

C#10874

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of Arbitration) GRIEVANT: K. Taylor
)
) POST OFFICE: La Jolla, CA
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)
UNITED STATES POSTAL SERVICE) CASE NO. W7N-5L-C 23727
)
)
) GTS 15987
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO)
)

BEFORE: JAMES T. BARKER, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: David H. English

For the Union: Dale P. Hart

Place of Hearing : 1140 Wall Street, La Jolla, CA

Date of Hearing : March 21, 1991

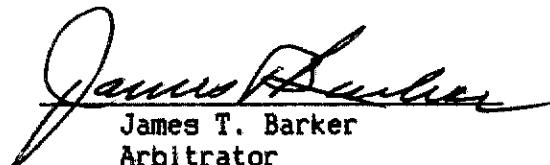
Briefs : May 3, 1991 (Postal Service)

 May 7, 1991 (Union)

AWARD : The grievance is sustained.

The grievant shall be immediately reinstated to his former or substantially equivalent position of employment, with backpay from April 25, 1990, and without loss of seniority or other benefits under the National Agreement.

Jurisdiction is retained for a period of sixty (60) days to resolve any conflicts pertaining to compliance with the remedial aspects of this Award.



James T. Barker
Arbitrator

Date of Award: May 28, 1991

Case No. W7N-5L-C 23727
GTS No. 15987
(Grievant: K. Taylor)

Opinion and Award

This arbitration hearing was held on March 22, 1991, in La Jolla, California at which time the parties were provided full opportunity to make opening and closing statements and present evidence. At the close of the hearing the Advocate for the Union requested to file a post-hearing brief. This request was granted and the parties agreed to the submission of briefs. Time for filing briefs was extended by mutual agreement of the parties. The Postal Service submitted its brief on May 3, 1991 and the Union's brief was filed by mutual consent on May 7, 1991, at which time the matter was fully submitted to the Arbitrator.

The Issues

The parties were unable to agree upon a statement of the issues.

The Postal Service proposed the following issues:

Did Management fail to follow Sections 365.211 and 365.214 of the ELM when it did not allow the grievant to withdraw his oral resignation?

If not, what is the appropriate remedy?

The Union would frame the issues as follows:

Did the grievant resign from the Postal Service? If so was the resignation processed in accordance with Sections 365.211 and 365.214 of the ELM and the National Agreement?

If there was a violation of the National Agreement, what should the appropriate remedy be?

The Arbitrator concludes that the issues raised by the instant controversy are those specified by the Union.

Relevant ELM Provisions

365.21 Resignation

365.211 Definition of Resignation (RESIG). Resignation is a separation at the employees request. Employees may resign at their discretion; this includes application for optional retirement. Resignations must be accepted and are binding once submitted. However, employees may be permitted to withdraw their resignation request provided the request to withdraw is made before the effective date of the resignation. Denial of an employee's request must be based on a valid reason and such reason should be explained to the employee before the effective date of the resignation. Administrative disruption or the hiring of a replacement before a request for withdrawal is made are appropriate reasons for such denial. A desire to avoid taking adverse action is not an appropriate reason for denying an employee's request.

* * *

365. 214 Notice and Acceptance. The following policies apply regarding notice and acceptance of resignations:

a. Written Resignation. Resignations should be submitted in writing. The employee specifies the reason and effective date. Whenever possible, written notice of resignation is given at least 2 weeks before the anticipated last day of work. Resignations are delivered by employees directly to their immediate supervisors for transmission to the appointing official. Any action to compel employees to remain beyond the date specified by them is without authority.

b. Oral Resignation. If employees decline to submit written resignations, their oral resignations must be accepted, preferably in the presence of witnesses. The supervisor or other official who receives an oral resignation records the date received, the reason given, the effective date, and the names of any witnesses. This record, signed by the supervisor, is placed in the employee's official personnel folder as a permanent record. A copy of this record is sent to the affected employee with the employee copy of the resignation Form 50.

c. Reason for Resignation. The reason for a resignation should be clearly stated in either a written or oral resignation. If the employee fails to give a reason for resignation, the supervisor enters the reason she or he believes the employee resigned.

d. Effective Date. When the employee sets an effective date of resignation to include a period of unapproved leave, the unauthorized absence may be charged to either earned annual leave or LWOP at the discretion of the appointing officer. The employee is informed of the decision and given the opportunity to change the effective date. If the employee is resigning in lieu of an involuntary separation, he or she may not set an effective date for resignation that will occur after the effective date for the involuntary separation.

