

C-21292

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	(Grievant: Harold Brunner, Jr.
between) (Post Office: West Milwaukee
UNITED STATES POSTAL SERVICE) (USPS Case No: I94N-4I-C 99136168
and) (NALC Case No: GTS 2348
NATIONAL ASSOCIATION OF) (
LETTER CARRIERS, AFLCIO)

BEFORE: Bernice L. Fields, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Timothy Lewis, Labor Relations Specialist

For the Union: Thomas Owens, Union Advocate

Place of Hearing: Milwaukee, WI

Date of Hearing: October 12, 2000

Date of Award: November 1, 2000

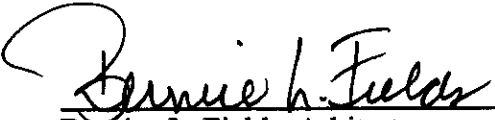
Relevant Contract Provision: JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN WORKPLACE, signed February 14, 1992.

Contract Year: 1994-1998

Type of Grievance: Contract

Award Summary:

The Grievance is sustained. See Attached Decision and Award.



 Bernice L. Fields, Arbitrator

INTRODUCTION

This matter came for hearing pursuant to the parties contractual agreement entitled "JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE, (JOINT STATEMENT) signed by the United States Postal Service and the National Association of Letter Carriers, among other signatories on February 14, 1992.¹ A hearing occurred on October 12, 2000 in a conference room of the West Milwaukee, Wisconsin Post Office located at 350 West St. Paul Street. Mr. Timothy Lewis, Labor Relations Specialist, represented the United States Postal Service. Mr. Thomas Owens, represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties.

The parties stipulated that the matter had been properly submitted to arbitration and that there were no issues of substantive or procedural arbitrability to be resolved. The arbitrator officially closed the hearing on October 12, 2000.

STATEMENT OF THE ISSUE

1. Whether Customer Service Supervisor Bradley Konek bullied, intimidated, threatened, or was abusive to Letter Carrier Harold Brunner, Jr., on December 2, 1998 at a Postal Service installation in violation of the "JOINT STATEMENT ON VIOLENCE AND

1. Other signatories include the National Association of Postal Supervisors, Federation of Postal Police Officers, National Association of Postal Mail Handlers, National Association of Postmasters of the United States, National League of Postmasters of the United States, National Rural Letter Carriers' Association, and the District of Columbia Nurses Association.

BEHAVIOR IN THE WORKPLACE?

2. If a violation is found, what is the remedy?

STATEMENT OF THE FACTS

The Grievant, Letter Carrier Harold Brunner, Jr.(Grievant), was delivering mail in the late afternoon in early December, 1998, on an unfamiliar route when it became so dark he could not see well enough to finish the route. He decided around 4:30 p.m., after tripping a few times and being unable to find mailboxes, that it was unsafe to continue to try to deliver the route, so he called the Post Office to request permission to stop delivering mail, but he only got a busy signal. A Postal customer was waiting for him when he returned to his vehicle. The customer wanted mail he believed the Grievant had, but since the customer did not have identification and was unknown to him, the Grievant would not give the mail to the customer. The customer became irate and Grievant quickly got in his vehicle and left the scene. The customer tailgated Grievant's vehicle back to the Post Office.

The customer complained to Customer Service Supervisor Bradley Konek (Konek). Konek also learned that Grievant had not finished the route. He went to Grievant's case, angry, waving his arms aggressively, and yelled at Grievant. Other workers nearby testified that Konek yelled that Grievant was "unprofessional" for returning mail and not calling in. When Grievant tried to tell Konek of his attempt to call, Konek yelled that he was a liar. Konek also accused Grievant of almost running down the customer who requested mail. Grievant called the customer a liar. Still yelling, Konek called the Grievant a liar several more times when the Grievant tried to explain his interaction with the customer. Witnesses testified that Konek was "out of control."

Konek admitted that other Postal employees had made complaints about his behavior in the recent past. He admitted that he had used profanity when directing employees, had lost his

temper before on the workroom floor, had been required to apologize to employees for his behavior, and that he had received remedial supervisory training as a result on another employee complaint. Other witnesses, including Konek's immediate supervisor, testified that there were a series of complaints about Konek's treatment of other letter carriers, including one case settled with a monetary award to the employee.

