REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

GRIVANT: B RANDHAWA
POST OFFICE: LA MIRADA,
UNITED STATES POSTAL SERVICE

and

CASE NO: F90N-4F-D96008106

and

F90N-4F-D96008107

GTS# 32334

GTS# 32333

BEFORE: Gary L. Axon, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Joseph Harris

For the Union: John Jackson

Place of Hearing: La Mirada, California

Date of Hearing: May 21, 1996

AWARD:

The Postal Service did not act pursuant to Article 16, Section 7 when it placed Grievant in an off-duty status without pay on August 17, 1995. The emergency placement grievance is sustained. The Postal Service shall make Grievant whole for any loss of wages and benefits between the date of the emergency placement and the effective date of the removal action.

The Postal Service had just cause to remove Grievant Randhawa for falsification of his application for employment. The removal grievance is denied and dismissed.

Date of Award: June 22, 1996

Gary L. Axon
Arbitrator
I. STATEMENT OF ISSUE

The parties were unable to agree to a statement of the issue regarding the emergency placement grievance. The Arbitrator frames the emergency placement grievance to state:

Did the Postal Service act pursuant to Article 16, Section 7, Emergency Procedure, when it placed Baljinder Randhawa in off-duty status without pay?

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

Did the Postal Service have just cause to remove Baljinder Randhawa from the Postal Service for the reasons stated in the Notice of Removal?

If not, what is the appropriate remedy?

II. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 12

PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

Section 1. Probationary Period

... B. The parties recognize that the failure of the Employer to discover a falsification by an employee in the employment application prior to the expiration of the probationary period shall not bar the use of such falsification as a reason for discharge.

...
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.

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.
III. STATEMENT OF FACTS

Grievant Randhawa was employed by the Postal Service in La Mirada, California. He commenced his employment in January 1993, and continued there until the date of his removal on September 25, 1995. Randhawa came to the United States from India in 1987. Grievant earned a bachelors degree in Business Administration from a college in India. Grievant worked for Circle K and Seven Eleven before he commenced employment with the Postal Service in 1993.

The Postmaster at La Mirada is Michael Karlson. Karlson interviewed Grievant on November 9, 1993, and made the decision to hire him for a letter carrier job at the La Mirada Post Office. Grievant’s immediate supervisor at La Mirada is Sal Sanchez, Supervisor of Customer Services.

In June 1995 Grievant filed a CA-2 concerning a possible Workers’ Compensation claim resulting from a problem with the satchel rubbing on his leg. As part of his review of the CA-2 claim, Karlson examined the OPF file to check Grievant’s prior work history. During his examination of the file, Karlson came across information that led him to believe that Grievant had prior employment with the Postal Service before coming to work at La Mirada. Karlson consulted with the Human Resources Department to obtain an employment history of Grievant. Karlson testified that he was "shocked" to learn that Grievant had previous employment with the Postal Service because it never came up during his initial interview and hiring in November 1993.
In late July 1995 Karlson received Grievant’s OPF for his Burbank, California Post Office employment. The records indicated that Randhawa, known at that time as Baljinder S. Chimba, was employed at the Burbank Post Office as a city carrier from July 27, 1991, until August 1, 1991. The records further indicated that he was terminated by the Postal Service for failing to achieve the required score on a driving test.

Karlson scheduled an interview with Grievant to be held on August 3, 1995. Present at the meeting were Randhawa, Karlson, Sanchez and Grievant’s Shop Steward, Rita Bonilla. Karlson opened the meeting by describing a number of documents wherein Grievant denied he had prior Postal Service employment. Karlson then asked Grievant if he had ever been employed by the Postal Service. Grievant responded, "No." Karlson then showed Grievant a number of Postal Service documents including his applications for employment with the Postal Service dated 1991.

Grievant then responded that he did not consider himself employed by the Postal Service at Burbank in 1991. According to Grievant, he was only at the Postal Service for training purposes. Grievant testified that it was his understanding he would not be employed until he successfully completed a number of tests. Because he did not satisfactorily complete the driving test, Grievant stated that he never became a Postal Service employee. Grievant testified he told Karlson that he did not consider himself a Postal Service employee because he was only in training for a short period of time.
On September 5, 1993, Grievant signed an employment application on which he answered a number of questions. Grievant certified that the statements he had made on the application were true and correct to the best of his knowledge. Grievant was asked:

Have you ever been fired from any job for any reason?

