

Background

This matter of arbitration stems from an indictment, CR-94-22, of Mr. Thomas Allen Redding for one count of arson - first degree and ten counts of burglary in Superior Court of Quitman County on March 28, 1994. A letter dated March 30, 1994, from Mr. Billy Cromer, Postmaster, Georgetown, Georgia, stated:

This is advance written notice that it is proposed to indefinitely suspend you from the U.S. Postal Service effective no sooner than 30 days from the date of your receipt of this notice. This action is being taken in accordance with Article 16, Section 4 of the National Agreement.

There is reasonable cause to believe you have committed a crime for which a sentence of imprisonment may be imposed.

Specifically, by indictment number CR-94-22, dated March 28, 1994, you were indicted in the Superior Court of Quitman County for one count Arson-First Degree and ten counts of Burglary.

These aforementioned charges are so egregious in nature that retaining you in postal employment would not be in the best interest of the Postal Service.

You and/or your representative may review the material, if any, relied on to support the reasons for this notice at the Human Resources Department, Room 232, between 8:00 a.m. and 5:00 p.m. If you do not understand the reasons for this notice, contact me for further explanation.

In a letter dated April 4, 1994, Mr. Jesse G. Bowles, Attorney for Mr. Redding, wrote to Mr. Walter E. Flanagan, Manager, Human Resources, wherein he stated:

I have been asked to assist the above-named carrier in regard to the proposed suspension of him from his duties, which were mentioned in a letter to Mr. Redding dated March 30th, 1994, but received by him at 4:30 P.M. on April 4th, 1994.

Although there has been an indictment of Mr. Redding by the Superior Court of Quitman County, Georgia, it is probable that the indictment has overstated

the underlying facts, and it is also possible that some or all of the charges could be changed or minimized.

The arraignment date in the case was set for March 28th, 1994, and this was suspended or continued on an indefinite basis.

The subject is 47-years-old and has never been charged with any criminal offense involving moral turpitude, and he has only had one speeding ticket in the year 1968, while in the service of the United States Air Force.

His character and reputation in the community in which he lives are exceptional, and there is a reasonable possibility that a sentence of imprisonment will not be imposed. From the earliest days of the charges, restitution was made by the subjects and accepted by the affected party or parties. The house for which the one count of arson was made, according to my information, was unoccupied at the time, and restitution for damage to that house has largely been accomplished by and through the replacement of the house and acceptance of the same by the ostensible owner. The only reason that has been delayed is because the accused parties have been doing all of the physical labor themselves.

I would appreciate a summary outline of the evidence you have obtained or been furnished and on which the Postal Service has taken the action covered by letter dated March 30th, 1994.

On April 13, 1994, Mr. Redding filed the following Grievance:

A step one (1) Grievance discussion was held on 4-17-94 at 4:00 P.M. on the subject of Notice of proposed suspension pursuant to Article 16 section 4 of the National Agreement between the USPS and the NRLCA.

Then, on April 18, 1994, a Step Two Grievance Form was submitted. It stated:

1. Nature of Grievance: (Be specific: what, where, when, etc.)

This is a Step 2 Appeal filed in behalf of Thomas Allen Redding, a reg. Carrier at the Georgetown post office, from an adverse decision rendered at Step 1. The Grievant was issued a NOTICE OF PROPOSED SUSPENSION on March 30, 1994 in accordance with Article 16 Section 4 of the National Agreement. The Grievant received the letter on April 4, 1994.

2. Contract Violation: (Incl. Handbooks, manuals, bulletins, etc.) Including, but not limited to:

This action is a violation of Article 16, Section 1, 4, and 6 of the National Agreement between the USPS and the NRLCA.

3. Corrective Action Requested:

The Union respectfully request that the NOTICE OF PROPOSED SUSPENSION be rescinded (sic.) and the Grievant be made whole for all lost wages and benefits. While the charges are real and an indictment has been issued, in this instant case, based on statements from the Grievant and his Attorney, the facts do not reveal reasonable cause to believe the Grievant is guilty.

On April 21, 1994, Mr. Flanagan wrote the following letter to Mr. Bowles. This letter stated:

In accordance with Article 1, Section 1 of the National Agreement between the U.S. Postal Service and the National Rural Letter Carriers' Association, the Rural Letter Carrier Union is the exclusive bargaining representative of Mr. Redding. As such, I cannot grant your request for a summary outline of the evidence the Postal Service has obtained.

In accordance with Article 15, Section 3, Step 1 of the National Agreement, Mr. Redding has a contractual right to file a grievance on any action taken by the Postal Service. In the event Mr. Redding exercises this right, he would be represented by the National Rural Letter Carriers' Association Union.

On the same date, Mr. Flanagan wrote a letter to Mr. Redding. This letter stated:

On April 4, 1994, you were issued a notice proposing to indefinitely suspend you from the U.S. Postal Service based on charges listed in indictment bill dated March 28, 1994. These charges included one count of Arson-First Degree and ten counts of Burglary.

I have given consideration to the fact that you did not respond to the Indefinite Suspension dated March 30, 1994. You have not presented any rebuttal

evidence on your behalf. The Postal Service has reason to believe that you are guilty of a crime for which a sentence of imprisonment may be imposed. Therefore, I find no basis to alter your indefinite suspension. Accordingly, your indefinite suspension will become effective at the close of business on April 29, 1994.

You have the right to appeal this action in accordance with Article 15, Section 3 of the National Agreement within 14 days of your receipt of this decision.

In a letter dated May 22, 1994, Mr. Robert T. Horne, State Steward, Georgia Rural Letter Carriers' Association, wrote the following letter to Mr. Roy Shirkey, Labor Relations, U.S. Postal Service, Memphis, TN:

This Step 2B Appeal is filed on behalf of Thomas Allen Redding, a regular rural carrier at the Georgetown Post Office, from an adverse decision rendered at Step 2A.

At issue is a Notice of Proposed Indefinite Suspension issued on April 4, 1994 based upon an indictment of the Grievant by the Superior Court of Quitman County.

Please find enclosed a copy of the grievance and the corrective action requested.

We respectfully request that this important matter be discussed with Mr. Gus Baffa, NRLCA Area Representative, at your earliest opportunity.

In a letter dated May 13, 1994, Mr. Tommy L. Caruthers, Senior Labor Relations Specialist, gave Management's Step 2-A answer. He stated:

ISSUE: Did management violate Article 16.4 of the National Agreement by placing the grievant in a non pay status based on his being indicted in the superior court of Quitman County on the charges of ARSON-FIRST DEGREE, 2. BURGLARY, 3. BURGLARY, 4. BURGLARY.

UNION'S POSITION: The Union contends that management violated the national agreement by placing the grievant in a non pay status. The Union argues that the charges levied against the grievant have been summarily

dropped for a lesser charge. The parties involved have worked their differences out and we are compelled to do no less.