Pertinent Facts

I

The grievant entered upon duty as city carrier June 25, 1983. At all times he was assigned to the La Jolla Post Office. At relevant times Robert Lockhead has been the Postmaster at La Jolla. Henry Montano was serving as Superintendent of Postal Operations in April 1990 when the events pertinent to the instant case took place. Montano had been the SPO at La Jolla since February 10, 1990. He had not previously been acquainted with the grievant.

The grievant is a Vietnam veteran and had been diagnosed as suffering from Post-Vietnam Traumatic Stress. In January 1988 he was referred to William Kelly, Supervisor of the Employee Assistance Program for the San Diego area. Kelly was aware the the grievant had served in Vietnam and was acquainted with the traits and behavioral characteristics manifested by the grievant. Accordingly, Kelly referred the grievant to Richard Thomas, who engages in readjustment counselling for the Veterans Administration. This referral was on January 28, 1988. Thomas concluded that the grievant was suffering from post-Vietnam traumatic stress. He testified that "there was not doubt" that the grievant was suffering from that syndrom.

Postmaster Lockhead testified that in 1988 the grievant was having "a very difficult time with supervisors" and he was referred to Dr. Melvin G. Goldzband

for a phychological fitness for duty examination. Dr. Goldzband found the grievant medically fit to perform the duties of a letter carrier. However, he recommended that the grievant continue to undergo medical treatment through the Veterans Center. Lockhead testified that the grievant was placed under no physical or mental limitations by Dr. Goldzband or management.

Lockhead further testified that he had "spent a lot of time and energy working with [the grievant]"; that he had presented him with his first problem as Postmaster at La Jolla; and that he had spoken with Kelly and then Thomas concerning the grievant. Lockhead testified that he treated the grievant "differently" by reason of the insight he had gained into the nature of his problem. To allow him to attend his counselling sessions he attempted to give him Thursdays off.

II

On Thursday, April 19, 1990, the grievant requested a half hour overtime from his immediate supervisor. This request was declined. Before leaving the station the grievant spoke with SPO Montano who allowed the overtime. Montano testified the half hour was granted on condition that the grievant take the entire volume of mail to the street. The grievant used the thirty minutes of overtime but left two feet of mail at his case.

When he reported for work on Monday, April 23, the grievant was called into Montano's office where Montano inquired about his use of thirty minutes of overtime on April 19. The grievant responded that Montano had authorized the overtime. Montano disputed this, noting that he had not issued a 3996 and that the grievant had left a volume of mail, thus failing to comply with the condition that he had imposed for allowing the half hour of overtime. Montano told the grievant that if he kept using unauthorized overtime he would get into trouble.

The grievant left Montano's office and returned to his case. He became increasingly angry. He believed his integrity had been challenged and that he was being harassed; that every time a new SPO is assigned "it starts all over again." He returned to Montano's office. He addressed Montano in a loud voice saying, "You can take this job and shove it up your ass. I quit." This was overheard by carriers on the work floor and he was also heard by letter carrier making the same statements before he entered Montano's office and after he returned from the office.

The grievant left the office. Montano followed him to the work floor. He observed the grievant go to Accountables and throw his keys on the desk. Montano asked the grievant to sign a Form 50 resignation form and the grievant answered that he was not going to sign anything.

The grievant testified that he had become emotionally upset and his intent was to leave the floor before he "lost it"; he was afraid of "becoming violent" because of past history. He testified further that he did not intend to resign; he "just wanted out of La Jolla."

After leaving the work floor, the grievant went to the street and called a friend. He testified that he could not recall if he went home.

