C#01789

IN THE MATTER OF REGULAR ARBITRATION)
BETWEEN)
NATIONAL ASSOCIATION OF LETTER CARRIERS)
AND)
UNITED STATES POSTAL SERVICE)
(Case No. W8N-5K-D 13477))
(C. Lorian Removal))
Glendale, AZ

ANALYSIS AND AWARD:
Carlton J. Snow,
Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from July 21, 1978 to July 20, 1981. A hearing occurred on August 19, 1981 in a conference room of the Main Post Office, located in Glendale, Arizona. Mr. Stan Chronister, President of Branch 576, represented the National Association of Letter Carriers. Mr. J. Carson Moore, Employee and Labor Relations Executive, represented the United States Postal Service.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. The arbitrator placed all witnesses under oath. As an extension of his personal notes, the arbitrator tape-recorded the proceeding. The advocates fully and fairly represented their respective parties.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no issues of substantive or procedural arbitrability to resolve. The parties requested an opportunity to submit posthearing briefs and agreed to do so by September 21, 1981. On

receipt of the last brief on September 28, the arbitrator officially closed the hearing.

II. STATEMENT OF THE ISSUE

The parties provided the arbitrator with a submission agreement which framed the issues as follows:

1. Was the discharge of Chaundra Lorian from employment with the U. S. Postal Service for just cause under the provisions of the National Agreement;

2. If the determination of No. 1 above is in the negative, what remedy is appropriate?

III. STATEMENT OF FACTS

This grievance challenges the decision of the Employer to terminate the grievant from her position of employment with the postal service. Management based its decision to remove the grievant, in large part, on a charge that she falsified official government documents. She does not contest that fact.

The facts of the case are not in serious dispute. The grievant conceded the fact that (1) she had a vehicular accident on July 14, 1980; (2) she moved the vehicle before reporting the accident; and, (3) she deliberately submitted false information on form PS 91 and CA-1. It

is the remedy about which there is a dispute. The Union contends that the Employer failed to consider mitigating circumstances in selecting an appropriate penalty in the case.

The grievant has been terminated from her employment with the postal service on three occasions. The first time occurred in Oakland, California after the grievant allegedly falsified time records. Apparently, the grievant did not file a grievance in that matter. At the time of her Oakland removal, she had been employed by the postal service for approximately fifteen months. The second termination for the grievant occurred some time before the end of her probationary period at the Glendale, Arizona facility. After the intervention of the Equal Employment Opportunity Commission, management reinstated the grievant with no backpay. The third removal action occurred as a result of the grievant's vehicular accident and false statements on July 14, 1980. That termination is the subject of scrutiny in this particular arbitration proceeding.

The grievant received employment at the Glendale facility on November 17, 1979. A supervisor for the Employer testified without rebuttal that he hired the grievant, despite her previous record at the Oakland facility, because (1) the grievant told him she had experienced a personality clash at the Oakland facility and because (2) there was no contradictory evidence in her personnel file. She alleged that someone had "rung her in on the time clock" in Oakland and that she had been "set up."

Desiring to give her a second chance, management at the Glendale, Arizona facility hired her. Her probationary period at Glendale was to be concluded on February 16, 1980. During that time, the grievant received a favorable "thirty day" evaluation. The Employer submitted an unfavorable sixty day evaluation on the grievant which did not contain her signature. She testified that, never before the arbitration hearing, had she seen that particular evaluation form. She did concede that she had received one Discussion as a result of a confrontation with a postal patron on the telephone. Her comments about that confrontation closely paralleled narrative comments contained in the dispute evaluation form. (See, Postal Exhibit No. 10).

The precipitating incident in this particular action occurred on July 14, 1980. The grievant rear-ended a flatbed truck. The accident caused approximately $100 worth of damage to her postal vehicle. She apparently injured her arm in the accident.

During her interview with a postal inspector, the grievant openly admitted that she had made false statements concerning the accident. On September 8, 1980, management notified the grievant that her conduct on July 14 would be the basis for terminating her from employment with the Postal Service. When the parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. The Employer: The Employer maintains that the grievant violated a federal statute by falsifying postal documents.

According to the Employer, her deliberately false statements violated a duty of honesty she owed the Employer. It is the belief of the Employer that such falsified documents constitute a special problem for this particular business because the Employer and the public rely on postal employes for a high level of trust.

