

IN THE MATTER OF ARBITRATION BETWEEN)

OPINION AND AWARD

C#01458

The National Association of Letter
Carriers, AFL-CIO

-and-

U.S. Postal Service
Evanston, Illinois

Grievance No. C8N-4A-D 9831
(Grievance of G. Albrecht)

The hearing in this matter was held in Evanston, Illinois on April 25, 1980, before Bernard Dobranski, selected as Arbitrator in accordance with the provisions of the Collective Bargaining Agreement in effect between the parties.

Appearances: David M. Bybee
For the Union

Virgil Lattimor
For the Employer

Full opportunity to present evidence and argument was afforded the parties.

ISSUE

The agreed upon issue is whether the grievant, Gary Albrecht, was discharged for just cause under the Agreement.

BACKGROUND FACTS

The grievant, Gary Albrecht, a full-time letter carrier in the Evanston, Illinois Post Office, with approximately five years of service, received a notice of removal on August 17, 1979. The reasons for the removal were:

Charge No. 1 - Tardiness

From June 25, 1979 to July 24, 1979, you were tardy for your scheduled tour of duty on (13) occasions out of a total of (22) work days according to the following:

<u>DATE:</u>	<u>TIME DUE:</u>	<u>TIME REPORTED:</u>
05/25/79	5:45	6:29
05/26/79	6:00	6:03
05/29/79	6:00	6:56
05/30/79	6:00	6:03
07/05/79	6:00	6:06
07/09/79	5:45	6:03
07/13/79	6:00	7:06
07/14/79	6:00	6:11
07/16/79	5:45	6:02
07/17/79	6:00	6:16
07/21/79	6:00	7:18
07/23/79	5:45	6:03
07/24/79 13	6:00	6:06

Charge No. 2 - Failure to Withdraw Departure Case

On July 24, 1979, while assigned to Route #50, you failed to withdraw your departure case. This is a daily requirement.

Charge No. 3 - Failure to Deliver Departure Case Mail; Delay of The Mails

On August 16, 1979, while assigned to Route #49, you took out mail from the departure case for delivery, but you returned it to the post office and put it in Route 49's case for delivery on August 17. Failure to deliver the mail from the departure case caused a delay of the mails.

The Grievant's prior disciplinary record is as follows:

On June 26, 1978, he was suspended for extension of street time.

On March 30, 1978, he was suspended for putting deliverable mail in Central Mark-Up and late reporting of inability to report for duty.

On May 2, 1977, he was suspended for misdelivery of PS Form 3849 and delay of the mails.

On January 17, 1976, he was suspended for absence without leave.

On December 11, 1975, he received a letter of warning for delay of the mails.

On August 27, 1975, he received a letter of warning for tardiness.

On January 20, 1975, he received a letter of warning for tardiness.

The Postal Service presented the following testimony:

Sharp, the grievant's immediate supervisor who also kept the time and leave records, confirmed that the grievant was tardy 13 times between June 25 and July 24, 1979. Although Sharp at first could not recall when the grievant first told him that his tardiness was due to his wife going through an emotional and traumatic time, after a leading question he suggested it was during the Step 1 grievance meeting. Sharp could not remember if the grievant had given him any reason from June 25 through July 24 for his tardiness. In fact, had no recollection of talking to the grievant about his tardiness during this period. Sharp also could not recall if the grievant had complained about a malfunction in the time clock. He did state that if the clock was not functioning, a carrier would normally tell him and it would be shut down until repaired. He did ask the grievant during the Step 1 meeting if he used a time-keeping mechanism to wake up and the grievant replied that "his dogs" woke him up.

Sharp testified that during the twelve months preceding the June-July tardiness he had numerous conversations about tardiness with the grievant. He would improve for a short time but later would resume the tardiness. Sharp could not recall the number of times he had such conversations or when they occurred.

