

C#17431

## REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration	) GRIEVANT:	Tobias K. Lofton
between	(	
UNITED STATES POSTAL SERVICE	) POST OFFICE:	Charleston, South Carolina
and	(	
NATIONAL ASSOCIATION OF LETTER	) USPS CASE NO:	D94N-4D-D 96079916
CARRIERS, AFL-CIO	(	
	) NALC CASE NO:	031463
	(	
	)	

**BEFORE:** Raymond L. Britton, *Arbitrator*

### APPEARANCES:

<i>For the U.S. Postal Service:</i>	William Davis
<i>For the Union:</i>	Ted J. Sink
<i>Place of Hearing:</i>	U.S. Post Office
<i>Date of Hearing:</i>	January 7, 1997; July 9, 1997

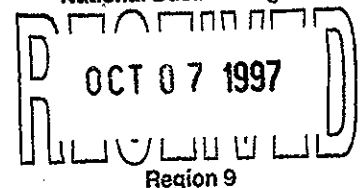
### AWARD:

For the reasons given, the grievance is denied.

*Date of Award:* September 26, 1997

*Raymond L. Britton*

Matthew Rose, NALC  
National Business Agent



## ISSUES

1. Did the Union file a timely grievance at Step 1 of the grievance procedure? If so,
2. Did the Postal Service have just cause to issue the Notice of Proposed Removal? If not, what is the appropriate remedy?

## HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution. Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

A hearing was held on January 7, 1997, and on July 9, 1997, a second hearing was held. After the hearing on July 9, 1997, it was agreed that the parties would submit Post-Hearing briefs to the Arbitrator by placing such briefs in the mails not later than August 9, 1997. The Post-Hearing brief filed by the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") was received by the Arbitrator August 11, 1997. The Post-Hearing brief filed by the United States Postal Service (hereinafter referred to as "Employer") was received by the Arbitrator on August 12, 1997.

## SUMMARY STATEMENT OF THE CASE

Tobias K. Lofton (hereinafter sometimes referred to as "Grievant") is a PTF Letter Carrier at the St. Andrews Station of the Charleston, South Carolina Post Office. On May 3, 1996, Clifford A. Blanche, Supervisor, Customer Service, in a memorandum to Mr. Toby K. Lofton, Subject: Emergency Placement in an Off-Duty Status stated in relevant part as follows (Joint Exhibit No 2):

\* \* \*

*You are hereby notified that you are being placed in an off-duty (without pay) status, effective immediately and will continue in this status until you are advised otherwise.*

*The reason for this action is:*

Charge 1. *You are charged with permitting someone to submit your altered CA-17 Form.*

*Specifically, on Wednesday, March 20, 1996, you completed PS Form 3971, Request for or Notification of Absence, indicating you needed seven (7) hours of annual leave for a doctor's appointment. In the "remarks" block, on the 3971, you wrote, "I am being worked in my doctor's schedule, having problems my right knee no set time, between 0800 and 1500." You were permitted to go to the doctor's office and I advised you to call back to this office as soon as you were done.*

*You phoned me and advised me that the doctor wanted you to stay off of your feet until Monday and that your wife would drop off the CA-17 on Thursday, March 21, 1996.*

*On Thursday, March 21, 1996, a window clerk handed me your CA-17 Form. Block twelve (12) on the CA-17 states, "Employee advised to resume work?" The "Yes" block was checked and "date advised" was written in as 3-24-96.*

*On Friday, March 22, 1996, Mr. Rodney Baker, Acting Supervisor, called your doctor's office to inquire as to the actual date that had been put on the CA-17 for your return to duty. The doctor's office faxed us a copy of the CA-17 that they had on file and the date on that form was 3-21-96. Ms. Joyce Scott, Medical Records Custodian, in Dr. Graham's office, states in the letter dated March 22, 1996, that you were seen by Dr. John Graham on 3-20-96. At that time a CA-17 Form was completed by Dr. Graham and a copy placed in your medical chart.*

*On 3-21-96, you brought in a blank CA-17 Form with the explanation that the original form dated 3-20-96 had been destroyed when it blew out of the window of your vehicle. Ms. Scott completed this form exactly as Dr. Graham had the first one and made a copy for your medical chart.*