DECISION: In the instant case management contends that the employee was given the benefit of the doubt by being given 30 days advance written notice. In accordance with Article 16.4 if there is cause to believe that the grievant is guilty of a crime of which a sentence of imprisonment may be imposed then there is no requirement to give advance written notice prior to putting in a non pay status. Since we have a copy of the indictment, we have reason to believe that the grievant may be guilty of a crime for which a sentence of imprisonment may be imposed. Arbitrators have consistently ruled that by having an indictment we have met the burden of having reasonable cause to believe that the grievant is guilty of a crime of which a sentence of imprisonment may be imposed. The grievance is therefore denied.

On August 30, 1994, Mr. Shirkey provided Management's Step 2B/3 response. He wrote:

There exists reasonable cause to believe grievant guilty of a crime for which he can be imprisoned. The indefinite suspension is appropriate and consistent with Article 16 of the National Agreement.

On September 26, 1994, Mr. Scottie B. Hicks, President, National Rural Letter Carriers Association certified this Grievance for Arbitration.

On January 20, 1995, an Arbitration hearing was held in Georgetown, Georgia. Both parties were afforded full opportunity to present evidence and to examine witnesses who testified under oath. Both parties submitted post-hearing briefs which were received by February 4, 1995. Upon receipt of both briefs, the record was closed.

Issue

The Postal Service proposed as the issue:

Did Management have reasonable cause to believe that the Grievant was guilty of a crime of which a sentence of

imprisonment may be imposed by placing him on indefinite suspension in accordance with Article 16.4 of the National Agreement and if not what shall the remedy be?

The Union proposed:

1. Did the Postal Service violate Article 16, Section 6 of the National Agreement by indefinitely suspending Thomas Allen Redding?
2. Did the Postal Service have just cause in indefinitely suspending Thomas Allen Redding?

Since the two parties could not agree to the issue, both parties agreed to have the Arbitrator formulate the issue after hearing the case:

Did the Postal Service violate Article 16 of the Agreement when it suspended Mr. Thomas Allen Redding indefinitely? If so, what shall be the remedy?

Relevant Articles
Of the Agreement

ARTICLE 16

DISCIPLINE PROCEDURE

Section 1. Statement of Principle

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

Section 4. Suspension of More Than 14 Days or Discharge

In the case of suspension of more than fourteen (14) days or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against the employee and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the employee's case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure.

When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the advance notice requirement shall not apply and such an employee may be immediately removed from a pay status.

Section 6. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or the designee.

In associate post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

Position of the Parties

Management:

Management stated that Mr. Redding, the Grievant, was indicted on one count of arson in the first degree and ten counts of burglary by the Grand Jury of Quitman County Georgia on March 28, 1994. Each of the eleven counts carries a maximum sentence of 20 years imprisonment as provided by Georgia State Law. The total would equate to 220 years

imprisonment for the alleged crimes if he had been convicted and given the maximum sentence.

The Postal Service obtained a copy of this indictment and questioned him. The Grievant was then placed on indefinite suspension. The notice which placed the Grievant on indefinite suspension was dated March 30, 1994 and was a proposed notice of suspension which gave the Grievant a 30-day grace period with pay. The Grievant was given seven days from the date the Grievant received the notice to respond to Mr. Walter E. Flanagan, Manager, Human Resources, as to why he should not be placed on indefinite suspension. A letter was forwarded to Mr. Flanagan from Mr. Jesse G. Bowles, Attorney at Law, on the Grievant's behalf. This letter advised Mr. Flanagan of arguments he thought pertinent to the Grievant's case and requested information relative to the case at hand. Mr. Flanagan advised Mr. Bowles that the Union was the authorized bargaining agent recognized to represent the Grievant and that no documents would be forthcoming. Mr. Flanagan advised the Grievant that he had not responded to the notice of proposed removal and that the proposed notice dated April 21, 1994 to indefinitely suspend him was affirmed.

Management argued that Arbitral precedent has established that the burden of proof does not encompass the normal doctrine of just cause in these type cases. Arbitral precedent has established that the proof required in similar cases requires that Management has only to establish that it had reason to believe that an employee was guilty of a crime for which a sentence of imprisonment may be imposed. Arbitral precedent has established that the proof required comes in the form of an indictment by a grand jury composed of the defendant's

peers. Management placed the Grievant on indefinite suspension based on an indictment for which the charges have yet to be denied.

Management stated that Mr. Billy Cromer, Postmaster, obtained a copy of the indictment upon the advice of Labor Relations, South Georgia District. The Grievant was given an opportunity to respond to the indictment, and he did not deny any of the charges. Mr. Cromer testified that he had copies of two newspaper articles from adjoining counties in his possession which pertained to the Grievant's situation prior to issuing him a suspension. At no time did the Grievant profess his innocence of the charges. There was no testimony regarding his innocence either at the arbitration hearing, during the proceeding of this grievance, or during the pre-hearing conference held with the Postmaster prior to issuing the Grievant an indefinite suspension. Even though not required to do so, Management gave the Grievant 30 days to get the charges dropped or furnish information to exonerate himself. The Grievant did not do so.

Management explained that Mr. Redding and an accomplice burglarized a hunting cabin, took items which according to a newspaper article, included a shotgun, and burned the dwelling. The charge of first degree arson indicates that the dwelling was completely burned. The charges have yet to be dropped and are still pending.

The Postmaster had a copy of the indictment prior to suspending the Grievant and the Grievant did not deny the charges. The Grievant had 30 days in a pay status to convince Management that the charges were ill-founded and did not. Management argued that it has more than met its required burden of proof. Management proved that it had reason to believe

that the Grievant was guilty of a crime for which a sentence of imprisonment may be imposed. Thus, placing the Grievant in an off-duty status was done to protect the integrity of the Postal Service and Management asks that this Grievance be denied.

Management argued that the Union offered nothing at arbitration which had been previously addressed during the processing of the Grievance. Therefore, the Arbitrator should reject any and all of the testimony offered by the witnesses called by the Union with the exception of Mr. Robert Horne who represented the Grievant at Step Two. Article 15.3, Step 2.C of the National Agreement requires full disclosure. Management rejects the argument that Article 16.4 requires a higher burden of proof such as that applicable to the doctrine of just cause.

