

IN THE MATTER OF ARBITRATION BETWEEN .
 .
 THE UNITED STATES POSTAL SERVICE .
 "Employer" .
 and the .
 .
 NATIONAL ASSOCIATION OF LETTER CARRIERS .
 UNION and its Lone Star Branch 12 .
 "Union" .

Re: David Murphy, Jr. - Removal
 Duncanville, TX
 SSN-3A-24100
 SSN-3A-24101

APPEARANCES

For the Employer: Mr. Phillip Pelch, Labor Relations Representative
 For the Union: Mr. Don Varenhorst, Regional Administrative Assistant

At an arbitration on May 15, 1981 in the Main Post Office at Dallas, Texas, the Employer and the Union authorized the undersigned to decide whether or not the Employer had just cause for an emergency suspension and removal of David Murphy, Jr. from service. A Hearing on the matter was held at the above written time and place. Both parties attended, presented witnesses, and offered evidence. The parties agreed this grievance was procedurally correct, all witnesses were sworn and subject to cross examination, and both parties made a closing argument at the conclusion of the Hearing. The agreed upon questions at issue were:

1. Did the Employer have just cause for an emergency suspension of David Murphy, Jr. on November 5, 1980? If the answer is "No," what will be the remedy?
2. Did the Employer have just cause to remove David Murphy, Jr. from service on November 28, 1980? If the answer is "No," what will be the remedy?

I will relate the events leading up to Murphy's emergency suspension and removal as I understood those events occurred.

Preliminary Background Discussion

David Murphy began working for the Employer sometime in 1972 as a Letter Carrier.

He was physically impaired with coronary arteriosclerosis and his diet usually consisted of low sodium foods, water washed oil-less tuna, and low fat foods. For the 8 years he has worked for the Employer, he always went home for lunch.

Sometime in the winter of 1980, Murphy went on light duty. He worked auxiliary assistance, he worked auxiliary routes, and he worked special delivery. On Monday, October 27, 1980, he was scheduled for a split shift from 8 a.m. to 2 p.m. and from 4 p.m. to 6 p.m. That morning he ran special deliveries then he returned to the office. Supervisor of Delivery and Collections, W. H. Henson, Jr. met Murphy at the door and told Murphy that the split was off and that Murphy was assigned to carry route 1607. Carrier Diane Potter had cased 1607 then she was assigned to another route.

Around 10:10 a.m. Murphy pulled down his case and prepared to go on the street. He met Henson as he was leaving and they had a discussion on how much time he would need to deliver 1607. Murphy told Henson that he would not finish 1607 on time. Murphy had delivered 1607 on Saturday, but he was not expecting to deliver 1607 on Monday because he was not scheduled for that route. Normally he was scheduled 1 week in advance and the assignment that morning was unexpected. The events that occurred around 12 noon that day were the events that led to Murphy's removal. Those events were described in the Notice of Proposed Removal signed by W. H. Henson.

Charge No. 1 Deviation of route.

On October 27, 1980, you were assigned to Route 1607. On that day I was on street observation of carriers. At approximately 1204 p.m., I observed you at the corner of Winding Trail and Trail Ridge. You were delivering of foot. I went around the block to continue observation of you. You had gotten in your postal vehicle and were driving south on Winding Trail. I followed you. You stopped at Jack-in-the-Box located at Camp Wisdom and Oriole. This is an authorized lunch location for you. I parked across the intersection from you to further observe you. Within a couple of minutes you got in your vehicle and left, driving south on Oriole Street out of my sight. I went to the Wheatland Plaza Shopping Center to see if you were having lunch there. I couldn't find you so I proceeded to your home address, which was nearby. I arrived at 12:12 p.m. and saw your postal vehicle parked in your driveway. At 12:49 p.m., you left your house and proceeded back toward your route # 1607. When you arrived at Holley Street, you became dis-oriented and drove up and down two streets before you got back to

your delivery. By your actions, you deviated from your route in excess of three miles round trip from your authorized lunch location.

Charge No. 2 Extension of lunch break.

When you arrived at Jack-in-the-Box, the time was 12:05 p.m. Thereafter, you left for your home address. I arrived at your address approximately 12:12 p.m. I observed you leave your house at 12:49 p.m. and arrived at your route location at 12:58 p.m. You are authorized a lunch break of 30 minutes. By your actions, you extended your lunch break by 24 minutes.

Charge No. 3 Delay of mail.

On October 27, 1980, you were assigned to deliver route # 1607. Before you left on street time, you did not submit a form 3996. At approximately 4:30 p.m. you returned to the station and advised me that you had not completed your route. A part time flexible carrier was sent out to finish your route which took 31 minutes. You did not call the station from your route to advise me of your inability to finish your route which is required of you.

