day to think about it and was given that time. He decided as well to bring in the resignation form the next day. Thus, Mr. Morgan and Mr. Hallmark resigned on August 31 and Mr. Reed resigned on September 1, 2006.

POSITION OF THE POSTAL SERVICE:

The Postal Service argued that this case is not properly before the arbitrator because the employees had resigned. According to the ELM, resignations are binding if they are not withdrawn within 24 hours. These resignations are binding. These employees admitted clocking each other off illegally. There has been no discipline. They have not been removed; they resigned. Mr. Morgan and Mr. Reed resigned; Mr. Hallmark retired. They were not coerced into resigning. Mr. Hallmark retired as of August 31, 2006. Mr. Morgan resigned as of August 31, 2006. Mr. Reed resigned as of September 1, 2006. These employees were stealing time and falsifying pay records. This grievance should be denied in its entirety.

Mr. McShan maintains that these resignations were voluntary. He did not order them to resign. He simply made them aware of what he was prepared to do and that they would be terminated for stealing if they did not resign. Mr. McShan said that he did not scare them. They gave him the resignation forms. He told them they could write down anything they wanted as a reason. They asked him how to fill out the form. He told them they could write or not write something in as a reason. They did not say on the form that they were resigning under duress. It was their choice to resign. No one asked for a Union steward. The Union steward, Paul Denman, was on vacation that week. He was called in later to carry the routes. He was present in the station during the meetings with the employees. Mr. McShan said that he was sure that at least two of the employees knew that Mr. Denman was in the building.. Mr. Denman came in while he was interviewing Mr. Morgan. Nobody asked for a steward. When the employees resigned, Mr. McShan said that he did not continue his investigation. He never received a final report from the OIG. He did not need to remove the employees on a 16-7 because they resigned. The resignations became effective within 24 hours. They did not withdraw them. Mr. Reed first said, on the 31st, that he would have to fire him. Mr. McShan told him that was his decision. He gave him time to think about it. He told him that he could not force him to resign. The next morning, Mr. Reed asked for a resignation form. An employee has no right to the grievance procedure once he has resigned and is no longer an employee of the Postal Service. Mr. McShan acknowledged that he had told the employees in April that he would like to keep the matter in house, but he was not going to put himself in jeopardy. He did not tell the employees that the matter was never going to leave the office. Mr. McShan said that he was trying to protect himself. He wanted his boss to go along with him. He did not want to lose three out of five of his city carriers. However, he was not going to get himself in trouble for what they had done. He gave them an honorable option. It is hard to explain to another potential employer being terminated

from the Postal Service. Mr. McShan said that he did not know if they were veterans. In any case, they resigned so they had no MSPB claim. These employees are no longer on his rolls or on his complement.

Mr. McShan said on cross examination that he talked to Labor Relations about this case. If April 10 was a Saturday, he found out on that Monday. He started his investigation. He conducted his investigation within two days of having found out. He was waiting on the OIG investigation. Checking a calendar, it was discovered that April 10, 2006 was a Monday. Mr. McShan said that he did his investigation between April 10 and April 17. The employees admitted that they were stealing. Then he spoke with his boss. Mr. McShan said that he was going to take some type of corrective action, but nothing was set in concrete. He was going to get the OIG involved and let them do their investigation. He does not remember the exact date that he contacted the OIG. It was his decision to offer the employees the opportunity to resign. The OIG did not advise him to do that. Labor Relations told him it was a removable offense and that a manager had just gotten removed for the same offense. Labor Relations did not advise him to hand them a resignation form. The OIG did not do a report. The OIG did not influence his decision. He was waiting for their investigation. They are better at investigating than he is. Mr. McShan acknowledged that the employees did not lie to him and did not lie to the OIG. Mr. McShan said that he was done with the resignations by 8 o'clock or 8:30 and that Mr. Denman probably came in about 8:30. He called the employees in the office one by one. He called Arnold Morgan in first, between 8 and 8:30. It took about 30 minutes. He did not have the resignation form out when he walked in the door. First, the OIG spoke to him. Then Mr. McShan spoke to him. He told him here are his options: Mr. McShan would seek termination or he could resign. Mr. Morgan took a minute to think about it and decided to resign. Some of the employees could have seen the Union steward because although he was on Annual Leave, he came in to work that day. They had to walk right past his case to come into Mr. McShan's office. Mr. Denman probably came in between 8 and 8:30 and went to his route, cased it and carried it. He was in the office about 15 minutes. Mr. McShan said that he was not familiar with the resignation provisions in the ELM. He did not check the ELM on resignations. Once the employees signed that resignation form, they had resigned and were no longer employees. When they filed grievances, he called Labor. Labor told him to go through the grievance procedure with them.

