

C#10856

REGULAR ARBITRATION AWARD AND OPINION

In the matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

GRIEVANT: T. Ejan

POST OFFICE: Redondo Beach, CA

CASE: W7N-5C-C 25778

GTS#: 16432

BEFORE: Walter A. Fogel, Arbitrator

HEARING HELD: Redondo Beach, California, April 5, 1991; briefs
were mailed by April 22.

APPEARANCES: For the NALC: Alan J. Apfelbaum, Regional
Administrative Assistant

For the Postal Service: Wanda Sanders, Labor
Relations Assistant

AWARD: The resignation of the Grievant was not effective. The Grievant must be returned to employment (with no break in her record) at the Redondo Beach Post Office or a mutually acceptable alternative position. If she had sick leave available at the time, she can use it for time absent from work between December 11 and 26, 1989. She must be made whole for her loss of pay and benefits, reduced by interim earnings and compensation, from December 27, 1989, until her return to work.

Walter A. Fogel
Walter A. Fogel

May 14, 1991.

ISSUES

The Parties submitted different issues, as follows:

Union

Was the submission of the resignation by the Grievant appropriate per Postal Service handbooks? If not, what is the remedy?

Was the Grievant's attempted withdrawal of her resignation proper and acted upon in good faith? If it was proper, or was not acted upon in good faith, what is the remedy?

Postal Service

Was the Grievant's resignation of December 11, 1989, effective? If so, did the Grievant have any right to the grievance/arbitration procedure after December 11, 1989? If the resignation was not effective, what should the remedy be?

Unable to agree on the issues, the Parties agreed that the arbitrator should frame them. It is evident that the principle issue is whether the Grievant's resignation was effective? There are two parts to this issue: 1. Was the submission of the resignation by the Grievant consistent with Postal Service requirements; 2. Was the Grievant's attempted withdrawal of her resignation proper and acted upon in good faith? Thus, the Parties do not actually disagree over the issues--because the question of whether the resignation was effective must consider both its submission and the Grievant's attempts to withdraw it. The Parties agree that, should I find the resignation not effective, the appropriate remedy becomes an issue.

The issue of whether the Grievant had any right to the grievance-arbitration procedure after December 11, 1989, is

superfluous. If I find that her resignation was effective, she is no longer employed by the Postal Service. If I find that her resignation was not effective, she is still employed by the Service and, of course, would have access to the grievance-arbitration procedure. In other words, whether the resignation was effective must be decided prior to considering arbitrability, but once the former is decided there is no need to consider the latter.

FACTUAL BACKGROUND

The Grievant was employed by the Postal Service in 1987; at the time of this Grievance, she was a T6, substitute Carrier, carrying five different routes on her five work days. She was married with two children, approximately five and eight years old. The Grievant immigrated from the Philippines approximately ten years ago.

All Parties agree that the Grievant was under emotional stress for two or more months prior to the incident on December 11, 1989, that set off the events that led to this Grievance. The precise causes of the stress are not known with clarity, but testimony indicated that the following elements may have contributed to one degree or another: 1. The rejection of her request for a transfer to the Laguna Nigel Post Office. Apparently, the Grievant believed the transfer request was going through, and that she would begin work in Laguna Nigel December

1, 1989, so that the rejection was a surprise. The Grievant lived in Mission Viejo and drove the 50 miles to her job in Redondo Beach each work day. 2. An extramarital relationship with a married Postal Service employee that ended unhappily for the Grievant and adversely affected her own marriage; she testified that she was "on the brink of getting a divorce" in December 1989. 3. Excessive use of alcohol and stimulants associated with dieting efforts. 4. Alleged sexual harassment by some of the Grievant's fellow Carriers.

The Grievant apparently thought that she was sexually harassed at work on Saturday, December 9, 1989. (She had previously complained of sexual harassment in mid-November.) On the morning of December 11, 1989, the Grievant complained of sexual harassment by other present employees, but after her supervisors looked into the matter, was informed by them that there was no evidence of harassment. She then broke down on the workroom floor and was taken to an office where she and Supervisor of Delivery, E. Douglas, talked at length. Douglas testified that the Grievant was "very upset," but she managed to calm her after some time. (Notes made by Douglas state that the Grievant "appeared hysterical".) Douglas suggested an appointment with an EAP counselor the next day, and the Grievant was sent home. (Douglas's notes state: "Told me she would kill herself if I made EAP appt. for Tues...".)

