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IN THE MATTER OF ARBITRATION)
)
BETWEEN)
)
AMERICAN POSTAL WORKERS UNION)
)
AND)
)
UNITED STATES POSTAL SERVICE)
(Case No. WIC 5D-D-7119))
(Cabanilla Grievance))

ANALYSIS AND AWARD
Carlton J. Snow
Arbitrator

I. INTRODUCTION

This matter came for a hearing pursuant to a collective bargaining agreement between the parties effective from July 21, 1981 to June 20, 1984. The hearing took place in a conference room of the Seattle, Washington Post Office located at 415 First Avenue, North. Mr. Max Morelock, Regional Labor Relations Representative, represented the United States Postal Service. Mr. Robert L. Tunstall, National Vice-president, represented the American Postal Workers Union.

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

The parties agreed that there were no substantive or procedural issues for the arbitrator to resolve and that the matter had properly been submitted to arbitration. The parties

authorized the arbitrator to retain jurisdiction for sixty (60) days after issuance of a report and award.

II. STATEMENT OF THE ISSUE

The parties agreed at the hearing that the issue before the arbitrator is as follows:

> Did the Employer have just cause for issuing the letter of removal to the grievant dated July 21, 1982? If not, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 16 DISCIPLINE PROCEDURE

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective 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.

Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no

prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

Section 3. Letter of Warning

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

Section 4. Suspension of 14 Days or Less

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended after two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

Section 5. Suspensions of More Than 14 Days or Discharge

In the case of suspensions of more than fourteen (14) days or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his MSPB APPEAL. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give

such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

In associate post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

Section 10. Employee Discipline Records

The records of a disciplinary action against an employee shall not be considered in any subsequent disciplinary action if there has been no disciplinary action initiated against the employee for a period of two years.

ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the national Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

IV. STATEMENT OF FACTS

In this case, the grievant has challenged management's right to discharge her for irregular attendance. At Step 2 of the grievance procedure, the acting union steward maintained that management had failed clearly to define the problem and had neglected to attempt to correct the grievant's alleged deficiencies by some means other than punishment. It is the belief of the Union that management's alleged failure to do so invalidated the grievant's discharge. At step 3, Mr. Hunter stated on behalf of management:

> Since December 27, 1981, the grievant has used 74.53 hours of unscheduled absences. This combined with her past record of two 7-day suspensions, one 14-day suspension, and three letters of warning in a period of one year and two months does not indicate a desirable employee. It is my opinion the grievant has been adequately warned of the consequences of not reporting to work. (See, Joint Exhibit No. 2(e)).

The grievant's date of hire by the Terminal Annex Post Office in Seattle was May, 1981. Management employed her in the clerk craft, and the grievant sorted mail both by machine and manually. The notice of removal on July 21, 1982 stated "irregular attendance" as the reason for the removal action. The notice listed the grievant's absences for 1982 as follows:

Date	Amount	Reason
Jan. 29, 1982	.67 hours	AWOL
Feb. 7, 1982	3 hours	SL
Feb. 17, 1982	5.0 hours	AWOL
Feb. 19, 1982	8 hours	SL
Feb. 20, 1982	8 hours	SL

Date	Amount	Reason
Feb. 21 1982	8 hours	SL
Feb. 22, 1982	8 hours	SL
Mar. 7, 1982	3 hours	SL
May 29, 1982	8 hours	SL
May 30, 1982	8 hours	SL
June 21, 1982	3 hours	SL
June 26, 1982	8 hours	SWOP
June 27	8 hours	SWOP
July 17, 1982	.36 hours	AWOL

(See, Joint Exhibit # 3(g)).

The Union has not disputed that these absences occurred. The absences were further detailed in 3971 Forms. The grievant explained her tardy of .67 hours on June 29, 1982 by stating that she had overslept. On February 17, 1982, the grievant was AWOL for .50 hours and gave no reason for her lateness. Her next AWOL occurred on July 17, 1982, and this incident precipitated her removal.

