

ARBITRATION PROCEEDINGS  
Before  
Peter DiLeone

C# 01875

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In the Matter Between:

OPINION AND AWARD

UNITED STATES POSTAL SERVICE  
Covington, Kentucky

Case No. 5COL 1825 /NC-C-17065-D

-and-

E. J. Volpenhein, Jr.

NATIONAL ASSOCIATION OF LETTER  
CARRIERS  
Branch 402 - Covington

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APPEARANCES

For the Postal Service:

RODNEY STONE--Labor Relations Executive  
KENNETH NELMS--Labor Relations Representative  
DOROTHY KELBUS--Management Associate

For the Union:

IRV. LAMBERT--Staff Representative  
J. M. SULLIVAN--President, Branch 402, NALC  
E. J. VOLPENHEIN, JR.--Grievant

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BACKGROUND FACTS AND CONTENTIONS

The matter involving E. J. Volpenhein, Jr., hereinafter the grievant, arose as a result of an incident which occurred on September 26, 1978 for which he was removed from the payroll on November 24, 1978.

The incident was recited in the Letter of Removal written by P. J. Skyrn, Supervisor of Delivery, and states:

"On September 26, 1978, you were assigned (as a part time flexible carrier) to Route 1559 and Vehicle 6113557. At approximately 3:00 P.M. I observed Vehicle 6113557 parked in the rear of store at 36th and Decoursey. You returned to the vehicle at 3:25 P.M. and stated to me that you had finished the route and were on your lunch break.

Since PS Form 1564-A, Carrier's Route Book, Route Instructions for Route 1559 does not authorize 36th and Decoursey as a lunch place, you were taking lunch break at an unauthorized place and time. . . ."

In view of the past work record of the grievant, the incident of September 26, 1978 was considered a "dischargeable offense" by the Postal Service. The Postal Service pointed out that the grievant had already received his last discipline under the progressive disciplinary procedure. It was a twenty-eight day suspension which occurred one and one-half years earlier and the Postal Service says this status merits the next penalty in the line of progression.

The Postal Service also argued that "the deviation of the grievant" from the authorized lunch spots in the regular carrier's route procedure was serious enough to take disciplinary action.

The Postal Service also contends that "all part-time flexible carriers are made aware of the designated lunch places when they act as substitutes on any assigned routes" and that the grievant, who was the substitute in this case, knew or should have known, the lunch locations for his break on September 26, 1978.

The Service maintains also that the lunch break on this occasion was taken at a time not otherwise allowed. It was, says the Postal Service, another violation.

The Union contends that the route instructions for the regular carriers do not necessarily apply to the substitute, particularly as to the schedule of designated lunch places on the regular route. They are most times, says the Union, unaware of them because of the short time between assignments.

The Union also claims that the substitute in this case was not apprised of the limitations; therefore, no punishment is deserved.

As for the past record of the grievant, the Union says that the grievant showed such marked improvement in his behavior since his twenty-eight day suspension so as to render his past record "as wiped clean," and that on this basis, "if a crime was committed, it had to be viewed differently."

#### OPINION

The events in this case establish that the grievant, a part-time flexible letter carrier, was assigned to Route 1559 for several days including the date of September 26, 1978. As a substitute, he was required to deliver mail along the line of travel set forth in the regular carrier's route instructions. He was also required to adopt the daily schedule of the regular route carrier which the Postal Service claims the grievant failed to follow.

The Postal Service maintains that the grievant should have followed "Office to route via Lincoln to 38th to Winston to Taylor Mill . . ." and to break for lunch "on route." If the

grievant broke for lunch at the designated authorized lunch period, says the Postal Service, and if he had eaten at any one of the locations designated on the route instructions, he would not have been disciplined.

The argument of the Postal Service, in essence, is that the grievant broke for lunch at none of the designated places and at a time not authorized "contrary to the requirement so clearly set forth in the manual with which the grievant was familiar." This deviation was proved by Supervisor Skyrn who was instructed to determine whether the grievant was adhering to policy, says the Postal Service, after it was reported the day before that he wandered from the route on that occasion as well.

There is no dispute as far as this Arbitrator can determine about the fact that the grievant, a substitute carrier, had lunch at a time and place not designated in the route instructions of the regular letter carrier.

It must be determined then whether or not the grievant was bound to follow the route and whether his deviation on September 26, 1978, constituted a violation of the rules and policies of the Postal Service. It was necessary for the Postal Service to establish that the grievant knew what his duties were as a substitute carrier on the day in question and that instructions to follow the rules as a substitute carrier were universally adopted and closely followed by others.

Was the grievant notified of this requirement? Was he aware of this policy and was it universally enforced? These are some of the questions which must be answered in this case.