Sharp also testified as to circumstances surrounding charge

No. 3, the failure to deliver departure case mail on August 16, 1979. On August 16, the grievant pulled mail from the departure case. The next morning Sharp discovered two letters in the grievant's case which had been put in the departure case the previous day and should have been delivered. Sharp never received any Form 1571 (a report of mail undelivered) for these letters from the grievant. He could not recall if he ever showed the two letters to the grievant but was sure they were discussed with him, though Sharp could not recall if such discussion occurred before the notice of charges. He was certain that the grievant was not shown the letters before the notice of charges was issued.

Williams, the Postmaster, testified that the Union only disputed a few instances of the grievant's tardiness. The excuse offered for the tardiness was that the grievant's wife became upset and disturbed because her mother, who had been killed in a 1975 automobile accident, could not be present at her May 1979 wedding, which was approximately one month before the tardiness began. The Postmaster did not find this to be an acceptable excuse for tardiness occurring in 1979.

He could not recall if any other employee had a tardiness record similar to the grievant's. At no time from March 30, 1978 until the Step 2 meeting in September 1979 did the Postmaster talk to the grievant about his tardiness.

Williams also testified that the grievant's explanation for charge No.3 was that he had miscased the mail and put the two letters in the mail for another street. Although the two streets were only one block apart, he did not retrace his steps and deliver the two

letters. According to the Postmaster, an employee normally would have retraced his steps one block and delivered the letters.

Principal, the Superintendant of Collections and Deliveries, testified as to the circumstances surrounding charge No.2, the grievant's failure to withdraw departure case mail on July 24, 1979. It is Principal's responsibility to mark the mail in the departure case before the carrier leaves the office. After the carrier leaves, he then goes back to check if the initialed mail has been removed. On July 24, 1979 the grievant did not pull his mail in the departure case.¹ Principal denied giving the grievant instructions that he did not have to pull the case.

The schedule for the final pulling time for route 50, which was the route assigned to the grievant that day, was at 8:30. Principal could not recall the specific address on the piece of mail nor could he recall whether he showed it to the grievant or questioned him about it.

He also testified that he spoke to the grievant on prior occasions about this sort of conduct but could not recall the dates of these conversations. No previous disciplinary action was taken for it. The grievant's route was a speed run scheduled to leave at 8:45 A.M. and he could not have left before 8:45 A.M. Clerks, however, would still be distributing mail after the grievant left the Post Office. According to Principal, the mail was pulled sometime between 8 and 8:27 A.M. during the morning in question.

The Union presented its case primarily through the testimony of Albrecht. He explained that in May, shortly before the tardiness

¹ Apparently there was one piece left behind on July 24.

began, he was married. After the wedding, his wife became very emotionally upset and distraught because her mother, who had died in 1975, was not present at the wedding. Although this might not seem to be very important to an outsider, it was extremely important to his wife. Her emotional condition affected his ability to get to work on time in the following manner: she would get upset and begin crying in the evening and continue into the early morning hours. During this time he would try "to reason with her and straighten it out." The result was many sleepless nights and a consequent difficulty in getting to work on time. Eventually she came to grips with the problem and worked it out. When this happened the tardiness ceased. Although he had a tardiness problem in 1975, it did not reoccur until June 1979 when his wife became upset.

He also testified that during this period he had a discussion with Sharp about the tardiness. It occurred after the third or fourth instance of tardiness when Sharp expressed concern about it. The grievant explained that he had a problem at home which he was working out. Sharp never said anything again to him about his tardiness until after the discharge.

The grievant further testified that he never had any discussion with Sharp between March 1978 and June 25 1979 about tardiness problems. Albrecht also indicated that the comment about the dogs waking him up was made in jest to the union steward after the Step 1 meeting.

As to charge No. 2, the grievant testified that he told Sharp that Principali told him that the departure case had to be pulled at 8:20 A.M. Sharp said he would check with Principali. Later Sharp

informed Albrecht that Principali denied telling him this. To the best of Albrecht's recollection, he withdrew all the mail in departure case on July 24, 1979. He can recall nothing at all about the incident. He was told nothing of the details of the charge until shortly before the Step 2 meeting in September.

