

C# 11248

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: S REEDY

POST OFFICE: LOS ANGELES  
CALIFORNIA

CASE NO: W7N-5D-D 30456

BEFORE: Gary L. Axon, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service:

Joseph Green  
Labor Relations Representative  
United States Postal Service  
7001 S Central Avenue, Room 301  
Los Angeles, CA 90052-9401

For the Union:

Harold Powdrill  
Executive Vice President  
Angel City Branch 24  
NALC, AFL-CIO  
774 Valencia Street  
Los Angeles, CA 90017

Place of Hearing:

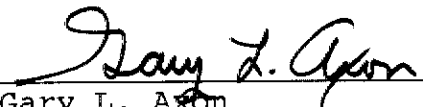
GMF - Los Angeles, California

Date of Hearing:

September 10, 1991

AWARD: The Postal Service did not have just cause to issue the emergency suspension and termination. The Postal Service is ordered to reinstate Grievant but without back pay and benefits.

Date of Award: October 3, 1991

  
\_\_\_\_\_  
Gary L. Axon  
Arbitrator

I. STATEMENT OF ISSUE

The parties stipulated to a statement of the issue which read as follows:

Was the emergency suspension and removal of Grievant Reedy issued for just cause? If not, what is the appropriate remedy?

II. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 16

DISCIPLINE PROCEDURE

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

III. STATEMENT OF FACTS

Grievant Reedy was first employed by the Postal Service in April 1989. She has been employed as a part-time flexible (PTF) letter carrier at the Edendale Post Office. At all times relevant to this case, Grievant's immediate supervisor was Andrew Allison,

a 204 B, temporary supervisor. Patricia Berry was the Superintendent of Branch Operations at Edendale Station.

On September 18, 1990, Reedy submitted a Department of Labor Form CA-1 claiming an on-the-job injury which occurred while she was coming down from the 9th floor to the 8th floor at 1910 Sunset. The injury is alleged to have occurred on September 13, 1990. In Item 13, Cause of Injury, Grievant wrote:

Carried Big Bag of mail on my back come down  
from floor to floor on stairs.

In Item 14, Nature of Injury, Grievant explained:

My Back and Shoulder have pain.

Grievant requested continuation of regular pay for wage loss resulting from the disability. (Jt. Ex. 2, p 11). The supervisor completed the second page of the document and signed it on September 18, 1990.

On September 13, 1990, Grievant was seen by a doctor at Kaiser Permanente. The doctor's certification indicates Grievant suffered a "non-industrial" injury and was disabled from September 13, 1990, to September 17, 1990. (Jt. Ex. 2, p 13). Grievant returned to work on September 17, 1990, but was unable to complete her duties because of alleged problems with her back. Grievant returned to Kaiser Permanente and saw another doctor who completed a certification which indicated the injury was "industrial" and Grievant was disabled from September 18, 1990, to September 23, 1990. (Jt. Ex. 2, p 13-A). Grievant visited Kaiser Permanente

again on September 23, 1990, for what the doctor checked as a "non-industrial" injury. The doctor wrote on the certification that the patient was disabled from September 23, through October 1, 1990. (Jt. Ex. 2, p 13-D). The doctor also restricted her work to "no mail bag carrying." Grievant was seen by a different doctor on September 24, 1990, who reported Grievant as having an "industrial" injury. This doctor wrote on the certification that Grievant was disabled from September 23, 1990, to October 11, 1990. He also placed temporary restrictions on Grievant for "No mailbag carrying." (Jt. Ex. 2, p 13-E). On November 28, 1990, Grievant's doctor cleared her for "full duty" and noted that she was still undergoing care for the injury to her back. (Jt. Ex. 2, p 13-H).

Grievant presented her claim for occupational disability to Tom Hurst, Injury Compensation Specialist, on September 18, 1990. Hurst rejected Grievant's claim because the medical slip offered in support of the CA-1 indicated the injury was "non-industrial." On the afternoon of September 18, 1990, Grievant returned to Hurst and advised him that she did not want to fill out an injury compensation claim at this time. (Jt. Ex. 2, p 14). Grievant once again returned to Hurst on September 19, 1990, with the OWCP claim form and a medical slip dated September 18, 1990, that revealed the injury was "industrial." Hurst accepted the claim and wage continuation was authorized for Grievant.