It is important to highlight the fact that all sick leave received by the grievant had management's approval. AWOL's, of course, received no such approval. There was no showing that the grievant had been forewarned concerning the potential impact of absences due to approved sick leave.

On May 7, 1982, management issued the grievant a restricted sick leave letter. The letter from the Tour I supervisor, Mr. Body, clearly established that the grievant must furnish a specific type of medical certificate on her return to duty

from any sick leave or be subject to a charge of AWOL. In his letter to the grievant, Mr. Body stated:

> If you wish to discuss with me any problems you may have, please feel free to do so. In addition, or if you would rather, I can make an appointment for you to talk to someone in the medical unit, PAR office, or in the Employee Relations Division. (See, Management's Exhibit No. 3).

The grievant did not avail herself of the offer of help. She did, however, provide management with proper medical certification for all sick leave taken subsequent to her receipt of the restricted sick leave letter. She did so until the occasion of July 17, 1982, when she was AWOL for .36 hours.

It must be emphasized that the grievant's attendance problems did not begin in 1982. On the contrary, she repeatedly had been warned concerning allegedly unsatisfactory attendance during 1981. Evidence of those warnings is as follows:

Aug. 13, 1981:

> The grievant's supervisor, D. Gruetzmacher, reported in an employee probation period evaluation that although the grievant was a good employee, she was having a problem with attendance. The supervisor stated that the grievant had been told she must improve her attendance. (See, Management's Exhibit No. 9).

Aug. 24, 1981:

> Management issued the grievant a letter of warning concerning her unsatisfactory attendance. She had been AWOL on August 23, 1981, and had failed to report her reason for being absent, even though on August 19, 1981, she properly had been notified to report to work on the day in question. (See Management's Exhibit No. 8).

Sept. 7, 1981:

Management notified the grievant of a seven-day suspension for unsatisfactory attendance. She had left work at 4:00 a.m. and still was not present when her tour ended. Additionally, she neglected to inform her supervisor of this absence. (See, Management's Exhibit No. 7).

Dec. 27, 1981:

The Employer notified the grievant of a fourteen day suspension for unsatisfactory attendance. This notice listed the following absences that occurred after the grievant's suspension of September 7. They are:

9-26-81	5.5	hours
10-11-81	8	hours
11-05-81	5	hours
11-11-81	4	hours
12-05-81	3	hours (AWOL)
12-26-81	8	hours (AWOL)

(See Management's Exhibit No 5).

Following her suspension of December, 1981 for irregular attendance, the grievant again was AWOL on January 20 and February 17, 1982, as well as absent due to sick leave on several occasions in February and once in March. On April 5, 1982, the grievant learned that her periodic step increase had been deferred due to her unsatisfactory attendance and unsafe practices. (See, Management's Exhibit No. 4).

At no point did the grievant ever protest the discipline imposed on her. Even when management gave her the two suspensions for unsatisfactory attendance, the grievant never challenged the Employer's decision. No challenge came until the grievance in this particular care.

The Employer also issued two letters of warning to the grievant for unsatisfactory work which did not relate to a problem with attendance. Those letters may be summarized as follows:

October 13, 1981:

> Supervisor Body documented the grievant's failure to observe safe practices while opening a door which resulted in an injury to the grievant's shoulder. The letter warned the grievant that future unsafe practices could result in further disciplinary action, including dismissal. (See, Management's Exhibit No. 6).

May 8, 1982:

> Supervisor Body issued an official letter of warning to the grievant for unsatisfactory work performance and noted her failure to key several letters which passed through the viewing area of the console. Her action led Supervisor Body to conclude that the grievant had been dozing. He noted that the same deficiency had been called to the grievant's attention on March 6, 1982. (See, Management's Exhibit No. 2).

The grievant did not challenge either of the letters of warning. The grievant offered no challenge to discipline for unsatisfactory attendance until she received the July 21, 1982 notice of removal, the focal point of this particular grievance.

