C#04187

AWARD IN ARBITRATION

UNITED STATES POSTAL SERVICE, Employer, -and- NATIONAL ASSOCIATION OF LETTER CARRIERS, Union.	WIN-5D-D 7304 WIN-5D-C 7674 REMOVAL OF JOHN PULLUM

The above captioned matter was duly processed through the parties' grievance procedure being unresolved appealed to and heard before the undersigned in regular arbitration on July 6 and December 14, 1983, at 18th and Lewis Street, Pasco, Washington.

Making appearances on the record were:

Robert Churchill - USPS representative

Jim Edgemon - NALC representative

At the outset of the proceedings the parties were unable to agree upon a statement of the issue.

The Employer advanced the issue to be:

1. Was the Notice of Proposed Removal dated July 9 and delivered to the grievant on July 12, 1982, grieved within the time limits required by the National Agreement, Article 15? If not, the matter must be dismissed as it is not properly before the arbiter.

2. Is there sufficient mitigating circumstances to reduce the penalty of removal issue to the grievant for mistreatment of mail matter? If so, what remedy, if any, is the grievant entitled to?

The Union advanced the issues for resolution to be:

1. Were the grievances filed by the Union challenging the Notice of Removal and Letter of Decision on such removal timely filed at Step 1, as required by Article 15 of the National Agreement, so as to make them arbitrable on the merits of each grievance?
2. If the answer is yes, did "just cause" exist, as required by Article 16 of the National Agreement, for the issuances of such notices?
3. If the answer to #2 is no, to what remedy is the grievant entitled?

Since the parties were not able to agree upon a statement of the issue it was agreed that when I had a full evidentiary record I would accept either of the parties' submission or frame the issue(s) as I deemed appropriate.

At the conclusion of the evidentiary portion on the proceedings the parties elected to file post-hearing briefs. Upon receipt of the parties' briefs this matter was duly taken under consideration.

Having carefully reviewed the entire record in this

case I find the Union's proffered submission acceptable.

It is my award that:

1. The instant grievance is not time barred.
2. Just cause was present to warrant issuance of the Notice;
3. The Grievant's "defenses" are not sufficient to mitigate the charges.

Respectfully submitted,

Robert M. Leventhal

Submitted this 23rd day of March, 1984
Culver City, California

BACKGROUND

At the outset of the proceeding on this case several issues were disposed of by stipulation. Initially the Union had appealed case WIN-5D-D 7305, the Grievant's emergency suspension. However, after the Employer had presented its time bar arguments the Union acknowledged that suspension had not been timely grieved and therefore withdrew its appeal.

At some point in the prearbitral processing of this grievance the Employer asserted some impropriety regarding the certification of the Union's steward to represent the Grievant, but those assertions were withdrawn and therefore are not at issue in the instant case.

The Grievant's work history prior to the events which led to his discharge were stipulated as follows:

> The Grievant was hired as a part-time flexible clerk at the Pasco, Washington, office of the United States Postal Service on November 28, 1970.
>
> The Grievant served continually as a part-time flexible clerk in Pasco from November 28, 1970 to April 17, 1971 when he was transferred to a part-time flexible letter carrier.
>
> The Grievant served continually as a part-time flexible letter carrier in Pasco from April 17, 1971 to September 28, 1974, when he was promoted to a full-time regular letter carrier.

At the time of the incident concerning the catalogs in question being sent to the Grievant's home, the Grievant was working in the Tri-Cities Mail Handling Facility as a clerk under the USPS Rehabilitation Program.

As to the events which "triggered" the Grievant's removal, the parties were able to stipulate as follows:

1. The Postmaster of Pasco, Washington, was aware on 3/19/82 that four catalogs appearing to be undeliverable were received in Benton City, Washington, on 3/26 and 3/29/82 bearing the grievant's address but not his name with the Postmaster of Benton City concluding the grievant had mishandled undeliverable mail.

2. The same day, 3/29/82, the Postmaster of Pasco and Supervisor Ethel Polillo compared the grievant's handwriting done on official compensation claims to that appearing on the catalogs and concluded that there were definite similarities to warrant a conclusion that the grievant could have addressed the catalogs to himself.

3. That afternoon (3/29/82) the postmaster of Pasco contacted the Postal Inspectors in Spokane, Washington and informed them of what he had learned and suspected.

4. The Postal Inspectors arrived in Pasco, Washington on 3/31/82 and were provided the four catalogs mentioned above.

5. On 4/2/82 (about midnight) the grievant met with two Postal Inspectors but refused to talk to them without an attorney present. (He did, however, provide them with several samples of his handwriting.)

6. The grievant was not given a Notice of Emergency Suspension, Notice of Indefinite Suspension or placed on Administrative Leave at any time between 3/29/82 and 6/17/82.

7. The grievant's first day back carrying Letter

Carrier routes was on or about 4/15/82 when he carried mail.

8. During the time the grievant carried mail in Pasco from 4/16/82 to 6/17/82, he was responsible for providing the security of Registered and Certified letters as well as C.O.D. packages entrusted to his care as a letter carrier.

9. On 4/13 and 4/23/82, Postal Inspector D. M. Hazen officially required of the Postal Inspection Service's crime laboratory an analysis of the grievant's handwriting so as to compare it to the handwriting appearing on the four catalogs referred to above.

10. On or about 4/30/82, the grievant was officially issued a new SF-46 (Government Driver's License) to expire on 1/7/83.

11. On 5/11/82, the Senior Document Analyst of the Inspection Service's Crime Lab responded to Inspector Hazen that he had concluded that the handwriting on the four catalogs was that of the grievant.

12. This information was provided in a 5/28/82 letter from Postal Inspector Wetzel to the Postmaster of Pasco and received by him on 6/1/82.

13. On 6/4/82, the grievant was interviewed by the Postmaster of Pasco and Supervisor David Duncan concerning the four catalogs.

14. On 6/17/82, the Postmaster of Pasco and Supervisor David Duncan again interviewed the grievant in regards to the four catalogs.

15. On 6/18/82, the grievant, Supervisor Duncan and the Postmaster of Pasco met at the office of Dr. Werdna Cochran (psychiatrist) to talk about the four catalogs and the grievant's handling of such.

16. Before this meeting concluded, the grievant was given a Notice of Proposed Emergency Suspension prepared before the parties met at Dr. Cochran's office.

17. On 6/23/83, the grievant met with the Postmaster of Pasco for his response to the Notice of Proposed Emergency Suspension as allowed him as a veteran.

