

ARBITRATION DECISION

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UNITED STATES POSTAL SERVICE
South Suburban, IL

and

Re: C1C-4A-D 31551
Felicia Harris

AMERICAN POSTAL WORKERS UNION
AFL-CIO

FOR THE UNION: Jerome L. Martin, National Business Agent
FOR THE POSTAL SERVICE: Randolph Hamlin, Labor Relations Rep.
PANEL ARBITRATOR: William F. Dolson, Louisville, Kentucky

By the terms of the Agreement between the American Postal Workers Union AFL-CIO (hereinafter referred to as the "Union") and the United States Postal Service (hereinafter referred to as the "Postal Service"), there is a grievance procedure including arbitration. Accordingly, William F. Dolson, a member of the regular regional arbitration panel, was assigned to this case. A hearing was held on October 1, 1984 in Bridgeview, Illinois. The parties were given an equal opportunity to examine and cross-examine witnesses and for oral argument. Both parties were given the opportunity to file post-hearing briefs. The Union did so.

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OPINION

BACKGROUND

On December 22, 1983, the Grievant, Felicia Harris, traveled to the home of Straughter Guthrie, the father of her child, to obtain child support. Guthrie had been separated from his wife Theresa, but they had reconciled, and she was at his residence when the Grievant arrived on December 22. An altercation took place. There is a dispute as to who was the initial attacker, the Grievant or the Guthrie's, but it is undisputed that the Grievant was the one arrested by the Calumet City police.

An undated newspaper article was published shortly after the incident which gave the following details:

Chicago woman held

CALUMET CITY -- A Chicago woman was arrested last week after two persons were wounded with a knife during an argument over child support.

Felicia M. Harris, 22, was charged with two counts of misdemeanor battery and one count of unlawful use of a weapon.

Police said Harris got into the argument Thursday with Staughter Guthrie, 26, and his wife, Theresa, 28, at their apartment at 546 Clyde Ave.

Theresa Guthrie was slashed under her left eye, police said Guthrie told police he was cut on his right wrist when he disarmed Harris.

The Guthries were treated at St. Margaret Hospital. Police said 15 stitches were required to close Theresa Guthrie's wound.

(USPS Ex. 4)

The Grievant testified that she told her supervisor on December 23, 1983 about her arrest for battery and was told

not to worry about it. Alice Arnold, who is the Grievant's aunt and also happens to be a Union Steward, testified that she informed Randolph Hamlin, the Labor Relations Representative, of the incident in December 1983. At that time, he did not indicate the Grievant would be disciplined. Arnold also discussed the Grievant's arrest with Curtis Collins, Acting Manager of Distribution, in January 1984.

The Guthries swore out complaints against the Grievant for battery on December 22, 1983. On March 7, 1984, the Grievant was found guilty of two charges of battery and was sentenced to one year of probation subject to serving six (6) consecutive weekends in the Cook County Department of Correction commencing March 24, 1984. This was changed to six consecutive Wednesdays and Thursdays which were her days off at the Post Office.

The record shows that one day after the incident Guthrie notified the Postal Service Personnel Department that the Grievant "committed a crime." It should be noted that Guthrie was employed at the same Postal Service facility as the Grievant. Guthrie was told to call back when the Grievant was convicted. On March 7, 1984, Guthrie contacted the Personnel Department and informed them of the Grievant's conviction. He was told nothing could be done. He was also told he could contact the MCS Manager Ebster. Guthrie contacted Ebster and discussed the matter with him on March 19, 1984. Guthrie requested that Ebster arrange the Grievant's and his schedules so that they would not be working together in the facility.

In the meantime, the following undated question and answer appeared in the Chicago Sun Times, "Action Time":

Q. A woman I work with at the post office attacked my wife and me in our home. My wife received 15 stitches in the face; I received four on my wrist. Although she pleaded guilty and was sentenced to spend weekends in jail, she's still working alongside me. It's distracting, and the government's position appears to be that as long as the local newspaper didn't report she was a postal employee, no further action would be taken. In other words, what the public doesn't know won't hurt. However, postal regulations stipulate that any worker convicted of a crime will be indefinitely suspended. Why is she still working? WOUNDED, Calumet City

A. The cat's now out of the bag and you'll soon get your answer. The postal facility manager now has his inspection service investigating the attacker's extracurricular life. In the meantime, you and the woman will work on separate shifts.

The newspaper article infers that Guthrie was unsuccessful in his request to Ebster for schedule changes, but it is possible that the schedules were changed before the article was published, which was in April.