The next day, December 12, the Grievant called in sick at 4:53 a.m. prior to her shift. At 6:59 a.m. she talked for

several minutes with Douglas about the alleged harassment.

December 13 was a day-off for the Grievant; telephone logs show that she called the Redondo Beach Post Office four times that day and the Long Beach EEO also four times. Supervisor Douglas called the Grievant on the afternoon of December 13, and informed her that she was being placed on administrative leave.

On December 14, the Grievant purchased a "sympathy" card and wrote the following on it:

Redondo Beach Post Office:

Effective Dec 11, 1989, I Theresa R. Ejan is putting in for my resignation. It's best that way. I have my family to look after.

Thanks for nothing:

Teresa R. Ejan [signed]

This undated communication was handwritten above and below the message printed on the card: "To let you know you are thought of with sympathy."

The Grievant testified that she wrote this note of resignation because she was "angry" over the lack of action on her sexual harassment complaints, and she was "confused" as to why she had been put on administrative leave. The Grievant's husband took the card to the Post Office and gave it to a Carrier who gave it to her immediate supervisor, B. Perry. Later that day, the Grievant called Perry to ask about the resignation letter; he said nothing about it and asked how she was.

The same day, the Grievant received two letters from

Postmaster Puskas. One informed her that she was being put on administrative leave, effective December 14. The other informed her that she was to report for a fitness-for-duty examination on December 19.

The Grievant testified that she called Supervisor Douglas on December 15 and said to her that she "wanted her job back", and that Douglas "kept saying" that the "papers had been cut". She also testified that employee D. Azolas called her and advised her to try to rescind her resignation. Supervisor Douglas testified that the Grievant did say she wanted her job back, but did not request a rescission of the resignation. She also testified that Azolas had talked to her about the Grievant returning to work, and she told him that the Grievant would have to meet medical requirements.

The Grievant checked herself into the South Coast Medical Center the afternoon of December 15, with symptoms of depression and emotional stress. She left the hospital, against the advice of her attending physician, on December 19, and drove with her brother to the Redondo Beach Post Office in order to see Postmaster Puskas and "straighten out" the problem, according to her testimony. She was told she could make an appointment to see him, but not until December 27. The same day she went to the Union office for help on the matter. The next day, December 20, the Grievant called Postmaster Puskas and asked for her job back. Puskas testified that he told her she "no longer worked here."

The Grievant, accompanied by a Union representative, met

with Postmaster Puskas and Supervisor Douglas on December 27. Puskas said that the Grievant's resignation had occurred, but that he would consider her reinstatement (to a location other than Redondo Beach according to him; to Redondo Beach according to Union testimony) if evidence of her mental stability could be provided. Puskas testified that he attempted to place the Grievant at another Post Office, but was unable to do so after it was discovered that the Grievant had been cited for a driving citation within the previous five years (whether the citation was for reckless driving or driving after drinking is not clear). He also testified that the form 50, for the resignation of the Grievant, had been "cut" on December 21.

Supervisor Douglas testified that the Grievant did not have attendance problems and was a "good worker". On December 26, 1989, the Grievant's physician released her for return to work without limitation. The Grievant testified that she has come to realize that her drinking was a problem, even though she never came to work under the influence, and that she has not been drinking for more than a year.

RELEVANT PROVISIONS OF THE AGREEMENT

EMPLOYEE AND LABOR RELATIONS MANUAL Section 365 Separation

365.16 Exit Interview. All employees voluntarily separated are interviewed. The exit interview gives management the opportunity to:

- a. Determine the true reasons why employees wish to leave the Postal Service.
- b. Retain the services of competent employees when a

satisfactory solution of their grievances or problems can be found.

c. Correct controllable causes of employee turnover.

365.2 Separations--Voluntary

365.21 Resignation

365.211 Definition of Resignation (RESIG). Resignation is a separation at the employees request. Employees may resign at their discretion; this includes application for optional retirement. Resignations must be accepted and are binding once submitted. However, employees may be permitted to withdraw their resignation request provided the request to withdraw is made before the effective date of the resignation. Denial of an employee's request must be based on a valid reason and such reason should be explained to the employee before the effective date of the resignation. Administrative disruption or the hiring of a replacement before a request for withdrawal is made are appropriate reasons for such denial. A desire to avoid taking adverse action is not an appropriate reason for denying an employee's request.

