REGULAR ARBITRATION

In the Matter of Arbitration
Between
The United States Postal Service
Sarasota, Florida
and
Branch 2148
National Association of
Letter Carriers, AFL-CIO

Grievance: #S4N-3W-D-27919
Abraham Davis,
Grievant
Record Closed:
Oct. 15, 1986

Hearing and Appearances:
Representing the Employer:
W. Daigneault
Labor Relations Representative
Tampa, Florida

Representing the Union:
Robert M. Harkinson
Regional Administrative Assistant
Atlanta, Georgia
Preliminary Statement:

On February 28, 1986 the Union filed a written grievance alleging that the Employer had violated the parties' National Agreement on December 16, 1985 by issuing to Abraham Davis, without just cause, a Notice of Proposed Removal. That Notice was followed by a confirming Letter of Decision, dated on February 3, 1986, effective February 17, 1986. The parties unable to resolve the matter of the grievance, assigned it to final and binding arbitration. Hearing was held at Sarasota, Florida before Irvin Sobel, Southern Regional Regular Panel Arbitrator on August 26, 1986.

The parties to the proceedings were accorded full opportunity to examine and cross examine witnesses and to present such other evidence as deemed relevant to the issue at hand. The record was closed on October 15, 1986 at which time briefs filed by the parties were received and exchanged, and the agreed upon opportunity for counter responses was availed upon by the Employer's advocate.

Finding of Fact:

The grievant had been employed by the United States Postal Service in Sarasota, Florida for approximately 6 1/2 years. On December 10, 1985, the grievant was issued the following Notice of Proposed Removal, bearing the signature of Kenneth Gjundjek, (Supervisor, Delivery and Collections):

This is advance written notice that it is proposed to remove you from the Postal Service no sooner than 30 days from the date of your receipt of this letter.

This action is based on the following reasons:
Investigation reveals that on September 19, 1985, at approximately 12:15 P.M., you were observed by a postal customer, disposing of bundles of mail in a dumpster near her apartment. Immediately after receiving a call from the customer, Postmaster Keene, R. Dupre, General Supervisor Delivery and Collection and myself proceeded to the dumpster to retrieve the mail. Mr. Dupre found a bundle of marriage mail flats in the dumpster at the northwest corner of the apartment complex at 1910 Sanford Circle. The customer directed them to another dumpster near her apartment where she saw the carrier dispose of mail. Found inside this dumpster was one (1) bundle of marriage mail and several other loose pieces. The bottom of the dumpster contained approximately two (2) inches of water and the mail was partially wet. The customer identified the mail as being the mail she had seen the carrier throw in the dumpster earlier. A Suncoast Today newspaper addressed to Postal Customer, 1910 Sanford Circle, Sarasota, FL 34243, was also retrieved from the dumpster. The customer said she had not received her Suncoast Today paper and that she did not throw it in the dumpster.

In an interview with the Postal Inspectors you stated that you carry marriage mail flats as a "third bundle": and that you have never been told you could dispose of undeliverable mail out on the route. You further stated that the only
mail you would put in dumpsters out on the route would be
No Obvious Value mail that would accumulate in a customer's
box and that you would clean out the box to make room for
additional mail. You stated that you never throw away
bundles of mail. You were shown the two (2) strapped
bundles of flats retrieved from the dumpster and were asked
if you recognized them and if there was any reason you
would throw them away. You answered, "Guess these are the
'shoppers', I guess", and said there was no reason you
would throw them away.

Later during the interview, you said that you probably
would have thrown them away if they had gotten wet in the
jeep because the jeep was leaking and they, "would
have been thrown away anyhow." However, it was determined
by Postal records that you had not reported your vehicle
to be leaking.

You were also shown the Suncoast Today newspaper addressed
to 1910 Sanford Circle. You stated that you remembered
delivering this piece of mail to the customer, that you
know the customer, and that you did not throw the newspaper
into the dumpster.

On September 21, 1985, Supervisor Dupre and myself took
sixteen (16) pieces of mail that had been retrieved from
the dumpster and went out on the route and attempted to contact the customers at the addresses on the mail. Of the sixteen (16) pieces, five (5) were good addresses where the customers provided statements to the effect that they did not receive that piece of mail that day; three (3) other addresses were occupied but no one was home. The remaining eight (8) addresses were vacant.

When questioned concerning this incident of destruction of mail, you stated, "there is no more information I wish to add."

You are charged with the destruction of mail which cannot be tolerated in the Postal Service. Employees are required to perform their duties in an efficient and effective manner and uphold the trust and integrity in the eyes of the public, which you have violated.

The said notice was received the following day by the grievant who had been placed upon Administrative Leave on September 20, 1985 following his interview with the Postal Inspectors. He continued in that status until the effective date of his removal on February 7, 1986, four days after receipt of the Letter of Decision, signed by Larry A. Day, Acting Manager, Customer Service.

On February 19, 1986 the Union initiated the grievance procedure at the first step before Ken Gjundjek who did
not respond. The Union, through Steward W. Dunsmore already had made a request on December 13, 1985, immediately following the Notice of Removal, for various types of information, including; 1) addresses on and copies of the 16 pieces of mail; and 2) all reports and forms showing concurrence for removal. On February 28, 1986 the Union filed the written grievance at the second step, wherein it alleged, that notwithstanding, the grievant had admitted improper disposition of mail, the Employer had not proven him guilty of the more serious charge of improper disposal of deliverable mail. The Union also cited a number of procedural abuses including failure by the Employer to supply it with the information it had properly sought under provisions of the LMRA. Included in these contentions were allegations that the Employer's Step 1 and Step 2 responses were and violated both Step 1(d), and Step 2(d) of Article 15, Section 2.

