

C-20266

IN THE MATTER OF THE ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE

) CASE NO: H94N-4H-D-98088283

) GTS NO: 043138

)

AND

) GRIEVANT: T.J. HOLLINGSWORTH

)

NATIONAL ASSOCIATION OF
LETTER CARRIERS

) PLACE: ST. PETERSBURG, FL

) DATE: NOVEMBER 2 , 1999

) POST-HEARING BRIEFS

) RECEIVED NOV. 29, 1999

BEFORE:

J. REESE JOHNSTON, JR., ARBITRATOR

APPEARANCES:

FOR THE POSTAL SERVICE:

ROSALYN WARNER

Labor Relations Specialist

2203 North Lois Avenue

Suite 1042

Tampa, FL 33607-7142

FOR THE UNION:

O. B. Elliott

President, Branch 1477

National Association of Letter

Carriers

12,550 66th Street North

Largo, FL 33773-3439

AWARD

The grievance of T. J. Hollingsworth is sustained. The Postal Service is directed to repay to Mr. Hollingsworth any sums of money lost by him so as to make him whole. In addition to the straight time lost while he was serving the seven-day suspension he is also to be compensated for any overtime lost, plus interest. The amount of overtime is to be determined by the number of hours of overtime worked by the carrier working Mr. Hollingsworth's route during the days that Mr. Hollingsworth was suspended.

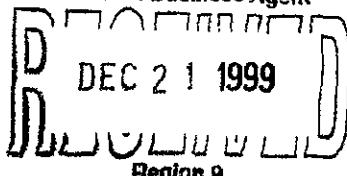
DATE OF AWARD:

Dec. 16, 1999


J. Reese Johnston, Jr., Arbitrator
800 Shadys Creek Parkway
Suite 325
Birmingham, AL 35209

Matthew Rose, NALC
National Business Agent

DEC 21 1999



BACKGROUND

At the beginning of the hearing of this case the Union raised the issue of failure of due process, to-wit: that the contract was violated in that the immediate Supervisor of the Grievant who met with him and his Union representative at the Step One meeting did not have authority to settle the grievance. As is customary with this Arbitrator, upon this contention being made by the Union, the parties were directed that the Arbitrator would first consider the question of the alleged violation of the contract regarding failure of due process and if he ruled with the Union, that that ruling would conclude the case and the Postal Service would have failed to have complied with the contract and, therefore, the Arbitrator would not have jurisdiction to hear and decide the grievance on its merits. However, if the Arbitrator found that the motion or issue raised by the Union was not well taken, then he would proceed to hear the matter on its merits and decide the case on its merits.

The immediate Supervisor of the Grievant did meet with him at the First Step of the grievance procedure and in his testimony stated that he was told that he did have authority to resolve the grievance. It is, however, the testimony of Mr. Kerr, the immediate Supervisor, that prior to the arbitration

case (November 2, 1999) he stated to the Union advocate that he, Mr. Kerr, had never known of a Station Manager initiating discipline. Mr. Kerr further testified that normally, if a complaint was called in after the employee's immediate Supervisor had clocked off, the Station Manager would approach them (Supervisor) later and urge them to initiate action. That in this case Mr. Kerr had left the Post Office and was not on duty when the complaint was called in and taken by Station Manager McConaugh. Mr. Kerr further testified that "had I resolved it differently (than Mr. McConaugh) I probably would have been carrying mail the next day." In response to a Union question "You felt that if you did anything in opposition to what he (McConaugh) had initiated, it would hurt your chances for promotion?" Mr. Kerr responded "Without a doubt". Mr. Kerr also testified that he "had no real opinion" since he knew it was supposed to go to Step Two. Finally, Mr. Kerr testified that he felt some discipline was in order, but that the discipline imposed was too severe. The discipline imposed was a seven-day suspension.

Arbitration cases generally have held that for the Union to prevail in the argument that the immediate Supervisor did not have the authority to settle the grievance at the First Step

requires the Union to sustain the burden of proof and that burden is that the Union must show that higher management so "cowed" the immediate Supervisor that the Step One hearing was a charade or a sham. In this case there has been little proof of any undue or improper influence by higher management. It is true that higher management imposed the punishment on the Grievant, Mr. Hollingsworth, but the bringing up of the fact that higher management imposed the discipline in no way violates the National Agreement between the parties. It is only when the immediate Supervisor, who is by the National Agreement required to hear the Step One meeting, does not have the authority to resolve the grievance. Under the facts before me in this case, Mr. Kerr was told emphatically and clearly that he had full authority to resolve the grievance. There is no direct testimony that anyone attempted to tie his hands or remove his ability to resolve the grievance at Step One. It is, however, Mr. Kerr's testimony that even though he was told that he had full authority, that he sincerely believed if he changed the punishment that he would be back delivering mail the next day. Mr. Kerr also alluded to the fact that if he changed the decision as to the punishment that had been imposed by his Supervisor, Mr. McConaugh, that it would also hurt his chances for promotion. He was serving as a 204-B

Supervisor at the time.

There are also arbitration cases by other arbitrators wherein the immediate supervisor had stated that he would have imposed a lesser discipline but did not do so because his supervisor or superior had determined on the discipline already imposed upon the Grievant. This admission has been found by these arbitrators to show that the supervisor did not have authority to settle the grievance at Step One. It has also been found by regular arbitrators hearing cases between the Postal Service and the National Association of Letter Carriers that the failure of the immediate supervisor to have authority to resolve the grievance at the First Step is a denial of due process; and such denial of due process will result in a sustaining of the grievance, and thereby dismissing the punishment imposed by the Postal Service.

In the case before me the testimony also discloses that Mr. Kerr, the immediate Supervisor, sought out the Union representative to explain his position in not reducing the amount of punishment that had been imposed upon the Grievant, Mr. Hollingsworth.

Under the facts in this case, it is a very, very close question as to whether or not the due process rights of Mr.

Hollingsworth were denied to him. The excellent post-hearing briefs and the citations of other Postal Service arbitration cases show the arbitrators in those cases to have come down on both sides of the fence. It is, however, my determination, based on the facts before me, the cases cited, and the excellent arguments made by the advocates of the parties, that under all the circumstances, Mr. Kerr did technically have the authority to resolve the grievance at the First Step but, due to his individual reasoning, he sincerely felt that he did not have this authority and, therefore, did not offer to resolve the grievance by imposing a lesser amount of punishment. Under these circumstances, and with some reluctance, I find that the Grievant's due process rights, as provided for under the National Agreement, specifically Article 15, Section 2, Step 1, were denied to him and, therefore, his grievance should be sustained.

Having determined that Mr. Hollingsworth's due process rights were denied to him as set out above, it is my further determination that there is no necessity to discuss the merits of the case and, therefore, no such discussion will be made.