

C#18283  
A-C

1 ARBITRATION DECISION AND AWARD

2 In the Matter of the Arbitration ) GRIEVANT:  
3 ) Class Action  
4 between ) Class Action  
5 ) Donald Hynes  
6 UNITED STATES POSTAL SERVICE )  
7 and ) POST OFFICE:  
8 NATIONAL ASSOCIATION OF LETTER ) Pomona, CA  
9 CARRIERS. )  
10 (Consolidated Cases) ) Case Nos:  
11 ) F94N-4F-C96018527  
12 ) GTS 32955  
13 ) F90N-4F-C9061448  
14 ) GTS 27654  
15 ) F94N-4F-C97010771  
16 ) GTS 37739

17 BEFORE: Louis M. Zigman, Esq. - Arbitrator

18 APPEARANCES:

19 For the Postal Service: Susan Johnson

20 For the Union: Charlie Miller

21 Place of Hearing: Pomona, CA

22 Date of Hearing: March 6, 1998

23 Briefs Received: May 6, 1998

24 Date of Award: May 9, 1998

25 AWARD:

26 That the supervisor's conduct vis a vis the three  
27 grievants constituted violations of the collective  
bargaining agreement, although the violations were  
minor in nature. Because the conduct of the  
supervisor was not egregious in nature, the question  
of corrective action, if any, should be remanded to  
the Service.

## Introduction

This matter was heard by Louis M. Zigman, Esq., neutral arbitrator on March 6, 1998, in Pomona, CA. The Postal Service was represented by Susan Johnson and the Union was represented by Charlie Miller.

Both parties were afforded an opportunity to present evidence and to examine witnesses. After the close the hearing both parties submitted written closing briefs and the matter stood as submitted on May 6.

thereafter. The matter stood as submitted as of May 1998.

Based on the evidence and contentions of the parties,  
I issue the following decision and award.

Statement of the Case

These three grievances all involve allegations of inappropriate conduct by supervisor, Ruth Walton.

According to the union, Walton acted in an inappropriate and in an abusive manner to three different employees, Sherrie Walker, Eddie Reed and Donald Hynes. The union asserted that Walton's conduct violated the Joint Statement on Violence and Section 1154 of the M-39.

The Service denied that Walton's conduct constituted a violation of either the joint Statement or of the M-39.

These grievances, which had been filed as separate grievances, on June 30, 1994; October 31, 1995; and September 24, 1996 respectively, were eventually consolidated for the purposes of the hearing.

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Material Facts

1                   Sher'rie Walker filed her grievance (F94N-4F-C96018527)  
2 on June 30, 1994 over an incident which occurred on June 16,  
3 1994. After her allegations against Walton, the postmaster,  
4 Penny Stevenson, conducted an investigation. After she  
5 completed her investigation, Stevenson issued Walton a letter  
6 of warning. In the letter of warning Walton was informed that  
7 she had engaged in unprofessional conduct; that she spoke  
8 abruptly and discourteously to Walker; and that she escalated  
9 the situation into a confrontation. Walton was cautioned that  
10 the Service considered her conduct as a serious offense and  
11 that was the reason she was given the letter of warning.  
12 Apparently the union and/or the g did not believe that this  
13 warning was sufficient inasmuch as the union continued to  
14 process the grievance through the grievance procedure.

15                  On October 23, 1995, approximately sixteen months  
16 later, there was another incident between Walton and Carrier,  
17 Eddie Reed. Reed filed a grievance in which he alleged that  
18 when he and Walton were discussing his request for 45 minutes  
19 of overtime that she "got into his face" and that she yelled  
and berated him.

20                  As a result of what he perceived was highly  
21 inappropriate conduct, Reed contacted his union and he filed a  
timely grievance against her.

22                  Eleven months later, on September 24, 1996, Donald  
23 Hynes filed a grievance against Walton too,

24                  According to Hynes, Walton yelled and berated him when  
25 he told her that he had to go home because he was not feeling  
26 well.