Contractual Provisions

Article 15

Grievance Arbitration Procedure

Section 2: Grievance Procedure-Steps

Step 1

(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:
1. Detailed statement of facts;
2. Contentions of the grievant;
3. Particular contractual provisions involved;
   and
4. Remedy sought.

Step 2; (a).....

(d) At the meeting the Union representative shall make full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.
Article 16

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.

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Article 31

Union-Management Cooperation

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Section 2. Information

The Employer will make available for inspection by the Unions all relevant information necessary for collective bargaining of the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such
information provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee. All other requests for information should be directed by the National President of the Union to the Senior Assistant Postmaster General for Employee and Labor Relations.

**Employee and Labor Relations Manual**

661.3 Standards of Conduct

Employees must avoid any action, whether or not specifically prohibited by this Code, which might result in or create the appearance of:

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c. Impeding Postal Service efficiency or economy.

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f. Affecting adversely the confidence of the public in the integrity of the Postal Service.

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666.8 Attendance

.81 Requirement for Attendance
.85 Incomplete Mail Disposition

It is a criminal act for anyone who has taken charge of any mail to quit voluntarily or desert mail before making proper disposition.

Position of the Parties:

Since those facts and contentions established by either party, which are relevant to the Arbitrator's decision will be restated by him in the body of his discussion no purpose, other than increased verbiage, would be served by their repetition. Accordingly, only a barebones summary of each parties' position will be stated.

The Employer's Position:

The Employer's position already has been stated in its Notice of Removal. Essentially the Employer contended that the evidence supports willful and improper disposition of deliverable mail, an offense whose severity is clearly a cause for removal. It argued that the Union's arguments of procedural violation, even if valid, were of such minor moment as to be inconsequential. They were raised by the Union as a diversion or subterfuge to conceal the dischargeable nature of the grievant's offense.

The Union's Position:

The Union contended that the five major procedural defects it had so amply proven were sufficiently violative both of the intent and provisions of the National Agreement either to warrant sustentation of the grievance without reference to its substantive merits, or at the least, mitigation of its extreme penalty.
Moreover, it argued that the major substantiative/rationale for the Employer's removal action, namely improper disposal of deliverable mail, was devoid of any foundation. It admitted that the grievant had improperly disposed of mail but contended that none of it was deliverable, and given the circumstances of the incident, the penalty imposed by the Employer was not only based upon false premises but also was far too severe, especially in the light of the grievant's impeccable prior seven year record in the Postal Service.

**Arbitrator's Discussion:**

**Introduction:**

The Employer, in its third step appeal denial, sharply delineated the underlying basis for its belief that the grievant's breach was so serious that removal of the grievant was justified. Neusanger, Management 3rd Step Appeal Representative, stated: "Investigation has established that deliverable mail was improperly discarded by the grievant." That decision built upon a second step denial by Charles B. Oliver, Step 2 designee who stated: "The overwhelming preponderance is that Mr. Davis knowingly and willfully (underlining by the arbitrator) discarded the subject mail improperly." In short, the Employer has constructed its belief around its contention that the two bundles of marriage mail and the sixteen pieces of "loose" 3rd class mail admittedly discarded by the grievant in the dumpster, and the one piece of third class mail which he denies having discarded, were not only deliverable but also were known to be so by him.

In light of the grievant's denials, and counterclaims regarding
the state of the mail and its lack of deliverability, response to
the following questions are necessary before the instant grievance
can be resolved. These are: 1) Were the two bundles of "marriage"
mail thrown into the dumpster wet before they were thrown into the
dumpster and therefore non-deliverable, or were they dry?; 2) Were
the pieces of loose mail the grievant admitted to have discarded in
the (S.E.) dumpster deliverable; and, can the grievant have been
reasonably construed to have thrown the admittedly deliverable
Suncoast Today, away? Crucial to the resolution of the above matters
is the credibility of the principal protagonists on both sides,
including the person (S.B.) who originally notified the Postal
Service of the grievant's actions and whose Suncoast Today became an
important, element of contention. In addition to the above
substantive issues, important issues of gross procedural
improprieties were raised by the Union and contested by the
Employer. Thus, another question which must be resolved is the
following: Were such procedural improprieties proven, how serious
were they, and what is the import in regard to the ultimate
disposition of the grievance?

Opinion and Award:

A major contention of the Union, and a test of the grievant's
credibility, is that the two bundles of mail admittedly discarded by
him in the northwestern and southern dumpsters at the Sanford Circle
Apartments, had become so wet during an intense downpour, which
cascaded water through a leak into the grievant's jeep, that the
bundles had become undeliverable. The Employer after inconclusive
presentation of evidence and argumentation by the parties
regarding the state of the jeep, and the timing, intensity and locus of the downpour, essentially had to rely upon its contention that the bundles were dry and deliverable prior to their being thrown into the dumpsters. The Postal Inspector's report states in this regard; "The bottom of the dumpster (south) contained approximately two inches of water and the mail was partially wet." The statements of General Supervisor Richard Dupre, and Kenneth Gjundjek, both on September 25, which are appended to Postal Inspector Cantrell's report (Appendix 1), use identical language in regard to the condition of the other bundle found in the northwest dumpster, namely, "This bundle of mail (flats) was returned in a completely dry condition".

Visual inspection by this arbitrator of the condition of the two bundles was far more supportive of the grievant's statements than of the Employer's. While both of the bundles long had been dry, each showed signs throughout, of having been considerably wet at some point in time. The differences between the two bundles, were not highly significant and what discrepancy between them did exist, was easily explicable by the two (2) to three (3) inches of water in the dumpster closest to the apartment of Sandra Bridges. In fact, the differences in appearances between the two bundles, especially in degree of buckling of the paper were far less than this arbitrator would have expected allowing for the amount of water admittedly found at the bottom of the south dumpster. That bundle showed far more signs of wetness throughout than would have ensued if its exposure to water was confined to "the bottom half where it was sitting in
the water." Even assuming arguendo, that the bundle was only "partially wet" and that state was solely attributable to the water in the dumpster, the appearance of the second bundle was, nevertheless, totally inconsistent with the "completely dry" description ascribed to it on September 25th by the two Supervisors (Gjundjek and Dupre).