Soon after the grievant had departed, Montano who was at the La Jolla Annex where the incident occurred, contacted Postmaster Lockhead by telephone at the main La Jolla post office. Montano told Lockhead that the grievant had "quit his job." At approximately mid-morning Scott Laveroni, Trustee and Steward of the Union, spoke with Lockhead who asked if he was aware that the grievant had walked off the floor. Laveroni had not been aware of this and he contacted the Branch office and spoke with Marion Mc Mackin, Assistant Secretary and Treasurer of the Branch. In turn, Mc Mackin called Lockhead.

It is clear that by the time Mc Mackin talked with Lockhead, Lockhead had received a description of what had taken place leading to the grievant's departure from work. Lockhead told Mc Mackin that the grievant had said, "I quit."

Mc Mackin asked Lockhead if he was aware of the nature of the grievant's medical problems and Lockhead stated that he was. Mc Mackin inquired if it were not possible that what the the grievant had said about quitting had not been a "rational statement". Lockhead did not respond directly.

Mc Mackin asked for a twenty-four hour "cooling off" period. Lockhead was not receptive to this suggestion, saying that the grievant was aware of what he was doing and that he considered the grievant's action as a voluntary resignation. He was going to cut a Form 50.

Lockhead testified that this was his first experience with oral resignation. He studied the ELM and spoke with Labor Relations concerning the matter. Labor Relations told Lockhead that there was no provision for a twenty-four hour "cooling off" period.

That afternoon Mc Mackin tried unsuccessfully to reach the grievant by telephone at his home.

At approximately 8:00 p.m. on the night of Monday, April 23, the grievant left a message on the telephone answering device at the home of Richard Seffesnf. Seffesnf is a letter carrier at the La Jolla post office and a friend of the grievant. The grievant requested Seffesnf to obtain his personal belongings from his locker. He said he would not "be back." Seffesnf cleaned out the grievant's locker on Tuesday, April 24.

At Montano's request, Seffesnf provided a written statement dated April 26, 1990.

III

Tuesday, April 24, was the grievant's scheduled day off. He called EPA Supervisor Kelly and they discussed the incident that had transpired the day before. The grievant was upset and Kelly told him that the matter might be "kind of serious." He suggested the grievant call Lockhead. Kelly agreed to make a telephone call to Lockhead and check into the matter further.

Kelly spoke with Scott Levinson, Richard Thomas of the Veterans Administration and with Lockhead. Kelly made clear that this was not an EPA matter. Kelly and Lockhead discussed the incident and the fact that the Union had requested a twenty-four hour "cooling off" period. Lockhead told Kelly that he had spoken with Tom Avey of Labor Relations and they had discussed the cooling off period but had agreed that the regulations did not provide for this.

In the meantime, on April 24, Mc Mackin again attempted to contact the grievant by telephone but was unsuccessful. She was in Union meetings all day long.

Lockhead testified that he waited all day on April 23 for the grievant to contact him and was "amazed" that the grievant did not call. He also testified he waited until mid-day on April 24 for contact from the grievant. When he did not hear from him he reached the conclusion that he "was serious" about resigning. He instructed his secretary to enter into the computer information which he had provided for transmission to Minneapolis where the Form 50 is prepared. He received from his secretary a printout of the information transmitted. April 24 1990 was entered in the printout as the effective date of the action, with April 23, 1990 as the last day in pay status.

Lockhead explained that he did not go to the grievant and ask for the effective date of his resignation. He felt that he was not required to do so; that

the grievant had set his own date of resignation by resigning. He did not seek to obtain the grievant's version of the dispute of April 23 because he assumed the grievant would come in; that what had precipitated the resignation was the incident between the grievant and Montano.

A Form 50 was issued reflecting authorization by the Regional Postmaster General and the date of May 1, 1990. Carried over into the "remarks" section were the April 23, 1990 and April 24, 1990 dates.

The time cards reflect the grievant as AWOL on April 23. Lockhead testified that because of the April 24 computer transmittal, the grievant's status was "resigned" and that he was in LWOP status from April 24 until May 1. The pay period ended on May 5.