18. On 6/29/83, the Postmaster of Pasco met with Dr. Cochran.

19. On 7/9/82, Supervisor David Duncan, in discussion with his superiors determined to issue the Notice of Proposed Removal to the grievant.

20. On 7/12/82, the Postmaster of Pasco gave the grievant the Letter of Decision implementing the Emergency.

21. At the same 7/12/82 meeting, Supervisor Duncan gave the grievant the Notice of Proposed Removal decided upon earlier on 7/9/82.

22. On 7/22/82, the grievant met with the Postmaster of Pasco to discuss the Notice of Proposed Removal as allowed him as a veteran.

23. On 8/5/82, the Postmaster of Pasco rendered his Letter of Decision on the Proposed Removal which was received by the grievant on 8/9/82.

On July 9, 1982, the Postal Service issued its notice of Proposed Adverse Action which is incorporated by reference and appended as Attachment A to this award.

On August 5, 1982, the Postal Service issued its "Letter of Decision" which is also incorporated by reference and appended as Attachment B.

POSITION OF THE PARTIES

The Employer

Arbitrability

At the outset of the evidentiary hearing the Employer

asserted that the instant grievance was time barred as the Grievant, an individual with knowledge of Union procedures and the grievance procedure, was noticed of his Proposed Removal on July 12, 1982, but the grievance was not filed until July 26, 1982. The Employer's representatives were continually available and the Grievant waited beyond the contractual 14 day time limit to grieve this action. The Union is clearly on notice that this Postmaster considers strict adherence to the contractual time limits important and therefore the instant grievance is time barred.

Merits

In support of its position that the instant grievance should be denied, the Employer's major arguments may be summarized as follows:

1. Charge #1, mistreatment of mail matter, recognized as a discharge offense, stands uncontroverted on this record.
2. Four catalogs were transmitted from Pasco to Benton City without the payment of postage. Use of the mails without the proper payment of postage is also a dischargeable offense. The fact the catalogs were intercepted due to the diligence of another Postal Service employee in Benton City and they were not actually delivered, in no manner excuses the Grievant's conduct.

3. The furnishing of false and misleading information during the course of an official investigation is a dischargeable offense. The Grievant, after he realized his fabrications would not stand, admitted he engaged in such conduct. The misrepresentations made by the Grievant during the course of the investigation were material.

4. The Postal Service, once it had initial knowledge of the Grievant's actions, before acting conducted a full and complete investigation. The time spent in this investigation was in no manner unreasonable and was clearly aggravated by the Grievant's statements which required additional investigative time to verify or disprove.

5. While the Grievant did not initially raise any defense regarding diminished capacity or mitigation due to mental illness, when this defense was raised, it was fully investigated and given consideration. Based upon the investigation it was determined that:

   a. No pattern of "harassment" by the Postal Service was demonstrated to be accepted as the underlying cause of the Grievant's emotional problem.

   b. The Grievant's attending psychiatrist affirmed that to the best of her knowledge at all

times the Grievant was fully aware of what he was doing, knew the difference between right and wrong, but she could give no assurances whatsoever that he would not repeat the conduct in question.

The Union

Arbitrability

In support of its position that the instant grievance is arbitrable the Union's major arguments may be summarized as follows:

1. There is no requirement that an employee grive both an emergency suspension and then the conversion of that suspension to a removal.
2. The Union acknowledges that the emergency suspension was not timely grieved and therefore the price paid for that error is a waiver of backpay for those 30 days in question.
3. The Grievant timely grieved the removal as under reasonable standards of contract interpretation in general and Washington law in particular, time limits commence to toll the day after an event has occurred. The Washington State statute expressly sets forth that:

> "The time which an act is to be done shall be computed by excluding the first day and including the last. If the last day falls on a Sunday, it shall be excluded."

4. When the above rule is applied, the grievance was filed within the contractually required 14 days.

Merits

In support of its member's grievance the Union's major arguments may be summarized as follows:

1. The Employer should be barred from taking any action against the Grievant as it had all its ultimate knowledge of the facts in this case no later than March 29, 1982, and yet elected to allow the Grievant to continue working, which he did without any adverse consequences to the Employer's business interests, until June 18, 1982.

   It is well established that if an Employer does not find an employee's conduct sufficiently serious to place that employee on an emergency suspension or to discipline or discharge once it has knowledge of the conduct, it cannot hold the employee insecure for an extended period and then act.

2. Clearly, by not placing the Grievant in some sort of leave status as of March 29, 1982, and allowing him to continue to work demonstrates the Employer had no real concern the Grievant was a threat that could result in damage to the U. S. Postal Service property, loss of mail or funds.

3. The failure of the Employer to act for approximately two and a half months is fatal to the Employer's case and on this fact alone, the Employer's delay in imposing discipline is a waiver on its prospective right to so act.

4. The Grievant's procedural due process rights were substantially and significantly violated as after the Postmaster turned this matter over to the Inspection Service, contrary to Section 221.11 of the Administrative Support Manual, the Postmaster launched an investigation on his own.

5. The Grievant had been previously subjected to a pattern of unwarranted harassment which was a major contributing factor to his mental illness and the irregularities in the manner in which this case was handled demonstrated this was the culmination of the Postmaster's desire to "get" the Grievant.

6. The Grievant acted wrongfully when he directed the catalogs to his home, however based upon the report of his psychiatrist his actions were precipitated by his emotional state of frustration caused by Postal Service management and therefore he could not hold back his desire to strike back.

7. The Employer was fully aware of the Grievant's emotional problem long before this incident

occurred and yet it failed to make any effort to determine the extent of the mental illness and to assist the Grievant in a program of rehabilitation.

8. The Postal Service has the right to refer an employee for a Fitness for Duty examination for emotional/psychiatric reasons, its failure to so act in this case when armed with knowledge that an emotional condition existed, makes the Employer ultimately responsible for the Grievant's actions in this case.

ANALYSIS

Arbitrability

It is a well established principle in labor management relations that unless it can be found with positive assurance a dispute is barred, all doubts should be resolved in favor of addressing a case on its merits.

In the absence of a contractual definition requiring that the date an event occurs, irrespective of the time during that date, is to be counted as day one, the usual standard is not to count the day the event occurred because the intent of a contractual time limit to grieve is to provide the parties full not partial days in which to act.

The Washington State Code cited by the Union is consistent with similar codes in other states and fully

comports with normal or usual arbitral standards.

