

C# 10280

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANT: Carlo Jenkins
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) POST OFFICE: St. Louis, MO
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UNITED STATES POSTAL SERVICE) CASE NO: C7N-4Q-D 66163
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and)
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NATIONAL ASSOCIATION OF LETTER)
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CARRIERS)
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BEFORE: Arthur R. Porter, Jr. ARBITRATOR

APPEARANCES:

For the Postal Service: Tommy J. Tabb
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Labor Relations Assistant
St, Louis, MO

For the Union: John Haake
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President NALC Branch 343
St. Louis, MO

PLACE OF HEARING: 1720 Market Street, St. Louis, MO

DATE OF HEARING: September 6, 1990

AWARD: Grievant Carlo Jenkins was not terminated from the United States Postal Service in accordance with the labor agreement. Mr. Jenkins shall be returned to the payroll with full back pay and benefits.

DATE OF AWARD: September 24, 1990

Arthur R. Porter
(Signature of Arbitrator)

Issue

At the time of the arbitration hearing the parties agreed that the basic issue in dispute was as follows:

Was grievant Carlo Jenkins terminated by the USPS in accordance with the labor agreement?

Presumably, if the termination was not in accordance with the labor agreement, the remedy must be fashioned by the arbitrator.

Background

At the time of the arbitration hearing, the parties submitted the testimony of grievant Carlo Jenkins and Louis Moore, retired Manager of Employment and Development for the St. Louis offices of the USPS. Joint and separate exhibits were introduced. No transcript was made of the hearing; no post-hearing briefs were filed by either party.

It was stipulated by the USPS management and the Letter Carriers that:

(Carlo Jenkins) worked through 2/1/90.

The following sections of the labor agreement or the Employee and Labor Relations Manual have been cited by one or both of the parties in support of their respective positions:

Section 1. Probationary Period

A. The probationary period for a new employee shall be ninety (90) calendar days. The Employer shall have the right to separate from its employ and probationary employee at any time during the probationary period and these probationary employees shall not be permitted access to the grievance procedure in relation thereto. If the Employer intends to separate an employee during the probationary period for scheme failure, the employee shall be given at least seven (7) days advance notice of such intent to separate the employee. If the employee qualifies on the scheme within the notice period, the employee will not be separated for prior scheme failure.

365.323 Probationary Period

Separation-disqualification must be affected during the probationary period except as provided in 365.321. Action is initiated at any time in the probationary period when it becomes apparent that the employee is lacking in fitness and capacity for efficient service. Any separation based on disqualification not effected during the probationary period, as provided in 365.321 even though the action is based on unsatisfactory performance during the probationary period, must be effected as a removal.

365.326 Procedure in Separating

If an appointing official decides to terminate an employee who is serving a probationary period due to conditions

arising prior to appointment, or because work performance or conduct during this period fails to demonstrate fitness or qualification for continued postal employment, the employee's services are terminated by notifying the employee in writing as to why she or he is being terminated and the effective date of the action. The termination in the notice regarding the termination must, at a minimum, consist of the appointing official's conclusions as to the inadequacies of performance or conduct.

365.327 Effective Date

The effective date of separation by disqualification must be before the end of the probationary period but may not be retroactively effective. The notice of separation must be given to the employee before the end of the probationary or trial period.

Management Position

Article 12 §1 of the labor agreement is clear. Management has the right to separate an employee from the USPS during the probationary period of ninety (90) days without any appeal of that action through the grievance procedure. If any employee, such as Mr. Jenkins, receive a separation notice, that employee's rights and employment cease.

Grievant Carlo Jenkins was reemployed by the Postal Service as a letter carrier, after he resigned in April of 1984. His reemployment was as a PTF carrier at the St. Louis, Pierre Laclede Station, effective 9/23/89 (m 4). Mr. Jenkins was sent a separation letter, under date of October 16, 1989 (jt 3), which was less than four (4) weeks after his date of rehire. The separation letter was received at his Postal Service listed address (receipt acknowledged by his mother) on 10/19/89 (m 1). That letter was the notification by the Postal Service that Mr. Jenkins was no longer an employee of the Service.