Lockhead further testified that once the computer entry was made on April 24, it would have been necessary to issue a new Form 50 to accomplish the grievant's rehire.

No immediate efforts to fill the vacancy created were undertaken. This was initiated "a couple of weeks later" when Lockhead requested a hiring register. The replacement was accomplished in mid-June.

IV

At approximately 7:00 a.m. on Wednesday, April 25, the grievant called in and spoke with Montano. The grievant informed Montano that he wished to report for duty. Montano replied that it was too late, that the Form 50 had already been cut and that he had resigned. The conversation was brief.

The grievant informed the Union.

The grievant testified that he had never been requested to supply a reason for his resignation or an effective date of resignation.

Thomas testified that he was aware of the the various aspects of the incident of April 23 and that the accusation and the apparent [reported] "style and manner" employed by Montano had triggered in the grievant feelings of betrayal, a challenge to his honesty and a perception of injustice. This lead to strong anger and rage resulting in overreaction, followed by depression of an "almost immobilizing" character. Thomas testified further that when the grievant said, "...take this job and shove it..." he was manifesting a "typical reaction of the syndrom" which included impeded judgment.

The Contentions of the Parties

1. The Position of the Union

The essence of the Union's contention is that the grievant did not resign in that he lacked the necessary intent to quit his employment with the Postal Service and never submitted or proffered a valid resignation as required by ELM Sections 365.211 and 365.214.d. The Union further contends that if it is concluded that the grievant did resign, the Arbitrator should treat the alleged resignation as one made under severe emotional distress, which, in keeping with arbitral principals must be treated as a discharge.

In support of these contentions the Union traces the grievant's history of Vietnam Post Traumatic Stress Syndrome and the awareness of Postmaster Lockhead of both the existence of the condition and efforts on the part of the grievant to achieve counselling and treatment. The Union focuses also upon the events of April 19 and April 23 involving the grievant and Supervisor Montano which formed the background of the grievant's feelings, responses and conduct leading to the grievant's statement which management claims constituted a resignation. In the view of the Union, Montano's "arrogant, misdirected, and dishonest supervisory

style placed the grievant in a situation which caused him to react the way he did on April 23rd."

Next the Union cites the variations in the record testimony pertaining to precisely what the grievant stated regarding his job, and whether he uttered the words "I quit." In substance, the Union avers that the evidence supports the grievant's testimony that he felt anger, was insulted, and reacted to Montano's "dishonest allegations towards him, as one might expect somebody with PTSD to react," namely by telling Montano "he could take the job and shove it". In the Union's view of the evidence, the grievant never stated his intention to quit.

In fleshing out its contention that the grievant never intended to resign, the Union notes the grievant's refusal to sign a resignation form in the face of Montano's efforts to have him do so. The Union sees this both as an attempt on Montano's part to "'push the grievant's buttons' so that he would resign" and as indictment to the Postmaster and Montano that he did not intend to resign. The Union asserts that actions were consistent with symptoms of PTSD.

Further, the Union contends that management sought no followup clarification from the grievant regarding his intent as manifested by his conduct on April 23. Moreover, it defines the unsuccessful attempts made by the Union to achieve a "cooling off period", and contrasts this with the efforts on the part of the postmaster to finesse the question of a "cooling off period", and whether the Form 50 reflecting the grievant's resignation had been "cut".

It is the contention of the Union that its representatives were misled as to the status of the Form 50 at the time it was seeking to convince management to "backoff" from proceeding to process a resignation; that although told by management the Form 50 had been "cut" on April 24, no official action was taken on the Form 50 until May 1. The Union contends that management had eight days after

the incident of April 23 to reconsider, and to do so with knowledge gained from the grievant's conversation with Monsanto on the morning of April 25 that the grievant did not intent to quit.