In closing, the Postal Service argued that Mr. McShan has credibly testified. It was not until August 31 that OIG Kenny Smith was able to interview all the employees. The employees worked for the Postal Service for a long time. They know the rules. They violated a rule. They signed a resignation form and did not know what they were signing. Mr. McShan had to get advice from his manager and from Labor Relations. These employees were stealing time and falsifying records. The appropriate penalty was removal. Mr. McShan was embarrassed that such a thing had happened on his watch. He would have liked to have kept it in house. He did tell his boss and Labor Relations, but he did not say what he was going to do. He contacted the OIG. He knew they would follow through. The employees knew the penalty and the consequences. They all said that they would rather resign than get terminated. He was advised this was a removable offense.

Mr. Holder gave him other examples of employees terminated for the same thing. He had to do what he had to do as a manager. The employees knew what they did was wrong. If they hadn't resigned, they would have been terminated. There were no statements on the resignation form that they resigned under protest or under duress. They did not want to put such a statement on there. They were *buddy punching*. They knew how to request leave. Just because they stopped once they were told to stop does not mean there was no penalty. The penalty for stealing is removal. It is stealing to get paid for time you don't work. Mr. McShan did not instruct them to resign. In fact, Mr. McShan gave Mr. Reed the opportunity to decide what he was going to do. He decided to resign to keep from getting a termination notice. This was not a termination. Management did not terminate anybody. At the time that they resigned, they were not employees anymore. They should have no access to the grievance procedure. It is not management's responsibility that the Union steward did not know what to do. Mr. Reed said that Mr. Denman did not know what to do. That is not the Postal Service's fault. There was nothing in writing from the OIG. Mr. Minton could have continued to follow through. Mr. Denman was at work in Crockett that day. There could have been union representation. There was no notice of proposed removal. There was no reason not to accept the resignations. Mr. McShan wanted the OIG involved at the direction of Labor Relations and his MPOO. The OIG, Kenny Smith, was only a fact finder. They did not utilize his investigative report but did allow him to interview. All three employees voluntarily resigned. There was no coercion, no duress. They were given options. They decided that they would rather resign than be terminated. They were not ordered to resign. The Union has not proven they were ordered to resign. The resignation form said that it was a finalization of their employment. The OIG said that if they resign, they could possibly not have to press charges. The OIG supported management that taking money without working is not right. This grievance should be denied in its entirety.

POSITION OF THE UNION:

The Union argued that a resignation is involuntary if it is the result of coercion, duress or misinformation. These employees were taken in to the office and put in a position of *obey now, grieve later*. They were brought into the Postmaster's office, the form was put in front of them, and they were told either resign or be fired. The employees do not deny having done something wrong. In April, they were taken into the office, given a discussion and told not to do it again. They did not do it again. Then, on August 31, they are told to sign and resign or be fired. The Agency wants the arbitrator to believe that they voluntarily resigned from the Post Office. They had no intention of resigning. They did not clean out their lockers and desk drawers. Usually, when someone voluntarily resigns, they give two week's notice. In this case, the resignation was submitted and effective the same day. The employees cased their routes that morning. The Postal Service wants us to believe that at 8:30, they all decided to resign on the same day at the same time. They did not give two week's notice. They did not write a reason. The ELM requires a reason for a voluntary resignation. No reason was given on any of the forms. Mr. Hallmark was of retirement age and decided to retire. They are all veterans. They were denied their veteran's rights. They were denied union representation. The Union steward was called in that day to carry the route of one of the dismissed

employees. He should have been called in to be present at the interviews. The employees were concerned that not to sign the form would be insubordination. They were called in the office one by one and ordered to sign the form and resign. The Agency knows it has problems with the merits of this case. The problem is the situation was four months old. The employees did not give the notice of resignation to their immediate supervisor, but to the Postmaster. Proper procedure for resignation was not followed. The Postal Service is also supposed to conduct an exit interview to find out why an employee wishes to leave and to try and retain their services. They did not do an exit interview. Management did not know how to handle a resignation. The Postmaster did not look at the resignation procedures. He just called them in and said *resign or I'll fire you*. These employees were coerced to resign and denied their rights under the grievance procedure and as veterans. The resignations should be overturned. The employees should be put back to work and made whole.