Neither Management nor the Union should be subjected to "trial by ambush" when presenting a case in Arbitration. The National Agreement for the four major Unions in the Postal Service all contain language in Article 15 requiring full disclosure which is tantamount to the discovery process applicable to legal forums. Full disclosure is required so that each party may fully understand the ramifications of its decisions and its options. This is further intended to encourage settlement at the lowest possible level with all parties privy to all the facts as may be relevant. When one party holds out pertinent information and then presents this information for the first time in arbitration, the other party has little chance to offer a defense. For this reason and the explicit and unambiguous requirements of the National Agreement, the arguments not previously made should be rejected. Regional Arbitrator Daniel G. Collins in Case No. N7C-1F-C 34373, Dated May 8, 1992:

. . . It is absolutely clear to this Arbitrator that here at the arbitration level the Union is attempting to raise and rely, exclusively in fact, on a provision of a Handbook that was never before raised or discussed in the grievance procedure. The Arbitrator agrees with the Postal Service that the National Agreement, as clearly written and as interpreted in National Level arbitration decisions, precludes the Union from now raising a claim under Section 1.33 of the F-1.

The provisions of the National Agreement dealing with the parties' grievance procedure, in Article 15, Section 2, Step 1(d), (f) and (g), and Step 3 (b) and (c) stress the importance of, and provide special procedures for developing all relevant facts and arguments prior to any appeal to arbitration. There are no corresponding provisions for developing additional facts or arguments in Section 3 of Article 15 dealing with arbitration. The clear import of all of these provisions when read together is that the case must in fact and theory be developed prior to, and not at the arbitral stage. National Arbitrator Aaron so held in his 1984 decision in Case No. NC-E-11359, in which he stated that

It is now well settled that parties to an arbitration under a National Agreement between the Postal Service and a signatory Union are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly observed

Arbitrator Collins explained:

. . . . Arbitrator Stoltenberg held that the Union was precluded from relying on Section 1.33 when it had, for the first time, raised that issue two weeks prior to the arbitration hearing. This Arbitrator regards that decision as sound-consistent with the terms of the National Agreement, the relevant National Level Arbitration awards, and arbitration doctrine generally.

Management argued that it has been well established through arbitral precedent that a party cannot make its case at arbitration. The Union is attempting to do so. The character witnesses that testified on the Grievant's behalf and the testimony offered by Postmaster Cromer regarding his reluctance to suspend the Grievant should not be considered in the ninth hour. These had not been contentions during the processing of the Grievance. If these

had, Management may have provided rebuttal testimony. Other members of the community who may not have known the Grievant as intimately as the witnesses could have offered their opinions about suspending someone that had been indicted on ten counts of burglary, stealing a shotgun and burning someone's property down. Management could have provided Mr. Jim Jones, Labor Relations Specialist, to testify as to what advice he gave the Postmaster and whether he had the authority to make or instruct the Postmaster in either of these official capacities. Management did not have these options.

Management claimed that the only argument raised in the Grievant's defense during the processing of this Grievance was that the Grievant had made restitution and that the charges levied against the Grievant had or would have the charges dropped. As verified by the testimony of the Grievant and the Postmaster, the charges have not been dropped. Mr. Robert Horne, State Steward, testified that in Step 2 of the Grievance Procedure, he did not argue that anything was discussed about the community wanting the Grievant to return to work. Nothing pertaining to these arguments was raised prior to Arbitration.

Management argued that the Grievant's character and standing in the community are irrelevant and have nothing to do with the action that Management took. Management's action was based on an indictment which was instituted by his community of peers based on evidence examined pertaining to his alleged involvement of a crime for which a sentence of imprisonment may be imposed. Management gave the Grievant ample time to offer a rebuttal to the charges or time to have the charges dropped. Management did not profess the guilt or innocence of the Grievant. The Georgia Bureau of Investigations evidently still

believes that there are other matters yet to be resolved because the Grievant still faces possible charges for the indictment.

Management stated that it understands the Arbitrator's reluctance not to hear the testimony prior to making a ruling. The Arbitrator in the instant case was correct to hear the testimony and to make an informed decision on its relevance. Management made a standing objection to the testimony of the surprise witnesses. With the Arbitrator now being informed, Management respectfully requests that the Arbitrator reject the testimony as not being relevant due to the resulting arguments not having been previously disclosed.

Management stated that the overwhelming majority of Arbitrators have consistently ruled that the standard of proof required to be sustained by Management in cases involving indefinite suspensions where the issue in dispute had criminal connotations is "reasonable cause." Where Arbitrators and Postal Advocates sometimes use the words "just cause", the burden of proof still does not rise to the level of the traditional doctrine of just cause.

Management referenced Arbitrator Sylvester Garrett in Case No. NC-NAT-8580, dated around July, 1978. Arbitrator Garrett addressed the principle of "nexus". If this Arbitrator applied the same logic that Arbitrator Garrett used, this Arbitrator should still deny the grievance. Arbitrator Garrett listed pertinent considerations where the disposition of cases involving indefinite suspensions under the crime provisions. Relevant excerpts are:

1. Whether there in fact was a reasonable basis to believe M-guilty of the alleged crime;
2. Whether there was a sufficient relationship between the alleged crime and M-'s job as a carrier or such other job to which he

might have been assigned in accordance with his seniority to warrant the initial suspension; and

3. Whether in any event M- was returned to his job with reasonable dispatch following his acquittal. Ibid.

Management stated Item 3 is not applicable because the charges were brought by the Georgia Bureau of Investigations and have yet to be dropped. Management has stated consistently that, if the charges are dropped and evidence is furnished stating same, the Grievant will be returned to work with dispatch.

In regard to establishing a nexus as indicated in item 2, the Grievant is a letter carrier and meets the public each day. The Grievant's job requires constant contact with the public. Unlike the Williams case, referred to in Chairman Garrett's ruling, Williams worked as a ZMT Operator indoors and had no contact with the public. Mr. Redding does.

Management claimed that testimony from the three non-postal witnesses established that Quitman County is a small rural community with about 2200 to 2300 residents who know of the charges brought against the Grievant. Mr. Redding was indicted by a grand jury of his peers. Evidently, they were not persuaded that his former image should cloud their duty; others may not also. The Postal Service has a responsibility to maintain the public's confidence. The drafters of the National Agreement recognize this responsibility and provided language in the form of Article 16.4.

Management argued that the Postmaster initially testified that he had been made to take the action and would not have done so if he had not been made to. On cross examination, he was asked who he worked for. Under oath, he said, his boss was Mr. Jimmy

Whittaker, Manager of Post Office Operations. The Manager instructed the Postmaster in the performance of his duties about what is expected of him, not Labor Relations. Labor Relations cannot make or instruct the Postmaster on actions to be taken. It has a responsibility to advise Management Officials of the proper procedures to take in disciplinary matters which are consistent with District Policies and contractual procedures.

Mr. Cromer, the Postmaster, claimed that Labor Relations advised him on how this type of situation is normally handled. The Postmaster read Article 16.4 in the National Agreement and he was satisfied that the situation met the circumstances described. The Postmaster explained a situation from the previous evening whereby the Postmaster told a customer that he wanted and felt that he should be able to refund her the entire amount of monies collected just five days prior for a post office box, but due to regulations, he could not.