Paragraph 6 of the Postal Inspector's statement (Appendix I) provides the essence of the Employer's main theme, namely, the grievant knowingly disposed of deliverable mail. It states: "On September 21, 1985, Supervisors Dupre and Gjundjek took sixteen pieces of the mail that had been retrieved from the dumpster and went out on the route and attempted to contact the customers at the addresses on the mail. Of the sixteen pieces, 5 were good addresses, where the customers provided the statement to the effect that they did not receive that piece of mail that day, 3 other addresses were occupied, but no one was home, and the remaining eight addresses were vacant.

The Union's counterargument in regard to the same mail was stated in its lengthy nine-page addendum to its second step appeal written by its Chief Steward, Rolando Blackman (Exhibit JT.#2). He states therein (Page 1) "Later that day the grievant disposed of these wet bundles along with some other undeliverable mail (MLNA, unclaimed, vacant, no receptacle, etc.) bulk rate mail, into a dumpster on his route." Referring to the already cited investigation by Supervisors Dupre and Gjundjek, Chief Steward Blackman states (pp.4-5): "Gjundjek fails to make any investigation or reference to: a) date of occupancy, b) P.O. Boxes, c) special instructions, d)
refusal or unclaimed mail, e) temporary forwards; and, p)9): b) concerning the 5 alleged "good addresses" one was a P.O. Box, one had special instructions by the owner down the street to deliver mail to him (FWD) two were MLNA, to grievant's knowledge, and one was a fwd, with no knowledge of a new resident. c) concerning the 3 alleged occupied houses, one was unclaimed, two were previous CMU.

Contrasted with the relatively superficial investigation conducted by the two Supervisors, and the simple implications derived, therefrom, the Union's very detailed analysis of the status of each address and occupant is highly convincing. That analysis, which was buttressed by the grievant's testimony which displayed intimate knowledge of the "postal status" of each occupant, and particulars and intricacies of the route, was highly convincing.

The form (Appendix #2) which the five individuals signed, neither defines their status either as the proper recipients of such mail, nor alluded to any other possible delivery instructions the grievant may have been given for that particular address. In a resort and vacation area such as Sarasota characterized by great mobility, such changes in occupancy status are not only frequent, but also are frequently known only to the regular carrier.

In short, the precise and detailed analysis by the Union, of each piece of mail at issue, can only mean that the Employer's proof falls far short of establishing that the grievant knowingly and willfully discarded deliverable mail. However, the Suncoast Today addressed to Ms. Sandra Bridges, the person who made the initial report regarding the grievant's discarding of mail in the dumpster

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adjacent to her, was not only clearly deliverable but also the grievant, who was her regular letter carrier, had delivered other mail to her on September 19th. Thus, the issue of whether the grievant knowingly disposed of deliverable mail rests to an appreciable extent upon whether or not the evidence and testimony establishes that it was the grievant who threw the Suncoast Today into the dumpster (S.E.).

It should be pointed out, at this juncture, that at his initial interview the morning of September 20, the grievant, despite admitting to discarding the bundles and all the other loose pieces of mail, vigorously contended that he had delivered that piece of mail, and with even greater vehemence denied discarding it. Thus, long before the central importance of this one piece of mail became obvious, the Suncoast Today was the only piece of mail cited by the Postal Inspector that the grievant was unwilling to acknowledge having discarded. In fact, he had denied discarding that piece of mail before he knew that Ms. Bridges was his main accuser.

When, as in this case, the arbitrator is confronted with conflicting and contradictory versions of the same event, he has neither a magic wand to wave, nor a scientific formula he can apply to determine who is the truth sayer and who is not. Indeed, after the respective versions have gone through several stages of laundering, due to the inevitable tendency of individuals over time to obliterate from their minds anything antithetical to their own self image, the issue is not always one of conscious statement of untruths. Thus, the arbitrator must draw his conclusions from his knowledge, based upon his experience of the probabilities
of how individuals normally behave in a particular environment, and statements taken immediately or shortly after the event or occurrence. Those more immediate recollections are likely to be more spontaneous because of insufficient time for "coaching" and hardening of the versions. The arbitrator must also weigh conflicts and ambiguities in the statements, and in the ensuing testimony based upon them.

The sworn statements of the two major Employer witnesses, (Sandra Bridges and Supervisor Dupre) if not actually in conflict with each other, are sufficiently ambiguous as to fail to provide the support for the grievant's alleged "dumping" of Sandra Bridge's Suncoast Today of September 19, 1985 (Appendix #1). In the first paragraph of her statement(s), on September 19th, at 1:40 PM she affirmed to Postmaster Keene "I observed my letter carrier, Abraham, last name unknown dispose of what appeared to be a bundle of flyers in the dumpster located near my apartment. After he departed I went to the dumpster to see if I was correct, before calling the Post Office to support it." (ss) Sandra J. Bridges.

Dupre, who received the call stated six days later, on September 25, 1985; "Ms. Bridges informed me that she had seen Abraham Davis throwing mail into the dumpster immediately outside her apartment. She described the mail as a bundled set of circulars and a number of yellowish circulars."

