

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration *

* * Grievant: A. Little

between: *

United States Postal Service * Post Office: Hartford, CT

and * USPS Case No: B11N-4B-D 16394439

National Association of * Branch Case No: 160610814

Letter Carriers, AFL,CIO * DR# 14-368672

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Vernon Tyler

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For the Union: Tom Cronin

OCT 28 2016

Place of Hearing: Hartford, CT

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

Date of Hearing: September 13, 2016

Date of Award: October 12, 2016

Relevant Contract Provision: Article 16

Contract Year: 2011

Type of Grievance: Discipline

Award Summary:

The Grievant in this case was issued a Notice of Removal alleging "Unacceptable Conduct - Willful Delay of Mail." The evidence presented by the Employer failed to prove the allegation of "Willful Delay of Mail" by the Grievant. While the Grievant's conduct may be labeled as unacceptable, it did not rise to the level deserving removal. The penalty is reduced to a Letter of Warning and the Grievant shall be reinstated and made whole in all respects.

Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 13 September 2016 at the postal facility located in Hartford, CT. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION**BACKGROUND AND FACTS:**

The Grievant in this matter is employed as a Letter Carrier working at an East Hartford postal facility. The Grievant became a career letter carrier following a conversion from a city carrier assistant in November 2014. His postal career began in November 2013.

On or about 27 April 2016, the Grievant received the following Notice of Removal Letter, signed by a Supervisor, Customer Service. That document, in pertinent part, reads:

"You are hereby notified that you will be removed from the Postal Service on May 28, 2016. The reason for this action is:

Charge: Unacceptable Conduct / Willful Delay of Mail

Specifically, On Wednesday, March 9, 2016, you willfully and intentionally delayed mail.

On March 9th you failed to deliver the mail assigned to you, specific to route 819. You returned to the Murphy Road office with undelivered mail; you failed to notify management of this mail and you failed to complete PS Form 1571, Undelivered Mail Report. You were non-scheduled the following day. Upon your return to the office on March 11th, you attempted to coerce City Carrier Assistant (CCA) Johnson, who was delivering mail on route 819 on this day, to complete the delivery of the mail that you failed to deliver or report on Wednesday, two days prior.

On Monday, March 14, 2016 you were interviewed by United States Postal Service Office of Inspector General (OIG) special Agents Andrew Dawson and Steven Coughlin. You admitted that on March 9, 2016, you brought back mail which you had been assigned to deliver. The willfully delayed mail consisted of about four small streets which was approximately 100 pieces of US Mail. You admitted you did not notify any supervisor and did not fill out any paperwork. Further, you admitted on Friday, March 11th, you accessed the delayed mail from March 9th and gave it to CCA Johnson while on the street. When asked by the Special Agents if you admitted to CCA Johnson that you "hide" mail, you replied, "Hide" was a bad choice of words and that you leave mail at the case and tuck it away so it cannot be seen by others." In a statement you provided to the OIG, you wrote, "I completely own up to bringing mail back and not notifying my manager. I also own up to not completing the correct paperwork (a 1571)."

Due to your actions a Pre-Disciplinary Interview (PDI) was scheduled for Monday, March 28, 2016, with your union stewards, Joseph Dellamura and Tom Cronin present. You admitted that you did not deliver all of the mail assigned to you on Wednesday, March 9, 2016, you did not fill out the PS Form 1571, nor did you notify management. You also admitted that you approached CCA Johnson on Friday and told her she was going to be mad at you when you gave her the delayed mail to deliver on route 819 so you offered to buy her breakfast for three months. Further, you were less than truthful when you answered you were not fully aware of rules and regulations when you were shown PS Form 8139, Your Role in Protecting the Security of the United States Mail, which you clearly signed and dated on October 25, 2013, to which you acknowledged the following: "I understand

that it is my duty to report immediately to my supervisor or to a Postal Inspector any information I may have of any ... unlawful delay of mail. I fully understand it is a crime ... to knowingly or willfully obstruct or delay the mail ..." I had further concern of your trustworthiness when you were asked how many times you failed to deliver mail and did not notify management and you replied, "I don't know." My trust in you was again compromised when you were asked if you were aware it is your responsibility to notify management if you are unable to complete your assigned duties and you replied, "Now I am Aware." In a prior PDI held with you on January 11, 2016, you were asked the same question and you replied, "Yes, but we are all human and make mistakes and I apologize for it."

