

C-21120

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANT: Whitaker
between)
UNITED STATES POSTAL) POST OFFICE: Statesville, N.C.
and)
NATIONAL ASSOCIATION OF LETTER) USPS Case No. D94N-4D-C
CARRIERS, AFL-CIO) 98005421
) NALC GTS No. 040474
)

BEFORE: KEITH POOLE, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Clifton Wilks

For the Union: Jeff Grainger

Place of Hearing: Statesville, N.C.

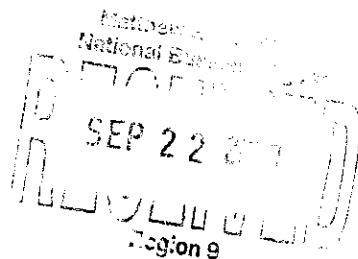
Date of Hearing: August 29, 2000

Date of Award: September 18, 2000

Relevant Contract Provision: Article 15, Article 19, Joint Statement on Violence and Behavior in the Work Place

Contract Year: 1994-1998

Type of Grievance: Contract



Award Summary:

Ms. June Whitaker was a letter carrier stationed at the Statesville, N.C. installation. She filed a grievance alleging that on July 26, 1997 she was abused, harassed and bullied by her Supervisor, Renee Williamson in violation of the Joint Statement on Violence and Behavior in the Workplace. I conclude Supervisor Williamson's conduct violated the Joint Statement and therefore the grievance is granted.

Keith Poole

Award and Opinion

Introduction

Ms. June Whitaker was a letter carrier stationed at the Statesville, N.C. installation. Her supervisor was Renee Williamson. On or about July 25, 1997 one of Ms. Whitaker's customers asked her if she would take a package along with some money and use the money to buy stamps and mail the package. Ms. Whitaker agreed to do this because she considered this a standard practice in the Statesville installation and because it was a way of providing a service for customers which improved the image of the Agency.

In the afternoon of July 26, 1997 Ms. Whitaker went to the front window in the Statesville installation and purchased the stamps with the money she had been given and mailed the package for the customer. Supervisor Renee Williamson stopped Ms. Whitaker when she was leaving the front window and informed her she should not be in the front window area. Ms. Whitaker said she had been on break. She listened politely to what Supervisor Williamson told her and responded "OK".

Ms. Whitaker then went back to the break room to complete her break. In the break room, she saw a fellow employee and she asked him if he was aware that letter carriers were not supposed to obtain stamps from the front window. Shortly after this conversation had begun, Supervisor Williamson came into the break room. There is a dispute as to what was said, but there is no dispute that Supervisor Williamson ordered Ms. Whitaker to leave the installation and go to the street. Although Ms. Whitaker was still on her break, she obeyed Supervisor Williamson's order.

Shortly after the events of July 26, 1997, a grievance was filed timely on behalf of Ms. Whitaker. The matter was then processed through the grievance procedure without resolution and arbitration was timely invoked. The undersigned arbitrator was then chosen to hear the case. On August 29, 2000 a hearing was held at the main post office in Statesville, North Carolina. Each party was ably represented and given a full opportunity to call witnesses, cross-examine witnesses, and submit any relevant evidence. By agreement, the parties made closing arguments and the Union submitted three citations.

ISSUE

Whether the Agency violated the Agreement and, if so, what is the appropriate remedy?

POSITION OF THE PARTIES

The Union position is that during the conversation between Supervisor Williamson and Ms. Whitaker, Supervisor Williamson conducted herself in a manner which violated the Joint Statement on Violence and Behavior in the Workplace. Specifically, Supervisor Williamson reprimanded Ms. Whitaker for going to the front window and obtaining stamps for a customer even though Ms. Whitaker was only following the standard practice. Supervisor Williamson then followed Ms. Whitaker into the break room knowing that Ms. Whitaker was on break and told her to "quit bitching and get out of the post office."

The Agency position is that Supervisor Williamson was enforcing a well-established rule when she informed Ms. Whitaker not to obtain stamps at the front window. Supervisor Williamson went into the break room because she thought Ms. Whitaker was spending official time complaining to a fellow employee instead of carrying her mail. At that time, Supervisor Williamson said, "If you're going to stand here bitching, at least get your facts straight." Supervisor Williamson then ordered Ms. Whitaker to the street in the belief that Ms. Whitaker was on official time. Throughout Supervisor Williamson acted properly carrying out her duties as a supervisor with the possible exception of her comment to stop bitching which does not rise to the level of a violation of the Joint Statement.