Not only do the two opening paragraphs of the statements diverge in small particulars, namely Abraham (Bridges) and Abraham Davis (Dupre), and one version, "immediate" and the other "near" in regard to the location of the dumpster, but they also diverge in key particulars. Bridges said that she saw the grievant dump a
"bundle of flyers", yet after she admittedly went to the dumpster, she called the Post Office, where Dupre received the call, and he states that she told him that she saw Abraham also "throw" a number of "yellowish circulars." She did not tell Dupre that she had already gone to the dumpster and had visual access to its contents. Neither she nor Dupre, reported at this juncture anything regarding a Suncoast Today. Yet her first paragraph was signed as though she seemed to terminate her statement by her signature at that juncture. It should also be pointed out that none of the circulars, brought forth as evidence, were "yellowish" in color. Supervisor Kenneth Gjundjek's statement, also written on September 25, 1985, six days after his interview notes, "I found one more bundle of marriage mail, several Luria's circulars, several (underlining by arbitrator) Suncoast Today circulars, and some other pieces of mail. Yet, only one clearly identifiable Suncoast Today was placed in evidence. In fact, the great majority of the Employer's exhibits, ostensibly of the "loose pieces of mail" were so blackened in the duplicating process that their origins were barely, if at all, identifiable, and thus also their value as evidence was reduced to a virtual nullity. Among those "barely identifiable" pieces were several sheets (viz. Exhibit #4) in which the only visible statement was, "Watch Out,.......Here Comes George Burns, Page 2", which conceivably could have been the "several" Suncoast Today's, alluded to by Gjundjek. However, the Suncoast Todays bearing the "Burns" statement are different than the September 19th issue which Ms. Bridges stated was not delivered to her. If this is the case, then the grievant's
story that much of the loose mail represented old out of date NOV material which he had "cleaned out" of mailboxes on his route was borne out. If the "George Burns" headline is from a different circular then Gjundjek made a misstatement when he stated he found "several" Suncoast Todays.

The nature, form, and content of Ms. Bridge's statement witnessed by Postmaster Keene, in her apartment, represents another anomalous element which raises serious questions. That statement (in Appendix I) is in three paragraphs, each one of which is signed by Ms. Bridges, and each referring to different events in sequence. The second and third paragraphs are linked to the previous signed paragraphs by "further". This sequencing would imply that after she signed each of the prior paragraphs, she either found, or someone told her that her statement was not complete and she added the latest evidence using "further" as the connecting "link". If the latter were true that somebody could only have been Postmaster Keene.

In fact, the 3rd paragraph, namely that which pertains to Ms. Bridges' allegedly undelivered Suncoast Today, is the most perplexing. It states:"Further, on September 19, 1985, I did not receive my Suncoast Today newspaper which was also retrieved from the dumpster at 1:57 PM". Not only is the seventeen (17) minute delay in finding and retrieving the only dry piece of mail, which ostensibly was on top, inexplicable, but also the apparent seventeen minute lapse between the second and third signatures would reinforce the Union's contention that they were written sequentially, and that after signing each of the first two paragraphs, Ms. Bridges was reminded by Postmaster Keene, who admittedly was in her apartment

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coordinating the evidence gathering, of the incompleteness of her prior statements.

Given this almost afterthought citation of the only piece of evidence, to which she should have accorded great initial significance, since it involved her personally Bridges' credibility becomes more questionable. In fact, both Gjundjek's and Dupre's statements regarding the Suncoast Today, seem to accord it the same almost afterthought status, namely the last sentence.

From the Employer's standpoint the most difficult to explain, if not inconceivable, matter regarding the Suncoast Today was its dry condition and location on top of the bundle. It was the only one of the seventeen (17) pieces of loose mail found completely dry. The probability that, loose mail "thrown", according to Dupre's version of Ms. Bridge's call into a container, whose bottom area is as large as that of an apartment dumpster, would land on top of a bundle, which occupies only a small proportion of that surface, is so slight as to put the likelihood of its occurrence in to the statistically very small, to negligible, possibility category. That very small degree of statistical probability is totally inconsonant with the "preponderance of proof" required to validate a contention of this nature.

This arbitrator is normally inclined to resolve the credibility issue in favor of the individual who has the least to gain from the testimony. When Ms. Bridges was first presented as a witness, given that she had no apparent self interest in her testimony, while the grievant had everything to gain from his, this arbitrator was inclined to resolve the credibility issue in her behalf. However,
the unusual nature of her appearance before this arbitrator evoked some initial doubts. The appearance of Ms. Bridges as a witness represented the first instance in this arbitrator's fairly long experience, in which the person who made the initial report either of such improper disposition of mail or of an equally serious incident, chose to abandon his/her anonymity in favor of testifying, especially after a lapse of almost one year. After her testimony, it became apparent, that not only was she involved in the grievance during the entire period, but also she was emotionally involved in her testimony and in what she regarded as the "right" disposition of the case.

Ms. Bridges throughout expressed considerable animus toward the grievant, notwithstanding her denial that it was either personally or racially motivated. It was clear, if her animus was not directed towards the grievant personally, that it was directed against postmen in general whose high pay and privileges, for what she regarded as relatively menial and unskilled work, she contrasted with her less well compensated status as a professional nurse. Her own language cited by the able Postal Service advocate in his post hearing brief, which she used to explain why she was so involved in the proceedings, was highly revealing in this regard. She stated; "I know a lot of people who would like to work for the Post Office, and I hate (underlining by the arbitrator) people who abuse the privilege."

That set of attitudes towards the grievant was manifested in other regards. Ms. Bridges, despite the fact, that the grievant had been delivering mail to her for a number of years, and had accorded her personalized service in delivering mail to her door since her box

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frequently was filled because she received a number of magazines and professional journals, knew him and referred to him only as Abraham. She kept referring to him as such, even after the NALC advocate in his cross examination, studiously referred to Mr. Davis.