365.214 Notice and Acceptance. The following policies apply regarding notice and acceptance of resignations:

a. Written Resignation. Resignations should be submitted in writing. The employee specifies the reason and effective date. Whenever possible, written notice of resignation is given at least 2 weeks before the anticipated last day of work. Resignations are delivered by employees directly to their immediate supervisors for transmission to the appointing official. Any action to compel employees to remain beyond the date specified by them is without authority.

....

c. Reason for Resignation. The reason for a resignation should be clearly stated in either a written or oral resignation. If the employee fails to give a reason for resignation, the supervisor enters the reason she or he believes the employee resigned.

....

POSITIONS OF THE PARTIES

Union

The Union makes two general arguments supporting its contention that the Grievant's resignation was not effective: 1. The resignation was not submitted in accord with the ELM; 2. The Postal Service failed in its responsibility to respond to the Grievant's attempts to rescind her resignation prior to the Form 50 having been cut.

The Union argues in support of 1. that the fact that the resignation note was written on a sympathy card shows the fragility of the Grievant's psyche at the time. More importantly, while citing an effective date, December 11, the note, itself, is not dated. Nothing in the ELM deals with a resignation written or received after the effective date. "Since the date the note was written is unknown to the Service it seems reasonable that they would have found that out before sending the paperwork to the personnel office." Further, the Grievant was put on administrative leave December 14, and called in sick December 12; how could she then be considered to have resigned December 11?

The ELM, argues the Union, requires that resignations be delivered by employees directly to their immediate supervisors, and in the instant case, the Grievant's husband delivered the resignation and delivered it to another letter carrier, not the supervisor. The ELM also calls for exit interviews.

The Union cites an Award of Arbitrator Render (W7N-5R-D 1513) wherein he wrote that in order for an employee to request resignation, "his mental condition must be such that he can

rationality make this decision".

The Union believes that the Postal Service had an obligation to accept the Grievant's attempts to rescind her resignation, under the language of 365.211 of the ELM. That language assumes a resignation submitted on or before its effective date. The fact that the instant resignation was written after the effective date does not absolve the Service of its responsibilities under the cited section. Furthermore, Supervisor Douglass was aware of the Grievant's fragile mental state on December 11, and stated that the Grievant was put on administrative leave for her own good. The Service knew the Grievant was incapable of making a rational decision on an important matter at that time.

The Union contends that under Subchapter 870 of the ELM (Employee Assistance Program), the Service has an obligation to help employees in need, which it did not do in the present instance.

The Union asserts that the evidence supports the Grievant's contention that she attempted to withdraw her resignation on December 15 and thereafter. The phone logs and testimonies of the Grievant and D. Azolas support this contention. The Union finds it "odd" that the Service processed the Grievant's resignation so quickly, and that Douglas attempted to make the Grievant and Azolas believe it would not process the resignation if the former obtained medical clearance. The Union questions Douglas's credibility with respect to the Grievant's attempt to withdraw her resignation on December 15. Again, on December 19,

the Grievant attempted to withdraw her resignation, but was unable to see the Postmaster. The Union believes the Service "was doing everything in its power to avoid Theresa until the PS Form 50 was cut by personnel".

The Union contends that the Grievant had a psychiatric examination and drug screen (negative) and was cleared for work on December 27, 1989; therefore, the Arbitrator should not only rescind the resignation, but also allow her to use sick leave for the period she was incapacitated, and make her whole for lost pay and benefits since December 26, 1989.

The Union submitted several prior Awards as precedent.

Postal Service

In general, the Service asserts that the Union has not shown that the Grievant's resignation was involuntary. Furthermore, the Service asserts that the "factual" evidence submitted by the Union, principally through the Grievant, is not credible.

The Postal Service contends that the Grievant first "asked for her job back" in her meeting with the Postmaster on December 27, 1989, and that she never asked to "withdraw" her resignation. These facts indicate that she recognized that she had resigned from employment, and was, therefore, seeking reinstatement.

The Postal Service contends that the evidence does not support the Union position that the Grievant attempted to withdraw her resignation on December 15 or any other date. Supervisor Douglas testified that, while the Grievant called the

Post Office many times during the week beginning December 11, she never asked that her resignation be "rescinded", and that she, Douglas, informed the Grievant that her resignation was being processed and also discussed with the Grievant what she had to do to be reinstated. The Service asserts that claims, by the Union or Grievant, that the Grievant attempted to withdraw her resignation on December 15, were not made until after the December 27 meeting. Even in testimony, the Grievant admitted that she had not asked Douglas about her resignation, but had simply asked for her job back.