The fact remains that the schedules of the Grievant and Guthrie were changed so that they would not be working together. However, this resulted in the Grievant receiving days off that did not coincide with the days she had to serve her jail sentence. The Grievant informed Union Steward Arnold of this problem. Arnold, in turn, informed Curtis Collins of the Grievant's conviction and scheduling problem, and Collins referred Arnold to Supervisor W. A. Chathas.

According to Arnold, the Grievant told Chathas of her conviction and the scheduling problem. Chathas agreed to change her off days so that they would coincide with her jail sentence.

Collins testified that in March he was aware that the Grievant had been sentenced to six consecutive weekends, but he thought she was still going to Court at that time. He claims he did not know of her conviction of the battery until June when he received a file from the Postal Inspectors.

Chathas testified that he changed the Grievant's scheduled off days in March or April, but he did not know the reason for that change. He stated that Collins knew the reason for the change. Chathas insisted that he did not know of the Grievant's conviction for battery until June when he received a file from the Postal Inspectors.

On June 13, 1984, Management received five documents from the Postal Inspectors: (1) an undated newspaper article describing the incident; (2) an undated Action Time article; (3) a misdemeanor complaint sworn out by Straughter Guthrie dated December 22, 1983; (4) a misdemeanor complaint sworn out by Theresa Guthrie dated December 22, 1983; and (4) the Grievant's Order of Sentence of Conditional Discharge.

On June 19, 1984, the Grievant was issued a Notice of Removal signed by Supervisor Chathas and reviewed and signed by Curtis Collins. The Notice stated:

You are hereby notified that you will be removed from the Postal Service on July 20, 1984. The reason for this action are:

CHARGE: Engaging in unfavorable conduct which was prejudicial to the Postal Service

Specifically, on or about December 22, 1983, you were arrested at 546 Clyde Avenue, Calumet City, IL, 60409, by local authorities for committing the act of Battery with a four (4) inch paring knife upon a Straughter J. Guthrie (Postal employee) and his spouse Theresa Guthrie (Non postal employee).

Your actions were described in committing the offense is that you made physical contact with the aforementioned parties in an insulting nature without legal justification and inflicted cuts to their body.

Subsequently, you were convicted and found guilty of the battery offense and given a conditional discharge of one year and confinement by the Cook County Department of Corrections on six (6) consecutive weekends.

The period of incarceration began on March 24, 1984 and continued through April 26, 1984.

Several newspaper articles were published in regard to the incident.

Your conduct was in violation of Part 661.53 and Part 666.2 of the Employee and Labor Relations Manual. (Joint Ex. 3)

A grievance was filed by Felicia Harris on July 9, 1984. It was denied in the various grievance steps. The grievance is now before me for a decision on the merits.

POSITION OF THE POSTAL SERVICE

The Grievant was discharged because she was in violation of Sections 661.53 and 666.2 of the Employee and Labor Relations Manual. An investigation by Postal Inspectors, revealed she engaged in off duty conduct that was prejudicial to the Postal Service.

A review of the evidence submitted by the Grievant and her representative does not reveal any discrimination or disparity in treatment of the Grievant.

POSITION OF THE UNION

Although Management was aware of the Grievant's arrest in December and of her conviction in March, it did not act to discipline her until it issued its Notice of Removal in June. The Notice stated that she was being removed from the Postal Service on July 20, 1984 for "Engaging in unfavorable conduct which was prejudicial to the Postal Service." Moreover, after issuing the Notice of Removal, the Postal Service allowed her to work an additional month. This conduct by the Postal Service falls under the principle that "justice delayed is justice denied."

The Grievant also was not treated the same as other employees who have been arrested and convicted of more serious crimes than the Grievant's. Those employees were not removed. Fair and equitable treatment is an important cornerstone of disciplinary procedure. Management failed to follow this principle when it removed the Grievant.

EMPLOYEE & LABOR RELATIONS MANUAL

661.63 Unacceptable Conduct

No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. Conviction of a violation of any criminal statute may be grounds for disciplinary action by the Postal Service, in addition to any other penalty by or pursuant to statute.

666.2 Behavior and Personal Habits

Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, courteous and of good character and reputation. Employees are expected to maintain satisfactory personal habits so as not to be obnoxious or offensive to other persons or to create unpleasant working conditions.

DISCUSSION

The parties stipulated that the issue in this case is as follows: Did the Postal Service have just cause for the Grievant's discharge? The Postal Service in discharging the Grievant relied on Sections 661.53 and 666.2 in the Employee & Labor Relations Manual. A basic principle contained in Article 16 of National Agreement is that discipline should be corrective in nature, rather than punitive and that no employee may be disciplined or discharged except for just cause.

