C#09593

A.B

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	GRIEVANT: Cynthia Carrington POST OFFICE: Norristown, PA CASE NO: E7N-2B-D21455 E7N-2B-D22404 UNION NO: GTS-3847 GTS-3881

BEFORE: Wayne E. Howard, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Thomas J. Scola

For the Union: Leon C. Smilowski, Jr.

Place of Hearing: Norristown, PA

Date of Hearing: October 19, 1989

AWARD: 1. The emergency placement of the grievant, Part-time Flexible Carrier Cynthia Carrington, in an off-duty status was procedurally deficient. The Service is directed to make the grievant whole for any days the grievant would otherwise have worked between April 17, 1989 and April 27, 1989.

2. The removal of the grievant, Part-time Flexible Carrier Cynthia Carrington, was for just cause. Her grievance is dismissed.

Dated: October 27, 1989

Wayne E. Howard
Arbitrator

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	CASE NOS. E7N-2B-D21455 E7N-2B-D22404 - GRIEVANCES OF CARRINGTON - OPINION AND AWARD

BACKGROUND OF THE CASE

On April 5, 1989 the Norristown, Pa. Post Office received a telephone call that a female Carrier was placing mail on the floor in front of the wall boxes and was throwing mail into a dumpster at the Dogwood Gardens Apartment complex. Temporary Supervisor Kenneth Sands determined that the Dogwood Gardens Apartment complex was a part of Rte. 173 which had been assigned to Part-time Flexible Carrier Cynthia Carrington on that date. He went out on the route and found approximately fourteen (14) pieces of bulk mail in the dumpster, checked the names on the mail against names on the mail boxes, and found they tallied. He found no mail on the floor in front of the mail boxes at the complex. He returned the mail to the post office where he gave it to Superintendent of Postal Operations Lawrence V. Kozak.

The incident was reported to Postal Inspector Gene Lalli, who requested that Carrier Carrington be "set up" for an observation on April 7, 1989. On that date at the request of his supervisor, Part-time Flexible Carrier Michael F. Chelenza cased the cards of "marriage mail" for a portion of Carrier

Carrington's route, specifically the Dogwood Gardens Apartment complex. He was also told to inform Carrier Carrington to place all of the mail, as well as the accompanying cards, in the boxes. Carrier Chelenza was unable to find Carrier Carrington before she left for her route, but said to her upon her return, "You did put the "marriage" mail in the boxes," and she replied "Yes, it's a nicely kept apartment, I wouldn't put them anywhere else."

According to the testimony of Carrier Carrington's supervisor, Carol A. Manieri, she checked the mail boxes at the apartment complex where she found the cards in the boxes but not the accompanying circulars. She then checked a subsequent part of Carrier Carrington's route where she found the circulars delivered, but not the cards, and thus concluded that Carrier Carrington had circulars to deliver at the apartment complex, but did not do so.

On April 14, 1989, Postal Inspector Lalli interviewed Carrier Carrington in the presence of Superintendent Kozak. She was shown seven (7) pieces of mail with an address on them and three (3) unaddressed circulars which had been recovered from the dumpster on April 5, 1989. She admitted throwing them in the dumpster to make room in the boxes for first class mail. She said that this time was the first time she had encountered boxes stuffed with mail. When asked if she had ever been told that she could discard deliverable mail, she stated she didn't know.

When questioned about her failure to deliver "marriage" mail together on April 7, 1989, she stated initially that she

thought the circulars were for the whole route, and though she did not have address labels, she began to deliver them. When she got to the apartments she saw the detached cards but had no circulars left. She didn't want to confuse anyone else who might deliver the circulars so she delivered only the cards.

Carrier Carrington was immediately placed in an off-duty status without pay by Superintendent Kozak, but no formal written notification was given her or to the Union until subsequent to April 26, 1989, the date on which a formal notice was prepared. At that time the reasons for such action were stated to be:

> RETAINING YOU ON DUTY STATUS MAY RESULT IN DAMAGE TO U. S. POSTAL SERVICE PROPERTY AND/OR LOSS OF MAIL OR FUNDS. (Joint Ex. 4)

Postmaster Caldwell signed the notice as concurring authority.