Due to your deviation of route and extension of lunch break for a total of 24 minutes, and your failure to call the station of your inability to finish your route, caused a delay of mail on your route.

As an experienced city carrier, you have received instructions in the duties of responsibilities of your position. Your actions of deviation of route, extension of lunch break, and delay of mail is intolerable and will not be condoned by the Postal Service. Therefore, your removal is warranted and is taken to promote the efficiency of the Service.

The Notice of Proposed Emergency Suspension contained the identical language in the three charges and the following additional paragraph:

It appears that your retention in an active duty status may result in damages to government property, loss of mail or funds, or be detrimental to the interests of the government or injurious to you, your fellow workers or the general public.

The Employer's Position

The Employer's position was that this emergency suspension and removal was for just cause because:

1. Murphy deviated from his route,
2. he extended his lunch period,
3. he delayed the mail, and

4. overtime was required to complete the deliveries.

The Employer maintained that Murphy had been told to have his lunch at locations specified on the form 1564A. The Employer admitted that Murphy was allowed to go home for lunch while he was assigned a route in the southwest part of the city. The deviation was allowed where Murphy took his lunch break enroute to his assigned route. This deviation was allowed because Murphy drove past his home enroute to the deliveries and no additional cost was incurred. However, route 1607 was in the northeast part of the city and Murphy's home was more than 1 mile off his deliveries.

In addition, the Employer pointed out that there was another employee (Letter Carrier Yeager) in the shop who was on a low sodium diet, and Yeager brought his lunch to work and stopped at a local bar-b-q for a drink.

Mr. Ron Payne testified he was Acting Superintendent of Postal Operations from September 1979 to February 1980 and he was aware of Murphy's medical history. Payne testified that at 12:30 p.m. on November 28, 1979 he saw a Postal vehicle parked at Murphy's home. Murphy was assigned Route 15 that day and Payne testified he told Murphy that his home was too far from the route for a lunch stop. Murphy replied that he needed a special diet for his health. Payne's response was that without medical documentation, Murphy could not go home for lunch.

Payne testified he told Murphy there were several eating places closer to Route 15 than Murphy's home, and Payne went to the 1564A form and drew a line through the authorization of Murphy's home as a lunch stop.

Payne admitted that he was unacquainted with low fat food, but he pointed out there was a delicatessen near Route 15 and Murphy admitted to Payne there were several eating places near the route that served food he could eat.

In order to avoid any confusion in the shop, Payne issued a Memorandum to all Carrier Craft Employee (Management Exhibit 2) on December 15, 1979. The relevant language of the memorandum stated:

Below are a list of instructions we feel are necessary to aid in the betterment of the carrier operation in the Duncanville Post Office. Any carrier not following these instructions can expect

disciplinary action to be taken against him.

1. Any exceptions to lunch or break locations on 1564-A must be approved in advance by your supervisor. (Underlining for emphasis)
2. There will be no casing on over-time unless approved by your supervisor.
3. All Carriers will follow SOP that is in their route book.
4. All Carriers will follow Postal Office Break Schedule. It is carrier's responsibility to know your break period. If you are late starting your break, your break will end as scheduled (any exceptions must be approved by supervisor on duty).
5. All Carriers will wear regulation uniforms while on duty.

Supervisor W. H. Hansen testified he was on route observation on October 27, 1980 and he noted the deviations as written in Charge No. 1 and Charge No. 2. Hansen testified that the October 27 incident was not the first time that he observed Murphy going home for lunch. The earlier incident was on April 17, 1980 when Murphy was assigned a delivery in the southwest part of the city and Murphy went home for lunch. Murphy lived in the southeast section of the city and explained that he needed a low sodium diet. Hansen testified that he told Murphy to either take a lunch with him on delivery, or have his spouse bring lunch to him, or take his lunch break enroute to his deliveries in the southwest part of the city.

At 12:58 p.m. on October 27, 1980, Hansen confronted Murphy with his taking his lunch break at home. When Hansen asked why Murphy went home for lunch, Murphy replied, "You gave me permission, Lloyd gave me permission, and the Post Master gave me permission to go home for lunch."

In their closing argument, the Employer contended that the National Agreement did not require the Employer to follow progressive discipline in all disciplinary matters. The Employer admitted that in many situations, progressive discipline was followed, but Murphy's emergency suspension and removal came about because he already had a Letter of Warning and a 7 Day Suspension and management felt that a 14 Day Suspension would not correct Murphy's misconduct.