On September 24, 1990, Silver Ishmael, United States Postal Service Injury Compensation Specialist, advised the United States Postal Service Inspection Service of a possible abuse in the

OWCP claim of Somjai Reedy. Ishmael also informed the Postal Inspection Service that Reedy had first brought in medical certification returning her to work and later that same day saw another doctor who placed her on temporary-total disability. Ishmael also advised that Reedy works for a bank in addition to her postal employment.

Postal Inspector C. A. Glende was assigned to investigate the case. Glende filed an investigative memorandum dated December 12, 1990. (Jt. Ex. 2, p 9 A-H). Several findings were noted in Glende's report which are relevant to this case. First, Glende contacted the manager of Union Bank and obtained Grievant's employment records. The records showed that Ms. Reedy worked full-time at the bank from 4 p.m. to mid-night, 8 hours per day with Tuesday and Wednesday off. The records revealed that Reedy worked for the bank, on September 20 and 21, 1990, the same dates in which she received continuation of pay benefits from the United States Postal Service.

Second, Glende's report includes the sworn statement from Supervisor Berry in which Berry stated that Grievant telephoned the Post Office on September 13, and stated she believed she had hurt herself while carrying mail the day before. Berry also related that Grievant stated to her that she wanted to be on light duty like Sharie Turner. Turner is another carrier in the office and has a limited duty assignment due to an on-the-job injury.

Third, Glende's report includes his notes of a December 4, 1990, interview with Grievant Reedy. Grievant Reedy refused to

provide a signed statement to the postal inspector. Glende's memorandum of the interview revealed that Reedy stated that she did work full-time for Union Bank from 4 p.m. to mid-night, 8 hours per day with Tuesday and Wednesday off. Grievant told Glende that she hurt herself while making deliveries on September 12, 1990. According to Glende's memorandum, Grievant telephoned the Edendale Station and spoke with carrier foreman Allison to advise him that she was seeking medical attention and might be late for work on September 13. Grievant stated she was off work for the next couple of days after the alleged September 12, 1990, on-the-job injury. Glende's memorandum of the interview also indicated Grievant confirmed all of the medical certifications that she had filed in support of her claim.

Fourth, Glende next related in his written report of the interview that Grievant stated she told the Kaiser doctor on September 18, 1990, that this post office has no light duty. A statement which Grievant denied at the hearing.

Fifth, Glende related that on December 7, 1990, he reviewed the file of Sharie E. Turner. In this file was a statement made by Ms. Turner that her on-the-job injury occurred at 1910 Sunset, on the 9th floor. Turner described her injury as "a pulled muscle." (Jt. Ex. 2, p 9).

On December 4, 1990, Grievant was placed on administrative leave by Superintendent Berry. (Jt. Ex. 2, p 8). Effective January 17, 1991, Grievant was placed on emergency suspension for the period between January 14, 1991, through

February 12, 1991. (Jt. Ex. 2, p 7). On January 11, 1991, Grievant was issued a notice of removal signed by Supervisor Allison. Allison stated the reason for this action to be:

You are charged with Misrepresentation and Falsification of Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.

. . . (Jt. Ex. 2, p 5)

Allison went on to detail in 5 pages a recitation of the facts concerning Grievant's claim for injury compensation, consultation with physicians, her work at Union Bank, the information Grievant and others provided to Postal Inspector Glende and the results of the review of the file of carrier Turner regarding her injury which occurred at the same address and was of the same type as alleged by Grievant.

Allison concluded the notice of removal by stating as follows:

In summary, on September 18, 1990, when you filed your injury alleging injuring to your back and shoulders while carrying mail at 1910 Sunset between the 8th and 9th floor, you were subsequently given temporary total disability from September 18, 1990 until September 23, 1990. Inspector Glende's investigation disclosed that you were also employed with Union Bank full time during this period. You worked both Thursday and Friday for Union Bank while you were temporarily totally disabled and claiming Continuation of Pay from the Postal Service. Furthermore, you were aware of limited duty assignments per your statement concerning Ms. Turner to Supervisor Berry and also per the lettering received from Injury Compensation regarding limited duty work

assignments. You also told Inspectors Thysell and Glende in your interview on December 4, 1990 that you told Kaiser doctor on September 18, 1990 that "this post office has no light duty."