27  
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1 As noted above, these three grievances were eventually  
2 consolidated and all three were heard on March 6, 1998.  
3

4 The evidence also disclosed that in each of these three  
5 grievances the union asserted that Walton's conduct  
6 constituted a violation of the Joint Statement and of the  
7 M-39, Section 1154.

8                   Testimony

9                   Testimony from the witnesses differed in certain  
10 respects..

11                  In regard to the Walker incident, Walker testified that  
12 Walton yelled at her and that Walton pushed and struck her  
13 with her hand. Walker's testimony was corroborated in certain  
14 areas by Lynette Sue Keebler and by Louis Mir.

15                  On the other hand, Walton denied pushing and/or  
16 striking Walker. Walton's testimony was corroborated in part  
17 by Margo Vasquez.

18                  With respect to the incident involving Eddie Reed,  
19 Reed's testimony was corroborated in part by Leo Martinez,  
20 Adriana Santander and Thomas Padron. Walton, on the other  
21 hand, asserted that Reed exaggerated and mis-characterized the  
22 incident.

23                  With respect to the incident involving Donald Hynes,  
24 there were no percipient witnesses as to what occurred, other  
25 than Hynes and Walton.

26                   Issue

27                  Did Ruth Walton's conduct constitute a violation of  
28 either the Joint Statement on Violence in the Work Place or  
in violation of Section 1154 of the M-39?

29                  If so, what is the appropriate remedy?

### Positions of the Parties

### Union's Position

The Union asserted that Walton's conduct on three separate occasions, involving Walker, Reed and Hynes, constituted inappropriate conduct by a supervisor and furthermore that her conduct constituted a violation of the provisions of the Joint Statement and/or of the M-39 Section

In this regard, the Union asserted that Walton's actions in yelling and berating these individuals constituted abusive and bullying conduct and therefore inappropriate conduct by a supervisor. More particularly, the Union asserted that this conduct not only violates the "mutual respect" provisions in the M-39 but it constitutes harassment and intimidation in violation of the principles as set forth in the Joint Statement on Violence.

While noting Walton's explanations and characterization to the effect that she had done nothing wrong and it was the three carriers, not her, who had engaged in inappropriate conduct, the Union pointed out that the Service itself concluded that Walton had engaged in misconduct with respect to Walker's situation. In this regard, the Union noted that Walton received a letter of warning for her misconduct.

While acknowledging that the Service did act properly in disciplining Walton, nevertheless the Union maintained that given the seriousness of Walton's actions that the letter of warning was not sufficient.

As support for this position, the Union pointed out that despite this letter of warning Walton continued to engage in similar misconduct; i.e. conduct vis a vis Reed and Hynes.

1           While also noting Walton's explanations as to her  
2 conduct involving the Reed and Hynes incidents, the Union  
3 maintained that her recollection and characterization of her  
4 conduct was inconsistent and in conflict with both Reed and  
5 Hynes as well as the testimony of other bargaining unit  
employees.

6           In view of the foregoing, and in noting that there were  
7 other incidents of yelling by Walton at other carriers, the  
8 Union maintained the other witnesses did support and  
9 corroborate Reed and Hynes' recollections as to what had  
10 occurred. As such, the Union asserted that Reed and Hynes  
11 testimony was more credible than the denials by Walton.

12         Furthermore, in noting that there were at least three  
13 incidents along with other similar complaints, the Union  
14 asserted that it is evident that Walton's conduct was not  
15 isolated and/or taken out of context.

16         The Union also asserted that Reed and Hynes'  
17 credibility should also be enhanced by their very positive  
18 record of service and by their tenure.

19         In view of the foregoing, the Union maintained that the  
20 evidence demonstrated that Walton's conduct constituted  
21 violations of the Joint Statement and of the M-39 and  
22 therefore a finding of misconduct should be made along with an  
appropriate remedy.

23         In terms of remedy, the Union withdrew the corrective  
24 action which it requested in each of the individual grievances  
25 and left the question of remedy to the arbitrator.

