REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between
UNITED STATES POSTAL SERVICE and
NATIONAL ASSOCIATION OF LETTER CARRIERS

BEFORE: ROSE F. JACOBS, Arbitrator

APPEARANCES:
For the U.S. Postal Service:
Daniel J. Lilly,
Sr.Labor Relations Spec.
Marcel J. Paquette, T.A.
Penny Fleury, Mgmt. Assoc
Carol Patierne,
Supervisor Customer Serv
Marion Ausfeldt,
Raymond R. Cote,
Mgr. Cust Serv. Heritage

For the Union:
William B. Cook,
Exec. V.P., Branch 358
Robert Reynolds, Sr.Stew.
Louis M. Philips, Trainer
Patrick Madden, Witness
Frank Maresca, Witness
Felicia Kerchner, Witness
Richard W. Kerchner

Place of Hearing: 29 Jay Street,
Schenectady, New York

Dates of Hearing:
November 30, 1993
February 15, 1994

AWARD
See Attached

Date of Award:
March 15, 1994

Arbitrator:
ROSE F. JACOBS

GRIEVANT:
Richard W. Kerchner

POST OFFICE:
Schenectady, N.Y.

CASES NO: B90N-4B-D-93038761
GTS 7773

Date of Award: March 15, 1994

Arbitrator: ROSE F. JACOBS
Pursuant to the arbitration procedures set forth under the National Agreement between the UNITED STATES POSTAL SERVICE and the NATIONAL ASSOCIATION OF LETTER CARRIERS, (hereinafter referred to as the "Postal Service" and the "Union", respectively), the Undersigned was appointed Arbitrator to hear and decide the disciplinary grievance herein and to render a final and binding Award. This proceeding involves the grievance of Transitional Carrier Richard W. Kerchner who was removed from the Postal Service. The dispute being unresolved was submitted by the Union to arbitration for final determination.

Hearings were held before the undersigned Arbitrator at the offices of the Postal Service at 29 Jay Street, Schenectady, New York on November 30, 1993 and February 15, 1994. The evidence adduced and the positions and arguments set forth at the hearing have been fully considered in preparation and issuance of this Opinion and its accompanying Award. The hearing was not transcribed and the Record consists of three (3) Joint, seven (7) Postal Service, and thirteen (13) Union exhibits. The evidence so submitted and the positions and arguments set forth at the hearing have been fully considered in preparation and issuance of this Opinion and its accompanying Award. The Parties were afforded ample opportunity to present evidence and testimony germane to their positions on the following disputed issues.

THE ISSUE

Was the Grievant, Richard W. Kerchner, removed for just cause?
BACKGROUND

On May 3, 1993 the U.S. Postal Service issued a Notice of Removal to Richard W. Kerchner, a Transitional Employee (TE) and charged him as follows:

Charge #1: You are charged with Expansion of Office Time or Street Time. On February 10, 1993 you used approximately 9 hours to complete 2 hours office and 5 hours street time. On February 12, 1993 you used approximately 9 hours to complete 1 hour and 50 hundredths office time and 6 hours 50 hundredths street time. On February 18, 1993 you used approximately 10 hours to complete 1 hours office time and 6 hours and 50 hundredths street time. On February 22, 1993 you used approximately 10 hours to complete 2 hours office time and 5 hours street time. Your unacceptable office and street performance was discussed with you several times with no improvement noted. You were also retrained in an attempt to improve your performance.

Charge #2: You are charged with Absence Without Official Leave (AWOL). You were instructed by Howard P. Fritz, M.D. to return to work on April 12, 1993 after a period of disability. You failed to contact this office regarding your return to work nor did you submit medical evidence to substantiate your continued absence.

Charge #3: You are charged with Disrespect to Your Supervisors. On two (2) occasions you have shown extreme disrespect toward Supervisors J. Bianchine and C. Patierne. You became very vocal when given instructions concerning your work assignment.

The Parties holding to diverse opinions with regard to the application of the Contract to the statement of facts brought this matter to this arbitration. The matter is now before the Arbitrator for binding resolution.

POSITIONS OF THE PARTIES

The Postal Service:

As a Transitional Mr. Kerchner is a non-career bargaining unit employee who was hired for a term not to exceed 359 calendar days.
Although he was removed for just cause, the concept of progressive discipline does not apply in this case. If Mr. Kerchner is found guilty of the charges, the Arbitrator does not have the authority to modify the discharge in the case of a TE.