PS Ex. 1, p. 4.

Randhawa checked the box marked "No." Grievant was also asked another question which read:

Are you a former Postal Service or federal employee not now employed by the US Government?

PS Ex. 1, p. 4.

Randhawa placed a check mark in the box indicating, "No."

Grievant also signed another document which contained information concerning his background. Under a category where he was asked to list any previous federal civilian and/or post office service, Grievant indicated "N/A." He also denied that he had ever been terminated or fired from a job for any reason. PS Ex. 2. On November 8, 1993, Grievant completed a second application for employment with the Postal Service. On Postal Service Form 2591, at page four in reply to questions number four and nine, regarding his prior employment, he answered, "No." PS Ex. 3. This was the same answer he gave on his initial employment application dated September 5, 1993. Grievant also completed another interview form in which he wrote "N/A" in reply to a question about any previous
civilian and/or postal service employment. Grievant again answered that he had never been fired from a job for any reason. PS Ex. 4.

The Postal Service entered a document titled "TERMINATION OF EMPLOYMENT" addressed to Baljinder S. Chimba dated August 1, 1991, which stated:

This is to officially notify you that your employment as a CARRIER at the Burbank Post Office has been terminated effective AUGUST 1, 1991.

The reason for this action is your failure to achieve the required score of 52 (80%) on the End-of-Training Test, Part I of TD-287-C.

Qualification is required to obtain an OF-346 Government Driver's License; and OF-346 is required to be a CARRIER at the Burbank Post Office. Therefore, we are unable to continue your training and/or employment.

Thank you for your interest and if you have any questions please call the Personnel Office.

PS Ex. 5.

Grievant testified that he received the letter but did not read it on the date it was issued. Grievant testified he never read the letter until it was shown to him by Postmaster Karlson on August 3, 1995.

The Postal Service also submitted a form titled "NOTIFICATION of PERSONNEL ACTION." PS Ex. 6. At Line 16, the effective date of employment was indicated as "7-27-91." Near the bottom of the page the form noted that Grievant was on 90 day probation from the effective date. The Postal Service also submitted Appointment Affidavits of Grievant dated July 27, 1991.
Supervisor Sanchez explained that in 1993 he was the training officer and conducted a new employee orientation with Grievant where he emphasized the importance of accurate completion of the pre-hire documents. Sanchez explained that he told Grievant that if they are wrong, he would be fired. Further, Sanchez stated that he asked Grievant if he understood his obligations to complete Postal Service forms accurately. Sanchez testified Grievant gave no indication that he did not understand the importance of completing the forms truthfully and correctly.

Karlson and Sanchez testified they did not accept Randhawa's explanation—offered at the August 3, 1995, interview—that he did not understand he was an employee because of what Randhawa claimed to be a training status. Based on a review of all of the documents, Sanchez concluded that removal was appropriate. Karlson concurred with that opinion, and a Letter of Removal was prepared. At the conclusion of the August 3, 1995, meeting with Grievant, Karlson placed Grievant on administrative leave without pay.

In a letter dated August 17, 1995, Sanchez notified Grievant that he was being placed in an emergency off-duty status. Jt. Ex. 2, pp. 11, 12. The charge was "Falsification of PS Form 2591, Application for Employment." Sanchez wrote in the emergency placement letter in relevant part as follows:

...  

After reviewing you [sic] Official Personnel Folder on July 31, 1995, it disclosed that you were employed by the Postal Service from July
27, 1991 to August 1, 1991 in Burbank CA under the Van Nuys District.

On PS Form 2591 under (H) certification it states, a false or dishonest answer to any question in this application may be grounds for not employing you or dismissing you after you begin work, and may be punishable by a fine or imprisonment. (U.S. Code, Title 18 Sec. 1001). All information you give will be considering in reviewing your application and subject to investigation.

