JOHN McCONNELL 6/21/83 WON
Art. 8.8B - Payment for non-scheduled day

10537 (E8C-2M-C)

C# 00051

In the matter of

United States Postal Service
Huntington, West Virginia

and

American Postal Workers Union
Huntington Area Local

Backlog cases
#E8C-2M-C 7675
Supervision of trainees
#E8C-2M-C 10537
Call-in pay
#E8T-2M-C 4311/3724
Job reversion

A hearing on these backlog cases was held in Huntington, West Virginia, on June 14, 1983.

Advocates: For the Union: Cecile Romine, National Vice-President
For the Postal Service: David Schodlatz/Sue Keene

In each of the above cases, the prescribed format was followed. There were no witnesses. Each party made an opening statement, introduced evidence and made a closing statement.

Each case will be summarized briefly and an award rendered on the pages which follow.

Case # E8C-2M-C 10537 Carpenter/Payment for non-scheduled day.

Issue: The parties stipulated that the issue could be stated

Was the employee entitled to an additional 6 hours pay on May 4, 1981?

The Union charges the Postal Service with a violation of Article 8 Section 8.B when it called the grievant J. Carpenter in to work on his non-scheduled day, told him to clock out after he had been at work only two hours and paid him only for the two hours, instead of 8 hours as required by the Agreement.

Facts: By letter dated April 27, 1981, John Carpenter, a distribution clerk, was ordered to report for work at 8:30 am. on Monday, May 4 to serve as witness on behalf of another employee, David Bias. The letter did not mention any amount of time to be spent at the Main Post Office. Mr. Carpenter reported for work as directed, worked for 2 hours and was told to clock out. Conversations on Friday, May 1 between Carpenter and his supervisors led to an oral understanding that Carpenter would work the full eight hours under the guarantee. (Grievance papers Jt. Ex. #2) However, when Carpenter requested the full eight hours of the guarantee, he was paid only two hours.

Union Position The Union argues that when an employee is called in to work on his non-scheduled day, regardless of the reason he is entitled to the guarantee of eight hours work or pay in lieu thereof. Whatever the reason for the call-in, the employee has the same expense and inconvenience and should have sufficient work or pay to cover these.

Postal Service Position: Management must pay a witness for his appearance at an EEO hearing. The employee is not called in to work but to appear as a witness. Carpenter was paid for the time required for this service.

Award: The Agreement does not speak to the issue involved, that is, pay to an employee when he appears as a witness in hearing in which the Postal Service is involved. It is clear, from the grievance papers, that the intent of Carpenter's supervisors was to have him report for a full 8 hours work during which time he presumably would be called to testify. This intention was countermanded by the Director of Mail Processing. Apparently Carpenter reported as directed at 8:30 am. and went to work. At some point he was called to testify and when his testimony was completed he was told to clock out. He was paid for two hours.

In my opinion, the guarantee of 8 hours work when an employee is called in to work on his non-scheduled day is to compensate an employee adequately for whatever expense and inconvenience he may incur in reporting for work. These do not change even though the reason for the call-in may change. It is unreasonable to ask an employee to give up a day off and report for work for only two hours pay.

J 17 is an Investigative Memorandum signed by the Postal Insprector, dated May 31, 1978. The Inspector describes his interviews with the two employees and others on the workroom floor. Mr. Steinbach was issued a suspension and the grievant was removed.

J 17 - 25 are all concerned with the Warning and Waiver, the statement to inspectors by several employees.

In J 23 an employee writes that he heard the grievant yell to Mr. Steinbach to leave him alone, to get out of the area. He did so three or four times but Steinbach would not leave. Another employee testified that he heard the grievant tell his adversary to get away from him and not pester him.

J 25 is a 21 calendar day suspension of Richard Steinbach for being a participant in the altercation with the grievant.

The Union submitted no Exhibits.

The Postal Service called the Arbitrator's attention to several citations and arbitration awards concerning incidents of a similar character.

The parties provided an oral summary and indicated that they had no intention of submitting Post-Hearing Briefs.

3. <u>The Position of the Parties</u>

The position of the Union is that two employees, the grievant and another distribution clerk, were involved in an argument which led to pushing, shoving and slapping. In the Union's view, Steinbach, the second distribution clerk, was the instigator and that the grievant was merely defending himself. Joint Exhibits 23 and 24 provide substantial evidence that the grievant was being harassed and pestered by the gibes of the distribution clerk. He stayed close to him, literally breathing into his face, slobbered over him, disregarded the grievant's pleas or warning to leave him alone.

