C#15714

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	GRIEVANT: Scott Vance
Between	POST OFFICE: Clackamas, OR
NATIONAL ASSOCIATION OF LETTER CARRIERS	CASE NO: E94N-4E-D 96027817
And	
UNITED STATES POSTAL SERVICE	

BEFORE: David Goodman — ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Jeff Forster, Labor Relations Specialist

For the Union: Jim Williams, National Business Agent

Place of Hearing: Clackamas, OR

Date of Hearing: June 13 and June 28, 1996

AWARD: The grievance is sustained. A reasonable and plausible explanation was offered by Grievant and, therefore, the circumstantial evidence of theft does not satisfy the standard of proof beyond a reasonable doubt. Grievant is entitled to immediate reinstatement and will be made whole for all lost wages and benefits, less unemployment compensation and interim earnings if any. All reference to the removal shall be expunged from his files.

Date of Award: August 7, 1996

(Signature of Arbitrator)

The parties stipulated that all steps in the grievance procedure had been complied with in a timely manner and that this case was properly before the undersigned for final and binding award consistent with the terms of the Agreement. At the close of hearing each side offered extensive oral argument and submitted arbitration awards in support of their respective position. In preparing this Award, the Arbitrator had some questions concerning Clackamas postmaster Ron Wood. During a telephone conference call with the advocates, the parties agreed to allow the undersigned to interview Wood on August 6, 1996, when in Portland for another case.

STATEMENT OF CASE

Grievant, Scott Vance, has been employed as a letter carrier since December 19, 1987, and has worked at the Clackamas, Oregon, carrier annex since June 1991. For the past three years he has served as a shop steward at that facility.

On November 30, 1995, William Bowman, manager of customer service at the annex, issued Grievant a Notice of Removal (hereinafter the "Notice") for "Unacceptable Conduct: Misappropriation of Mail Matter." The Notice is written with great specificity. Other than citations from manuals, it is set forth in its entirety:

> CHARGE -- Unacceptable Conduct: Misappropriation of Mail Matter
>
> On Thursday afternoon, November 9, 1995, Supervisor Ken Streicher and I were sitting in my office at the Clackamas Annex. The window in the office overlooks the annex parking lot. At approximately 15:30, Mr. Streicher and I noticed you drive into the parking lot as you returned from delivering your route. Rather than driving your official

vehicle directly to the postal parking area as you should have, we saw you pull into the employee parking area and stop next to your personal vehicle, a pickup truck.

Mr. Streicher and I both noted that your actions were out of the ordinary, and we continued to watch to see why you had stopped there. We observed you remove a newspaper covered bundle from your postal vehicle. The bundle was small enough for you to carry comfortably in two hands, but bulkier than just a newspaper. You carried the bundle to your truck, and placed it in the front seat. We saw you cover the bundle with your jacket, then you closed and locked the door of the truck.

You returned to the postal vehicle and drove it to the official parking area, When you entered the building, Supervisor Streicher and I instructed you to come into the office. I told you that we had seen you remove something from the postal vehicle and place it in your truck. I told you that was against postal regulations, and informed you that we would have to see what it was. You became agitated and nervous and told us that you were uncomfortable taking us to look inside your truck. After you continued to express reluctance, Supervisor Streicher informed you that we would call the Postal Inspectors and wait until they arrived. You said you would show us what was on the front seat of your truck.

Supervisor Streicher and I accompanied you to your truck, in the employee parking area. You went to the passenger door, leaned in, and immediately began rearranging the items on the front seat. When you eventually turned sideways, so that we were able to see the inside, I saw a sample box of Dove soap sitting on top of the newspaper. I could see a second Dove soap sample box still partially wrapped in the newspaper you had just placed on your seat. It was apparent that you had removed the sample boxes of Dove soap from your official vehicle enclosed within the newspaper. As Supervisor Streicher and I started to walk back toward the office, you called out to us that you would give the samples back. Then you told us that the samples were from your own mail. I reminded you that this was a detached label mailing, and asked where the labels were that went with the samples. Without looking in your truck, you told me that you didn't have the labels. You said that someone might have "planted" the samples in your mail box.

We returned to the office, and as Supervisor Streicher placed a call to the Inspection Service, you told him again that you would return the samples. When he told you it

was too late for that, you claimed once more that the samples were from your own mail box.

Postal inspectors R. G. Taylor and A. K. Saffer arrived at approximately 16:35 P.M. and interviewed you. You informed the inspectors that the Dove samples had been at the Clackamas Annex all week, but you did not deliver them on your route until that day [November 9, 1995]. You said the two Dove samples in your truck were delivered to the mailbox at your residence, 28779 SE Allen Road in Eagle Creek, on Wednesday November 8, 1995. You told the inspectors that you had stopped next to your pickup truck. You placed a USA Today newspaper and a fajita, wrapped in the newspaper, in the truck. You told the inspectors there were no soap samples inside the newspaper, and reiterated that the samples were already in your truck from the prior day's mail delivery at your home. You said you stopped at your truck to get some OWCP papers that needed my signature, but when you looked you discovered that you had left them at home.

Following the interview, you agreed to allow the inspectors to search your truck. They found two newspapers, the Oregonian and USA Today, a bulk rate mailing addressed to you at your home address, a Food Day with its detached mailing label addressed to you, a fajita wrapped in aluminum foil, and the two sample boxes of Dove soap. There were no detached mailing labels for the Dove samples.

Inspector Taylor asked you where the detached labels for the Dove samples were. You told him the samples were delivered to you without the labels. You told them you were sure you had taken all of your mail out of your mail box when you picked it up on November 8th. You also told them that you pick up all of your mail each day. You said that you bring all of your "junk" mail with you in your truck so you can recycle it. You did not respond when they asked you why you brought the Dove samples, which were obviously not recyclable. Inspector Taylor asked you why you offered to give back the soap samples after you were confronted. You told him that we had misconstrued your statement. You said you made it clear that the samples were yours, but told us that you didn't need them and we could have them if we wanted.

On November 10, 1995, inspector Taylor contacted Jeri Crane, the regular rural carrier on route #2 in Eagle Creek. Rural Route #2 includes your residence at 28770 SE Allen Road. Ms. Crane said she carried her route on Tuesday November 7, and Wednesday November 8, 1995. She stated that she did not deliver any Dove soap samples to any

address on her route on November 7th, November 8th, or on any other day.

Inspector Taylor contacted Dixie Adkins, the Rural Carrier Assistant for Eagle Creek route #2 on November 10, 1995. Ms. Adkins told Inspector Taylor that she carried route #2 on Saturday November 4, 1995 and Monday, November 6, 1995. She stated that she delivered all of the Dove samples for route #2 on Saturday November 4, 1995. She could not recall specifically whether she delivered any Dove samples to your address, but she stated that she did not deliver any samples without detached address cards.

We subsequently contacted Metromail, the company that mailed the Dove Soap samples. They checked their mailing records and notified us, in a letter dated November 17, 1995, that they did not send a Dove sample to 28669 SE Allen Road, Eagle Creek. They stated that it was not a targeted address.

On November 14 and November 21, 1995 we interviewed you as part of our administrative investigation. You stated again that you picked up the Dove samples from your mailbox at 9:40 P.M. on November 8, 1995. You denied that you took the Dove samples from the mailstream, and said neither you nor your wife would have a use for them. You said that Supervisor Streicher and I could not have seen you removing the samples from your vehicle because visibility was obscured that day. You explained that the samples could have been placed in your mailbox by people who want to get you in trouble, or kids might have put them in there. You showed us a container that you said was the fajita container you moved from the Postal vehicle to your pickup. You claimed it was about the same size as the Dove samples and must be what we saw you place in your truck.

I do not find your explanations persuasive or credible. Many of your statements are speculative, others are unfounded, self-contradictory or inconsistent with the facts. I note that your first response, when confronted, was to say you would give them [the samples] back. Since then your story has changed repeatedly. Inspector Saffer states that he did find a fajita when he searched your truck, but it was wrapped in aluminum foil--it was not in a container. When Mr. Streicher and I watched you from the office on November 9, 1995, our view was clear. Visibility was not impaired by lack of daylight or adverse weather conditions.

The evidence indicates that you removed two sample boxes of Dove soap from the mail entrusted to you for delivery on November 9, 1995, and placed them surreptitiously in

your pickup truck as you returned to the post office from your route. . .

Your actions are extremely serious. The Postal Service enjoys a position of public trust. Our customers entrust their mail to us in the belief that it will be secure against theft, pilferage, depredation and misappropriation by our employees. In order to fulfill this public trust, the Postal Service must make every effort to ensure that each employee, is honest, trustworthy and committed to performing his or her duties with the utmost integrity. Your misconduct strikes at the very heart of the mission of the Postal Service. Further as a letter carrier you spend much of your work day outside the office, without direct supervision. The Postal Service must rely on you to maintain the security to the mail entrusted to your care and to respect the sanctity of that mail, regardless of its class or apparent value.

Every Postal employee is on notice from the very day they begin employment, that rifling, theft, misappropriation or other depredation of mail is absolutely prohibited, and an offense which will result at a minimum in removal from the Postal Service, if not criminal prosecution. I believe this action is fully warranted by the nature of your misconduct and my loss of confidence in your honesty and integrity.

