

C# 07106

In the Matter of the Arbitration between

UNITED STATES POSTAL SERVICE

- and -

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

CASE NO.
E4N-2U-D 33715

GRIEVANCE OF
JACKSON

OPINION AND AWARD

Pursuant to Article 15 of the Agreement dated July 21, 1984 between the United States Postal Service (hereinafter referred to as the Service) and the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as the Union), a hearing was held before the undersigned arbitrator on March 20, 1987 at the United States Post Office in Newark, Delaware. At the hearing the parties appeared, gave testimony, presented evidence, and were represented by Mr. Aurelio P. Martinez for the Union and Mr. Frank A. Coll, Jr. for the Service. The arbitrator was informed on April 16, 1987 that all attempts for a settlement of the issues had broken down and a decision would be necessary.

BACKGROUND OF THE CASE

On March 25, 1986 after a prior removal action Carrier Bobby Joe Jackson entered into a "Last Chance Agreement" with the Service in which his removal was to be held in abeyance for one year (3/21/86 to 3/21/87) with the proviso "if you fail in any way to fulfill the requirements of your position, immediate action will be taken to reinstate the removal."

According to the testimony of Acting Supervisor John M. Francart, he had seen Carrier Jackson come in the facility at about 2:45 P.M. on July 7, 1986, but could not find him on the workroom floor at about 3:00 P.M. At approximately 3:10 P.M. he encountered Carrier Jackson and asked where he had been, for Supervisor Francart wanted to give him a list of curtailed mail for him to case. Carrier Jackson became loud and abusive, according to Supervisor Francart, and

indicated he had been back from the street only ten minutes and had been in the bathroom. Supervisor Francart said, "Let's cool down and go to the office." Carrier Jackson refused to do so, and Supervisor gave him a direct order which Carrier Jackson also refused. Supervisor Francart then went to Supervisor Arthur E. Money and asked him to witness the insubordination. Supervisor Francart then directed Carrier Jackson again to go to the office in the presence of Supervisor Money, and he again refused. Supervisor Francart reported the incident to the Postmaster. Supervisor Francart further testified that he was threatened by Carrier Jackson about a month after the incident.

Supervisor Money corroborated Carrier Jackson's refusal of a direct order, indicating that the latter had responded, "Man, this is just a bunch of bullshit; I'm not going to the office." Supervisor Money also testified that he had given Carrier Jackson a Letter of Warning for Failure to Clear Accountable Mail on May 22, 1986. He was aware that Carrier Jackson was on a "Last Chance" status at the time, but did not think the offense was serious enough for discharge action. Supervisor Money admitted, however, he had settled a grievance over the Letter of Warning by agreeing to remove the Letter from Carrier Jackson's file after sixty (60) days, if there was no repetition of the offense which there was not.

According to the testimony of Supervisor Matthew C. Mitchell, who ultimately took the removal action, he had to discipline Carrier Jackson on April 18, 1986 for being AWOL, and again issue a Letter of Warning to him on July 7, 1986 for his continued failure to wear proper footwear. With respect to the latter discipline, Carrier Jackson refused to hand the Letter of Warning back and caused a slight problem on the floor. Supervisor Mitchell was not aware that the Letter of Warning for Failing to Clear Accountable Mail was not valid at the time he proposed removal of Carrier Jackson, and he was unable to explain why he delayed any removal action for so long after the above incidents occurred.

According to the testimony of Acting Supervisor Walter D. Marcus, Carrier Jackson called in sick on August 13, 1986, and when on the following day he asked Carrier Jackson whether he was on restricted sick leave, Carrier Jackson told him he should have been removed from restricted sick leave. When he subsequently found that Carrier Jackson was on restricted sick leave and informed him, Carrier Jackson responded, "if that's the case, I'm going home right now." Supervisor Markus testified that he did not accuse Carrier Jackson of being guilty of irregular attendance based on his absences of August 13, 1986 (AWOL), or those of August 15, 16, or 18, 1986 (SL).

Postmaster Joseph Becker testified that he had counselled Carrier Jackson on a number of occasions, and had numerous reports from his supervisors concerning Carrier Jackson's problems. Although he signed the Letter of Decision effectuating the removal of Carrier Jackson, he was unaware that the Letter of Warning for Failing to Clear Accountable Mail was not valid at the time he made his decision, and he did not remove him because of misuse of sick leave in mid-August.

According to the testimony of Carrier Jackson, he did nothing to violate the "Last Chance Agreement," though he admits that he continued to have problems with a "host of supervisors." He admits that the disciplinary notice for AWOL on April 18, 1986 was a valid action, but denies the other charges. The July 7, 1986 Letter of Warning for wearing improper footwear came about because he had worn out footwear which would be considered proper, and he denies that he was insubordinate to Supervisor Francart on the same date. With respect to his taking of sick leave in mid-August, no one ever informed him that he would be fired for being absent for legitimate illness.

On August 23, 1986, Carrier Jackson was issued a Notice of Removal, and on October 1, 1986, he was issued a Letter of Decision effecting his removal as of October 3, 1986. Carrier Jackson grieved the actions of the Service, and unable to adjust the grievance to its satisfaction, the Union requested arbitration of the issue.

