

C# 16436

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	GRIEVANT:	Daniel L. Corban
between	(POST OFFICE:	Lakeland FL
UNITED STATES POSTAL SERVICE)	USPS CASE NO:	H94N-4H-D 96049616
and	(NALC CASE NO:	029111
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO)		

BEFORE: Michael E. McGown, *Arbitrator*

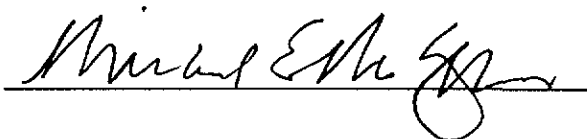
APPEARANCES:

<i>For the U.S. Postal Service:</i>	Angela N. Ferguson
<i>For the Union:</i>	D. Robert Johnson
<i>Place of Hearing:</i>	U.S. Post Office
<i>Date of Hearing:</i>	January 3, 1997

AWARD:

For the reasons given, the grievance is sustained and the Employer directed to rescind the Notice of 7-Day Suspension and make the Grievant whole.

Date of Award: January 31, 1997



Matthew Rose NALC
National Business Agent
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ISSUE

Was there just cause for the Notice of 7-Day Suspension dated February 21, 1996? If not, what is the appropriate remedy?

SUMMARY STATEMENT OF THE CASE

The parties failed to reach agreement on this matter and, pursuant to their contractual procedures, the Arbitrator was appointed to hear and decide the matter. At the Hearing, the parties stipulated that this matter was properly before the Arbitrator, that all steps of the arbitration procedure had been followed, and that the Arbitrator had the authority to render the decision. After the Hearing, the United States Postal Service (hereinafter referred to as "Employer") and the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") agreed to present oral closing arguments in support of their positions.

Daniel L. Corban (hereinafter sometimes referred to as "Grievant") is a Part-Time Flexible Letter Carrier at the Post Office in Lakeland, Florida. On February 21, 1996, Customer Service Supervisor William C. Graham issued to the Grievant a Notice of Suspension that states in relevant part as follows (Joint Exhibit No. 2):

You are hereby notified that you will be suspended for a period of seven (7) calendar days beginning on March 14, 1996. You are to return to your regular schedule effective March 21, 1996.

The reasons for this suspension are:

Unsatisfactory Performance

On February 10, 1996, at approximately 12:45 p.m., you were delivering mail on route #321. You pulled into the driveway at 940 Lake Hollingsworth Drive. When you pulled out of the driveway after delivering the mail you stated that you stopped at the end of the driveway. You then entered the road and hit a vehicle which was approaching from the left who had the right of way.

As a professional letter carrier, you are well aware of your responsibilities in performing your duties in a conscientious and effecting manner including following safe driving rules. Your actions are inconsistent with part(s) 666.1 and 814.2 of the Employee and Labor Relations Manual as well as Rules #10, #23 and #25 of the Safe Driving Rules for Postal Drivers. Your actions were a very serious violation of these rules and will not be tolerated.

* * *

On March 10, 1996, the Grievant filed a grievance protesting the Notice of Suspension, and on that date, the grievance was denied by Supervisor Graham. Pursuant to Article 15 of the National Agreement, the grievance was appealed on March 22, 1996, to Step 2 of the grievance procedure alleging a violation of, but not limited to, Articles 15 and 16 of the National Agreement and stating in relevant part as follows (Joint Exhibit No. 2):

FACTS: WHAT HAPPENED—*On February 22, 1996, Daniel Corban was issued a letter of seven day suspension for a Vehicle Accident.*

UNION CONTENTIONS: REASONS FOR GRIEVANCE—*The NALC does not contend that Mr. Corban was not in an accident. It only contends that the punishment for this accident is not correct for many reasons.*

* * *

Since this is Mr. Corban's first accident in the Postal Service and since he has no tickets in the last 24 years we can assume he has no chargeable accidents. In this case a seven day suspension can not in any way be construed as corrective and therefore must be punitive.

Discipline should also be progressive. Management has, however, in this case, jumped directly into a seven day suspension. This is inconsistent with Art. 16 because it has been held many times by Arbitrators that, for discipline to be corrective, it must be progressive.

* * *

Disparate of treatment

In the last three, if not longer, years any first at fault Vehicle Accident in the Lakeland Downtown Station has generated a six month Letter of Warning. The only exceptions were roll-away accidents which generated longer Letters of Warning.

(Our last case being for Edward Pieniak. Case is included in this file.)

Letter carriers who are similarly situated should receive the same discipline for the same misconduct.