Arnold A. Morgan testified that he was a casual for three and a half years and became a PTF on August 22, 2005. He has never taken a whole week of vacation since he has been working at the Postal Service, although he has accumulated the time. He was called into the office in April and asked if he had been clocked out by another employee. He said, *yes sir, he did it*. Mr. McShan said that he will talk to his boss. This was in April. He told him not to ever do it again. He said that if he does not do it again, he would keep it in the Post Office and would not bring it up ever again. On August 31, he did not see his steward. The steward was on vacation. He started work at 6:30 on August 31 and was on his route at 7:30. He was called in to the office right before break at 8:30. All city carriers take a break at 8:30. He did not see Mr. Denman in the office. He did not know why he was called in to the office. It was not his intention to resign. The Postmaster sat him down and brought up the April incident. He said it was over his head and there was nothing he can do about it. Someone came in and Mr. McShan walked out of the office. He spoke to the postal inspector. Mr. McShan came back in. Mr. McShan said that he was having to let him go. Mr. McShan showed him a piece of paper that he needed to sign. He said that he needed to sign that piece of paper or be terminated. Mr. Morgan said that he thought that it was an order. He signed the paper. He read the part that said resignation. He did not want to be terminated. He was looking to come back to the Post Office. He was scared. He did not know what to do. He did not know that he could not file a grievance if he signed the form. He would not have signed it if he knew that.

On cross examination, Mr. Morgan acknowledged that he was aware of the expectations for a Postal employee and aware of the rules. He acknowledged that he did not think that buddy punching was the right thing to do. When he left his previous job, he gave two week's notice and the reason why he left. Here, he was forced to do something he did not want to do. He did not write a reason on the form because he did not know what to do. Mr. McShan told him to sign the form or be terminated. Mr. McShan did not say in April that he was not going to terminate him. The other man, he thought was a postal inspector. He showed him something and introduced himself. It was the Postmaster, not the postal inspector, who forced him to resign. He was scared and nervous and did not know what to write down. He did read the form before he signed it, but he did not understand it. He did not know what to do. He did not ask for a Union

steward because he was scared. It did not cross his mind that he could lose his job for *buddy punching*. He thought it was not right. He thought after he signed the form he could still contact the Union to file a grievance. He thought that the Union was still with him. Postmaster McShan is a good guy. He wants you to get your work done.

On redirect, Mr. Morgan said that he has never received any discipline before. He has never filed a grievance. He has never used a steward before. He was written up one time. He signed a piece of paper in April that said something about not doing it again. It said you have been written up. He signed it. He can't remember if he received a copy. Mr. McShan said in April that he called his boss and his boss said it was up to him. Mr. McShan said *don't do it again and you won't hear about it again*. Mr. Morgan said that he didn't know that he could not file a grievance if he signed the resignation form.

On recross, Mr. Morgan said that he thought that he could go to another Post Office.

Carl H. Hallmark testified that he was 62 years old and has worked for the Postal Service for 35 years and 3 months, all in Crockett. He started working in the Crockett Post Office on November 8, 1974. In April, 2006, he was told that he should not have someone else clock him out after he had left. He had done it a couple of times. He was told that Mr. McShan did not want them to do it any more, that it was wrong. Mr. Hallmark said that he told Mr. McShan that he was sorry and that he would not do it any more. He was finished with his route and watching the clock. He wanted to pick his wife up from school and drive her home because it was raining hard and his wife does not drive. He told the truth, that he did it. He thought that it was over with. On August 31, he had no idea why he was called into the office. He has carried the same route for 28 years. This was the biggest surprise of his life. He was taking his break about 8:25, sitting on the back porch, smoking. He wondered where Arnold Morgan was. Then Arnold Morgan walked in to his pick up. He had no idea what was going on. He was called in to the office. He still had no idea what it was about. The Postmaster gave him the form and told him either be fired, resign or retire. So, naturally, he took retire. He was in shock. Mr. McShan was in and out of the office. Mr. Hallmark said that he never had anything like that happen in his life. He was never disciplined before. He never had to file a grievance. He never had to use a Union steward. They never had a lick of trouble in Crockett. Mr. Denman was not in the office. He was home. Mr. Hallmark said that he thinks that they ought to have been disciplined for what they did, reprimanded, and put back to work. Mr. Hallmark said that he was in a state of shock. He was thinking that his world had turned upside down. He thought that he would file a grievance to get his job back. He wanted to work 2-3 more years. He truly enjoyed his job. He knew he had done wrong. He thought the discussion was the end of it. He did not do it any more. He still misses his job.

