

28061

REGULAR ARBITRATION PANEL

In The Matter of Arbitration	Grievant: Class Action
Between	Post Office: Stockton, CA
UNITED STATES POSTAL SERVICE,	USPS Case No. F06N-4F-C 08155769
Employer,	NALC Case No. 213 08 C 140
-and-	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO,	
Union.	

BEFORE: Claude Dawson Ames, Arbitrator

APPEARANCES:

<u>For the Postal Service:</u>	Mark Villalpando, Manager, Labor Relations Specialist
<u>For the Union:</u>	Bryant Almario, Regional Administrative Assistant
Place of Hearing:	Stockton, CA
Date of Hearing:	October 1, 2008
Date of Brief:	November 17, 2008
Date of Award:	February 6, 2009
Contract Provisions:	Articles 3, 5, 19
Contract Year:	2006 - 2011
Type of Grievance:	Contract

Award Summary

Local Management, through the conduct of Supervisor Mohan Kaur, did violate the National Agreement and Joint Statement on Violence and Behavior in the Workplace at the Stockton Post Office. The remedy is set forth in the Arbitrator's Decision. The Stockton Post Office is hereby ordered to Cease and Desist from further violations of Articles 17 and 31 of the National Agreement. The Union's grievance is hereby sustained in part and denied in part.

Claude Dawson Ames

CLAUDE DAWSON AMES, Arbitrator

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I

PRELIMINARY BACKGROUND

The instant grievance is brought as a Class Action on behalf of Carrier Craft members at the Stockton Main and Stockton Westlane Stations. The Union is alleging a violation of the Joint Statement on Violence and Behavior in the Workplace (JSOV) based on a series of incidents involving management personnel and their treatment of Letter Carriers. Specifically, the Union maintains that Management has allowed a pattern and practice of workplace harassment by a certain manager (Mohan Inder Kaur) that has resulted in unacceptable workplace behavior, intimidating tactics, and threatened disciplinary action against Carriers in the Stockton and Westlane Stations.

The National parties developed the JSOV and jointly put in place a clear and enforceable statement against violence in the workplace which is applicable to all postal employees. The JSOV is the standard measure of respect and mutual dignity to be accorded equally to both bargaining employees and management supervisors in the workplace.

The JSOV was implemented to prevent violent acts, similar to those that occurred at the Royal Oaks facility, from ever happening again. The JSOV requires that all Regions and Districts implement a "Zero" tolerance policy against "Violence in the workplace, and to treat each postal employee with equal Dignity and Respect."

II

FACTUAL BACKGROUND

On February 21, 2008, at or about 9:15 a.m. at the Stockton Post Office, Amolak S. Badyal was sitting at the union desk performing his steward duties when Carrier Lao Yang came up to speak to Chief Union Steward Ken Soderdahl, who was on the phone. Yang, who approached Soderdahl, without receiving prior permission from Manager Kaur to do so, came to ask Soderdahl about the proper casing of Soderdahl's route. Yang was assigned to double case the route and wanted to know where the split in the route was. While waiting for Soderdahl to get off the phone, Yang was confronted by Manager of Customer Service Kaur, who yelled at him and told him to go back to his case. According to the testimonies of both Yang and Soderdahl, Manager Kaur did not give Yang

an opportunity to explain what he was doing at Soderdahl's desk.

Steward Badyal was sitting in the union area and observed the confrontation between Manager Kaur and Carrier Yang. Badyal interceded and told Manager Kaur to "go on and walk away." Badyal was then instructed by Manager Kaur to report to her office to discuss the incident. After being instructed several times to report to her office, Badyal finally did so. A loud verbal and physical exchange between Manager Kaur and Badyal then occurred behind closed doors. Badyal stated that as he entered Manager Kaur's office, Kaur immediately said, "The only reason you are a steward is because you don't want to carry mail." Badyal responded by questioning Manager Kaur's qualifications for being a Station Manager. The exchange grew heated and Manager Kaur raised her hand and said, "I will slap you." She then called Badyal a liar and a cheat and then referenced his religious (Sikhism) beliefs. In response to this, Badyal testified that he wanted to say something that would hurt Manager Kaur's feelings and he commenced a verbal assault by accusing Manager Kaur of having had an inappropriate relationship with Manager Centeno of Customer Service. Badyal then told Manager Kaur, "Don't you think people see what you're doing? You and Harry always together. You guys always have this door closed for many hours and he is driving your personal vehicle while you sit on the passenger side." Badyal then asked Manager Kaur, "How did you get this job? What did you have to do in order to get this job? Did you suck Harry's dick?"

