ARBITRATION AWARD

In the Matter of the Arbitration

Between

UNITED STATES POSTAL SERVICE
Southfield, Michigan

And

NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 1

ALBERT A. EPSTEIN
ARBITRATOR

GRIEVANCE NO. C8N-4B-D 34474
FREDERICK DANIELS TERMINATION

THE PROCEEDINGS

The above parties, unable to resolve a grievance filed by employee Frederick Daniels with reference to his termination by the Postal Service on August 17, 1981, submitted the matter to the undersigned for arbitration under the terms of their labor agreement.

A hearing on the matter was held at the Southfield, Michigan, Post Office on February 11, 1982. Both parties were represented and fully heard, testimony and evidence were received and both parties made oral closing arguments.
FOR THE UNION:

Mr. Ronald Brown                        Regional Administrator Assistant
Mr. Peter Romanelli                      President, Branch 1
Mr. Albert Wendlund                      Vice President, Branch 1
Mr. Frederick Daniels                    Grievant

FOR THE POSTAL SERVICE:

Mr. Howard E. Byrne                      Director of Employee and Labor Relations

THE ISSUE

Did the United States Postal Service have just cause for the termination of Frederick Daniels on August 17, 1981, under the terms of the labor agreement between the parties?

PERTINENT LABOR AGREEMENT PROVISIONS

"ARTICLE XVI

DISCIPLINE PROCEDURE

"In the administration of this Article, a basic principle shall be that discipline should be cor-
rective 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."

PERTINENT EMPLOYEE & LABOR RELATIONS MANUAL PROVISIONS

"666 USPS Standards of Conduct

"666.5 Obedience to Orders

"666.51 Protests

Employees will obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual will nevertheless carry out the order and immediately file a protest in writing to the official in charge of the installation, or appeal through official channels."

DISCUSSION AND OPINION

The grievant was a Carrier whose seniority dated from December 30, 1978. On July 10, 1981, the grievant's supervisor, Rosalie Shinski, approached the grievant at approximately 4:00 p.m. to issue him a Letter of Warning for attendance irregular-
arities. She asked the grievant to read the Letter, to sign it indicating that he received it, and to give an attached management copy back to her. The grievant failed to read the Letter but instead put both copies into his briefcase. She asked the grievant for the management copy and then directed him to give the copy back to her. The grievant refused and Shinski again gave a direct order to the grievant to return the copy. The grievant left the building, refusing to give management's copy of the Letter of Warning to Shinski. On July 16, 1981, the grievant was issued a Notice of Removal for insubordination, termination to be effective on August 17, 1981. The Postal Service notes that the Notice of Removal followed a long history of disciplinary action, which included Letters of Warning and suspension. Taken into consideration by the Postal Service in support of its action was the grievant's previous record of suspensions, which included a seven-day suspension on May 27, 1980, for unsatisfactory job performance and a similarly based ten-day suspension, dated September 23, 1980.

The Postal Service takes the position that the action of insubordination, which triggered the termination, standing
alone might not necessarily warrant the grievant's termination. However, based on the grievant's past record of work rule infractions, it contends that the grievant has reached the point of incorrigibility and cannot in the foreseeable future be a satisfactory employee. It notes that the Union does not controvert the charge of insubordination but offers as a defense, the grievant's history of mental disorder and treatment for same. In reply, the Postal Service contends that this defense is self defeating in this case because, first, the responsibility of any employee is to perform the duties for which he or she was hired. Assuming arguendo, that the grievant is suffering mental disorder and cannot perform the duties and responsibilities of his position, he would not be able to return to work. Secondly, the Postal Service notes that on numerous occasions the testimony reveals that management attempted to help the grievant with his deficiencies outside of the disciplinary procedure but was repeatedly thwarted by the grievant. Thirdly, if in fact, the grievant was suffering any form of mental disorder on July 10, 1981, this condition was of a long standing nature and the grievant had not availed himself of a self help program to curtail his condition.
It is the contention of the Postal Service that all employees are required to follow minimum and generally accepted rules of conduct. It suggests that the grievant cannot be excused from following these rules where a work force is required to be courteous, trustworthy and to represent the highest standards of behavior before the general public.

The Postal Service submits that there was no medical evidence presented at the hearing which conclusively linked the grievant's act of insubordination to any medical problem. It notes that the act of insubordination complained of herein resulted from a relatively minor matter - the issuance of a Letter of Warning. The Postal Service points out that the grievant's action did not result from provocation by his supervisor and it points out that the grievant's conduct in this case was the last straw, the final misconduct after a series of work rule violations and previous disciplines, and that this misconduct could not be ignored or handled in any other manner than by the discipline of discharge. It therefore requests that the grievance be denied.