The U.S. Postal Service demands that employees be honest and trustworthy. The standard of conduct contained in the Employee and Labor Relations Manual (ELM) Subchapter 660 cannot be treated lightly. Retaining you on duty may result in damage to the U.S. Postal Service property, loss of mail or funds, or you may be injurious to your self or others.

... Jt. Ex. 2, pp. 11, 12.

The emergency placement was to be effective August 25, 1995.

In a letter dated August 17, 1995, Sanchez notified Grievant that he would be removed from the U.S. Postal Service effective September 25, 1995. The reason for this removal action was stated by Sanchez as follows:

Charge: Falsification of PS Form 2591 - Application for Employment.

During a review of your Official Personnel Folder by Postmaster Karlson on/or about June 20, 1995 there was a personnel record indicating you had previously been employed in the Burbank Post Office. Postmaster Karlson had interviewed you on November 9, 1993 and did not recall you stating any prior postal employment on your employment application.

He requested that the personnel office review the HRIS Human Resource records and request your prior employment records from the Federal
Records Center. The OPF for your Burbank Post Office employment was received July 31, 1995 and indicated you had been employed there as a city carrier from 07-27-91 until 08-01-91 when you were terminated for failing to achieve the required score of 80% on the End-of-Training Test. Your employment was under the name Baljinder Singh Chimba.

On PS Form 2591, Page 4, dated 9-5-93 and 11-08-93 Section F, Question #4, asked "Have you ever been fired from any job for any reason? Your answer was marked "no." Question #9 asked "Are you a former Postal Service or Federal Employee not employed by the U.S. Government? Your answer was marked "no."

Furthermore on the pre-employment interview sheet signed and dated by you on 09-05-93 your response to "List below any previous federal, civilian and/or Post Office Service." Your answer was marked "N/A." Have you ever been terminated or fired from a job for any reason? Your answer was marked "no."

When you were interviewed on Thursday 08-03-95 by Postmaster Karlson and myself you first stated that you had not previously been employed by the Postal Service. Upon further questioning you did state that you had been in training for the Burbank Post Office, approximately 2-3 days but that you did not consider that training as work. When asked if you received a pay check for that time in training you answered "yes." You also stated that you would have listed it on your employment application had you considered it work. Rita Bonilla, NALC Steward, was present at the interview.

Page 4 of the aforementioned PS Form 2591 informs you that "A false or dishonest answer to any question in this application may be grounds for not employing you or for dismissing you after your [sic] begin work..." All the information you give will be considered in reviewing your application and is subject to investigation." You signed the forms certifying the information you supplied to be true and correct to the best of your knowledge and belief.
As a result of your false answers on the employment application the Postal Service was denied the opportunity to fully and accurately evaluate your suitability for a carrier position. Section 313.53 of EL 311 Personnel Operations Handbook states, in part: "Policy. (Emphasis in original) It is USPS policy to refuse employment to persons who were removed from the Postal Service or from other federal employment for cause.........In exceptional cases where appointment of such an individual is contemplated, approval of the Field Director, Human Resources, or Manager, Employment and Development must be obtained before employing any such former postal or federal employee........" Such prior approval was not obtained because you provided false information.

In addition, the U.S. Postal Service demands that employees be honest and trustworthy. The standards of conduct contained in the Employee and Labor Manual (ELM) Subchapter 660 cannot be treated lightly. The Postal Service daily handles items of obvious and significant value for our customers. It is critical to the Service that we and our customers be able to be fully confident in the honesty and integrity of our employees. Therefore, in view of the documented evidence, this removal is taken to promote the efficiency and to protect the integrity of the Service.

Jt. Ex. 3, pp. 14, 15; emphasis added.

The Union filed separate grievances challenging the emergency placement and the removal. The Union grieved the emergency placement as being without just cause, claiming that Randhawa had not been involved in conduct expressly referred to in Article 16, Section 7, which would justify immediate suspension. Jt. Ex. 2, pp. 7-10. The Postal Service denied the grievance on the ground that falsification of the Postal Service Form 2591 casts serious doubt on Grievant's integrity, honesty and trustworthiness.
The Postal Service rejected Grievant's claim that the falsification of the employment application was due to a misunderstanding. Jt. Ex. 2, p. 6. The Union appealed the emergency placement case through the upper levels of the grievance procedure where it was again denied by the Postal Service.

