

C# 15436
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REGULAR ARBITRATION PANEL

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

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(Grievant: WILLIAM RAYSON
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(Post Office: Miami, FL
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(Case No.: H90N-4H-D-96001310
(H90N-4H-D096020054
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BEFORE: RODNEY E. DENNIS, Arbitrator

APPEARANCES:

For US Postal Service: STEPHEN H. MURRAY - Senior Labor Relations Specialist

For the Union: LAURIE MIALE - Secretary, NALC Branch 1071

Place of Hearing: Miami, FL

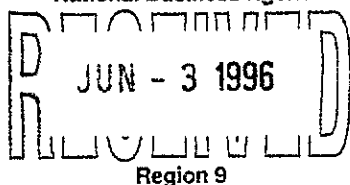
Date of Hearing: May 15, 1996

AWARD: The Emergency Suspension was inappropriate. Article 16.7 does not apply to the facts of this case.

The Grievant's removal was not for just cause. The Postal Service did not prove the Grievant intentionally curtailed preferential mail. The removal was reduced to a seven-day Suspension without pay.

Date of Award: May 24, 1996

Matthew Rose, NALC
National Business Agent



BACKGROUND OF THE CASE

The Grievant, Mr. William Rayson, is employed by the Postal Service as a Letter Carrier at Normandy Station, in Miami, Florida. He has about ten years of seniority. A portion of his time with the Post Office has been spent as a Letter Carrier Shop Steward.

On June 22, 1995, the Grievant reported to work at his proper start time and began to put up his route. It was clear from the beginning that there was far more mail on his route than could be delivered in regulation time. The Grievant informed his Supervisor of this fact and requested five hours of overtime. He was authorized two hours and told to curtail three feet of mail. He filled out a 1571 indicating that third class mail had been curtailed.

The Grievant left the station for his route without any further check of his mail or of the curtailed mail being made. During the afternoon, Assistant Area Manager Ron Isaldi conducted a route inspection at Normandy Station. He checked each Carrier's case and the officially curtailed mail. He discovered some mail on the ledge on Route 19, sixty-four pieces of preferential mail mixed in with Route 20's curtailed mail, as well as nixie mail not handled on Route 21.

This mail was discovered at about 2:00 PM. At approximately 4:00 PM, the Grievant called in for additional help to finish his route. He was sent auxiliary help. This individual took about one hours worth of mail from him. The Grievant's route was then finished.

About midafternoon, the Supervisor of Customer Service at Normandy, Ms. Moritz, who was at an all-day conference, called her office. She learned that Ron Isaldi had done a check of Carrier cases and had found the sixty-four pieces of preferential mail in with the curtailed third class mail on Route 20.

On June 23, when Mrs. Moritz returned to work, she called the Grievant into her office and issued him an Emergency Suspension under Article 16.7 of the National Agreement. The Suspension reads as follows:

UNITED STATES POSTAL SERVICE

DATE: June 26, 1995
TO: William Rayson
Letter Carrier

You are hereby notified that in accordance with Article 16.7 of the National Agreement you were placed in an off duty (without pay) status effective June 23, 1995 at approximately 8:45 AM and are to continue in this status until advised otherwise.

S.G. Moritz

On June 27, 1995, Postal Inspector Galvin began an investigation into the matter. The Inspector interviewed all parties

involved in the incident. The two employees who had informed Ms. Fletcher that they had heard the Grievant make a statement about curtailing mail were also interviewed. When interviewed by the Inspector, one of the employees, Carrier Shandalis, stated that she could not remember the Grievant making any statement about curtailing mail. Mr. Willie Harrold, the Box Clerk, was also interviewed. The Inspector's report indicated that Mr. Harrold overheard the Grievant make the following statement: "They can't tell me not to curtail mail. I'll curtail mail if I want to."

The Inspector's report was issued on July 27, 1995. On August 8, 1995, the Grievant was called in for a predisciplinary hearing. As a result of that hearing and the Inspector's memorandum, the Grievant was removed from the Postal Service.

On August 18, 1995, the Grievant was issued a Notice of Removal. The Notice of Removal is lengthy, running to four full pages. (The four pages essentially contained a reprint of the Inspection Service's report on the incident.) The reasons for the Grievant's removal, can be summarized as follows:

You are hereby notified that you will be removed from the Postal Service effective end of your tour of duty September 23, 1995.