In addition, the following elements of your past record have been considered in arriving at this decision:

* You received a seven calendar day suspension on February 28, 1995 for Failure to Follow Instructions To Immediately Report an Accident

* You received a seven calendar day suspension on January 11, 1995 for Unacceptable Behavior; Violation of the Code of Ethical Conduct

* You received a Letter of Warning on August 31, 1994 for Failure to Follow Instructions: Failure to Secure Mail

* You received a Letter of Warning on August 20, 1994 for Unacceptable Conduct: Falsification of Clock Ring

You have the right to file a grievance under the grievance arbitration procedure as set forth in Article 15, Section 2 of the National Agreement within fourteen (14) days of your receipt of this letter.

Linda Smith, vice-president of Branch 82, filed a written

Step 2 grievance on December 20, 1995, maintaining an absence of just cause for removal and claiming that management had not met the required burden of proof or conducted a proper investigation. The remedy requested was reinstatement with back pay and other benefits and rescission of the removal. Following a Step 2 meeting with Smith on January 2, 1995, Ron Wood denied the grievance on January 9, providing detailed reasons and analysis for his decision. Smith submitted extensive corrections and additions to Wood on January 19 in response to his Step 2 decision. A Step 3 appeal was filed on January 22 which was denied on March 21, and the grievance was appealed to arbitration on March 26.

At the start of the June 13 hearing, the parties entered into the following stipulations:

-- Grievant was off from work on November 8, 1995.

-- Grievant delivered Dove soap packets on his route on November 9, 1995.

-- Grievant returned 10 to 15 samples to the office on November 9. On the way he pulled the LLV beside his parked vehicle, opened the doors of both vehicles and placed some objects on the seat of his personal vehicle.

-- Grievant allowed his supervisors and postal inspectors to inspect his personal vehicle.

-- Two Dove samples were on the seat of his personal vehicle when it was examined by his supervisors, Buzz Bowman and Ken Streicher, Postal Inspectors Robert Taylor and Allan Saffer, and his Union Representative, Linda Smith.

-- Grievant requested a polygraph when interviewed by postal inspectors and a polygraph was not administered.

-- There is a bank of seven rural mailboxes and Grievant receives his mail at one of those boxes.

-- Between June 1995 and December 1995 the seventh box furthest on the left was added.

STIPULATED ISSUE

Was there just cause for the November 30, 1995 Notice of Removal for "Unacceptable Conduct: Misappropriation of Mail Matter"? If not, what is the appropriate remedy?

STATEMENT OF FACTS

The following witnesses were called by management: William Bowman, manager of customer service; Ken Streicher, supervisor of customer service; Robert Taylor, postal inspector; Allan Saffer, postal inspector; Jeri Crane, the regular rural route carrier at the Eagle Creek post office who delivered Grievant's route; Dixie Adkins, a rural route carrier at Eagle Creek post office who delivered Dove samples for Grievant's route on November 4, 1995; and Merl Hilsenteger, Eagle Creek postmaster. The following witnesses were called by the Union: Susan Vance, Grievant's wife for 12 years; Leora (Ogilvie) Lajimodiere, Grievant's neighbor whose mailbox sits right beside Grievant's; Sandy Dunford, Grievant's neighbor whose mailbox is one of the seven; Linda Smith, a letter carrier and vice-president of Union Branch 82; and the Grievant.

For the most part, management witnesses testified to the allegations contained in the Notice. For organizational purposes, the Statement of Facts is divided into three categories: the Discovery, the Investigation, and Additional Information.

The "Discovery"

The distance from Bowman's office to Grievant's truck was at least 200 feet. In his November 12 written statement to postal inspectors detailing what he observed on November 9, Bowman wrote that he saw Grievant carry a newspaper bundle in both hands from his postal vehicle to his truck, place the bundle on the front seat and then "conspicuously covered it with his jacket." On cross-examination he admitted he did not see the samples in Grievant's hand and, from his office, could not see the seat of Grievant's truck. He also said he observed Grievant pick up his jacket, but "probably didn't see" him throw it over anything in the truck.

In his written statement Bowman said he told Grievant that transferring items from a postal vehicle to a personal vehicle was against postal policy, and went on to describe that when he and Streicher followed Grievant to the truck, Grievant opened the passenger door and "immediately leaned in and rearranged his coat and the papers." When Grievant moved away from the door, one of the samples was sitting uncovered on top of the newspaper and another was "partially wrapped in the newspaper." On cross-examination, he testified that the samples were not under the jacket when he looked into the truck; that he did not actually know if Grievant moved something around when Grievant first opened the vehicle, but believed or assumed that Grievant rearranged the items so the samples would not be wrapped in the bundle. He also said there is no postal regulation prohibiting

an employee from stopping at his private vehicle and placing something in it from a postal vehicle. As for the location of the samples, Bowman testified they were still partially covered in the newspaper bundle.

In his written statement and in testimony, Bowman maintained Grievant's immediate response to Streicher's comment that there were samples in the truck, was that he would give the samples back. Grievant then said he had received the samples in the mail, and when Bowman asked for the detached labels, Grievant responded "without looking" that he did not have them, and suggested that someone might have planted the samples in his mailbox. Bowman did not see a fajita box in the truck.

In his written statement, Streicher said that from Bowman's office he observed Grievant place an object wrapped in newspaper into the front seat of the truck and cover it with his jacket. There is no reference to Grievant carrying a bundle in two hands. When first confronted in the office, Grievant said "he only put his lunch and his newspaper in his truck." After Grievant agreed to show them the inside of the truck, he opened the door, rearranged items on the front seat "blocking our view" and then stepped aside. Streicher observed near the driver's side that the newspaper was "still wrapped around a partially visible Dove soap sample." The second sample was partially covered by newspaper pages. Streicher said, "that is a sample, that is mail." Grievant's first response was "I'll give those back" and went on to say that they were his samples which had been

delivered to his mailbox the previous day. When asked for the address cards, Grievant said he did not have them.

On cross-examination Streicher said one of the samples was on the seat toward the driver's side, and the other was partially concealed in the bundle. On cross-examination, he said that it appeared Grievant took the jacket and covered something, but was unable to see it.

Streicher, like Bowman, agreed that Grievant could clearly see Bowman's office and Bowman through his truck windows. Their written statements were consistent with the summary sheets on the first three pages of the November 17 IM.

During the interview with postal inspectors, Grievant explained that he had delivered Dove samples that day (November 9) and that the two samples inside his truck had been delivered to his personal residence in Eagle Creek on Wednesday, November 8. He also told them that he had placed a USA Today newspaper, which had a fajita from his lunch wrapped inside, into his personal vehicle. With Grievant's permission, they searched his vehicle and recovered the two samples. Additional items on the front seat included bulk business mail addressed to Grievant, and a Food Day newspaper with a detached label addressed to Grievant. The inspectors could not find detached labels for the samples.

Grievant told the inspectors that Bowman and Streicher had misconstrued his offer to give the samples back. He said he made it clear the samples belonged to him, but said he did not

"need" them and they could have them. Grievant also said he remembered picking up his mail on Wednesday, November 8, at about 1:00 to 1:30 p.m. Grievant offered to be polygraphed, but the offer was never accepted.

The IM does not report the location of the samples when they were first seen by the inspectors. Inspector Saffer recalled that one was totally covered and underneath the paper, and the other was sticking out of the open end of the paper. When told what Bowman had said about the location of the samples, Saffer replied that no one entered the vehicle after the supervisors had made their discovery, and he could not explain the difference in testimony. Staffer also recalled seeing a tightly wrapped piece of tinfoil approximately 6 to 8 inches long.

Inspector Taylor testified that among the items found in the vehicle was a "partially eaten fajita";[1] he did not see a tray wrapped in tinfoil. As for the samples, Taylor said one was "clearly" visible and the other was only partially visible. He also could not explain the difference in testimony. Both investigators admitted that if they were privy to information during or after their investigation which might exonerate the employee, they had a responsibility to follow up on such information.

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[1]The Arbitrator has assumed this statement comes from a mistake in note taking. There is absolutely no support for the proposition that the piece of tinfoil was unwrapped to determine its contents.

Linda Smith accompanied Grievant and the inspectors to the truck. She said both samples were "in clear view." One was close to the driver's side and the other in the middle of the seat. Smith remembered that Grievant was questioned about the detached labels, that inspectors had picked up pieces of mail from the front seat to look for them and they were not there. Smith did not see a fajita wrapped in an aluminum container in the truck. In this regard it is interesting to note that in Wood's Step 2 denial, he wrote Smith had claimed she had seen the container.

On the fajita issue, when he was unable to finish the second of two fajitas at lunch, Grievant said the remaining fajita was placed in a container and wrapped in tinfoil. Some time later he placed the tinfoil and its contents inside the newspaper, completed his route, and on his way to the station remembered he needed some OWCP paperwork to give to Bowman who was scheduled to leave for vacation the following day. Believing he had taken the material with him from home, he pulled the LLV alongside his truck, carried the newspaper in one hand and his keys in the other, opened the truck and looked for the paperwork. In the process he lifted his jacket, which was on the seat of the truck, and when he did not locate the information, he placed the newspaper and its contents on the seat, and covered it with his jacket. He denied removing samples from the LLV to his truck.

Grievant also claimed that he had stopped beside his truck on other occasions to unload personal belongings from the LLV. One example was when he received bulbs and perennials from customers. He maintained that once Bowman was outside and watched him do so. Hence, there was nothing unusual about what he did on November 9.

As for his encounter with Bowman and Streicher, Grievant admitted to initial discomfort and hesitancy when he was asked if they could look into his truck. He then agreed when they said they would contact postal inspectors. Taking the shortest route to his vehicle, he opened the passenger door, leaned over and pulled his jacket away from the newspaper, exposed the wrapped tinfoil, and backed away so they could see inside.