* * *

In a statement made by Richard Beuth, Shop Steward downtown Station 003, he states the following: The accident happened on February 10, 1996. Cary Newton 204B who investigated the accident told me upon returning to the office that Dan Corban had an accident. He told me he (Corban) was backing out of 940 Lake Hollingsworth.

The following week Bill Graham and I were talking about the accident and Bill told me that if it were up to him a letter of warning would be sufficient. A few days later Bill told me he thought he had Postmaster Al Manganello talked into a letter of warning but, that Al was still waiting to hear from Tampa.

This statement leads us to charge that this discipline was ordered by higher management, rather than by Corban's immediate supervisor. In fact we feel it was ordered by someone in the Suncoast District Office to comply with Bob Davis's letter of January 22, 1996, that outlines discipline for violation of safety rules.

The National Agreement requires discipline to be proposed by lower-level supervision and concurred in by higher level authority. This requirement was omitted in this instance.

* * *

Mr. Beuth's statement also leads us to the conclusion that Management's grievance representative at step one—Bill Graham—lacked authority to settle the grievance.

* * *

In addition, it must be noted that Mr. Corban's Letter of Suspension for a vehicular accident was dated February 21, 1996 and Mr. Pieniak's Letter of Warning for a Roll-away Vehicle Accident is dated February 29, 1996.

CORRECTIVE ACTION REQUESTED: *Make Mr. Corban whole to include any overtime he missed while serving his suspension.*

A Step 2 meeting was thereafter held, and on March 27, 1996, the grievance was denied by Customer Service Manager J.E. Aust, who stated in relevant part as follows (Joint Exhibit No. 2):

Mr. Corban was involved in a serious "at-fault" vehicle accident which caused property damage and endangered both his own safety and that of the other driver. He was cited for violation of right-of-way.

Mr. Corban was delivering mail to 940 Lk Hollingsworth Drive. This delivery is listed on Form 3999 as a walk-up. Mr. Corban deviated by driving into the customer's driveway which then necessitated turning the vehicle around and placed him in harms way. This was an act of extreme carelessness.

The Union states that previous "first at-fault accidents have generated a letter of warning," and specifically refers to the case of Edward Pieniak for comparison purposes. However, during the Step 2 Meeting conducted on March 22, 1996, it was confirmed that a suspension was initially requested for Edward Pieniak's accident and this was reduced under the UMPS Process to a Letter of Warning.

Mr. Graham, who is the immediate supervisor, has also confirmed that most first time accidents were settled with a letter of warning under the UMPS Process. He has acknowledged that his initial reaction to Mr. Corban's accident was to go with a letter of warning but upon seeking clarification of the District's safety policy concerning "extreme carelessness" he decided that a 7 day suspension was justified. His statement is attached.

The grievance is denied.

On March 30, 1996, the Union submitted a Letter of Corrections and Additions to the Step 2 Decision, stating in relevant part as follows (Joint Exhibit No. 2):

1. *Mr. Aust in his Step 2 Decision Letter exaggerates the severity of Mr. Corban's vehicle accident. He depicts it as a serious "at-fault" accident even though in his statement Mr. Corban states that he was only going 3 to 5 miles per hour and had to show the other driver where the damage was on her vehicle.*

2. *In paragraph 2 of his decision, Mr. Aust states that Mr. Corban deviated by driving into the driveway at 940 Lake Hollingsworth Drive and that on Form 3999 this address is listed as a walk up. In fact, this address has been delivered this same way for the last 9 years.*

3. *In the same paragraph, Mr. Aust mentions turning the vehicle around placed Mr. Corban in harms way. In fact, turning the vehicle around in a off-street area involved no danger to Mr. Corban or the vehicle.*

4. *In paragraph 3, Mr. Aust mentioned that for comparison purposes Mr. Pieniak's roll-away accident was cited to show that "first at-fault accidents generated a letter of warning." He also mentioned that the Pieniak case was reduced from a requested suspension to a letter of warning. We feel that this only proves that a seven day suspension is very punitive and that the UMPS team agreed with us.*

5. *In paragraph 4, Mr. Aust mentions that Mr. Graham, after clarification of the District's Safety Policy concerning "Extreme Carelessness," decided a 7 day suspension was justified. The NALC disagrees with this assessment because Mr. Corban did none of the examples of "Extreme Carelessness" listed in the safety policy. His accident was minor in nature and does not justify the harsh penalty he just served.*

6. *It should also be noted that Mr. Beuth's and Mr. Corban's statements do not agree with Mr. Graham's statement of 3/22/96.*