True, the manual which is given to each new employee states that lunch breaks should be taken by carriers at times and locations set forth in the "route instructions," and true, the manual provides that no deviations are permitted without prior clearances; but in this station, it was not made clear that substitutes were bound by it when their routes were completed and lunch followed. Union witnesses testified that whenever their delivery was completed, they could eat anywhere before returning to the station. Several Union witnesses, who substituted for the regular carriers, testified that they were under the belief that as long as they did not delay the mail, they could eat at the times specified in the route instructions or at any other time whenever their delivery was completed and that they could do so anywhere.

If this kind of climate prevailed at this station, no matter what the rules say, it makes it exceedingly difficult for this Arbitrator to uphold the serious action taken here. As a matter of record, if the grievant had followed the instructions and taken the time for lunch at the closest place designated on the route instructions sheet of the regular carrier on this date, he would have had to go more out of his way than "The D and B" restaurant for his lunch.

It could be argued that the grievant made a stop for lunch at an improper time, but even if this argument were valid, the evidence showed that there was approval for such behavior in the past whenever a delivery was completed by the regular as well

a substitute carrier. It must be said on behalf of the Postal Service, however, that in some instances, permission for deviation was known by regulars and substitutes; but in essence, there was no clear-cut procedure at least well enough known so that a substitute would be apprised of their responsibility, particularly in cases where deliveries were completed. The grievant and several other substitutes testified they could eat anywhere when their deliveries were completed.

Under these circumstances, this Arbitrator must find that discharge was not merited.

Well, then, what penalty is appropriate under these circumstances? What, for example, should the penalty be for a substitute carrier who believed that he was doing right by eating for the first time that day after his route was delivered and doing so at a place closer to the station than the ones set forth on the route instructions for the regular carrier?

The only evidence in this case which can be considered as militating against the grievant is his failure to call in to get permission to eat at "The D and B" since it was a deviation from the route.

A close examination of the evidence leads this Arbitrator to conclude that no discipline is warranted even on this basis.

It would be unreasonable to impose any penalty without first making certain that the grievant knew he was violating a rule, which rule was generally ignored.

The evidence supports the Union claim that while the grievant didn't stop to eat at any of the places designated after he completed his route, he did not knowingly deviate, all of which raises another question in this case.

If the Postal Service at this station places great emphasis on adherence to route procedures, why was it then that the grievant and several other Union witnesses, also substitutes, were unaware that deviations after completion of mail deliveries constituted misconduct? The answer is that the Postal Service at this station did not impart to substitute carriers the reason for the need to adhere to route instructions and penalties for violation of said instructions.

If the Postal Service conducts its business under a set of rules regarding the responsibility of substitutes which are not sufficiently explained, it seems unreasonable to expect the substitutes to know that misconduct means deviating from a route to eat lunch after his work was completed for the day. To further illustrate this, some substitutes expressed the feeling that they were really on their own time when their route was completed.

What the Arbitrator is saying here is that while the type of offense committed by the grievant was a minor offense, it by no means should have been considered "an offense constituting the next step in the progressive discipline procedure," as was argued by the Postal Service.

If it is the intent of this station to apprise its substitute carriers that penalties will be issued upon "deviations"

such as the one occurring here, then that intent should be communicated to the substitute carriers without ambiguity.

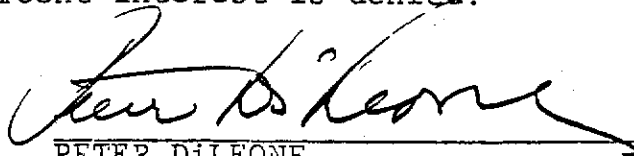
In the light of these circumstances the type offense committed by the grievant in this instance, being a minor offense, necessitated only a discussion with the grievant by the station supervisors when the said offense was committed. It must be said further in this connection that the parties to the National Agreement here have carved out the method of handling such minor offenses so clearly set forth under the discipline procedure outlined in Article XVI. For minor offenses committed by any employee, the Service may exercise the right to discuss such offense with the said employee without the contemplation of disciplining for such minor offense. The appropriate action or penalty by the Service in this instance should have been a simple warning to the grievant that he adhere to the route instructions. That action of warning constitutes the only appropriate penalty in this case.

The penalty imposed in this case must, therefore, be reversed.

#### AWARD

The removal action of the Postal Service was inappropriate. The grievant, therefore, shall be reinstated to his job without loss of seniority and with full back pay from the date of his

removal to the date of his reinstatement less any unemployment benefits or earnings received during said period. The request made by the Union for eight percent interest is denied.

  
PETER DILEONE

Dated this 11<sup>th</sup> day of April, 1979  
at Cleveland, Cuyahoga County, Ohio.