

C# 16247

A+B

Regular Arbitration Panel

In the Matter of the Arbitration)	
between)	Grievant: Class Action
)	Grievant: Hamilton-Milner
UNITED STATES POSTAL SERVICE)	Location: Torrance, CA
(hereinafter "the USPS"))	Case No. F90N-4F-C94024977
)	Case No. F90N-4F-C94024038
and)	ARBITRATOR'S
NATIONAL ASSOCIATION OF)	OPINION & AWARD
LETTER CARRIERS, AFL-CIO)	
(hereinafter "the Union"))	

BEFORE: Arbitrator Edna E. J. Francis

APPEARANCES:

For the USPS: Terry E. Bickelmann
Labor Relations Specialist

For the Union: Joan Hurst
Regional Administrative Assistant

Place of Hearing: USPS
2510 Monterey Street
Torrance, CA 90510

Date of Hearing: April 21, 1995

AWARD: In some instances, the "acting" supervisor's behavior was inconsistent with and, therefore, violative of policies of the USPS requiring supervisors to foster an atmosphere of mutual respect. However, in view of evidence that management took appropriate steps to correct the "acting" supervisor's offending behavior where corrective action was warranted and in view of the absence of any compelling evidence that such behavior continued, an arbitral order removing the individual from an "acting" supervisory position, denying her future promotion to a permanent supervisory position, or awarding any other remedy is not warranted.

Dated: December 28, 1996

Los Angeles, California

Edna E. J. Francis

Edna E. J. Francis, Arbitrator

BACKGROUND

This arbitration proceeding was convened by the parties pursuant to Article 15 ("Grievance-Arbitration Procedure") of the parties' National Agreement. The proceeding stems from two grievances alleging, in essence, that an acting supervisor had engaged in a pattern of inappropriate behavior toward subordinate employees in violation of various USPS policies and the National Agreement and that she must be removed from an acting supervisor's position and denied permanent promotion to a supervisory position.

The Step 2 grievance form in Case No. F90N-4F-C94024977 (Class Action), dated June 17, 1993, sets forth the following allegations as the basis for the Union's position that management has violated Articles 3, 5, and 19 of the National Agreement, Section 115.4 of the M-39, and the *Joint Statement on Violence and Behavior in the Workplace*: and that it is, therefore, entitled to the remedy it seeks:

Facts: What Happened:

On March 12, 1993 204b Judy Hall made inappropriate and unprofessional racial and personnel (sic) remarks to Regular Carrier Nancy Haigh on the workroom

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floor. Ms. Hall has a history of inappropriate and unprofessional comments, remarks and actions including a physical altercation with another Letter Carrier.

Union Contentions: Reasons for Grievance:

The conduct of 204b Judy Hall has reached a point where she has demonstrated that she is no longer qualified to supervise Letter Carriers.

Repeated attempts to modify her actions and words have proven to result in no change in her behavior.

After the incident of October 15, 1992 with Branch President Jim Hurst, Officer in Charge Steve Nelson assured Mr. Hurst that he had corrected Ms. Hall and that he felt she now understood her responsibilities to the employees that worked for her. The events of March 12, 1993 show that Ms. Hall is merely willing to change here (sic) behavior for the time necessary to insure her return to 204b status and then returns to the same unprofessional actions and words.

The Joint Statement on Violence and Behavior in the Workplace speaks to the fact that employees that do not respect others and do not treat others with dignity and fairness will not be tolerated.

Ms. Hall's conduct has reached the point where she should no longer be permitted to supervise Letter Carriers.

The suggested remedy presented in the Postmaster's letter of May 3, 1993 is hardly sufficient to deem Ms. Hall as one who should be in charge of other employees.

Corrective Action Requested:

204b Judy Hall not be allowed to supervise Letter Carriers in the future and/or any other remedy that may be appropriate.

(Joint Exhibit 3E)

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The grievance was placed in abeyance, by mutual agreement of the parties, pending receipt of the Step 3 decision regarding another grievance.

On January 20, 1994 and February 2, 1994, Mr. Hurst directed a letter to the Postmaster indicating that he had received the Step 3 decision in that grievance and requested to meet regarding the Step 2 grievance quoted immediately above. Following a meeting on Step 2, management's Step 2 designee, by letter dated February 7, 1994, denied the grievance, noting therein that management was concerned that all employees treat each other with respect and dignity at all times and that management believed the grievance procedure was not the proper place to address the issues in the grievance because Ms. Hall was "caught in the middle of a 'he said-she said' situation of accusations and denials"). The Union submitted "additions and corrections" asserting that there was no "he said, she said" situation" because Ms. Hall had admitted her conduct during a meeting in which the incident was addressed. The Union then appealed the grievance to Step 3 of the grievance procedure, alleging that management had violated Articles 2, 5 and 19 of the Agreement, Section 115.4 of the M-39, and the *Joint Statement on Violence and Behavior in the Workplace*. Management's Step 3 designee denied the grievance, offering the following rationale:

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Supervision of employees is an exclusive right of the employer and is defined in Article 3 of the National Agreement. Management and not the union (sic) makes the determination of the personnel who will conduct its operations. In this instance the facts disclosed that Acting Supervisor J. Hall apologized to the individual for her comments. In addition management acting in good faith gave Ms. Hall additional human effectiveness training. Further the union (sic) has not presented any supportive facts of a violation of Article 14 [i.e., failure to provide safe working conditions and to develop a safe working force].