B. The Union: The Union conceded that the grievant submitted false information to the Employer. It is the position of the Union that mitigating circumstances caused the grievant to react as she did on July 14. The Union maintains that the grievant had been working under "extreme pressure" since she had been removed during her probationary period and reinstated as a result of the EEO complaint. There allegedly was inordinate pressure exerted on her by management in an effort to find a basis for removing her again. According to the Union, fright, pain from injuries, and shock caused the grievant to falsify documents on July 14. Additionally, the Union argued the Employer had notice that the grievant was driving a defective vehicle. Finally, the Union maintained that the grievant had received disparate treatment in this matter.

VI. ANALYSIS

A. Falsification With Intent to Deceive:

1. Falsification: Arbitrators customarily have ruled that a finding of willful dishonesty, in the absence of

mitigating circumstances, justifies termination of an employe. Falsification of company records is an act of dishonesty and usually draws substantial discipline. A grievant who is accused of "dishonesty" often effectively is labeled a criminal even though criminal charges might not be brought against him or her. Consequently, a high quantum of proof is generally sought whenever an offense involves an element of moral turpitude or criminal intent. In this particular case, those threshold issues are resolved by the grievant's admission of guilt. She did not dispute the fact that she falsified documents.

In an accident report (Form 91) dated July 14, 1980, the grievant stated that:

> Brakes on vehicle non-operational. To avoid vehicle accident I aimed and hit a post. (See, Employer's Exhibit No. 2).

On July 17, 1980, on Form CA-1, the grievant stated:

> Driving 40 MPH North on 43rd Ave. The light at Greenway turned yellow, I applied the brakes and there were no brakes. I dropped the gear to first, and swerved off the road and hit a post. (See, Employer's Exhibit No. 1).

In response to discrepancies implicit in the two statements, the Glendale Superintendent of Postal Operations requested an investigation. That is, the grievant alleged her vehicle had brake failure and that the jeep hit a post, but an examination of the vehicle and the alleged accident site produced no post and no replication of the brake failure.

Postal Inspector Beatrice Moore interviewed the grievant on July 31, 1980 in the presence of her shop steward. It was at that time the grievant admitted that she had lied about the way the accident had occurred. She admitted having rear-ended a hitching device on the back bumper of a large flatbed truck. (See, Employer's Exhibit No. 3). The grievant stated to Inspector Moore:

> I left the scene of the accident because I was not going to report the accident. When the jeep overheated, I decided to report the accident. I completed Forms CA-1 and Form 91 stating I hit a post. This was not true as I hit the back of a large flatbed truck. I thought it would be less serious to hit a post. (See, Employer's Exhibit No. 3).

2. Intent to Deceive: The grievant failed to be persuasive of the proposition that she lied and falsified documents because she was in shock from the accident and in pain from her injuries. First, the grievant told the lie for the second time on July 17, 1980. That was three days after the accident. There was no evidence supporting a conclusion that she was in shock at that time. Second, the grievant had apparently injured her arm in the accident. Yet, the pain did not prevent her from finishing her route and then driving herself to a hospital on a motorcycle.

It is reasonable to conclude that the grievant falsified documents in an effort to deceive her Employer and with the hope that the deception would generate less trouble for her. This conclusion is supported by the grievant's own words. When asked during cross-examination why

she did not tell the truth, the grievant testified as follows:

> It's a combination of things. Possibly watching too much television. I was afraid of saying that I hit a vehicle and that the vehicle wasn't there. So I figured my best way was to say that I was in a one person, one vehicle accident, because I thought I'd get in a hell of alot more trouble saying I hit a truck and that they left the scene of an accident than if I said I went off the road. (Emphasis added).

When asked how she concluded that lying was to her advantage, the grievant stated:

> It was a minor accident, and I had no idea there would be that much of an investigation into it. My only thought was just to get it done with. (Emphasis added).

B. Faulty Brakes: The grievant failed to submit proof supporting a conclusion that her accident had been caused by faulty brakes. According to the grievant, before beginning her route, she told the VOMA the brakes seemed defective. She also testified that, after pumping the brakes, they seemed fine.