Manager Kaur then reportedly slapped Badyal across his face several times and Badyal forcibly grabbed her. Badyal then released Manager Kaur and left the office. The police were called and a police report was taken. An investigation was conducted by the Postal Service and on March 31, 2008 a Notice of Proposed Removal was issued to the Shop Steward Amolak S. Badyal on the charge of: "Unacceptable Conduct/Violation of the Joint Statement on Violence and Behavior in the Workplace."

Supervisor of Customer Service, Mohan Inder Kaur, was also given disciplinary action in the form of a Notice of Proposed Reduction in Pay and Grade based upon the charge of "Unacceptable Conduct." Steward Badyal grieved the Notice of Removal which was subsequently reduced and resolved by the Dispute Resolution Team on June 3, 2008. A. Badyal's Notice of Removal was

reduced to a 21-day time off suspension with no back pay. Manager Kaur's original charge of Unacceptable Conduct/Notice of Proposed Reduction in Pay and Grade for which she was given a 14-day suspension by Manager of Post Office Operations-Sacramento District, Bobbi J. Riley, was subsequently reduced by Management to a Letter of Warning. Badyal filed a Restraining Order against Manager Kaur in court that was dismissed.

The Postal Service does not dispute what occurred between Badyal and Manager Kaur. According to the Service, both have been equally disciplined for their violations of the JSOV. As such, the Service maintains that the matter before the Arbitrator is moot, since appropriate disciplinary action has been implemented in this case. The Union disagrees, maintaining that it is seeking a determination of a contractual violation of the National Agreement, specifically the parties' JSOV, by Manager Kaur, and that she not be allowed to supervise members of the Carrier Craft based on her established history of intimidation and violation of the JSOV.

A hearing was held at the Stockton Westlane Station on October 1, 2008. The Union and Class Grievants were represented by Bryant Almario, Regional Administrative Assistant for the NALC. The Service was represented by Mark Villalpando, Manager, Labor Relations for the Sacramento District. The Service initially raised a challenge of mootness to the Union's grievance before the Arbitrator. According to the Service, there is no further action required based upon the discipline that was imposed on both parties by the Service. The Union comes forth now "only for an additional pound of flesh." The Union maintains that it is not seeking a "additional pound of flesh," but a determination that she be contractually precluded from further supervision of Carriers within the Post Office.

After careful examination of the arguments presented by the parties, the Arbitrator finds that the Union's grievance is arbitrable and not moot. The Union's grievance does not address any disciplinary action that was previously implemented by the Service. The Union maintains that a contractual violation of the JSOV occurred and seeks an appropriate remedy. The hearing proceeded and the parties then stipulated that the matter was properly before the Arbitrator. All witnesses who were called to testify were duly sworn under oath. The Arbitrator received into the evidence

record approximately 850 pages of documents and arbitral decisions submitted by the parties. After an initial extension of time and receipt of Management's post-hearing brief, the hearing was closed in a timely manner.

III

ISSUE PRESENTED

The issue in this dispute as framed by the Arbitrator is as follows:

Did Manager Mohan Inder Kaur violate the National Agreement on Joint Statement on Violence in the Workplace by the manner in which she treated Carriers at the Stockton Westlane Post Office? And did Management violate Articles 17 and 31 of the National Agreement? If so, what are the appropriate remedies?

IV

RELEVANT CONTRACT PROVISIONS

ARTICLE 3 - MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted.