Without addressing if in fact a Washington State Code has jurisdiction over federal authorities, the fact is it represents a customary rule for the tolling of time limits and there is no reason why it should not be applied in the instant case. Therefore, the instant grievance was timely filed and is properly before me as it was presented on the 14th day after the Grievant was noticed.

Merits

The basic or "bare bones" facts of this case were not in substantive dispute. Charge #1, mistreatment of mail matter, was eventually admitted by the Grievant. Little question exists within the Postal Service that the usual penalty for an infraction involving mistreatment of mail matter is usually discharge.

As to charge #2, while the Union argued that since the Grievant did not actually receive the catalogs, he did not fail to pay postage due, is rejected forthwith. To accept this argument would be to argue that an employee could take postal service property and mail it to himself, but until it was actually received, no wrong doing had occurred.

The fact some other Postal Service employee was diligent and caused the catalogs to be intercepted before they went on to the Grievant's home, in no manner excused the Grievant's conduct regarding the catalogs which was first

improper by addressing them to convert them to his personal use and then placing them in the mail stream for handling when no postage had been paid for that service.

As to charge #3, the Grievant acknowledged he lied during the investigation, but that conduct was, according to the Union, excusable because of his mental condition and the anxiety caused by the Employer's inexcusable delay in investigating the case. Therefore, absent the Union's proffered mitigation argument, no dispute exists the Grievant did, on several occasions, make material misrepresentations in fact which did prolong the investigation.

The Union did not dispute that employees who use the mails for their own purpose without the payment of proper postage or who wilfully lied during the course of an official investigation breached the trust necessary for continued employment as a Postal Service employee and are therefore subject to discharge.

Therefore, not at issue in this case is the Grievant's conduct, each element standing alone or in concert representing the types of offenses the Postal Service regularly moves to discharge for and absent some special mitigating circumstances, arbiters consistently confirm.

While the Union offered a virtual "potpourri" of defenses, in my opinion they fall into two major categories, procedural errors of such a magnitude they would bar the Postal Service from taking any disciplinary action, the

Grievant's mental condition to the extent that it should be accepted as mitigation for his actions.

While I have carefully considered each and every one of the Union's procedural defenses, I do not consider it necessary or probative to address each one. I have elected to address those, which if I found proven, might represent a basis to consider modification or reversal of the Employer's actions.

It was alleged that the Grievant had been subjected to a long pattern of harassment by Postal management and this was proven as over the years he had grieved and succeeded in having enumerable actions taken by the Postal Service reversed.

However, when the record is carefully reviewed there were not some 13 separate actions as suggested by the Union or over 50 as reported by the Grievant to his psychiatrist, but four step increase deferments, two suspensions which were overturned, one suspension which was arbitrated and a removal action that was reversed.

While the above appears to be a significant number of actions involving one employee, a number of those actions were reviewed by triers of fact and no findings were presented to me that the Postal Service's actions against the Grievant were frivolous or manifested malice.

In its post-hearing brief counsel for the Postal Service advanced that based upon this record, there is no

evidence that the Grievant was singled out for harassment or disparate treatment nor is there any evidence the Postal Service having decided to "get" the Grievant, deliberately went about building this case. I therefore must concur with the Postal Service's assesment of the evidence on this point.

However, when a defense of mental illness is presented, it is often not the reality of the situation that is at issue, but how the mentally ill person views and interprets the situation or condition and then how that perception interacts with the mental illness.

If an employee is suffering from a diagnosed mental illness, a perception of persecution could well be a causative factor to trigger antisocial behavior.

Therefore, while this defense is rejected on a factual basis, I concur with the Union that the Grievant could well believe that he was being persecuted by the Postal Service. Accordingly, this issue will be addressed further when the Union's argument of diminished capacity due to a psychological disorder is considered.

A number of the Union's proffered defenses dealt with the assertion that the Employer had its ultimate knowledge of the facts in this case no later than March 29, 1982, and yet took no action until June 18, 1982, and by so acting it sat on its rights to act and no discipline was in order.

At the outset I disagree with the Union's construction of the events. It is technically correct that by March 29,

1982, the Employer had knowledge of all the essential facts, but what is misleading in the Union's argument is if, as of that date, the Employer had proof of the sort it could rely upon to justify disciplinary action.

The fact the Employer's proofs came later in no manner supports an argument that since the initial suspecions were subsequently proven to be so, the Employer should have known such proofs would be forthcoming and therefore should have acted upon initial knowledge.

In fact, if the Employer acted before it had all its proofs in order, the charge would have been failure to properly investigate and if an emergency suspension taken, a lack of proper grounds for such an action due to faulty investigation.

The facts of this case are the Employer, having good cause to believe that the handwriting was the Grievant's, but until it received confirmation back from the Postal Inspection lab, it elected not to act. Further, the Postal Service forbore acting until it verified one way or the other the Grievant's various explanations as to what had in fact occurred.

It is true the Postal Service did take some 82 days from its initial knowledge on March 29, 1982, until the first disciplinary action was issued on June 18, 1982. It is also true, as noted above, that when all the investigative steps were completed the Postal Service had no more

information than it had on March 29, 1982. What the Postal Service did secure from the investigation, which was clearly prolonged by the Grievant's misrepresentations and attempted involvement of others to justify his actions, is the confirmation of the handwriting samples and the report that was received on June 1, 1982. On June 4, 1982, the report was discussed with the Grievant and based thereon questionnaires were sent to the publishers of the catalogs on June 6, 1982, and the Grievant's step-mother (who he offered as an alibi) was interviewed on June 14, 1982. The publisher's responses were received and the Grievant again interviewed on June 17, 1982, when the results of the investigation again were reviewed and the Grievant continued to deny any wrong doing.

It was not until the morning of June 18, 1982, that the Grievant called and asked for a meeting at his psychiatrist's office with postal management and at that meeting he finally admitted he had in fact lied.

Based upon the above sequencing of events, I find the Union's argument that the Employer "sat" on its rights and is therefore barred from acting against the Grievant, without merit.

In one of the many cases cited by the Union in support of its position in the instant case, the Grievant was reinstated in part, because the Employer did not fully investigate the case and that investigation had failed to secure information from that Grievant's psychiatrist as to

his mental condition before the Employer acted. In the instant case the Union now attempts to criticize the Employer for fully and fairly investigating each aspect of the case and attempting to verify each of the Grievant's representations.

As to the Union's argument that the Postal Service is barred from taking action against the Grievant because the Postmaster violated the Administrative Support Manual Section 221.7, which sets forth:

> "Do not discuss information concerning offenses or expected offenses of Postal employee with anyone outside the Inspection Service."