On April 2, 1996, the grievance was appealed to Step 3 of the grievance procedure, and a Step 3 meeting was held on May 30, 1996. On July 1, 1996, in a letter to National Business Agent Matthew Rose, the grievance was denied by Labor Relations Specialist Jimmy L. Fleming, who stated in relevant part as follows (Joint Exhibit No. 2):

* * *

The grievant was issued a 7 day suspension dated February 21, 1996. Specifically, the grievant was involved in a preventable vehicle accident on February 10, 1996, while delivering mail on his route. A review of the file revealed no unsafe factors which would have caused this accident other than the grievant's failure to yield to the other driver at the intersection. There was no policy provided by the union to conclude that carriers would only be issued warning letters for having preventable vehicular accidents. Just cause existed for the discipline.

On July 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 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.

(b) In any such discussion the supervisor shall have the authority to settle the grievance. The steward or other Union representative likewise shall have the authority to settle or withdraw the grievance in whole or in part. No resolution reached as a result of such discussion shall be a precedent for any purpose.

(c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) day period. Within five (5) days after the supervisor's decision, the supervisor shall, at the request of the Union representative, initial the standard grievance form that is used at Step 2 confirming the date upon which the decision was rendered.

(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

- 1. Detailed statement of facts;*
- 2. Contentions of the grievant;*
- 3. Particular contractual provisions involved; and*
- 4. Remedy sought.*

** * **

*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.

Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohi-

bition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

Section 3. Letter of Warning

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

Section 4. Suspensions of 14 Days or Less

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she shall be suspended after ten (10) calendar days during which ten-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

** * **

Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

In associate post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

** * **

A Letter from Bob Davis, District Manager, Customer Service & Sales to Suncoast District Postmasters and Plant Managers dated January 22, 1996, (hereinafter sometimes referred to as "District Directive") states in relevant part as follows (Joint Exhibit No. 4):

*The increase in accidents, injuries, and associated costs are far above our goals and is a trend which must be reversed. Therefore, effective immediately, any violation of a safety rule or procedure **will result** in disciplinary action.*

The type of disciplinary action will be determined by the facts of the individual case and in accordance with the following general instructions:

- 1. Violations of safety rules, regardless of whether or not they result in accidents or injuries, which display extreme carelessness by the employee will normally result in a suspension regardless of the employee's past record of accidents/injuries.*
- 2. Violations of safety rules, regardless of whether or not they result in accidents or injuries, which display a lesser degree of carelessness than in item #1 above and with a past*

history of at-fault accident(s) may warrant a suspension. With no past record, a letter of warning will be considered.

Examples of extreme carelessness resulting in an accident would include, but not limited to, the following:

Vehicle

- A. *Failure to use seat belts when required*
- B. *Backing into another vehicle or fixed objects*
- C. *Running into parked or stopped vehicles or fixed objects*
- D. *Rollaway resulting from parking procedure violations*
- E. *Traffic control (lights, stop signs, etc.) violations*
- F. *Speeding*

Disciplinary action must always be corrective in nature and never punitive; therefore, good objective judgment must be applied. It is not our intent to harass or cause undue hardship to any employee but, where warranted, use disciplinary action as a tool to reduce vehicle accidents/injuries that are caused by violations of our safety rules and regulations.

To ensure all employees are aware of our policy, all supervisors must read this letter on guidelines to all employees in their units and also post the letter on bulletin boards.

Your cooperation in making the Suncoast District the safest in the nation is expected and appreciated.

*** * ***

POSITION OF THE PARTIES

The Position of the Employer

It is the position of the Employer that the Grievant violated safety rules and was involved in a preventable at-fault vehicle accident. The Employer contends that the Union failed to prove that the Grievant was treated in a disparate manner or was the victim of any due process violation. The Employer maintains, therefore, that the discipline was appropriate and that the grievance should be denied.

The Position of the Union

The Union takes the position that the Grievant's due process rights were violated, since the supervisor who issued the discipline lacked the required decision-making authority as well as the authority to resolve the grievance at Step 1 of the grievance procedure. The Union contends further that the Grievant was treated in a disparate manner and that he was subjected to punitive rather than corrective discipline. The Union maintains, therefore, that the grievance should be sustained and the Grievant made whole.

OPINION

Here, the Arbitrator is required to determine whether the rights of the Grievant were violated as a result of the manner in which the seven-day suspension was imposed and, if not, whether the discipline issued met the just cause requirements of the National Agreement.