Nor was he shown copies of the letters that formed the basis of Charge No. 3 until the day before the Step 2 meeting. Although he had no recollections of the 2 letters, he tried to give an explanation based on an assumption as to how the letters could have passed through his hands. It was this assumption which formed the basis of his grievance statement.

It is upon these facts that the case now comes before the Arbitrator.

POSITIONS OF THE PARTIES

Employer's Position

The Postal Service has the right to discipline an employee for tardiness and for a failure to follow instructions as to the manner in which he is to perform his work. In view of the grievant's prior disciplinary record, corrective steps have obviously failed and, therefore, just cause for discharge exists.

Union's Position

The Union asserts that the imposition of the discharge penalty was improper. The grievant had a legitimate reason for his tardiness which he explained to Sharp. As to the remaining charges, the Employer hid the relevant facts and the grievant was forced to defend himself by making certain assumptions as to what might have happened. For these reasons, the grievance should be sustained.

DISCUSSION AND OPINION

My conclusion, based on an analysis of the individual charges against the grievant, is that the discharge was not for just cause and, therefore, the grievance should be sustained.

The first and most serious charge is the one of tardiness. There is no question that the grievant was tardy on 13 separate occasions during the period of June 25 - July 24, 1979. However, although such tardiness might normally merit some form of discipline, in this case management at the time was aware of the reasons for it and condoned, acquiesced or tolerated it. Having done so, it cannot almost one month after the tardiness ceased rely upon it to support the grievant's discharge.

In making this finding, I rely primarily on the testimony of the grievant, which I found persuasive. Sharp's testimony, on the other hand, was not. Although he was the grievant's immediate supervisor and the one who initiated the notice of removal, he could not recall any conversations with the grievant about his tardiness during the period it was occurring. It is doubtful that a supervisor would permit an employee to report tardy that many occasions without mentioning it to the employee. I believe discussions did occur and that the substance of them comports with the testimony of the grievant. The result was that management was aware of the reason for the tardiness and, at that time, chose to tolerate it. This places the grievant's tardiness in a context in which discipline was not justified.

As to the remaining charges, I do not find them adequate to sustain the discharge.

It is clear that the discharge was based on the combination of the three charges and not on each as a separate and independent ground for the discharge. The removal of the tardiness charge as a proper element destroys the combination upon which the discharge was based and renders it improper. Although the remaining charges, if true, may indicate wrongful action by the grievant, they are not sufficient, standing alone, to support discharge, even in light of the grievant's past disciplinary record.

In addition, the procedures followed by management to inform and enlighten the grievant about the remaining charges hardly comport with proper procedural due process.

As regards Charge No. 2, Albrecht's uncontradicted testimony was that no details concerning the charge were provided to him until long after the incident occurred. Principali's testimony was that he could not recall if anything was said to the grievant before the charge was made. In fact, he could not recall the address of the letter involved. Moreover, the management waited about a month (from July 24 until August 17) to make the charge.

The Postal Service urges that there is no statute of limitations in the agreement as to when a charge must be brought. That argument misses the point, however, which is that the grievant must be given a meaningful opportunity to respond to and defend against the charges. In this case, given the nature of the offense - the failure to withdraw a piece of mail from the departure case - and the volume of mail normally handled by the grievant, the grievant did not have such an opportunity when he was not given any indication of the offense until almost one month later.

As regards the charge No. 3, the same general comments apply. The grievant never saw the two pieces that he allegedly failed to deliver until almost one month after the notice of charges was issued. He was forced to prepare his grievance, both as to this charge and the previous one, based on assumptions as to what might have happened. Such a procedure does not provide an adequate opportunity to respond in a meaningful or effective fashion.

AWARD

For all the reasons set forth above, the grievance of Gary Albrecht is sustained. He was not discharged by the Postal Service for just cause, as required by the Agreement.

The Postal Service is directed to offer Albrecht reinstatement to his former employment, without loss of seniority or other benefits, and with compensation for lost earnings as an employee of the Postal Service, from the date of discharge to the day of reinstatement, less his earnings from elsewhere, if any.

South Bend, Indiana
September 2, 1980


Bernard Dobranski
Arbitrator