On May 2, 1989, Carrier Carrington was issued a Notice of Removal for:

> DISCARDING U. S. MAIL AND FAILURE TO PROPERLY DELIVER MAIL. (Joint Ex. 5)

Supervisor Manieri, who issued the Notice of Removal, Postmaster Caldwell, who was the concurring authority, and Superintendent Kozak all admitted that the charge of failure to properly deliver mail, the charge based on the "marriage" mail incident of April 7, 1989, would not support a removal action, which was essentially based on the charge of discarding mail.

Carrier Carrington grieved the emergency suspension and subsequent removal actions taken by the Service. Unable to adjust the grievances to its satisfaction, the Union requested arbitration of the issue.

POSITIONS OF THE PARTIES

The Service's Position

The Service has evidenced that discarding of the mail did take place. What class of mail or how much mail is not relevant. The intent of the grievant is also immaterial, and all that is important is what happened. The proper disposition of mail is the core function of the Service and Carriers are hired to insure that proper final disposition of the mail is made. Removal of an employee who discards mail must be supported.[1]

The Service committed no procedural infirmity when members of management did not interview the grievant prior to her emergency suspension or removal.[2]

The Service admits that the charge of failure to properly deliver mail is not a charge which would normally support removal; however, it did occur and was added to the charge of discarding mail in the Notice of Removal.

For the above reasons, the grievance should be dismissed.

The Union's Position

This is the classic case of an employee who acted irresponsibly and not deliberately. The small amount of mail discarded clearly did not benefit the grievant, but was the result of ignorance of regulations, and not knowing what to do when a

[1]The Service cites Case E8N-2D-D10560 (Zumas) dated December 22, 1981; Case E1N-2B-D14823 (Powell) dated December 28, 1984; and Case S4N-3D-D24384 (Nolan) in support of this position.

[2]The Service cites Case E7M-2A-D11307, 11308 (Howard) dated May 12, 1989 in support of this position.

mail receptacle becomes full. The Union does not condone the disposing of mail, but management at Norristown has shown through its lengthy wait before it suspended her that it did not consider her a threat not to deliver the mail, as they permitted her to work for a period of almost ten (10) days after the incident.

The Union has contended throughout the grievance procedure that the grievant has been the victim of disparate treatment. Indeed, an employee who was guilty of deliberately failing to deliver "marriage" mail was assessed only a fourteen (14) day suspension subsequently reduced to a letter of warning which would be removed from his record after one month. (Union Ex. 3)

Superintendent Kozak and Supervisor Manieri admitted that they took actions to discipline the grievant without giving the grievant an opportunity to explain her actions.

Arbitrators have previously ruled that where Carriers have acted wrongly without knowledge that they were doing wrong creates a mitigating circumstance. In the instant matter the charges against Carrier Carrington, though serious, do not warrant removal.[3] Therefore, the grievance should be sustained.

OPINION

The issue in the instant case is whether the emergency suspension and subsequent removal of the grievant, Part-time

[3]The Union cites Case S1N-3Q-D26601 (Williams) dated July 16, 1984 and Case E1N-2U-D7392 (Zumas) dated April 19, 1984 in support of this position.

Flexible Carrier Cynthia Carrington, were for just cause. The Service essentially contends that the grievant admitted to discarding mail, an offense which merits the removal penalty. The Union basically argues that the grievant discarded mail out of ignorance of how to handle a mail box which had become full, although it also contends that there are procedural infirmities and the Service is guilty of disparate treatment.