*Ms. Scott indicates that block twelve (12) on the form stated, patient was "advised to resume work on 3-21-96." On March 25, 1996, you completed PS Form 3971, Request for or Notification of Absence, requesting annual leave for both March 22 and March 23, 1996. On April 24, 1996, I had an investigative interview with you and I asked you, why didn't you work on 3-22 and 3-23-96 which were Friday and Saturday? You stated, "Those would have been my days off on rotating days. I thought I was included in rotating. My day off was Thursday so I thought on rotating days, I would have Friday and Saturday."*

*\*\*\**

On May 3, 1996, Clifford A. Blanche, Supervisor, Customer Service in a memorandum to Mr. Toby K. Lofton, Subject: Notice of Proposed Removal stated in relevant part as follows (Joint Exhibit No. 2):

*This is advanced written notice that it is proposed to remove you from the Postal Service, no earlier than thirty (30) days from the date you receive this letter.*

*This action is based on the following reason(s):*

*Work rules and regulations in the Employee and Labor Relations Manual at part:*

**Part 661.3.f. - Standards of Conduct:** *"Employees must avoid any action, whether or not specifically prohibited by this Code, which might result in or create the appearance of affecting adversely the confidence of the public in the integrity of the Postal Service."*

**Part 661.53 - Unacceptable Conduct:** *"No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service."*

**Part 666.2 - Behavior and Personal Habits:** *"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."*

*Work rules and regulations in City Delivery Carrier Duties and Responsibility Methods Handbook, series M-41 states at part:*

*112.52 - Neatness and Example: "Conduct affairs of personal life in a way that will reflect creditably on both you and the Postal Service."*

*\* \* \**

*Charge 1. You are charged with permitting someone to submit your altered CA-17 Form.*

*\* \* \**

*. . . . . You will receive a written decision from Mr. Adams.*

*\* \* \**

*Since you are charged with an offense that warrant removal for the first occurrence, the penalty will not be held in abeyance if you file a grievance.*

*\* \* \**

On June 4, 1996, James Adams, Manager, Post Office Operations in a memorandum to Mr. Toby K. Lof-ten, Subject: Decision Letter - Proposed Removal stated in relevant part as follows (Joint Exhibit No. 2):

*\* \* \**

*On May 3, 1996, you were issued a notice proposing to remove you from the Postal Service based on the charge outlined in the notice.*

*While you and/or your representative did not respond orally or in writing to the charge outlined in the Notice of Proposed Removal, I have given full consideration to the Notice of May 3, 1996, and find that the charge is fully supported by the evidence.*

*I find the evidence of record fully supports charge 1, Permitting Someone to Submit Your Altered CA-17 Form. Documents in the file indicate that on Thursday, March 21, 1996, you informed your supervisor that your wife would drop off your CA- 17 Form. That day, a window clerk handed your supervisor your CA-17 Form and in block 12 on that form indicated that you were to resume work on March 24, 1996. Documents in the file indicate that Mr. Rodney Baker, Acting Supervisor, on Friday, March 22, 1996, phoned your doctor's office and determined that your date to resume work should have been March 21, 1996. Documents in the file indicate that Ms. Joyce Scott, Medical Records Custodian, in Dr. Graham's office, states that you were seen by Dr. Graham on March 20 and the first CA--17 Form was completed, indicating that you should resume work on March 21, 1996. In addition, Ms. Scott indicates that on March 21, you brought in a blank CA- 17, explaining that the original had been lost. Ms. Scott indicates that she completed this form exactly as Dr. Graham had completed the first CA-17 Form.*

*Postal employees are required to be honest, reliable, and trustworthy. Your conduct, as described above, constitutes a serious breach of the standards of conduct expected of Postal employees. For this reason, I no longer have any confidence in your ability to perform in any Postal position.*

*While I have considered your eighteen (18) months tenure of service, due to the serious nature of the charge, I find an insignificant basis in which to mitigate this action.*

*Therefore, it is my decision that you will be removed from the Postal Service, effective June 8, 1996.*

\* \* \*

A grievance was filed protesting the Notice of Proposed Removal, and a Step 1 meeting held on June 7, 1996, and no decision rendered. Pursuant to Article 15 of the National Agreement, the grievance was appealed to Step 2 of the grievance procedure on June 12, 1996, contending that the issuance of the Notice of Proposed Removal was unwarranted due to the lack of sufficient evidence. By way of remedy, it was requested that Mr. Loften be reinstated.