Streicher looked into the truck, said words to the effect, "those are samples, that's mail," turned around and started back to the office. Bowman asked where the detached labels were and Grievant said he would look for them. He adamantly denied ever saying, at the truck, that they could have the samples. That occurred back at the office after he again told them the samples were his and had come from his mailbox the day before.

During his interview with inspectors, he agreed to allow them to search his vehicle and recalled that Saffer found the aluminum wrap, held it up, asked what it was, and Grievant said it was his lunch from that day. They did not look inside the wrapper, and after retrieving the samples they returned to the

office and continued the interview. During that interview they asked what time on Wednesday, November 8, he had picked up his mail. He said he could not remember, but under further questioning estimated that it was between 1:00 to 1:30 p.m. Grievant maintained his innocence, offered to take a lie detector test and their response was, "We'll see." The interview ended and Grievant was placed on administrative leave.

Grievant went home, told his wife what had occurred, and after discussing the events in some detail, his wife reminded him that they had picked up the mail the night before at about 9:40 p.m. when they went to a restaurant for dessert. The next day, November 10, they prepared independent statements in response to Smith's direction that she would need a statement for her files.

During testimony, Grievant was asked for his explanation on how the samples got into his mailbox and offered four possibilities: (1) someone took them out of one of the other boxes and put them in his; (2) the rural carrier may have put a couple of samples in his box because they were extras; (3) Bowman or Streicher placed them in his mailbox; or (4) "most probably" the children in the neighborhood took the samples from Ogilvie's box, brought them home and when the mother directed them to return the samples, they placed them in the box right next to Ogilvie's.

On cross-examination Grievant said he never declined to give postal inspectors a written statement. Instead, he told

them that he had revealed everything, and while he declined the opportunity, he asked, "Do I really need to give one?" They never said they needed a signed, written statement, but only that Grievant had a right to give one.

Grievant was asked if there were any discrepancies in the IM. He said postal inspectors neglected to list all of the items found on the front seat, including the fajita. He maintained that when asked why the samples were kept in his truck, since they were not recyclable, he did not remain silent but said, "I don't know what I planned to do with them." Grievant was also questioned at length about his assertion that Bowman or Streicher may have placed the samples in his mailbox. Ultimately he agreed with counsel that this scenario required a giant leap in logic.

Like Grievant, Smith testified that when speaking with the postal inspectors, Grievant had a good deal of trouble identifying the exact time of day he picked up his mail on November 8. He was "very unsure" and ultimately said "maybe 1:30 to 2:00 p.m."

The Investigation

After speaking with Bowman, Streicher and Grievant on November 9, the inspectors went to the Eagle Creek station on November 10. They interviewed and obtained written statements from the regular rural route carrier on Grievant's route and the substitute rural carrier. For the most part, their statements are reflected in the Notice, with the exception that

the substitute carrier who delivered the samples on Grievant's route on Saturday, November 4, wrote, "I didn't deliver more than two samples to any one box."

The inspectors' investigation was completed with the submission of written statements from Bowman and Streicher on November 13. Both Saffer and Taylor testified that at no time during Grievant's interview was the issue of mail tampering brought to their attention. Nor did Grievant suggest that someone else had placed the samples in his box. Instead, he maintained that the samples were delivered to him. Saffer and Taylor were not asked to provide a supplementary report, or asked to fingerprint the samples.

In addition to the November 17 IM, Bowman conducted two investigative interviews with Grievant, accompanied by Smith, on November 14 and November 21. On November 14 Grievant suggested that there may have been some confusion over what had occurred. He explained that what was inside the paper was the fajita "box" from his lunch, wrapped in tinfoil, which was approximately the same size and length as the samples. He denied stealing the samples, said that he does not use "women's products" and that his wife would not use Dove soap because of her allergies to scented products. In support, he submitted his and his wife's written statements, and pointed out his wife had reminded him they had picked up their mail on November 8 at about 9:40 p.m. on their way to a restaurant, and not at 1:30 p.m. as he had reported to the inspectors. She also noted that

in the mailbox was some third class mail and the two samples, and referenced their "habit" of leaving junk mail, which included the samples, in the truck to be thrown out and recycled. Although reiterating much of what his wife had written, Grievant's statement was more detailed and included the fajita explanation. He also wrote that when they went to the restaurant with their two dogs in the truck, the larger one, which weighed 90 lbs., sat on the seat where he had placed the samples and crushed one of them.

On November 17, Becki McMeekin from Metromail, wrote to Streicher in response to his request that she search her files to determine if Grievant or his wife had been slated for receipt of Dove samples. She reported that according to records, while samples were targeted for houses on SE Allen Rd. (Grievant lives at 28779 SE Allen Road), the Vances "should not have received a Lever Dove Packet sample" (emphasis in the original).

At the investigative interview on November 21, Grievant and Smith were given a copy of the IM and the attached statements, and the letter from Metromail. There was a good deal of repetition from the earlier interview and there was also discussion about delivery of samples by the rural carrier to Grievant's route four to five days before Grievant had claimed he retrieved the samples from his box. Grievant raised the issue of mail tampering, asserting that the postmaster from the Eagle Creek post office had visited with families whose mailboxes were at the same location as Grievant's, and had discussed the

tampering issue with them. He also said that tampering stickers were placed on all boxes warning that such conduct was against the law. Bowman's notes of the interview show "lots of problems with mail being tampered with on Scott's home address route . . . explanation for no SEQ. cards is kids messing in boxes and putting them into Scott's box."

Bowman testified that the following day he spoke with the inspectors about the fajita. They reported that it had been wrapped in tinfoil and not in a container.

On November 30, the same date as the Notice, Smith wrote Metromail asking McMeekin to check on whether six addresses, two on SE Island Road and four on SE Allen Road, had been targeted for Dove samples. McMeekin responded on December 7, indicating that some addresses on both roads had been targeted, but of the six addresses the "1 and only address" that should have been targeted was Leora Ogilvie's. Ogilvie's box sits right beside Grievant's.

Smith's testimony is virtually undisputed on what occurred at the Step 1 meeting with Bowman. As for documents provided, she gave Bowman a copy of her letter to McMeekin and McMeekin's response; she provided a set of eight pictures, four relating to the position of Grievant's truck vis-a-vis Bowman's office (consistent with Grievant's claim and hers that Bowman was unable to see from his office what was placed in the truck), two pictures showing the location of Grievant's box and the six others, and two close-ups of Grievant's and Ogilvie's boxes

showing the tampering sticker. It's appropriate to note here that all of the boxes in the picture, except Felix's and the new box, had the sticker on them. In addition, Smith also provided a December 11, 1995 written statement from postal patron Sandra Dunford, explaining the problems with "children taking our mail, tearing airmail up, hiding it in the bushes, putting odd things in the mailboxes." Dunford also wrote that such conduct had been occurring for a couple of years, commenting that "this last year has really been bad." In addition, Smith reviewed what was written in the statements from Grievant and his wife (including the change in time from when the mail was picked up on November 8) and explained what she had learned about the tampering issue from interviews with Merl Hilsenteger, postmaster at Eagle Creek, and Jeri Crane, the regular carrier for Grievant's route. Included in this discussion were comments by Hilsenteger about "quite a number of complaints," especially in the summer of 1995, and the comment from Crane that there continued to be problems at that site.

Smith testified to Bowman's response that he thought there was "sufficient investigation and in his heart he felt [Grievant] was guilty." She maintained that she asked Bowman or someone from the Postal Service to speak again with Metromail and to interview the Eagle Creek postmaster, rural carriers, and Grievant's neighbors. She also asked that they drive to the site of the boxes, since management needed to investigate this

alternative explanation rather than prejudge Grievant's guilt or innocence.

According to Smith, the same arguments and information were presented to Clackamas postmaster Ron Wood at Step 2. At the time she told him management had the burden of proof and was required to conduct a thorough investigation to meet the "just cause" standard. Wood responded that he thought Grievant was guilty since Grievant had changed his story and was just trying to find excuses. Smith responded saying that the only change had to do with the time that Grievant had picked up the mail on November 8; Wood did not agree.

As already indicated, Smith filed lengthy additions and corrections following Wood's Step 2 response. This document, along with Smith's testimony, was the source for a good deal of cross-examination. It was pointed out that the additions and corrections contained the statement that Metromail's representative had said that "other houses in the area were targeted for samples," but in fact, McMeekin's December 7 letter said "the only address" that had been targeted was Ogilvie's. Smith would not agree she had misrepresented McMeekin's response. She was also questioned about her testimony wherein she said that Metro had claimed Ogilvie was scheduled to get "at least one sample," whereas McMeekin's letter referenced only one sample, and the reference in the additions and corrections that Ogilvie was targeted for "one or more samples." Smith repeatedly maintained this was not a mischaracterization. The additions

and corrections also contained the assertion that Dunford's statement showed mail had been moved "from box to box," yet the actual written statement did not make this claim. Smith admitted she had misstated the contents of the letter. As for her claim there was only one change in Grievant's story and that management had not conducted a complete investigation, Smith conceded that the IM showed interviews with rural carriers in an effort to check out alternative explanations. There was also Grievant's alternative explanation at the November 21 interview that there were people who wanted to get him into trouble. In this regard, Smith admitted she did not look into this allegation.

Bowman, who testified before Smith, admitted on cross-examination that no one spoke with Grievant's wife about her statement (or the time of day when they had picked up their mail); that no one from management had spoken with patrons on Grievant's route, or with the postmaster about tampering since management was satisfied that there was a problem and that stickers were placed on the boxes in an effort to solve it; that postal inspectors were not asked to come back for a supplemental investigation on the tampering issue; and that no one had gone to the bank of mailboxes or contacted Ogilvie to determine if she had received a Dove sample or samples.