OPINION

In 1992, the United States Postal Service and eight organizations including the National Association of Letter Carriers issued a Joint Statement on Violence and Behavior in the Workplace. In a decision dated August 16, 1996 Case No. Q90N-4f-C 94024977/94024038, Arbitrator Carlton Snow found that the Joint Statement was a binding agreement between the Agency and NALC. Arbitrator Snow further found that the grievance procedure of the National Agreement between the parties could be used to enforce the Joint Statement and that arbitrators had broad remedial powers to fashion an appropriate remedy, including removing a supervisor from his or her administrative duties.

Since the Joint Statement can be enforced through the parties' negotiated grievance procedure, the question then becomes what constitutes a violation of the Joint Statement. In its relevant portions the Joint Statement on Violence and Behavior in the Workplace reads as follows:

...there is no excuse for and there will be no tolerance of harassment, intimidation, threats or bullying by anyone.

We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or

intolerant. "Making the numbers" is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions. ...

Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace.

This language prohibits harassment, intimidation, threats, bullying, abuse, and intolerance. It states employees be treated with dignity, respect and fairness. These terms are all broad terms and the obvious problem is that reasonable people can honestly disagree as to what these terms mean in any specific situation.

In determining how these terms should be applied to the facts of this case, I first looked at the language of the Joint Statement and the principles which are contained in the Joint Statement. In reviewing the language of the Joint Statement, I can identify the following principles:

1. Employees should be treated with dignity, respect and fairness.
2. The USPS must serve the public efficiently and productively.
3. Employees will give a fair day's work for a fair day's pay.
4. Efficiency, that is "Making the numbers" does not excuse or permit abuse of employees.
5. Those employees, including but not limited to supervisors, who do not treat others with dignity, will not be rewarded.
6. Those employees, including but not limited to supervisors, who behave unacceptably will be removed.

In reviewing the language of the Joint Statement and the principles enunciated, it appears to me that the Joint Statement established three different categories of conduct. The first category is what I would call appropriate behavior in which individuals are treated with dignity, respect and fairness. The second category is behavior which is inappropriate, but which is not so reprehensible as to violate the Joint Statement. The Joint Statement speaks of this behavior when it states those who do not treat others with dignity and respect will not be rewarded. The third category is conduct which is a violation of the Joint Statement and which is "unacceptable". The term "unacceptable" refers back to conduct which is abusive, intolerant, harassing, intimidating, threatening or bullying and which will result in removal. The use of the terms abusive, intolerant, harassing, intimidating, threatening and bullying makes it clear that this is extreme behavior. The statement that such conduct will result in removal confirms that "unacceptable" behavior is extreme behavior.

Having established that there are three categories of behavior, appropriate behavior, inappropriate behavior and unacceptable behavior, the next issue is whether the standard for whether conduct violates the Joint Statement is an objective one-would a reasonable person feel abused, harassed, intimidated, bullied, threatened or not tolerated or is the standard a subjective one-did the person involved feel abused, harassed, intimidated, bullied, threatened or not tolerated. For the reasons which follow, I conclude the standard is an objective one-would a reasonable person have felt abused, harassed, intimidated, bullied, threatened or not tolerated.

To find that the standard is whether the individual involved felt harassed, abused, intimidated, threatened or bullied would mean that any time a supervisor made a comment to an employee, the employee could claim he or she felt harassed, abused, intimidated, threatened or bullied and the employee could claim a violation of the Joint Statement. Such a result is inconsistent with the principle that supervisors will hold employees accountable for employee performance and it is inconsistent with the Agency's need to serve the public efficiently and productively. Using the reasonable person/ objective standard permits the Agency to fulfill its mission, but at the same time it ensures that there is accountability and consequences for those situations where there is unacceptable behavior.

Having established that there are three categories of conduct and that the measure is an objective standard, the next question is how does one determine which category is appropriate in any given situation? In answering this question, I again turn to the language of the Joint Statement and the principles set forth in the Joint Statement.

When the Joint Statement says that employees will give a fair day's work for a fair day's pay, it recognizes that the supervisor will hold the employee accountable for his or her performance. Once a supervisor is charged with the responsibility for ensuring an employee gives a "fair day's work", it is inevitable there will be conflict between the supervisor and the employee. While the Joint Statement recognizes that conflict is inevitable in the supervisor-employee relationship, the Joint Statement also recognizes that conflict can be either productive or it can be destructive and the intent of the Joint Statement is that conflict should be productive.

If the Joint Statement is to achieve its goal of productive rather than destructive conflict, it is critical to establish criteria which do not inhibit communication because communication is critical to ensuring conflict is productive. Often times what appears to be a conflict is actually a situation in which each party has incomplete information and the exchange of information alone can resolve the problem. In other apparent conflicts, it turns out that the point of conflict is not the real issue at all and once the parties realize what the underlying issue is, the matter can be resolved. Third, even when there is a genuine conflict, the only hope for a resolution is ensuring parties can openly communicate while recognizing that good communications will not resolve all conflicts.

