

IN ARBITRATION PROCEEDINGS PURSUANT TO THE-COLLECTIVE
BARGAINING AGREEMENT BETWEEN THE PARTIES

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In the Matter of an Arbitration)
)
between)
)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO,)
)
Complainant,)
)
and)
)
UNITED STATES POSTAL SERVICE,)
)
Respondent.)
)
Involving the grievance of:)
)
MR. DARRYL DICK)
)
_____)

C# 4913

Regular Arbitration

Case No. WIN-5G-D-27346

VAN NUYS, CA

APPEARANCES:

On Behalf of the Union:

Mr. Thomas H. Young, Jr.
Regional Administrative Assistant
National Association of Letter Carriers, AFL-CIO
1124 West Chapman
Orange, California 92668

On Behalf of the U. S. Postal Service:

Mr. Russ Davenport
Labor Relations Assistant
United States Postal Service
15701 Sherman Way
Van Nuys, California 91409-9403

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Francis Richard Walsh, Esq.
Arbitrator
200 McAllister Street
San Francisco, California 94102-4978

OPINION

The hearing in this arbitration was held in Van Nuys, California, on January 31, 1985. At the conclusion of the evidentiary part of the hearing, and the closing statements of the advocates the case was submitted for final decision.

The Grievant's date of hire was May 31, 1969, and he was removed from the Service on August 6, 1984. The issue in this case is: Whether the removal was for just cause, and if not what is the appropriate remedy?

The Service's letter of proposed removal, dated July 2, 1984, stated in part:

"You are hereby notified that you will be removed from the Postal Service no sooner than thirty days from receipt of this notice. The reasons for this action are the irregularities described below:

"Charge #1 - Mishandling of Mails

On Saturday, June 2, 1984, at approximately 0700, while performing vehicle safety inspections, Sherman Oaks Station Supervisors Connie Figgins and Wilma Ballew noticed faded Green Sheet Shopper bundles partially covered by raingear in your contract vehicle. After finishing their safety inspection, the Supervisors contacted you

and with the aid of alternate Shop Steward Motto Miller, proceeded to your van to retrieve the bundles. When you opened up the van, you stated that the Green Sheets were nothing but duplicates. The bundles were the "S" bundles which had labels affixed to them and had not been broken. Also found in the back of your van were three Playboy wrappers without the magazines; the wrappers were addressed to different customers. Further investigation revealed a compartment containing bundles of detached labels of Green Sheets and ADVO, all addressed to Route 341. A full mail inventory found in your van is

as follows:

9 unopened Green Sheet Shoppers (7 bundles had address labels)

50 (approximate) loose Green Sheet labels

7 sets of Green Sheet detached labels

108 Bullocks ad-sale dated 4-4-84 through 4-7-84

5 unopened and 1 opened bundle of Holiday Health Spa

3 empty Playboy wrappers

1 empty Schering Corporation box addressed
to Dr. Hand, 13453 Moorpark.

1 Screen Extra Guild book addressed to Ericson,
4355 Ventura Cyn. #11

1 Games Magazine - March issue addressed to
Mrs. K. Lisciandro

8 pieces of miscellaneous bulk rate addressed
to various people on route 341

30 pieces of all classes of mail including First
Class, addressed to Dr. Bauman, 13449 Moorpark

When confronted as to why you had the mail in
your van you replied, 'Well, I'm not the only one
who does this.'

"Charge #2 - Unauthorized Possession of Postal Equipment
in addition to mail found in your van, four carrier
pouches, two leather and two canvas were also found.

When confronted you stated that a supervisor gave
you the two leather pouches; however, you could not
explain why you had possession of two canvas pouches.

"The following past elements were considered in taking
this action:

1/19/84 Letter of Warning Unsafe Act

12/5/83 Suspension-2 day AWOL

11/8/83 Letter of Warning AWOL/Tardiness." . . .

The Service contends: the facts stated in "Charge 1" (quoted above) were proved; the Grievant's original explanation, that he intended to deliver much of the material when he started his route, but changed his mind while he was on the route, is not credible; even assuming the Grievant's explanation is credible, the fact remains he mishandled mail over a long period of time; without any doubt he was guilty of mishandling of mails; the facts in "Charge 2" (quoted above) were also proved, and showed that he was in unauthorized possession of postal equipment; here again, the Grievant's explanation was not credible; though the Grievant may have had some emotional problems, they did not excuse his gross misconduct; testimony showed he had not changed his personality as much as he claimed; the Service was never aware of his alleged personal problems; there is no guarantee that the Grievant will not revert to his former ways if he is reinstated to his former position; the grievance should be denied.

The Union contends: the Grievant is a long time employee with a good record; all of his problems were caused by the overwhelming personal problems caused by his family situation; the only disciplines, minor ones, he had encountered prior to the ones which led to his removal were also attributable to the same problems; he has taken positive steps, by seeking and following competent advice from a professional; he is now able to return to work, and whatever personal problems which remain will not prevent him from being an exemplary employee, as he had been in the past; the grievance should be granted, the Grievant should be returned to employment, the removal should be

rescinded, and if appropriate, some lesser degree of discipline be imposed.

There can be no question but that the Grievant engaged in the conduct described in "Charge 1". The Grievant's original explanation for not delivering much of the mail ("Everybody does it.") is neither accurate nor satisfactory; and it does not excuse him. Even assuming the Grievant is correct, that Dr. Bauman had asked the former to keep her mail, he knew the mail should have been kept at the station. Clearly the large volume of mail which admittedly was mishandled over a long period of time would justify severe discipline.

With respect to the allegations in "Charge 2", the basic facts with respect to possession were proved. Whether the Grievant's explanation is accepted, viz., that a supervisor had authorized him to keep the leather pouches so that he (the Grievant) could have them repaired, and then use them again is not too important. For purposes of this case, I will assume the Grievant is telling the truth.