26         In asserting that the arbitrator does have authority to  
27 issue remedial action, the Union requested a finding that the  
Service violated the collective bargaining agreement, postal

1 regulations and the Joint Statement, in the manner in which  
2 Walker treated these grievants. The Union also requested a  
3 directive that the Service cease and desist from allowing its  
4 supervisors to harass and/or abuse their subordinate  
employees.

5 For all of these reasons the union maintained that each  
6 of the grievances should be sustained.

7 Service's Position

8 The Service denied that Walton's conduct on any of the  
9 dates in question constituted a violation of either the Joint  
10 Statement and/or of the M-39.

11 While acknowledging that Walton was given a letter of  
12 warning with respect to the incident with Walker in June,  
13 1994, the Service maintained that her conduct did not rise to  
14 the level of a violation of either the Joint Statement or of  
15 the M-39. In this regard, the Service asserted that Walton  
16 was reprimanded because she allowed the situation with Walker  
17 to escalate instead of her having taken professional action in  
mollifying Walker's conduct.

18 With respect to the incident involving Reed and Hynes,  
19 the Service asserted that both Reed and Hynes exaggerated and  
mis-characterized the incidents. Even assuming arguendo that  
20 Walton raised her voice, the Service maintained that those  
21 incidents were rather minimal and that they did not rise to  
22 the level of inappropriate conduct.

23 As support for this position, the Service pointed to  
24 Walton's testimony and to the Stevenson's testimony as to the  
25 fact that there is often some degree of conflict when  
26 supervisors and their carriers are "negotiating" overtime.  
27 According to the Service, both Reed and Hynes were upset by

1 Walton's decisions and they argued with Walton. And, the  
2 Service acknowledged that while there may have been some  
3 arguing on both sides, the Service maintained that Walton's  
4 actions did not rise to the level of violence as contemplated  
5 by the Joint Statement nor did her conduct constitute a  
violation of Section 1154 of the M-39.

6 In this respect, the Service stated:

7 "Some level of conflict occurs in the work place on a  
8 daily basis, the incident at issue did not rise to the level  
to violate the Joint Statement or any contractual violation.  
9 Supervisors must have latitude, within the bounds of  
reasonableness to supervise and direct employees. Clearly  
10 Article 3 gives management the right to direct employees and  
to maintain the efficiency of the operations entrusted to it."

11 In view of the foregoing, the Service maintained that  
the Union failed to establish it's burden of proof in  
demonstrating that Walton's conduct constituted a violation of  
13 the Joint Statement and/or of the M-39. Moreover, with  
respect to the incident involving Walker, the Service asserted  
15 that it took appropriate action to correct that situation.

16 For these reasons, and in noting that Walton is no  
longer assigned to the Pomona Post Office and is not  
supervising craft employees, the Service maintained that the  
19 three grievances should be dismissed; citing awards of  
arbitrators Axon, Eaton, Rehmus and one of the previous awards  
of the undersigned.

22 Analysis and Conclusion

23 In analyzing grievances where the Union essentially  
24 alleges misconduct against supervisors, I believe that it is  
appropriate to hold the Union to much the same standard with  
26 respect to the burden of proof as the Service has when the  
Service takes disciplinary action against a bargaining unit  
27 employee. In other words, when weighing the quantum of proof,

1       the Union must establish by a preponderance of the evidence  
2       that the manager/supervisor's conduct constituted a violation  
3       of either the Joint Statement and/or of the M-39.

4           In assessing the first incident involving Walker, in  
5       June 1994, the evidence is undisputed that after management  
6       completed its investigation that it did conclude that Walton's  
7       conduct constituted a violation of the supervisory standards.  
8       Because of that conclusion the Service did issue disciplinary  
9       action.

10          In reviewing the level of discipline, I note that  
11       arbitrators generally refrain from substituting their judgment  
12       for management except in situations when the arbitrator  
13       concludes that the discipline constituted arbitrary and/or  
14       capricious action.