No where is it set forth that a Postmaster upon receipt of an inspection report cannot gather additional information before reaching a decision to discipline or discharge or that if the Postmaster inadvertantly does conduct some aspects of investigation after the matter is in the hands of the Postal Inspectors, that such "automatically" compromises the investigation and the employee, irrespective of guilt, is excused.

The final "procedural" defense of the Union that I choose to address is that since the Postal Service had knowledge the Grievant was seeing a psychiatrist, its failure to make any inquiry into the nature of the Grievant's mental problem and to have the Grievant take a fitness for duty examine and/or to establish a program of rehabilitation, makes the Employer responsible for what occurred.

I find it difficult to respond to this argument by the Union because it is so patently incorrect. If the Postal Service is responsible for the acts of each and every employee who has submitted a request for reimbursement because they have seen a psychiatrist, total chaos in the workplace would ensue.

If the Postal Service, or for that matter any Employer, is obligated upon a receipt for a claim for payment from a psychiatrist or psychologist or the receipt of any type of notation an employee is using such services, to then investigate the reasons why the employee is using the services and absent so acting be denied the right to discipline or discharge that employee in the future, would either invite all employees to seek a psychiatrist or psychologist to have a defense against any prospective problems which may arise or of much greater consequence, would be what I would expect to result in an immediate Union reaction against any Employer who so acted, to grieve such an action as an unwarranted invasion of personal rights.

To address this from a different direction, I would doubt an Employer would be justified if without probable cause or reason it moved to investigate the nature of treatment for any employee who was consulting a psychiatrist or psychologist, order fitness for duty exams and perhaps direct a program of rehabilitation. Such actions would be at a minimum discriminatory treatment toward an employee who is

having a mental versus a physical problem as well as an unwarranted and improper invasion of their personal rights.

If an Employer is confronted with express and explicit diagnosis that may be an underlying cause of excess absenteeism, AWOL or some other job related conduct, I concur the Employer is obligated to consider such. However, to argue because an Employer has knowledge that an employee had seen or is seeing a psychiatrist or psychologist and based on that fact alone it is obligated, as a condition preceedent to any discipline or discharge to investigate why that employee was going for psychiatric help, is, particularly in the instant case, without merit.

I would respectfully call to the Union's attention that Dr. Cochran, who the Union relies upon as its principle witness, released the Grievant to return to work without restriction.

Further, the Union's proof regarding the Postal Service's knowledge of the Grievant's psychiatric problem was based upon Employer's Exhibits 16 and 20, and Union's Exhibits 27, 28, 29, 30, 43, 44, 45 and 46.

This "evidence" represents a letter from Dr. Barnard (Ph.D) in October 1976, to a Dr. Pettee, where certain tests are reported. While Dr. Barnard found the Grievant depressive he set forth no definitive diagnosis of a mental illness that impaired the Grievant's capacity to function.

Additionally, there is a note by Dr. Cochran dated

June 1, 1981, suggesting the Grievant would benefit from being off from May 29, 1981 until his condition can be "fully evaluated," then a June 11, 1981, from Dr. Cochran setting forth the Grievant should remain on disability for at least one more month, a physician supplemental report and a letter transmitting same to the Postal Service in order to facilitate payment for her services.

The Grievant was given an extensive examination on July 8, 1981, and appended thereto is a psychiatric evaluation by a Dr. Pipe, M.D. which was conducted in conjunction with his ankle injury problem. Those findings were that his memory was intact, his cognative function normal, no confusion or thought disorder.

On January 4, 1982, Dr. Cochran prepared a "To Whom It May Concern" note that the Grievant was under her care, unable to work for an indefinite period. Dr. Cochran's June 28, 1982, letter post dates the events of this case and addresses her understanding as to what gave rise to the meeting in her office of June 18, 1982.

Therefore, the Union's shotgun at procedural issues is without merit. At issue is a case where the Employer conducted a very full and complete investigation as to the incident(s) and the material facts as set forth in the proposed adverse action and the letter of decision are proven. Further, at the time the decision to discharge was reached, the Employer had meetings and writings from the

Grievant's psychiatrist and gave consideration to the defense of mitigation.

At issue then in this case is if, the Employer, improperly evaluated the Grievant's mental condition when it denied mitigation.

In support of its major assertion that the Grievant's conduct should be accepted as mitigation the Union submitted some 15 arbitration cases for my consideration.

While not addressing that arbitration is not a precidential process and reported cases are legion where arbiters have noted what is in effect a diminished capacity defense and found such inappropriate or inadequate, in the main the cases cited by the Union reflect what I feel to be a willness on the part of some members of the arbitral community to accept that if there is sufficient proof an employee was clearly not responsible for his actions when the improper conduct occurred and there is sufficient evidence the employee was cured to the extent there is no reasonable expectation such would occur again, a basis for reinstatement exists.

Some of the arbitration cases cited carried the above concept further and allowed that where the prospects for a "cure" appear good, employees would be accorded reinstatement when there was competent medical opinion such had been effected to the point the employee could return to work and

the Employer need not have undo concern the individual would repeat the objectionable conduct or represent a threat to himself, others or the Employer's business interests.

A number of the cases cited by the Union involved AWOL and the failure of employees to properly document their absences. The subsequent submission of adequate documentation, but after the discharge action had been taken was at issue. In my opinion such cases are not analogous to the instant case, but I would respectfully point out to the Union, that each of the arbiters in those cases, did hold the Grievant accountable and reinstated without back pay.

In the main, with one exception, the other arbiters in deciding cases looked to the diagnosis and opinions of the various psychiatrists and psychologists and where there appeared to be sufficient evidence the individual was mentally impaired to the extent they could not be held fully accountable for their actions, they were held at least partly responsible as all were reinstated without back pay.

From a conceptual standpoint I find the approach as advanced in most of the Union's cited cases suffering from an internal contradiction. In one case the arbiter found the employee did in fact suffer a "blackout" during which he had no recall of the events and had no idea as to what he had done or why. The factors which caused the blackout were considered temporary by the examining doctor and medical evidence was present that was sufficient in that arbiter's

mind to determine the Grievant was cured to the point that he had no greater possibility of a reoccurence than did any member of the work force from suffering a heart attack. However, that arbiter did not award back pay either to the date of the discharge or the date the Postal Service was given evidence that Grievant was "cured." Therefore, while finding the Grievant in that case was not responsible for his actions, that arbiter imposed a substantial suspension.