POSITIONS OF THE PARTIES

The Service's Position

The Service repeatedly attempted to rehabilitate the grievant but failed. In a period of less than five (5) years the grievant was assessed sixteen (16) separate disciplinary actions culminating in the "Last Chance Agreement" of March 24, 1986. Yet within five (5) months thereafter, the grievant had been disciplined three (3) more times, was absent on four (4) occasions, and late on four (4) occasions, and in a defiant manner refused the directions of supervisors on at least two occasions. Thus, he has clearly failed to live up to the provisions of the "Last Chance Agreement." There is nothing in the record to mitigate his offenses.

Therefore, the removal of the grievant should be deemed to be for just cause, and his grievance should be dismissed.

The Union's Position

In spite of the grievant's past disciplinary record, he is not guilty of any violation of the "Last Chance Agreement." The Service considered past elements of his disciplinary records which in accord with legitimate grievance settlements should not have been part of his record, but expunged. Other elements were so picayune that no one could have withstood such scrutiny. He is not charged with one legitimate offense.

For these reasons, the grievant should be reinstated to his job and made whole for all lost earnings.

OPINION

The issue in the instant case is whether the removal of the grievant, Carrier Bobby Joe Jackson, was for just cause. The Service essentially contends that notwithstanding an unsatisfactory disciplinary record over a long period of time, a record which culminated in a "Last Chance Agreement," the grievant continued to violate that "Agreement" and was properly removed. The Union basically

argues that the Service was unable to support its charges that he violated the "Last Chance Agreement."

First, it is an essential element of industrial due process that a disciplined employee be clearly informed of the employer's charges against him. A careful review of the charges contained in grievant's Notice of Removal calls into question on what basis the grievant was removed. While the Service had clearly many bases for the grievant's removal, it is difficult to determine on which charges it was effected. The Service, by "throwing the book" at the grievant in its Notice of Removal has included therein invalid charges, belated charges, and charges admitted by Service witnesses to be too picayune to support his removal. The result has been an action which is procedurally tainted.

Secondly, the removal action is specifically tainted by being based in part upon an invalid disciplinary action. On May 22, 1986, the grievant received a Letter of Warning for Failure to Clear Accountable Mail. The grievant contested this action, and in settlement of his grievance the Service agreed to remove the Letter of Warning from his file in sixty (60) days, if there was no reoccurrence. There was no reoccurrence of this offense, and the discipline should have been removed from the grievant's file prior to the filing of the Notice of Removal. Both Supervisor Mitchell who prepared the Notice of Removal and Postmaster Becker who prepared the Letter of Decision admitted that they had overlooked the invalidity of this charge.

Thirdly, it is an essential aspect of industrial due process that discipline be administered reasonably promptly after commission of the offense which prompted the discipline. In two serious offenses of blatant insubordination on the part of the grievant on July 7, 1986, one, his refusal to return the Letter of Warning to Supervisor Mitchell, was not even reported or charged to the grievant, and the other, his refusal to go to the office to discuss a matter with Supervisor

Francart, was not made the subject of any disciplinary action until the Notice of Removal was communicated to the grievant on August 23, 1986, almost seven weeks after the incident. Supervisor Mitchell, the author of the Notice of Removal was unable to explain why he had never charged the grievant with insubordination in the Letter of Warning incident, though he testified about it at the hearing, and was unable to explain why the incident of insubordination against Supervisor Francart, quite obviously in the mind of the Service the most serious offense of the grievant during this period, had never been the matter of disciplinary action until the passage of almost seven weeks. Moreover, such a delay in the imposition of discipline clearly leads the employee into a false sense of security that his conduct is acceptable to the Service. Thus, the corrective nature of the disciplinary process becomes unnecessarily blunted.

Fourthly, the offense of misuse of sick time, the offense most closely related time-wise to the preparation of the Notice of Removal, was nevertheless discounted for importance both by the Supervisor involved and by the Postmaster who signed the Letter of Decision. Supervisor Marcus testified that he did accuse the grievant of misuse of sick leave with respect to his absences in mid-August, and Postmaster Becker testified that the grievant was not removed because of any irregularities in sick leave.


For the above reasons, the Notice of Removal and Letter of Decision are so tainted by a lack of procedural due process that the action of the Service cannot be upheld.

The grievant, however, should find little comfort in the above conclusion, for the offenses which he did commit, particularly those of an insubordinate nature, clearly supported removal action, had the Service utilized proper disciplinary procedures. The grievant, therefore, shall be reinstated to his job with full

seniority rights, but without retroactive compensation, and the grievant shall remain subject to the provisions of the "Last Chance Agreement," for the seven (7) months which remained at the time he received his Letter of Removal.

AWARD

The removal of the grievant, Carrier Bobby Joe Jackson, was not for just cause. The Service is directed to reinstate the grievant to his job with full seniority rights, but without retroactive compensation. The grievant shall also be subject to the "Last Chance Agreement" for the seven (7) months which remained thereon at the time the removal action was initiated against him.



Wayne E. Howard
Arbitrator

DATED: May 8, 1987