ARTICLE 19 - HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the postal service, that directly relate to wages, hours or working conditions, as they apply to employees

covered by this Agreement, shall, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

HANDBOOK M-39

115.4 Maintain Mutual Respect Atmosphere

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE

"... We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and 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."

V

POSITIONS OF THE PARTIES

A. Union's Position:

The Union contends that Manager Kaur violated the parties' JSOV through her violent act of physically assaulting fellow employee A. Badyal and her intimidation and harassment of other carriers at the Stockton Area Stations. According to the Union, Manager Kaur has a demonstrated record of aggressive behavior and a management style that has been complained of at least 9 times to postal management. The Union recently filed three separate complaints with Management regarding Manager Kaur's aggressive and intimidating management style toward employees. The Service has failed to take appropriate action to protect Carriers at the Stockton Post Office or to remove Kaur

from supervision of Carriers, to prevent further acts of physical violence or intimidation.

Kaur's conduct was unprofessional, inappropriate, and threatening toward A. Badyal and in violation of Postal Manuals (M-39), JSOV, and the Sacramento District's Zero Policy Against Violence in the Workplace. The Union even filed several grievances in the past against Kaur for her violation of the JSOV, which were subsequently settled by Management.,

At the time Carrier Terrence Banks (Finance No. 057519) was given a poor job performance by Kaur, Banks complained about Kaur's intimidating management style . Kaur's actions towards Banks were aggressive and unwarranted. The case was resolved with all parties agreeing to abide by the JSOV. Carrier M. Herrera (Finance No. 057519) complained that Kaur yelled at him for several minutes on the work floor in front of fellow Carriers. As a result of Kaur's conduct, Herrera later went out on stress leave. Carrier Jason Bondoc's grievance was settled (Case No. 4F-956-0163-07) after complaining about Kaur's intimidating and aggressive management style in which she shouted at him while casing his mail. "Don't even think about taking a lunch break today," she yelled at him during a morning walk-thru, when he told her that he was not under-timed. According to a statement by Bondoc, "Kaur needs anger management because she has some problems." Carrier Danny Gonzales (Finance No. 0957519), a 12-year Carrier on a strict medical work restriction due to open heart surgery, complained of Kaur's harassing and intimidating management style. According to Gonzales' statement, Kaur engaged in inappropriate conduct and accused him of "just screwing around on the street and ripping off the government," in front of OIC Centeno. The Union also contends that Management has violated the parties' National Agreement, specifically Articles 17 and 31. The Union maintains that, in violation of the Agreement, the requested documents were not provided in a timely manner by Management. The Union is seeking a Cease and Desist Order against Management regarding its failure to respond to document requests and further seeks to have Manager Kaur precluded from any further direct supervision of the Carrier Craft. The Union also seeks Manager Kaur's termination from her postal employment.

B. Agency's Position

The Agency denies the Union's contentions that Local Management permitted Manager Mohan Kaur to treat the rules of conduct that she is charged to uphold "in utter contempt". Management maintains that, when presented with evidence of wrongdoing and questionable conduct by Manager Kaur, it has taken appropriate action. Management concedes that the grievance before the Arbitrator involves violent conduct, one in which both employees were found to violate the Joint Statement on Violence and Behavior in the Workplace.

Both employees were involved in this physical altercation that occurred on February 21, 2008. Management contends that the JSOV is very clear, as is the District's policy against zero tolerance of violence in the workplace. Management acted immediately in issuing appropriate discipline to both Manager Kaur and to A. Badyal. Management also initiated an appropriate investigation in which it determined that A. Badyal was the instigator in this matter and provoked Manager Kaur not only by his conduct, but also by his statement in which he accused Manager Kaur of "sucking someone's dick" in order to obtain her position. Management does not condone the violent response of Manager Kaur by physically slapping Badyal, or the physical altercation that escalated thereafter between these two postal employees.

The remedy which the Union now seeks is inappropriate. According to Management, the Union is attempting to punish and retaliate against Manager Kaur by asking for her removal from the Postal Service. Further, both Manager Kaur and A. Badyal were issued appropriate discipline for their inappropriate actions. Management requests that the Union's grievance be denied in its entirety.