The Emergency Suspension

The emergency placement of the grievant in an off-duty status on April 14, 1989 was procedurally deficient in one major respect. The grievant was not given written notice of the charges against her until over twelve (12) days after she was orally suspended. While the grievant was suspended under Section 16.7 of the Agreement, which creates an exception to the advance notice requirements contained in Sections 16.5 and 16.6 of the Agreement, it does not empower the Service to place an employee on an off-duty status without a written notice of the charges against her within a reasonable period of time after her suspension. Superintendent Kozak, the author of the suspension notice, sat in on the interview of the grievant by the Inspection Service on April 14, 1989, knew the essential charges against the grievant, and so far as the record reveals, has no explanation for the undue delay. The very seriousness of the charges necessary to invoke the emergency procedures require that the employee be informed of those charges within a reasonable period of time after his or her suspension.

It is abundantly clear, however, that the grievant was properly notified subsequent to April 26, 1989 of the charges against her, and such notification cured the deficiency. The grievant can be made whole by placing her on the clock for the failure of the Service to give her prompt notification. A reasonable estimate would be those days between April 17, 1989 and April 27, 1989 which the grievant would otherwise have worked. The Service is directed to make her whole for such period.

The Removal

The grievant admittedly discarded mail on April 5, 1989. Arbitrators have repeatedly upheld the penalty of removal for the discarding of mail, irrespective of class, and irrespective of amount. It is difficult for the arbitrator to accept the fact that the grievant, even though a short service employee, did not know that removing mail from a particular mailbox and throwing it away was one of the most serious offenses a Carrier could commit. Whether or not the grievant knew what to do when she encountered a mailbox which was so full of mail no more could be delivered, she must have known that taking mail from the box and throwing it away was not a proper expedient.

Indeed, contrary to the grievant's "opinion," the mail which she extracted from a patron's mailbox and discarded was not stale mail, but recent mail in which the discounts offered or coupons offered were still "live." (Service Ex. 6) Thus, she denied the mailer the benefit of his mailing fee and the mailee the benefit of the offer made through the invasion of his personal property and the destruction of its contents.

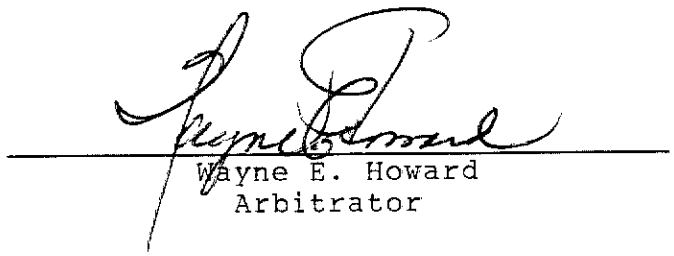
The mere fact that the Service also charged her with "failure to deliver mail" on April 7, 1989, a separate offense which has historically been treated more lightly by the Service, does not constitute grounds for claiming disparate treatment. As stated above, removal has been considered the normal and usual penalty for discarding mail. While the additional charge adds little to the grievant's offense, it certainly can't be expected to subtract from it. There is no disparate treatment of the grievant when the more serious charge of discarding mail is considered.

The mere fact that management did not separately investigate the incident or discuss it with the grievant does not create a procedural defect. The Service may rely on its specialized investigative arm, the Inspection Service, to investigate incidents which may lead to disciplinary action, and management may rely on these reports without duplicating the investigation by interviewing various parties. Indeed, failure to investigate a matter properly is not a procedural defect, but a substantive one, which may result in the inability of the Service to support its action. Here, the Service is supporting its action on the basis of the grievant's admissions during her interview by the Inspection Service. It is not necessary to duplicate the interview.

Contrary to the Union contentions, the Service did suspend the grievant from work as soon as it learned of her admissions before the Postal Inspection Service. While this interview

with the grievant took place some nine (9) days after the incident, once the Service was aware of her admissions they took immediate action to remove her from her job.

For the above reasons, the removal of the grievant cannot be said to be for other than just cause, and the grievance is dismissed.



Wayne E. Howard
Arbitrator