The record shows the Management at the South Suburban Facility was aware in December of the Grievant's arrest and in March of her conviction for battery. It was also aware that Strughter Guthrie, one of the victims of the battery, also worked at that facility. The Grievant's shift was changed by Management so that she would not be working in the facility at the same time as Guthrie. She was assigned to the 11 p.m. shift and given different days off.

This new schedule created problems for the Grievant. In particular, the new off days did not correspond with the days she was to serve her jail sentence, Wednesdays and Thursdays. She eventually got her off days changed back to Wednesday and Thursday, after explaining her problem to Management.

These scheduling changes all occurred in April after the Action Time article appeared in the Chicago Sun Times. Apparently, at that time Management decided separating the Grievant and Guthrie was sufficient action to take under the circumstances; yet, Management issued a Letter of Removal in June, after obtaining a Postal Inspector's report.

What was in the report that the Postal Service did not know back in April? The answer is "nothing." All the information provided by the Postal Inspectors was old information. It consisted of the following: (1) The undated newspaper article published in December which described the events of the battery. Although the Grievant and the Guthries were named, the article did not indicate that any of the named persons worked for the Postal Service. (2) The undated Action Time article which was published in April described the parties involved as working at a postal facility, but it did not give their names nor the name of the facility. (3) The battery complaints against the Grievant by the Guthries. (4) The Grievant's conviction of battery.

Management knew in March that the Grievant had been convicted of battery. If it had any justification to discipline her, it would have been at that time. In April, Management knew of the Action Time involvement. The editor's answer indicates this. I do not find that the Action Time article was so prejudicial to the Postal Service that it would have justified her removal. Apparently, Management agreed, because its only action at that time was to separate the Grievant's and Guthrie's shifts.

This response to the circumstances by Management indicates they decided the Grievant could continue as an acceptable employee and that there was no basis for anticipating any adverse impact from her continued employment. What the Postal Service has done in this case is similar to what it did in the grievance of Douglas, Case No. AC-E-4890D. In that case, Arbitrator Wayne Howard commented:

"Thus, the Service is in the untenable position of asking the arbitrator to consider the offense far more seriously than the Service did at the outset, and the untenable position of asking the arbitrator to demonstrate a concern for the safety of fellow employees which the Service failed to demonstrate through the early history of the incident. Clearly, the Service is in a better position than the arbitrator to judge the conduct of the grievant and its impact on the workplace and the workforce, yet, in effect, it is asking the arbitrator to overturn its original judgment."

Based on the above, I find that by the time the Postal Service discharged the Grievant, the charge it relied upon

had become too stale to justify her removal. There is, however, another reason why discharge was inappropriate under the circumstances.

The record shows that other employees at the South Suburban Facility have been arrested and convicted of much more serious crimes than battery and those employees were not removed. Union witnesses described numerous instances where this occurred. The only defense of the Postal Service witnesses was that they could not remember the instances and that the Union did not have documentary proof of the instances cited.

Elkouri and Elkouri in How Arbitration Works, 643,644 (1970), state the general principle:

"It is generally accepted that enforcement of rules and assessment of discipline must be exercised in a consistent manner; all employees who engage in the same type of misconduct must be treated essentially the same unless a reasonable basis exists for variations in the assessment of punishment (such as different degrees of fault or mitigating or aggravating circumstances affecting some but not all of the employees)."

In the case of the Grievant, the Postal Service violated this principle.

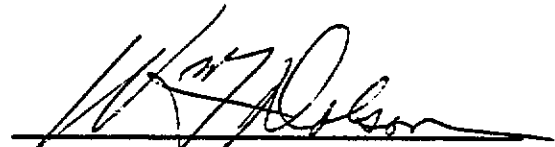
It is not necessary, as claimed by the Postal Service, that the Union present documentary evidence that other employees were treated differently. The testimony of James Malone was sufficient to establish disparate treatment. He is President of the Union at the South Suburban Facility, and

he testified from firsthand knowledge obtained through his activity in grievance and E.E.O. matters. He named four persons who were not removed even though they had been arrested and convicted of more serious crimes than the Grievant. This testimony was not rebutted by the Postal Service.

AWARD

The removal of the Grievant was not for just cause. Accordingly, the grievance is sustained. The Grievant shall be reinstated to her former position and made whole in all respects.

November 8, 1984
Louisville, KY



William F. Dolson
Panel Arbitrator