It is significant to note that the grievant made no reference to her conversation with the VOMA concerning allegedly faulty brakes when she made her statement to the postal inspector. The VOMA, Mr. Ralph Bodewin, responded to the grievant's initial call concerning her accident and drove her vehicle to an authorized service station in Glendale, and he never noticed any problem with the brakes. Additionally, the Employer

had an authorized automotive inspector check the brakes of the vehicle on July 14, and this inspection revealed no defects. (See, Employer's Exhibit No. 7).

Ms. Diane Trulious, testified that she had found the brakes on the vehicle to be defective. Her testimony, however, has received little weight because Ms. Trulious did not drive the vehicle until four to six weeks after the grievant's accident. It is more reasonable to rely on evidence obtained on the day of the accident.

C. No Proof of Mitigating Circumstances:

1. Teachings From Other Cases: To set aside or reduce discipline for an infraction as serious as falsification of documents, substantial mitigating circumstances need to be firmly established. As one arbitrator stated:

> Purposeful and deliberate evasion usually results in upholding a discharge. (See, Commonwealth of Pennsylvania, 66 LA 96 (1976)).

The grievant in this case is guilty of purposeful and deliberate evasion. The arbitrator in the Commonwealth of Pennsylvania case modified a discharge to a suspension only after concluding that the grievant, who had been charged for falsification of his employment application, did not knowingly conceal required information. (See, 66 LA 96 (1976)). The arbitrator found that, since (1) the grievant lacked an intention to conceal information and (2) had provided good service for seven years

of employment, the grievant's wrongdoing, although not justifiable, deserved some lesser penalty than discharge.

In H. R. Terryberry Company, an arbitrator again modified discipline from a discharge to suspension. (See, 65 LA 1091 (1975)). In that case, the grievant had been accused of taking credit for work not actually done. But the arbitrator based his decision in that case on a finding that the employer failed to prove the grievant's guilt beyond a reasonable doubt. In the Lorian case, the grievant's guilt has been admitted.

In Napcor Plastics, Inc., an arbitrator once again modified a discharge of an employe who allegedly falsified the inventory count of her output. (See, 52 LA 212). The arbitrator did so because the employer failed to prove beyond a reasonable doubt that the grievant had falsified records in an attempt to defraud the company. The grievant in this particular case has conceded that she willfully falsified records in a deliberate effort to mislead her Employer.

McKesson Chemical Company is another case involving falsification of documents. (See, 52 LA 13 (1969)). In that case, an employer had discharged five delivery drivers after an investigation established that they had turned in false daily work reports. In that case, there was evidence of lax supervision, including a foreman's directions to "kill time." In light of such instructions from a foreman and the excellent past records of four drivers, the arbitrator concluded that termination was too severe.

2. Application of the Teachings:

a. Disparate Treatment: In the Lorian removal, proof of wrongdoing was not in serious dispute. There was documentation of the grievant's falsification as well as her confession.

Similarly, there was an intent to deceive the Employer in order to make matters easier for herself, another point admitted by the grievant. Likewise, the parties stipulated at the hearing that the grievant had received special safety training and had been informed concerning proper procedures to follow in the event of a traffic accident. There is no evidence indicating that the supervisor encouraged the grievant to falsify documents, as occurred in the McKesson case. In other words, there was (1) proof of wrongdoing, (2) proof that it was the grievant's intention to deceive, and (3) no evidence of laxity on complicity by management.

The grievant, however, contended that she was the object of management's disparate treatment. According to her, another employe, Ms. Lea Spence, also had been guilty of falsifying records, failing to report an accident, and driving on the sidewalk. Initially, Ms. Spence had been terminated but later had been reinstated by management without pay after a thirty day suspension. The grievant contended that she deserved at least similar treatment.

The facts in the two cases simply are not comparable. The grievant in this case had approximately eight months of service at the Glendale facility. Ms. Spence had approximately twelve years of service. The Spence incident involved approximately $5 of damage to private property and none to her postal vehicle. The grievant in this case incurred damage of approximately $100 to her postal vehicle while driving at a speed of between 25 and 40 MPH.