Charge #1 was expansion of office and/or street time. The Postal Service cited five different dates when this occurred. Supervisor Carol Patierne gave extensive testimony supported by documents regarding five dates to substantiate this charge. On February 10, 1993 the Grievant used approximately two hours beyond what is normal for his assignment. On February 12, 1993 the Grievant used approximately one hour beyond what is normally expected. On February 18, 1993 the Grievant used approximately two hours and fifteen minutes beyond what is normally expected. On February 20, 1993 the Grievant used approximately two hours and thirty minutes beyond what is normally expected. Finally, on February 22, 1993 the Grievant used approximately three hours beyond what was normally expected.

The Union did not present any credible argument about the accuracy of the time but rather it attempted to justify the expanded time by weather and that Management cannot hold the Grievant to standards of performance used by the regular Carrier. The Postal Service used route data as a base line. It was not anticipated that the Grievant would be on time minute to minute for both street and office performance. However, since his time overrun for the five dates cited in the Notice of Removal was two (2) hours, one (1) hour, two hours and fifteen (2:15) minutes, two
hours and thirty (2:30) minutes, and three (3) hours, clearly Management was within its rights to have expectations that the Grievant would be close to the normal street and casing times of his route. Such an expectation is reasonable.

The Union's witnesses said some interesting things. Madden conceded that Carriers do not have as much time as they want to case mail. He also indicated that Carriers should adhere to established street time as fast as possible. Carrier Reynolds indicated that Route 421 should have taken between ten-twelve hours to case and deliver. Management showed through testimony and documentation that on one of the days in question 13.33 hours were used. The Grievant's testimony with regard to Charge #1 was nothing more than general statements about his experience as a Letter Carrier. He provided nothing specific to dispute any of the five days. As a matter of fact he said he would accept the accuracy on face value. The charges were based on a combination of both street and office performance. Snow had no impact on office performance. The Grievant testified that he worked in the capacity of a Carrier for about a year before his appointment as a TE. He had enough delivery experience in February 1993 to allow Management to have casing and delivery expectations in line with Ms. Patierne's testimony.

Charge #2 in the Removal Notice was that the Grievant was AWOL when he failed to report back to work after a period of six weeks. Supervisor Ausfeldt testified that she called the Grievant's doctor after receiving a note dated April 26, 1993 (Jt. Exh. 3) to
determine whether Mr. Kerchner had been cleared to return to work. Dr. Fritz indicated that he was cleared on April 12, 1993. Dr. Fritz followed up with a note dated April 30, 1992 (M. Exh. #6) which confirmed this. The Union attempts to show confusion on the part of the Grievant. There is another note from the doctor in the case file. That note was dated May 10, 1993 and is dated seven (7) days after the Removal notice and was received by the Schenectady Post Office on May 24, 1993. In this May 10th note Dr. Fritz states again that the Grievant was instructed to return to work on or about April 12, 1993. Charge #2 comes down to an issue of credibility. The Postal Service has two doctors' notes which indicate that the Grievant was told to return to work on April 12, 1993. There is no testimony or evidence from Dr. Fritz to show anything other than that Management's charge is accurate.

Charge #3 in the Notice of Removal was that the Grievant had behaved with disrespect to supervisors on two occasions. Supervisor Patierne described two incidents. The first was in the computer room in Heritage Station and involved her and Supervisor Judy Bianchine. Ms. Patierne gave testimony that Mr. Kerchner was loud, abusive and disrespectful to herself and Judy Bianchine. The second incident took place in late February 1993 on a date when Grievant returned late from the route he was assigned to. Again, Supervisor Patierne gave credible testimony regarding this incident. At the hearing the Grievant introduced testimony about a supervisor and an alcohol problem and the role it played in this second incident. It is important to note that nowhere in the
grievance procedure does this evidence appear in Step 2 or 3. It is an established principle that new arguments are not to be raised at arbitration. Supervisors should not have to be subjected to disrespectful behavior. The Union's own Step 2 grievance appeal indicates that the Grievant may be abrasive. In his testimony he admitted he spoke quite rudely to Supervisor Carol Patierne and he also confirmed the language that she testified to with the second of the two incidents. With regard to the Union's contentions that Management failed to provide requested information to process the grievance, there was testimony from the Manager of Customer Services that he provided all requested information. There was testimony from the NALC representatives that no written requests for information were ever submitted in the grievance process.