Next, the Union dissects the provisions of Section 365.214 and 365.214. c. of the ELM in arguing that the grievant was never provided the required opportunity to withdraw his alleged resignation and was not given an explanation of why his refusal to sign a resignation form did not constitute a valid withdrawal of his resignation. Further, asserts the Union, the grievant was accorded no opportunity by management to change the effective date of his resignation. Additionally, referencing ELM 365.211, the Union avers that management made no showing of administrative disruption as would have alleged served as a basis for denying the grievant an opportunity to withdraw his resignation.

Finally, the Union cites arbitral authority for treating the alleged resignation of the grievant as a discharge and not a voluntary resignation. A textual passage from page 615 of Elkouri and Elkouri, Third Edition, is quoted and the conclusion reached by Arbitrator Edwin Render in Case No W7N-5R-D 1513, decided May 17, 1988, is called to the attention of this arbitrator.

The Union seeks an award sustaining the grievance, rescinding the resignation, making the grievant whole for all lost wages in a manner consistent with Article 7, Section 1.A.1 of the National Agreement, and restoring all seniority and benefits.

2. The Position of the Postal Service

The Postal Service contends that the Postmaster did follow the provisions of the ELM and that the grievant did resign his position and failed to timely withdraw his resignation.

The Postal Service notes that the Union had the burden of proof in this contract matter and was required to show that the Management violated the ELM by accepting the grievant's verbal notice of resignation, or, second, in failing to accept the employee's request for cancellation of that resignation. It is the view of the Postal Service that the Union failed to sustain that burden.

Affirmatively, the Postal Service asserts that the evidence establishes the grievant did resign and intended to do so. The Service avers that not only did the grievant's statement to his supervisor state his intention, but he created an impression among his peers that he was quitting. Further, his actions and conduct were such as to create in the mind of his supervisor that that he was resigning. The intention of the grievant to resign is further signified, contends the Postal Service, by the grievant's request to his fellow employee to clean out his locker.

Moreover, the Postal Service observes that the grievant's actions in informing his supervisor of his resignation followed by 45 minutes the discussion in the office that had allegedly led to his anger and his decision to resign. This shows the action was deliberate and not the result of severe emotional strain or loss of ability to control his emotions.

In a related sense, the Postal Service contends that no medical or other evidence was presented by the Union showing that the grievant suffered from any disorder that adversely affected his ability to relate to his customers, supervisors, or fellow employees. Rather, contends the Postal Service, the evidence shows that he had full control of his mental capacity; he knew what he was doing and rationally chose to become angry and quit because he felt his integrity had been challenged. He was "grandstanding". The Service contends that this was not the result of diminished capacity.

Addressing the provisions of ELM 365.21, the Postal Service stresses that employees may be permitted to withdraw their resignation request provided the request to withdraw is made before the effective date of the resignation. The Service cites the testimony of the Postmaster that his practice is to send in resignations at the close of the day submitted. However, notes the Service, knowing the grievant's background, the Postmaster waited well into the next day before he took action.

The Postal Service asserts that the ELM is silent as to the Postmaster's discretion in withdrawing a resignation after its effective date. The Service emphasizes, however, that ELM 365.11 provides resignations must be accepted and are binding once they are submitted. In the view of the Postal Service, the course of action taken by the Postmaster was well within his discretion and was not capricious. He had the duty to treat all employees consistently. It would be inefficient, avers the Postal Service, for the Postmaster to follow a policy of waiting a few days in order to determine what a resigning employee would do about a proffered resignation. Although he possibly could have waited longer than he did, he acted with full knowledge of all the surrounding circumstances; carefully sought advice from Labor Relations; and waited upon the reasonable expectation that the grievant would call him "as he had in the past". The conduct of the grievant in walking off the floor and leaving his route uncovered presented a serious matter and the Postmaster could not leave the route uncovered indefinitely. Waiting 24 hours before taking action was reasonable, contends the Postal Service, and did not represent precipitous action.

Finally, contends the Postal Service, no issue of harrasment or constructive discharge was raised by the Union and therefore the just cause provisions of the National Agreement are not involved.

The grievance should be denied.

Analysis

The entire record of this arbitration convinces this Arbitrator that the grievant did not perfect a genuine resignation, and that management acted arbitrarily, and in violation of the National Agreement, in treating the grievant as having resigned his employment.