The reasons for this removal action are:

On June 27, 1995, Postal Inspectors began an investigation into the delay of mail by you at the Normandy Branch Post Office. The basis of this investigation was information from Postal Management that you

may have intentionally delayed your mail and was reported to have made statements indicating these intentions.

Your actions as described above cannot be tolerated. You are charged with Unsatisfactory Performance due to Incomplete Mail Disposition.

A grievance was filed in regard to both the Suspension and Removal. They were denied by the Postal Service at each level and progressed to arbitration. It was agreed at the hearing that each action would be presented separately, but that testimony in one case might logically apply to the other and the Arbitrator could render one decision addressing both actions.

THE ISSUE

1. Did the Postal Service have just cause under Article 16.7 for the Suspension of the Grievant? If not, what shall the remedy be?
2. Did the Postal Service have just cause for the removal of the Grievant? If not, what shall the remedy be?

CONTRACT LANGUAGE AND REGULATIONS PERTINENT TO THIS ARBITRATION

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.

MANAGEMENT OF DELIVERY SERVICES

131.4 Reporting Requirements

.41 It is your responsibility to verbally inform management when you are of the opinion that you will be unable to case all mail distributed to the route, perform other required duties, and leave on schedule or when you will be unable to complete delivery of all mail.

.42 Inform management of this well in advance of the scheduled leaving time and not later than immediately following the final receipt of mail. Management will instruct you what to do.

.43 Complete applicable items on Form 3996, Carrier Auxiliary Control, if overtime or auxiliary assistance is authorized in the office or on the street.

.44 Report on Form 1571 all mail undelivered—including all mail distributed to the route but not cased and taken out for delivery. Estimate the number of pieces of mail.

.45 Do not curtail or eliminate any scheduled delivery or collection trip unless authorized by a manager, in which case you must record all facts on Form 1571.

.46 Before you leave the office, enter on Form 1571 the mail curtailed; when you return, add any mail which was not delivered and which was returned to the office.

.47 Complete Form 1621, Carrier's Route Report, according to instructions on reverse of form.

126 OFFICE WORK WHILE CARRIER IS ON ROUTE

126.1 Review of Work Area

.11 Review the carrier work area after carriers are on the street. Spot check carrier cases daily to make certain no mail is lodged behind or under the shelves.

.12 Verify the type and amount of mail curtailed to see if it agrees with that shown on Forms 1571, Report of Undelivered Mail, Etc., and 3921, Daily Volume Recording Worksheet. (A simple system is to measure in linear feet.

115 DISCIPLINE

115.1 Basic Principle

In the administration of discipline, a basic principle must be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. The delivery manager must make every effort to correct a situation before resorting to disciplinary measures.

POSITIONS OF THE PARTIES AND FINDINGS ON THE GRIEVANT'S EMERGENCY SUSPENSION

Supervisor Moritz learned that the Grievant had left sixty-four pieces of preferential mail with his curtailed mail when she called her office during the afternoon of June 22, 1995. When she arrived at work on the morning of June 23, she immediately called the Grievant into her office and placed him on Emergency Suspension under the procedure outlined in Article 16.7 of the National Agreement. The written Notice of Suspension is quoted above.

The Union takes the position that the Supervisor had no basis for taking action against the Grievant under Article 16.7. The Grievant did not commit any improper action that warranted immediate Suspension without pay.

The Postal Service contends that the Grievant knowingly left preferential mail behind mixed in with curtailed mail. This act constitutes deliberate delay of the mails and is a criminal offense. The only proper action was to suspend the Grievant from the Postal Service immediately, while a more detailed, in-depth investigation took place.

In reviewing the facts surrounding the Emergency Suspension, it is difficult to conclude that the Suspension was justified. Article 16.7 is specific about the circumstances under which Management may invoke it in dealing with an employee. On May 30, 1990, Mr. Woodrow Conner, Field Division General Manager, Postmaster, Miami Division, issued a memorandum to all Supervisors addressing the utilization of this Article. I agree fully with Mr. Connor's position on this subject and quote his comments below:

The National Collective Bargaining Agreement establishes specific circumstances under which the provision of the Emergency Procedures may be implemented. Those provisions are: ". . . when 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 damages to United States Postal Service property, loss of mail or funds, or where the

employee may be injurious to self or others." These are the only reasons for utilizing Article 16.7.