(Jt. Ex. 2, p 5-C)

The Union filed a grievance alleging that the removal was not for just cause and punitive in nature. In the grievance, Union stated management failed to provide any substantive evidence to prove its charges and that Grievant's injury was fully supported by medical evidence. (Jt. Ex. 2, p 4). Postmaster C. W. King denied the grievance at Step 2. Postmaster King in denying the grievance stated in relevant part as follows:

After a full review of the facts in this case, and based upon the particular circumstances, this grievance is denied for the following reason(s): The charge is appropriately confirmed on the record. The Grievant provided false information to the doctor causing her to be placed on Temporary Total Disability. The Grievant has failed in her obligation to be honest, reliable, trustworthy and of good reputation.

This charge is tantamount to falsification which warrants removal without recourse to progressive discipline.

(Jt. Ex. 2, p 3)

The Union advanced the case to Step 3 and argued Grievant properly and honestly filed the Form CA-1 to report the injury of September 12, 1990. Excel Hunter, Manager of Labor Relations, denied the grievance at Step 3 stating:

Investigation shows that the grievant was on temporary total disability from September 18, 1990 until September 23, 1990. Investigation



further disclosed that the grievant was employed with Union Bank full time during this same period of time. Evidence discloses that the grievant worked both Thursday and Friday at Union Bank while she was temporarily totally disabled and claiming Continuation of Pay from the Postal Service. Misrepresentation and Falsification of Form CA-1 in this manner is one of the most serious work rule violations a Letter Carrier can commit. It obviously threatens the integrity of the Postal Service and destroys the reliability and trust worthiness of the grievant. Therefore, it is concluded that the grievant did engage in the misconduct described in the Notice of Emergency Suspension and Removal. The infraction such as this is just cause reason for the Emergency Suspension and Discharge without recourse to progressive discipline.

(Jt. Ex. 2, p 1)

The Union elevated the case to arbitration. A hearing was held at which time both parties were given the full and complete opportunity to offer evidence and argument in support of their respective positions. The issue is now properly before the Arbitrator for a decision.

Superintendent Berry was called by the Postal Service to support its case for removal. Berry testified that Grievant had stated to her that she would like to be on light duty similar to carrier Turner. Berry also related that Grievant had complained to her that the carrier job was too hard and it was a man's job that she wished her husband could secure with the Postal Service. Berry also stated that Grievant reported the injury as occurring at 1910 Sunset while delivering the mail between the 9th and 8th floors. Berry conducted no investigation of the alleged injury or

circumstances surrounding the filing of the CA-1 claim. Berry did not issue the termination letter.

Postal Inspector Glende testified at the arbitration hearing via telephone conference call. The essence of Glende's testimony was to confirm the material already reported in his investigative memorandum. Glende admitted on cross-examination that he did not interview any of the doctors whom Grievant had allegedly told the Postal Service had no light duty.

The next witness called by Postal Service was Andrew Allison who had signed the notice of removal. Allison stated he did not write the letter of removal and conducted no independent investigation of the charges asserted in his letter of removal. Allison stated he had no personal knowledge of the events recited in the notice of removal, but had relied primarily on the Postal Inspection Service report. Allison testified that the notice of removal was written by someone in the labor relations office.

The last witness called by Postal Service was Tom Hurst. Hurst described the procedures for filing a workers' compensation claim for an on-the-job injury. Hurst recounted how he had first rejected and then accepted Grievant's claim for Continuation of Pay once the medical evidence supported the information asserted in the CA-1 form. Hurst next stated that he was aware Grievant had another job but did not mention it at the time he had talked with Grievant. However, Hurst stated he told Grievant that if she was drawing pay from the Postal Service she was prohibited by law from drawing a salary from another employer.

On cross-examination Hurst admitted there was no violation in using the CA-1 form with the attached medical certification (Joint Exhibit 2, page 13-A) in processing of the paperwork to his level. Grievant's claim was controverted by OWCP. The claim was initially denied and subsequently on June 19, 1991, it was accepted with respect to medical benefits for the period September 12, through September 16, 1990. (Jt. Ex. 3).