It is clear however that in all the cases cited in support of the Union's position, the Postal Service's interests were recognized and therefore the employees actions, even when found to be totally beyond their control, were not fully excused and the employee had the appropriate disciplinary response for their misconduct recognized and they were held accountable for their actions until the Postal Service was given assurance the possibility of reversion to the prior behavior had been essentially or practically eliminated.

While I understand the rational of most of the cases cited and I accept many of the concepts as set forth therein and as a general practice I usually do not comment on my colleagues opinions as arbitration is a nonprecidential process and each case is to be decided by the sitting arbitrator on its unique facts, I do feel that where an arbiter is faced with a specific diagnosis from a court ordered psychiatrist that an employee is a "manic depressive"

and suffering from paranoid schizophrenia to acknowledge that the arbiter is not trained in these fields, but he knows a number of persons who are manic depressive, but who function adequately and therefore to reinstate that employee to work, is most difficult for me to accept.

One of the cited cases the Postal Service's discharge was reversed because the arbiter found that soon after the events occurred, the Employer failed to investigate what had caused the incident and the extent to which the Grievant was then "cured." That failure to uncover competent medical evidence was sufficient for that arbiter to find a discharge was inappropriate and he evaluated the case as if the Postal Service had that information in a timely manner and ordered reinstatement. However, the Grievant was still held somewhat responsible for his actions as all back pay was not awarded.

Without addressing if the Employer is obligated whenever an employee raises a mental illness defense to then attempt to consult with the employee's psychiatrist or psychologist to determine their mental state as a condition precedent to discipline or discharge, this case is clearly and significantly distinguishable from the cited cases. At no time did the Grievant conduct himself in such a manner that would suggest he was not responsible for his actions and after the investigation had progressed the Grievant's psychiatrist was met with and submitted a written statement as to her opinions regarding the Grievant's actions. No

dispute existed that the interchange between the Postal Service and the Grievant's psychiatrist was reasonably summarized on page two of the Proposed Letter of Removal or that the medical findings 1 through 5 in the Letter of Removal were incorrect.

Therefore, at issue for consideration is the testimony of the two medical practicioners the Union brought to the arbitration hearing.

Mr. Mead, a Mental Health Specialist II, who conducted an interview with the Grievant for one and one half hours on June 16, 1983 and submitted a written report dated June 30, 1983 (approximately a year after the percipient events) testified as to certain opinions regarding the Grievant's mental condition.

Without addressing Mr. Mead's qualifications, nowhere in his June 30, 1983, assessment did he note the Grievant had been suffering from a mental illness (as a result of consultation with any other practitioner) or was, in his opinion, presently suffering from a mental illness which impaired his capacity to function or understand right from wrong.

The importance of Mr. Mead's testimony was that based upon his examination, the Grievant was in need of psychiatric help and that if this grievance was denied, the Grievant was a suicide risk.

In all deference to the Union, without addressing why

Mr. Mead in his report of June 20, 1983, found the Grievant had no current intention of suicide and did not opine the Grievant was suicidal and he had not seen him professionally again before he testified at the arbitration, this testimony raised two points I feel compelled to comment upon.

If the representation that an employee may commit suicide if they do not persist in an arbitration to retain their job is given any credence whatsoever, then the test would not be just cause for discipline or discharge, but to what extent if any did a discharge, even if just cause was present, cause a mental problem for an employee and if that problem was sufficient to make them suicidal should they not be awarded back their job, they should be reinstated. Such a result is totally at odds with the entire practice of industrial jurisprudence and therefore must be rejected.

The second point I feel important to comment upon in this issue is that the Union submitted a number of awards where those grievant's psychiatric problems were accepted as mitigating circumstances. One of the principles commonly set forth by the other arbiters was that these grievants were to be reinstated because their mental problems were of reletively short duration and effectively cured. If Mr. Mead's testimony is to be given credence, with due note that he did not indicate in his report that he felt the Grievant was a suicide risk, at the hearing he represented that if the Grievant did not get his job back he would be a suicide

risk. Therefore, if as of the date of the arbitration the Grievant was so mentally ill he would be a suicide risk if he did not get his job back, serious question can be raised that he was well enough as of that date to return to work.

I raise the above two points as I wish to communicate to the Union that I appreciate that it made every effort to defend the Grievant, but sometimes every effort results in over reaching.

While I do not know if Mead's testimony was an attempt to intimidate my decision and I do not and cannot comment on how other arbiters may view testimony to the extent that unless a Grievant is reinstated they may commit suicide, I feel, I cannot accord weight to an employee's post-discharge "suicide" risks in evaluating if the Employer, at the time it took its action, had just cause as contemplated by the collective bargaining agreement.

Of significant import in this case was Dr. Cochran's testimony. I found her to be open and forthright with her answers.

The practical effect of Dr. Cochran's testimony and I feel confident she would not disagree if shown a copy of this part of the opinion, was the Grievant, for the period just prior to these events was not psychologically disabled to the extent he could not function on his job and she did

in fact affirm that she cleared him to return to his regular position without restriction.

The Union's argument that the Grievant's actions to strike out in frustration over not knowing when he would be returned to his regular job is rejected as there is credible evidence that the Grievant was informed he would be returned to his regular job within a short period of time and he had that knowledge before he marked up the catalogs.

Dr. Cochran's testimony was, that at all times the Grievant knew the difference between right and wrong and she was working with him to express his anger in order to alleviate his despression, but such expression could not be done in an antisocial manner and if he did so act, he would have to face the consequences of his behavior.

Further, Dr. Cochran did not set forth that the Grievant should or could be excused from his wrongful actions nor did she testify that he had a "momentary" episode whereby he lost control and had no knowledge as to what he was doing.

What Dr. Cochran testimony represents is that as a treating psychiatrist her patient's best interests would be served and his treatment enhanced if there could be any way the proscribed penalty for his actions could be modified.

In her opinion the Grievant is a basically honest person and while she could give no assurance that he would not again engage in the type of conduct at issue, the bottom line was that until he began to better learn to vent his hostilities and get control of his repressed anger, it would be

impossible to predict how that anger might vent itself in the future.

I fully concur with Dr. Cochran there is no question in my mind that if the Grievant were to be reinstated his mental health would improve and a reinstatement would be of great benefit to him as a human being.

However, the hard facts of this case are there was no medical evidence to support a diminished capacity defense and while perhaps the Postmaster may have delved deeper into what Dr. Cochran was saying or meant by certain statements, she could not, no matter how hard she tried to advance that the Grievant's actions were, under the circumstances, understandable, represent that he was not fully responsible for what had occurred.