Ms. Bridges continued interest and involvement in the grievance was manifested in other contexts. Almost three months later, when the Notice of Removal, was received, Union Stewards Blackman and Dunsmore went to the Sanford Apartments to investigate, and were accosted by the Apartment Manager, an admitted close friend and confidant of Ms. Bridges, and Ms. Bridges herself. They were, according to unrebutted testimony asked to leave, and denied access to the same " Occupants " cited by the Employer as not rightfully receiving their mail to whom Gjundjek and Dupre had been accorded full access on September 20th. At that time, according to the Stewards, Ms. Bridges and the Manager met them, " with a hostile and uncooperative attitude " Ms. Bridges stated " they were in support with any action taken by the Postal Service, and there was no need to go around bothering people when the grievant's guilt was clear."

Through that statement it could be inferred that not only had she kept in contact with the Service through Postmaster Keene, but also she regarded herself as vindicated by the action of removal. Such a personal commitment can be as much a source of self interest as Davis' desire to save his job.

Obviously with his job and economic well being at stake the grievant's testimony would be self serving. But, self serving does not automatically denote lack of credibility or falsification and it behooves the Employer as the moving party to discredit the grievant's
testimony. This, the Employer, despite its well reasoned brief by its advocate, failed to do. The USPS failed to present any evidence, other than that encompassed in the already alluded to five (5) pieces of loose mail and the Suncoast Today, either that the grievant failed to deliver a single piece of deliverable 3rd class mail that he should have delivered, or missed a single stop on his route. In fact, it is hard to establish a motive for his alleged failure to deliver the Suncoast Today to Ms. Bridges, since he, by her own admission delivered her 1st class mail on that day. The normal motive for improper disposition of mail is that the carrier(s) involved falls behind in his route delivery schedule and either unable or unwilling to request overtime, tries to reduce his/her load to manageable proportions by "dumping" part of it. Management was unable to disprove the grievant's contention that he returned two and one half (2 1/2) bundles of Luria posters, to the station for disposition. According to him, it was only after he found that he had more than enough Luria circulars, even without the wet ones, that he disposed of the latter in the Sanford dumpsters. Such an excess supply of circulars on a given carrier's route is neither an unknown or unusual occurrence in the USPS.

It is true that the grievant's statement to the Postal Inspectors was guarded, did not initially acknowledge his disposal of the circulars, and many of the above cited defenses were stated somewhat later. However, the circumstances, of that investigation, given the knowledge available to Davis on the morning of September 20th, were preclusive of a full candid set of answers. In short, the failure of the Employer to disprove the grievant's admittedly self
serving justifications of his actions means that his is a reasonably credible version.

For the above cited reasons the Employer has not established that reasonable preponderance of proof requisite to sustaining its contention that the grievant willfully and knowingly disposed of deliverable mail in an improper manner.

Procedural and Due Process Issues:

Four basic procedural and due process issues were raised by the Union. These are; 1) The lack of the contractually required concurrence by the station head, or his designee, prior to suspension or discharge; 2) Inadequacies in the written decision by the Employer's Step 2 designee; 3) An inadequate and damaging delay of approximately 4 1/2 months between the incident and the receipt of the final Letter of Decision; and 4) Inadequacies and due process violations in the investigatory procedure, especially by the Postal Inspector's office.

The Employer contended that if any violations existed, they were unintentional and of such a minor technical nature, that they in no way damaged the grievant.

The Employer's advocate, also contended in his post hearing rebuttal brief, that the Union's argumentation in regard to the first two procedural issues constituted "surprise". This arbitrator finds that the Union properly raised the issues during the grievance procedure and thus no surprise was involved in the argumentation over the issues themselves. However, in its post hearing brief, the Union's argumentation, and its supporting citations, strongly inferred that the procedural deficiencies were being raised as
issues rather than in their original mitigatory context. In this regard the Employer advocate's objections, in his post-hearing rebuttal are well taken and the procedural matters will be treated in this decision solely as mitigatory.

The Employer clearly violated the National Agreement not only by failing to acknowledge the Union's rightful request for the concurrence form, but also by attempting to conceal its absence by less than candidly stating at the arbitral hearing that such forms were not in use in the Sarasota office. The Sarasota office, as evidenced by its advocate is clearly within the jurisdiction of the Tampa E/LR office, which to this arbitrator's knowledge clearly requires such concurrence and has a form for such (278E).

Assuming arguendo, that the Employer's statements, in this regard were true, they would still constitute a clear and unambiguous violation of Article 16.8(A) of the National Agreement, which would have precedence over any local procedures.

Notwithstanding, the Employer advocate's arguments and citations, this arbitrator finds that the Step 2 decision by its designee Charles B. Oliver to be in violation of the specifications for such as stated in Article 15, Step 2(D). "The overwhelming preponderance of the evidence presented indicates that Mr. Davis knowingly and wilfully discarded the subjec mail improperly. Is the removal citation justified?

The answer is yes. This is a serious violation of ELM-661.3, 666.8, and 668.2 of the Code of Ethical Conduct.....".

That statement by failing to provide the specificity required by the National Agreement, is inconsistent with its intent and purpose.
Moreover, the ELR regulations cited in the above response are relatively general and vague. The arbitral decision, by Arbitrator Robert Moberly (S1C-3W-D-43704), cited by the Employer to argue that the above cited brief statement by Oliver was consonant with the National Agreement is as follows: "Management provided the reason for denying the grievance namely that 'Employees actions in this case warrented Management's disciplinary action.' There was no dispute as to what the employee's actions were." Unlike the Moberly citation, cited by the Employer as precedent, this case was characterized by a high degree of dispute as to what the employee's (Davis) actions were. The National Agreement imposes a requirement upon the Employer's Step 2 designee to state what these facts were.

These violations are not merely nit picking technical ones. The contractual provisions violated are clearly designed to provide knowledge to the grievant as to the basis under which he is being disciplined, how that decision was reached, the information upon which his appeal was rejected, and the basis for rejection of the Union arguments. All this information is necessary for the grievant's defense, and the failure to obtain it is clearly damaging to him/her.