(Joint Exhibit 2)

By letter dated February 1, 1995, the Union requested that the grievance be submitted to arbitration.

The Step 2 grievance form in Case No. F90N-4F-C94024038 (Hamilton-Milner), dated January 5, 1994, sets forth the following allegations as the basis for the Union's position that management has violated Article 19 of the National Agreement and Section 115.4 of the M-39:

Facts:

On December 7, 1993, Carrier Karen Milner called the North Torrance Post Office from her route concerning a broken satchel.

According to Milner she talked to Carrier Rosalinda Jones on the phone, but 204b supervisor Judy Hall would not come to the phone with instructions. When Milner

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returned to the Post Office a confrontation occurred (sic) with Hall. Milner states that Judy Hall "made remarks about my home life" and "how bad my work habits are" in front of others on the workroom floor, and that "she should have fired me."

Contentions:

It is necessary to maintain an atmosphere of mutual respect between employees while at work.

The M-39 specifically addresses this in Section 115.4 when it states that "it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect of each other's rights and responsibilities."

Judy Hall failed these responsibilities (sic) in her comments to Karen Milner.

This is only the most recent example of a pattern that Hall has followed in the past. As the result of an incident in 1992, OIC Steve Nelson assured Branch 2207 President Jim Hurst that Hall had been instructed in her responsibilities to the employees that worked for her.

On March 12, 1993, Hall made inappropriate personal remarks to Carrier Haigh on the workroom floor.

(Joint Exhibits 3H, I, and J)

The parties held a Step 2 meeting regarding the grievance on January 7, 1994.

By letter dated January 12, 1994, management's Step 2 designee denied the grievance, finding that "the allegations have proven to be untrue" and that certain matters brought up during the meeting including the incident between Ms. Hall

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and Ms. Haigh had been resolved and were irrelevant to the grievance then under consideration. By letter dated January 27, 1994, the Union informed management that the "Nancy Haigh incident" had not been resolved and was still at Step 2 of the grievance procedure. The Union appealed the Hamilton-Milner grievance to Step 3, alleging that Ms. Hall had made inappropriate comments to Ms. Hamilton-Milner regarding Ms. Hamilton-Milner's home life, her work habits, and her job security and requested that "Ms. Hall be instructed about Section 115.4 of the M-39 concerning the maintaining of an atmosphere of mutual respect and that Ms. Hall not be allowed to supervise Letter Carriers in the future and/or any other remedy that may be appropriate." (Joint Exhibit 3, pages A & B). By letter dated July 6, 1994, management's Step 3 designee denied the grievance for the following reasons:

Supervision of employees is an exclusive right of the employer and is defined in Article 3 of the National Agreement. Management and not the union makes the determination of the personnel who will conduct its operations. In this instance the facts disclosed that the union has not presented any statements of factual evidence that support the alledged (sic) incident of inappropriate behavior by Ms. Hall.

Further the Union has not presented any supportive facts of a violation of Article 14 [[i.e., failure to provide safe working conditions and to develop a safe working force]. (Joint Exhibit 3)

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By letter dated "February 1, 1994" (the correct date should be February 1, 1995, the Union requested that the Hamilton-Milner grievance be submitted to arbitration. Both grievances were heard on April 21, 1995.

The record from the arbitration hearing on that date encompasses four Joint Exhibits; one Postal Exhibit; one Union Exhibit and testimony from nine witnesses. James Hurst, Nancy Haigh, Wayne Pfeiffer, Rosalind Jones, and Karen Hamilton-Milner were called by the Union. In addition, the parties stipulated that a written statement prepared by Kim Utzinger could be admitted in lieu of live testimony from Ms. Utzinger and given weight as if she had appeared and testified in person. The USPS called Coy Porter, Judith Hall, Charles Grant, and Thomas Jono as witnesses.

In early May 1995, the parties submitted post-hearing briefs by the deadline they had established. However, by letter dated May 19, 1995, the USPS advocate informed me that the USPS was "withdrawing" the instant grievances from arbitration for referral to Step 4 so that an interpretive issue could be addressed. By letter dated May 23, 1995, the NALC advocate requested, in view of the referral of the cases to Step 4, that I retain jurisdiction of the cases pending decision by the parties' Step 4 representatives. In a jointly signed letter to me

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dated September 25, 1996, which I received by certified mail on November 25, 1996, the NALC advocates informed me that the interpretive issue had been heard and decided at the National level by Arbitrator Snow, enclosed a copy of Arbitrator Snow's decision, and requested that I render a decision regarding the instant grievances.