VI

DECISION

The Joint Statement on Violence and Behavior in the Workplace was mutually developed by the national parties and clearly sets forth their agreed intent and "unequivocal commitment to do everything in our power to prevent further incidents of work-related violence." The parties' also expressed their national intent "to make the work room floor a safer, more harmonious, as well as a more productive workplace where every postal employee is treated with respect and dignity." This policy statement is recognized at every Regional and District level throughout the Postal Service and is fully enforceable. According to the JSOV, "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."

The grievance before the Arbitrator arises from a violent workplace incident involving Manager of Customer Service, Mohan Kaur (Indian-Punjab) and Union Shop Steward Amolak Badyal, also Indian-Punjab, who mutually engaged in inexcusable, inappropriate, unacceptable and unprofessional conduct, warranting their permanent removal from further postal employment. These two postal employees allowed their cultural and ethnic personal dispute to interfere with Postal and Union business that not only disrupted postal operations, but adversely impacted labor-management relations at the Stockton Post Office. Unfortunately, for reasons known only to the parties, both Manager Kaur and Shop Steward Badyal were permitted to continue their postal employment, in clear and direct violation of the National Joint Statement on Violence and Behavior in the Workplace, and the District's own zero tolerance policy against violence in the Workplace. Kaur's penalty was only a Letter of Warning and Baydal received a 21 Day Suspension Without Pay.

The Agency maintains that the Union now seeks retaliation against Manager Kaur for conduct for which discipline has already been imposed through administrative procedures. According to the Agency, the Union is now merely out to get Manager Kaur and have her removed from further postal employment while, at the same time, condoning the misconduct of its Union Steward, A. Badyal. According to Local Management, the Union comes forth with unclean hands. Management argues

that it has taken all appropriate measures to discipline both Manager Kaur and A. Badyal, and the matter requires no further action or Manager Kaur's removal.

The Union maintains that it is not seeking additional disciplinary action against Manager Kaur, but presses its challenge against Local Management and Manager Kaur for allowing this supervisor to continue violating the JSOV through her aggressive management style while supervising members of the Carrier Craft. The Union not only seeks Manager Kaur's prohibition from further direct supervision of members of the Carrier Craft, but also her removal from postal employment as well. The Union also seeks a determination that Local Management violated Articles 17 (Representation) and 31 (Information) of the National Agreement by failing to provide documents in a timely manner to the Stewards.

After careful consideration and review of the evidence record presented, including the numerous arbitrable decisions submitted by the parties in support of their positions, the Arbitrator finds that the Union has sustained its burden of proof of Article 17 and 31 violations and that Manager Kaur did violate the JSOV. The Arbitrator further finds that Local Management was aware of the problem, but failed to take appropriate and immediate action to resolve the ongoing conflict, which created a hostile work environment. The Arbitrator's finding that Manager Kaur's conduct and interactions with Letter Carriers are in direct violation of the JSOV, is supported by a long history of Carrier complaints filed with Local Management which resulted in the parties' settlement to abide by the JSOV.

Local Management, including Manager Centeno, was aware of the harassing, intimidating and aggressive managerial style of Manager Kaur and the numerous complaints which had been lodged against her. The Arbitrator finds, based upon the evidence records presented before him, that Local Management turned a blind eye and failed to adequately address Manager Kaur's conduct and chose to view these complaints as a nuisance and Union's attempt to intimidate Management, rather than a legitimate dispute related to an aggressive managerial style in violation of the National parties' Joint Statement on Violence and Behavior in the Workplace.

Although the Arbitrator is well aware and very supportive of the rights of Management pursuant to Article 3 to take appropriate measures in determining not only personnel, but also methods for its postal operation, he is equally aware of the intent by the National Parties to insure that all postal employees in the workplace, regardless of status or position, be treated with equal dignity and respect. Local Management's failure to respond appropriately and to act in accordance with the requirements of the JSOV, directly contributed to a pattern and practice of aggressive managerial behavior and misconduct on the part of Manager Kaur. Such conduct is totally unacceptable in the Postal Service and a clear violation of both the JSOV and Sacramento District's own policy of zero tolerance against violence, threats, intimidation, and other tactics that may disrupt the work force, and/or create a hostile work environment. Clearly, this is not the harmonious workplace intended by the National parties when they drafted the JSOV.