Additional Information

Grievant's wife, Susan Vance, Leora Ogilvie, and Sandra Dunford described the various problems at the bank of mailboxes.

Mail has been lost, or mail such as bills, has arrived days after expected, mail has been found in the bushes, newspapers and bills have been lost, mail has been placed in the wrong box, mail has been "wadded up"; and things like rocks and silly putty have been found in the boxes. These problems were attributed to the Felix children. In June 1995, the neighbors complained to the Eagle Creek postmaster, who came out to the route and spoke to them and Ms. Felix. Tampering stickers were then placed on all boxes, but the sticker is no longer on the Felix box. Since then the frequency of tampering has declined substantially, but problems have continued. According to Hilsenteger, the conversation with Felix concerned the illegality of tampering, and occurred within earshot of the children. Hilsenteger testified that he has not received any other complaints since the summer of 1995.

As for the samples, Ms. Vance said it was very unusual to receive any samples and recalled that after pulling the two samples from the box she laughed since she had never received samples and when she finally did, she could not use them because of her allergies. Dunford, too, said she had not received any samples in a long time.

Ogilvie testified that she never received Dove samples in the mail or the detached address card,[2] but has received other

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[2]The Postal advocate objected to this testimony, maintaining that this information had not been shared prior to the hearing. Only today did he learn that she had not received a Dove sample. In response, the Union advocate cited the December 7, 1995, letter from McMeekin, which was shared with management at Step

samples like diapers and Oil of Olay. Ogilvie also claimed that she has received multiple samples, including Oil of Olay, but could not recall if she also received multiple address cards.

In December 1995, Ogilvie received a postcard-size card from the Clackamas postmaster indicating that she had been slated for a Dove sample, and asking whether she had received it. Ogilvie marked the card to show she had not, and sent it back. No one from the Postal Service spoke with her about the Dove sample or the address card.

Along with this testimony, and in an effort to save time, the Union was allowed to submit statements from other postal patrons, written in May 1996. One was from Kathy Bird who had observed the Felix children opening mailboxes, and another from Cindy McGregor who maintained that the Felix children opened their mail, trashed it, took it home and then returned opened mail. McGregor "repeatedly" spoke with Felix, but the children "still refuse to stop."

Also, to save time, the Postal Service was allowed to submit a June 10, 1996, letter from McMeekin which included a listing of households in the relevant zip code that received Dove samples. McMeekin wrote that it was not their practice "of mailing more than one sample to a household," but explained that if this did occur, "most likely there is enough of a dif-

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1, and argued that since the Postal Service had notice of a sample being scheduled for Ogilvie, the Union should not be faulted for the fact that the Postal Service did not complete its investigation by speaking with her. The objection was denied.

ference in the address that allowed us to add both records to our file."

With regard to the multiple sample issue, rural carrier Jeri Crane said that a sample is delivered only if there is an address label for it. "Sometimes" patrons receive more than one card which means they also get more than one sample. Crane was familiar with the tampering problems since the patrons have talked to her about them. She had no explanation for why Felix's mailbox did not have a sticker, since she said she put stickers on all the boxes.

POSITIONS OF THE PARTIES

Postal Service Position

The Postal Service argues there was just cause for removal. It is unrebutted that two Dove samples were found in Grievant's truck, after he was observed carrying something from the LLV to his truck, on the same day that he had delivered Dove samples on his route. The Postal Service posits that unless there is a reasonable, plausible and/or feasible explanation, the grievance must be denied.

The Union and/or Grievant offered four possible theories for what might have occurred. First is the Union's claim that samples came from other mailboxes. If that be the case, where are the detached labels? The Union has failed to provide an adequate answer to this question. In addition, the rural carrier testified that very few patrons received two samples and that a detached card must accompany each sample. Thus, with few patrons

slated for two samples, it follows that very few on Grievant's route received two samples, and the chance that one of the seven boxes received two samples is even more remote.

Ogilvie testified that she never received a detached label, but, again, the carrier said where there's a card, there's a sample. Here there are no labels, and Ogilvie never received a sample. The Postal Service posits that the second sample is the "big hole" in the Union's theory. With two samples, the only explanation is that Grievant had access to the samples on November 9 when he delivered them, and placed two in his truck.

The second theory suggests that management had something to do with what occurred. To reach this conclusion, a manager must have placed the samples in Grievant's box. To avoid detection this must have occurred after the carrier delivered the mail. But management had no way of knowing when Grievant would pick up his mail, and without knowing when it would be delivered, there was no "window" of opportunity. Moreover, management would also have had to know that Grievant would keep the samples in his truck for recycling, and that he would stop his LLV by the truck and transfer the samples. There was no "set-up."

A third theory suggested by Grievant was the rural carrier knew he was a carrier, liked him, and decided to give him two extra samples. The rural carrier, however, was credible and said where there's a card, there's a sample. There was no card

for Grievant, and accordingly this theory, too, should be rejected.

The last theory concerns mail tampering by children, but is it reasonable and feasible? Although there were complaints to the postmaster in June 1995, there is no evidence that the problem continued into November. In addition, the tampering theory is not characteristic of typical tampering cases. As postal inspectors stated, there was no mail on the ground, no evidence of switched mail, or rocks in the mailbox or any other indication of reported tampering that day. Hence, they opined that this was unlike any other tampering case they had investigated.

Assuming arguendo this is one of those rare instances where Ogilvie received two samples and, even more unlikely, two samples without address cards, consistent with this theory, the children would have had to take those samples and keep them for four days (Saturday to Wednesday). This means that the children would have had to come back four days later and put both samples into Grievant's box, a box belonging to a letter carrier. This also means that they would have had to put them back on the very day before Grievant delivered his own samples. Ultimately the Postal Service contends that all of these theories are neither reasonable nor feasible.

Another issue concerns Grievant's credibility. Grievant said there was a fajita container wrapped in aluminum, but two postal inspectors, two managers and even the Union's vice-

president, Linda Smith, never saw the box. Instead, what was observed was wrapped aluminum around the fajita. Even assuming a container holding the fajita was wrapped in tin foil and placed inside the paper, there would be no need to carry the paper in two hands, as Bowman and Streicher observed. Two hands were required to carry the Dove containers since they did not stack up and could only be carried side by side. Thus, even if it's common to transfer items from a postal vehicle, it is unlikely the transfer would require both hands, especially if it is a wrapped-up fajita box.

The Arbitrator should also consider Grievant's initial response when Streicher observed the samples in his truck. Grievant said, "I'll give them back," which is most telling, as it clearly suggests wrongdoing. But it "gets better" as Grievant first told the postal inspectors that management had misconstrued his statement, and then in testimony denied making this statement altogether.

The Postal Service also points out that Grievant burst ahead of Streicher and Bowman on the way to his truck and that both saw Grievant's upper body moving, which strongly suggests he was separating the samples from the newspaper. Under circumstances where an employee is challenged for taking something from a postal vehicle and placing it in his private vehicle, an innocent employee would open the door to the truck and step back. This was not what Grievant did. In addition, the Postal Service asks the Arbitrator to consider whether the statements

from Grievant and his wife are truly independent from one another. They used the same phraseology which, unlike the supervisors' statements, suggests collaboration.

This may not be a "perfect case," but there is no reasonable, feasible or rational explanation for why there were two samples without address cards which appeared four days after delivery to Grievant's route, and why tampering occurred four days earlier, with the samples returned to Grievant's box the day before Grievant delivered samples to his customers. Awards from other arbitrators are cited for their discussions on credibility and "what makes sense" within the realm of reasonable human experience.

Last, the Union's argument on the failure to investigate should be rejected. Postal inspectors responded with a detailed investigation, which provided sufficient evidence of guilt, notwithstanding Ogilvie's claim that she did not receive a sample. Inspectors spoke with the rural carriers, with supervisors, and with Grievant. The fact that neither the inspectors nor management ran down each and every theory does not mean there was a faulty investigation. This is especially true since Grievant's theories "turned out" to have no substance. Just because a "laundry list" is thrown out does not require management to respond to every item on the list. The theories must be realistic and plausible. For these reasons the Postal Service asks the Arbitrator to find just cause for removal and deny the grievance.

Union Position

Arguing there was an absence of just cause for removal, the Union first maintains the burden of proof is on management to show Grievant's guilt beyond a reasonable doubt. Whether charged with theft or misappropriation of mail, it is a charge of moral turpitude and management is required to remove all doubts before Grievant's guilt can be established. "Suspicion is not a substitute for proof." It is not the Union's burden to show innocence, and yet the Step 2 and Step 3 decisions show attempts to shift that burden to the Union. Such attempts should be rejected, as they were in the awards ~~from~~ of other arbitrators.

As for the circumstantial evidence relied on by management to establish guilt, if there is more than one reasonable inference which leads to other plausible explanations, the Arbitrator must find for Grievant. The Union posits that management relied on a "head in the sand" approach in its investigation and chose to ignore other plausible explanations. It did so at its own peril. It turned a "blind eye" and failed to conduct a full and fair investigation after the IM had been issued and after it received information which could have exonerated Grievant.

Following the November 14 meeting, the Postal Service failed to contact or speak with Grievant's wife and other postal patrons; it was not going to "allow the facts to cloud the issue." Its blind eye approach continued after the November 21 meeting where Grievant and Smith informed management of additional facts, and again they were ignored.