When Dr. Cochran's testimony is considered in context with the Grievant's testimony, what emerges is the picture of an individual who clearly knew the difference between right and wrong but who not only acted wrongfully on one ocassion, but then knowingly lied to the Postal Service (as well as to other Union officials) and even fabricated an alibi involving a third party. These actions prolonged the investigation but when the Grievant was finally confronted with facts he could not refute he then confessed.

However, the Grievant's propensity to lie was not confined to the period in question, but I found to persist even in the arbitration itself.

The Grievant advanced a number of excuses that it was alright to take the catalogs and his testimony was clear, the prior Postmaster did allow employees to take catalogs when they had them certified as discards and initialed to show that approval had been given.

The fact the Grievant stated he was unaware that what he believed to be the prior Postmaster's rule had been changed is irrelevant. The Grievant did not follow what he testified the old rule was, his actions in this case even if the old rule was in effect, would have also been totally improper.

As to the issue that the Postal Service took an inordinate amount of time and that led to the Grievant lying during the investigation, once again Dr. Cochran was most credible. For vertually any person the longer an investigation goes on the more stress is created due to the uncertainty as to what may occur and the more time individuals have to think up how they will get out of a situation the temtation to create an alibi is great.

The fact the Grievant was undergoing some psychiatric treatment does not make him significantly different from others when confronted with misconduct. The Grievant was called in, asked to discuss the situation, secured a Union steward, then decided he wanted an attorney. The Grievant had every opportunity to call for a meeting at any time during the course of the investigation, he did not, but

elected to wait and see what the Postal Service would find out. If the Grievant really wanted to tell the truth, he had the opportunity at any time during the course of the investigation. In fact, the Grievant testified that he had no question what the investigation was about or what was at issue as he knew what was "up" when the Postal Inspectors first came to see him.

Faced with a very good idea as to what was going on, the Grievant not only lied, he continued to lie and by his own testimony then decided to test the system to see if he could use the information from his test (the Avon catalog) to substantiate his lie. At all times when these events were occurring Dr. Cochran certified the Grievant was not psychologically disabled to the extent that he did not know what he was doing nor that he was not responsible for his actions.

Further, Dr. Cochran's testimony was that her treatment technique did not condone such behavior and patients had to understand that if they engaged in antisocial behavior such as striking people to vent their anger or lying, they must face the consequences of their actions.

In summary, the Union's procedural arguments in this case are found to be without merit. In fact some of the procedural problems were caused by the Grievant's misconduct.

The Postal Service fully and fairly investigated each and every assertion the Grievant advanced during the course of the investigation and when all were disproved only then

the Grievant confessed and then raised the defense he was suffering from mental illness caused in part by the Postal Service's persecution of him over the years. There is insufficient evidence to support the allegations of persecution, but even accepting arguendo the Grievant believed such to be true, his attending psychiatrist certified him as able to return to his regular duties without restriction and did not diagnose any mental disorder which could be accepted as a basis to find he was not fully responsible for his actions.

The Grievant, when questioned by the Postal Inspectors about this matter, in full knowledge as to the seriousness of what he had done, embarked upon a deliberate course of lying in an effort to cover his actions.

By the above acts, the Postal Service had just cause to determine the Grievant was not sufficiently trustworthy to remain an employee and absent an affirmative finding of diminished capacity so the Grievant could not be fully responsible for his actions, I can find no justification to determine that just cause to discharge was not present.

Accordingly, this grievance is denied.

Respectfully submitted,

Robert M. Leventhal

Submitted this 23rd day of March, 1984
Culver City, California

DATE: July 9, 1982

OUR REF: DCD:jf

P.O.CL:

SUBJECT: Notice of Proposed Adverse Action - Removal

TO: John M. Pullum SSN 565-60-5431
Full Time City Carrier

This is advance written notice that it is proposed to remove you from the Postal Service no sooner than 30 days from the date of your receipt of this letter.

This action is based on the following reasons:

Charge #1 - Mistreatment of Mail Matter.
Specifically, on Monday, March 29, 1982, Postmaster W. A. Helm received two catalogs from the Postmaster at Benton City, WA bearing hand printed addresses of Rt. 1 Box 1333, Benton City, WN 99320. The Postmaster at Benton City recognized that this was your address, that you were an employee of the Pasco Post Office, and stated that this gave the appearance of unacceptable conduct. Upon receipt of these catalogs, Postmaster Helm contacted the Benton City Postmaster and was informed that the two catalogs received in Pasco on March 29 had been discovered by a craft employee in the Benton City Post Office on or about Friday, March 26, 1982. The craft employee had become suspicious and turned the catalogs into the Postmaster. It was also discovered that two additional catalogs had been received at the Benton City Post Office on Monday, March 29, 1982 bearing the hand printed address of Rt. 1 Box 1333, Benton City, WN 99320. It was verified that you were working in a position which gave you access to this type of mail between March 25 and 29, 1982. In accordance with Chapter 2 of the Administrative Support Manual, the Postal Inspection Service was contacted. Since they accepted the case, I took no further action until they completed their investigation. On June 1, 1982, Postmaster Helm received an investigative memorandum regarding your conduct in connection with this matter. Postal Inspector's had attempted to interview you in connection with their investigation, but you declined to answer questions without your attorney present. In connection with their investigation, samples of your handwriting were submitted to the Postal Inspection Service Crime Laboratory for comparison with the hand printed addresses appearing on the catalogs. It was the opinion of G. W. Lewis, Senior Document Analyst, that you had printed the addresses on the catalogs. The Inspector's report concluded that these catalogs were not your property when you placed your address on them and your actions had resulted in your receiving the catalogs without proper payment of postage. On June 4, 1982, Postmaster Helm and I interviewed you in the presence of a union steward. You were shown photocopies of the faces of the four catalogs (House of Imports, Corp.; Farnam Companies, Inc.; J. C. Whitney and Company; and Omaha Vaccine Company)