The Union filed a second grievance challenging the removal as without just cause. The grievance alleged that the time Grievant spent with the Postal Service from July 27, 1991, to August 1, 1991, was only a training period. Since Grievant did not pass this training period, the Union argued that he had never been hired and therefore, his responses on the application forms were honest, truthful and accurate. Thus, the discharge was punitive in nature rather than corrective. Jt. Ex. 3, pp. 5-13. Postmaster Karlson denied the grievance at Step 2.

The Union appealed the removal at Step 3 where it was denied on the ground Grievant had failed to disclose critical and material information on his employment application. Since falsification raises serious doubts regarding an employee's honesty and fitness for employment, the Postal Service concluded removal was the appropriate penalty. Jt. Ex. 3, p. 3. The Union advanced the removal case to arbitration.

The two grievances were consolidated for hearing before this Arbitrator. A hearing was held at which time both parties were offered the full and complete opportunity to present documentary evidence and testimony concerning the two cases. The witnesses were sworn and subject to cross-examination. The parties
waived the opportunity to present written closing briefs and
offered oral argument in support of their respective positions.
The two cases are now properly before the Arbitrator for decision.

IV. POSITIONS OF THE PARTIES

A. The United States Postal Service

The Postal Service takes the position that false
statements were made by Grievant when he sought employment with the
Postal Service in 1993. Specifically, Grievant made untruthful
statements concerning his prior work experience with the Postal
Service. According to the employer, Grievant's false statements
concerning his employment with the Burbank Post Office in 1991 were
not harmless or the result of a misunderstanding. The documentary
evidence presented by the Postal Service clearly establishes
Grievant was a Postal Service employee in 1991 and was, in fact,
terminated. The employer next argues that Grievant was hired and
fired by the Postal Service in 1991 and that he "knew it." In
addition, Grievant engaged in a course of conduct to hide the facts
in order to be rehired in 1993. The falsifications on the 1993
applications were material and relevant to the hiring process. If
Grievant had put the correct information on the application form,
Postmaster Karlson would not have been able to hire him into the La
Mirada Post Office. Postal Service regulations prohibit the
rehiring of an employee who has been removed from the Postal
Service without higher level management approval. Because Grievant
did not offer the information regarding his 1991 employment,
Karlson never went through the review process which was necessary in order to rehire an employee who had been previously discharged.

The employer next argues the reason Grievant was removed from the Postal Service in 1991 was that he failed a driving test during the probationary period. According to the Postal Service, driving safely is an integral part of the work of a letter carrier. The failure to disclose that he had been terminated for failing to pass the driving test would have been a material and relevant fact in the decision to rehire Randhawa in 1993 had it been disclosed. By failing to disclose his previous 1991 probationary experience, Grievant got an advantage in 1993, that he was not entitled to in order to attain permanent employment.

Moreover, when Grievant was first questioned on August 3, 1995, by Karlson and Sanchez about his prior employment history with the Postal Service he denied being previously employed by the Service. According to the Postal Service, Grievant lied when he denied previous employment with the Postal Service to his supervisors on August 3, 1995. It was only after Grievant was shown the documentary evidence pertaining to his employment history at Burbank that he conceded that he had previous Postal Service experience. Grievant’s explanation that he was not an employee, but only engaged in training to be employed by the Postal Service was not a credible excuse for the falsification.

The documentary evidence shows that Grievant was paid for his work on the three days in 1991. Postal Service Form 50 showed he had been employed in a probationary status. Grievant also went
through the ritual and oath of office to become a Postal Service employee. PS Ex. 7. The appointment document indicates he entered duty on July 27, 1991.

There is no dispute that Grievant received the termination notice dated August 1, 1991. Grievant’s denial that he did not read the termination notice is not credible. The Grievant is an educated man with a bachelors degree in Business Administration, and had several years of managerial experience with Circle K and Seven Eleven. His scores on the written examination for the Postal Service were high and indicate that he knew what he was doing when he falsified the employment application forms.