The Union filed this grievance against Konek for violations of the JOINT AGREEMENT and under the collective bargaining agreement. The Employer denied the grievance at all levels on the ground that the behavior of Konek did not rise to the level of a violation of the JOINT AGREEMENT. This matter was appealed to arbitration by the Union.

POSITION OF THE UNION

Relying solely on its rights under the JOINT AGREEMENT, the Union seeks the removal of Konek as a supervisor of Letter Carriers. It alleges that in this incident and other incidents within the last few years Konek has demonstrated a pattern and practice of abusive behavior toward Letter Carriers in violation of the mutual respect and workplace dignity mandated by the JOINT AGREEMENT.

POSITION OF THE POSTAL SERVICE

Postal Management admits that Konek called the Grievant a liar, but alleges that there was no intent on Konek's part to bully, harass, or intimidate Grievant. Konek's Manager and the Postal Service argued that such exchanges occur daily on the workroom floor in the Milwaukee Post Office, and do not rise to level of violations of the JOINT AGREEMENT because there were no direct threats of violence. Further, the Postal Service says that the incident could not have been as bad as the Union alleges because the Union steward in whose presence the incident occurred took no immediate action, did not call the police, the Postal Inspectors, or file an immediate grievance. The Postal Advocate argued that the grievance was

an attempt by the Union "to rid itself of managers it perceives as a stumbling block to conducting business as the Union sees fit..."

Konek testified that he was not in the least upset when he went to the workroom floor after interviewing and giving the disputed mail to the customer. He says he went to investigate the customer's complaint that Grievant had almost hit the customer with the Postal vehicle. He says that when Grievant called the customer a liar, he, Konek, said in a normal tone of voice, "if the customer is proved correct, then you will be the liar." He denied yelling or flailing his arms, or being out of control. He alleges Grievant holds a grudge against him.

In addition the Postal Service says that arbitrators have no authority under the collective bargaining Agreement to discipline supervisors since such action is specifically excluded in Article 1.

RELEVANT LAW

The grievance relies solely on the "JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE, signed by the parties February 14, 1992 which reads :

"We all grieve for the Royal Oak² victims, and we sympathize with their families, as we have grieved and sympathized all too often before in similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies, or research projects.

The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.

This is a time for candid appraisal of our flaws and not a time for scapegoating, fingerpointing, or procrastination. It is a time for reaffirming the basic right of all

2. On November 8, 1991, a discharged Letter Carrier armed with a loaded semiautomatic rifle, entered the Main Post Office in Royal Oak, Michigan from an unsecured rear loading dock. Seeking out supervisors who had been responsible for his discipline, the discharged Letter Carrier fired more than 100 rounds, hitting eight people before taking his own life. Four of his victims, including the principal witness at his arbitration hearing, died.

employees to a safe and humane working environment. *It is also the time to take action to show that we mean what we say.*

We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.

We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. *"Making the numbers" is not an excuse for the abuse of anyone.* Those whose unacceptable behavior continues will be removed from their positions.

We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of our 7000,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated.

Our intention is make the workroom floor a safe, more harmonious, as well as a more productive workplace. We pledge our efforts to these objectives."

SIGNATORIES

DISCUSSION AND FINDINGS

a. Arbitrators Have the Authority under the Snow Decision to Discipline Supervisors.

The JOINT STATEMENT is a separate, but collateral contractual obligation between the parties. It is not an appendix to, nor subsumed under the parties' collective bargaining agreement. The JOINT AGREEMENT amends the Postal Service's exclusive right to discipline supervisory workers and delegates that right to neutral arbitrators only when supervisory workers violate the provisions of the JOINT AGREEMENT. In all other instances, supervisory workers are exempt from discipline by arbitrators under the collective bargaining agreement. The Postal Service relinquished their exclusive right to discipline supervisory workers in this narrow exception so that "justice could be seen to be done." Prior to the Snow decision, only

non-supervisory workers faced public discipline for violent behavior. If supervisory workers were disciplined, and Union workers were skeptical that they were, discipline was private and workers never knew what, if any, measures Management meted out to heavy-handed supervisors. That policy created resentment and suspicion among Union workers. The JOINT STATEMENT is the parties' attempt to remedy the smoldering resentment of workers who saw only a one-way process. Now, under the JOINT AGREEMENT, workers who feel that they have been inhumanely treated have the right to use the grievance procedure to bring bullying or abusive supervisors to a neutral forum for a resolution. The Snow decision says basically, that if the Postal Service can use the JOINT AGREEMENT to discipline violent workers, then the contract principle of mutuality of remedies provides that workers have the same right.

