

REGULAR ARBITRATION

SOUTHERN REGION

USPS - NALC

C#10876

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In the Matter of Arbitration	)	Case #:	S7N-3S-D-32870
Between	)	G.T.S. #:	013762
United States Postal Service	)	Kenneth Williams, Grievant	
Miami, Florida	)		
and	)		
Branch 1071	)		
National Association of	)		
Letter Carriers	)	Grievance File Closed:	
AFL - CIO	)	March 20, 1991	

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Before Irvin Sobel, Arbitrator of Record

Appearances:

For the National Association of Letter Carriers (NALC, Union)

Charles Windham  
Regional Administrative Assistant  
Miami, Florida

For the United States Postal Service (Service, Employer, Management)

Steve Murray  
Labor Relations Representative  
Miami, Florida

Matthew Rose, NALC  
National Business Agent

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Region 9

NALC  
Br. Pres.  
Cs. File  
ADVOCATE

Background:

The hearing was conducted on March 20, 1991 at the Executive Annex of the Miami General Mail Facility pursuant to Article 15 of the 1987-90 National Agreement (N/A) between the signatory parties. The grievances leading to this arbitration were processed through the grievance procedure and are properly before the above cited arbitrator. Each party was accorded full opportunity to introduce all evidence deemed relevant to its case, examine and cross examine witnesses, and argue its position. The parties eschewing post hearing briefs concluded the hearing with oral arguments, including therein relevant case citations.

The issue as stipulated by mutual acquiescence of the parties was stated as follows:

Was there just cause for the Emergency Suspension, under Article 16.7 of Kenneth Williams? If not, what is the appropriate remedy?

Facts in Case:

On July 17, 1990 at approximately 11:30 a.m. a Safety Review Team observed the grievant go through the intersection of 192nd Street Northwest. According to Form 4584 (Observation of Driving Practices) the grievant was observed "driving vehicle making (sic) delivery without seat belt also with vehicle door open". At the time of the alleged unsafe practice "carrier don't (sic) have OF 346". The grievant was placed on Emergency Suspension under the aegis of Article 16.7 and was put off the clock in an unpaid status for the

remainder of the day and turned over his OF 346 - Driver's License.1

On August 7, 1990 after a first step denial on August 1, 1990 by Lorraine Delevaux Superintendent of the Miami Little River Station, the Union filed a written grievance on behalf of Letter Carrier Kenneth Williams. That grievance contended:

The grievant was placed off the clock on Article 16 of the National Agreement. The actions of Management are punitive in nature and circumvent the provisions of the Human Relations Principles Agreement. Management blatantly disregarded Section 115 of the M-39 Handbook and Section 374 of the E/LR Manual. The grievant is not guilty of any misconduct and the invocation of Article 16.7 is not warranted. The action taken by Management on July 16, 1990 is arbitrary and capricious in nature.

The Employer's 2nd Step designee Violette Murphy in denying the grievance argued:

Carrier has been made aware on numerous occasion that he must work in a safe manner following all safety rules and regulation. Carrier failed to work and observe safety rules and regulation. He did not exercise care in the performance of his duties. Due to the seriousness of the offense this grievance is denied.

The Union, through Executive Vice President Don Southern, responded:

I am in receipt of your decision for the above captioned case, dated September 20, 1990, that was received in this office on October 9, 1990. This will serve as the Union's letter of addition and corrections in accordance with Article 15 of the National Agreement.

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1 The grievant was subsequently issued a Letter of Warning for the same infraction. That LOW is not the subject matter of this grievance.

The grievant was placed off duty under Article 16.7 for 3.45 hours based on his allegedly violating a local seat belt rule. Management has failed to support the burden of proof in this case and cannot offer any evidence that the seat belt was indeed unfastened.

Since credibility is a question in this case, we refer to the numerous safe-driver awards issued to the grievant for adhering to safe driving regulations when observed by Management.