V. POSITION OF THE PARTIES

A. The Employer;

The Employer asserts that the grievant's dismissal should be upheld. She had a poor attendance record and was also tardy. She had been counseled by her supervisor concerning a personal problem and rejected any offer of help. She had been duly warned verbally, by withholding her periodic step increase, as well as through disciplinary suspension. According to the Employer, management had made clear to her that the irregular attendance would not be tolerated. Despite a fourteen-day suspension for irregular attendance given the grievant on December 27, 1981, her attendance problem persisted into January, February, March, May, June and July of 1982. It is the position of management that the grievant failed to heed the warnings issued by her supervisors and that she clearly understood the consequences of continued irregular attendance.

Nor does the Employer believe the grievant's pregnancy must be counted as a mitigating factor. According to the Employer, several warnings concerning irregular attendance had been issued to the grievant before the beginning of her pregnancy. Additionally, management maintains that neither the grievant nor the Union informed the Employer before issuance of her removal that her pregnancy constituted a cause of her irregular attendance. It is the belief of the Employer that supervisors should evaluate an employe's past record in determining an appropriate disciplinary sanction. Consequently, the grievant's notice of removal properly made reference to

disciplinary action for poor work performance, according to the Employer. Finally, management maintains that the grievant's continued disregard for attendance rules following her receipt of the notice of removal clearly showed her lack of motivation toward correcting poor attendance performance.

B. The Union:

It is the position of the Union that the Employer lacked just cause for dismissing the grievant. According to the Union, a claim of unsatisfactory work performance should not have been a factor considered in the grievant's dismissal. That allegedly placed the grievant in double jeopardy due to the fact that she already had been denied a step increase in April, 1982 for unsafe practices. According to the Union the grievance must stand or fall solely on the basis of the charge of unsatisfactory attendance.

The Union has maintained that not until May 7, 1982, when management placed the grievant on restricted sick leave, did the grievant have to substantiate leave due to illness with medical certification. It is the belief of the Union that, since the grievant had a clear attendance record from March 8 until May 29, 1982, she in fact improved her attendance. Further, since her pregnancy allegedly was a factor by mid-May, 1982, it should be considered in evaluating absences occurring after May 29, 1982 through the time of the grievant's dismissal, according to the Union's theory of the case.

The Union strongly objected to any consideration of absences which accrued after the grievant received her notice of removal. The Union maintains that a reasonable person, already aware that her feeling of illness is due to pregnancy, cannot be expected to visit a doctor in order to receive certification concerning such "illness." Finally, it is the position of the Union that management failed clearly to indicate to the grievant the consequences of her irregular attendance.

VI. ANALYSIS

A. References to Other Discipline in the Notice of Removal:

Was it proper for management to refer in the Notice of Removal to discipline issued the grievant for problems other than those related to unsatisfactory attendance? The Union has contended that management should not have considered any unsatisfactory work performance by the grievant as a factor in her dismissal. It allegedly was improper to do so because the grievant already had been denied a step increase on April 5, 1982 for unsafe practices.

Management did not violate the collective bargaining agreement between the parties by its evaluation of the grievant's entire file. Article 16, Section 10 of the parties' agreement provides that records of a disciplinary action against an employe shall not be considered by management only if the employe's record has been clean for a period of two years.

The grievant in this case has been employed by the Seattle Post Office for only a little over one year. Consequently, it was proper for management to take into consideration her entire disciplinary record.

While management must not use the record of previous offenses, such as poor or unsafe work habits, to establish that an employe is guilty of unsatisfactory attendance, the Employer may take into account prior disciplinary action in an effort to help it determine an appropriate penalty. Even though the stated cause for the grievant's removal was "irregular attendance," there was nothing impermissible in the Employer's listing an aspect of the grievant's past work record which had nothing to do with her irregular attendance. The issue of the grievant's unsatisfactory work performance was neither the precipitating incident in this particular grievance nor a pivotal part of management's consideration. It was legitimate for the Employer to evaluate the grievant's entire record in determining the appropriate sanction for her violation of attendance regulations.