TE Richard Kerchner began his term on August 24, 1992. He served over nine months of his 359 day appointment before he was removed. He also served as a Casual prior to his TE appointment. During that time Mr. Kerchner received training and some re-training on proper delivery skills and techniques. He also accumulated a world of experience in the area of delivery services. As was discussed at the outset of the hearing, the Postal Service and the NALC entered into a unique agreement which determines that the issue is simply whether or not the Grievant is guilty of the charges. There is no opportunity to modify the discharge if proven. The Postal Service contends that any one of the three charges is severe enough to warrant removal. It contends from the evidence and testimony that the three charges have been proven.
Therefore, the Arbitrator should review the documents and testimony and determine that the Union's grievance is denied.

The Union:

The first time Richard Kerchner discovered that his job was in jeopardy was when he received the Notice of Removal dated May 3, 1993. With regard to Charge #1, although the Grievant knew that Management was not entirely happy with his performance, he did not even have a clue that it would subject him to removal, nor was he forewarned that his industrial life was in danger. Management supported this charge by using DUVRS (linear measurement of volume) to determine whether or not the Grievant's performance was acceptable. Station Manager Cote agreed at the hearing that DUVRS should not be used as the sole basis for discipline, and Ms. Patierne did not mention any other determining factor for the discipline other than DUVRS except during the eleventh hour on cross-examination when she feebly accused Mr. Kerchner of wasting time in the office by walking around instead of working. This accusation should have been made at the time of the issuance of the discipline. Since she was not able to quantify the extent of time wasted, the accusations ring hollow. Further, if she had checked with her superiors, Supervisor Patierne would have known that she could not base her Charge #1 solely on the use of DUVRS, nor did she take into account the adverse weather conditions when she determined that Richard Kerchner was not working fast enough on the street. In addition, there is the unrefuted testimony of the two
stewards who were familiar with two of the routes in question (Rts. 421 and 325) which are difficult routes to case and require permanent office auxiliary assistance daily and expanded street time during the winter months. Further, Supervisor Patierne acknowledged that she neither considered nor investigated the possibility that Grievant’s health could have affected his work performance when Mr. Kerchner was hospitalized for surgery and did not return to work for two months.

As to Charge #2, it was not until April 28, 1993 that the Grievant found out that he was expected back to work on April 12, 1993. Ms. Patierne decided to remove the Grievant without conducting an investigation or getting any input from Mr. Kerchner or giving him a reasonable time to respond. For the AWOL Charge she relied solely on Supervisor Ausfeldt’s word and did not attempt to contact the Grievant to find out why he was not back at work on April 12, 1993, and Supervisor Ausfeldt did not contact the doctor’s office until April 28, 1993. Further, Ms. Ausfeldt’s investigation was inadequate, since had she properly investigated she would have cleared up the date Mr. Kerchner was actually released to return to work. In addition, had Supervisor Patierne conducted a thorough investigation, she would have learned that Richard Kerchner was not retrained in street and office procedure for eight hours as she claimed. Carrier trainer Louis Philips testified that he was ordered by supervisor Krone to conduct office training only and that the Grievant’s street performance was acceptable. The training lasted approximately 1.5 hours.
With regard to Charge #3, alleged disrespect must also be accompanied by insubordinate behavior. This was not proven or even alleged. Here, too, had there been a proper investigation before the discipline, it would have been discovered that, in the first instance, Mr. Kerchner was required to come in to work the last minute on a holiday after he had already been given permission not to do so. In fact the Postmaster had issued general orders that employees would be given time off to conduct family business. The Grievant came to work despite the fact that he had hired a truck and made arrangements with others to move his family and his belongings from Schenectady to Queensbury on the particular holiday. The other incident of abrasive behavior took place the last day before Kerchner took ill and was working in a good deal of pain under very difficult weather conditions when he was confronted with an unrefuted belligerent Acting Supervisor who had been drinking.