The Postmaster testified that he felt like the Grievant and other employees of the Georgetown Post Office were family. This explained his reluctance to issue the Grievant a suspension. He stated that he had no problem upholding Postal Service's policies once it was explained to him that the action taken was consistent with the Postal Service's policy on how to handle situations whereby an employee had been indicted for a crime for which a sentence of imprisonment may be imposed. The Postmaster issued the Grievant the indefinite suspension based on an indictment he had after he gave the Grievant an opportunity to respond. The Grievant did not deny the charges.

Union witness, Ms. Balkcom stated she was shocked when she learned that Mr. Redding was the accused and thought they might be wrong. She stated that he made a mistake. She appeared surprised when she obviously learned for the first time at Arbitration that the Grievant had been and is still under indictment.

Mr. Edwards, the Mayor, stated he was surprised when he learned that the Grievant was the accused. He testified that he did not condone these type actions. Mr. Anderson testified that he was shocked when he learned that the Grievant was the accused. He did not condone these type actions. These individuals knew the Grievant on an individual, personal basis. They stated that they were speaking on his behalf for personal reasons. Management asked: "What about those who do not know the Grievant on a personal basis? I wonder what they might say? Nexus has been shown if found to be relevant." Management Brief, p. 8.

Management claimed that Arbitrator Garrett speaks of the need to have an indictment as opposed to an arrest warrant as was done in the Williams' case. Management had the indictment. This constituted the basis for the charges levied.

Management stated that based on the rationale applied in this National Award and the considerations enumerated above, this Grievance should still be denied if this lesser form of just cause is applied. Arbitrators have ruled consistently that the "reasonable cause" standard is the only proof required before invoking an indefinite suspension for crime considerations. Arbitral jurisprudence has established the reason for the position taken by Management. Management enclosed a number of awards for consideration. All of these decisions have been issued since the award of Arbitrator Garrett in 1978. This is the same standard that the

Postal Service, South Georgia District, employs and has been upheld countless times by numerous, distinguished Arbitrators.

Management closed by stating:

Management has stated consistently, from Step 1 through Step 3 and now at Arbitration that, management based its decision to indefinitely suspend the grievant on an indictment. Proof of the grievant's guilt, innocence, former standing in the community or whether restitution has been made is irrelevant to this proceeding. What is relevant is, whether Management had substantive information in hand, prior to suspending the grievant. Based on Arbitral precedent an indictment has been deemed to be the proper information of which one should base a decision of this nature on.

The Union offered in the grievant's defense, that the charges were either dropped or in the process of being so. However, they have not. If they are dropped the grievant will be put back to work. If not our final decision will be predicated on the outcome of his trial. As of this writing the grievant still faces the possibility of criminal conviction with possible sentencing ranging from 1 to 220 years imprisonment.

Whether the Arbitrator applies the reasonable cause standard or the just cause nexus, Management has proven that the action taken was proper in accordance with Article 16.4 of the National Agreement. Management asks that the Arbitrator find same and deny this grievance in its entirety. Management Brief, p. 9.

The Union:

The Union first argued that the merits of this case should not be considered because of the Postal Service's serious breach of due process and its utter disregard for the requirements of Article 16, Section 6 of the National Agreement. Article 16, Section 6 guarantees an employee with due process by requiring that all discipline be proposed by lower-level supervision and reviewed and concurred with by a higher-level authority. An

indefinite suspension is procedurally defective where the higher level supervisor makes the decision to indefinitely suspend, rather than the immediate supervisor. This case could not present a clearer violation of this important due process safeguard. Postmaster Billy Cromer, Mr. Redding's immediate supervisor, testified that it was not his decision to place Mr. Redding on indefinite suspension. Postmaster Cromer testified that he did not inform Labor Relations after Mr. Redding was indicted. The Labor Relations office in Macon was informed of the indictment by a relative of Mr. Flanagan who attended a church service in Georgetown. When Labor Relations in Macon learned of Mr. Redding's indictment, it directed Postmaster Cromer to obtain a copy of the indictment and forward it to Macon. Postmaster Cromer dutifully obtained a copy of the indictment which is a public record.

Postmaster Cromer testified that, if it had been up to him, he would not have placed Mr. Redding on indefinite suspension and Mr. Redding would still be working. Mr. Cromer testified that he did not draft the letter of proposed indefinite suspension; he was told by Labor Relations to sign it and deliver it to Mr. Redding. It will be impossible for the Postal Service to suggest that Postmaster Cromer comported with the requirements of 16.6 and initiated the indefinite suspension. Postmaster Cromer clearly indicated that this entire matter was handled by the Labor Relations office in Macon, Georgia.

The Union stated that, where the imposition of discipline is not recommended or initiated by the employee's first-line supervisor, the discipline cannot stand. It cited Arbitrator Jonathan Dworkin:

... When higher-level authority does more than advise: when it takes over the decision-making role and eliminates the contractual responsibility of local supervision -- and then concurs in its own decision -- a substantive due-process violation occurs. Such violation cannot be overlooked as a mere technicality. The bi-level disciplinary procedure provides a unique protection for employees. It cannot legitimately be disregarded, and the employer's neglect to follow it creates a breach of contractually established due-process requirements of such importance as to require that the resulting discipline be overturned. Case No. C1R-4H-D 31648 (1985).

The Union argued that the Postal Service did not have just cause to indefinitely suspend Thomas Allen Redding. While the Union contended that this case should be disposed of on the basis of the Postal Service's egregious violation of Article 16.6, the record reflects that the Postal Service did not carry its burden in showing that just cause existed for Mr. Redding's indefinite suspension. Throughout the Grievance Procedure and at the hearing, the Postal Service took the untenable position that, because Mr. Redding had been indicted, the Postal Service was privileged to indefinitely suspend him pursuant to Article 16, Section 4 of the National Agreement. The last paragraph of Article 16, Section 4 only allows the Postal Service to dispense with the advance notice requirement and immediately remove an employee from pay status where there is "reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed."

The Postal Service has boldly taken the position that standards of just cause did not apply to this case and the Postal Service made no serious efforts to show that just cause existed for Mr. Redding's indefinite suspension. The Postal Service is mistaken that "reasonable cause to believe" eliminates the overriding principle of Article 16 that all discipline must be for just cause.