The over four and one half month delay between the incident itself (September 19th) and the Letter of Decision while not "unconscionable" as the Union's advocate argued, still can be said to be antithetical to any sound industrial relations principles, if not violative of the spirit of the National Agreement. Notwithstanding, the fact that the Employer argued it operated within that intent by putting the grievant on Administrative Leave. Two and one half
months elapsed between the incident and the Notice of Removal, even though the investigation was completed, and no new facts were even sought, after the Postal Inspector's Investigative Memorandum of October 9th was received. Approximately another two months elapsed between the Notice and the Letter of Decision. During the interim, there were three Managers (Acting) of Customer Services, each allegedly knowing less and less regarding the incident itself. The Union contended that the delays were the result of substantial disagreement, if not conflict, within USPS's Management as to the disposition of the grievance. Whether this is true or not, the delays made it very difficult for the Union to effectively marshal the evidence required for the grievant's defense.

Among the alleged deficiencies in the Postal Inspector's Investigative Memorandum and in the procedures used to obtain the evidence were; 1) The grievant was merely told two people wanted to talk to him, and; 2) He was never informed of the seriousness of the investigation nor informed of his rights despite the potentially "criminal" nature of the alleged act. He, therefore, was lulled into not asking for Union representation even though four responsible Union officials were in the next room. He was never informed of the possible jeopardy to his job, and the questions started disarmingly about his knowledge of operating procedures. When initially asked about discarding mail it was in the latter context, but when asked specifically about the two bundles he finally did admit he had discarded them because they were too wet. The inspectors who initially created the impression that his plight was not serious, left him in the room for one half hour while they talked to

27.
Management officials, and after obtaining input from the latter then asked him for his statement. He wasn’t told that he had to defend himself against discharge, he merely reiterated what they had discussed about the mail and thus, his own statement did not include any element necessary to his defense. He was then immediately put on Administrative Leave and left in limbo for two and one half months thereafter.

On the other hand both Richard W. Dupre and Kenneth Gjundjek were allowed until September 25th to complete their statements. They did not have to make their statements until the grievant had made his, and thus their statements, especially that of Gjundjek's who ultimately signed the Notice of Removal, were partially designed to rebut the grievant's. Ms. Bridges statement was available to the Inspectors on the 20th, and they used it as a basis for questioning the grievant, yet, despite her contradictions and conflicts, they chose not to interview her again and literally treated her statement and the subsequent ones of Dupre and Gjundjek as gospel. They left the remaining part of the investigation to Dupre and Gjundjek. It was at best, a hit and run superficial investigation.

In short, the Employer failed to adequately sustain its contentions that the grievant knowingly and willfully disposed of deliverable mail. Its procedural breaches were not minor and of small consequence; instead, those breaches were sufficiently damaging to both the Union and the grievant, especially the latter, to warrant some mitigation of the original removal action.

Notwithstanding, the Employer's failure to sustain its original charge, the grievant by his own admission was guilty of improperly
disposing of mail matter, itself a serious offense for a seven (7) year Postal Service veteran, who must have known better. That seriousness is only lessened to a small degree by the fact that the mail was either wet and/or undeliverable. The Employer's public image was adversely affected by the method of disposal, improperly chosen by the grievant. The determination of which mail is deliverable, and which is not, is not his and he was completely aware of this fact. Any unauthorized act of disposal of mail by a carrier is serious. If such practices were generalized by carriers, even if only in cases where they decide the mail was too wet to deliver, those who use the USPS to deliver their advertisements and thereby provide 60-70 percent of the Postal Service's volume, would soon find alternative and less risky modes of delivery to the detriment of the employment of all carriers. That seriousness was not attenuated one iota by all the pictorial evidence marshalled by the Union designed to show that the Employer's dumpsters are poorly kept and the Employer is lax in disposing of its "excess mail". That argument does a severe disservice to both the grievant and Union, and does not in any fashion mitigate the severity of the grievant's offense.

In assessing the amount of discipline that he will render, once he has rejected the charge on which the Employer based the most severe of all penalties but has sustained a reduced but still highly serious charge, the arbitrator must take into account a multiplicity of factors. The most important among them are, the grievant's equitable position and rights to his employment status, his previous record, the Employer's actions and activities in this case against which he must weigh their arguments regarding the severity of the
acts committed by him/her, and finally the damage to the Employer's interests.

In this case, the grievant denied knowingly and willfully discarding deliverable mail and the Employer fell short of proving he had. His "taking the law in his own hands" by deciding the mail was either too wet to deliver or was undeliverable, even if he were correct in this regard, was still a highly improper act and caused him to initiate the whole process which led to his removal, and this proceeding. Acting on his own impulses, he improperly and against all regulations, discarded mail matter and did so in a fashion which led to the Service being publicly placed in a highly compromising position. In short, he not only improperly threw the mail into the dumpster, but also he initiated the whole unfortunate set of circumstances, which led to this juncture and this should be borne in mind.

Thus, because of the failure by the Employer to sustain its charges, and of the Employer's procedural improprieties the removal action by the Employer will be set aside and the grievance will be sustained in this regard. However, the grievant's actions, which caused the process through which he was removed to have been initiated, require that he accept major responsibility for the position he is in. He should not receive one iota of benefit from his own highly serious improprieties. Thus, while sustaining the grievance and reinstating the grievant to his former position in the United States Postal Service as of the date of the receipt of this Award, no back pay will be awarded. However, because of his improper discharge, maintenance of the grievant's equitable position and
interest in his employment status requires restoration, of seniority all continuing benefits, such as pension, medical insurance, and all other welfare funds and insurance payments which would have accrued to him had he not been improperly discharged.

Award

The Removal of Abraham Davis from the Service, is hereby remanded and he will be restored to full duty, at the rate of pay appropriate to his length of service, as expeditiously as possible, after receipt of this decision. He will receive no back pay but will be accorded full restitution of all seniority time, as well as all continuing benefits, such as pension, medical insurance, and other health and insurance payments which would have accrued to him during the period of his improper removal from the Postal Service. The terms of this Award will be recorded on the grievant's personnel record.