Still there is more. At Step 1 when the Union revealed what it did as part of its investigation, which included evidence of tampering and evidence that Ogilvie was slated for a sample, and even after the Union urged management to conduct a further investigation, it did not do so. Yet this information, which provided a plausible explanation for the alleged four-day delay, was again ignored. With regard to this delay, the Union notes there is no evidence on when Ogilvie picked up her mail. It is certainly possible that she did not do so during this period of time. This was a shoddy investigation and underscores why the removal should be overturned. Once again, awards from other arbitrators are cited in support.

The Union also maintains that the Postal Service never bothered to fingerprint the samples which might have shown that Grievant's wife, in fact, had handled the samples. A single fingerprint may have cleared Grievant, but the Postal Service did not even avail itself of this opportunity. Another point of note is Ogilvie's testimony that she received a card from the Clackamas postmaster asking if she had received Dove samples. She checked "no" and sent it back. Still, no one called her for important information which she could have provided.

The Union also posits there was no motive to steal these samples. Undisputed is that Grievant returned 10 to 15 samples, and if he had chosen to steal samples, why take only two and not more. And why take samples when neither he nor his wife would have used them? Grievant offered to take a polygraph,

but postal inspectors never took him up on it. It was alleged that Grievant moved things around in his truck when Streicher and Bowman accompanied him, but if that is the case, why would Grievant leave the samples in plain view so that anyone could see them? Grievant testified that he could clearly see Bowman in his office, so why engage in theft in clear view of his supervisors?

Management's argument that Grievant changed his story should be rejected. The only correction was with regard to the time he picked up his mail. This occurred after his wife reminded him of this fact when he returned home and explained what had happened. The Union suggests that with all the "stress and strain" which comes from an investigation by postal inspectors, it is "amazing" that Grievant remembered all he did. The Union also rejects management's contention that Grievant and his wife collaborated in preparing their statements. The fact is Grievant spoke with his wife and told her what occurred, and as a consequence, some similarity should be expected.

There was also a good deal of inconsistency in testimony from management witnesses. The Arbitrator should compare testimony from Saffer, Streicher and Bowman on the location of the samples. Having seen the location of the office and the truck, the Arbitrator should also remember that it was impossible for Bowman and Streicher to observe anything below the sight line from their office window. They could not see how Grievant opened his vehicle, whether he was carrying something in one or

two hands, and what he did when he placed the newspaper in his truck. Another inconsistency is Streicher's testimony that he was right behind Grievant and Bowman's testimony that no one was near Grievant as he approached his truck.

The Union also urges that Grievant has been consistent throughout this entire ordeal, with but one change to his story. As for his inability to explain the four-day delay, it is not the determining factor but just one piece of circumstantial evidence. It is a "quantum leap" for the Postal Service to assume that Ogilvie picked up her mail at any time between November 5 and November 8. The fact is there was lots of tampering with mail, and it is entirely plausible that the children took the samples from Ogilvie's box. The Union finds it odd that only the Felix mailbox did not have a tampering warning, which suggests that tampering did not stop in June and that the Felix children were involved. The key question is the presence or absence of a detached mailing card; this question "cuts both ways." Where exactly is the address card, even assuming one existed? Its absence certainly suggests the possibility of tampering. As for the fajita, no one looked inside the tinfoil. Grievant raised this issue on November 14 and November 21 and otherwise fully cooperated in the investigation. He did not hide anything and allowed postal inspectors to go to his truck and search it completely. For all of these reasons, the Union asks that the grievance be sustained, that

the Notice be expunged from the record and that Grievant be reinstated with full back pay and other benefits.

DISCUSSION AND CONCLUSION

As it should be when a case arrives at arbitration, this has been a most difficult one to decide. Astute counsel from each side left no stone unturned in forcefully and professionally arguing the strength of their position. While it is not unusual to challenge the theories and evidence presented in a circumstantial evidence case, it is unusual for this Arbitrator to be unsure of the result, even after a thorough analysis of testimony and evidence. Experience suggests that when this occurs it usually means that the employer has failed in its burden of proof. For the reasons stated below, that is what occurred in this case.

The burden is proof beyond a reasonable doubt. In Bowman's request for personnel action on November 22, 1995, with approval from Wood, removal was sought for "mail theft." Although the Notice charges Grievant with "Misappropriation of Mail Matter," it does not diminish the substantive basis for Grievant's discharge. Clearly that was theft.

Let there be no misunderstanding, theft and/or misappropriation is not converted to some lesser form of misconduct because the product stolen has little monetary value. As this arbitrator stated in his December 8, 1993, award in Case No. F90T-4F-B93037079 and F90T-4F-B93040489 (Hodge) at page 20, "There is no distinction between an employee who eats one or two boxes of

cereal samples and an employee who eats a cookie sample. Both are subject to termination." Theft is theft and trust is trust. One who steals, regardless of value, can no longer be trusted, and the Postal Service is well within its right to discharge the employee without regard to years of service or an excellent employment record.

Theft is a crime of moral turpitude and it is conduct which burdens an employee for the rest of his/her employment career. Equally important, the label of "thief" carries with it a certain social stigma which will impact the employee's feeling of net worth within the community and family environments. Perhaps these are some of the reasons why the highest standard of proof is required in these kinds of situations. It is a familiar refrain to say that all doubts must be resolved in favor of the accused in criminal proceedings, but its importance is not diminished at arbitration.

The starting point for analysis begins with the comments from Arbitrator Carlton Snow on circumstantial evidence in Case No. W7N-5D-D 18820 (1990, pages 11-12).

> In this case, the Employer has sought to meet its burden of proof using circumstantial evidence.
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> Evidence can be either direct or circumstantial. Direct evidence exists when a trier of fact must conclude only that the evidence is credible to establish the truth of asserted facts. An example of direct evidence would be testimony from a witness that he saw one person shoot another. A trier of fact would only have to conclude that the testimony of the witness was credible in order to reach a conclusion that the fact asserted, the shooting, was true.
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> Circumstantial evidence is different. It requires not only a conclusion about the credibility of testimony

> from a witness but also the use of inferences. Circumstantial evidence requires an arbitrator to infer that asserted facts are true in a way that is unnecessary when direct evidence is the basis of a decision. Circumstantial evidence that a witness saw a shooting would be testimony from the individual that he or she was near a place where the person had been shot, at a time when the person had been shot, and that the witness saw a particular person running away from the scene. In order for an arbitrator to reach a conclusion that the accused shot the person, it would be necessary to infer not only the testimony from the witness is credible, but also that the presence and flight of the person seen leaving the scene established that the individual shot the victim.
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> The value of circumstantial evidence depends on the strength of the inference which can be drawn from established facts. If circumstantial evidence is ambiguous and permits several different inferences to be drawn, then the evidence is week and generally will not establish the truth of the proposition for which it has been offered. The force of circumstantial evidence depends on its capability of removing other reasonable explanations except for the proposition it has been offered to support. Circumstantial evidence may be more reliable than direct evidence, but it is necessary for the other reasonable explanations to be eliminated; and it should not leave legitimate questions unresolved (emphasis supplied).

See also Case Nos. S8N-3A-D-12035 and S8N-3A-D-12036 (Scearce, 1980, page 5) wherein he observed that in circumstantial evidence cases there need be "a strong showing that the conclusion reached is the only reasonable one possible" (emphasis in the original), and the comments from Arbitrator LeWinter in Case No. S1N-3U-D 36512 (1985, page 6): "Circumstantial evidence is valid evidence. However, the evidence must point to grievant's guilt and not elsewhere." Another comment, which this Arbitrator believes is instructive, comes from Arbitrator Rentfro in Case No. W1C-5H-D 12242 (1983, page 8) as it pertains to shifting burdens:

> Therefore, even in criminal cases where proof "beyond a reasonable doubt" is the appropriate standard, if the misconduct is established, presumed or inferred, culpability flows from the act itself, or can be adduced from the surrounding circumstances. However, this presumption is not conclusive and generally does not end the inquiry. It merely shifts the burden to the party charged to come forward with evidence to explain or justify his conduct. If the evidence is adequate and credible, even inferences lose much of their probative effect (emphasis supplied).

To the extent the Union argues that the burden should not be shifted from the employer to the employee, it is rejected. As established below, the circumstantial evidence presented by management, if left unchallenged by other "reasonable explanations" (Arbitrator Snow), is sufficient to establish Grievant's guilt. Thus, it was up to the Union to come forward "with evidence to explain or justify his conduct" (Arbitrator Rentfro). Whether characterized as burden of proof or burden of persuasion, if the Union failed to provide credible and reasonable explanations for Grievant's conduct, management's conclusion that theft occurred would be the "only reasonable one possible" (Arbitrator Scearce). Thus in the words of management's advocate, the question becomes whether Grievant provided a plausible, reasonable and/or feasible explanation.

No one saw Grievant take two samples from the LLV and place them in his truck. That would be direct evidence of theft, assuming Bowman and Streicher were otherwise credible. The following circumstantial evidence, for which there is really no serious dispute, is reliable and tends to support the proposition that Grievant is guilty of the offense:

1. On Thursday, November 9, 1995, Grievant took something from the LLV which was wrapped in newspaper and placed it in his personal vehicle.
2. Two samples of Dove soap were found on the front seat of his vehicle.
3. Grievant had delivered Dove soap samples to customers on his route that same day.
4. Grievant or his wife pick up their mail every day it is delivered.
5. Grievant's address was not targeted for delivery of Dove soap.
6. Dove soap samples were delivered to postal patrons in Grievant's residential area on Saturday, November 4, four days before Grievant said he retrieved samples from his box.
7. It is the exception rather than the rule for a postal patron to receive more than one sample.
8. The rural letter carrier who delivered the samples on November 4 said that "very few boxes received two samples."
9. The rural carrier maintained that she did not deliver any sample without an address card.
10. Grievant did not have a detached label for either sample.