The Union argued that the relationship between the “reasonable cause to believe” language and the “just cause” principles which underlie the party’s discipline procedure was the subject of a national level grievance involving the interpretation of the last sentence of Article 16, Section 3 of the 1975 National Agreement between the Postal Service and the National Association of Letter Carriers (NALC). The last sentence of the USPS-NALC Agreement is identical to the last sentence of Article 16, Section 4 of the instant parties’ contract. Arbitrator Sylvester Garrett on page 29 of his decision that both the Postal Service and NALC “appeared to recognize that an indefinite suspension in a ‘crime’s case’ represents disciplinary action which must be for ‘just cause’.” Arbitrator Garrett found it inconceivable that the Postal Service negotiators:

Reasonably could have believed that the suspension of an employee because of alleged commission of a crime would not be subject to a full independent review in arbitration to determine whether the suspension was for “just cause” and whether remedial action, including back pay, might be appropriate. This conclusion seems unavoidable even under the language of the last sentence in Section 3, in itself, since it requires that there be “reasonable cause” to believe the employee “guilty” of the alleged crime. In any grievance involving “just cause” or suspension in a “crime’s case”, the presence or absence of “reasonable cause” to believe the employee guilty would be an unavoidable first question. It also seems apparent that some alleged crimes could have no material bearing on an employee’s ability to perform from his or her job without embarrassment to the Service or impairment of efficiency or safety. Yet, as the Service concedes, there must be a “nexus” in any such case between the alleged crime and the employee’s job with USPS. Whether such a “nexus” exists also is an obvious question under the “just cause” test. NC-NAT - 8580 (1978), p. 31-32.

Arbitrator Garrett offered several general conclusions including:

- (1) Every suspension effected under the last sentence of Article XVI, Section 3 is reviewable in arbitration to the same extent as any other suspension to determine whether “just cause” for the disciplinary action has been shown;
- (2) Such a review in arbitration necessarily involves considering at least (a) the presence or absence of “reasonable cause” to believe the employee guilty of the crime alleged, and (b) whether such a relationship exists between the alleged crime and the employee’s job in the USPS to warrant the suspension . . . P. 34-35.

The Union also cited Arbitrator Alan Walt, NC-C-9349-D (1979) and Arbitrator Paul J. Fasser, Jr., NC-S-5849-D (1977).

The Union claimed that the Postal Service cannot carry its burden and show either that it had “reasonable cause to believe” or that it had just cause to indefinitely suspend Mr. Redding. In fact, the Postal Service did not even address the latter. The Postal Service essentially admitted that it did nothing but rely on the indictment in issuing the indefinite suspension to Mr. Redding. The Postal Service offered no evidence that an independent investigation of any kind was ever considered or carried out. There is no evidence that the Postal Inspection Service was ever contacted. Thus, it is difficult to see how the Postal Service could have had “reasonable cause to believe.”

The Union contended that the charges contained in the indictment remain allegations and in no way prove that Mr. Redding is guilty of them. The Postal Service was provided with information from Mr. Redding’s criminal attorney who represented that “it is probable that the indictment has overstated the underlying facts, and it is also possible that some or all of the charges could be changed or minimized.” This information was obviously discounted by the Postal Service; no reasonable explanation has ever been offered as to why.

Any suggestion that this information was less valuable or could not be considered because it did not come from Mr. Redding's collective bargaining representative is ridiculous. This information goes directly to the question of "reasonable cause to believe." It is noteworthy that the Labor Relations Office in Macon had caused the proposed indefinite suspension letter to be issued to Mr. Redding within 48 hours of the issuance of the indictment, thus making it difficult, if not impossible, to engage in a meaningful investigation. The sequence of events is clear. Labor Relations in Macon fortuitously learned of Mr. Redding's indictment and then required Postmaster Cromer to issue an indefinite suspension.

The Union stated that there is more to this case than whether or not the Postal Service had "reasonable cause to believe." That is, for the Postal Service to show that just cause existed for the indefinite suspension, it is required to demonstrate that Mr. Redding's alleged criminal conduct had a significant bearing on his ability to perform his job as a rural carrier. It is well established that the Postal Service may discipline an employee for off-duty misconduct only when it effects the employer-employee relationship. In this case, the Postal Service made little effort and was unable to show that Mr. Redding's indictment had any negative effect on the efficiency of the Postal Service's operations or its image.

Postmaster Cromer testified that Mr. Redding was a very good employee with no disciplinary history. No evidence that any of Mr. Redding's co-workers did not want to work with him or that any customers would object to his return to the route was presented. The Postmaster testified that there was overwhelming community support for Mr. Redding. When the Postal Service attempted to remind Postmaster Cromer of a conversation they had

the day before the hearing at the Georgetown Post Office where a female customer apparently had something negative to say about Mr. Redding, Postmaster Cromer explained that the customer was not upset with Mr. Redding because of the indictment but because Mr. Redding was an outspoken supporter of the construction of a nearby medical waste incinerator. The female customer was one of the incinerator project's most vocal opponents. Thus, the Postal Service was unable to produce a shred of evidence that there was any opposition to Mr. Redding's continued employment with the Postal Service. The Postal Service's own witness suggested that there was overwhelming support for him.

The Postal Service introduced three newspaper articles through Postmaster Cromer to show that the Postal Service's image had been tarnished by the indictment. The Association objected to the introduction of these newspaper articles because they were not provided to the Association at any point during the Grievance Procedure contrary to Article 15, Section 3 and Article 31, Section 2 of the National Agreement. One article with the headline, "Ming: No arrests yet in arson case," made no mention of Mr. Redding. The other two articles indicated only that Mr. Redding had been indicted. Neither article made any mention that Mr. Redding was a Postal employee. Marginal newspaper coverage, especially with no reference to the Postal Service, is meaningless. The newspaper clippings clearly were not considered when Labor Relations in Macon issued the indefinite suspension. Postmaster Cromer indicated that he had not sent the articles to Labor Relations and that he had only shown them to Mr. Caruthers the day before the hearing.

The Postal Service was unable to show that Mr. Redding's indictment had a negative effect on the efficiency of the Service, that he posed a threat to himself, his co-workers, or his customers, or that the image of the Postal Service would have been tarnished. All of the testimony indicated that Mr. Redding was well-liked, the community wanted him back on the route, and the image of the Postal Service would not have suffered if he had remained on the job.

The Union presented three witnesses on behalf of Mr. Redding. Mr. Willie Anderson, a psychiatric social worker and Quitman County Board of Education member, testified that Mr. Redding was an excellent carrier who often went beyond the call of duty. He stated that he was happier with his mail service when Mr. Redding was carrying the route. Mr. Anderson had known Mr. Redding for ten or fifteen years and stated that he was shocked when he learned of Mr. Redding's arrest and indictment. He indicated that the Postal Service's image would be improved if Mr. Redding were returned to work.