ISSUES

As Stated by the Union

"Did the Employer violate the National Agreement and the Joint Statement on Violence and Behavior in the Workplace by failing to maintain an atmosphere of mutual respect?

"If so, what is the appropriate remedy?"

As Stated by the USPS

Whether the Union's requested remedy, "204B Judy Hall not be allowed to supervise Letter Carriers in the future and/or any other remedy that may be appropriate" is properly before the Arbitrator?

"If so, what is the appropriate remedy?"

FACTUAL CONTEXT OF THE DISPUTE

The grievances herein arose at the Torrance Post Office out of interactions between Ms. Judith Hall, an "acting" supervisor in delivery operations there and Carriers there. Ms. Hall, an employee of the USPS since November 1982 and herself a Carrier, was an acting supervisor in delivery operations at the Torrance Post Office from February 1992 through December 1994. Some of the circumstances surrounding various incidents involving Ms. Hall and others are in dispute.

It is undisputed that on March 12, 1993, there was discussion between Ms. Hall and Nancy Haigh, a Carrier at the Torrance Post Office, regarding a couple of matters. According to Ms. Haigh's testimony at the arbitration hearing, the circumstances of their conversations were as follows. At approximately 11:00 to 11:30 a.m. on March 12, 1993, while other Carriers were present, Ms. Hall called Ms. Haigh a "troublemaker" as Ms. Haigh walked past Ms. Hall. Ms. Haigh asked Ms. Hall what she meant. Ms. Hall responded that if Ms. Haigh would mind her own business, things would run smoother. Ms. Haigh assumed that Ms. Hall's comments related to another incident earlier that day in which Ms. Hall (a) accused Ms. Haigh of telling others that Ms. Hall was dating another acting supervisor in the office and (b) called Ms. Haigh a liar. In view of the earlier

incident that day, Ms. Hall's branding Ms. Haigh a "troublemaker" annoyed Ms. Haigh. Ms. Haigh, therefore, decided to report the namecalling to Wayne Pfeiffer, Union Steward and Vice President of the Union. Later that day, Ms. Hall approached Ms. Haigh and said "Give me Coy's \$10.00," referring to \$10.00 Ms. Haigh had won in a raffle event sponsored by the Union the previous night. Ms. Hall then suggested that Ms. Haigh rather than Coy Porter, a Carrier at the Torrance Post Office, had been given the \$10.00 because Mr. Porter is black and because Ms. Haigh was "sleeping with" Mr. Pfeiffer. Ms. Haigh became so upset that she started crying and sought out Mr. Pfeiffer so that Ms. Hall's conduct could be reported to management. A meeting was held shortly thereafter, attended by Ms. Haigh, Ms. Hall, Mr. Pfeiffer, and Jeff Grant (the General Foreman). During the meeting, Ms. Hall admitted making racial and sexual remarks to Ms. Haigh. Mr. Grant stopped Ms. Hall from making further comments when Ms. Hall attempted to justify her remarks by stating that "if Ms. Haigh had minded her own business, we would not have this problem." Ms. Hall then apologized to Ms. Haigh. However, immediately after apologizing, Ms. Hall said "I can't wait until I get back in uniform so that I can tell you and Wayne what I think of you." Ms. Haigh filed a grievance because she did not think that the matter was resolved with Ms. Hall's apology. Prior to the incident, Ms. Hall

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and Ms. Haigh had bowled on the same team and had worked together occasionally. However, they were not "friends."

Coy Porter, a Carrier for 15 years at the Torrance Post Office, testified at the arbitration hearing, that at the raffle event the previous night, his ticket was drawn while he was briefly away from the room to go to the restroom, but because he was not in the room, he did not receive the \$10.00 prize; that "everyone" in the office jokingly mentioned the next day that Ms. Haigh had been given Mr. Porter's \$10.00; that in that same vein Mr. Porter jokingly told Ms. Hall to get his \$10.00; that Ms. Hall said "it was not right that he did not get the \$10.00"; that Ms. Haigh later came to Mr. Porter and asked him if he was serious about wanting the \$10.00; and that Mr. Porter and most of the Carriers treated the hoopla over his not getting the \$10.00 as a big joke.

At the arbitration hearing, Ms. Hall attested to the following information regarding the matter. Ms. Hall was not supervising Ms. Haigh on March 12, 1993. After Coy Porter jokingly told Ms. Hall to ask Ms. Haigh about his \$10.00 and to tell her he wanted it, Ms. Hall mentioned the matter to her and said, "It wouldn't be because you're sleeping with Mr. Pfeiffer." Ms. Hall (who is black) did not make any oral reference to Ms. Haigh's race but suggested, by rubbing her hand over her own skin, that Mr. Porter's skin color may have been a factor.