Tallahassee, Florida

November 17, 1986

This is a certified true copy of Arbitration Award

Irvin Sobel, Arbitrator
INVESTIGATIVE MEMORANDUM

1. On September 19, 1985, the Inspection Service was notified by the Sarasota Postmaster that a postal customer had observed a carrier disposing of bundles of mail in a dumpster near her apartment at approximately 12:15 p.m. that date.

2. Immediately after receiving the call from the customer, Ms. Sandra Bridges, 1910 Sanford Circle, Sarasota, Florida 34243, Postmaster Keene, Supervisor of Delivery and Collection Kenneth Gjundjek, and R. Dupre, General Supervisor of Delivery and Collections, proceeded to the dumpster to retrieve the mail. Mr. Dupre found a bundle of marriage mail flats in the dumpster at the northwest corner of the apartment complex at 1910 Sanford Circle. The customer directed them to another dumpster near her apartment where she saw the carrier dispose of the mail. Found inside this dumpster was one bundle of marriage mail and several other loose pieces. The bottom of the dumpster contained approximately two inches of water and the mail was partially wet. The customer identified the mail as being the mail she had seen the carrier throw in the dumpster earlier. A Suncoast Today newspaper addressed to Postal Customer, 1910 Sanford Circle, Sarasota, Florida 34243, was also retrieved from the dumpster. The customer said she had not received her Suncoast Today paper and that she did not throw it in the dumpster. The customer's statement is attached.

3. Full-time Carrier Abraham Davis, Route 8064, Sarasota, Florida, was interviewed in the Inspector's Office at the Sarasota Post Office on September 20, 1985, by Inspectors T. W. Cantrell and R. P. Maddux regarding the retrieved mail. Carrier Davis stated that he carries the marriage mail flats as a "third bundle" and that he has never been told that he could dispose of undeliverable mail out on the route. He further stated that the only mail he would put in dumpsters out on the route would be no obvious value mail that would accumulate in a customers box and he would clean out the box to make room for additional mail. He said he never throws away bundles of mail.
4. Davis was shown the two strapped bundles of flats retrieved from the dumpster and was asked if he recognized them and if there was any reason he would throw them away. Davis answered, "Guess these are the 'shoppers,' I guess" and said there was no reason he would throw them away. Later during the interview, Davis said that he probably would have thrown them away if they had gotten wet in the jeep because the jeep was leaking and they would have been thrown away anyhow. It was determined by postal records that Carrier Davis had not reported his vehicle to be leaking.

5. Davis was shown the Suncoast Today newspaper addressed to 1910 Sanford Circle. He stated that he remembered delivering this piece of mail to the customer; that he knows the customer, and that he did not throw the newspaper into the dumpster. Davis provided a written sworn statement to this effect.

6. On September 21, 1985, Supervisors Dupre and Gjundjek took 16 pieces of the mail that had been retrieved from the dumpster and went out on the route and attempted to contact the customers at the addresses on the mail. Of the 16 pieces, 5 were good addresses where the customers provided a statement to the effect that they did not receive that piece of mail that day; 3 other addresses were occupied but no one was home, and the remaining 8 addresses were vacant.

7. Copies of the statements of the customer, the supervisors, and Carrier Davis are attached. The two bundles of marriage mail and the 35 to 40 pieces of loose mail are being held at the Sarasota Post Office.

T. W. Cantrell
Postal Inspector

TWC:srk

Attachments: Described Exhibits
To Postmaster
Sarasota, Fla.

Sept. 19, 1985
11:40 P.M.

I, Sandra J. Bridges, on the date at 12:15 P.M. (approximately), observed my letter carrier, Abraham, last name unknown, dispose of what appeared to be a bundle of sales flyers in the dumpster located near my apartment. After he departed I went to the dumpster and saw if I was correct before calling the post office to report it.

Sandra J. Bridges

Further, once the post master came to my home and I identified some Harris' Paints' Sales catalog and a bundle of circulars that were in the dumpster which were indeed placed there by my letter carrier, Abraham, last name unknown.

Sandra J. Bridges

Further, on Sept. 19, 1985, I did not receive my Suncoast Today newspaper which was also retrieved from the dumpster at 1:57 P.M.

S. Bridges

witnessed: M. Keene
Men have difficulty dealing with women who reach top

Darrell Sifford

The first: "Please excuse this apparently late note, but I was too emotionally constipated to ask my secretary to do it." I am an executive in a large company, 28, and, of course, a busy person. I was not prepared for my wife's reaction to my career and my management style. I am not a kind person. I have been going to school and work尽可能地 to pursue all of my career goals. Now I have my career, my beautiful office, my custom-decorated home, but unfortunately none of those things can hold me and give me comfort and support when I need a kind word. I think it's time that we tell the young women aiming for the top that it can be very lonely up here.

The second: "My wife is an attorney with a large law firm. Because she is ambitious and because she wishes to become a partner, she normally works 80 or more hours a week. Needless to say, with these hours, there is little time for anything else — let alone a relationship that requires time to grow and develop. This fact has led to the breakup of our marriage — the time and energy spent on her profession as opposed to me. I like men, but I do not have the time I spend on non-career activities."

The third: "I am a woman, 35, a successful engineer, and I would like to have a full emotional life, too. The truly ironic part is that when I am concentrating on my career and not trying to develop my outside life, I seem to be asked out on more dates. When I've sought emotional relationships, men have run away... after saying things about how independent I've always been. The only time a man has ever wanted to become serious is when I was about ready to fall apart emotionally and I appeared very sweet and very helpless... Men like women in roles."