Your actions on March 9 and March 11, 2016, and the subsequent interviews with you make clear you cannot be trusted to work for the Postal Service. You created a lack of trust in your ability to perform your duties when you willfully delayed US mail for which you were responsible. This misconduct is a serious threat to the core responsibility of a letter carrier to deliver all mail. Mailer and customer expectations along with the Postal Service standards and reliability are impacted by actions such as this. There is simply no excuse for this type of behavior.

All Postal Service employees are expected to put forth an honest work effort. No employee has the unfettered discretion to ignore their work responsibilities in order to do as they please. Your failure to satisfactorily perform your duties, in a broad sense, constitutes a serious challenge to your supervisor's authority and demonstrates a poor level of cooperation. Your actions are totally unacceptable..."

The document goes on to cite alleged violations of various postal regulations as well as advising the Grievant of his contractual rights available to appeal the Notice of Removal.

The Grievant, as well as the Union, refute the charges. The instant grievance was filed in protest. The Union asks that the Grievant be returned to work and made whole in every respect. In rebuttal, the Agency argues the evidence supports their removal action and requests their initial decision to remove the Grievant from Postal employment be upheld.

Obviously, the Parties were unable to resolve this dispute during the prior steps of the Parties Grievance-Arbitration Procedure of Article 15. An impasse was declared by the Step B Team on 3 June 2016.

It was found the matter was properly processed through the prior steps of the grievance procedure. Therefore, the dispute is now before the undersigned for final determination.

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine witnesses. The record was closed following the receipt of oral closing arguments from the respective Advocates.

JOINT EXHIBITS:

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.
2. Grievance Package
3. Grievance Package

4. Office of Inspector General - Report of Investigation

5. Witness Statement

COMPANY'S POSITION:

It is the position of the Postal Service that the discipline issued to the Grievant was for just cause in accordance with the Discipline Procedures in Article 16 of the National Agreement.

Management asserts the Grievant demonstrated by his actions beginning on March 9th, that he willfully and intentionally delayed the mail further demonstrative that he was not a trustworthy employee.

The Service insists the Grievant made the decision not to deliver the mail. Furthermore, the Agency believes the Grievant made the decision to return the mail to the facility, hide it somewhere in or around the facility and then, upon his return to work on March 11th, attempted to bribe another carrier to deliver the mail.

The Postal Service argues the preponderance of evidence will show there was just cause for the discipline and that it was warranted and will ask the discipline be affirmed and the instant grievance denied.

UNION'S POSITION:

According to the Union, the burden of proof is on the Employer to prove the Grievant is guilty of the charges cited in the Notice of Removal document.

It is the Union's position the Grievant did not commit any of the actions purported by Management willfully or intentionally. The Union insists the Employer will not be able to prove either of those allegations.

The Union agrees the mail was brought back that day and points out the Grievant does not deny doing so. The Union argues the Grievant, a short term employee, was not sure about all the rules and regulations.

According to the argument of the Union, the actions of the Grievant in this case do not rise to the level of removal

action. The Union does not disagree that some form of discipline may be appropriate in this case.

The Union's requested remedy is that the Notice of Removal be reduced and the Grievant be returned back to work.

THE ISSUE:

Did Management violate Article 16 of the National Agreement when they issued Grievant A. Little a Notice of Removal for Unacceptable Conduct/Willful Delay of Mail dated April 27, 2016? And if so, what is the proper remedy?

PERTINENT CONTRACT PROVISIONS:

**ARTICLE 16
DISCIPLINE PROCEDURE**

DISCUSSION AND FINDINGS:

This matter involves an issue of removal wherein the burden of proof falls on Management to establish just cause for their actions.

While Article 3, Management Rights, provides the Employer with the power to "suspend, demote, discharge, or take other disciplinary action...", the Employer is limited in any decisions as restricted by other Articles or Sections of the Agreement.

According to the Agreement, no Employee may be disciplined or discharged except for just cause. In my view the "just cause" provision is ambiguous; however, its concept is well

established in the field of labor arbitration. The Employer cannot arbitrarily discipline or discharge any Employee. The burden of proof is squarely on the Employer to show the discipline imposed was supported with sound reasoning.

In addition, the just cause standard cannot be gauged in the same manner in all cases since each discipline case is unique to its own set of facts and circumstances.

The chief negotiators of Article 16 suggest progressive discipline. In many cases, that guideline prevails and progressive discipline works to serve both the Employer and Employee. As an example, absenteeism is oftentimes corrected with progressive discipline.