The Union takes the position that the grievant did not receive the required thirty days' notice because the Letter, which was mailed on July 16, 1981, was not received by the grievant
until July 25, 1981, when it was brought to him in the hospital where he was under treatment for a mental disorder. It maintains, therefore, that the Notice of Removal was defective and that the discharge would therefore be improper on these technical grounds.

With reference to the merits of the case, the Union submits that the grievant was suffering from a known mental disorder and had been previously hospitalized, and that there was no discussion with the grievant on this subject on the occasion of this alleged charge of insubordination. It submits that Supervisor Shinski did not consider the medical disorder from which the grievant suffered, which caused irrational conduct at times. It is the Union’s position that the Postal Service has not proven a clear and flagrant act of insubordination but merely a minor irregular conduct on the part of the grievant.

The Union also contends that the record of the grievant citing previous offenses covered different types of offenses and therefore the warning at issue was not in the progressive procedural step inasmuch as it related to a different type of offense. The Union also contends that the grievant had been absent a month; that his condition should have been obvious to Postal officials
but no one took this into consideration when considering the grievant's termination. It notes that the grievant was not in a normal condition on or about July 10, and specifically refers to the fact that he was in the hospital for approximately thirty days during July and August, 1980. It refers to the fact that he has been receiving lithium medication and now goes to a psychiatric hospital.

It is the contention of the Union that at least the Postal Service should have referred the grievant for a fitness for duty examination, in accordance with the regulations set forth in the Employee & Labor Relations Manual and adopted by the parties as a part of their contract.

The Union contends that the grievant's termination was not justified under the above mentioned circumstances and that he should be reinstated to his job and be compensated for lost wages or for time spent on sick leave during the period following his termination.

A review of the testimony, evidence and arguments of the parties indicates that the grievant's conduct on July 10, 1981, which the Postal Service contends was the final straw that broke the camel's back, considering the grievant's previous record,
is not of such a grievous nature that justifies the discharge of the grievant. The whole incident involves a refusal by the grievant to sign or return a copy of a Letter of Warning which his supervisor was seeking to serve upon him for a previous attendance irregularity. The Postal Service admits that this conduct standing alone would not justify discharge but ties it into the previous suspensions and the grievant's previous conduct in general and makes the determination that the total picture justifies termination. It therefore requests that the grievance be denied.

I disagree with the judgment of the Postal Service in this case. The Postal Service management had to be aware of the grievant's mental disorder for which he had been undergoing treatment and should have given some consideration to the mental state of the grievant at the time of the incident involved herein. I do not condone the grievant's action in refusing to sign or return the Letter of Warning presented to him but this action was not the type of insubordination which justifies the supreme penalty of discharge. The grievant was guilty of a minor form of insubordination and should be penalized but termination is not the appropriate discipline.
Considering the grievant's mental problems and the fact that he was hospitalized at the time he received the Notice of Discharge, I have examined the position of the Union claiming that the grievant did not receive the appropriate notice. The Postal Service issued the notice in ample time and the fact that it was not actually delivered personally to the grievant until sometime around July 25 by the members of his family does not nullify the legality of the notice. Therefore, I must dismiss the Union's claim that the discharge was procedurally defective.

With reference to the grievant's mental condition at the time of his discharge, the Postal Service appears to take the position that the grievant may not have been in a mental condition to properly perform his duties. This, however, is another matter separate and apart from the justification of the discharge action and there is a forum for disposing of this problem.

In consideration of the fact that the grievant was guilty of minor insubordination, I am reducing the penalty of discharge to a suspension without pay from the date of the discharge to the date upon which the grievant is reinstated under the terms of the Award, which will follow in this matter.
I direct that the Postal Service offer the grievant a fitness for duty examination, in accordance with the applicant regulations, and if the grievant is found fit for duty, he should be promptly reinstated to his former position. An Award will issue accordingly.

**AWARD**

I. The United States Postal Service did not have just cause for the termination of Frederick Daniels on August 17, 1981.

II. The termination is reduced to a disciplinary suspension from the date of the discharge to the date of the grievant's reinstatement under the terms of this Award.

III. The grievant will not be awarded any back pay.

IV. The Postal Service is directed to submit the grievant for a fitness and duty exam-
ination and if he is found fit for duty, the grievant shall be promptly reinstated to his former position.

CHICAGO, ILLINOIS
JUNE 2, 1982