At the outset, it is necessary to address the threshold question raised by the Union as to whether Customer Service Supervisor William C. Graham, who issued the suspension to the Grievant, had the necessary decision-making capability as well as the full authority to resolve the grievance at Step 1. In his testimony, Supervisor Graham stated that he was the Grievant's immediate supervisor and that he investigated the accident. According to his testimony, an accident such as that involving the Grievant would normally have resulted in discipline no greater than a Letter of Warning. However, in light of the recent issuance of the District Directive, Supervisor Graham determined that he should consult with Postmaster Al Manganello prior to making a decision. Supervisor Graham testified that Postmaster Manganello informed him that the District Directive indicated that it was time to take a tougher stance on accidents and that the decision was up to Supervisor Graham. After determining that the accident was of a serious nature displaying extreme carelessness, Supervisor Graham concluded that a seven-day suspension was justified and issued the discipline. According to his further testimony, Supervisor Graham stated that he was the Step 1 supervisor and that, at that time, he had full authority to resolve the grievance.

Postmaster Manganello testified that he concurred in the decision by Supervisor Graham to issue a suspension. With respect to the consultation that he had with Supervisor Graham, Postmaster Manganello stated that he did discuss with Graham the District Directive. Further, he maintained that he consulted with the Tampa District Office in order to make sure that all of the necessary paperwork had been completed.

In contrast, Union Steward Richard Beuth, who served as the Step 1 representative, testified that, prior to the issuance of the suspension, he was told by Supervisor Graham that the latter was inclined to issue a Letter of Warning and felt Postmaster Manganello would agree. Subsequently, however, Steward Beuth was informed that after a consultation with the Tampa District Office, Supervisor Graham had determined that a suspension would be issued. In similar vein, the Grievant testified that he met with Supervisor Graham after the accident but prior to the issuance of the suspension. According to the Grievant, at that time, Supervisor Graham told the Grievant that he would recommend a Letter of Warning.

In light of the foregoing testimony, it seems to the Arbitrator that a legitimate question has been raised as to whether the disciplinary action imposed upon the Grievant resulted from decisions made at the District level rather than at the supervisory level, and an examination of the District Directive is therefore warranted. The author of the document in question, Operations Manager Marion E. Parker, testified that he drafted the District Directive in order to improve the safety of the working environment. According to Manager Parker, the District Directive is not a mandate and the examples of extreme carelessness suggested therein were not intended to be all-inclusive.

At best, reconciling the language used in the District Directive with that contained in Article 16 of the National Agreement is difficult. In its closing argument, the Employer maintained that when handling safety violations, management has three choices: 1) it can do nothing; 2) it can, for minor offenses, initiate a discussion under Article 16, Section 2; or 3) it can, under the further provisions of Article 16, impose discipline in the form of a Letter of Warning or suspension. Further, according to the argument of the Employer, the District Directive is not in conflict with the National Agreement.

As read by the Arbitrator, Article 16, Section 1 of the National Agreement states, in relevant part, that "No employee may be disciplined or discharged except for just cause such as, . . . failure to observe safety rules and regulations." In the view of the Arbitrator, this language permits—but does not require—disciplinary action to be imposed for safety violations. By comparison, the District Directive states, in relevant part, that ". . . any violation

of a safety rule or procedure will result in disciplinary action.” This language clearly requires supervisors in the District to impose discipline, whether or not the supervisor believes that discipline is warranted under the facts of a particular situation. Thus, notwithstanding the testimony of Manager Parker and the argument of the Employer to the contrary, the District Directive *is* a mandate, since it creates within the District a policy under which *all* safety violations result in disciplinary action, thereby effectively removing supervisory discretion. In short, as a result of the District Directive, when an employee violates a safety rule or procedure, a supervisor cannot simply “do nothing,” but is rather required to impose discipline. It follows therefrom that a supervisor lacking such discretion at the decision-making stage also lacks the authority to resolve a Step 1 grievance filed to protest the discipline. Thus, the Arbitrator is required to conclude that the District Directive, by ordering discipline to be imposed for any safety violation, conflicts with the principles espoused in Article 16, Section 1 of the National Agreement, and thereby violates the fundamental right of an employee to a disciplinary determination unfettered by mandates from higher level authority.

As a result of the foregoing conclusion, the Arbitrator deems it unnecessary to the resolution of this matter that he further address the merits of whether the Grievant’s conduct justified the imposition of any disciplinary action or the additional procedural arguments of the Union concerning disparate treatment. It should be noted that while, as a result of this conclusion, the Grievant is to be made whole, the Arbitrator does not find that the Grievant is entitled to any overtime compensation, for no evidence was submitted on that question.