The Postal Service concludes that Grievant had multiple opportunities to put truthful answers down on the employment application forms he filed in 1993. Further, Grievant never sought clarification about what he should do with what he perceived to be a training period with the Postal Service in 1991. During the 1993 employment process, Grievant never disclosed he had any relationship with the Postal Service prior to his employment in 1993. Therefore, the Arbitrator should conclude that Grievant purposely falsified his application with respect to material facts concerning his prior employment history with the Postal Service.

Based on all the above stated arguments, the Arbitrator should conclude the Postal Service acted properly when it placed Randhawa on emergency suspension and removed him from the Postal Service for falsification of his application for employment.
The Postal Service submitted the following arbitration awards in support of its legal position. Case No. W4N-5C-D 2279; Case No. N4N-1A-D 4703; Case No. S1N-3D-D 4153; Case No. S8N-3U-D 025909; Case No. NC-E-1016-D.

B. The National Association of Letter Carriers

The Union begins by arguing that the emergency suspension was a disciplinary action and said action was not for just cause. Since an emergency suspension is discipline, it falls under Article 16 which requires the employer to establish just cause to discipline the Grievant. In the instant case, Grievant was not placed in an off-duty status until twenty-one days after the investigative interview. The employer was well aware of the alleged falsification at the end of the August 3, 1995, interview. However, the employer took no action to issue the emergency placement for fourteen days, and even then gave an effective date five days after the letter was issued. Thus, the Union submits the emergency placement in off-duty status was untimely, as it was not "immediately" exercised by management.

Turning to the removal action, the Union asserts there was no just cause for the removal. According to the Union, the burden is on the Postal Service to establish "fraudulent intent" on the part of Randhawa in order to sustain the removal. Absent from this record is any evidence Grievant intended to falsify the employment application form.

The Union next argues that Grievant was entitled to the presumption of innocence concerning the alleged falsification. The
evidence before this Arbitrator reveals that the managers concluded that Grievant should be fired for the alleged falsification without adequate investigation. While the Union recognizes that the Postal Service may terminate an employee for falsification of an employment application, the Union submits the Postal Service failed to establish any intent on the part of Grievant to falsify his 1993 application for employment.

The Union asserts that Grievant had a mistaken belief that he was in a training status during his brief three-day period of time with the Postal Service in 1991. According to the Union, Grievant’s testimony that the training officer told him not to quit his job with Circle K indicated to him that he was not an employee with the Postal Service. Grievant relied on the training officer’s statement and believed it when he was told that he would not be hired until he passed all of the Postal Service tests.

While the Grievant now understands after going through the grievance process that he was an employee in 1991, he entered the improper answers on his application form as a result of his misunderstanding of his status with the Burbank Post Office. Arbitral authority establishes that intent to falsify an application form is a necessary element to prove in order to remove an employee for falsification of an application for employment. There is no evidence in the record to refute Grievant’s explanation that he misunderstood his correct status with the Postal Service in 1991, when he completed his application for employment in 1993.
In summary, the Union submits the emergency placement and the removal were not for just cause. The Arbitrator should sustain the grievances and make Grievant Randhawa whole for any loss in wages and benefits as the result of the emergency placement and removal.

The Union submitted the following arbitration awards in support of its position. Case Nos. F90N-4F-D94051134, F90N-4F-D94063532; Case No. W7N-5N-D 1493; Case Nos. S8N-3W-D 27309, S8N-3W-D 27310; Case No. W1C-5K-D 23901; Case No. W7N-5M-D 6939; Case Nos. H4N-3U-C 58637, H4N-3A-C 59518.

V. DISCUSSION AND FINDINGS

There are two grievances before this Arbitrator. Since the two grievances involve different sections of the National Agreement, the Arbitrator will decide the two grievances separately.