Ms. Hall realized soon thereafter that Ms. Haigh was upset about the "sleeping with" comment. Because of the way she and Ms. Haigh had dealt with each other in the past, Ms. Hall did not perceive the allusion to skin color to be inappropriate. Ms. Hall and Ms. Haigh had always joked back and forth with each other. They had worked together in the same delivery unit for a number of years and had a good relationship. Although Ms. Hall had never been to Ms. Haigh's home, they were in the same bowling league and had attended some of the same affairs, including Union meetings and potluck dinners and had conversed with other at those affairs. After Ms. Haigh came into Ms. Hall's office, upset and crying, on March 12, Ms. Hall realized that their relationship had changed. During a meeting with Ms. Haigh, Mr. Pfeiffer, and Mr. Grant, Ms. Hall apologized to Ms. Haigh. It is possible that she said after apologizing something to the effect that "when I get back in uniform, I'll have a good discussion about this." Ms. Hall believed the matter was resolved with that meeting. Her relationship with Ms. Haigh was good after that. Approximately 12 to 14 months prior to the hearing, Ms. Haigh told Ms. Hall that her hair style looked like that of a rapper she had seen on TV.

During the arbitration hearing, Jeff Grant, who was employed at the Torrance Post Office from approximately 1988 to June 1993 attested to the

following information. On March 12, 1993, Mr. Pfeiffer informed Mr. Grant that Ms. Haigh was upset and crying because of an incident with Ms. Hall. Mr. Grant sent Mr. Pfeiffer to get Ms. Haigh so that he could investigate what had happened. Mr. Grant recalls that Ms. Haigh told him that Ms. Hall had indicated to Ms. Haigh that Ms. Haigh (who is white), rather than Mr. Porter, had won a \$10.00 raffle the previous night because Mr. Porter is black. Mr. Grant reminded Ms. Hall of her supervisory status and told her that such comments were inappropriate. Ms. Hall apologized to Ms. Haigh. Ms. Hall stated during the meeting that Ms. Haigh had made disparaging comments about one of Ms. Hall's lunch associates. As a result, Ms. Haigh also apologized to Ms. Hall at that meeting. Mr. Grant did not hear Ms. Hall say that she would tell Ms. Haigh and Mr. Pfeiffer what she really thought of them when she was back in uniform. Although there was no express statement that the matter was resolved at the conclusion of the meeting, all parted on friendly terms and Mr. Grant assumed the matter was resolved. In May 1993, Ms. Hall attended a Human Relations class as directed by management. Thereafter, Mr. Grant did not receive any complaints about her from other employees. He regards Ms. Hall as a good supervisor.

The circumstances of the incident on December 7, 1993 between Ms. Hall and Ms. Hamilton-Milner are also in dispute. Ms. Hamilton-Milner attested to the

following information regarding the matter. On December 7, 1993, as Ms. Hamilton-Milner was delivering mail, the strap on her satchel broke. She immediately phoned the office. She informed the individual who answered the phone that her satchel had broken and told her to "have Judy [Ms. Hall] send out a satchel for me and I'll be out here waiting for it." She hung up without giving the individual time to relay her comments to Ms. Hall. "Hattie" brought out the satchel to Ms. Hamilton-Milner and told her, "I don't know why she's giving you such a hard time about it." When Ms. Hamilton-Milner arrived back at the office, she informed Ms. Hall, in response to Ms. Hall's question about what happened, that her satchel strap had broken. Shortly thereafter, as Ms. Hamilton-Milner was placing on the case a tag which she knew "belonged on the supervisor's desk," Ms. Hall asked "Do you know where the tag goes?" Ms. Hamilton-Milner was angry and threw the tag. It landed on the floor. Ms. Hall then asked Ms. Hamilton-Milner to go to the office. Ms. Hamilton-Milner did not feel comfortable with Ms. Hall and asked for Sam Bales, the Station Manager. Ms. Hall told her she had failed to follow Ms. Hall's direct order to return to the office to get a new satchel. Ms. Hamilton-Milner responded that Ms. Hall had not gotten on the phone to give her a direct order. Ms. Hamilton-Milner was "pissed off" and picked up a newspaper and threw it on the floor. Ms. Hall ordered her to

pick up the newspaper. Ms. Hamilton-Milner refused to do so for about a minute. Ms. Hall then asserted that Ms. Hamilton-Milner had a miserable home life, to which Ms. Hamilton-Milner responded that "It's none of your business" and "From what I hear, you're the one with the problems." Ms. Hall then said, "You're a lousy Carrier, and I should have fired you." The next day, Ms. Hamilton-Milner informed the Union Steward that she was angry at Ms. Hall for the comment about Ms. Hamilton-Milner's personal life and that Ms. Hall had not, in fact, given her a direct order. A couple of days later, Mr. Bales told Ms. Hamilton-Milner that he had told Ms. Hall she was wrong not to speak to Ms. Hamilton-Milner when she phoned about the satchel strap and asked whether she then felt better about the problem. Ms. Hamilton-Milner did not feel better because she knew "Ms. Hall had a tendency to push people's buttons."