ATTACHMENT "A"

which contained your hand printed addresses. You were asked for an explanation. You denied having removed these catalogs from the mail stream or waste in the post office. You stated you were aware that this was prohibited conduct and did not do it or words to that effect. You provided a lengthy and detailed explanation as to how the catalogs had been placed into the mail stream by your stepmother, Melva Pullum, and that they were not taken from the post office. In an attempt to verify your explanation, letters and questionnaires were sent to each of the publishers of the catalogs. Bill Faber of the House of Imports responded on or about June 11, 1982 in writing and Postmaster Helm also discussed the matter with him by telephone. He stated his company only sent catalogs to businesses and that neither you nor Melva Pullum were on their mailing list. On Monday, June 14, 1982, Postmaster Helm interviewed Melva Pullum. She was shown photocopies of the front and back covers of three of the catalogs. She denied having seen the House of Imports catalog and could not remember seeing the Omaha Vaccine Company catalog and Farnam Horse Equipment catalog. She stated that she had mailed five or six catalogs to you that you had marked at her home with your address. She stated she mailed them all at one time in a drop box at the Kennewick post office in late March, 1982. On June 14, 1982, Helen Miller, Office Manager, for J. C. Whitney and Company, responded that the catalog we had sent them was originally sent to J. Robertson in Anchorage, AK. On June 16, 1982, W. R. Remias of Farnam Companies responded that their records did not reflect their having sent a catalog to you or Melva Pullum. Thomas Carney, of the Omaha Vaccine Company, responded to our questionnaire and indicated his company had sent you a copy of their catalog that was published in March. On June 17, 1982, I again interviewed you with Postmaster Helm in the presence of a union steward. You were questioned as to the apparent conflicts in your version of what happened and the information obtained through the investigation. You were unable to satisfactorily explain all of these apparent contradictions, including the fact that the J. C. Whitney catalog bearing your hand printed address had been originally addressed to an individual in Anchorage, AK. You again assured us that you were telling us the truth and you would have to be an idiot to do something like that or words to that effect. On the morning of June 18, 1982, Postmaster Helm and I interviewed the Postmaster at Benton City and his employee who had originally turned in the catalogs. This employee verified that the four catalogs were part of a number of catalogs that had been received by her at the Benton City post office with hand printed addresses of Rt. 1, Box 1333 in Benton City. Later that day, Postmaster Helm received a phone call from you stating that you wished to meet with him at the office of your psychiatrist, Dr. Cochran. We met with you at approximately 3:45 PM on June 18, 1982, at which time you apologized for having lied to us, and you admitted that you had taken the four catalogs from Postal Service premises and mailed them to your own address by hand printing your address on them. You further stated you did this with all four catalogs at the same time. Your psychiatrist indicated you had not seen her for the past several months and that this was the first she had known of this incident. Postmaster Helm subsequently received a report from Dr. Cochran which had been requested at the time of our meeting with her. Since we felt it was inadequate, Postmaster Helm again met with your psychiatrist on June 29, 1982. During this interview, your psychiatrist stated you knew the difference between right and wrong and

that your motivation for addressing the catalogs to yourself was anger and depression over your perception of how you had been treated by the Postal Service and the fact that you were working as a clerk. She could give Postmaster Helm no assurance as to the possibility of this recurring, and she stated it could happen under conditions in your employment which you perceive as adverse. The above actions violate the following rules and regulations in the Employee and Labor Relations Manual: 661.2 ....All postal employees are expected to follow the standards quoted below. .... Uphold the Constitutional laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion... ...Uphold these principles, ever conscience that public office is a public trust. 661.3 Employees must avoid any action, whether or not specifically prohibited by this Code, which might result in or create the appearance of: (a) Using Postal Service office for private gain... ...(c) Impeding Postal Service efficiency or economy.... ...(f) Affecting adversely the confidence of the public in the integrity of the Postal Service. 661.53 No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. Conviction of a violation of any criminal statute may be grounds for disciplinary action by the Postal Service, in addition to any other penalty by or pursuant to statute. 666.1 Employees are expected to discharge their assigned duties conscientiously and effectively. 666.2 Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, courteous and of good character and reputation.... 666.3 Employees are expected to be loyal to the Government and uphold the policies of the Postal Service.

Charge #2 - Failure to Pay Proper Postage.
Your actions as described above resulted in the four catalogs being transmitted through the mail from Pasco to Benton City without payment of proper postage.

Charge #3 - Furnishing False/Misleading Information.
During the course of this investigation and throughout several interviews with you on June 4 and 17, 1982, you furnished the following information, as well as other information, which was later established to be false, which prolonged the investigation, which increased costs to the Postal Service, and required us to involve postal customers:

A. That you had not taken the four catalogs from the mail stream in an attempt to divert them to your personal use.

B. That you had found the catalogs at your stepmother's home and she mailed them to you without your advance knowledge.

You and/or your representative may review the material, if any, relied on to support the reasons for this notice of removal at the Tri Cities Mail Handling Facility, 2828 W. Sylvester, Pasco, WA between the hours of 8:00 AM and 5:00 PM,

Monday through Friday. If you do not understand the reasons for this notice, please contact me for further explanation.

You and/or your representative may answer these charges within ten (10) days from your receipt of this letter, either in person or in writing, or both, before W. A. Helm, Postmaster, 2828 W. Sylvester, Pasco, WA 99301 between the hours of 8:00 AM and 5:00 PM, Monday through Friday. You may also furnish affidavits or other written materials to Mr. Helm within ten (10) days from your receipt of this letter. You will be afforded a reasonable amount of official time for the above purpose if you are otherwise in a duty status. After the expiration of the ten day time limit for reply, all facts in the case, including any reply you submit, will be given full consideration before a decision is rendered. You will receive a written decision from Mr. Helm.

You have the right to file a grievance under the Grievance/Arbitration Procedure as set forth in Article XV, Section 2, of the National Agreement within fourteen (14) days of your receipt of this notice.

David C. Duncan
SPO, Customer Services
Pasco, WA 99301-9998

rec. 7-12-82

UNITED STATES POST OFFICE

: WAH:jf

DATE: August 5, 1982

SUBJECT: Letter of Decision

P.O.CL:

TO: John M. Pullum SSN 565-60-5431 CERTIFIED #P331 802 550
Full Time City Letter Carrier RETURN RECEIPT REQUESTED

On July 12, 1982, you were issued a notice proposing to remove you from the Postal Service based on charges in the notice.

I have given full consideration to your personal answer of July 22, 1982 and your psychiatrist's written report dated July 21, 1982. I have also considered all other evidence of record, your prior work record, longevity, etc. I find, however, that the charges stated in the notice dated July 9, 1982 are fully supported by the evidence and warrant your removal from the Postal Service. The action will be effective August 12, 1982.