In the real world, people being what they are, the niceties of etiquette are not always followed when there is conflict. Instead, there are often what diplomatic communiqués call "a frank and candid exchange of opinions" but honest exchanges of opinion are critical to making conflict constructive and whether these exchanges of opinion are productive or destructive is not just a function of what one person does, it depends upon both parties. Inevitably there will be times when these exchanges of opinion may be painful or involve discomfort for one or both of the parties, but as painful or uncomfortable as it is to hear these opinions, they may be the prerequisite to improvement and growth for either the supervisor or the employee. For this reason, I conclude the mere fact an employee may feel some pain, discomfort or disagreement as a result of a supervisor's statement is not unacceptable behavior which violates Joint Statement. For the same reasons, I conclude that lack of civility, while inappropriate behavior, is not unacceptable behavior, which violates the Joint Statement.

While both parties must be given considerable latitude to express their respective positions, productive conflict can only occur if the parties address the issues, rather than personalities. Any discussion should address behaviors. When discussions address personal characteristics, they are probably inappropriate and potentially abusive and/or harassing, both of which violate the Joint Statement.

Turning now to the specifics of this case, the first issue is credibility as to whether there was a practice of employees going into the front window area to purchase stamps for packages they had been given by customers.

It is undisputed that prior to July 26, 1997 a customer had asked Ms. Whitaker to mail a package for her and had given Ms. Whitaker the money for purchasing stamps. On the afternoon of July 26, 1997, Ms. Whitaker went to the front window and purchased stamps with the money the customer had given her. Ms. Whitaker testified that although there was a sign stating employees should not enter the area, she did so because it was a standard practice. When Supervisor Williamson criticized her for going into this area, Ms. Whitaker felt she was being singled out since she was only doing what other employees routinely did and none of them had ever been criticized for such conduct.

Ms. Whitaker's testimony that employees routinely went into the front window area to purchase stamps for packages which customers had given them was corroborated by Union President Tom Davis.

According to Supervisor Williamson, the rule is clear that no employee should go into the front window area, there is a sign informing employees they are not to enter this area and there is no practice of employees going into this area. Supervisor Williamson's testimony was corroborated by Postmaster William Jones.

For the reasons which follow, I find there was such a practice.¹ Specifically, I rely on the testimony of Pat Applegate because no evidence was presented which suggested Ms. Applegate had any bias or interest in the outcome of this case. Ms. Applegate testified that as part of her duties she often worked as a window clerk and that letter carriers routinely came into the front window area and purchased stamps for packages with the money customers had given them. She further testified that supervisors had also purchased stamps for customers and finally she testified she had never been told this practice was improper. Ms. Applegate's basic testimony was confirmed by letter carrier Lorna Byers.

The Statesville installation is a small one consisting of about 104 total employees including 32 letter carriers, 3 supervisors and a postmaster. One can walk from one end of the installation to the other in less than a minute. It is a small station in which everyone can see what everyone else is doing. Based on the small size of the station and the testimony of Ms. Applegate, it is inconceivable to me that this practice could have been as overt and obvious as it was without Supervisor Williamson knowing about it. Accordingly, I conclude that Supervisor Williamson deliberately singled out Ms. Whitaker and criticized her knowing Ms. Whitaker was following a standard practice.

The second credibility issue involves the conversation in the break room. According to Supervisor Williamson's testimony at the hearing, she thought Ms. Whitaker went to the break room on official time and Ms. Whitaker was griping to a fellow employee while on official time which is why Supervisor Williamson ordered Ms. Whitaker out of the station.

According to Ms. Whitaker, Supervisor Williamson knew Ms. Whitaker was on break, but followed her into the break room, told her to stop bitching and ordered her out of the station even though she knew Ms. Whitaker was properly on break.

For the reasons, which follow, I credit Ms. Whitaker. Shortly after the July 26, 1997 incident, Supervisor Williamson prepared a statement in which stated that when she initially spoke to Ms. Whitaker about going into the front window area, "she told me she was on break and she was mailing a package for a customer." This statement given within ten days of the incident is more reliable than Supervisor Williamson's testimony at the hearing over three years later and it is completely consistent with Ms. Whitaker's testimony.