Rosalind Jones, a Carrier at the Torrance Post Office, attested to the following information. On December 7, 1993, Ms. Jones was answering phones as part of her limited duty assignment. She received a phone call from Ms. Hamilton-Milner indicating that her satchel strap had broken, that she was running late, and that she wanted someone to bring her a satchel. Ms. Jones relayed the information to Ms. Hall. Ms. Hall told Ms. Jones that she did not have any satchels and told Ms. Jones to put Karen [Hamilton-Milner] on the phone. Ms.

Hamilton-Milner told Ms. Jones to put Ms. Hall on the phone. When Ms. Jones so informed Ms. Hall, Ms. Hall said "Who in the hell does Karen think she is?" After Ms. Hamilton-Milner hung up, Ms. Hall said, "Why didn't you tell her to come back to get one?" Ms. Jones told Ms. Hall that Ms. Hall's comments were unprofessional. She believes that eventually a satchel was sent out to Ms. Hamilton-Milner.

At the arbitration hearing, Ms. Hall recalled the incident as follows. On December 17, 1993, Ms. Jones informed Ms. Hall that Ms. Hamilton-Milner was on the phone reporting that she had a broken satchel and wanted another one sent out to her. Ms. Hall told Ms. Jones to have Ms. Hamilton-Milner return to the office. Ms. Jones reported that Ms. Hamilton-Milner said, in response, that she was "parked at 161st Street and was not returning to the office for a satchel." Ms. Hall may have said, "Who does she think she is?" She would not have said "Who the hell does she think she is?" Ms. Hamilton-Milner was angry when she returned to the office. She tossed a newspaper under the desk. Ms. Hall asked her to pick it up. She tossed a collection card at the supervisor's desk and it landed on the floor. Ms. Hall sensed the tension. Then, Ms. Hamilton-Milner said to Ms. Hall, "You have a smart alecky mouth; if you're having personal problems, don't bring them to the office." Ms. Hall asked Ms. Hamilton-Milner to go the office so

that they could discuss her failure to follow a direct order to return to the office to pick up a satchel. Along with Mr. Bale, they discussed the matter. Ms. Hall did not tell Ms. Hamilton-Milner that she was a lousy worker or that she should have had her fired. In fact, Ms. Hall believed that Ms. Hamilton-Milner was an excellent worker, who was known to have mood swings. Ms. Hall discussed this incident with management, and no member of management told Ms. Hall that any of her behavior toward Ms. Hamilton-Milner was inappropriate.

Other incidents in which Ms. Hall was involved, ranging from a physical altercation to a disagreement with the Branch President Hurst, were also referenced during the hearing. It is undisputed that Ms. Hall, as a Carrier, was involved in a physical altercation with another Carrier and was placed on an emergency suspension in October 1987. (Ms. Hall's testimony and Joint Exhibit 2, p. 6). The evidentiary record contains a letter dated October 16, 1992, sent by James R. Hurst, Local Union President at that time, to Steve Nelson, Officer in Charge at the Torrance Post Office at that time, reporting that he and Ms. Hall (acting supervisor at that time) became involved in a disagreement on the workroom floor which he asked to move to a private room because it appeared Ms. Hall was trying to belittle him in front of fellow Carriers; that upon entering the General Foreman's office, he noticed that two other supervisors were present

and, therefore, asked to have a Union Steward present; that Ms. Hall left the room saying, "I'll get your a steward" and "I'll get your ass;" that he felt Ms. Hall's behavior was inappropriate; and that he wrote the letter to Mr. Nelson to place management on notice that such behavior would not be tolerated from Ms. Hall or from any other supervisor. (Joint Exhibit 2, p. 5). At the arbitration hearing, Mr. Hurst testified that Mr. Nelson told him that he would take care of the matter mentioned in the letter. Ms. Hall testified that Mr. Hurst appeared not to trust her when they went into the office and told her that he wanted to call in a Union Steward; that she left the office to get Union Steward Sam Barreras; that Mr. Hurst's demeanor toward her was degrading, disrespectful, and belittling, and that she was upset by it; and that she did not say to Mr. Hurst, "I'll get your ass," but did tell him "This is not over and I'll be back."

In a written statement in the record by Kim Utzinger (accepted in lieu of Ms. Utzinger's live testimony), Ms. Utzinger reports an incident, as follows, between herself and Ms. Hall on June 4, 1994. As Ms. Hall was conducting a "stand-up," Ms. Utzinger continued to throw flats. When the meeting was over, Ms. Hall approached Ms. Utzinger's case and told her she was tired of telling her not to throw flats and that Ms. Utzinger could consider Ms. Hall's remarks an official discussion. As she spoke, Ms. Hall grabbed the remaining flats from Ms.