On July 8, 1996, William B. Davis, Labor Relations Specialist, in a memorandum to Mr. Jack Heyward, Steward, NALC, Subject: Step 2 Grievance Decision stated in relevant part as follows (Joint Exhibit No. 2):

\* \* \*

*The above captioned grievance was discussed with you at Step 2 of our grievance arbitration procedure on June 27, 1996. The Union's Step 2 Grievance Appeal Form was received in this office on June 13, 1996.*

*The issue of the grievance is whether or not just cause exists for the Notice of Removal issued to the Grievant.*

*Your contentions and arguments have been given careful consideration. Based on the facts presented at our meeting and the information contained in the grievance file, I have decided to deny your grievance.*

*The Notice of Removal is for just cause and the charge, Permitting Someone to Submit Your Altered CA-1 7 Form, is fully supported by the evidence. There is sufficient information in the grievance file that clearly indicates that the Grievant permitted an individual that he identified as his wife to submit his CA-17 on Thursday, March 21, 1996. The block on the CA-17 Form indicating that the employee was to resume work was marked 3-24-96. However, the copy in the doctor's office indicates that the employee would have resumed work on 3-21-96.*

*The Notice of Removal, dated May 3, 1996, was issued to the Grievant on 5-3-96. The union's Step 2 Grievance Appeal Form indicates that a Step 1 Meeting was held on June 7, 1996.*

*Article 15, Section 2, Step 1.a. states in the relevant part, "Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date in which the employee or the union first learned or may reasonably have been expected to have learned of its cause."*

*Your grievance is denied based on the fact that it is procedurally defective. The National Agreement requires that a grievance be filed within fourteen (14) days of the date in which the employee or the union first learned or may reasonably have been expected to have learned of its cause. Since the Grievant signed for the Notice of Removal on May 3, 1996, and the Step 1*

*Grievance was filed on June 7, 1996, the grievance was filed well beyond the fourteen (14) day time limit.*

\* \* \*

*Based on the above and the information contained in the grievance file, I cannot grant your remedy.*

*I find no violation of the articles cited, therefore, your grievance is denied.*

\* \* \*

On July 13, 1996, Jack Heyward, Steward, NALC, in a letter to Mr. William B. Davis, Labor Relations Specialist, stated in relevant part as follows:

*... , it s the Union's contention that we disagree with your decision. Therefore, we are sending this grievance to Step 3.*

*On July 10, 1996, Toby Loftin turned in his statement on what happened with regards to his CA 17. In addition, he turned in a notarized statement from Kevin L. Williams, a witness in this case. I am enclosing both statements, respectively.*

\* \* \*

On September 3, 1996, Carol McCrarey, Labor Relations Specialist, in a memorandum to Matthew Rose stated in relevant part as follows (Joint Exhibit No. 2):

\* \* \*

*This confirms the disposition of the subject Step 3 D grievance appeal.*

*The issue in this grievance is did the Postal Service have just cause to issue a Notice of Proposed Removal to the grievant.*

*No new arguments were raised by the Union at Step 3. Management contends just cause exists for issuing the discipline. I am convinced the evidence supports that the grievant permitted someone to submit his altered CA-17 form. Moreover, this grievance is procedurally defective as it was untimely filed at to Step 1.*

*Based on the factors this grievance is denied.*

\* \* \*

On September 23, 1996, the grievance was appealed to arbitration.

Provisions of the National Agreement effective August 19, 1995, to remain in full force and effect to and including 12 midnight November 20, 1998, hereinafter referred to as "National Agreement" (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

**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 actions 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;*
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and*
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.*

**ARTICLE 15  
GRIEVANCE-ARBITRATION PROCEDURE**

**Section 1. Definition**

*A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.*

**Section 2. Grievance Procedure--Steps**

**Step 1:**

*(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union may also initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office.*

**\*\*\***

**Step 2:**

**\*\*\***

*(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written*

*statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.*

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*(g) If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3.*

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### **Section 3. Grievance Procedure--General**

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*B. The failure of the employee or the Union in Step 1, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Step 2, or at the step at which the employee or the Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.*

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### **Section 4. Arbitration**

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#### **A. General Provisions**

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*6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.*