The Union maintains that every employee has a right to be protected against harassment and that the evidence was clear as to who was the aggressor. It also feels that the Employer did not give adequate consideration to the Inspector's report. The grievant, it emphasizes, was not totally at fault and the Union's plea is for mitigation that the penalty does not warrant removal, particularly since the other distribution clerk was only suspended for 21 days.

The grievant, who was a Vice President of the Local and the Union Steward at the time of the incident, described what transpired and told of the issue involving the Union's suit and Steinbach's inquiry about his rights. He testified that the other employee came to his area, yelling, spitting, screaming and, as the grievant walked away, he kept following him and finally grabbed him by the arm, "slobbering close to my face." He finally pushed him away and after the second or third time slapped him. The supervisor took him to the First Aid room for such treatment as was required.

In the Union's view the grievant was unduly punished when compared to the discipline meeted out to the other distribution clerk.

The position of the Employer is that the woorkrom is hardly a place to settle an argument in physical terms. An employee was pushed and struck. He was injured and treated as the result of the blows. "Something did happen." Who started it, who concluded it was difficult to determine. The investigators were uncertain. Discipline was given to both employees. In one instance only a 21 calendar day suspension, in the case of the grievant, in view of his prior record, removal was considered more appropriate.

It is the Employer's position that under the principles of progressive discipline each succeeding incident requires successive amounts of discipline unless, of course, the employee's record is free from any discipline for a period of two years in which case the record is wiped clean.

The grievant had a long disciplinary record, letters of warning, short periods of suspension followed by longer periods of suspension. In fact, he was given a 29 day suspension as late as April 12, 1978.

The Postal Service concedes that the other employee was outside of his own work area, that he was himself involved in some sort of aggression. The steward, however, that is the grievant, could have left the area and gone to the Tour Superintendent's office to protect himself from the offensive fellow worker. He did not do so. The Employer observed that he resorted "to the

law of the jungle." He struck the other worker. The Employer has a responsibility to provide a safe working place and cannot and should not tolerate physical combat. The work floor is not a boxing ring. The grievant simply did not seek the assistance of a security guard or supervisor. He resorted to physical force and, in the light of his prior disciplinary record, the Postal Service simply concluded that the next step called for removal from the payroll.

4. Discussion: Opinion and Award

There can be no question whatsoever concerning the Employer's responsibility for providing a safe place to work. This is elementary and is of critical importance, not only for the individuals involved but for every employee. There can be no place for solutions by combat. That is reserved for the boxing ring, for the prize fight where the spectators pay for the privilege of seeing men fight. Such "solutions" cannot be countenanced at the work place.

Arbitrators have invariably sustained the action of the Employer in disciplining employees who resort to physical combat to make their point. Arbitrators, however, have often sought to distinguish between the victim and the aggressor. When it is crystal clear that the person who was hurt was also the aggressor, a certain degree of mitigation against him who struck the blow is not unreasonable.

Having heard the testimony, read the Exhibits and reflected about the order of events, this Arbitrator has concluded that the grievant was harassed, irritated, almost challenged to protect himself. He did not use good judgment. He should have left his section without delay, should have sought the security of the supervisor's office, should have located a security guard. Such quick exit from the area would have given him some protection from an employee who was apparently determined to create a confrontation. This he did not do. He lost his cool, pushed and slapped, in part to protect himself and in part to drive the other distribution clerk away from him. Pushing and slapping is hardly a fight.

The Arbitrator is aware of the logic in the Employer's reasoning as to the justification for removal under the principle of progressive discipline. The grievant had been warned verbally and in writing, he had been given short suspensions and longer suspensions. He had "earned" further discipline because of the altercation on May 5. It seems so natural that having tried minor discipline and some form of major discipline, discharge was the only discipline left. The Employer's counsel made much of this in his oral argument at the Hearing.

If the issue which led to the discipline did not involve a fracass with another employee who is no less to blame for the altercation than the grievant himself, the Arbitrator would have been inclined to sustain the Employer's logic. However, since the

other employee was largely to blame for what transpired, the Arbitrator cannot accommodate himself to a discharge, although he does not approve of the grievant's action nor his language.

It is the Arbitrator's Opinion and Award that the Removal Notice should be rescinded; that the grievant should be returned to work within two weeks after the receipt of this Award; that the discharge should be converted to a long term suspension.

Respectfully submitted,

William Haber

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