Specifically, the National Arbitrator, Professor Carlton Snow, found in Arbitration Q90-4F-C 94024994/94024038 that:

“The grievance procedure of the National Agreement [Article 15] may be used to enforce the parties' bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties.”

Other Regional arbitrators have also found and imposed discipline on supervisors:

San Antonio, Texas, Arbitrator Bajork “restricted a supervisor from any position which included the core activity of dealing or working with carrier employees.” G94N-4G 96019934;

North Hollywood, CA, Arbitrator McCaffree found that the Postal Service had violated the Joint Statement and issued a cease and desist order to the supervisor threatening to fire workers. F90-4F-C95 065124;

Boston, MA, Arbitrator Wooters found the Postal Service in violation of the Joint Agreement and ordered the supervisor to apologize to workers for “abusive and disrespectful conduct.” B90N-4B-C 96012210;

Memphis, TN, Arbitrator Bajork demoted a Manager to supervisor and prohibited his promotion for a period of five years, and warned supervisors that they would be subject to forfeiting bonuses, promotions and were subject to removal for future violations. H94N-4H-C 95041405;

Yucaipa, CA, Arbitrator Rehmus required a supervisor to do a stand-up apology to workers for his remarks to a worker. F94N-4F-V 97033030;

Riverside, CA, Arbitrator Hales ordered the Postal Service to take corrective action against an abusive supervisor. F94N-4FC97-017883;

Seattle, WA, Arbitrator McCaffree found that the Postal Service acted in a disrespectful manner to a worker and ordered the Postmaster to apologize. E90N-4E-C94 054971;

New Brunswick, NJ, Arbitrator Jacobs found that the Postal Service failed to maintain an atmosphere of mutual respect and issued a cease and desist order, required the supervisor to apologize and ordered the supervisor retrained and ordered her decision inserted in his personnel file. A90N-4A-C 95008050; and

Milwaukee, WI , Arbitrator Walt found a supervisor's behavior violated the Joint Agreement and the Employer was ordered to distribute a written statement of the Employer's intent to scrupulously adhere to the Joint Agreement. I90N-4I-C 95043033

This issue was clearly decided in Milwaukee by Arbitrator Walt in 1997. Therefore, contrary to the opinion of the Milwaukee Office, arbitrators do have the power to discipline supervisory workers who violate the JOINT AGREEMENT.

b. What Actions Constitute a Violation of the Joint Agreement?

Konek's supervisor, Manager Jeffery Hanson, testified that Konek's behavior was not a violation of the JOINT AGREEMENT because the police, or other emergency response units were not called by the Grievant. He testified that the kind of exchange between supervisor and employee reviewed in this arbitration was a common, everyday occurrence on the workroom floor in this the largest Postal facility in Milwaukee. His statement was very disturbing because it shows that the Postal Service believes that unless the level of violence reaches the place where armed police officers are necessary to disengage the parties, the dispute is trivial and that no violence has occurred. The Milwaukee Post Office has a complete misunderstanding of what constitutes violence in the workplace. An atmosphere where a supervisor shouting abusive, demeaning and humiliating comments to a worker is a common, everyday occurrence is exactly the atmosphere the JOINT AGREEMENT was issued to eliminate. It appears that in the

Milwaukee Post Office custom is stronger than law because despite the JOINT AGREEMENT and the Postmaster's 1997 renewed pledge to adhere scrupulously to the JOINT AGREEMENT's provisions, neither Konek or his Manager made even colorable compliance with the JOINT AGREEMENT'S mandate to have zero tolerance for harassment, intimidation, and or bullying behavior.