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## **ARTICLE 16 DISCIPLINE PROCEDURE**

### **Section 1. Principles**

*In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform*



*work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.*

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#### **Section 5. Suspensions of More Than 14 Days or Discharge**

*In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.*

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#### **Section 7. Emergency Procedure**

*An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U. S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.*

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#### **Section 9. Veterans' Preference**

*A preference eligible is not hereunder deprived of whatever rights of appeal such employee may have under the Veterans' Preference Act; however, if the employee appeals under the Veterans' Preference Act, the employee thereby waives access to any procedure under the Agreement beyond Step 3 of the grievance-arbitration procedure.*

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#### **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 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 . . . .*

## **POSITION OF THE PARTIES**

### **The Position of the Employer**

It is the position of the Employer that this grievance is procedurally nonarbitrable as the Union failed to file the grievance timely at Step 1 and thereby waived its right to appeal the subject grievance. The Employer contends that it had just cause to issue the Grievant a Notice of Proposed Removal as he allowed someone to submit an altered CA-17 to the Postal Service which contained incorrect information to allow the Grievant additional time off.

### **The Position of the Union**

The Union takes the position that the grievance was timely filed and has been in process for over a year. The Union contends that there is no clear and convincing evidence to support the charge that the Grievant allowed someone to submit an altered CA-17. The Union contends in this regard that the CA-17 was handled by many different individuals, including the custodian of records, and that this is where it appears the problem occurred.

## **OPINION**

Initially, it is necessary that the Arbitrator address the issue raised by the Employer as to whether this matter should be considered to be procedurally nonarbitrable on the grounds that the Union failed to file a timely Step 1 grievance.

The record discloses that following an investigation by Postal Inspector Greer W. Shafer and management, the Grievant was issued a Notice of Proposed Removal dated May 3, 1996, charging him with permitting someone to submit his altered CA-17 form. On June 7, 1996, the Union filed a Step 1 grievance on behalf of Mr. Lofton and the grievance was thereafter processed through the various steps of the grievance arbitration procedure. The Employer maintains that the Decision Letter relative to the Notice of Proposed Removal and dated June 4, 1996, was never received by the Grievant. The Step 2 Standard Grievance Form reflects that a Step 1 meeting was held between the parties on June 7, 1996, and that no Step 1 decision was rendered.

In support of its position that this matter is nonarbitrable, reference is made by the Employer to Article 15, Section 2, Step 1(a) of the National Agreement which states, in relevant part, that "An employee who feels aggrieved must discuss the grievance with the employee's immediate Supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause." The Employer argues that as the Grievant was placed on notice on May 3, 1996, when he signed for the Notice of Proposed Removal, the Union failed to file a timely Step 1 grievance and thereby waived its appeal. With this, for the reasons hereinafter given, the Arbitrator cannot agree.

The Notice of Proposed Removal dated May 3, 1996, advised the Grievant that "You will receive a written decision from Mr. Adams." A Decision Letter was issued and signed by Postmaster Jones Adams on June 4, 1996, and a grievance was filed on June 7, 1996. An employee who is a Preference Eligible, according to the rules of the Merit System Protection Board, is entitled to a Decision Letter. Thus, the time period for the filing of a grievance when a Decision Letter is issued begins to run when the Employer has made a final decision to remove an employee and not when a Notice of Proposed Removal is initially issued. It necessarily follows therefrom that inasmuch as this grievance was filed within fourteen (14) days of the issuance of the Decision Letter, the grievance is properly arbitrable.

The Employer argues that the Grievant never received the Decision Letter as the sealed envelope containing the Decision Letter and the former address of the Grievant, as well as an uncompleted return receipt, were still in the possession of management and unopened until the day of the hearing. The Employer further argues that the corrections and additions submitted by the Union indicate that no dispute existed between the parties as to whether or not a timely Step 1 grievance was filed on behalf of the Grievant. Specifically, the Employer points out that the Union has a contractual right to set forth in writing any corrections or additions to the Employer's Step 2 Decision Letter and that there were no such corrections and additions. Instead, the Employer points out that in its corrections and additions letter, the Union only disagreed with the Employer's decision and was therefore appealing to Step 3. Neither argument is found to be persuasive. That the Grievant may not have physically received the Decision Letter and that the Union made no mention in its corrections and additions of any dispute between the parties as to the timeliness of filing of the Step 1 grievance cannot, in the view of the Arbitrator, be considered as controlling herein.