The Postal Service closed its case after the testimony of Hurst. The Union then rested its case based on the record established by the Postal Service. On learning that the Union did not intend to call Grievant to testify, the Postal Service asked to reopen the record in order to take testimony from Grievant Reedy. Over the objection of the Union, the Arbitrator granted the Postal Service motion to reopen the case and to call Grievant Reedy as a witness.

Grievant Reedy recounted the details of her injury and subsequent filing of the CA-1. On questioning by the Postal Service representative Grievant denied stating to the doctor that there were no light duty jobs available in the post office. According to Grievant, she gave the doctors the package of information supplied by OWCP which contained information regarding light duty work. Grievant also denied that Hurst ever told her she could not work elsewhere or that it was illegal to work another job while drawing Continuation Pay benefits from the United States Postal Service. With respect to the situation of carrier Turner,

Grievant stated that she did not learn until after her injury had occurred that carrier Turner had been hurt at the same location.

**IV. POSITION OF PARTIES**

**A. The Postal Service**

The Postal Service takes the position that misrepresentation and falsification of a CA-1 form is so serious as to warrant immediate discharge from the Postal Service. By misrepresenting and falsifying the information on a CA-1 form, Grievant's trustworthiness and honesty have been permanently impaired. According to Postal Service, the conduct of Grievant in this case is "tantamount to fraud." Grievant filed a claim for temporary total disability and continuation of pay benefits. At the same time Grievant was drawing disability benefits she was fully employed at Union Bank.

Moreover, Grievant was told she could not hold another job for a period during which she was claiming workers' compensation benefits. In the view of Postal Service, Grievant's conduct indicates she was scheming to secure benefits to which she was not entitled by filing a false CA-1 form. Postal Service reasons that it is not right for Grievant to work at a bank while drawing full wages from the Postal Service as the result of filing a claim for disability benefits.

Postal Service alleges that Grievant admitted to the charges during her testimony. The charges are so serious that

mitigation of the discharge is unwarranted. Thus, the Arbitrator should sustain the removal and deny the grievance.

**B. The Union**

Union takes the position that the charges have not been proven. Postal Service has been unable to point to any statement made by Grievant on the CA-1 form that was demonstrably false and/or misleading. According to the Union, the purported facts stated in the letter of removal were neither investigated nor documented by Postal Service managers. Hence, the Arbitrator should find that the lengthy narrative provided by supervisor Allison in the letter of removal does not constitute proven charges which would form the basis to remove this employee from the Postal Service.

Union next argues that management failed to comply with its mandate to investigate the facts before removing an employee from the Postal Service. The only investigation in this case was conducted by the postal inspection service. Both managers admitted they conducted no independent investigation of the facts surrounding this case. Union submits that the investigation conducted by the Postal Service does not satisfy the obligation of Postal Service managers to do an investigation under Section 544.17 of the ELM.

The Union also argued that the removal is flawed because supervisor Allison did not request review by a concurring authority before the removal notice was issued.

The Union also faults the Postal Service because its managers did not correctly fill out their portion of the CA-1 form. If the managers are not providing accurate information to OWCP, Union asserts it is unfair to charge Grievant with providing false and misleading information with respect to this claim.

In sum, Union concludes the charges against this Grievant are "baseless." Since the Postal Service failed to meet its burden of proof to establish that Grievant provided false information on the CA-1 form, the Arbitrator should sustain the grievance and award the requested relief.

**V. DISCUSSION AND FINDINGS**

Postal Service charges Grievant with misrepresentation and falsification of a claim for traumatic injury and continuation of pay. The quantum of proof in cases where the employee is charged with acts of dishonesty is extremely high. Where the allegation of misconduct carries the stigma of dishonesty the burden is on the Postal Service to prove by clear and convincing evidence the charges on which it seeks to remove the employee.

The basis for removal in this case centers on the allegations Grievant falsified a Form CA-1. (Jt. Ex. 2, p 11). While the Postal Service did not identify at the hearing precisely what statements on the CA-1 it considered false, there appears to be only two items which could form the basis of the charge. On the CA-1 Grievant answered the following relevant items:

Item 13, Cause of Injury:

Carried Big Bag of mail on my back come down from floor to floor on stairs.

Item 14, Nature of Injury:

My Back and Shoulder have pain.