Such evidence would not only meet the standard of proof of "beyond a reasonable doubt," but standing alone would inextricably lead go a conclusion that the employee engaged in theft or misappropriation of mail.

Of course, there is much more to this case. The Union argues it offered reasonable explanations and, therefore, the circumstantial evidence is insufficient to establish guilt. The underpinnings for the Union's claim can be summarized as follows:

1. Leora Ogilvie's box is right beside Grievant's box.
2. Ogilvie was targeted to receive a Dove soap sample.
3. Ogilvie did not receive the sample or a detached address card for the sample, and said so in December 1995 when she returned a preprinted card to the Clackamas postmaster.
4. Ogilvie has received multiple samples in the past.
5. Tampering has occurred at the barn of mailboxes where Grievant's mailbox is located. The tampering has included taking mail from one box and placing it in another, receipt of others' mail, crumbled up mail, and placing non-mail objects in boxes.

6. The worst of the tampering occurred on or before June 19, 1995, but has continued since then.

7. The Eagle Creek postmaster visited the site in June 1995, spoke with Ms. Felix about the conduct of her children and directed that tampering stickers be placed on all mailboxes.

8. Felix's mailbox was the only box in existence in June 1995 not to have a tampering sticker in November 1995.

9. Grievant's wife, Susan Vance, corroborated that she and her husband retrieved the two samples from their box at 9:40 p.m. on November 8.

10. Susan Vance is allergic to scented soap and other scented products and her husband does not use "women's" products.

11. A fajita wrapped in tinfoil was on Grievant's front seat on November 9.

12. No one actually observed Grievant transfer Dove soap samples to his truck.

13. Along with the Dove samples, there was other third class mail on the front seat for recycling by Grievant and his wife at their convenience.

The obvious inference to be drawn from this evidence is that Grievant retrieved the samples from his mailbox and did not misappropriate them from those remaining after delivering his route on November 9. To reach this result, the Arbitrator must accept as a reasonable explanation that there was a misdelivery by the substitute carrier on November 4 and that tampering resulted in the samples being placed in Grievant's box on November 8.

There is no reason to question the credibility of Metromail's representative on who was targeted for delivery or the credibility of the substitute rural carrier or the regular carrier that Dove samples were delivered on Saturday, November 4. Nor is there any reason to question the credibility of Bowman or Streicher on whether they saw Grievant transfer something from the LLV to his private vehicle and then lift his jacket from the seat and place it on top of whatever Grievant carried

to his truck. Grievant confirmed the transfer and confirmed the lifting of his jacket. Ogilvie, too, was a credible witness as she had absolutely nothing to gain by denying receipt of a sample (or a detached address card), or by saying that she had returned a preprinted card to the Clackamas postmaster in December 1995.[3] With five to six weeks between the scheduled delivery date of the sample and receipt of the card, it would not be unreasonable for someone to remember if a sample had been received.

The second sample was one of two pieces of evidence which were most damaging to Grievant's case. The second was the four-day hiatus between the delivery date and the retrieval date from Grievant's mail box. The inferences to be drawn from these established facts is strong circumstantial evidence for removal. However, it is the support structure for these inferences that melts like butter because of another established fact. The Postal Service has been unable to explain or offer any plausible theory for Ogilvie's missing sample. It never showed up. If it had, Grievant would be left with three samples, one of which had found its way to the proper box. The likelihood of three samples is so remote that the tampering issue would be a "red

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[3]With agreement from both advocates, the Arbitrator met with Clackamas postmaster Ron Wood on August 8, 1996. He was also credible in denying that he sent Ogilvie a card, had any knowledge that she had not received a sample or that she had returned a card to him. An alternative explanation is that the card was sent as a follow-up by Metromail as part of its marketing responsibility.

herring." Under such circumstances, there would be no reason to investigate this claim.

However, without the Ogilvie sample (which includes a detached mailing card) there are only two explanations worthy of consideration: First, the carrier failed to deliver a sample to Ogilvie, which would explain Ogilvie's testimony and/or second, tampering occurred on Saturday, November 4, or shortly thereafter, which would likewise explain Ogilvie's testimony. With regard to the first, the testimony of the substitute carrier would have to be rejected, that she had delivered all samples as addressed. If she had failed to deliver the sample, it is just as likely that she erred and delivered two samples to Ogilvie as it is that she erred and delivered no samples to Ogilvie. Noted in this regard is Ogilvie's testimony that she had received duplicate samples of Oil of Olay in the past.

Of course, it is possible that one sample was delivered to Ogilvie, but once again where is it? The only explanation is that tampering occurred and the sample was destroyed or kept by the tamperer. It is submitted that the issue of tampering becomes quintessential to the outcome of this case.

Suppose it were concluded that tampering had not occurred. While it would be clear that the carrier had made a mistake, there would then be a valid explanation for Ogilvie's missing sample. However, even more significant, it would also be clear that Ogilvie could not have received two samples which mysteriously arrived at Grievant's box four days later. This

is especially true since Grievant picked up his mail every day and, hence, with Saturday, November 4 as the only delivery date for samples, Grievant would have had to receive two samples, through misdelivery, on that day only. Under this scenario, Grievant's guilt would be established.

Suppose it were concluded that tampering had occurred. The carrier's testimony might still be intact; Ogilvie might have received exactly what was contemplated, but someone else took it. That would be a plausible explanation for the missing sample. Of course, there would still be the Union's claim to contend with, that the carrier misdelivered a second sample to Ogilvie, that tampering took place and that the samples were then returned to Grievant's box four days later.

Most important, though, a proper investigation into the tampering allegation might have provided a lot more information. While there is evidence to suggest that tampering has diminished since June 1995, there is also evidence that tampering has occurred since then. Although Eagle Creek's postmaster has no record of tampering complaints after June, it does not mean that such tampering has not occurred. It only means that there have been no reports of it.

Let's be clear from the beginning of this discussion on tampering that management compromised its case by not only failing to conduct an investigation into this issue, but chose to ignore it entirely. In addition, there is a good deal of evidence to suggest that management was too quick to jump to a

conclusion of guilt, and that it chose to ignore other explanations because of what appeared to be a very thorough investigation by postal inspectors.

In his request for removal on November 22, Bowman noted that Grievant had "maintained his innocence throughout the investigation," but observed "he has not, however, provided any evidence to support his position or disprove our case" (emphasis in the original). The second statement is simply not true.

At the November 14 investigative interview Grievant presented his "fajita box" theory as part of an explanation for the confusion over what he had carried to his truck. This was not a story that first came to light at this interview.

When Grievant was first confronted by Bowman and Streicher on November 9 and told he had been seen carrying something wrapped in newspaper to his truck, Grievant said it was his lunch (see Streicher's written statement submitted to postal inspectors). In the inspectors' memorandum of interview with Grievant on November 9, they reported Grievant's claim that he had "placed a USA Today newspaper which had a fajita from his lunch wrapped inside it" and not Dove samples. This occurred before the inspectors searched Grievant's vehicle. At the vehicle Saffer observed a six- to eight-inch piece of wrapped tinfoil, but not "a tin foil box." Taylor's testimony was similar--he did not find a "tray wrapped in foil," but no one unwrapped the tinfoil. The tray, which was cardboard, was presented at the November 14 meeting along with Grievant's

explanation for the possible confusion; the tray was the approximate size of the Dove sample packet. According to Grievant, the tray was wrapped or rolled into the tinfoil. This was evidence to "support his position."

At this same meeting Grievant also presented written statements from himself and his wife, maintaining that the samples were pulled from their mailbox at 9:40 p.m. The timing of their pick-up varied from what Grievant had first told postal inspectors and the Postal Service has stressed this inconsistency as a primary reason for doubting Grievant's credibility. Let's think about this for a moment.

From the onset of the inspectors' investigation, Linda Smith, a well-trained Union steward, was present at the investigation. She was also the one who requested Grievant to prepare a written statement. She recalled the conversation with inspectors about when Grievant had retrieved the samples the day before. Both she and Grievant testified that Grievant was unsure of the exact time and said 1:30 p.m. only after he prodding by the inspectors. The IM reports Grievant saying that he remembered picking up the mail "between approximately 1:00 and 1:30, but he was <u>unsure</u> about the exact time" (emphasis supplied). Just how strong is this alleged inconsistency?

In addition, one must also question why Grievant would chance a charge of inconsistency if the 9:40 p.m. change was not true. In the absence of any evidence showing that Grievant's mail was delivered after 1:30 p.m., Grievant had nothing to

gain by the change in time. Nor did his wife. It is also submitted that the combination of a lengthy written explanation for why the pick-up occurred at 9:40 p.m., plus initial reluctance to pinpoint the exact time during the inspectors' interview, plus the simple fact that when someone is confronted by postal inspectors there is bound to be some anxiety and some inaccuracy in reporting events, allows for a conclusion that this alleged inconsistency has been given far too much weight by postal management.

Grievant's written statement contained two other points of interest. First, it is undisputed that Bowman and Streicher could clearly observe the upper part of Grievant's body from Bowman's office and that Grievant could clearly observe Bowman sitting in his office from Grievant's truck. As Grievant wrote on November 10: "If I intended to conceal some wrongdoing from anyone, I sure didn't do a good job." Grievant knew the rules about theft. If he were stealing samples, why take them in plain view of his supervisor.