The Union believes that the Postal Service was anything but fair and objective with this Employee. Supervisor Patierne and Station Manager Cote wanted to fire Mr. Kerchner and nothing was going to stop them. In this instance, Management retrained the Grievant in office procedure for one and one-half (1 1/2) hours and then allowed him only a few days to improve, not taking into consideration the Grievant's health condition. What happened here was that the Service conducted a "kangaroo court" at Steps 1 and 2, since it had already made up its mind to discharge Richard Kirchner.
It was never said that this Employee was caught goofing off on the street and/or in his office performance until Ms. Patierne realized that her case had no basis to warrant discipline. Neither was Mr. Kerchner AWOL. It was never considered that as soon as he was made aware of the discrepancy in his medical documentation, he remedied the problem and returned to work. It should be taken into consideration that Mr. Kerchner was anxious to get back to work and that he had no income while he was out sick and had to go on Welfare to provide the basics for his family -- this was the Employee who would work anytime the Service demanded that of him, even at the inconvenience of aborting his moving plans at the last moment. The arguments offered against him with regard to the disrespect were vague and there was no substantial proof. Furthermore, the Arbitrator should take into consideration that Supervisors Biachine and Wunning did not attend the hearing so that the Grievant could refute their accusations.

As a result of the foregoing, the penalty suffered was not appropriate -- wrongdoing was not proven -- the Postal Service did not meet its obligation. According to the foregoing, the Union requests that the grievance be sustained in full and the Grievant made whole for all lost wages and benefits and be brought back to work.
ARTICLE 16
DISCIPLINE PROCEDURE

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.

MANAGEMENT OF DELIVERY SERVICES
M-39, TL-9

242 EVALUATION AND ANALYSIS

242.3 Evaluating the Route

.31 Office Time

.311 Under normal conditions, the office time allowance for each letter route shall be fixed at the lesser of the carrier's average time used to perform office work during the count period, or the average standard allowable office time.

.32 Street Time

.321 For evaluation and adjustment purposes, the base for determining the street time shall be either:

a. The average street time for the 7 weeks random timecard analysis and the week following the week of count and inspection; or

b. The average street time used during the week of count and inspection.

* * *

.332 No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet office standards.
DISCUSSION AND CONCLUSION

The Grievant, a Transitional Employee (TE) was removed from the Postal Service for expansion of street and office time, for being AWOL, and for disrespect toward a Postal supervisor. The Union contends that winter walking and being unfamiliar with the duty assignments contributed to the expanded time. Furthermore, the Union argues that the AWOL charge occurred while the Grievant was under a doctor’s care and the doctor failed to notify him that he was ready to return to work. Finally, the Union contends that although the Grievant may be abrasive at times he is not disrespectful.

On the other hand, Management contends that the Grievant was afforded extra training in an attempt to help him improve his street and office performance and that no improvement was shown; that he was out due to an illness which started on March 1, 1993 until his return to duty on May 3, 1993, and his medical documentation cleared him to return to work on April 12, 1993. Based on this information Management asserts he was correctly charged with AWOL. In addition, he has on numerous occasions questioned Management’s right to assign him work and has been very vocal, argumentative, and threatening.

In deciding the just cause issue, the Arbitrator is required to review the penalty imposed to insure that it is reasonably related to the seriousness of the offense and determine that it is not discriminatory and not arbitrarily or capriciously imposed. Management is required to administer discipline with an even hand.
This is not to say that identical penalties must be assessed for identical offenses. It is to say, however, that there must be reasonable objective criteria for the different treatment of different employees. Such criteria may include the degree of culpability of the Employee and the seriousness of the offense committed, as well as such considerations as length of employment, merit of employment, and prior disciplinary record.

During the course of the hearing, the Union raised an important procedural question that should and must be considered -- that under the concepts of just cause, the Employer is under duty to make a reasonable independent investigation of any occurrence before taking disciplinary action and its admitted failure to do so may void disciplinary action, especially if it results in the loss of evidence that might have been favorable to the Grievant. Therefore, it can be said that the just cause standard requires the Postal Service to show that the removal was imposed after an objective pre-disciplinary investigation resulting in proof of the Grievant’s infraction of a clearly communicated and reasonable rule. The same standard further requires the Postal Service to demonstrate that the disciplinary consequences of the rule infraction were properly communicated to the Grievant, that the discipline was consistent with the National Agreement, the offense, and the Grievant’s past employment record.

What is necessary in matters of this sort is that before discipline is imposed, Management must first give fair warning to employees that more severe penalties would be meted out for future
similar infractions. It cannot be said that the Employee in this case was so warned nor that the Postal Service held an investigation into the true facts of this case. During the course of the hearing, the Union raised this important procedural question that should and must be considered.