Violence in the workplace begins long before fists fly, or lethal weapons extinguish lives. Where resentment and aggression routinely displace cooperation and communication, violence has occurred. Such violence surfaces as threats, intimidation, harassment, and sub-lethal assault. Assault is the apprehension of imminent physical contact, not the contact itself. The physical contact is battery. The JOINT AGREEMENT is intended to reach and to correct emotional violence as well as actual physical attacks. It is this untreated emotional violence that has led to the infamous series of multiple shootings by Postal Service employees that has taken the lives of 35 persons in the last 10 years.

It may be helpful to have a clearer definition of what constitutes the kind of non-physical violence for which a supervisory employee may be disciplined. Because the relationship between supervisor and employee is inherently unequal, an employee confronted by a supervisor with behavior that a reasonable person would find offensive such as yelling, name-calling, profane, sarcastic, belittling, or other inappropriate language is a victim of workplace intimidation and bullying because the employee cannot react as though the assault came from an equal. Such behaviors constitute threats to an employee even if no direct threatening language is used. The threat is implied in the nature of the relationship, a supervisor can do things to the employee from writing a negative evaluation to termination, therefore the supervisor will be held to a higher standard of review in supervisor-employee confrontations. The offense is aggravated if it occurs in front of co-workers or third persons such as Postal customers. Angry shouting,

abusive, profane or other inappropriate language demeans and humiliates an employee, and has no place on the workroom floor. Such behavior violates the JOINT AGREEMENT and will subject a supervisor to discipline even for a single incident. When such behavior is the supervisor's everyday management style on the workroom floor, there is a presumption that a hostile work environment exists, and more stringent remedies may be taken to correct the situation.

The Employer will be held to a standard of strict liability for the acts of its supervisory personnel because the Employer chooses and trains supervisors to direct the work of other employees, knows or should know the state of affairs on the workroom floor, and has the power to counsel, discipline or remove supervisors who bully and intimidate employees before or immediately after such occurrences are reported. The Postal Service has an affirmative duty to attempt to resolve matters like this case immediately and not wait for years while the relationships on the workroom floor slide into irreconcilability.

However, there should be no witch-hunting in complaints about supervisors. The focus must be kept strictly on behavior, rather than suspicions, psychiatric diagnoses, or off-putting personal characteristics. The important question must remain, "Has there been intimidating, demeaning, or humiliating behavior toward the employee?"

c. The Supervisor in this Case Committed Acts of Violence Against the Grievant That Merit Discipline.

The supervisor in this case was not credible when he denied approaching the Grievant in an angry and abusive manner. The evidence supports a finding that Konek abused his power as Grievant's supervisor to demean and humiliate him before co-workers. Nothing in his testimony or the circumstances indicate that there was any reason to believe that the Grievant deliberately or negligently tried to injure a Postal customer with his vehicle. Nor was Grievant ever disciplined for the incident. The supervisor's unsubstantiated judgment that the Grievant lied

about the incident does not justify the treatment the Grievant received. Nor does the Grievant's justifiable inability to deliver all the mail merit the kind of treatment he received. *"Making the numbers" is not an excuse for the abuse of anyone.* The supervisor created an unnecessary and unacceptable level of stress in the workplace, not only for Grievant, but also for the other employees who witnessed the incident. Although the incident occurred in 1998, neither the supervisor, nor his manager, has made any attempt to ameliorate the damage done to the working relationship. There has been no apology from the supervisor, nor has the manager attempted to mediate the differences between the two, nor made any attempt to reconstruct the relationship. The resentment and hostility between the supervisor and the Grievant was still palpable at the hearing. Such deep smoldering resentment festers and grows in such an atmosphere. The supervisor's behavior has poisoned the well of cooperation between himself and employees he is suppose to motivate. It is highly unlikely that any employee in the unit would be willing to extend himself toward excellence for Mr. Konek.

A "fair day's work for a fair day's pay" imposes obligations on both parties in the relationship. A "fair day" at work does not include the kind of behavior exhibited by Mr. Konek. Therefore, I find that Supervisor Konek violated the JOINT AGREEMENT by threatening, bullying, intimidating, demeaning and humiliating the Grievant on December 2, 1998.

D. The Unit Manager Also Failed to Maintain an Atmosphere of Dignity and Mutual Respect Among the Employees He Supervised.