To attempt to use 16.7 for other purposes or to read into the intent of the Article for the purpose of circumventing other procedures is inappropriate and improper and may result in the Postal Service not being upheld even where the Article is properly used.

When warranted, Article 16.7 is an appropriate tool to apply, but like anything else, abuse leads to its loss.

The use of Article 16.7 in the instant case is a perfect example of an inappropriate application. What took place here is not remotely similar to any of the specific conditions specified in the Agreement. The Connor's memo clearly explains what is appropriate and what is not when Article 16.7 is applied. The charges against the Grievant do not fall under this provision. He should not have been suspended from service under that Article.

AWARD

The Grievant was not suspended for just cause.

POSITIONS OF THE PARTIES AND FINDINGS ON THE GRIEVANT'S REMOVAL

The Grievant was taken out of service on June 23, 1995. The Postal Inspectors were notified of the incident on June 27 and began an investigation that day into the charge that on June 22,

the Grievant had delayed sixty-four pieces of preferential mail and that there was reason to believe that he had intentionally done so. The Inspector in the case interviewed all parties involved. His report was detailed and factual. It stated with considerable accuracy what was told to him. The Supervisor, Ms. Moritz, by her own testimony, relied on the Inspector's report to support the action taken against the Grievant. It is appropriate for a Supervisor to consider an Inspector's report as a major piece of evidence in a case. But to apply the report in an arbitrary and capricious manner is not.

This Grievant was charged with intentionally leaving preferential mail that he should have taken out on his route and delivered. The issue of intentionally leaving the mail was at the crux of the Grievant's removal. The record, however, does not support the charge that the Grievant left the mail on purpose.

One employee who originally indicated that she heard the Grievant make threats that he would curtail mail if he wanted to said that she did not recall him make such statements when questioned by the Inspectors. The second employee who told Supervisor Fletcher and the Inspector that he heard the Grievant say he would curtail mail if he wanted to, when confronted in the arbitration hearing modified his statement and denied he said what appeared in the Inspector's report.

When one considers the fact that the Postal Service's prime witnesses to the Grievant's supposed statements about curtailing mail if he wanted to either denied having heard any statement or said they heard comments about curtailing the mail, but not what was printed in the Inspector's report, it is not difficult to disregard all of their comments. When the notion of delaying mail intentionally is stripped from the record, Management's case against the Grievant dissolves.

While there is no need for me to address all of the personal comments made by various witnesses in the case, it is appropriate to note that discipline against an employee should not be based on personal likes and dislikes by Supervisors, but rather on the rules, and regulations, and Contract clauses that govern the employee-employer relationship. In the instant case, the Supervisor involved moved with unnecessary speed and acted based only on hearsay evidence.


No use of progressive discipline was attempted. The Postal Service took action against the Grievant as if he had been guilty of a major capital rule infraction such as stealing, involvement with drugs or alcohol, pilferage of mail, and the like. The only thing the Postal Service has proven is that the Grievant left sixty-four pieces of mail in the curtailed mail on June 22, 1995. To remove a ten-year employee with no marks on his record for

such an action is arbitrary and capricious and unsupportable under current regulations and Contract requirements.

The facts remains, however, that the Grievant was negligent to some degree for leaving pieces of preferential mail behind. He knows that such behavior is not appropriate and that on-time delivery of preferential mail is important to station managers, as well as to Postal patrons. Because of the Grievant's lack of diligence in handling his mail in this instance, he should not be totally vindicated because the Service failed to prove he intentionally left his mail. It is my judgment that, based on the probative evidence, the Postal Service can make a point in this case by assessing the Grievant a seven-day Suspension. The Grievant should also be aware that any delay of mail for any reason will be looked upon in a serious manner.

AWARD

The Grievant was not removed for just cause. The removal shall be reduced to a seven-day Suspension without pay. The Grievant shall be made whole for all time held out of service, exclusive of the seven-day Suspension, between June 23, 1995, and the date he is returned to service. The appropriate interest shall be paid on the backpay award.


Rodney E. Dennis
Arbitrator

May 24, 1996