There is sufficient evidence to establish that you took undeliverable mail matter in violation of Postal Service Rules and Regulations; that your actions resulted in avoidance of payment of postage; that you furnished false information during the course of the investigation; and that you used the Postal system and your position for personal gain. You acknowledged that you were aware that your actions were prohibited conduct. An important objective of the Postal Service is to provide efficient and reliable mail service to our customers at a reasonable cost. If we were to allow employees to mishandle mail, or expose employees who have taken actions such as yours to our customer's mail, the public's confidence in the Postal system could quickly be undermined. While I was exploring other similar cases and reviewing the National Agreement, it became apparent to me that the joint concern of the parties was/is demonstrated over the special fiduciary relationship which exists between an employee, (and the high profile position held by Postal Service employees in general), the Postal Service and the public, otherwise they would not have included the language which appears in Article 16, National Agreement. My position and the position of the Postal Service has consistently been that mistreatment of mail matter is a serious breach of this relationship for which the appropriate penalty is removal. Your actions, coupled with your untruthfulness during the investigation, renders you as being unworthy of further trust. Based on the foregoing, a reduction in level/pay is not for consideration due to the severity of the infraction involved and you would still have access to mail if you were working in a lower level position such as mailhandler, custodian, etc. In addition, I don't believe that a suspension is for consideration in connection with this matter, because permanent removal from the work place is the only appropriate penalty.

Considering the seriousness of this case and the involvement of the Postal Inspection Service, as well as the fact that you further complicated and pro-

longed the investigation by your own actions, I believe the discipline taken was timely. You presented no evidence of disparate treatment, since you acknowledged that you were not aware of anyone else in the Pasco Post Office who had been involved in this type of situation.

During several of our meetings recently, you have indicated that your performance as a carrier since April, 1982, has been acceptable, and Mr. Duncan and I have agreed that we've seen improvements. However, it appears that your improved performance may have resulted from the pending investigation of which you were aware, and I have some serious reservations regarding your cooperativeness and seriousness about this entire matter since you fabricated stories which were untrue in an attempt to obsolve yourself of responsibility in connection with this matter.

Regarding your plea of mitigation, I am not convinced that your mitigating circumstances are creditable or that they should override my decision to remove you. You have argued that you have been the subject of mistreatment and/or unusual job tensions for the past seven years, yet you waited until mid 1981 to seek psychiatric help for emotional problems. In addition, on your original OWCP claim dated April 3, 1981 for ulcers, you indicated that you first realized your illness was caused or aggravated by your employment on April 1, 1981 "because of problems with OWCP and comp over the last five years." These statements are inconsistent with each other. In addition, you failed to advance a defense regarding mitigation during the early stages of the investigation. It wasn't until you realized that our evidence disproved your fabricated version of the incident and that your deceitfulness had been detected that you brought up the plea of mitigation. You never mentioned anything about mitigating circumstances during the interview with postal inspectors nor did you during the first two interviews with Mr. Duncan and myself. It is difficult for me to understand how you can argue mitigation due to stress when, in fact, stress producing situations were caused by your very own actions, i.e., taking undeliverable catalogs from the mail knowing it was against Postal Service rules and your untruthfulness during the investigation. By reporting for duty on February 23, 1981 as a clerk, you accepted rehabilitative work contrary to your allegation that we involuntarily placed you in this work.

I have also considered the fact that there are contradictions/inconsistencies in the medical events of record and the fact that they are inconclusive. Dr. Cochran did not furnish any medical basis for her diagnosis. Although you and Dr. Cochran have consistently maintained since June 18, 1982 that your actions were the result of emotional problems from job-related stress, there is ample evidence to substantiate just the opposite:

1. In July, 1981, the Orthopaedic Panel Consultants reported that your acute gastritis was not related to an industrial injury. Dr. Pipe, who was a member of the Orthpaedic Panel, reported that your memory was intact, there was no confusion, and that your cognitive function was normal.

2. On February 11, 1982, Dr. Cochran reported that your "emotional problems have been alleviated."

3. On February 22, 1982, Dr. Morris noted "in the past two months following surgery I have seen an impressive change in John's attitude and general outlook."

4. On April 13, 1982, Dr. Preston stated that you do not have mental trouble and that you are not psychotic. He stated that you were alert to time and place and station - that you had no obvious aberrations of mental or physical condition.

5. On June 29, 1982, Dr. Cochran stated that you knew the difference between right and wrong and that you were capable of assuming responsibility for your actions. She stated that you could clearly and logically explain the circumstances surrounding the theft of the undeliverable catalogs. She stated that she had no way of preventing a recurrence and that a stressful situation may produce further unpredictable behavior on your part.

You did not attempt to clear up some of these discrepancies with Dr. Cochran during one of your visits to her office after you were in possession of the other doctor's reports mentioned above. You indicated that if you were involved in another stressful situation, you could turn to Dr. Cochran. However, this would pose difficult and insurmountable problems for your supervisors in terms of your dependability, finding replacements for you, etc. Dr. Cochran's requests for rehabilitative considerations and/or financial help from the Postal Service are accommodations which cannot reasonably be made under the circumstances.

Therefore, I believe removal is the appropriate remedy in this case even considering the mitigating circumstances you offered, because your actions have resulted in my not being able to trust you in the work place handling our customer's mail. There are some indications that you are still not being completely truthful with us in that you have indicated that you took only four catalogs, whereas a Benton City rural carrier stated she saw as many as two dozen catalogs bearing your handwritten address. I simply cannot accept responsibility for your again being entrusted with the sanctity of the mails.

You have the right to appeal to the Merit Systems Protection Board immediately, but not later than 20 days after the effective date of this action (August 12, 1982). If you desire to appeal to the Merit Systems Protection Board, your appeal should be sent to Merit Systems Protection Board, Seattle Field Office, Federal Building, Room 1840, 915 Second Avenue, Seattle, WA 98174. Your appeal must be in writing and give reasons for contesting the action with any offer of proof and pertinent documents you are able to submit.

If you appeal, you thereby waive access to any procedures under the National Agreement beyond Step 3 of the Grievance/Arbitration procedure. If you appeal to the Merit Systems Protection Board, please provide me with a copy of your appeal.

If you appeal this action, you will remain on the rolls, but in a non-pay, non-duty status after the effective date of this action until disposition of the case has been had either by settlement or through exhaustion of your administ-

rative remedies. You are entitled to a representative of your own choosing throughout your appeal. You and your representative, if he or she is a U. S. Postal Service employee, shall be afforded a reasonable amount of official time for preparation of your case if you and/or your representative are otherwise in a duty status.

W. A. Helm, Postmaster
Pasco, WA 99301-9998

Attachments: MSPB Rules and Regulations
MSPB Appeals Form

rec. 8-9-82