Management is required to implement the terms of the National Agreement fairly, avoiding arbitrary, capricious or disparate application of any of its provisions. A degree of managerial judgment and discretion is implicit and essential to the scheme of enforcing contractual provisions in the context of the work environment. Human intellect and intelligence is a necessary ingredient, otherwise computers or robots could fill the role, make decisions and render judgments.

In instances wherein a provision or provisions of the National Agreement are applied in arbitrary or capricious fashion to an employee or group of employees a violation of the Agreement results. The merits of any claimed violation of the Agreement must be examined on the basis of all relevant facts and circumstances. A seeming abuse of discretion in one case may be, in another, due to distinguishing facts and factors, an appropriate and justified exercise of legitimate management rights. Claims of disparate treatment will be found meritorious only if the circumstances are identical, or substantially so. A claim of uniform application of contract terms provides no shelter to management in circumstances wherein the application is based on faulty evaluation and judgments regarding material and important considerations.

It is concluded that management failed to fairly apply the relevant provisions of the Employee and Labor Relations Manual to the known circumstances

of the grievant's asserted relinquishment of his job, and did thereby violate the National Agreement.

The record evidence fully documents the circumstances in which the grievant told SPO Montano that he "could take his job and shove it...." and separately stated that he had "quit". The grievant had been diagnosed as suffering from a post traumatic stress disorder and he had received the cooperation of Postmaster Lockhead in scheduling his work to accommodate counselling and treatment. Lockhead was aware, or should have been aware, of the behavioral traits and patterns of individuals suffering from the disorder. It was against this background, and the dispute with SPO Montano over overtime, that the grievant engaged in the aberrant behavior of walking off the job on April 23, and that evening directed his friend and co-worker to clean out his locker.

The grievant's behavioral responses were judged by Richard Thomas, an expert in the field, as attributable to post traumatic stress syndrome, and to be typical manifestations of the syndrome. Postmaster Lockhead had ample basis for suspecting the existence of this as a reason and explanation for the grievant's unusual conduct. He failed to follow the cautious course dictated by the background and circumstances that pertained to this unusual instance of apparent abandonment of employment. He thereby acted arbitrarily in deciding to apply relevant ELM provisions in the manner and extent defined by the evidence. A violation the National Agreement resulted.

Section 365.21 of the Employee and Labor Relations Manual defines a resignation as a separation at the employee's request. It specifies that employees may be permitted to withdraw their resignation request provided the request to withdraw is made before the effective date of the resignation. In further refinement of the resignation process, Section 365.214 of the ELM provides that if

an employee decline to submit a written resignation, their oral resignation must be accepted, preferably in the presence of witnesses. ELM 365.214 c. specifies that the reason for resignation should be clearly stated in either a written or oral resignation. If the employee fails to give a reason for resigning, the supervisor is directed by the ELM provision to enter the reason she or he believes the employee resigned.

By virtue of Article 19 of the National Agreement, the various provisions of the Employee and Labor Relations Manual, including ELM 365. 211 and 365.214, continued in effect at all times pertinent to this controversy. Moreover, those provisions, like all other ELM provisions, are subject to the mandate that they contain nothing which conflicts with the National Agreement.

Embedded as a guiding principal of the collective bargaining relationship between the parties to the National Agreement is the concept of good faith and fair dealing in the application and implementation of the terms of the Agreement and the handbooks, manuals and published regulations derivative of the terms of the National Agreement. It is a well-known axiom of labor relations that a given interpretation or application of a contractual provision may be within the letter of the literal language of that provision but not within the spirit or intent of the provision itself, or of the collective bargaining agreement of which it is a part.

Applying these concepts to the instant controversy, it is readily discernible that under a circumscribed, literal interpretation of the grievant's actions and conduct on April 23, management had an arguably plausible basis for contending that he had resigned his employment. However, careful scrutiny of the language of ELM 365.211 and companion provision 365.214 b. and c. discloses that bona fide intent, volition and considered judgment on the part of the "resigning"

employee are recognized as indispensable to the formulation and maturation of a resignation. Thus, provision is made for withdrawing the resignation, previously communicated, and preference for written, as compared oral, resignation is declared. If through declination of the employee to provide a written resignation, a preference for witnesses to the oral declaration is expressed. Further, a policy favoring careful delineation of the reason(s) for resigning is set forth.