The Service argues that Union Representative Apfelbaum's January 22, 1990, report on his step 1 meeting on this Grievance stated that the Grievant withdrew her resignation on December 27, signifying that no such attempted withdrawal had occurred earlier.

The Service asserts that, contrary to the Union testimony of J. Goins, the Postmaster did not speak with, or even see, the Grievant when she came to the Post Office on December 19, 1989, and that the Grievant's own testimony supports this view. The Service argues further that the Grievant, according to her own testimony, did not request her job back until the December 27 meeting, and, then, did not ask to "withdraw" her resignation.

Postal regulations require that requests to withdraw resignations be made prior to their effective date. Postal regulations do not prohibit retroactive resignations; "Thus, it is certainly not illogical to maintain that, by making her resignation date retroactive, Mrs Ejan could not withdraw it".

(brief, p. 8) At best, the operative date for withdrawal was December 14, the date she submitted it.

The procedures for employee resignations, as set forth in the ELM, Section 365, are "best case" procedures, which the Service cannot always control. The facts that the Grievant did not directly deliver her resignation note, in advance of its effective date, and that no exit interview was conducted (the Grievant was not available for one) do not invalidate the resignation.

The Grievant did not have any entitlement right of reinstatement. Such action is at the discretion of the Service. The Grievant's case for reinstatement was not aided by her unwillingness to obtain help from the EAP.

There is no evidence to support the contention that the Grievant was mentally unstable when she submitted her resignation. By December 14, she had had three days to calm down after the December 11 incident in the Post Office. Further, there is no evidence that either alcohol or drugs were affecting her; the drug screen done on the Grievant on December 14 was negative. Also, the psychiatric examination of the Grievant on December 17 indicated that she was "rational".

In sum, the Service believes that the Grievant, while in control of her mental faculties, submitted a voluntary resignation that it was obligated to accept. Requests for withdrawal of resignations cannot be considered if submitted after their effective dates. Furthermore, the Grievant never did

request a withdrawal of her resignation, and did not even ask for her job back until December 27.

The Postal Service also contends that the Grievance is not arbitrable because the Grievant ended her employee status when she submitted her resignation.

The Service cited three non-Postal Service Awards and submitted ten Postal Service Awards in support of its positions.

DISCUSSION AND CONCLUSIONS

Factual Issues

The Parties continue to disagree about crucial factual issues--whether the Grievant asked for her job back when she talked with Supervisor Douglas on December 15, and whether she asked to "rescind" or "withdraw" the resignation she had submitted the previous day. Because of their importance, I must first decide these factual issues before deciding this Grievance.

While many statements, made over the 17 months since this Grievance arose, are in the record (movement of the Grievance to Arbitration was delayed by an unsuccessful attempt to resolve it through the Union-Management Pairs System), testimony at the Hearing definitively resolved these two issues: the Grievant on December 15 did, by telephone, ask Supervisor Douglas for her job back, but she apparently did not ask to "rescind" or "withdraw" her resignation submitted the previous day. The testimonies of the Grievant and Douglas on this point were

consistent. The former testified that she asked Douglas for her job back on the 15th, but did not say that she asked to "withdraw" or "rescind" the resignation; and Douglas testified that the Grievant told her she wanted her job back, but did not ask to "rescind" the resignation.¹

Based on these facts, I conclude that the Grievant did attempt to nullify her resignation on December 15, one day after she had submitted it. It is of no importance that she did not use the term "rescind" or "withdraw"--these words may not even be in her oral vocabulary (while she can certainly communicate in English, it is not her native language), what is important is that she communicated to Douglas her desire to have her job back, which means that she did not want the resignation to be effective. No other reasonable conclusion can be reached. To argue that the Grievant did not seek the ineffectiveness of her resignation on December 15 because she did not use the terms "rescind" or "withdraw", is sophistry, an attempt to exploit the lack of verbal sophistication of the Grievant. If the Grievant wanted her job back on December 15, which she did, it is simply

¹. Even following the Hearing, both Parties continue to be inaccurate regarding these issues. The Union asserts (brief, p. 14) that "Theresa Ejan testified credibly at the hearing, that she spoke with Erlene Douglas ~~on~~ on December 15, 1989 and requested that her resignation be withdrawn". As I've stated, the Grievant testified only that she told Douglass she wanted her job back. The Postal Service asserts (brief, p. 9) that "Ms. Ejan, herself, testified that she did not request her job back until December 27, 1989". Not only is this assertion wrong, it also conflicts with the Service's earlier (brief, p. 5) quotation of the Grievant's testimony, that she "asked [Douglas] for my job back" on December 15.

common sense to conclude that she did not want the resignation she had submitted the previous day to be effective.