15          In viewing the situation in the Walker incident and in  
16       noting that there is a dispute amongst the witnesses as to  
17       whether Walton actually pushed and/or struck Walker, I cannot  
18       find that Stevenson's decision to impose the letter of  
19       warning, instead of more severe discipline, constituted an  
20       abuse of her discretion. In other words, I accept Stevenson's  
21       conclusion that the evidence was not sufficient to establish  
22       that Walton struck or pushed Walker. I reach this conclusion  
23       not only from considering Stevenson's analysis, but also from  
24       my own review of the evidence in this hearing. In my view, if  
25       the shoe were on the other foot with Walton accusing Walker of  
26       having hit her, with witnesses on both sides, the Union would  
27       surely argue that the Service failed in their burden of  
28       proving such a serious charge.

29          The fact that Stevenson did find some basis for  
30       Walker's grievance and the fact that Walton was disciplined

1 for her conduct did weaken the Union's contentions that a  
2 stronger disciplinary action should have been applied.  
3

4 Because I didn't find the evidence sufficient to  
5 establish that Walton pushed and/or hit Walker, I do not find  
6 nor conclude that Walton's conduct vis a vis Walker was so  
7 serious as to have constituted a violation of the Joint  
8 Statement.

9 Therefore, in considering Walker's grievance on its  
10 own terms, separate and apart from the other two grievances,  
11 I cannot find nor conclude that the failure to have given  
12 her more discipline constituted a violation of the collective  
13 bargaining agreement, postal regulations and/or the Joint  
14 Statement.

15 Turning next to Eddie Reed's grievance, I note that the  
16 evidence seemed to indicated that Walton did inappropriately  
17 raise her voice to Reed. On the other hand, I was not  
18 persuaded that her conduct was as serious as characterized by  
19 the Union.

20 In this regard, I note that while I do not necessarily  
21 condone supervisors raising their voices when speaking with  
22 their subordinates, I acknowledge that at times disagreements  
23 between supervisors and carriers occur when negotiating  
24 additional time for purposes of over-time. While I agree that  
25 carriers and/or supervisors should not be disrespectful to  
26 each other, nevertheless one must view the words and actions  
27 in each situation in order to determine the inappropriate  
28 nature and/or the seriousness of this conduct.

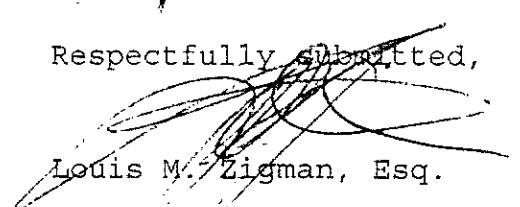
Again, while I understand the Union's arguments that  
their members should not be subjected to being berated and  
yelled at by their supervisors and that such conduct might

1 possibly lead to serious consequences in the work place,  
2 nevertheless, in having viewed the evidence in this particular  
3 case, I did not find that Walton's conduct constituted so  
4 serious misconduct which requires affirmative relief by the  
5 undersigned. Here again, while I agree that Walton spoke  
6 harshly to Reed and Hynes, and inappropriately so,  
7 nevertheless, I did not find that the harshness in her voice  
8 and/or the body language that she used rose to the level as  
9 outlined in the Joint Statement as particularly egregious  
conduct.

10 In arriving at this conclusion, I have also considered  
11 the awards cited by the Union by arbitrators Hutt, McCaffree  
12 and Jacobs. From my review of their awards, it is evident  
13 that the conduct engaged in by the supervisors in those cases  
14 was considerably more serious and more egregious than the  
conduct in this case.

15 As noted above, while I agree that Walker's conduct was  
16 not as serious as characterized by the Union, nevertheless, I  
17 am persuaded that Walker could have, and should have exercised  
18 better judgment in her actions vis a vis these three  
19 individuals, Walker, Reed and Hynes, and therefore I agree  
20 that while there was a violation of the collective bargaining  
21 agreement the violation was minor in nature. Because I did  
22 not find Walton's conduct as egregious, calculated and  
23 intentional but rather as a transitory emotional outburst, I  
24 shall remand the question of corrective action, if any, to the  
Service.

25 Respectfully submitted,

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27 Louis M. Zigman, Esq.  
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