Then, there are those infractions, whereby progressive discipline, is simply improper. Theft would certainly be a good example of one of these instances. In this business, such an act would be intolerable and removal following the first occurrence would only be appropriate. I'm sure the chief negotiators would agree with this reasoning.

Each matter of discipline rests solely on its own merits. What is found to be applicable in this case cannot be applied evenly to other similar issues. In fact, this case is totally

unique when compared to other matters of discipline that I've decided throughout my arbitral career.

The one constant is the burden of proof in any discipline matter rests with the Postal Service. It's their obligation to establish just cause or, at the very least, via their case in chief, demonstrate a valid reason via clear and convincing evidence.

It is not up to the Union to prove innocence, instead, for the moving party to establish guilt. In order to prevail however, Management need not prove their case beyond a reasonable doubt.

Instead, in arbitral matters, the preponderance of evidence rule applies. Clear and convincing evidence is proof via the preponderance. Regardless of the specific term employed, this Agreement, like most others, requires a showing, via evidence, that, more likely than not, the Grievant is guilty as charged.

This is based on the probability of the evidence, it's probable truth and accuracy, not necessarily the quantity. In any case, the meaning is somewhat subjective and this forum lacks a steadfast rule that can be applied to all cases.

Instead, only a guideline delineates the evaluation of the evidence and accordingly, is considered on a case by case basis.

This particular Article 16 case involves allegations of "Unacceptable Conduct - Willful Delay of Mail." There are certain acts that are certainly dischargeable offenses, **Willful Delay of Mail** certainly being one of them. However, in this case, I am of the considered opinion the discipline is too severe.

Foremost, the Grievant did not dispute the facts of this Charge, that being the delay of mail. However, I was not convinced the Grievant willfully and deliberately delayed the mail. Instead, via the course of his testimony, it became evident to me the Grievant was not fully aware of Postal procedure to follow in such an instance. The Postal Service argued the Grievant signed a PS Form 8139, prior to the beginning of his employment. And on that basis, Management insisted the Grievant should have been aware that a supervisor should have been notified that deliverable mail had been returned to the Post Office.

However, to that end, I'm sure the Grievant, prior to beginning employment signed various postal forms, one after the other, without being fully cognizant of their content. However,

that does not excuse the infraction. In my view, regardless of what Forms the Grievant may have signed, it should have been a very basic understanding that a supervisor should have been notified of any undelivered mail. That would be an expected understanding of any postal employee. It's only common sense that undelivered mail cannot simply be set aside.

However, in this instance, I do not find the Grievant's actions to be a dischargeable offense in this particular instance. Article 16 suggests progressive discipline and I firmly believe this to be one of those instances wherein the chief negotiators would make such a recommendation.

The record in this matter is silent regarding any past discipline of the Grievant. Given the facts of this case, the act committed by the Grievant does not rise to the level deserving removal action. I do not consider it an act that was so egregious that removal action is proper for the first offense. The Grievant admitted to returning the mail to the post office at the end of the day. The Grievant testified his intent was to return to the office in time "to make the truck." The Grievant also stated that a supervisor was not available when he returned to the office. I find the testimony of the Grievant to be credible.

However, the Grievant should have notified management of the returned mail. His testimony was that, upon his return to the office that day, a supervisor was not present. Maybe so. That does not relieve the Grievant's responsibility of providing, at the very least, some form of notation to a supervisor. For whatever reason, that was not done.

The Grievant is charged with the "willful delay of mail." While I agree there was certainly a delay of mail, I was not convinced that act was willful. It was the Employer making the allegation the actions of the Grievant were willful. The evidence does not prove that portion of the Charge. At best, his actions were certainly careless and clearly against Postal protocol. However, the evidence failed to prove the intent of the Grievant that day as malicious or deliberate.

The record also fails to identify any other discipline that may have been issued to the Grievant. Management implied this instance was not the first time the Grievant has delayed the delivery of mail. However, there is absolutely no evidence to that end. Instead, this appears to be the first instance of discipline involving this Grievant.

As previously stated, I am of the considered opinion the removal action of the Employer is far to severe a penalty given

the circumstances in this case. Therefore, following the guideline of the Article 16 progressive discipline protocol, the grievance is sustained and the discipline is hereby reduced to a letter of warning.

The Grievant shall be returned to work and made whole for all lost wages and benefits.

AWARD

The grievance is sustained in accord with the above. The Notice of Removal is reduced to a Letter of Warning and the Grievant shall be made whole..

Dated: October 12, 2016
Fayette County PA