It is important to note that the grievant was never sent for remedial training and that the criteria necessary for implementation of Article 16, Section 7 was (sic) not present.

Management's position was restated by its 3rd step advocate, Luis Cadavit. In his 3rd step denial statement Cadavit argued:

The invocation of Article 16.7 is proper under those circumstances. The grievant was observed violating prescribed rules and regulations as it pertains to safety. The violation of safety rules in such a nature gives sufficient reason to immediately place the grievant in an off-duty status by the Employer. I find no contractual violation.

#### Relevant Contract Provisions

##### Article 16.7

##### Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

Position of the Parties:

The essence of each parties' position was more than adequately developed in the statements cited above. Accordingly since those additional facts and arguments presented by the parties which are deemed relevant to this arbitrator's decision will be developed by him in the body of his Opinion no purpose other than increased verbiage will be served by their reiteration under separate attribution. Thus, only a barebones summary of each party's position will be stated at this juncture.

The Employer's Position:

The Employer contended that its invocation of Article 16.7, placing the grievant off the clock, was justified by the grievant's serious breach of safety regulations. Driving without a seat belt is not only a violation of the Employee Labor Relations Manual but also of State Law. Moreover, in addition to the failure of the grievant to fasten his seat belt, the leaving of his vehicle door open created a situation in which the grievant not only endangered his own well being but also the Service's property.

It is the Service's responsibility to maintain a safe and secure work environment and the failure by the grievant and countless others to follow safety rules and procedures had already resulted in a situation in which the Miami region was among the National leaders in one invidious statistic, namely accidents. In that context the Union was advised of the Employer's intentions to confront the matter through the frequent street surveillance of its Review Teams, which were empowered to take immediate action, including the invocation of

16.7 to deal with a serious violation of safety regulations. That use of 16.7 was sanctioned by the Article's terms, namely that section which cites, "failure to observe safety rules and regulations, or in case when retaining an employee on duty may damage U.S. Postal Service Property or where an employee may be injurious to self or others", as a reason for placement of an alleged violation in an off-duty off-pay status.

The Union's Position:

The Union contended that neither the need to rectify what was undoubtedly a serious accident situation in the Miami area nor the circumstances of the grievant's violation justified the invocation of a regulation designed unequivocally for emergency situations. The regulation was designed to encompass only those who commit very serious breaches, the effect of which could reasonably be expected to create a hazard to the Service, fellow employees, or to the individual(s) themselves. No such situation could reasonably have been expected from the minor breach committed by the grievant who had an impeccable seven (7) year accident free safety record, and received several awards for safe driving. In addition the recent form 4584's filled out by the surveillance team, other than the one cited by the Employer, were all commendatory of the grievant.

The automatic application without any variance of Article 16.7 to all safety violations, major or minor, regardless of their gravity and the record of the individual involved, is not only contrary to both the spirit of the regulation but also renders the action arbitrary and capricious. The grievant's immediate Supervisor has

had the decision imposed upon him by higher authority since the entire policy emanated from above namely from Postmaster Connor.

The entire policy was imposed by higher Management to correct what was undoubtedly a most serious situation. It was undertaken without Union involvement, and over its vociferous objections, despite the fact that the major thrust of Article 14 is Union-Employer co-operation at all levels in solving safety problems. No Union members or officers were part of the safety team.

Moreover, the surveillance team observed the grievant for over seventeen minutes before the alleged safety violations were observed as the grievant was passing through the 162nd Street intersection. The Union contended that the team could not have observed whether his seat belt was fastened from their particular vantage point.

The actions taken by the Employer constituted double jeopardy in that the grievant was placed off the clock as well as later being issued a Letter of Warning for the same safety breach. Moreover, he never received a Notice of Emergency Suspension, itself a major breach.