The decision to remove Mr. Jenkins was made by Employment and Development Director Louis Moore on grounds that it was urgent to remove Mr. Jenkins from the Postal Service employment. Mr. Moore testified that his office failed to follow the standard procedures of notification to the supervisors at the station at which Mr. Jenkins was working. The station manager and direct supervisor knew nothing about the separation decision, until much later. The error of notification occurred in Mr. Moore's office, as he was not familiar with the normal notification procedures for internal distribution of separation notices.

Consequently, Mr. Jenkins kept working. The Postal Service had to "cut" a new form 50 so that the employee could be paid (m 4). This act was done and Mr. Jenkins was finally handed his separation letter on 2/1/90.

An employee who ignores a separation letter (jt 3) cannot be permitted to continue to work, simply because there was an internal management error in the processing of a legitimate decision. Management has the power to remove, without recourse to the grievance procedure, if that removal takes place within the probationary period. The separation was proper under the terms of Article 12 §1 of the agreement.

Union Position

Grievant Carlo Jenkins never received the letter of separation (jt 3). There must have been a failure of communication within the home of Mr. Jenkins. It should be noted that ELM ¶365.327 provides that the separation notice must be given to the person involved before the end of the ninety day probationary period. The notice of separation (jt 3) could have been sent with the requirement that its receipt had to be acknowledged by the addressee. No such requirement was stipulated in the delivery of the separation letter.

Arbitrator David A. Dilts has ruled in a St. Louis dispute that "giving" means more than simply sending the letter to the house of the man or woman involved. At least, it should have been addressed to the person, with receipt to be signed by him/her. As noted by Mr. Dilts, given means "...that the Postal Service make known to the grievant or lodge in his hands the notice" (award, p.9). Note, decision by Arbitrator Dilts (C4N-4Q-D 23074).

Grievant Jenkins continued to work for the Postal Service, until he was notified of his separation on or about February 1, 1990. His station supervisors had recommended that he be retained for regular Postal Service duty (jt 2).

The ELM (¶365.326) requires that the appointing official notify the employee "...why she or he is being terminated ...". The minimum requirement includes "...conclusions as to the inadequacies of performance or conduct...". The employee may nor be able to appeal the reasons through the grievance procedure, but the employee is owed some statement of the reasons for the separation. The separation letter (jt 3) signed by Louis Moore contains none of these required statements of inadequacies.

Finally, Mr. Jenkins not only completed his probationary period of work with the Postal Service, he worked more than a month beyond the conclusion of the ninety days probationary time. Management cannot now say that he was terminated within the probation period.

Grievant Carlo Jenkins has the right to a regular "just cause" termination. That is, Mr. Jenkins must receive a Notice of Removal. He must be able to appeal that removal through the various steps of the grievance procedure, including arbitration. Mr. Jenkins must be returned to the payroll, with back pay and benefits back to the effective date of his discharge, which followed receipt of the separation notice on or about February 1, 1990.

Discussion

The arbitrator upholds the Letter Carrier position in this strange case. This position is taken for the following reasons:

1. The ELM provisions quoted above are meant to implement the provisions of the labor agreement in Article 12 §1. As noted by Arbitrator Dilts (above), mailing a notice to the address of the grievant may not be sufficient. The ELM requires that the notice be given to the employee. At least, given should mean an addressee signature of the receipt document.

2. Even if Mr. Jenkins received the separation notice, there would be a strong case for reversing the management action. Management permitted the employee in question to work not only further into the probationary period but beyond it (m 4 and u 2). Mr. Jenkins was paid during this time. In fact, Mr. Jenkins testified that he did not miss a payroll period during this entire time.

3. Management is bound by its own mistakes. The grievant worked beyond his probationary period and received average or better than average ratings. If Mr. Jenkins is to be removed, that removal must be through the usual removal steps for employees, who have completed their probationary period.

Mr. Jenkins shall receive back pay and benefits from the date of his removal from the payroll in February of 1990.