The only real, and very difficult question in this case is whether the Grievant, an employee with long seniority, should be removed in view of the problems which he had encountered, and the effect they had on him in relation to his work. The Union argues that those afflicted with severe emotional problems, arising through no fault of their own, should be treated, for disciplinary purposes like those with problems arising from alcohol and/or drugs. (See ARTICLE 35 of the National Agreement.) ARTICLE 35 does impose certain duties and

responsibilities on the parties to the collective bargaining agreement. But that article pertains to alcohol and drugs. Thus there is no contractual mandate imposed on the Service in the event of physical and/or emotional problems. This does not mean however that the same understanding and spirit which prompted the insertion of ARTICLE 35 cannot be used in appropriate cases by the Service and by arbitrators.

The familial problems experienced by the Grievant, his wife and his son were without question very severe, and not uncommon in the world in which we live. The Service does not deny this. I see no reason for setting them out in detail here, for to do so would add nothing to my ultimate decision. It would only serve to cause possible embarrassment, and perhaps worse consequences to the Grievant and to his family.

The Service has a duty to protect its patrons, and in doing so it must at times impose discipline, up to and including removal. Though removal is obviously punitive, one of the principal reasons for its use is to assure that trustworthy employees process and deliver the mail. If all the facts indicate an employee cannot be trusted to carry out his/her responsibilities then the Service is justified in removing that employee.

Allan N. Schore, Ph.D., a License Clinical Psychologist, testified to the following: he first saw the Grievant in May, 1982, and has seen him at least once a week since that time; (most of that which he

testified to is contained in his letters which are set forth in full below); Dr. Schore believes the Grievant can now return to work, and do his work properly; though the Grievant has had the capacity to distinguish between right and wrong his judgment had been seriously impaired, and this is what caused him to fail to do his work properly; the probability of the Grievant's repeating his acts of misconduct, which caused him to be removed from the Service "is nil".

Dr. Schore's first letter of July 23, 1984 states:

"This letter is in reference to a current patient of mine, Mr. Darryl M. Dick, who is presently being treated psychotherapeutically for ongoing depressive episodes. His DSM III diagnosis is 'Dysthymic Disorder, 300.40'. During the first months of this year, his depressive symptomatology significantly increased, due to endogenous and familial factors. Specifically, his mood became lower, his energy level dropped, and he became more withdrawn and insecure. Additionally, perhaps the most outstanding depressive symptoms were lapses of attention, concentration and judgment. It became clear that these psychological symptoms were interfering with his usual successful work adjustment abilities. Thus, although his work was not the cause of his depression, it was severely impaired by it. During this time, he spent most of his psychotherapy sessions attempting to cope with the difficulties he was experiencing on the job.

"Currently, although the depression has somewhat lifted, it still continues. The patient manifests a great deal of anxiety concerning the possible loss of his position resulting from his intensified psychological disorder which occurred in the first months of this year. He frequently expresses a great deal of remorse and guilt about his job infraction.

"I would hope these facts might impart some understanding concerning your evaluation of his future job status. Termination would result in an intensification of his depression and a serious blow to his self-structure.

"Mr. Dick will continue in treatment with me. I would hope that whatever consequences might befall him would not include the loss of his position.

"If I can be of any further assistance, or can help to clarify any of the above statements, please feel free to contact me at the above address.

"Thank you for your consideration in this most important matter."

Dr. Schore's second letter of October 17, 1984, states:

"The following is an update of an earlier evaluation of a patient of mine, Mr. Darryl Dick.

"On July 23, 1984, I noted that the patient was beginning to resolve a clinical depression which had been most severe at the end of 1983 and the beginning of this year. I also noted this depression had undoubtedly impaired his work performance.

"Over the last 3 months Darryl has made significant gains in his psychotherapy. He has diligently attended our sessions and used them well. Over the same period of time, the depressive symptomatology has subsided, and I can now report that his psychological functioning has returned to much more adequate levels. His mood disorder has diminished, concentration and judgment are more intact, and his motivation has returned. Thus, the prognosis at present is excellent.

"In his present state he could undoubtedly deal competently with his vocational responsibilities. At this time I can confidently predict a successful re-entry and adjustment into the work environment. I would thus recommend reinstatement at this time."

The Service did not introduce any meaningful expert testimony effectively to rebut Dr. Schore's opinion and findings.


Under all the circumstances I do not believe removal was for just cause in this case. This long term employee, with a good record until severe problems beset him, deserves another chance. He should be well aware this may well be his last chance. My findings should not be construed as a criticism of the action of the supervisory personnel of the Service. They acted in good faith in rendering their decision to remove. The Grievant served for fifteen years with a good record until the family problems took their toll on his emotions and his

judgment. He had been on the same route for the last eight years of his service, and had been commended by his patrons. The Grievant is of course not completely free of blame. He must have been aware that he needed expert help, and that it was available. For his failure to avail himself of that help, and for his misconduct during the course of his work, he deserves some discipline. That which I hold to be appropriate is reflected in my Award which is given below.

AWARD

1. I grant the grievance.
2. I hold the Service did not have just cause for removing the Grievant.
3. I hold the Service did have just cause for suspending the Grievant until April 30, 1985. I direct that his suspension be effective from August 6, 1984 up to and including April 30, 1985.
4. I direct the Service to reinstate the Grievant to his former position effective May 1, 1985.
5. I direct that the Grievant receive no back pay for the period of his suspension.
6. I direct that the Grievant lose no seniority.
7. I direct that the Grievant lose all benefits, except for health and welfare benefits, during the period of suspension.

April 8, 1985


Francis Richard Walsh
Arbitrator