A. Article 16, Section 7, Emergency Procedure

The Arbitrator finds that Postal Service acted contrary to Article 16, Section 7, Emergency Procedure, when it placed Grievant Randhawa in an off-duty status on August 17, 1995. The justification for the emergency placement was not supported by sufficient factual evidence necessary to place Grievant in an off-duty status. Accordingly, the emergency placement grievance will be sustained. The reasoning of the Arbitrator is set forth in the discussion which follows.
Article 16, Section 7, establishes an emergency procedure which may be implemented under appropriate circumstances. The emergency procedure permits management to "immediately" place an employee in off-duty status without pay where there is an "allegation" involving certain types of activities. The Postal Service is expressly authorized to use the emergency procedure where the allegation involves intoxication, pilferage, or failure to observe safety rules and regulations. In addition, the Postal Service may use the emergency procedure 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." Emphasis added. By this language the parties have agreed that certain situations do arise where management must act "immediately" to suspend an employee under the specified conditions. Section 7 is clearly a permissible variation from the conventional disciplinary suspensions contemplated by the parties under the National Agreement.

Moreover, the level of proof necessary to impose a Section 7 emergency placement in off-duty status is less than would normally be required under other disciplinary provisions of the contract. Since Section 7 grants management a right to place an employee "immediately" in a non-duty, non-pay status because of an "allegation" of certain misconduct, the burden of proof must be held to less than the traditional standard necessary to support a just cause suspension or discharge. Further, Section 7 expressly authorizes the placement of the employee in off-duty status where
retention of the employee "may" result in certain harmful consequences to the Postal Service. In the judgment of this Arbitrator, the choice of the word "may" indicates an intent that Postal Service has the option to utilize Section 7 procedures where it has something less than clear and convincing evidence of employee misconduct. Adoption of an interpretation which would hold management to a strict burden of proof before it may enforce the Section 7 procedure would nullify the clear and unambiguous right of the Postal Service to take immediate action under the emergency circumstances designated in Section 7.

Applying the principles discussed above to the facts of the instant case, the Arbitrator concludes the Postal Service did not have sufficient justification to place Grievant in an off-duty status without pay. Section 7 is carefully crafted to allow the use of the emergency placement procedure in specifically designated circumstances. In the notice of emergency placement, supervisor Sanchez claimed as follows:

... Retaining you on duty may result in damage to the U.S. Postal Service property, loss of mail or funds, or you may be injurious to your self or others.

... Jt. Ex. 2, p. 12.

The charge against Grievant arose out of an alleged falsification of his employment applications in late 1993. During Grievant's term of employment, his honesty and trustworthiness had
never been an issue. Supervisor Sanchez was unable to articulate
at the arbitration hearing, how retaining Grievant in a paid
status—while the case was being investigated and the removal
action advanced forward—fell within the type of conduct specified
in Article 16, Section 7. There is no basis in fact to conclude
retention of Grievant on duty may have resulted in damage to U.S.
Postal Service property or that he might be injurious to himself or
others.

Supervisor Sanchez also claimed that retaining Grievant
on duty might result in loss of mail or funds. The charges against
Grievant did not involve theft or mishandling of mail. The
evidence offered by the Postal Service failed to demonstrate a
sufficient connection between the falsifications on the application
forms, and how retaining Grievant on duty during the investigation
might result in loss of mail or funds.

Based on all of the evidence management had on August 17,
1995, the Arbitrator holds Postal Service did not have sufficient
evidence to conclude retention of Randhawa on duty while the
investigation continued might pose a threat to the mail or Postal
Service funds. Absent from this record is credible evidence an
emergency situation existed on August 17, 1995, which is a
necessary condition precedent, to the use of the emergency
procedures set forth in Article 16, Section 7. Accordingly, the
Arbitrator finds Postal Service violated the National Agreement
when it implemented the emergency procedure by placing Grievant in
off-duty status, without pay on August 17, 1995.
B. Removal

The Arbitrator holds Postal Service proved by clear and convincing evidence Grievant did knowingly submit two Form 2591s to the Postal Service which contained false information regarding his employment history. Further, Postal Service demonstrated Grievant knowingly gave false information to Postmaster Karlson during his employment interview, and on the pre-employment interview forms signed and dated by Grievant on September 5, 1993. Based on the totality of the record, the Arbitrator concludes just cause existed to remove Grievant from the Postal Service. Accordingly, the removal grievance is denied and dismissed. The reasoning of the Arbitrator is set forth in the discussion which follows.