As to Item 13, Postal Service failed to prove Grievant did not carry a bag on her back from floor to floor. Nor did Postal Service establish that Grievant's back and shoulder did not have pain.

The medical evidence in this case supports Grievant that she had suffered an injury and was disabled from letter carrier work. The medical certifications offered into evidence uniformly attest to Grievant's medical condition. (Jt. Ex. 2, p 13 (A-H)). Postal Service offered not one piece of medical evidence to contradict the medical record that Grievant was injured and disabled.

The major thrust of the Postal Service case was that since Grievant worked at Union Bank after she filed the disputed CA-1, the claim of injury was false. The Arbitrator rejects that line of reasoning for seven reasons. First, the medical evidence supports Grievant's position. The medical evidence is uncontroverted Grievant was injured. Second, Grievant testified that she did data entry work for the bank. The task Grievant performed for the bank was not physical and was far less strenuous than the work required of a letter carrier.

Third, there is no evidence before this Arbitrator the data entry work performed by Grievant was outside of her medical restrictions. Fourth, the evidence did not establish Grievant's work for the bank impaired or affected her ability to return to her Postal Service duties.

Fifth, it must be recalled that Grievant worked for Union Bank before her injury. The work at the bank was performed after completion of her scheduled shift for the Postal Service. This is not a case where the injured employee went out and found a job, and thereafter worked during hours the employee would be normally performing services for the Postal Service. As the record in this case stands, Grievant continued to work for the bank on the exact same schedule she had before the injury. In other words, the bank job was a second job which she performed in addition to her Postal Service employment both before and after the injury.

Sixth, Postal Service witness Hurst testified it was against the law for a Postal Service employee to draw continuation of pay and earn a salary from another employee. Hurst testified that he so advised Grievant of the prohibition against drawing wages from another employer while drawing continuation pay. Grievant denied Hurst ever advised her of such a prohibition.

Neither Hurst or Postal Service produced a copy of the law purportedly prohibiting employees from receiving continuation pay from Postal Service while drawing wages from another employer on a second job the employee worked prior to and after the injury. Further, the letter of removal makes no reference to a law which



prohibits such employment by an injured employee as constituting a reason for the removal. Without a copy of the law in the arbitration record or citation in the letter of removal, the Arbitrator is compelled to reject this argument as supporting the discharge.

Seventh, the letter of removal in this case is unusual. It is a lengthy letter relating in narrative style the events Postal Service believed occurred with respect to this employee. Except for the first paragraph of the letter, specific charges that Grievant committed certain acts in violation of Postal Service rules for which discipline is appropriate do not appear in the body of the letter.

The supervisor who signed the letter of removal testified he did not write the letter of removal. In addition, the supervisor stated he conducted no personal investigation and had extremely limited personal knowledge of the statements contained in the letter of removal.

When the supervisor's almost total lack of personal knowledge concerning the statements contained in the notice of removal is coupled with the failure of Postal Service to prove the incidents described in the letter of removal by other means, this discharge falls far short of meeting the just cause test.

In sum, the Arbitrator concludes Postal Service has failed to prove by clear and convincing evidence Grievant engaged in conduct which was "tantamount to fraud" as contended by Postal Service at the arbitration hearing. Had the Postal Service met it

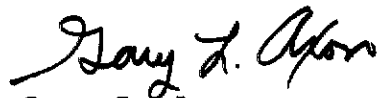
burden of proof, this Arbitrator would have no trouble sustaining disciplinary action up to, and including discharge for acts of dishonesty and misrepresentation.

Turning to the issue of the appropriate remedy, the Arbitrator concludes the reinstatement shall be without back pay. The starting point for this case was Grievant's inability to work as a carrier because of an injury. It would be basically unfair to require Postal Service to pay back wages to an employee who was claiming she was physically unable to perform the work of a carrier. The second reason for ordering the reinstatement of Grievant without back pay is that Grievant held down a full-time job during the period of her discharge. In the judgment of this Arbitrator an award of back pay to an employee who was off work due to injury and at the same time held a full-time job with another employer is unjustified.

AWARD

The Postal Service did not have just cause to issue the emergency suspension and termination. The Postal Service is ordered to reinstate Grievant but without back pay and benefits.

Respectfully submitted,



Gary L. Axon  
Arbitrator

Dated: October 3, 1991