B. The Grievant's Attendance Record

Was the grievant's attendance, in fact, unsatisfactory? Section 511.43 of the Employee and Labor Relations Manual provides the following guidelines concerning absences:

> 511.3 Employee Responsibilities:
>
> Employees are expected to maintain their assigned schedule and must make every effort

> to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absence when required.

In this regulation, management has made clear that malingering will not be permitted. The regulation is also straightforward about management's right to require that an employee provide proof of an acceptable reason for an absence from work. What the regulation does not indicate is how much absence from work, due to certificated, verified illness, constitutes unacceptable absence.

Arbitrators have routinely agreed with management that discipline is appropriate for unexcused absences. (See, for example, Celanese Corp. of America, 9 LA 143, and Ambach Industries, inc., 72 LA 347). An absence for which no good cause is established and for which no notice has been given obviously disrupts the work place, and appropriate measures are legitimate to discourage such activity.

Early in the grievant's employment history, she failed to report to work, even though she had been notified to do so. That occurred on August 24, 1981. She also failed to inform management that she would be absent. The Employer charged her with eight hours of being AWOL and issued her a written warning that a failure to report a reason for an absence would not be permitted.

Approximately two weeks later on September 7, 1981, management again charged the grievant with being AWOL. This particular unexcused absence occurred when the grievant left her work place three hours before the end of her tour of

duty and failed to inform her supervisor that she was departing. The Employer issued her a seven-day suspension for being AWOL on that date.

Approximately three and a half months later, on December 27, 1981, the grievant received a fourteen-day suspension for unsatisfactory attendance. Her absences, subsequent to the seven-day suspension she earlier had received, came as a part of the notice of suspension. In addition to sick leave accrued on four separate dates, management listed a charge of being AWOL on December 5 and December 26, 1981.

Following her fourteen-day suspension, the grievant's incidents of "unexcused" absences greatly diminished. On January 29, 1982, management charged the grievant with .67 hours of being AWOL. On February 17, management charged her with .50 hours of being AWOL. On July 17, 1982, management charged her with .36 hours of being AWOL. The point is this: although the grievant was late to work on three occasions following her fourteen-day suspension, each of those "tardies" kept her from the work place for less than an hour. Arbitrators customarily have treated tardiness as a less serious offense than an absence. (See, for example, Pacific Air Motive Corp., 28 LA 761, and Peerless Manufacturing Company, 73 LA 915). Tardiness standing alone cannot be considered as serious an offense as absence from work without a legitimate excuse.

Consequently, the question becomes whether it is reasonable to conclude that the grievant was guilty of unsatisfactory

attendance, given the fact that all her absences related to illness subsequent to the fourteen-day suspension were excused absences. They were excused both by medical certification and by the fact that management had been informed of the absences at the appropriate time. Some attention must also be given to the fact that the grievant's AWOL behavior pattern had lessened from unexcused leaves of several hours duration to several "tardies," each of which were less than an hour in duration.

The Employer's primary contention is that supervisors clearly warned the grievant her attendance record was unsatisfactory. She received those warnings through the progressive discipline issued to her for irregular attendance. Management has argued that the grievant, by her many absences subsequent to the fourteen-day suspension, indicated she is incapable of improving her unsatisfactory attendance record.

For obvious reasons, there is no clearcut work rule concerning how much sick leave will be considered "too much" sick leave. Evidence submitted by the parties established that the grievant accumulated over seventy hours of absences between January and July, 1982. In other words, during a seven month period, the grievant was away from the work place the equivalent of slightly more than a day a month.

There is no objective standard of an acceptable amount of sick leave at this particular facility. The general supervisor testified as follows:

> QUESTION: To your knowledge has there been any rule, as far as standards of sick leave, promulgated to the bargaining unit from management? Like a certain percentage?

ANSWER: We don't reduce it to a percentage.

Ms. Stephens, the grievant's tour supervisor, testified that one absence a month "is a problem." She also stated that management's expectations concerning attendance have not been reduced to a specific number of hours.