The Union's Position

The Union's position was:

1. Article XVI Section 5 of the National Agreement contained language specifying the conditions wherein an emergency suspension could be imposed and none of those conditions applied on October 27, 1980.
2. All the lunch stops for route 1607 were fast food operations.
3. Murphy had delivered Route 1607 one time before he was removed and one day of experience on a new route was insufficient time to learn the route, thus Murphy was not guilty of delaying the mail.
4. Murphy had always eaten lunch at home and on some occasions supervisors ate lunch with him.

Murphy testified that he always had lunch at home. He testified that he had discussions with Supervisors Payne, Gale, and Henson over where to have lunch, but "Nothing was ever solved and he had no direct order that he was not to eat at home." Murphy felt that Payne and Gale wanted him to volunteer to not eat lunch at home.

In their closing statement, the Union maintained that corrective discipline meant that progressive discipline should be applied. The Union pointed out that another employee at the same station had a Letter of Warning, a 7 Day Suspension, a 14 Day Suspension, then the employee corrected his problem and Murphy should also be allowed the opportunity to correct his performance. The Union pointed out that Henson had made lunch concessions to Murphy and that was why Murphy always had lunch at home. The Union argued that the discussion between Henson and Murphy at 12:58 p.m. on 10-27-80 was superficial and only for the purpose of supporting management's subsequent capricious and discriminatory actions.

Opinion

In this grievance, the Employer maintained there was just cause to emergency suspend and remove David Murphy because he deviated from his route, he delayed the

mail, and he extended his lunch break. The Union maintained the discipline was punitive and not corrective. I will dispose of the issues presented by the parties.

First and foremost is the question of whether or not the emergency suspension was for just cause. Section 5 of Article XVI provides:

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of alcohol or drugs), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. ***

Mr. Murphy was not intoxicated, he was not using any non-prescription drugs, he had not pilfered the mail, he had not been accused of violating any safety rule, he had not damaged any of the Employer's property, and he had not caused the Employer to lose any mail or funds. In carefully reading over the provisions of Section 5, there is a continuous thread of reasoning for an emergency removal. That thread of reasoning is that an employee should not remain on the rolls if by his continual presence in the shop, he would negligently or deliberately damage the Postal Service, or injure himself, or injure other people while on duty. That is the thread of reasoning for Section 5. For example, a drunk employee might damage equipment, injure other people, or injure himself. Obviously, such an employee should be sent home. The same reasoning would be true for drug addicted employee. Loss of mail or funds obviously damages the Postal Service and that, again, is part of the thread of reasoning. Management maintained that an emergency suspension also applied to an employee who was a detriment to the Postal Service. I do not disagree with that because the word "detriment" means damage or injury; however, the damage or injury must be limited to the specific items listed in Section 5. The mere fact that Mr. Murphy can not walk a route as fast as another Carrier does not mean that he is damaging the Postal Service. He was a light duty employee and he was not expected to walk as fast as another Carrier. Furthermore, his staying too long at lunch, or deviation from his assigned lunch location on October 27, 1980 did not mean that he would continue such actions in the future. Section 5 is for the purpose of preventing

damages if an employee remains on duty and I do not find that the Employer has proven that Mr. Murphy would have damaged the Employer by remaining on duty.

The next question to decide is whether or not Mr. Murphy knew that he was not to go home for lunch. Management discussed this matter with Murphy as early as November 28, 1979 (Management Exhibit 1) and the immediate supervisor proposed that a Letter of Warning be issued. Upper management declined to concur in the proposed Letter of Warning. A few days later on December 15, 1979, management issued a memorandum to all carriers and the memorandum specifically stated that lunches and breaks were to be taken in accordance with the form 1564A unless a different location was approved by a supervisor. In addition, Murphy's home was crossed off the form 1564A as an approved lunch location by Supervisor Ronnie Payne. The privilege of eating lunch at home was restored by Supervisor Henson but the privilege was limited to being assigned a route in the southwest part of the city and Murphy had to take his lunch break while going to the route. Murphy's point was that "nothing was settled" by the discussions, that management wanted Murphy to "volunteer" to give up eating at home, or that he never received a "direct order" to not eat at home. I do not agree with Mr. Murphy's point of view. In my opinion, "nothing was settled" because Mr. Murphy did not want to give up the privilege and he kept the controversy alive by his unwillingness to do as he was asked to do. The privilege of eating at home was granted to Murphy by prior management and it was not a privilege granted to other employees. New management that came on board wanted to do away with Murphy's privilege; and it was not a matter of Murphy volunteering to give up his privilege but his failure to recognize that the new management had a right to revoke a privilege granted by prior management. It should not have been necessary for management to give Murphy a direct order to not eat at home. I believe that Mr. Murphy understood the English language and he knew that management did not approve his eating at home (except when delivering the southwest part of the city) but Murphy did not want to give up his privilege.