Having found that Ms. Whitaker was more credible in her testimony regarding the past practice and in her testimony that Supervisor Williamson knew she was on break, I credit her testimony that Supervisor Williamson came into the break room, told her to

¹ This practice came into being because the Service has emphasized assisting customers and the customers who ask the carriers to purchase stamps for them are elderly or sick people who have limited mobility. Out of a concern for service and out of sympathy, carriers have taken packages from these people along with the money for stamps and then purchased stamps and mailed the packages for these individuals.

"stop bitching" and ordered her out of the station knowing that Ms. Whitaker was taking a break to which she was entitled.

In summary, I find Supervisor Williamson had an official discussion with Ms. Whitaker for engaging in conduct which Supervisor Williamson knew was a standard practice among carriers. I find Supervisor Williamson improperly interrupted Ms. Whitaker's break and that Supervisor Williamson deliberately went into the break room to stop Ms. Whitaker from talking with a fellow employee regarding the practice of going to the front window. I conclude that Supervisor Williamson told Ms. Whitaker to "stop bitching" because Ms. Whitaker was questioning whether she had been fairly treated and I find Supervisor Williamson improperly denied Ms. Whitaker her break when she ordered her out of the station.

Based on these facts, I find Supervisor Williamson abused, harassed, bullied and intimidated Ms. Whitaker, thereby violating the Joint Statement.² I also find that despite extreme provocation, Ms. Whitaker obeyed the rule, "Work now, grieve later."

Having found that Supervisor Williamson violated the Joint Statement, the next issue is the remedy. In fashioning a remedy I first look to Arbitrator Snow's decision. As I understand Arbitrator Snow's decision, arbitrators have broad flexibility in determining an appropriate remedy but they do not have the right to discipline a supervisor.³ Accordingly, none of the remedies which I am ordering constitute discipline.³

Second, I look to the Joint Statement. The Joint Statement explicitly says that "those who do not treat others with dignity and respect will not be promoted." Consistent with this statement, I am ordering that a copy of this decision be placed in Supervisor Williamson's personnel file for three years from the date of the decision and that a copy of this decision be attached to any applications which Supervisor Williamson submits for a promotion.

The Joint Statement was issued with the intention of making the workroom floor "more harmonious." The "work now, grieve later" rule is critical to maintaining workfloor harmony and order. When a supervisor abuses, harasses and bullies an employee and attempts to provoke the employee and when, despite the supervisor's conduct, the employee obeys the "work now, grieve later" rule, it is critical the employee's conduct be rewarded. The best way of encouraging desirable behavior is to reward it when it occurs. For this reason, I am requiring Supervisor Williamson write a letter of apology to Ms. Whitaker which states specifically that Supervisor Williamson understands her conduct on July 27, 1997 violated the Joint Statement and that she

² According to the record, Supervisor Williamson had prior to this incident issued a letter of removal which Ms. Whitaker had taken to arbitration and which resulted in Ms. Williamson being reinstated with a 30 day suspension. This may explain Supervisor Williamson's motivations, but ultimately, it is the conduct, not the motivation which matters and here the conduct clearly violated the Joint Statement.

³ Discipline in this context is defined as an oral reprimand confirmed in writing, a written reprimand, a suspension, a downgrade, or a removal.

"apologizes for her unacceptable conduct." I am also ordering that Supervisor Williamson, who is now assigned to Greensboro, be barred from working in any supervisory capacity in Statesville, N.C. for so long as Ms. Whitaker is an employee at the Statesville, N.C. installation. This remedy is consistent with the Joint Statement's desire for a more harmonious workfloor and is far milder than the provision in the Joint Statement's which calls for removal when there is unacceptable behavior.

The Joint Statement also provides that those who do not show dignity, respect and fairness will not be tolerated. Accordingly, I order that a copy of this decision shall be sent to Supervisor Williamson's present supervisor for review and for appropriate action consistent with the Joint Statement.

AWARD

For the reasons stated above he grievance is granted. The remedy is as follows:

1. A copy of this decision shall be placed in Supervisor Williamson's personnel file for a period of three years from the date of this decision. A copy of this decision shall be attached to any application for promotion which Supervisor Williamson makes during this three year period;
2. Supervisor Williamson will write a letter of apology to Ms. Whitaker within thirty days of the date of this decision. This letter will state specifically that Supervisor Williamson understands her conduct on July 27, 1997 violated the Joint Statement and that she "apologizes for her unacceptable conduct." I am also ordering that Supervisor Williamson be barred from working in any supervisory capacity in Statesville, N.C. for so long as Ms. Whitaker is an employee at the Statesville, N.C. installation; and
3. A copy of this decision will be provided to Supervisor Williamson's immediately supervisor for review and for appropriate action consistent with the Joint Statement.

This 10 day of September, 2000.



Keith Poole
Arbitrator