The grievant's attendance, in fact, was unsatisfactory. Through warning letters and suspensions, management made it exceedingly clear to the grievant that her unexcused absences simply would not be permitted. Consequently, discipline is warranted for the three tardies accumulated by the grievant subsequent to her fourteen-day suspension for unsatisfactory attendance.

A primary problem confronted by the arbitrator in this case has been what to do about the grievant's absences in which she had "excused" sick leave. There are any number of cases in which arbitrators have concluded that management has a right to discharge employes for unsatisfactory attendance, even where the absences have been due to illness. (See, for example, Trans World Airline, Inc., 44 LA 280, and Cleveland Trencher Company, 48 LA 615). Customarily, one would expect a grievant to be placed on notice that "excused" sick leave would be counted against the worker as part of a pattern of unsatisfactory attendance. In this case, management has failed to place the grievant on notice that "excused" sick leave would be counted against her.

The Employer had the option to disprove the grievant's requests for sick leave. Management, in fact, approved each

and every request the grievant made for sick leave. Subsequent to her fourteen-day suspension, the grievant's approved sick leave taken between February 7 and June 21, 1982 all constituted paid sick leave. Although the grievant took sick leave without pay on June 26 and June 27, 1982, the Employer approved her absence.

It is recognized that Mr. Body testified he had talked with the grievant "numerous times" concerning her attendance problems. Specifically, on April 9, 1982, the grievant had requested light duty, and Mr. Body discussed a personal problem of the grievant which had led to her request. He even offered to help the grievant to contact outside agencies which could advise her concerning how to deal with the problem. The grievant failed to accept the offer of help. Mr. Body's offer of assistance was most commendable. There, however, was no showing at all that the grievant's personal problem had any bearing on her unsatisfactory attendance. The record shows only that, on April 9, 1982, there was some connection between the grievant's personal problem and her request for light duty.

The point is that management failed to warn the grievant that her excused sick leave might be counted against her. For example, the restricted sick leave notice given the grievant on May 7, 1982 did not do so. (See, Employer's Exhibit No. 3). The notice informed the grievant that all absences must be supported by medical certification. The notice did not inform her that future illnesses would be counted against her

as reflecting a pattern of unsatisfactory attendance. The notice indicated only that future illnesses must be certified by medical personnel. Except for the .36 hours of tardiness on July 17, 1982, the grievant followed the instructions set forth in Mr. Body's letter of May 7. She presented medical certification for absences on May 29, May 30, June 21, June 26 and June 27, 1982. It would have been reasonable for the grievant to have concluded that medically certificated illnesses would not be counted against her in such a way as to lead to her discharge.

Not for a moment should it be concluded that management must retain employes whose claims of illness are false. Arbitrators long have recognized the right of management to remove such individuals. (See, for example, Socony Mobil Oil Company, Inc., 45 LA 1062, and Federal Services, Inc., 41 LA 1063.) In fact, management has an obligation to protect the resources of the employer from such false claims. Nor, as previously indicated, is management necessarily required to retain an employe whose health is so poor as to require excessive absences.

On the other hand, the Employer has a duty to make clear what conduct will cause an employe to be discharged. Since it is reasonable to expect that employes will on occasion be absent due to illness, sanctions to be imposed for such "excused" absences need to be reasonably clear. (See, for example, Stevens Shipping and Terminal Company, 70 LA 1066). If an employe is to be subject to discharge for excused absences,

reasonable notice of that fact is essential.

In this particular case, the Employer made it clear to the grievant by a warning letter and two suspensions that she must inform management before taking sick leave, that is, that AWOL behavior would not be permitted. After the grievant's fourteen day suspension, her AWOL behavior improved considerably. She no longer neglected to inform the post office of an intended absence, and the charges of being AWOL were essentially three "tardies," each less than an hour in duration.

The grievant also followed the Employer's instructions concerning the need for medical certification of each illness. Management made clear that false claims of illness would not be tolerated. The grievant, however, received no notice that medically certificated absences would be counted against her. The grievant failed to receive notice that "too much" verified sick leave could cause her to be removed from the postal service. The point is that the failure to inform the grievant her excused absences could lead to her termination undermined management's contention that the grievant received adequate warning of the consequences of not reporting to work. The grievant needed to know that her excused absences along with any instances of being AWOL would be used to show a pattern of irregular attendance.