Besides the Grievant, employee D. Azolas also made Management aware of her desire to nullify the resignation. There can be no doubt that nullification of the resignation was a subject of discussion, because Douglas told both the Grievant and Azolas that the paper work on the resignation had already been started. Then, clearly, both nullification of the resignation and getting the Grievant's job back (if there can be any distinction between the two) was discussed.

Was the resignation effective?

This central issue has three components: 1. Was the resignation properly submitted. 2. Did the Grievant attempt to nullify it? 3. Did Management act properly under Section 365 of the ELM in processing the resignation and effectively refusing to permit its nullification?

1. The Union contends that Grievant's resignation on December 14 was not proper because it was not submitted directly by the Grievant to her immediate supervisor, was not dated, was unusual in form, and was not followed by an exit interview. I agree that these facts made the resignation unusual, but I do not find that they made it ineffective by themselves. Because all of the specifications under Section 365 were not met does not mean that it was not a proper resignation; the Postal Service cannot insist that all of these specifications are met before it will

accept a resignation.

More serious, however, was the mental condition of the Grievant when she submitted the resignation. Supervisor Douglas's notes indicated that she was "hysterical" on December 11, and was making suicidal sounding statements. On December 12 and 13 she made six calls to the Post Office, and, according to Douglas's notes, made at least one mention of killing herself. On December 13, she was put on administrative leave and scheduled for a fitness for duty medical examination. Apparently she viewed her placement on administrative leave as a disciplinary action. In short, there is considerable evidence that the Grievant was in a highly emotional state of mind when she wrote her note of resignation on December 14. And the form of the note reinforces this conclusion about her mental instability. It was bizarre: written on a sympathy card, undated, and making the effective date December 11, three days before the note was submitted. The resignation could not have been effective December 11 because the Grievant worked part of that day and took sick leave on December 12.

All of these facts raise strong doubts that the Grievant submitted a proper resignation--that she was sufficiently rational to be able to make an important decision. And, at the time, they should have raised doubts in the minds of Management personnel, who were well aware of the condition of the Grievant. Indeed, so concerned was Management that on December 13 it scheduled a fitness for duty examination for the Grievant.

2. I have already found that the Grievant, on December 15 and thereafter, attempted to nullify her resignation.

3. The known emotional condition of the Grievant and the form of the resignation note should have raised doubts for Management about the resignation when it was submitted on December 14. After the Grievant's attempts to nullify it through her conversation with Douglas on December 15, all uncertainty should have been removed--the resignation was an irrational act which the Grievant would not have carried out in a more stable mood, and which she attempted to nullify as soon as she became more stable. The combination of the instability of the Grievant and her next-day attempts to nullify the resignation leave no doubt: this was not an effective resignation.

The Postal Service, to its credit, in Section 365.211 of the ELM recognizes that employees sometimes have second thoughts about resignations, and, consequently, provides for their withdrawal and requires a valid reason for Management denial of such a request. In the instant case Management violated the spirit and intent of Section 365.211.

Management seized upon the Grievant's resignation note to rid itself of her as quickly as possible, and it did all that it could to ignore the Grievant's attempts to nullify her resignation. The Grievant's job performance was not unsatisfactory, however, she had become something of a problem

because of her emotional outbursts and relations with other Carriers, particularly her claims of sexual harassment (the validity of those claims is not before me). Thus, when her resignation was received on December 14, Management acted immediately to effectuate it--Postmaster Puskas, the same day, submitted a Request for Personnel Action (to process the re/signation), and a request for her operator's permit was sent to the Grievant the next day. The intent of Section 365.211 to bring about soberly considered resignations, required at least a short waiting period before processing the Grievant's resignation, given her known emotional condition.