Utzinger's hands and threw them into the flats case. Ms. Hall told Ms. Utzinger that she had given Ms. Hall a hard time the day before and Ms. Hall was tired of it. In Ms. Utzinger's opinion, Ms. Utzinger and Ms. Hall had not had a problem the day before. (Union Exhibit 1). At the arbitration hearing, Ms. Hall testified that Ms. Utzinger complained to Ms. Hall that she was being singled out by Ms. Hall; that she and Ms. Utzinger talked about her Utzinger's perceptions; and that their talk was beneficial. Postmaster Thomas Jono testified that Mr. Hurst reported the incident to him, as follows: Ms. Utzinger continued to throw flats as Ms. Hall was conducting a stand-up session; Ms. Hall became very upset and grabbed the flats from Ms. Utzinger and threw them into the flats case; and Ms. Utzinger felt that Ms. Hall had embarrassed her in front of her co-workers. Mr. Jono further testified that Ms. Hall indicated to him that the incident was not exactly as portrayed by the Union, because although she did take flats from Ms. Utzinger's hands, she did not forcefully jerk the flats from Ms. Utzinger's hands; that when he met with Ms. Hall and Ms. Utzinger, both acknowledged to him that they did not have a lot of interaction with each other and thereafter would take the time to talk to each other a little more; and that Mr. Jono verbally reported back to Mr. Hurst that the matter had been handled.

The Union

The evidentiary record establishes that the Union is entitled to the remedy it seeks in the grievances, i.e., the removal of Ms. Hall from a supervisory position. In October 1987, Ms. Hall was placed on emergency suspension for involvement in a physical altercation with another Carrier. In October 1992, approximately eight months after Ms. Hall began temporary details as an Acting Supervisor, Branch President Jim Hurst wrote a letter to Officer-in-Charge Nelson complaining about Ms. Hall's behavior, viz., Ms. Hall's threat "to get his [Mr. Hurst's] ass." Mr. Nelson discussed the matter with Ms. Hall. In March 1993, Ms. Hall made inappropriate racial and sexual remarks to Carrier Nancy Haigh. When confronted with the accusations, she admitted them and went on to threaten Shop Steward Pfeiffer and Ms. Haigh by stating that she would tell them what she really thought of them when she got back into uniform. The Union filed a grievance. (Joint Exhibit 2). In May 1993, at the direction of the Postmaster and as a result of her inappropriate behavior toward subordinates, Ms. Hall attended a Human Relations class. Nevertheless, in December 1993, Ms. Hall failed to maintain an atmosphere of mutual respect with Carrier Hamilton-Milner. The Union then filed another grievance concerning Ms. Hall's behavior. In June 1994, Ms. Hall again engaged in inappropriate behavior with Carrier

Utzinger when she physically grabbed flats from Ms. Utzinger's arms and threw them in the flats case. Ms. Utzinger asked for and received a special meeting with the Postmaster regarding Ms. Hall's improper conduct.

In summary, the record shows that Ms. Hall has continually engaged in behavior which is obnoxious or offensive to other employees and creates unpleasant working conditions; that she has failed to maintain an atmosphere between employer and employee which assures mutual respect of each other's rights and responsibilities and that she has been retained despite the fact that the Joint Statement on Violence and Behavior in the Workplace provides that "those who do not treat others with dignity and respect will not be rewarded or promoted and that those whose unacceptable behavior continues will be removed from their positions." The Union holds that in retaining Ms. Hall in a supervisory position, the USPS has violated Article 3 of the National Agreement (Management Rights); Article 14 of the National Agreement (Safety and Health); Article 19 (Handbooks and Manuals); Section 662.2 of the Employee and Labor Relations Manual (Behavior and Personal Habits); Section 115.4 of the M-39 Handbook (Maintain Mutual Respect Atmosphere); and the Joint Statement on Violence and Behavior in the Workplace.

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All the Union has requested in this case is that the USPS live up to the commitment it made in the Joint Statement on Violence and Behavior in the Workplace. In that document, the parties agreed to what is considered improper behavior and to what constitutes the appropriate remedy in the event that anyone chooses to continue to violate the standards of that agreement, i.e. removal.

The Union requests that the Arbitrator find that the Union has carried its burden of showing that Ms. Hall has repeatedly violated the National Agreement and the Joint Statement on Violence and Behavior in the Workplace and that she shall not be allowed to supervise letter carriers as an acting supervisor or be promoted to a supervisory position on a permanent basis.

The USPS

Management determines who will be delegated the authority and responsibility to supervise its workforce. Therefore, the Union has no authority to ask for the removal of Ms. Hall from acting supervisor status.