E. L. Edwards, Jr., Mayor of Georgetown, testified that he has known Mr. Redding all of his life and was in disbelief when told that Mr. Redding had been arrested. Mr. Edwards was a very satisfied customer and would like to see Mr. Redding return to his duties. As Mayor, Mr. Edwards was in a unique position to gauge community sentiment. He testified credibly that there was "very strong support" for Mr. Redding's return to work. He believed that the image of the Postal Service would not be tarnished if Mr. Redding were returned to work.

Ms. Hortense Balkcom, a lifelong Georgetown resident, owned the property that was destroyed in the fire which Mr. Redding is accused of intentionally setting. The destroyed property was a hunting cabin that Ms. Balkcom rented to hunters. Ms. Balkcom was shocked when she learned that Mr. Redding had been arrested. Ms. Balkcom testified that she did not press charges against Mr. Redding and noted that Mr. Redding rebuilt the hunting cabin. Ms. Balkcom testified that he did such a great job that she thought about moving into it. The Union noted that the fact that Mr. Redding made restitution to Ms. Balkcom should not be construed as an admission that he is guilty of a crime for which a sentence of imprisonment can be imposed. If anything, Mr. Redding's gesture reflects favorably on his character. Despite the personal loss felt by Ms. Balkcom, she does not believe that Mr. Redding should have been indefinitely suspended.

The Postal Service did concede that, if the indictment was dropped or Mr. Redding was acquitted in a trial, he would be immediately returned to work. The Postal Service must do its part in managing its employees and imposing discipline where appropriate. The Postal Service has ceded all judgment to the criminal process and to a District Attorney who has sat on an indictment for almost ten months with no specific date set for trial.

The Union stated that the Postal Service had an affirmative duty to investigate upon learning of the indictment, but did not. The Postal Service is required in cases of alleged off-duty misconduct to determine whether that alleged misconduct would effect the integrity or operations of the Postal Service. If the Postal Service had been able to offer credible

testimony in this regard, it may have met its burden under just cause. However, the Postal Service made no efforts to address these issues.

The Union concluded:

The indefinite suspension in this case was not properly initiated by Mr. Redding's supervisor, Postmaster Cromer. Instead, the indefinite suspension was forced on Postmaster Cromer by Labor Relations in Macon. This is a clear violation of Article 16, Section 6 of the National Agreement. There is no exception which allows the Postal Service to ignore the judgments and desires of its front line supervisors, even in cases where employees have been indicted for off-duty misconduct. Thus, the Arbitrator need not reach the merits of this case.

If, however, the merits are addressed, the record reveals that the Postal Service failed to meet its burden to show that it had "reasonable cause to believe that Mr. Redding was guilty of a crime for which the sentence of imprisonment could be imposed." The Postal Service also failed to show that indefinite suspension was for just cause.

The record does reflect that Thomas Allen Redding is an Air Force veteran and an exemplary eighteen (18) year Postal employee, that he does not pose a threat to his Postmaster, his co-workers or his customers. Indeed, these people want him back on the route. The Postal Service never had and does not now have a valid reason for indefinitely suspending Mr. Redding.

We ask that you hold the Postal Service to its contractual promise that all discipline, including indefinite suspensions, be supported by just cause. As none exists here, we respectfully request that you grant the grievance and immediately reinstate Mr. Redding with full back pay with interest and benefits to the date of his indefinite suspension. Union Brief, pp. 15-17.

Analysis and Discussion

This matter of arbitration concerns contract interpretation and application, evidence and proof, and arbitral principles. The first matter to be addressed is the argument by the Union that Mr. Redding was denied due process and that the merits should not be addressed

because Mr. Cromer, the Postmaster, did not actually make the decision to suspend Mr. Redding indefinitely. The Union referenced Article 16, Section 6 which requires higher-level authority to review the proposed disciplinary action before proposed disciplinary action is taken and provided numerous postal arbitration cases as support. While Mr. Cromer testified that he may not have taken the action to suspend Mr. Redding indefinitely, he certainly agreed that he believed in complying with postal regulations and acted upon the advise and counsel of "Labor Relations in Macon" Tape. He signed the letter drafted by "Labor Relations" in Macon and concurred with its content. Therefore, the evidence does not show that Article 16, Section 6 was violated; there were no due process violations in this matter.

A second item to be addressed is the one argued by both parties, i.e., the failure to "make a full and detailed statement of the facts." Neither party met this standard and both parties challenged evidence of the other party. Management challenged the testimony of the Union witnesses, principally Ms. Balkcom, the owner of the property which Mr. Redding was charged with damaging, Mr. Edwards, the Mayor, and Mr. Anderson, a postal customer on Mr. Redding's former route. The Union challenged the newspaper articles which were in Mr. Cromer's possession but were not given to Labor Relations until the day before the hearing. As well, the Union questioned Mr. Cromer about an incident with a customer the day before the hearing wherein he had to follow postal regulations, but wished he could have better accommodated the customer. In all of the incidents, they are tangentially related to the core evidence. If the Postal Service had conducted an investigation, it potentially could

have obtained the same information provided by Ms. Balkcom, Mr. Edwards, and Mr. Anderson. The newspaper articles were in Mr. Cromer's possession, but none of them identified Mr. Redding as a postal employee.

Management relied on the second paragraph of Article 16, Section 4 as the provision to support its action and relies on the grand jury indictment as support for invoking Mr. Redding's suspension under Article 16, Section 4. Management claimed that this matter is not a traditional "just cause" discharge. Instead, Management argued that it must show that there was a "reasonable cause" to believe that Mr. Redding was "guilty of a crime for which a sentence of imprisonment can be imposed" The Union argued that Article 16, Section 1 must be considered in the interpretation of Article 16's provision in its entirety. In fact, the first two sentences of Article 16, Section 1 begin by referring to "In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. . . ." Since Article 16 provides for various types of discipline, it is clear that the "Statement of Principle" proffers the principle that discipline or discharge shall be for "just cause." Article 16, Section 4 provides for suspension for more than 14 days or discharge and suspension is a form of discipline. Therefore, there is a proper connection between the "Statement of Principle," discipline for "just cause," and suspension for more than 14 days. In other words, there must be evidence for Management to have "reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed" The primary evidence presented by Management in this case is the indictment.

Since the Postal Service placed so much weight on the indictment, it is important to recognize what an indictment is. An indictment is:

An accusation in writing found and presented by a grand jury, legally convoked and sworn, to the court in which it is impaneled, charging that a person therein named has done some act, or been guilty of some omission, which by law is a public offense, punishable on indictment. A formal written accusation originating with a prosecutor and issued by a grand jury against a party charged with a crime. An indictment is referred to as a "true bill" whereas failure to indict is called a "no bill".