The threshold issue to be resolved is whether Grievant was in fact employed by the Postal Service in 1991. The Arbitrator finds Grievant was employed by the Postal Service at the Burbank, California Post Office. The record evidence established Grievant was employed on July 27, 1991, and terminated from employment on August 1, 1991.

The unrefuted evidence is Grievant entered into service with the Postal Service on July 27, 1991. The Form 50 reflects Grievant entered service on July 27, 1991. The Form 50 was sent to Grievant. In addition, on July 27, 1991, Grievant took the oath of office. The Appointment Affidavit was signed by Grievant on July 29, 1991. PS Ex. 7. Immediately adjacent to Grievant's signature on the Postal Service Form 61 is a box with the title "Date Entered on Duty." Typed in the box is the date, "July 27, 1991." There is
no dispute Grievant was paid for the services he performed for the Postal Service. The fact Grievant was in training does not detract from the reality he was entered onto the rolls as a Postal Service employee on July 27, 1991.

Moreover, the August 1, 1991, termination letter expressly advised Grievant that his "employment as a CARRIER at the Burbank Post Office has been terminated effective AUGUST 1, 1991." Emphasis added. If Grievant had a status with the Postal Service other than as an employee, there would have been no need to terminate his employment on August 1, 1991. At the arbitration hearing, Grievant conceded that as the result of what he had learned during the grievance procedure, he now understands he was in fact employed by the Postal Service in 1991.

The critical document in this case is the August 1, 1991 letter captioned "TERMINATION OF EMPLOYMENT." PS Ex. 5. The first and second paragraphs read:

This is to officially notify you that your employment as a CARRIER at the Burbank Post Office has been terminated effective AUGUST 1, 1991.

The reason for this action is your failure to achieve the required score of 52 (80%) on the End-of-Training Test, Part I of TD-287-C.

Qualification is required to obtain an OF-346 Government Driver's License; and OF-346 is required to be a CARRIER at the Burbank Post Office. Therefore, we are unable to continue your training and/or employment.

Thank you for your interest and if you have any questions please call the Personnel Office.

PS Ex. 5; emphasis added.
The third paragraph notes the reason for the termination of employment was Grievant's inability to qualify for "an OF-346 Government Driver's License." To hold the job of a carrier, the termination letter noted the person must have an OF-346. The letter was signed by Sam Mincer, Manager, Training.

Based on the above stated findings, the Arbitrator holds Grievant was employed by the Postal Service on July 27, 1991, and terminated from employment on August 1, 1991.

Article 12, Section 1(B) expressly reserves the option in management to discharge employees for falsification of an employment application form even after the probationary period has expired. By the express terms of Section 1(B), it matters not when the employee falsified the application form. There is no statute of limitations for falsification of employment application forms.

On Postal Service Form 2591, page four, Section 4, Item four, Grievant was asked if he had ever been fired from "any job for any reason." Grievant marked the box indicating "No" on his applications dated September 5, 1993, and November 8, 1993. PS Exs. 3, 4. Item nine on page four asks the applicant if they are a former Postal Service employee or federal employee. Grievant marked the box indicating "No" on the application forms.

Grievant signed the certification which states:

I certify that all of the statements made in this application are true, complete, and correct to the best of my knowledge and belief and are in good faith.

PS Ex. 1, p. 4.
Grievant also completed two pre-employment interview sheets. PS Exs. 2, 3. The form asks the applicant to list "ANY PREVIOUS FEDERAL CIVILIAN AND/OR POST OFFICE SERVICE." Grievant indicated "N/A," meaning not applicable.

The form also questions the applicant as follows:

Have you ever been terminated or fired from a job for any reason? PS Ex. 1, p. 4.

Randhawa wrote "No" on the form. At the bottom of the form, Grievant signed the certification which stated:

I CERTIFY THAT ALL THE ABOVE STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. PS Ex. 2.

In his final pre-employment interview with Postmaster Karlson, Grievant never revealed his prior Postal Service experience. Nor did Grievant advise Karlson of what he then believed to be his "training" status with the Burbank Post Office in 1991.