As for Bowman's claim that Grievant carried the bundle to the truck with two hands, Streicher's written statement says nothing about two hands. Moreover, and with all due respect to Bowman, from this Arbitrator's observation of Grievant's truck, and LLV, and their position in reference to Bowman's office (which was slightly downhill from the truck), it was virtually impossible for this Arbitrator to conclude with any degree of certainty that Bowman could actually see two hands on the

newspaper instead of one. The angle of vision, the height of the metal section of the driver's door on the truck and the position of the LLV and the truck (something akin to side by side and front to front) did not permit this result.

Second, Grievant wrote about how on November 8 his 90-pound dog had sat on and crushed the sample boxes. Smith reported that the boxes were "beaten up" and "mangled." If Grievant had hid them in a newspaper, would it not stand to reason that he would have selected clean ones from those he brought back from his route on November 9? These samples did not appear brand new, which lends a tiny bit more credence to Grievant's story.

Additional information was offered at the November 21 interview one day before Bowman's removal request. Responding to the IM, the rural carrier's statement that all samples had been delivered on November 4, and Metromail's memo on November 17 which indicated that Grievant's address had not been targeted for a sample, Grievant raised the tampering issue for the first time (along with reiterating what had been said at the November 14 meeting). According to Bowman's notes, Grievant reported as follows: "Lots of problems with mail being tampered with" at Grievant's home address: "Kids messing in boxes" and "Kids may have put them in there." Smith's notes show the following: "Problems with mail being tampered with. Postmaster has been out and stickers on boxes. Mail has been missing or not received

by sender. Kids could have put in mailbox." Isn't this some "evidence to support his position"?

Please understand there was nothing unusual about raising the tampering issue for the first time at this meeting. Indeed, it might be considered unusual if this issue had been raised before then. There was no reason to do so, since Grievant had maintained all along that the samples had come from his box. Granted, there were no address cards, which is suspicious. But still, Grievant did not raise tampering as an excuse. In fact, he could not offer any explanation for the missing address cards. Now, though, when he first learned that samples had been delivered four days earlier and that he had not been targeted for a sample, if there were no explanation, Grievant's "goose was cooked," so to speak. Hence, he had to come up with something. He did so immediately upon hearing this information. Thus, the transition to another explanation at this point in time makes sense. Equally important, there was substance to what Grievant had to say; it was not a red herring. Although there was no hard evidence per se "to support his position or disprove our case" at the time Bowman offered this observation in his November 22 request for removal, the same cannot be said for the Step 1 meeting.

At the Step 1 meeting, thirteen days after the Notice, Smith gave Bowman pictures of the mailboxes with tampering stickers, a statement from Dunford which addressed the tampering issue, the Metromail letter showing that Ogilvie had been slated for

a sample, and a verbal summary of Smith's discussions with the Eagle Creek postmaster and the rural carrier about the tampering problem. Smith asked Bowman for a further investigation which included a request that someone speak with the Eagle Creek postmaster and the rural carrier, and that someone observe the location of the boxes and interview Grievant's neighbors. There was no investigation, not even a phone call to Ogilvie.

The December 20 Step 2 appeal asserted the failure to conduct a thorough investigation. At the January 2 Step 2 meeting between Clackamas postmaster Wood and Smith, Smith once more reviewed all of the information offered at Step 1 and renewed her request for an additional investigation. It was to no avail. Wood concluded there was "no evidence" to support the tampering theory and it was "pure speculation." But there was evidence on tampering and had anyone phoned Ogilvie and asked about the sample, she would have said she had not received it. Then there would have been evidence linking the tampering claim to the sample itself. There should have been a further investigation.

One is left to wonder what could have been learned by postal inspectors if they were asked to follow up on the tampering claim and to speak with Ogilvie. They may have learned something about Ogilvie's pattern when it came to picking up her mail on Saturdays. She might have said she retrieves her mail every day, which would have led to the inference that any tampering with sample(s) had to have occurred on Saturday, November 4.

She might have said she was out of town that week-end or that she had not picked up her mail on that particular day. Under such circumstances, if tampering had occurred, the window of opportunity was less than four days. If someone had asked, Ogilvie might have even said that she had received duplicate samples in the past.

Who knows, had someone spoken with Ms. Felix, she might have recalled seeing a sample or two of the Dove packets, and had directed her children to return them. After all, it was a Saturday when children were off from school and available for some "monkey business" at the mail boxes. Under such circumstances, it is entirely possible that the sample(s) was returned to Grievant's box, the one beside Ogilvie's. Who knows, Felix may have said she had seen and used the one missing sample, or she and her children may have denied any tampering and may have been able to explain their whereabouts on that particular day. Felix may even have had an explanation for why her box was the only one without a tampering sticker. And, who knows, now that a neighbor had been fired from his job, Felix might have been more cooperative, and made a special effort to question her children about the Dove sample(s) and possible tampering. Obviously, there was a lot to be learned if someone had followed the Union's suggestion.

Aside from these observations, there might not have been any need for a further investigation into tampering. More specifically, the two samples were preserved by the inspectors as soon

as they were removed from Grievant's truck. In her written statement, Grievant's wife said she had retrieved the mail on their way to a restaurant and testified that she had examined the samples. This Arbitrator has read other postal cases where inspectors took fingerprints of recovered mail in an effort to obtain a positive identification. Had it been done in this case, we would be far closer to establishing guilt or innocence.

Not to be misunderstood, even assuming that Ogilvie was wrong about Wood's inquiry, Grievant's claims were still entitled to greater consideration. The tampering charge did not suddenly appear late in the game, so to speak, without any evidence to support it. This was not a grasping of straws situation which we are probably all too familiar with, where a discharged employee claims a laundry list of defenses without any basis in fact. In these situations there is a right to question feasibility, plausibility and the like, and to conclude that the probability is so remote that there is no obligation to investigate further. Here, though, there was no laundry list: There was the fajita "box" and there was tampering, and by Step 1 management knew that one of the patrons, whose mailbox was in the barn of boxes where Grievant's box was located, had been slated for a sample. Once again, however, no one made a telephone call to ask if she had received it, and no one investigated to determine the probability of tampering. As a consequence, there is no reasonable explanation for the missing sample and because of it, a plausible alternative has increased

in stature with "legitimate questions unresolved" (Arbitrator Snow).

To be sure, there remains a good deal of suspicion about Grievant's innocence. Like those in management, this Arbitrator, too, was drawn into the web of what appeared to be strong circumstantial evidence of guilt. And yet the Union has provided a reasonable explanation which allows for other inferences to be drawn from the evidence. Those inferences lead to exoneration,[4] and accordingly, consistent with direction from Arbitrator Snow, credibility of testimony becomes critical to the outcome of this case.

Assessing credibility is always a risky task. It may be unfortunate, but credibility is often determined on the basis of one brief appearance on the witness stand, a place where very few people feel comfortable. Error in judgment is always possible under such circumstances, and that is why the one charged with rendering a decision must exercise a good deal of care and caution in sifting through all of the evidence and testimony and in weighing all factors with fairness and objectivity.

To aid the decision maker, there are some well-established guides to help in further reducing the possibility of mistake. For example, testimony by a witness who is biased or has a stake

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[4]Please keep in mind the difference between guilty and not guilty as distinguished from guilty and innocent. Our justice system is based on the former, which is to suggest that there are occasions when there will be insufficient evidence of guilt, which does not necessarily mean the accused is innocent.

in the outcome is more closely scrutinized than testimony from a neutral. Testimony that is corroborated, in whole or in part, may be entitled to greater weight than that which is wholly uncorroborated. Factors like motive, intent, and the nature of the relationship also play an important role. A personal or professional relationship may provide a reason to lie or withhold information.

To the extent that testimony is consistent or inconsistent with prior statements, or from one point at a hearing to another, is a factor which may also provide a key to credibility. The internal logic of the testimony itself, and the degree to which a witness is able to perceive, to remember, and to communicate events and details in a clear and accurate manner are likewise important.

While any and all of these guides may have a bearing on a particular case, care is also taken in their application to ensure that distortions do not arise which cloud the essential issue of the witness's veracity. For instance, this Arbitrator pauses before concluding that just because someone has a stake in the outcome, he/she has a motive for lying. Every employee has the desire to save his/her job, and thus to rely only on this criterion presupposes that all such employees are lying. That is an absurd hypothesis. Although less subtle perhaps, supervisors have interests to protect as well: to appear competent before their superiors, to avoid ridicule or loss of respect by those they supervise, if their position is not

sustained, and to ensure that their decision is viewed as fair, reasonable and proper. They also have an interest in the outcome and hence, their testimony and the discharged employee's testimony must be viewed with care, but certainly not dismissed simply because of possible motive or bias.

These were the thoughts of this Arbitrator as he went to work on the credibility issue. Try as the Arbitrator has to find a weak link in Grievant's testimony, with one important exception Grievant passed the test. His testimony was consistent throughout, and was corroborated by his wife. He did well during his brief appearance on the witness stand, and so did his wife.

Granted, there are reasons aplenty for a wife to go to bat for her husband, especially when he is the primary wage earner. Nevertheless, her matter-of-fact testimony on a number of points, especially her reaction to the very infrequent receipt of samples, when she laughed because her allergies precluded her use of the soap, was quite convincing. Her testimony, and Grievant's too, about tampering was corroborated by totally disinterested witnesses. Of course, as indicated earlier, the fact that tampering has existed does not mean that theft did not occur. It is but one inference, albeit extremely important, which provides a vehicle for explaining how the samples arrived at their mailbox.