Based upon the evidence adduced at the hearing, both oral and documentary, there is no indication that the supervisor conducted the necessary independent investigation of the facts surrounding the incident nor did she interview the Grievant to get his side of the story before imposing the discipline. The Notice of Removal does not reflect that this was an emergency removal. Therefore, there was ample time to investigate. Management’s own handbook, the EL-921 Supervisor’s Guide to Handling Grievance, pg. 13 provides:

4. **Was a thorough investigation completed?**

Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective.

This is the employee’s day in court privilege. Employees have the right to know with reasonable detail what the charges are and be given a reasonable opportunity to defend themselves before the discipline is initiated.

There came before me an Employee who testified with a discernible effort to be straightforward and accurate with regard to the events that led up to the discipline. In comparison the testimony of Supervisor Patierne is found to be unreliable and nothing but bold assertions, especially when she stressed that the Grievant received both office and street retraining. This
testimony was credibly refuted by Mr. Louis Philips, the trainer himself, who clearly stated, "I did not retrain him on the street. Ed Krone mentioned that there was no problem with his street work, and his office retraining lasted no longer than an hour and twenty minutes or, at the most, an hour and one-half." Therefore, although Management's documents support the extended street time in Charge #1, the Union has satisfactorily refuted the Supervisor's testimony with regard to credibility. In addition, there are other mitigating factors that must be taken into consideration. Had the monitoring of the Grievant's street performance been executed during any month other than February with its severe adverse weather conditions, the outcome might have been different.

The Record fully supports the conclusion with regard to Charge #1 (Expansion of Office or Street Time). The Union has proven that the Service made its determination to remove by using DUVRS to establish standards and should also have taken into consideration the contents of Union Exhibit #2 which reads in pertinent part:

Daily volume estimations recorded for individual routes in accordance with these procedures will not constitute the basis for disciplinary action for failure to meet minimum casing standards,

and the Step 4 decision (Union Exhibit #3) which reads in pertinent part, as follows:

Management may not charge or impose discipline upon a carrier merely for failing to meet the 18 and 8 casing standards. Any such charge is insufficient Under the Memorandum of Understanding of September 3, 1976, the only proper charge for disciplining a carrier is "unsatisfactory effort." Such a charge must be based on documented, unacceptable conduct which led to the carrier's failure to meet the 18 and 8 criteria. In such circumstances, management has the burden of proving that
the carrier was making an "unsatisfactory effort" to establish just cause for any discipline imposed.

Also taken into consideration was Union Exhibit #4, the MOU between the USPS and the NALC on Time and Work Standards dated August 1, 1975, which reads in pertinent part:

The Parties Agree that the casing standards to be used in the evaluation of city letter carrier routes under the current route evaluation system shall continue to be eighteen (18) per minute for letter, eight (8) per minute for flats, on standard six or seven shelf cases, with appropriate wing cases...Failure to make standards may be treated as just cause for discipline in cases of unsatisfactory effort.

The Arbitrator has also considered the following Step 4 decisions in making her determination:

a) Union Exhibit #5 dated September 17, 1987 on case #H4N-5D-C 16822, Richland, WA:

The National criteria for development of office time is explained in the M-39 Handbook and methods for recording volumes are contained in Management Instructions. Daily volume estimations recorded for individual routes in accordance with appropriate provisions will not constitute the basis for disciplinary action.

b) Union Exhibit #6 dated October 22, 1985 settling twelve (12) cases in pertinent part:

Each of these cases involve a disciplinary action as a result of route management. In keeping with the principle of a fair day’s work for a fair day’s pay, it is understood that there is no set pace at which a carrier must walk and no street standard for walking.

c) Union Exhibit #7 dated October 31, 1985 resolving grievances HIN-1N-D 36894 Avenel, New Jersey and HIN-1Q-D 34997 Troy, New York the Parties stipulated:

These grievances involve disciplinary actions as a result of route management. In keeping with the principle of a fair day’s work for a fair day’s pay, it is understood that there is no set pace at which a carrier must walk and no street
standard for walking.

In addition to the foregoing, it was stated in the minutes of the National Joint City Delivery Committee Meeting on November 16, 1993 (Union Exhibit #8), as follows:

There was much discussion about discipline for street expansion resulting from the reference volume issue, and about not using reference volume as the "sole basis" for discipline. Management responded that reference volume, standing alone, without additional evidence to substantiate wrongful expansion of street time could not sustain a disciplinary action.