Grievant claimed that he answered "No" to Items four and nine on the Form 2591 and the pre-interview forms concerning his prior work experience because he believed that he was not a Postal Service employee. According to Grievant, he never considered himself an employee because he was in training. Grievant reasoned that until he passed all of the tests, he would not be an employee. The Arbitrator holds Grievant's assertion that he did not consider himself an employee of Postal Service unworthy of belief.
The documentary evidence overwhelmingly proved Grievant was in fact an employee of the Postal Service in 1991. Even if Grievant did not consider himself a Postal Service employee, the "TERMINATION OF EMPLOYMENT" letter dated August 1, 1991, should have dispelled his notion that he was not in fact employed by the Postal Service. In clear and unambiguous language, Grievant was notified his "employment as a CARRIER at the Burbank Post Office has been terminated effective AUGUST 1, 1991."

The Arbitrator finds Grievant's testimony that he never read the 1991 termination letter until he was confronted with it by Karlson in 1995 is not credible. Grievant is an educated man who scored high on the written tests. He is also an experienced manager. To accept Grievant's story that he never read the 1991 termination letter in the four and one-half years before his 1991 employment was discovered, would require this Arbitrator to ignore the reality of the situation.

Moreover, when Grievant was first asked about his 1991 employment by Karlson in 1995, Grievant denied he was an employee of the Burbank Post Office. It was only after being confronted with the written documents that Grievant came up with the tale of being a trainee, and not an employee. The Arbitrator concurs with the Postal Service that Grievant was not candid with Karlson and Sanchez during the August 1995 investigatory interview.

The Arbitrator holds Grievant knew he was a Postal Service employee in 1991 and that he was terminated from Postal Service employment on August 1, 1991. Further, the Arbitrator
finds Grievant knowingly falsified his employment application to
hide the true facts in order to secure Postal Service employment in
1993. Grievant had numerous opportunities to clarify any
misunderstanding he might have had about his 1991 Postal Service
experience. However, Grievant never sought clarification during
the lengthy employment process. Nor did he ever mention that he
had been a Postal Service "trainee" at the Burbank Post Office.
The Grievant's total silence about his 1991 Postal Service
experience argues against any validity to the point he
misunderstood his employment status in 1991.

Grievant's proven falsifications on the application forms
concerned material and substantial facts that were relied on by the
Postal Service during the 1993 hiring process. First, had Karlson
known Grievant had been discharged from the Postal Service, he
could not have hired Grievant in 1993. Postal Service regulations
require that a person who has been fired and later seeks
reemployment must be reviewed and approved by higher authority.
Un. Ex. 1. Because of Grievant's multiple deceptions, that process
never was utilized when Karlson hired Grievant in 1993.

Second, the reasons for Grievant's 1991 termination went
to the heart of a carrier job. Grievant was unable to pass the
driving test in 1991. The ability to drive safely is an essential
job function of a carrier. If Grievant had put accurate
information on his application forms, it is unlikely he would have
been hired.
Postal Service employees are required to be honest and trustworthy. Grievant certified on his application that all statements were true and correct. During the investigative interview, he compounded his initial falsification of the form by denying to his supervisor that he had ever been a Postal Service employee. Grievant's deliberate falsification on the Form 2591 and the perpetuation of the falsehood in 1995 demonstrates that he is willing to ignore his duty to be honest and trustworthy.

The arbitration awards cited by the Postal Service establish that removal is an appropriate discipline for falsification of an employment application. There are no mitigating circumstances present in the record of this case which warrant overturning the decision to remove this employee from his job with the Postal Service. Therefore, the Arbitrator must conclude the decision of the Postal Service to remove Grievant was for just and sufficient cause.
AWARD

The Postal Service did not act pursuant to Article 16, Section 7 when it placed Grievant in an off-duty status without pay on August 17, 1995. The emergency placement grievance is sustained. The Postal Service shall make Grievant whole for any loss of wages and benefits between the date of the emergency placement and the effective date of the removal action.

The Postal Service had just cause to remove Grievant Randhawa for falsification of his application for employment. The removal grievance is denied and dismissed.

Respectfully submitted,

Gary L. Axon
Arbitrator
Dated: June 22, 1996