In addition,, the corroborating testimony from neighbors also bodes well for Ms. Vance's credibility. Those neighbors

supported her claims about delay and return of mail which they also attributed to tampering. The inference to be drawn from this testimony is likewise significant as it provides a reasonable explanation for the up to four-day hiatus between the delivery date and the retrieval date.

There were also no inconsistencies in her testimony. Management attempted to undermine her credibility based on the similarity in word usage in her written statement and Grievant's, citing Grievant's claim that they wrote their statements independent of one another. This assertion is rejected. One similarity is the reference to Grievance not using "'women's soaps and products" (Mrs. Vance), and not using "womans [sic] products" (Grievant's). But what other words could be used to make this point? None. As for other arguable similarities--Ms. Vance's allergies to scented products, the recycling of "junk" mail, the trip to the restaurant and the "two boxes" or "two samples" of Dove soap--this same observation applies. Also noteworthy are the lengthy discussion between Grievant and his wife on the evening of November 9, and on November 10, prior to writing their statements. Under such circumstances, similarity of content could be expected.

Turning now to Grievant, a lot of what he had to say and why has been addressed elsewhere in this Award. One point which is difficult to reconcile is his initial response to Streicher's discovery of the two samples on the seat of his truck. Both Streicher and Bowman were very definite that the first words

from Grievant were, "I'll give those back." Later, when questioned by inspectors about this remark, Grievant said his comment was "misconstrued" and "made it clear to them the samples were his, but then indicated he didn't 'need' them so they could have them if they wanted." In his testimony Grievant denied ever making the statement at his truck, "I'll give those back." He maintained that words to this effect were made when he returned to Bowman's office. Thus, there is at least the appearance of an admission against interest, and an inconsistency.

For purposes of argument, the Arbitrator has assumed Grievant made the comment, "I'll give those back." Streicher's written statement provides the context for this remark. Prior to an agreement by Grievant to show Bowman and Streicher what was in his truck, Grievant had first agreed to Streicher only. The following is Streicher's version of what happened next.

> I told him I was not comfortable with that. Both Buzz [Bowman] and I saw him place an object wrapped in newspaper into his truck and cover it with his jacket, and <u>if there was mail in his vehicle, it is theft, and I did not want any credibility disputes</u>. That if he had put mail into his private vehicle, from his LLV, he would be facing removal. I did not want to look at the contents of his vehicle alone. I told him, "if there was mail in your truck, not addressed to you, you will loose [sic] your job." <u>He then stated that he had no "addressed" mail in his vehicle</u>. I again told him if he felt uncomfortable with showing what he had placed in his vehicle, that was all right. We should get the inspection service involved in this anyway. He then said he would show us (emphasis supplied).

After describing how Grievant led them to his vehicle, opened the passenger door and "started rearranging" items on the front

seat, "blocking our view,"[5] Streicher wrote that Grievant stepped aside so they could see what was inside. Streicher then wrote the following:

> On the front seat over near the driver's side was the newspaper still wrapped around, a partially visible Dove Soap Sample." There were also several loose pages of the paper on the front seat with another sample in it, again, partially covered with the loose newspaper pages. I said, pointing at the samples, "that is a sample, that is mail." He then said, "I'll give those back." I turned to Buzz, who was behind me and said "there is mail in there, we should contact the inspection service." He looked in the door, agreed and then Scott said, "those are mine, they were delivered to my box at home yesterday." Buzz asked if he also had the card that came with them, and Scott said no he did not. That it didn't matter, they were his . . .

It is submitted that the admission loses much of its clout when viewed within the context of how it came about. Please remember that Grievant had just returned from his route, and was confronted by two supervisors who wanted to examine the contents of his truck. He was then advised that if he had mail in the truck (not addressed to him), it was theft and he would be fired. Streicher then finds the samples and declares, "that is a sample, that is mail." That is when Grievant offers to "give those back" followed immediately by his next comment claiming ownership of the samples and declaring that "they had been delivered" to his box the day before.

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[5]Grievant's explanation was not incredible. Grievant said he took the most direct route to his vehicle, through the ivy, and because Bowman and Streicher thought it was so unusual to put something under the jacket, Grievant leaned into the vehicle and pulled the jacket away from the newspaper, exposing the tinfoil containing his lunch. He said he never touched the samples, but just backed out of the way so they could look inside.

Other than the alleged admission, Grievant never wavered from his position. It remained the same throughout. With regard to the comment, is it so unusual that someone would make this offer, as a first response, after being warned that he would be fired if unaddressed mail were found? Do any of us really know beforehand what we would say or do at a critical point in time? Oh sure, there is a norm upon which to judge predictable behavior. For example, in this situation an innocent person (or even someone who is guilty and is trying to cover up) would probably come up with a denial similar to Grievant's --"it's my mail, I just received it yesterday." It does not mean the person is innocent, although it is the type of comment one would expect. Hence, what is more important is not what is necessarily said, but what can be offered in support of the statement. To this extent, Grievant's comment following the "admission" is within the norm of a predictable response. Of course, as already established, Grievant offered evidence in support of his subsequent comment. That is far more important than the asserted admission, especially when viewed within the context of Streicher's and Bowman's comments in the office.

Going one step further, now let us assume Grievant never made his second comment, and there is only his first comment. Clearly, it sounds different. It has the true quality of an admission against interest since it certainly suggests that he had taken samples from the LLV. And so, like everything else connected with this case, this is one more piece of circum-

stantial evidence which has been considered within the big picture of whether there is proof beyond a reasonable doubt.

As for the inconsistency between Grievant's testimony and what was said to inspectors about his first comment, the inconsistency cannot be reconciled. Perhaps Grievant made a conscious decision to change his story because he feared its impact on the Arbitrator. Perhaps with the passage of seven months, Grievant replayed the events so many times he became convinced the comment was "misconstrued" and chose to forget it altogether. And perhaps when it was time to testify, and when considering his entire career was on the line, and would be decided during his brief appearance on the witness stand, he chose to place his case in the very best light possible.

Nevertheless, it was this inconsistency which caused the most concern, and, to be frank, the Arbitrator can still not figure it out. It was such an obvious one, it could be a basis for finding Grievant not credible and, therefore, his wife not credible as well. Yet, as discussed earlier, assessing credibility is not an easy task and requires care and caution along the way. Frequently the pieces fall into place. The testimony does not make sense, there is no evidence to support it, and even the "vibrations" from the witness lead to only one result. That is absolutely not the case when it came to Grievant.

Grievant's reason for stopping by his truck has not been discredited. He had experienced an earlier job-related injury

and thought he had left OWCP papers in his truck which he wanted Bowman to have before Bowman left for vacation. The injury is undisputed and so is Bowman's statement. Next, when Grievant is first confronted in the office and asked what was inside the newspaper, he answered (apparently without hesitation) that it was his lunch. Wrapped tinfoil, approximately the same length as the sample, is found on the seat of the truck which purportedly contains the left-over fajita. Next, Grievant changes the time that he picked up his mail on November 9, and there is no evidence of an ulterior motive. Next, when Grievant learns he was not slated for a sample, his immediate response is tampering. It is not "speculation" as there is evidence to corroborate this claim. Next, the Union learns about and reports on the Ogilvie sample and lo and behold Ogilvie testifies the sample was never received. It is submitted that all of this circumstantial evidence shows reasonable doubt and, in totality, overshadows Grievant's first comment to Streicher, and the inconsistency in testimony on this issue.

Quite aside from these observations, Grievant did not have a monopoly on inconsistencies. Management witnesses, too, made statements at one point in time, only to change them when it was their turn to testify. These inconsistencies are not just limited to the location of samples in the truck. Bowman's testimony, in particular, varied from what he had written and submitted to postal inspectors. His written statement painted one

picture, but on cross-examination he painted another. All of these matters are addressed at pages 8-9 and 11 of this Award.

Does it mean that Bowman and the others are not credible witnesses? Probably not, but the inconsistencies, while perhaps more subtle than Grievant's, cannot be reconciled.

In the final analysis, this may be one of those very rare instances where everyone is telling the truth. Based on what they observed, Bowman and Streicher were right to be concerned. Based on what they found in Grievant's truck immediately following Grievant's delivery of samples, they were right to be suspicious. Based on reports from Metromail and the rural carriers, they had reason to conclude that Grievant had committed a dischargeable offense. The circumstantial evidence pointed in that direction.

Their error occurred not because of what they had in the way of evidence, but because of their unwavering conviction that there was no other plausible explanation. This is not a case where there was a rush to judgment or even the absence of an adequate investigation. Instead, this is a case where management was unwilling to listen or react to what the Union had to say. The Union had done its homework. It assumed the burden of coming forward with a different scenario, along with evidence to back it up. Management, however, did not respond and remained steadfast in its conviction. It refused to budge and, in the words of the Clackamas postmaster, thought the Union's version was "pure speculation." However, management's inability to account

for a missing sample turned alleged speculation into a reasonable probability. Thus, what was thought to be a strong case of circumstantial evidence suffered as a result. Now there is reasonable doubt, and the Arbitrator must conclude that there was an absence of just cause for the removal.

AWARD

The grievance is sustained. A reasonable and plausible explanation was offered by Grievant and, therefore, the circumstantial evidence of theft does not satisfy the standard of proof beyond a reasonable doubt. Grievant is entitled to immediate reinstatement and will be made whole for all lost wages and benefits, less unemployment compensation and interim earnings if any. All reference to the removal shall be expunged from his files.

Respectfully submitted,

DAVID GOODMAN, Arbitrator