Mr. Murphy's testimony disclosed that he was a retired Chief Petty Officer in

the U. S. Navy. He had 22 years of active duty and I am certain that he knows that when a new skipper comes aboard a ship that the new commander has the authority to prescribe rules in accordance with the laws of the Government of the Navy and in accordance with rules prescribed by the Department of the Navy for Navy personnel. The crew knows and every CPO knows that many changes may take place with a new skipper. The same thing happens when a new Post Master or a new supervisor comes into the postal station. The new management may abolish old privileges, revise routes, and re-organize the staff for greater efficiency so long as the changes do not violate the National Agreement, supplementary agreements, or postal regulations. There have been managerial changes in the Duncanville Post Office and, in my opinion, Mr. Murphy did not want to recognize that new management has the authority to take away privileges that had been allowed by old management. There was no reason for management to give Murphy a "direct order" to quit eating lunch at home. An employee who is willing to accept management's authority does not need to have "direct orders" before complying with managerial instructions - the employees who need direct orders are those who do not want to follow instructions.

I find that David Murphy knew that he did not have management's approval to eat lunch at home and the Employer did have just cause to impose discipline on David Murphy. I will discuss the matter of corrective discipline and the appropriate discipline for Mr. Murphy.

Article XVI of the National Agreement provides that "a basic principal shall be that discipline should be corrective in nature, rather than punitive." The application of this rule means that the discipline imposed upon an employee for a misconduct should be the minimum discipline necessary to get the employee to correct himself. There is no touchstone to tell precisely how much discipline should be imposed to get an employee's attention so that the employee knows he must correct his behavior or he will be fired. Usually managers begin to discipline by starting with discussion; then if additional discipline is needed the employee gets a written warning; then if additional discipline is needed, the employee is suspended a few

weeks; then if additional discipline is needed, the employee is fired. The reason why progressive discipline is used is because managers do not always know the minimum discipline necessary to get an employee to mend his ways, thus the manager begins with mild discipline and progressive discipline inflicts more hardship if the employee continues to misbehave.

In my opinion, the instant grievance is amenable to progressive discipline. Mr. Murphy had a Letter of Warning for taking too long on his deliveries and a 7 Day Suspension for taking too long on his deliveries. The Employer's evidence left me with the impression that management considered Mr. Murphy a "pain in the neck" and management was anxious to get rid of him, hence the administrative leave, the emergency suspension, and the removal. The fact that Mr. Murphy was put on administrative leave the day after the date of occurrence leads me to believe that management was in a terrible rush to get Murphy out of the shop immediately. However, I believe that if Mr. Murphy makes a genuine effort to improve his performance, that he could do so. He must obey management's instructions, he must fill out the form 3996 when his is unable to finish on time, he must call in early enough to allow management to hold over a carrier if he finds that he can not finish on time, he must obey safety rules, and he must not deviate from his assigned route without managements approval. After carefully considering the entire record, I will order the emergency suspension to be expunged from Mr. Murphy's personnel file, and I will order that the removal be reduced to a 2 week suspension.

Award

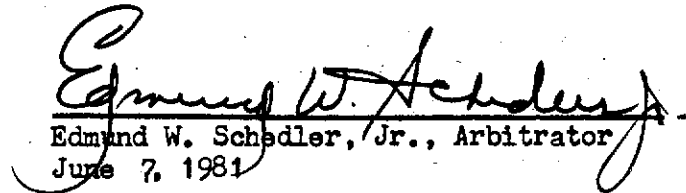
After a careful consideration of all the evidence and upon the foregoing findings of fact, the answers to the questions at issue are:

1. The Employer did not have just cause to emergency suspend David Murphy. The Employer will immediately offer to expunge the Letter of Notice of Proposed Emergency Suspension from David Murphy's personnel file.
2. The Employer did not have just cause to discharge David Murphy. The Employer will immediately offer to replace the Letter of Removal with a 14 Day Suspension and re-instate David Murphy to his former light duty job effective November 18, 1980

without loss of seniority or other benefits of employment.

3. The Employer will offer to pay David Murphy the wages he has lost since November 18, 1980.

David Murphy will furnish the Employer with a statement of wages he has earned since November 18, 1980 and those wages will be deducted from item 3 above. David Murphy will be responsible to pay to the appropriate government agency any refundable unemployment compensation that he has received.


Edmund W. Schodler, Jr., Arbitrator
June 7, 1981