Voluntary resignations are common in the work place, typically deriving from a combination of defined motivation, deliberation and planning on the part of the employee. It is less common for an employee who has committed eight years to an enterprize to resign percipitously and verbally in the aftermath of a work-related disagreement and dispute with supervision involving matters only marginal and not fundamental to the continuing work relationship. Warning signs emanate, in the circumstances, mandating careful and fair application by management of the promulgated procedures. The go-slow warnings become intense when the employee is one whose tempestuous disposition and personality is well known to the management official vested with responsibility to apply and implement the procedures by which oral resignation is effectuated. This is particularly so in the case of Postmaster Lockhead who had insight into the nature, characteristics and anticipated manifestations of the post-traumatic stress syndrom for which the grievant had received ongoing counselling and to whom, by reason of Lockheads interposition with supervision, a form of "different" treatment had been accorded.

The Postal Service failed to comply with pertinent ELM provisions on two scores.

First, by failing to undertake a bone fide analysis of whether the grievant oral statements and related conduct constituted a genuine resignation within the meaning of the ELM provisions. Second, by taking actions which, in the

circumstances prevailing, presumptively and constructively foreclosed the grievant's right under the ELM to withdraw his supposed "resignation" and/or recant his actions.

On the first score, the coupling of the dispute between the grievant and ~~the~~ his supervisor, and, as discussed above, the insight which Postmaster Lockhead possessed into the grievant's psychological and personality difficulties, cast a deep shadow of skepticism over the bona fides of the grievant's stated intention to "quit". While the Postmaster was entitled to give weight to the grievant's "quit" statements, made on the work floor and in the presence of employees, it is clear that these statements were made while the grievant was obviously distressed, and integral in time to his angry explosion directed to Supervisor Montano. The statements were part of the res gestae of the entire episode. At least one employee, Distribution Clerk Pulliam, didn't take the grievant seriously.

It is noteworthy that Postmaster Lockhead placed no stress upon the fact that the grievant had called Seffensf to request him to clean out his locker. Seffensf did not empty the locker until the evening of April 24, after Lockhead had entered the resignation data into the computer. Moreover, Seffensf's statement verifying this instruction was dated April 26, two days later. In the circumstance, this factor appears to have carried no weight in the Lockhead's conclusion that the grievant had resigned.

Lockhead properly weighed the fact that the grievant left the station and was in AWOL status the balance of the day. Still, from Lockhead's own testimony, it is clear that he did not consider this the final, dispositive indication of a genuine intention to resign. Rather, Lockhead waited until mid-day on Tuesday, April 24. This was the grievant's non-scheduled day. Lockhead was not expecting him to report, but merely to call in. He did not do so.

April 25 would have been a scheduled day for the grievant and his failure then to report or to make contact with management would have served as a definitive signal of his intentions. Lockhead and management chose not to bide time and await this important deadline.

This Arbitrator stops short of ascribing bad faith to the Postal Service, but the evidence is clear that management showed extreme reluctance to go the extra mile in search of a definitive answer.

Be that as it may, Lockhead was operating, nonetheless, pursuant to a contractual mandate to permit employees to withdraw their resignation request provided the request to withdraw is made before the effective date of the resignation. To be taken into account is the fact that the grievant had refused to sign a resignation form, and although he had left work under unusual circumstances and had made ambiguous statement in the heat of anger and acrimony indicating an intention to "quit", he had not "submitted" any written resignation nor defined in specific terms his date of resignation. It became all the more imperative from the standpoint of even-handed and fair application of the terms of the National Agreement to a eight year employee, known to Lockhead to suffer from the effects of post traumatic stress, for management to proceed with caution in a circumstance that mandated no immediate, forthwith action, and pursuant to contractual language that defined no hard and fast deadline. Not only was the fact of resignation open to reasonable doubt, the necessity of precluding "withdrawal" rested on no contractual imperative.