Mr. Konek is not solely responsible for this incident. His direct supervisor, the Manager of the unit, Mr. Jeffery Hanson, also bears part of the responsibility by condoning this and prior incidents of this behavior by Mr. Konek. Mr. Hanson is charged with monitoring the behavior of supervisors under his control. I find that he failed to promote and maintain an atmosphere of dignity and mutual respect in this unit. Mr. Hanson's failure to apply dispute resolution techniques to repair the damage done by Mr. Konek confirms in the minds of the Grievant and

workers who witnessed the incident that Mr. Konek's behavior is the accepted and standard operating procedure for the Postal Service. Mr. Hanson's behavior violates the JOINT AGREEMENT, and also subjects Mr. Hanson to discipline.

Authoritarian power centered management is passé, and can no longer be justified in the industrial setting. Supervisors and managers who fail to change with the times contribute to workplace unrest and do violence to the workplace. There is no substitute for civility in supervision and a mutual regard for the dignity of persons in interpersonal relationships. Compassion is fully consistent with firm decision making.

Bullies cannot exist unless the local Employer tacitly permits or encourages bullying behavior. If promotions and rewards are based on the positive contributions of individuals to operations efficiency, so also must accountability extend to the behavior of certain employees within the Postal Service which evidence shows violates the Employer's commitment to act in accordance with the JOINT STATEMENT and its related policies and regulations. Based on the evidence of this case, I hold that the superiors of a supervisor identified in a grievance may likewise be subject to the JOINT STATEMENT'S twin remedies absent any exculpatory evidence of their violation. Managers have the primary responsibility to lead this effort.

In 1997, in this same Post Office Arbitrator Walt heard a similar case under the JOINT STATEMENT involving an out of control abusive supervisor. He ordered the Postmaster to prepare and distribute a written statement assuring both the Union, managers and supervisors that the Milwaukee Post Office would scrupulously adhere to the obligations set forth in the JOINT STATEMENT. Although that statement was distributed, it seems not to have had the desired effect since I can detect no discernible change in the attitude of the supervisor and manager in this case than in the case heard by Arbitrator Walt. Future grievances which demonstrate that the Milwaukee Post Office still in not in compliance with the provisions of the

JOINT STATEMENT should be reviewed with more stringent scrutiny.

DECISION AND AWARD

After a study of the testimony and other evidence produced at the hearing and the arguments of the parties in oral and written closing statements on the evidence and on the basis of the above discussion, findings of fact, rationale, analyses and conclusions, I decide and award as follows:

1. The Grievance is sustained. The behavior of the Employer did violate the "Joint Statement on Violence and Behavior in the Workplace" through the actions of Supervisor Bradley Konek, and the inaction of Manager Jeffrey Hanson. The supervisor bullied, intimidated, threatened, humiliated and demeaned the Grievant on December 2, 1998.

2. Manager Jeffery Hanson condoned by his silence the unacceptable behavior of Supervisor Konek. His silence told employees in his Unit that Konek's behavior was acceptable behavior in the Milwaukee Post Office.

3. The Employer is Hereby Ordered To:

a. Suspend Supervisor Bradley Konek for a period of ninety (90) days from any position which includes the core activity of supervising Letter Carriers;

b. Obtain a psychological fitness for duty report of Bradley Konek to determine whether his demonstrated tendency for explosive, angry, profane and abusive outbursts are compatible with the task of directing human beings in a work environment;

c. Provide Anger Management training for Bradley Konek;

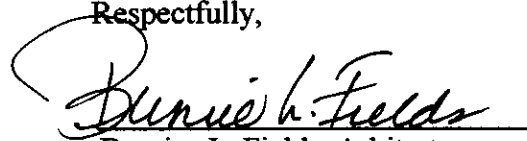
d. Provide training for all supervisors and managers in the Milwaukee Post Office within 180 days after issuance of this decision regarding the effect on workers and production of prolonged and unacceptable levels of stress in the workplace, and provide training in dispute mediation techniques;

e. Require Manager Jeffery Hanson within ten days of the receipt of this Award to do a "stand-up" apologizing to employees in his Unit for condoning by his silence the unacceptable behavior of Bradley Konek; and

f. Post within 10 days after receipt of this decision a copy of this Arbitration Award prominently on a main bulletin board of every Post Office in the Milwaukee District for a period of thirty days.

Dated: 11/1/2000

Respectfully,


Bernice L. Fields, Arbitrator