On cross examination, he said that Postmaster Carpenter never talked to him about *buddy punching*. He knew to fill out leave forms if he left early. He did not think that it hurt anybody. He had done his day's work, from 7:30 - 4. He knows not to steal. He did not really consider this stealing. He had done his job. He puts out extra effort to keep from running overtime. He has probably given the Postal Service 100 hours of free time. He did not feel right doing it.

On redirect, Mr. Hallmark said that he follows instructions. He felt like he was being order to sign the form. He was told retire, resign or be fired.

Samuel Reed said that he has spent his entire Postal career in Crockett, 21 years. He was a PTF for 15 years, since November, 1985. He made regular within the last six years. He never had any discipline. He had some discussions, but all problems had been worked out. He had no warnings, no suspension. This is the first Union stuff they ever had in Crockett. He knows who his steward is, Paul Denman. But in Crockett, when they had problems, they worked them out, talked them out. On August 31, they met the Union steward as they were walking him out the door. Mr. Denman was just coming in. They called him in off Annual Leave to carry the routes they had to leave. The Postmaster presented him with the resignation form that Thursday morning. He shoved it in his face. He said, *you'll either be fired or sign this*. Mr. Reed said that he was just shocked. He was scared to death. He said that he guessed they would just have to terminate him. He walked him to his car. He is 54 years old. He did not want to be fired. He needs another job. He thought perhaps he should sign the paper and let the Union take care of it. You are supposed to do a direct order and then ask questions. This was a direct order from the Postmaster. He wouldn't have signed it if he knew he had no recourse. He figured he would do what they tell him to do and go from there. The Post Office drives that home. He's always tried to do what they told him. He did not have a reason for the form. He thought this incident was all settled back in April. He had no inkling it would come down the way it did.

On cross examination, Mr. Reed said that another man was reading a speech and flashed a badge. He had no idea what was going on. The man mentioned his name and flashed a badge. He said the Postmaster would be in. He spoke of a threat of imprisonment. Mr. Reed said that he was in a vacuum. He did not know what was going on. Mr. Denman came in to work as they were walking him out. They were through with him. It was too late to ask for Mr. Denman. They were walking him out to his car. He was not given an option to resign. He was told he can either resign or be terminated. He said, *terminate me*. He called Paul Denman that night. It took Mr. Denman 3-4 days to find Union help. This is the first Union stuff they have ever done. He was in a situation where he could either get fired this way or this way. So he just signed the form. Mr. Reed acknowledged that he punched somebody else off so that they could get paid while not doing their duty. He knew it was wrong. Mr. McShan gave him the opportunity to think about it. He thought about and decided that Mr. McShan told him to sign the form so he had better sign. The opportunity was an instruction. He had the option of being terminated or being terminated by signing a piece of paper.

On redirect, Mr. Reed said that he did not know that he was giving up his right to the Union by signing the form. He had just come back to the station from vacation on that Monday of the week of the 31st. He talked to Mr. Denman that night. Mr. Denman was trying to get phone numbers. He did not know what to do. So he figured if he was told to sign it, he better sign it.

The Union's last witness was James C. Minton. Mr. Minton has been with the Postal Service for 29 years and has been a union steward for 15 years and an LBA for 7 or 8 years. He was called by the NBA's office to go to Crockett, Texas to handle three terminations. He prepared the grievances for each of the three and presented them to the supervisor, Mr. Keene. These were disciplinary cases and he filed the grievances as disciplinary grievances. It was understood by both parties that this was discipline. When he arrived in Crockett, he spoke with Postmaster Gary McShan. He spoke with the immediate supervisor and prepared and presented the grievances. On August 31, each employee was escorted off the property to their vehicle. He did not receive an OIG report. He made calls to OIG Ken Smith for it but did not get it. He interviewed Supervisor Jimmy Keene. He called the Postmaster. He placed two calls to Mr. Smith and left a message on his answering machine. He never heard from Mr. Smith. He met with Mr. McShan on September 26 for the Formal Step A. They presented their contentions. Mr. McShan remembers talking to the employees on April 10. He told them not to do it anymore. He put them right back to work. He did not say that he was still investigating. Mr. McShan said that because of vacations, it took more than 4 months for the OIG to come to do the investigation. There is not enough vacation time to cover all this time. They did not need all five at the same time. The Union argues that the time delay was not reasonable. He did not put the men on emergency suspension. Then they were forced to resign on one day, a day when the steward was on Annual Leave. Mr. McShan maintains that they signed it voluntarily, but in fact it was forced and coerced. Not one of them asked for a resignation document. They were forced to sign it. They were given instructions to sign these documents. They felt obligated to follow the instructions now and grieve later. If one voluntarily resigns or retires, he is not escorted off the property. The only employees escorted off the property are people who are fired. These employees therefore have access to the grievance procedure, even after they have signed this form. Management and the Union have agreed that separation from the Postal Service does not bar grievances. They can file a grievance within 14 days. These resignations were signed under the duress of the Postmaster's instructions. Each man filed a grievance within 14 days.