Judith Sible is a clinical psychologist in private practice in Philadelphia and author of the book "How to Stop Looking for Someone Perfect and Find Someone to Love." In an interview, she said that career women do have some special problems when it comes to men.

"If they're very successful, if they earn more than the man, if they hold higher positions, they face a divorce rate that's higher than the average for all women. In

Distributed every Thursday
I, Abraham Davis, 262 98 2541
Rt. 8064 full time Reg Carrier, I'm giving this statement to inspectors
Cantrell and Maddux in Regards to
Questions asked me Considerably Some
Bulk Mail which was found in a
Dumpers, on My Route on 9-19-85.
Regarding Suncoast today for 1910
Sanford Cir. I Remember Del. this
Piece of Mail to Customer, unless
Customer throw it Away I didn’t
Throw this piece Away. Curia’s is
A Vac. Address, 2088 28th. The House
Marriage Mail, Apr 30 Piece was old
Mail that I Cleared out of the boxes at
Sanford Circle or Vac. Boxes at Sanford
Circle or 28th street. The two
Strip Bundles of Marriage Mail
Problem got wet in My Jeep and
they was to wet. They would have
been thrown Away Anyway so I
Through they Away.
I have Never been told to
Throw way Mail on the Rt. I Should
Have brought this Mail back to the
Office to throw Away.

Witnes: J. W. Bentley
I have read this statement and it is true.

[Signature]
9-20-85 Letter Carrier.

Sworn and subscribed to before me, this 20th day of September 1985 at Sarasota, Florida.

[Signature]
W. Cantrell, Postal Inspector 9-20-85

[Signature]
Acting Postal Inspector 9-20-85

Page 2 of 2 pages of Exhibit D.
On September 19, 1985, Richard Dupre called me into his office about 1:15 P.M. He told me that we had to go investigate a customer complaint about a carrier throwing mail away. He asked me who was covering Sanford Circle and I told him the regular carrier, Abraham Davis.

Mr. Dupre, Postmaster Keene and myself went to investigate. Upon arriving at Sanford Circle, we checked the dumpster at the northwest corner of the apartment complex. We saw a bundle of marriage mail in the dumpster. I retrieved the mail. The bundle was completely dry.

Mr. Dupre and myself went to check the dumpster at the northeast corner, adjacent to 1910 Sanford Circle and Postmaster Keene went to talk to the person who had called in the complaint.

Upon checking the dumpster, we saw mail in the dumpster. I got in the dumpster to get the mail. I found one more bundle of marriage mail, several Luria's circulars, several Suncoast Today circulars, and some other pieces of mail. There was about 2 inches of water in the dumpster. The marriage mail was wet on the bottom half where it was sitting in the water. Some of the other mail was partially wet depending on whether or not it was in the water. While I was in the dumpster, Mr. Keene brought a lady to the dumpster. The lady was identified to me as Ms. Bridges by Mr. Keene. Mr. Keene had Ms. Bridges look in the dumpster. She identified one bundle of marriage mail and the Luria's as the mail she had seen the carrier throw away.

One of the Suncoast circulars was addressed to Ms. Bridges. She told us that she had not received that Suncoast Today, nor had she disposed of it.

Kenneth Gjundjek
Supervisor, Delivery and Collections

Witness: Peggy O. Finin
9-25-85
STATEMENT

At approximately 1:10 P.M., September 19, 1985, I received a phone call from Ms. Sandra Bridges. Ms. Bridges informed me that she had observed Abraham Davis throwing mail into the dumpster immediately outside her apartment. She described the mail as a bundled set of circulars and a number of yellowish circulars.

Immediately after the phone call, Mr. Keene, Postmaster; Ken Gjundjek, Abraham Davis' Supervisor, and myself went to 1910 Sanford Circle. Upon arriving at Sanford Circle, we stopped at the dumpster on the northwest corner of the apartment complex. Contained in the dumpster was a bundle of marriage mail flats. This bundle of mail was retrieved in a completely dry condition. Mr. Gjundjek and I then went to another dumpster outside of Ms. Bridges apartment. Mr. Keene went to talk with Ms. Bridges while Mr. Gjundjek and I checked the context of the dumpster. Inside the dumpster we found one bundle of marriage mail flats and several loose pieces of other mail. The bottom of the dumpster contained approximately two inches of water. The bundle of marriage mail was approximately one half wet. Ms. Bridges identified the Luria's mailing and the bundle of marriage mail as the mail she had seen Abraham Davis throw away. Ms. Bridges dated and initialed the Luria's mailing and a Suncoast Today. The Suncoast Today was addressed to Ms. Bridges. Ms. Bridges stated she did not receive the Suncoast Today nor had she disposed of it.

Richard W. Dupre
General Supervisor
Delivery and Collections

Witness:

Paul A. Brown
10-25-85
TO: Mr. Miles F. Keene
Postmaster

FROM: K. Gjundjek
Supervisor, Delivery and Collection

DATE: 9-26-85

REMARKS:
In reference to vehicle #8183123, there has been no tag (PS Form 4565) turned in on this vehicle for it leaking water by Mr. Davis or any other carrier.

[Signature]

K. Gjundjek
In reference to vehicle #8183123, there has been no tag (PS Form 4565) turned in on this vehicle for it leaking water by Mr. Davis or any other carrier.
I have seen the attached piece of mail marked "Exhibit #4". I have initialed this mail to verify that I have personally seen it.

To the best of my knowledge, I have not seen this mail prior to this date, nor has any member of this residence seen this mail, nor I or any member of my residence dispose of this mail.

I have given the U. S. Postal Service permission to retain this mail.

Signature: ____________________________
(Resident)

Street Address: _______________________

City: ___________________ State: _______ ZIP Zone ______

Date: ________________ Time: ________________

Witness: ___________________ Date: _________ Time: ________________

Witness: ___________________ Date: _________ Time: ________________