The abrupt nature of the action taken by Management was not only punitive rather than corrective but also totally without just cause. To allow Management to hand out Emergency Suspensions, like it were handing out candy, for such trivial incidents would not only violate all the due process provisions of the N/A but also confer additional powers to it beyond those prescribed in Article 3.

Opinion and Award:

In agreeing to Section 7 of Article 16, titled Discipline, which granted Management the unilateral right to place an employee "immediately" on non-pay duty status on the basis of certain happenings the Union showed its recognition of the fact that certain actions by employees were so serious they reasonably portended that if the person who committed the infraction was permitted to remain on the job the individual could either negligently or deliberately damage the Postal Service or prove injurious either to that employee or others. The parties clearly understood by their use of terminology that this procedure, which plainly constituted an exception to the carefully designed due process requirements of Sections 4 and 5 of the same article was to be used very sparingly and confined only to those situations in which the individuals' actions, if continued while on the job could be sufficiently dangerous to constitute a genuine Emergency. The Emergency Suspension under the rubric of Section 7 is subject to the "just cause" provisions of Article 16.1 which clearly imposes upon the Employer the responsibility to prove that "imminent danger" from that employee's continued presence is a reasonable presumption. In the absence of such a reasonable presumption the employee is allowed to remain on the job and on the rolls until his case has been adjudicated under the grievance procedure.<sup>1</sup>

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<sup>1</sup> In the case of removal the grievant is entitled to be on the clock for at least thirty (30) days.

In reading the provisions of Article 16.7 the categories especially that of safety violations are extremely broad and encompass a whole host of actions some of which, if the employees were allowed to continue on the job, would reasonably constitute such an imminent danger. However the great bulk of such violations, do not present such a danger and thus can be handled within the processes of Sections 4 and 5. This would indicate that the Employer, for even the most desirable purposes, cannot set up rules which place every violations regardless of its severity into a category which automatically mandates "a given course of action", in this case Emergency Suspension.

The imposition of such automatic discipline mandated by higher authority not only removes the right of the immediate supervisor(s) to make an independent determination of the course of action, and the penalty, if any, to be imposed, but also in effect removes from such lower level authority to settle the dispute. Moreover, in the absence of making allowances for the seriousness of the violation, the offender's past record and the immediate circumstances surrounding the breach of conduct, Management by imposing an automatic rule is acting arbitrarily and capriciously in its enforcement of Section 7.

The Employer's attempt to link the seat belt and door violations to some imminent danger which requires the grievant's immediate removal from Postal premises is reminiscent of the old adage which links together a whole series of highly unlikely events starting from "the loss of a nail the shoe was lost", to the ultimate result namely, "the kingdom was lost". Given the grievant's impeccable

seven (7) year safety record, the fact that the team was observing him for approximately fifteen minutes, during which he made several starts and stops before they detected a violation, the likelihood that some imminent serious consequence would emerge from allowing the grievant to continue driving during the remainder of the day was so extremely remote that it would defy statistical determination. If such imminent danger were likely from permitting the grievant to drive why would the Employer limit the duration of the suspension to the remainder of the day and allow him to resume his activities the next morning.

The issue before this arbitrator is whether Article 16.7 was properly invoked and not whether the Employer's action was an attempt by a frustrated Employer to avoid the Human Relations Program under terms of which such alleged violations were previously processed. While the above contention may be tenable the issue before this arbitrator is the propriety of the Employer's action in regard to the grievant and not whether the Employer violated agreed upon procedures.

For the above cited reasons the grievance will be sustained.

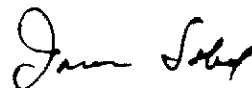
Award:

Paid administrative leave, in the amount of 3.45 hours at the grievant's prevailing rate of pay as of the date of the incident, will be granted the grievant. All references to the grievant's suspension under Article 16.7 will be removed from his Personnel records.

Tallahassee, Florida

June 4 , 1991

This is a certified true  
copy of Arbitration Award



Irvin Sobel, Arbitrator