After the resignation reached Supervisor Perry on December 14, the Grievant called him and asked about the resignation, but Perry would not talk about it. The next day when the Grievant told Supervisor Douglas she wanted her job back, Douglas told her (and Azola) the "papers have already been cut", which was a disingenuous statement at best, since the process leading to the production of a Form 50 (ultimately produced on December 21) could certainly have been stopped when the Grievant spoke with Douglas on December 15. Conflicting testimony exists about whether Postmaster Puskas saw the Grievant when she left the hospital and went to the Post Office on December 19, but there can be no doubt that what she was trying to do was get her job back, and no one in Management would respond to her on that date. I believe it was reprehensible that the Postmaster would not, or could not, see the Grievant, who was obviously undergoing much

turmoil, until December 27; this delay was consistent with other efforts of Management to avoid discussing the resignation with the Grievant until it was effectuated.

Finally, Management defended its actions by citing the language under Section 365.211 that "Resignations must be accepted and are binding once submitted". But that language is for normal circumstances and does not apply to the circumstances surrounding the Grievant's resignation. The Grievant did not submit an effective resignation, therefore, it did not have to be accepted and was not binding. Furthermore, Section 365.211 also provides for withdrawal of resignations, before their effective dates, to be sure, but the fact that this language does not contemplate a bizarre resignation, made effective prior to its submission date, does not negate the intent of the language, which is to permit withdrawals that do not produce "administrative disruption" and where replacements have not been hired. Even if the Grievant had submitted an effective resignation, Management was obligated to consider her attempt to nullify it, made the next morning.

Management acted in bad faith toward the Grievant when, knowing her fragile emotional condition, for which it had scheduled a fitness-for-duty examination, it rushed through the processing of her bizarre resignation and blocked her attempts to nullify it.

Arbitral Precedent

Issues of the effectiveness of resignations invariably are decided based on the particular circumstances that surround them, but one widely accepted general rule is that a resignation is not effective when it is made by an employee who is in an emotional state that prevents rational contemplation of his/her action. Thus, Arbitrator Render (in W7N-SR-D 1513) held a resignation to be ineffective where the employee's mental condition precluded a rational decision. And, in another Award submitted by the Union, Arbitrator Purcell (NTN-IJ-C 2556) held similarly where an employee wrote out a five word resignation on a scrap of paper. Similar Awards are easily found outside of the Postal Service: in 49 LA 490, Arbitrator Seitz found "a psychological type of pressure of such significance that X___ in a sense did not voluntary resign"; in 57 LA 446, a depressed, paranoid employee "was not mentally competent" to resign; and in 51 LA 206, a resignation submitted by an employee who was extremely angry and emotional was not effective.

The three non-Postal Service Awards cited by the Postal Service are easily distinguished from the instant case. In 47 LA 454, Arbitrator Roberts held a resignation to be effective where the employee had submitted it as part of "a deliberate and premeditated course of conduct" to obtain a particular work assignment. In 40 LA 469, a resignation was held effective where the employee tried to withdraw it seven days after it was submitted, and no evidence of mental stress existed. In 38 LA 425, a resignation was held effective where the employee

submitted it when faced with the likelihood of discharge for dishonesty.

Similarly, all but one of the Awards submitted by the Postal Service, in which resignations were found to be effective, can be distinguished from the instant case by the fact that mental instability at the time of the resignation was not present, some of the grievants resigned to avoid removal or to obtain retirement funds, and attempts to nullify the resignations were not made for at least several days after they were submitted. The one exception is an Award by Arbitrator Searce (NIN-IM-C 5978) where he found effective a resignation from an employee who became angry (but not mentally incompetent) during a discussion of his work attendance with his supervisors. The employee angrily submitted his resignation and attempted to retract it later the same day. The Award held that he could not retract it because his attempt to do so was not prior to its effective date, and the Postal Service had already arranged for the grievant's replacement. Whether this Award was influenced by the facts that the grievant had poor attendance and work records, was currently on a 42 day on-the-job injury absence, and had had 22 accidents over a ten year period, I do not know. Regardless, I do not find this Award to be sound precedent for the instant case.

Remedy

The Grievant must be returned to employment with the Postal Service; any record of a break in her employment must be removed

from her personnel file. She must be returned to employment in the Redondo Beach Post Office unless a mutually acceptable alternative can be arranged.

The Union requested that the Grievant be permitted to use sick leave for the time she was unable to work between December 11 and 26, 1989. Provided she had sick leave available, I see no reason why she should not be able to use it for this period of incapacitation.

The Postal Service's mistreatment of the Grievant caused her a loss of work after December 26, 1989, the date her physician released her for work--the Service cannot dispute her ability to work on and after that date since it separated the Grievant from employment prior to the fitness-for-duty examination that it had scheduled for her on December 19. The Grievant must be made whole for loss of pay and benefits from December 27 on.