On cross examination, Mr. Minton agreed that there were no removal letters in the file. Mr. Minton said that on September 1, he interviewed and spoke with Supervisor Jimmy Keene, who informed him that was not involved in this matter. He presented the grievance to Jimmy Keene. Since Mr. Keene claimed no involvement, Mr. Minton claimed that he had no authority to settle the grievance. Mr. Minton said that the employees did not tell him that they were told that they could face imprisonment. Steward Denman was on annual leave and was called into work that day after two of the employees had already been escorted off the property.

On redirect, Mr. Minton said that when an employee is caught stealing, he is normally escorted off the property under 16.7. There was no union official present on August 31.

In closing, the Union argued that if management was going to terminate these employees, they should have done so on April 10th. They could have issued a 16.7 on April 10th. The employees admitted that they did it. If the OIG had been called in April,

and they were removed timely, that would be one thing. But this is not the way it happened. Nothing stopped management from doing it properly when they found improper conduct with Postal funds. The Postmaster did his investigation within a week. He said that it was his decision to call in an OIG, but then he said that the OIG had nothing to do with his decision. He made his decision on August 31, with the OIG there. The excuse for the lapse of time was vacation. If the Postmaster was making the decision, all three of the employees and the Postmaster were present between April 10 and April 17. Management is responsible to bring these matters to be decided at a faster pace. The longer they wait, memories lapse. It is management's responsibility to bring charges immediately so that the union can properly represent employees. In this case, all of the rights of the employees were violated. All three were brought in on the same day without a union steward and told to sign the resignation form. If Mr. Reed had stuck by his decision to be terminated, he would already be back to work because the discipline would not have been timely. These men had never been disciplined before. They had never filed a grievance before. They never needed a steward before. They did not know why they were in the office. They thought that the issue had been resolved four months ago. All three say that they were told that it would be handled within the office. If you voluntarily resign, you ask for the form. There is a procedure under the ELM. You don't have an OIG escort you to your car when you resign or retire. Between April 10 and August 31, something happened to change Mr. McShan's mind. Someone told him that he needed to do something about this. He felt that his hands were tied and he did what he had to do. They were concerned about whether a removal would have stood up after waiting so long. These employees deserved to have a grievance heard. This was not done properly. Mr. Hallmark should have retired with a party and a plaque, not by being escorted to his car. These employees were deprived of their rights. They deserve their day in court. Mr. Morgan and Mr. Reed deserve the opportunity to continue with their careers. The Postal Service scared these employees to death. It was a big deal in a small town. It is hard to get another job. Mr. McShan is a decent guy. He had orders to do this. Mr. Hallmark is retired. Mr. Morgan and Mr. Reed should be re-instated with full benefits.

DISCUSSION

The arbitrator finds that this case is arbitrable. These were not two voluntary resignations and a voluntary retirement done under the proper provisions of the ELM. These three employees had not come to work on the morning of August 31 planning to give two week's notice of their plans to resign or retire. Rather, these three employees came to work on August 31st and were ambushed into resigning and retiring in response to a situation that had been discovered and discussed with them more than four months earlier. These were certainly not voluntary resignations or retirements. Rather, they were disciplinary action by the back door, done in violation of the National Agreement and in a way that robbed these employees of their essential contractual rights. They are entitled by the National Agreement to grieve discipline, up to and including arbitration. Therefore, we find that this grievance is arbitrable.