At the point in time when Lockhead issued the instructions to transmit by computer the information relevant to the grievant's "resignation", postal management, including Postmaster Lockhead, had received authoritative indications that the grievant was recanting his conduct of April 23. Similarly Lockhead was

aware that the grievant was evidencing to the Union, to the EPA counsellor, and to his Veterans Administration counsellor, his awareness that he had acted incorrectly and unwisely; that he was having second thoughts. Consideration, evaluation and accounting of these factors would have communicated to an objective official the clear implication that a withdrawal was probably pending. These factors should have also communicated the clear possibility, if not likelihood, that the words and actions spoken and taken in anger on April 23 did not clearly qualify under the ELM as an oral resignation.

In this factual context, by disregarding these strong indicators, and by imposing an artificial deadline for withdrawal not warranted by the accompanying prevailing circumstance of the grievant's non-scheduled day and the realistic potential that he would seek to resolve the matter a half day later, on his next scheduled day, Postmaster Lockhead and the Postal Service failed to follow the spirit and underlying intention of ELM 365.21 that a reasonable time be allowed for an employee to withdraw his/her resignation. In short they acted arbitrarily. Arbitrary interpretation of contractual provisions to the detriment of a covered employee results in a violation of the collective bargaining agreement.

The Postal Service makes much of the fact that Lockhead had entered data into the computerized system at mid-day on April 24, and that this defined the effective date of the grievant's resignation. In a factual circumstance different from that pertaining in this arbitration, a rigid compliance to the "effective date" language of ELM 625.211 and 625.214 would perhaps be justified and mandated. But in the particular and peculiar circumstances of the grievant's "resignation", this claim lacks merit.

The resulting Form 50 was not signed until May 1. In the interim between April 24 and May 1, nothing prevented Lockhead, or management otherwise, from

cancelling the entry, and making adjustments in accompanying records to reflect a bona fide reconsideration or retraction of the action taken. Any doubts that may have pertained concerning the grievant's true intentions were removed when he called in at the beginning of the work day on April 25 and was informed by SPO Montano not to report for work. Clearly, the grievant was signalling his intention not to resign and was claiming his job. Managerial discretion and postal record keeping and accounting is not so sterile and mechanistic as to require so barren and circumscribed approach.

On the basis of the foregoing, it is found that the Postal Service acted arbitrarily in treating the grievant as having resigned his employment and processing his purported resignation to completion, in the face of clear desire and efforts on the grievant's part to return to work. Violation of the National Agreement resulted. The grievant must be reinstated with back pay.

The instant grievance raises a contract issue and is not premised upon a violation of Article 16. Contrary to the Union, the grievance forms no basis for concluding that the grievant was discharged. However, management's actions resulted in the loss of employment opportunity with the Postal Service properly claimable by the grievant. Accordingly, for remedial purposes, the standard remedy applicable to discharges failing to meet the just cause standard is deemed appropriate.

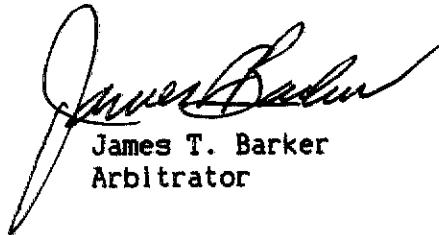
AWARD

The Postal Service violated the National Agreement in the manner and to the extent indicated above.

The Postal Service is directed to rescind the action which resulted in placing the grievant in the status of an employee who had resigned his employment with the Postal Service.

The Postal Service shall make the grievant whole for all wages lost between April 25, 1990, and the date of the grievant's reinstatement to his former or substantially equivalent position of employment with the Postal Service, all without loss of seniority or other benefits.

The Arbitrator shall retain jurisdiction for a period of sixty (60) days for the purpose of resolving any conflicts pertaining to compliance with the remedial aspects of this Award.



James T. Barker
Arbitrator

May 28, 1991