In the Haigh grievance, management provided the appropriate remedy by having Ms. Haigh and Ms. Hall discuss the incident and voluntary apologies were made by both. Also additional training was given to Ms. Hall. Prior to the incident which upset Ms. Haigh, Ms. Hall and Ms. Haigh had felt free to make comments regarding "just about everything" to each other. The day before the

incident, Ms. Haigh had voiced disapproval to Ms. Haigh about Ms. Haigh's luncheon partner. About three months after the incident, Ms. Haigh felt free enough about their relationship to tell Ms. Hall that Ms. Hall's hairstyle looked like that of a rapper Ms. Haigh had seen on TV. There have no reported incidents between Ms. Haigh and Ms. Hall since the incident. In the Haigh grievance, it is clear that the appropriate remedy has already been granted. The evidence shows that the incident was resolved by the parties through a grievance meeting on March 12, 1993.

In the Hamilton-Milner grievance, management did not provide a remedy because Ms. Hall did not engage in any improper behavior. The evidence indicated that Ms. Hamilton-Milner was in an angry mood and displayed poor judgment. There is no support for the Union's position that Ms. Hall was unprofessional with Ms. Hamilton- Milner and disguised her behavior by giving Ms. Hamilton-Milner an official discussion. Ms. Hall asked Ms. Jones to tell Ms. Hamilton-Milner to return to the office to pick up a satchel. Ms. Hamilton-Milner did not return to the office to obtain a satchel, and when she did return, she began throwing things about the office. Ms. Hamilton-Milner conceded that her behavior was inappropriate and that she was "pissed off" and mad when told to return to the office for a satchel. Ms. Hall thereafter gave Ms. Hamilton-Milner a

discussion concerning her behavior and also informed Ms. Hamilton-Milner that she should not bring personal problems from home to the workplace.

Other alleged incidents between Ms. Hall and others are either irrelevant to the grievances at hand or not established by the evidence. Although Mr. Hurst testified that Ms. Hall threatened to "get his ass" in an alleged incident in October 1992, Ms. Hall has told the more credible version of their conversation. She testified that she informed him that she would obtain a steward, as he had requested and that she would get back to him, not that "she would get his ass." Ms. Hall's behavior as a Carrier over five years prior to her conversation with Mr. Hurst on March 12, 1993 is irrelevant to the grievances at hand. In the cases at hand, there was no physical contact or any suggestion of physical behavior between Ms. Hall and the other individuals involved.

The Union has failed to demonstrate that Ms. Hall has repeatedly violated any of the handbooks and manuals it cited, including the Joint Statement on Violence and Behavior in the Workplace. Although it has reached far in attempt to demonstrate Ms. Hall has violated the *Joint Statement*, it has failed in that attempt.

The USPS requests that both grievances be denied in their entirety.

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DISCUSSION

In April 1996, the following issues, generated by the Union's requested remedy in the grievances herein, were submitted to arbitration at the national level in Cases Q90N-4F-C-94024977 and Q90N-4F-C-94024038:

"Does the Joint Statement on Violence and Behavior in the Workplace constitute an enforceable agreement between the parties so that the Union may use the negotiated grievance procedure to resolve disputes rising (sic) under the Joint Statement?"

"If so, what is an appropriate remedy?

(Arbitrator's Decision, p. 2)

In a decision issued on August 16, 1996, Arbitrator Snow held, in a nutshell, that the parties' conduct in negotiating the *Joint Statement on Violence and Behavior in the Workplace* manifested an intent to be contractually bound by their pledges therein; that the negotiated grievance procedure set forth in the National Agreement is not limited to matters in dispute under the National Agreement which have been negotiated in the traditional way, but may be used to resolve "a dispute, difference, or complaint" related to "conditions of employment"; that the

Joint Statement relates to conditions of employment; that the Union may use the negotiated grievance procedure to resolve disputes arising under the *Joint Statement*; and that arbitrators deciding disputes arising under the *Joint Statement* have available to them the flexibility found in arbitral jurisprudence when formulating remedies, including removal of a supervisor from his or her administrative duties. Arbitrator Snow's award thus disposes of the claim that the grievances herein must be dismissed because an arbitrator lacks authority to grant the remedy sought by the Union.

As factual support for the requested remedy, the Union cites several incidents which the Union alleges show a pattern of inappropriate behavior on Ms. Hall's part which render her unsuitable for a supervisory post. Therefore, as in most grievances, the first issue to be addressed here is whether the evidentiary record supports the allegations of fact offered in support of the grievance. Then, if the grievance is meritorious at all, the focus shifts to the matter of remedy--in this case the propriety of the requested remedy that Ms. Hall be removed from an "acting" supervisory position and be denied permanent promotion to a supervisory position because of alleged violations of various policies governing behavior in the workplace, including the *Joint Statement on Violence and Behavior in the Workplace*.

While the evidence indicates that Ms. Hall's behavior was insensitive and inappropriate in some instances, particularly for an individual serving in a supervisory capacity, the evidence does not persuade me, as the Arbitrator deciding a remedy issue, that there was any instance of conduct which was so inappropriate that it warranted removing Ms. Hall from a supervisory position or that Ms. Hall engaged in a "pattern" of inappropriate behavior over a period of time which should have compelled management to remove her from an "acting" supervisory position and deny her the opportunity to advance to a supervisor's position on a permanent basis. Furthermore, the circumstances surrounding some of the incidents are sharply disputed and involve as percipient witnesses only Ms. Hall and the other individual involved in the incident, both of whom undoubtedly bring their own biased perceptions and self-serving interests to their reports of the incidents.