It is the responsibility of local Postal management to discipline employees where necessary. Around April 10, Mr. McShan became aware that Mr. Hallmark and Mr. Morgan had left the Postal Service for the day earlier than their end time clock ring showed. He discovered this because of inconsistencies between the clock rings and a mileage scanner he was checking. He questioned Mr. Hallmark, Mr. Morgan and Mr. Reed, who had been clocking them out, about the matter. All three employees admitted that Mr. Reed had improperly clocked out Mr. Morgan and Mr. Hallmark after they had left. This is called *buddy punching*. We have no details in this record of the occasions on which this allegedly occurred. However, we do have testimony from all three employees and from Mr. McShan that the employees acknowledged what they had been doing right away, acknowledged that it was wrong, and agreed that they would never do it again. Mr. McShan discussed the matter with the employees within days of having learned of the problem. All three employees understood from the discussion that this was the end of the matter.

If Mr. McShan was going to bring further discipline against these employees, he needed to do so promptly. There is a clear and well worked out system of issuing discipline under the contract. When the employees admitted their conduct, Mr. McShan had all the information he needed to decide what to do. It was his responsibility to make a decision, or to call the matter to the attention of the employee's immediate supervisor, and have him make a decision about any further disciplinary action. We have no idea what the function of the OIG could have been in this matter, when the employees already had acknowledged what they had done, and all the OIG did was to re-interview the employees. There was no reason to delay taking disciplinary action. If action beyond the discussion was going to be taken, it should have been taken promptly. If official discipline had been issued promptly in April, the employees would have known where they stood, and could have properly grieved the discipline if they chose to do so. The delay from April through the end of August, just to get an OIG agent to interview employees who had already acknowledged what they had done, completely removes any just cause from this action. Indeed, the employees, quite properly understood that the matter had been resolved by the discussion with Mr. McShan in April. They did not commit the infraction again. Especially since Mr. McShan testified that he did not wish to lose the services of these employees, the matter should have rested here.

To revisit the matter at the end of August is not just. It is double jeopardy. It is holding the employees responsible twice for the same offense. There are no provisions in the National Agreement by which an employee can be forced to resign or retire in lieu of discipline. To do so is an egregious violation of the National Agreement. Even at the end of August, Mr. McShan could not take proper disciplinary action. If he was going to terminate the employees, he should have done so properly, through the disciplinary procedure. He should have prepared a Notice of Proposed Removal. The employees should have had the proper notice and the contractual time period to prepare a defense and a grievance. No proper decision was made about the weight of the admitted conduct against the rest of the their Postal careers.. Mr. Hallmark had worked in Crockett for 35 years, Mr. Reed for 21 years. Surely their long, discipline-free service should

have been weighed against their violation, however, egregious. In a disciplinary action, such a weighing should have been done.

However, Mr. McShan decided to take matters into his own hands. He did not use the clear disciplinary procedure. Rather, he invented his own procedure. He decided, after shocking them by a completely unexpected call to the office and interview by an OIG agent who flashed a badge, to make them resign, under the guise that he was doing them a favor. By his own admission, he did not even know the proper resignation procedure, spelled out in the ELM, which he had not consulted. He simply accused them of stealing, threatened termination or worse, and terrified them into signing right then and there a resignation form which was irrevocable unless overturned within 24 hours. While in a disciplinary proceeding they would have clearly been entitled to Union representation, he did not offer them Union representation, even though he called in the steward, who was on annual leave, to cover their routes. He took advantage of blindsided, unsophisticated, trapped employees. This would be how he would solve his problem. If they resigned, he would not have to decide what disciplinary action to take and then defend it. He would not have to defend his failure to take more serious action to his bosses. He would be free of his problem and of them.

The arbitrator finds that Mr. McShan's actions were a gross violation of Articles 16, 5, 15 and 19 of the National Agreement. These actions therefore cannot be allowed to stand. They are hereby reversed, rendered null and void. All three employees need to be made whole and returned to the positions they were in on August 31, 2006. They need to be paid full back pay and benefits. Mr. Morgan and Mr. Reed should immediately resume the positions as letter carriers which they held on August 31, be credited with full seniority and benefits as though they had been working, and receive full back pay and all other benefits to which they would have been entitled. Mr. Hallmark's situation is a bit more difficult to reverse. He has retired and has been receiving retirement benefits. It is not clear to the arbitrator if he would want to reverse his retirement, pay back his retirement benefits, and receive full back pay instead, like the other two employees, and return to his job. If he desires to do so, the Postal Service is directed to work with him to make this possible. If he chooses to remain retired, Mr. Hallmark should be paid the difference between his retirement pay and his Postal salary from August 31 through the date of this award, March 2, 2007. Mr. Hallmark should also be issued an appropriate certificate of appreciation for his long service to the Postal Service. The arbitrator retains jurisdiction to handle any disputes over the remedy.