C. An Appropriate Penalty

The arbitrator has pondered long the nature of an appropriate penalty in a case of this sort. On the one hand, the grievant is not a model employe. She has received a warning about dozing on the job. She continued to be tardy after having been duly warned by two suspensions against accumulating any more instances of being AWOL. Additionally, if there are medical or personal facts which might have militated against finding the grievant's attendance to be unsatisfactory, she has failed to make those facts known to the Employer.

For example, although the grievant became pregnant in mid-May 1982 (and the Union argued the pregnancy issue at Step 3 of the grievance procedure), there was no evidence that the grievant had made known her pregnancy or any related problems to the Union or to management before the issuance of the notice of removal. The grievant even conceded that she might not have made known the fact of her pregnancy until after she had received the notice of removal. Additionally, more than half of the absences charged against the grievant occurred before her pregnancy. In light of the fact that the grievant herself did not believe mentioning her pregnancy to the Union or to management was important, as well as the fact that most of her absences occurred before her pregnancy, it is reasonable to conclude that the pregnancy should not be considered a mitigating factor in determining an appropriate sanction in this case.

The grievant's record of attendance between the time she

received the notice of removal and the time of her actual removal left much to be desired. The grievant was marked AWOL on July 24, July 31, and August 7 for failing to provide medical certification. On August 23 she was absent and failed to call in for permission to obtain a leave of absence. (See, Management's Exhibit No. 15). While such conduct is not relevant to the merits of the case, it is highly pertinent in helping to fashion an appropriate sanction in the case.

On the one hand, the Employer failed to make clear to the grievant that excused absences would be counted against her and be used in a charge of irregular attendance. On the other hand, the grievant accumulated three "tardies" after repeated warnings and two suspensions as a result of poor attendance. Those facts support a conclusion that strong discipline is in order, although something short of discharge is appropriate. Nor can one lose sight of the grievant's rather casual attitude toward her attendance after having received the notice of removal. Even at the arbitration hearing the grievant failed to demonstrate an understanding of her need to attend work regularly. She testified that, if her job were restored to her, she would "try to be there " and would "try to be a good worker." Since management failed to give her warning that excused absences would be counted against her, discharge was too severe a penalty. But because of the grievant's record and attitude as reflected in evidence submitted at the hearing, strong discipline is appropriate.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer did not have just cause for issuing the July 21, 1982 letter of removal to the grievant. She shall be reinstated without any back pay, and this arbitration decision shall serve as a "last chance" warning to her. If the grievant is guilty of any instances of being AWOL or accumulates more than two tardies during her first year back at work, management may automatically discharge the grievant in its discretion.

The arbitrator shall retain jurisdiction of this matter for sixty days from the date of the report in order to resolve any problems resulting from the remedy in the award.

It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

CARLTON J. SNOW
Professor of Law

Date: 5-12-83

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B 2099

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, 1981 to July 20, 1984. The parties presented this dispute to the arbitrator at the conclusion of a companion case, Case No. WIC 5D D 7119, dealing with the grievant's removal from the Postal Service. Mr. Max Morelock Regional Labor Relations Representative, represented the Postal Service. Mr. Robert L. Tunstall, National Vice-president, represented the Postal Workers Union.

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 tape-recorded the proceeding as an extension of his personal notes. All witnesses testified under oath. The advocates fully and fairly represented their respective parties.

There were no issues of substantive or procedural arbitrability to be resolved. The parties authorized the arbitrator to retain jurisdiction for sixty days after issuance of an award.

II. STATEMENT OF THE ISSUE

The parties agreed that the arbitrator should state the issue. It is as follows:

> Should the grievant receive backpay for a seven day suspension which was "purged" at Step 2 of the grievance procedure?