Most importantly, the Spence incident involved no falsification of government documents. Although Ms. Spence had been charged with

falsification, an investigation revealed that the charge had been a mistake. Ms. Spence testified without rebuttal that the party whose post she had hit used one date for the accident while Ms. Spence used another. An investigation revealed that Ms. Spence's date proved to be the correct one. Her only other accident had occurred some six months earlier and also had involved no falsification of documents. The grievant, on the other hand, had been involved in an earlier incident of falsifying documents with the same employer.

b. The Issue of Medication: The grievant contended that she had been receiving medication for some time prior to the incident on July 14 and that management knew of her medical condition. She had submitted a form from a doctor's office dated the day before the arbitration hearing indicating that the grievant had been issued a prescription for Triavil on June 17, 1980. (See, Union's Exhibit No. 5). Two management officials testified that they knew nothing about the grievant's medication prior to the arbitration hearing. A witness for the Union, as well as the grievant herself, testified that management had been informed of her condition.

The Employer has a policy of disallowing employes from driving vehicles if they are receiving medication. The grievant did not deny that she knew about the Employer's policy. Nor did she explain why she had never submitted a doctor's slip requesting other duty for her during the period when she was taking medication. She acknowledged that the medication had been to aid her sleep. She understood that mixing such medication with driving exposed not only her and her Employer but also the general

public to grave danger.

It is reasonable to conclude that, had management been placed on notice concerning the grievant's medication, it would have denied her permission to drive postal vehicles. The grievant testified that she gave a doctor's slip to Supervisor Lord indicating that she was taking medication. She presented no copy of the slip at the arbitration hearing, and there was no indication that she had attempted to obtain a copy of it from her doctor. Supervisor Lord denied ever having received such a doctor's slip. In light of the fact that the doctor must be presumed to have kept a record of it and the fact that the grievant did not submit it in arbitration, it is reasonable to conclude that no such slip exists. Likewise, the grievant failed to submit supportive evidence concerning when, if ever, she had filled the doctor's prescription.

c. Mental Pressure Resulting From Animus Toward the Grievant:

The grievant contended that management at the Glendale facility was "out to get her." Management allegedly was hostile toward her as a result of an earlier EEO decision reinstating her. Consequently, she allegedly was under a great deal of emotional stress. While it is true that on the day of the accident, the grievant had arrived at work at 4:30 A.M. only to be told to go home and return at 9:30 A.M., it is not true that the Union established this change in work orders as a major cause of the accident. There was no proof that the grievant had been singled out for changes in her schedule.

Most importantly, no where has it been demonstrated that this change in schedule caused the grievant to falsify two governmental forms.

What has been established is that the grievant falsified two government documents in order to deceive her employer and to make things easier on herself. There was no link established between the falsification charge and her work schedule on July 14.

A number of other factors undermine the grievant's argument that she labored under mental pressure due to management's animus toward her. First, she had worked for the Postal Service in Oakland for over one year. She must be presumed to have gained familiarity with the grievance procedure. The grievant is not a shy or retiring person. She states her position fluently and forcefully. Earlier she had taken a complaint to the Equal Employment Opportunity Commission and had been successful in gaining reinstatement. At the time of her accident, she was no longer a probationary employe. She knew that the full protection of the grievance procedure was available to her. The grievant failed to corroborate her assertion that management was "out to get" her.

d. <u>The Grievant's Past Record</u>: There is no way for the arbitrator to conclude with certainty whether the grievant's contention that she never had been shown the unfavorable "sixty day" evaluation is true. Likewise, the arbitrator cannot assess whether management's conention, that the grievant had been shown the evaluation but had refused to sign it, is true. The point is, however, the arbitrator is firmly persuaded that the grievant's past record does not count in her favor.

The grievant was not a long-term employe for the Glendale facility but one who had been there for less than a year. According to evidence

submitted at the hearing, she had been discharged from her job at Glendale before the end of her probationary period for poor work performance. Although she had been reinstated, it is important to note that her reinstatement had occurred for procedural reasons and did not include an award of backpay.

Most significant in the grievant's past record is her removal from employment with the Postal Service in Oakland. That removal included a charge of falsifying time records. It is important to highlight the fact that the grievant had not grieved her Oakland dismissal. She again explained it away as an effort of the Employer to "set her up." It is reasonable to conclude that, had there been evidence of an abuse of managerial discretion involving the grievant, she would have challenged her Oakland supervisors in arbitration.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievant's discharge from employment with the United States Postal Service was for just cause under provisions of the national agreement. The grievance is denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

Carlton J. Snow
Professor of Law

Date: 11-13-81