An indictment is merely a charge which must be proved at trial beyond a reasonable doubt before defendant may be convicted. U.S. v. Zovluck, D.C. N.Y., 274 F. Supp. 385, 390. An indictment is only an accusation, it is the physical means by which a defendant is brought to trial, its sole purpose is to identify defendant's alleged offense, and it is not evidence that offense charged was committed and may not be considered as evidence by jury during its deliberations. U.S. v. Glaziou, C.A. N.Y., 402 F.2d 8, 15.

An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. Fed. R. Crim. p.7, Henry C. Black, Black's Law Dictionary, 5th Ed., St. Paul, MN: West Publishing Co., 1979, p. 695.

Relevant words include "public offense," "accusation," "charge," and "proved at trial beyond a reasonable doubt." Thus, the indictment simply is the necessary step before going to trial. At trial, the prosecutor still must convince a jury that the defendant is guilty. Still then, punishment must be determined. In other words, the Postal Service concluded that this indictment was essentially proof which led Management to conclude that Mr. Redding could be imprisoned.

Both parties submitted numerous previous arbitration decisions, including the decision by Arbitrator Garrett which was submitted by both parties. Each of these decisions was studied for the relevance. Many of the arguments in the previous cases are the same as those advanced by the advocates in this case. Interestingly, Arbitrator Raymond Britton addressed a situation which could have appropriately been applied to the instant case. He stated:

For under the terms of Article 16, Section 6 of the Agreement, the Employer is only required to show from the investigatory evidence that it had a reasonable cause to believe that the Grievant was guilty of a crime for which a sentence of imprisonment might be imposed. This, in the considered judgment of the Arbitrator it has done and therefore has met the requisite burden of proof. There is no requirement under Article 16, Section 6 that the Employer proved the Grievant was guilty of any misconduct or that she was indicted or convicted in the courts prior to the imposition of the discipline. It is only necessary that the Employer establish by the evidence that it conducted a reasonable investigation and had reasonable cause to believe that the Grievant was guilty of a crime for which a sentence of imprisonment could be imposed.

In the present matter, no “reasonable” investigation was conducted. The evidence appears to show a heavy reliance on the indictment along.

In the second decision by Arbitrator Britton, a deputy sheriff testified at the hearing. He had observed the Grievant selling drugs to a young drug user who called the Grievant by name. Arbitrator Britton also wrote in his decision:

The record further establishes that the Grievant’s arrest received extensive newspaper coverage and that he was identified on television by name and as an employee of the Post Office. It is not denied by the Union that the charges made against the Grievant are serious, and that the notoriety resulted from his arrest reflects unfavorably on the Postal Service. A postal carrier who is charged with such misconduct negatively impacts the confidence of the public and its trust in his ability to service their needs as a carrier. Additionally, such

misconduct causes unwanted adverse publicity to the Postal Service and results in embarrassment and a lowering of morale and its employees.

Arbitrator Elvis Stephens used guidelines established by Arbitrator Garrett. Arbitrator Stephens provided the following explanation:

The critical question in this case is what type of evidence of some sort that an employee has been arrested for a crime for which he or she could be imprisoned is sufficient to warrant suspension under Article 16.6A. A few arbitrators have held that an arrest alone is sufficient. Most arbitrators have held that there must [sic.] more than just an arrest, there must be an arraignment or indictment. This arbitrator, in case SIN-3W-D 28739, held that under the circumstances of that case, an arrest alone was not sufficient to meet the reasonable cause standard. In that case I cited several arbitration cases, including the national award of Arbitrator Garrett, NC-NAT-8580.

In the interpretative case decided by Garrett (also submitted in this instant case), he sets forth some general conclusions for arbitrators to follow in similar cases. The first was that every suspension issued under Article 16.3 (the relevant language of which is now Article 16.6) is reviewable in arbitration to determine if there was "just cause" to issue such suspension. The second is more relevant to the instant case:

(2) Such a review in arbitration necessarily involves considering at least (a) the presence or absence of "reasonable cause" to believe the employee guilty of the crime alleged, and (b) whether such a relationship exists between the alleged crime and the employee's job in the USPS as to warrant the suspension; (p. 35)

A case the NALC had submitted for Garrett to consider concerned an employee who had been suspended for 11 months. Garrett comments:

. . . The charge there involved an alleged sale of marijuana, where the Grievant from the beginning had asserted a defense of mistaken identity. His suspension was effected simply upon the basis of his arrest, without an indictment or preliminary hearing. Any "nexus" between the charge and his ZMT Operator job would have been attenuated at best. His suspension actually was effected before a Postal Inspector had

submitted an Investigative Memorandum which showed that the arrest of April 16, 1975 had been based on a warrant alleging a sale of marijuana to an undercover agent nearly 7 months earlier (on September 23, 1994) at an address which differed from the Grievant's home address (where he had been arrested). The Investigative Memorandum specifically noted that a preliminary hearing had not yet been had.

On these facts the Associate Impartial Chairman had ample basis to find a lack of just cause for the precipitate suspension in that case. . . . (Pp. 35-36)

In the instant case the grievant was suspended for being arrested on the basis of the sale of marijuana to an undercover agent. We do know what information the deciding official had when he made a decision, although we do know that the only evidence he referenced in the suspension letter was the newspaper article (which did not mention the Postal Service). Judging from what is generally known about the accuracy of newspaper articles, this arbitrator does not think that such article is sufficient documentation for an employee's suspension.

Arbitrator Stephens stated in his concluding paragraph that:

If the Grievant had been arraigned or indicted, the employer would have had reasonable cause.

While Arbitrator Stephens did in fact make such a statement, there was no indication from the written decision that such a broad generalization can be made. Precedential value comes from decisions and principles based on evidence which have been presented, not on propositions, conditional statements and dictum by the Arbitrator.

Arbitrator Linda Byars denied a Grievance in a case where an employee had been arrested for cocaine possession. However, Arbitrator Byars ruled that

. . . The Grievant was not truthful with Management at the time of his arrest and was not truthful at the Arbitration hearing.

In fact, the Union Steward did not refute the Supervisor's testimony. Thus, Arbitrator Byars no doubt correctly concluded that a Grievant who had lied twice about a cocaine arrest was probably guilty of a crime for which a sentence of imprisonment could be imposed.

Management submitted a decision by Arbitrator Mark Lurie in a USPS-NALA case.

He explained:

The standard of proof required to convict a person charged with the commission of a crime is that of "proof beyond a reasonable doubt"; this is not the standard of proof to which the Postal Service is held when considering the retention of that employee. Rather, Article 16, Section 6.A. permits the Postal Service to suspend an employee when it has "reasonable cause to believe . . . [he] is guilty of a crime for which a sentence of imprisonment can be imposed". The consensus of the arbitration award citations cited herein is that the "probable cause" required for the filing of criminal charges or the return of a criminal indictment also constitutes a reasonable cause for suspension under Section 6.a.