III. STATEMENT OF FACTS

Management notified the grievant on December 27, 1981 that she would be suspended for fourteen days beginning January 1, 1982. Supervisor Body issued the suspension to her as a result of the grievant's irregular attendance. She did not grieve the discipline. (See, Union's Exhibit No. 1).

On December 30, 1981, management notified the grievant that she would be suspended for a period of seven days, to begin on January 1, 1982. She had been disciplined for lifting a sack in an unsafe manner. Mr. Body also signed this notice of suspension. He included a statement to the effect that the seven day suspension would run concurrently

with the fourteen day suspension. He said:

> Your suspension will end on January 8, 1982, at 0750, however, you will not return to work until 2300 on January 15, 1982, when your suspension, received on December 27, 1981 ends. (See, Union's Exhibit No. 2).

The Union successfully grieved the seven day suspension for unsafe practices. The Employer's labor relations representative said in his letter to the Union after the second step of the grievance procedure had been conducted:

> The Union's arguments were taken into consideration. A check of the 2548 Training Record Card does not indicate any training in safety related activity. It is my opinion, therefore, that the manager failed in the just cause provisions. Therefore, the Grievant will be reimbursed seven days pay. (See, Union's Exhibit No. 3).

Management's representative at the second step of the grievance procedure testified that, at the time he rescinded the seven day suspension and ordered the grievant to be reimbursed seven days of pay, he did not know that she had served a fourteen days suspension which was not grieved and which had covered the same time period as the seven day suspension. He also testified that it is not normal practice for an employe to be placed on concurrent suspensions.

It is important to emphasize the fact that the seven day suspension at issue had been "purged" even before the second step procedure occurred. In short, the grievant's record, as of early February, no longer contained an "unsafe practice" sanction for the date in question. Additionally, since the grievant was serving an uncontested fourteen day suspension during the time she would have served the seven day suspension,

the seven days suspension, even if it had not been "purged," would not have involved a loss of pay. In other words, the grievant was not harmed by the seven day suspension. It was purged from her disciplinary record and did not cause her to lose pay.

IV. POSITION OF THE PARTIES

A. The Union:

The Union contends that the seven day suspension imposed on the grievant ran concurrently with the fourteen day suspension. The Union argues that, since the seven day suspension was purged, the grievant actually should have received a seven day and not a fourteen day suspension. It is also the position of the Union that, if the ruling is that the grievant served a seven rather than a fourteen day suspension, management's discipline in the case was not progressive; and the subsequent removal of the grievant should be reevaluated.

B. The Employer:

The Employer contends that there was no reliance on the seven day suspension at issue in this case when management dismissed the grievant. Consequently, the issue raised by the Union allegedly is irrelevant as it has no relationship

to the grievant's subsequent dismissal. According to the Employer, the issue of the grievant's seven day suspension was resolved at Step 2 and should be considered to have been closed at that time.

V. ANALYSIS

First, the seven day suspension imposed on the grievant was not cited by management in its removal case against her. There was no evidence showing that the seven day suspension which the Employer "purged" from the record had any impact on the grievant's dismissal. Second, the Union failed to be persuasive of the fact that the seven day rescinded suspension for an unsafe practice had any bearing on the uncontested fourteen day suspension for irregular attendance. Clearly, it was unusual for Supervisor Body to issue concurrent suspensions. But the issue before the arbitrator is not whether Mr. Body had a right to issue concurrent suspensions but whether the grievant is entitled to receive seven days of back pay as was "awarded" to her in management's decision at the second step of the grievance procedure.

The grievant has no right to the backpay. The award of seven days of back pay clearly had been based on a mistaken belief that the grievant had lost seven days of pay in serving a seven day suspension for an unsafe practice. It is clear that the grievant did not lose any pay at all as a result of

her alleged unsafe practice. Consequently, she is not entitled to any reimbursement. Her fourteen day suspension for irregular attendance was uncontested and properly served.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievant should not have received backpay for a seven day suspension which management "purged" at Step 2 of the grievance procedure.

It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

CARLTON J. SNOW
Professor of Law

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