Notwithstanding the Arbitrator's finding of Manager Kaur's violation of the JSOV in dealing with Carriers, the Arbitrator also finds that the local Union's handling of the situation was not entirely helpful, in resolving the conflict with Management. The Arbitrator has no authority or jurisdiction in this situation to grant the Union's request to terminate and remove Manager Kaur from further postal employment. Fundamental concepts of fairness, due process of notice, and the right to be heard, are clearly procedural requirements for removal, not only for Union members, but also for Postal supervisory personnel.

Given the fact that Manager Kaur is not required to be before the Arbitrator and not a member of the parties' National Collective Bargaining Agreement, the Arbitrator finds no basis or authority to grant such a request for her direct removal. Further, in light of Management's allegations of possible Union bias and possible retaliation against Manager Kaur for the Baydal incident, the Arbitrator finds that it would be inappropriate for him to intercede in a matter that should be addressed by Management's administrative process. Accordingly, for the reasons stated above, the appropriate remedy is as follows:

VII

REMEDY

The appropriate remedy in this case is determined by the evidence record that has been presented before the Arbitrator. The Arbitrator has taken into consideration the arguments of the parties and the numerous prior settlement agreements that were entered into between the Union and Local Management, regarding Manager Kaur's behavior, conduct and managerial style complained of by various carriers. It is clear from the evidence presented, that Local Management was well aware of Manager Kaur's aggressive behavior and refused to address the issue and failed to take appropriate action as required under the JSOV.

Local Management viewed the complaints as simply an act of retaliation on the part of the Union and the settlements, as the Union's attempt to interfere with Management's right to manage its work force, rather than legitimate complaints under the JSOV regarding Managers Kaur's failure to treat each postal employee with equal dignity and respect in the workplace. Also, in view of the prior settlement agreements entered into between the Union and Management in which Manager Kaur was prohibited from further supervision of Carriers in Zone 4, the Arbitrator finds it most appropriate to now impose a remedy with much broader restrictions and implementation, regarding the supervisory duties of Manager Kaur as it relates to the Stockton Area Carrier Craft.

Therefore, it is the Arbitrator's remedy in this matter, that Manager Kaur is hereby restricted and shall be prohibited, from her day-to-day supervision of Carriers in the entire Stockton area. And, as a further remedy in this ongoing dispute, which has resulted in an atmosphere of open hostility and mistrust between Labor and Management, the Regional parties are hereby instructed to intercede in the Stockton Main-Westlane Stations, by appointing representatives with authority to address and resolve this hostile work environment. Neither party to this dispute can stand idly by and allow another potential Royal Oaks to occur, by failing to take appropriate and intervening action. The Regional parties are hereby instructed to act immediately. The Arbitrator shall also issue a Cease and Desist Order against further violation of Articles 17 and 31 by Local Management.

The remedies imposed by the Arbitrator are carefully crafted and specifically tailored as previously indicated in Case No. F06N-4F-C 08237439, and should be carried out and implemented by the Postal Service. Nothing in the Arbitrator's decision or remedies in this Decision impacts upon the rights or due process of Manager Kaur or her continued employment status with the Postal Service. Accordingly, based on the reasons stated above, the Union's grievance is sustained in part and denied in part.

AWARD

Local Management, through the conduct of Mohan Kaur, did violate the National Agreement and Joint Statement on Violence and Behavior in the Workplace at the Stockton Post Office. The Stockton Post Office is hereby ordered to Cease and Desist from further violations of Articles 17 and 31 of the National Agreement. The Union's grievance is hereby sustained in part and denied in part.

Respectfully submitted,

Dated: February 6, 2009



CLAUDE DAWSON AMES, Arbitrator