The Employer further points out that the Columbia Division Step 1 Fact Sheet that was signed on June 7, 1996, by Mr. Clifford Blanche, Supervisor, Customer Services, and Mr. Michael Hamilton, Union Steward, shows under the paragraph heading, "List All Facts Not In Dispute," that management placed the Union on notice that the Step 1 grievance filed on behalf of Mr. Lofton was considered untimely. Thus, the Employer maintains, the Union and management agreed that the grievance filed on behalf of Mr. Lofton is considered by both parties to be untimely. While ordinarily the recital in the Step 1 Fact Sheet may be treated as an admission, it seems to the Arbitrator that under the circumstances of the instant case this is not warranted due to the uncontroverted testimony of Mr. Michael Hamilton that at the time, he was a relatively new shop steward handling his first removal and that he was unfamiliar with the form.

With respect to the merits, the evidence reveals that on Wednesday, March 20, 1996, the Grievant was seen by his personal physician, Dr. Graham, and while at the doctor's office a CA-17 form was completed by the doctor. After leaving the doctor's office, and while crossing the Cooper River Bridge, the CA-17 blew out of the Grievant's car window. On March 21, 1996, the Grievant returned to the office of Dr. Graham to obtain a copy of the CA-17 and was informed that the records had been sent to the office of the custodian. The Grievant thereupon went to the custodian's office and spoke with Ms. Joyce Scott who then took the Grievant to her office, described as a "small cubicle", where they sat at her desk and filled out another CA-17. The Grievant was then handed this document in an envelope and the envelope was thereafter delivered to a window clerk at St. Andrews Station by the Grievant's friend, Kevin Williams. There is no testimony that the envelope had been opened or tampered with in any way.

Mr. Clifford Blanche, Supervisor of Customer Services, testified that someone brought a CA-17 form to a window clerk and that he received the CA-17 form which was from the Grievant's doctor on March 21, 1996, stating that the Grievant could return to work on March 24, 1996. Supervisor Blanche further testified that the block number 12 of the document appeared to both he and Supervisor Baker to have been altered. He stated that Supervisor Baker then called the doctor's office and asked about the date on the CA-17 form and was told that March 24 was not the date placed thereon by the doctor's office. Supervisor Baker then asked the "lady" at the doctor's office for a statement that the original CA 17 had the date of March 21, 1996. She complied, and a day or two later mailed a hard copy. Supervisor Blanche also testified that the injury compensation specialist was notified and that the inspection service conducted an investigation. When the investigation was completed and the report returned, he conducted a Pre-D with the Grievant and based on the answers received at the investigative interview felt that disciplinary action was warranted.

Then Acting Supervisor Rodney Baker testified that when he examined the CA-17, he checked to see if it was filled out completely and accurately. He stated that the CA-17 looked correct but that the date to return work, which was the 24th, was a Sunday and that this was odd and did not make sense to him. He further stated that the Station Manager, Richard Bates, also looked at the form and handed it back to him and said that the date had been

changed and he agreed. He was told by the manager, and later by Supervisor Blanche, to call the doctor's office. He stated that he went to the telephone and called the doctor's office. Joyce Scott, the lady who handles CA-17's, was put on the line and he explained to her that he was inquiring about the CA 17 of the Grievant and if copies were kept of the CA-17 when they fill them out as he wanted to verify the date of a return to work. He additionally told Ms. Scott that it looked like the date was the 24th and that it had been changed. He stated that Ms. Scott asked that he fax a copy of the CA 17 and as he was standing near the fax machine he agreed to do so. Ms. Scott told him that she would fax the one they had and she faxed it to Supervisor Baker. Mr. Baker testified that when he compared the two, they were the same CA-17's except the CA-17 that Ms. Scott sent said the 21st and his said the 24th and were the same otherwise. Supervisor Baker further testified that he then went back to Supervisor Blanche and explained what he had and that Blanche said to call the doctor's office back and get a note that that was the copy that was given the Grievant. He stated that Ms. Scott wrote him a note and sent back the original copy.