Although Ms. Hall's involvement in a physical altercation as a Carrier in October 1987 is cited as a basis for the contention that she is unfit for a supervisory position, the record does not demonstrate any correlation between that matter nearly five years prior to the incidents in the current grievances and the matters in the current grievances. The circumstances of the incident in October 1992 between Branch President Hurst and Ms. Hall are in dispute and

there is no corroborative information which would justify crediting Mr. Hurst's version of it over Ms. Hall's version. He testified that Ms. Hall told him that she would "get his ass." Ms. Hall denied making any reference to "getting his ass" and said that she told him the matter was not over and that they would get back to a discussion of it. Although the circumstances of the incident involving Ms. Hall and Ms. Haigh in March 1993 are disputed to some extent, it is clear that the circumstances, even if viewed in a light most favorable to Ms. Hall, portray inappropriate conduct on Ms. Hall's part. As a supervisor, she certainly had no grounds for approaching Ms. Haigh either on a joking or serious basis to question Ms. Haigh's receiving the \$10.00 raffle prize at a Union-sponsored event. Ms. Hall's comments and suggestions that Ms. Haigh won the raffle because of "who she was sleeping with" or because Mr. Porter had the wrong skin color would have been rude and improper even, if at the time they were made, Ms. Hall had occupied the status of co-worker rather than supervisor. Thus, they must be regarded as especially offensive coming from a supervisor, whose responsibilities include fostering and promoting an atmosphere in the workplace where all individuals will be treated with dignity and respect. However, the concern and indignation which that incident spawned did not go unaddressed. Ms. Haigh complained to the Union. The Union called the incident to the attention of

management. During a meeting called by management and Union officials to address the matter, Ms. Hall apologized to Ms. Haigh. The Postmaster referred Ms. Hall for human relations training in May 1993 which, from management's perspective, was effective.

The two incidents after Ms. Hall's human relations class do not constitute persuasive evidence that Ms. Hall did not benefit from the human relations training or from management's attempts to correct her behavior through counseling. In the Hamilton-Milner incident in December 1993, all of the evidence regarding the incident, taken together, suggests that the bulk of the problem was created by Ms. Hamilton-Milner's defiant attitude and angry demeanor toward Ms. Hall, rather than by any misbehavior on Ms. Hall's part. Likewise, in the Utzinger case, it is undisputed that Mr. Utzinger's behavior toward Ms. Hall was rude and disrespectful, in view of the fact that she continued to throw flats while Ms. Hall was conducting a stand-up session instead of devoting her attention to the stand-up session. If Ms. Hall became angry and grabbed flats from Ms. Utzinger's hands and threw them into the flats cases, certainly she should not have done so and should have shown more control and restraint in dealing with Ms. Utzinger. Again, only Ms. Hall and Ms. Utzinger know exactly what happened. Ms. Hall admits that she took the flats from Ms.

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Utzinger but denies that she did so in an emotionally charged way. Whatever the truth of the matter, the most compelling evidence regarding the incident is that Ms. Utzinger, Ms. Hall, and others met and discussed any issues which could have lingered to cause problems between them and resolved the matter to the satisfaction of all concerned.

In summary, the evidence establishes that Ms. Hall's behavior as acting supervisor, in some instances, was inconsistent with policies of the USPS which exhort all employees, including supervisors and management officials, to treat each other with respect and dignity and which call for appropriate action to ensure enforcement of those policies. However, the evidence does not justify an arbitration award removing Ms. Hall from an "acting" supervisory position or barring her from serving in a supervisory position on a permanent basis. No portion of the foregoing discussion or findings should be construed to mean that insensitive or discourteous behavior on the part of a supervisor should be lightly regarded. To the contrary, such behavior must be forcefully addressed at its inception and checked to preclude the emotional pain such behavior brings to the individuals on the receiving end of it and to forestall the wider morale problems which could develop and culminate in verbal and physical violence. I simply find here that the drastic step of removing Ms. Hall from an "acting" supervisor

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position and precluding management from considering her for promotion to a supervisory position is not supported by the evidentiary record.

AWARD

In some instances, the "acting" supervisor's behavior was inconsistent with and, therefore, violative of policies of the USPS requiring supervisors to foster an atmosphere of mutual respect. However, in view of evidence that management took appropriate steps to correct the "acting" supervisor's offending behavior where corrective action was warranted and in view of the absence of any compelling evidence that such behavior continued, an arbitral order removing the individual from an "acting" supervisory position, denying her future promotion to a permanent supervisory position, or awarding any other remedy is not warranted.

Dated: December 28, 1996
Los Angeles, California

Edna E. J. Francis
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