Further, full weight is accorded the Grievant's testimony about the misunderstanding in Charge #2 that the letter Management received from his physician dated May 10, 1993, if considered, would have cleared up the problem. That letter clearly states:

This letter is to clarify the return to work status of Mr. Richard Kerchner. Please be advised that during an office visit, March 30, 1993, Mr. Kerchner was instructed to return to work on or about April 12th. However, additional plans were made for him to require a day away from work on April 29, 1993 to undergo further medical testing. It is quite possible that that information was misconstrued by the patient to imply that he was not to return to work until after that procedure was performed...

The Arbitrator is persuaded that the unrefuted health problems of the Grievant and proven weather conditions as reported by "The Daily Gazette" during the period monitored had a strong influence on Mr. Kerchner's street performance in February 1993. See, especially Union Exhibits 12(a)(1-11) and 12(b)(1-10).

The storm brought the third significant snowfall in the past 10 days to some areas. The weather service said the month's snowfall total of 28.1 inches was the fifth highest on record for a February...The state of emergency was declared because the snow has accumulated faster than city crews have been able to clear it from along the sides of city streets...This has precipitated the need
for a state of emergency.

The Daily Gazette
Schenectady, New York

The naked accusations of the Supervisors relied upon in Charge #3 with regard to disrespect do not stand up to the just cause requirements of Article 16, and the charge of AWOL relied upon in Charge #2 is found to be hasty and premature and might not have occurred had Management made a proper investigation into why the Grievant did not return to work on April 12, 1993.

Based on all of the foregoing, an examination of the Agreement and the evidence in this case raise serious doubts concerning the procedural integrity of the action against the Grievant. As a result, the process falls short of the requirement of Article 16 and deprives Mr. Kerchner of just cause for discipline. What is necessary in matters of this sort is that before discipline is imposed, Management first must have fully investigated and given fair warning to employees that more severe penalties would be meted out for future similar infractions. It cannot be said that Mr. Kerchner was warned. A grievance procedure to be effective should have an opportunity at the primary level for adjustment of the grievance. Here we have an action taken by a Supervisor who made no effort to ascertain the facts and gave this Grievant no opportunity to state his position. Such conduct clearly is not conducive to establishment of just cause which is the contractual criterion for imposition of discipline here.

At the hearing, the Grievant was very convincing when he stated, "I never had any confrontations. I was always very
courteous to Judy, Carol and any of the Supervisors. I do not know the reason for my termination, and it was hard to figure out. . . . There are quite a few employees who would corroborate the fact that I did a good job and went out of my way to do a good job and was always helpful. I still feel I have done nothing to deserve this. I won't put down Carol or Judy or any of the Supervisors, because I don't think it is necessary to do so."

As to Charge #3 (the alleged Disrespect to Supervisors), I have also considered Union Exhibit 131 that "[D]isrespectful conduct" is a purely subjective standard, reflecting the personal attitude of the person relying upon it. Unless it amounts to insubordination or causes a disruption of work, it cannot be used as an excuse for adverse action against an employee..." Kerchner was clearly not insubordinate, that is, he did not refuse to obey any orders, nor was there any disruption of work alleged or proven. I concur in the thought expressed by the aforesaid language that seems tailored to fit the defects in the handling of this Removal case. It might be arguable whether the Contract provides adequate grievance procedures to protect a TE from arbitrary or discriminatory treatment by Management. Adequate as the safeguard of the grievance steps up to arbitration may be, the present absence of any fair opportunity to convince Management of possible error by the Removal caused serious injury to this grievant. I find the evidence presented does not show just cause for the discharge and that was a violation of the just cause principle of

1 Case #NC-W-8707, Arbitrator Benjamin Aaron, 11-14-78.
Article 16. Therefore, under the present circumstances, the discipline must fall and the grievance sustained. The factors above described have led me to the conclusion that discharge is not possible in this case under the circumstances here described. Given the due process violations outlined above, the Grievant must be returned to the job.

AWARD

The Removal of the Grievant was not for just cause. He shall be reinstated forthwith with seniority and other benefits unimpaired and paid for lost wages from the date of removal to the date of reinstatement, less interim earnings.

Dated: New York, New York
March 15, 1994

ROSE F. JACOBS

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss:

I, hereby affirm upon my oath as Arbitrator that I am the individual described herein who executed the within instrument which is my Award.