It is urged by the Union that whether the document in question had been altered is entirely speculative. The Union maintains that the document passed through several hands including a secretary, the Grievant, the Grievant's friend, a postal service clerk and at least four postal supervisors. While the Union further maintains that neither the Grievant nor his friend stated that they altered the document in any way, it is necessary to note that the Grievant's friend and witness, Kevin Williams, stated that the date of return to work on the CA-17 received from custodian Scott was that of March 24, 1996. The Union refers to the three CA-17's, namely, the form turned in by the Grievant, the form sent to Supervisor Baker and the original of the doctor. It concludes therefrom that discrepancies in the copies, other than the alleged alteration, occurred because there was never a copy retained in the records office. The Union endeavors to support its claim that Ms. Scott did not have a copy by referencing the testimony of Inspector Shafer that the "cubicle" contained no copy machine and the testimony of the Grievant that he sat at the desk with Ms. Scott and filled out the CA-17 and that she did not make a copy of the CA-17 he received and that there was no copy machine in the small records room. This, the Union urges, is the reason for having Supervisor Baker send his CA-17 to the records office before Ms. Scott would send him a copy of her CA-17.

The claim of the Union that Ms. Scott did not have a copy of the CA-17, however, does not comport with the evidence submitted. For Postal Inspector Greer W. Shafer is shown to have testified that when she went to the office of Ms. Scott during the course of the interview, Ms. Scott had a copy of the CA-17 form in the medical file. Ms. Shafer testified that Ms. Scott told her that when the Grievant came in with the green form Scott had taken the original copy that Dr. Graham had filled out and copied the restrictions on the new green form and then made a copy showing a return date of March 21, 1996. Inspector Shafer further testified that she asked Ms. Scott if she changed the form or authorized the change and that Ms. Scott said no that when the form was given to the Grievant, the return to work date was March 21, 1996. Inspector Shafer also testified that she asked Ms. Scott to make a notation in the lower corner of the form and that Ms. Scott did so indicating that it was a copy of Dr. Graham's original form.

The Union contends that Dr. Graham's copy of the CA-17 on page 79 of Management Exhibit No. 2 differs in several respects from the other two CA-17's. In this regard, the Union argues that the statement made by Ms. Scott at page 78 of Management Exhibit No. 2 that "I completed the form exactly as Dr. Graham had the first one and made a copy for the chart" is not true. In this connection, the Union compares blocks 8, 9, 12 and 14 from the CA-17 at page 12 of Management Exhibit No. 1 and the CA-17 at page 79 of Management Exhibit No. 2 and states that these items are not comparable and certainly not exact. However, other than for the difference in dates of the two documents, the contents, while not identical, are nonetheless found by the Arbitrator to be substantially the same. Similarly, and notwithstanding the contention of the Union to the contrary, the Arbitrator finds that, as to the CA-17's at pages 11 and 12 of Management Exhibit No. 1, whether the zeroes opposite bending/stooping and operating machinery match is irrelevant as the numbers are the same on both documents and that all the other

numbers match up perfectly. Clearly, it was necessary that the custodian copy from a CA-17 form that was already present in the doctor's file in order to be able to match the contents of the original CA-17.

Reference is made by the Union to the testimony of Local Union President Bobby Edwards that Supervisor Blanche had been instrumental in the dismissal of five (5) black employees at St. Andrews Station and that after a meeting between Union National Business Agent, Matthew Rose and Postal Service District Managers concerned with the morale and working environment at the St. Andrews Station, Mr. Blanche was to be moved from the station. As the Arbitrator finds no probative evidence in the record connecting the foregoing testimony with the subject case, no controlling weight can be given thereto. To find otherwise would require that the Arbitrator engage in speculation and conjecture. In similar vein, no controlling force can rightfully be given to the omission in the Postal Inspector's report that Supervisor Blanche allegedly grabbed the Grievant and pushed him towards the door while the Grievant was being escorted from the building after the interview.

In light of the foregoing, the Arbitrator is constrained to conclude that the removal action taken by the Employer was for just cause. This, it seems to the Arbitrator is convincingly demonstrated by the finding that both the original CA-17 of the doctor and the copy made therefrom by record custodian Joyce Scott indicate in block 12 the date of March 21, 1996, as the date to resume work. In this respect, Ms. Scott is shown to have testified that she made her copy from the original doctor's form which shows the date of March 21, 1996, and that the copy she made was handed to the Grievant.