In the opinion of the Arbitrator, the filing of such criminal charges or indictments creates a rebuttal presumption of such "reasonable cause". Normally, it may be presumed that (a) prior to the filing of charges or an indictment, the employee will have offered to the authorities any exculpatory evidence or arguments at his disposal, and that the issuance of the charges or indictment represents the finding of probable cause notwithstanding such evidence and defenses, and that (b) the finding of probable cause upon which the criminal charges or indictment was based was a reasonable finding. However, if the suspending official is made aware of the existence of evidence indicating that the employee might not be guilty of the charges or indictment filed against him, then the official has a duty to investigate and to formulate his or her own opinion as to such guilt or innocence, notwithstanding the charges or indictment.

The Arbitrator cautions that this duty to investigate is not a formalist procedural prerequisite to the Postal Service's suspension rights under Article 16, Section 6.A. Management is entitled to presume that the issuance of charges or of an indictment is premised upon the reasonable finding of probable cause, and to rely solely upon that presumption in issuing an indefinite suspension. However, a duty to investigate will arise when

Management possesses knowledge of the possible existence of exculpatory evidence which would significantly mitigate or vitiate the charges levied against the employee. The existence of such exculpatory evidence constitutes a rare exception to the rule that criminal charges or an indictment are "reasonable grounds"; when such charges or indictment are present, the standard of "reasonableness" does not require that management investigate further. Rather, the affected employee has an affirmative duty to apprise management of the existence of such exculpatory evidence, and, indeed, the grievance procedure is intended to afford the employee such an opportunity.

In the case at hand, the grievance record does not reveal, nor has there been offered in the arbitration hearing, evidence which, if discovered by management investigation, would have vitiated the "reasonable grounds" upon which the suspension was based. The Arbitrator finds, therefore, that the presumption of reasonable cause has not been rebutted, and that the indefinite suspension of the Grievant under Article 16, Section 6.A. was a valid exercise of management's authority under the Agreement.

In the present matter, Postmaster Cromer's position involving Mr. Redding should have been sufficient evidence for the Postal Service to have investigated further. The fact that Mr. Cromer himself would have retained Mr. Redding should have caused the Postal Service to have investigated further. A further investigation would have revealed that Ms. Balkcom, the owner of the property, probably would have testified at trial, as she did at the arbitration hearing, on Mr. Redding's behalf. She would have been sworn in, as she was at the hearing, and would have testified that the hunting lodge had been restored to a condition better than before the fire. She would have testified that she had known Mr. Redding most of his life; she would be an excellent character witness for him. While Mr. Edwards and Mr. Anderson were essentially character witnesses, both revealed that Mr. Redding was a reliable, effective rural carrier and the Postal Service would be enhanced by his return to employment. While neither could speak for the entire community, Mr. Edwards at least serves as a spokesperson

and represents the governmental interests. On the other hand, there was no opposite evidence presented.

A position advanced by the Postal Service is particularly puzzling, that is, its approach that, if Mr. Redding had evidence that the charges had been dropped or that he is innocent of the charges, the Postal Service would immediately return him to work. That position itself strikes at the heart of the principle of "innocent until proven guilty." Under such a system, as here, if a postal employee is indicted, he/she would be placed on indefinite suspension and would remain in that status until he/she could prove his/her innocence. This Arbitrator does not believe that the writers of the contract language had such system in mind. On the other hand, if there is an indictment and an investigation into the matter provides evidence that there is reasonable cause to believe that the accused employee is guilty of the crime for which imprisonment is possible or likely, Article 16, Section 4 would logically be invoked.

Interestingly, both parties submitted Arbitrator Garrett's decision from an 1978 decision. The first guidelines established in Arbitrator Garrett's decision is easily answered because Mr. Redding admitted his part in the crime. The second guidelines addressed the relationship between the alleged crime and the postal employee's job, an argument advanced by both parties, that is, the "nexus" argument. The general principle here is:

. . . . In general, arbitrators are reluctant to sustain discipline or discharge based on off-duty misconduct or lifestyle absent some relationship or nexus to the job. . . .

. Arbitrators should be reluctant to sustain discharges for off-duty conduct "lest Employers become censors of community orals," but he nevertheless agreed that "where socially reprehensible conduct and

employment duties and risks are closely related, conviction for certain types of crimes may justify discharge.

....

While generally an employee's conduct away from the place of business is normally viewed as none of the employer's business, there is a significant exception where it is established that the employee's misconduct off the premises can have a detrimental effect on the employer's reputation or product, or where the off-duty conduct leads to a refusal, reluctance or inability of other employees to work with the employee involved.

Marvin F. Hill, Jr. and James A. Wright, Employee Lifestyle and Off-Duty Conduct Regulations, Washington, D.C.: Bureau of National Affairs, Inc., 1993, p. 168.

In regard to the "nexus" argument, there is simply no proof. The testimony of Postmaster Cromer, Mayor Edwards, Mr. Anderson, and Ms. Balkcom must be compared with the three newspaper articles, none of which tied Mr. Redding to the Postal Service.

Normally in decisions such as this one, the Arbitrator issues a make-whole decision with reinstatement and restoration of seniority rights. However, this case is not "normal" in the following ways: (1) the Postmaster's testimony essentially supports reinstatement of the Grievant and stated that, if he had made the decision, he would not have suspended the Grievant, (2) Ms. Balkcom, the owner of the property damaged by fire, testified on behalf of the Grievant, and (3) Mr. Redding had restored the hunting lodge to a condition, according to Ms. Balkcom, better than prior to the fire. Therefore, the make-whole remedy must encompass the unique situation of the case because Mr. Redding spent time making restitution for his actions and restored the property which he damaged. As a result, the value of his share of time spent on restitution must reduce the make-whole remedy. In addition,

any earnings received elsewhere during the period of his suspension must be deducted. This decision considers the facts that Mr. Redding and Mr. Frank Ryle restored the property. Unless Mr. Redding can prove otherwise, his share of the restoration must be considered 50 percent. In other words, the value of his labor to make restitution must be subtracted from his back pay. To rule otherwise, Mr. Redding would essentially receive a "windfall" for committing the act for which he was indicted. If the parties cannot agree on the amount, this Arbitrator will provide further instructions and/or will make the appropriate decision.

Decision

Based on the evidence and the Agreement, the Grievance is sustained. The Postal Service is directed to reinstate the Grievant, to restore his seniority, and to make him whole for any losses. The "make-whole" remedy is reduced by any earnings of the Grievant during this suspension and the value of the Grievant's time devoted to the restitution to the property damaged. Per the Agreement, the fees and expenses of this Arbitration are assessed against the Postal Service.

3-29-95

Date

William H. Holley, Jr.

William H. Holley, Jr.
Arbitrator.