REGULAR ARBITRATION PANEL

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

BEFORE: Nancy Hutt, Arbitrator

APPEARANCES:

For the Postal Service: Robin George, Labor Relations Specialist, Sacramento, CA

For the Union: Alan J. Apfelbaum, Regional Administrative Asst., NALC, Santa Ana, CA

Place of Hearing: Sacramento, 3775 Industrial Blvd., West Sacramento, CA 95799

Date of Hearing: November 15, 1996

AWARD: The grievance is sustained. The Arbitrator concludes after review of the evidence the Employer did not have just cause to remove Grievant. Grievant shall be reinstated with full back pay and benefits, less thirty (30) work days, which represents a disciplinary suspension.

Date of Award: December 31, 1996
STATEMENT OF THE CASE

This dispute involves a removal for irregular attendance. The parties agreed the matter is properly before the Arbitrator for resolution. At the arbitration hearing the Grievant was fully and fairly represented by the Union, was present throughout the hearing, and testified in her own behalf. Following presentation of the evidence by both parties, the matter was submitted to the Arbitrator upon oral argument at the close of the hearing, pending submission of several arbitration awards by the Union.

FACTS OF THE CASE

This case involves the removal of a letter carrier effective June 14, 1996, for irregular attendance. The Grievant was charged with the following absences:

<table>
<thead>
<tr>
<th>Date</th>
<th>Hours</th>
<th>Reason</th>
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<tbody>
<tr>
<td>January 2, 1996</td>
<td>.22</td>
<td>Tardy *</td>
</tr>
<tr>
<td>February 22, 1996</td>
<td>.09</td>
<td>Tardy *</td>
</tr>
<tr>
<td>February 26, 1996</td>
<td>8</td>
<td>Emergency Annual Leave *</td>
</tr>
<tr>
<td>April 27, 1996</td>
<td>.15</td>
<td>Tardy *</td>
</tr>
<tr>
<td>May 2, 1996</td>
<td>.15</td>
<td>Tardy *</td>
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* In conjunction with scheduled day off. The Employer charged Grievant with a violation of Section 511.43 and Section 666.81 of the Employee and Labor Relations Manual which states employees are expected to maintain their assigned schedule and required to be regular in attendance.
The Notice listed elements of Grievant's past record which included:

- December 15, 1994 Notice of Fourteen Calendar Day Suspension, Irregular Attendance (Parties agreed later reduced to ten day suspension)
- August 15, 1994 Two Calendar Day Suspension, Irregular Attendance
- February 16, 1994 Letter of Warning, Irregular Attendance

Essentially, there is no factual dispute as to the times as set forth in the Notice.

Grievant was charged with four incidents of tardy between January 2 and May 2, 1996. Grievant testified if an employee was .08 or less hours late, it was not considered a tardy whereas any time over .08 was considered a tardy. One incident was .09 hours tardy. Grievant testified she was involved in a car accident on February 26 and was never asked for documentation. The parties stipulated the 8 hours of emergency annual leave was granted by the Employer.

The Grievant testified that she was, until recently, a single parent with two children and no help. Sometimes in the morning she was delayed and felt frustrated. On the morning she was eight minutes late, May 2, Grievant did call in to inform her supervisor she would be late and asked if she would get in trouble. Out of frustration, Grievant commented perhaps she should not come to work knowing the consequences. Grievant acknowledged she had an
attendance problem.

Supervisor Common, who was promoted to her supervisory position the month prior to the issuance of the removal notice to Grievant, testified on May 2 Grievant called to inform the Service she would be late. Common stated that Grievant complained if she was going to get in trouble anyway she would not come in at all and enjoy the day off. This threw up a red flag to Common who went to review Grievant's past elements. Grievant was eight (8) minutes late that day and soon after her arrival, Commons met with Grievant and a Union Steward.

Common testified she told Grievant it was an investigatory interview that could result in discipline. Grievant testified she was never informed it was an investigatory interview, but that Common approached her and said I want to talk to you. The contemporaneous note prepared by Common indicated she asked Grievant for an explanation about her four tardies and one EAL and cautioned her about her attendance. Grievant explained that Commons made reference to her attendance, but never asked Grievant anything about her attendance in general.

On the same day Manager Sumpter approached Grievant and handed her a Form 3971 to sign. Grievant signed it. Soon after, the Manager approached again and handed Grievant a Form 3971 to which Grievant responded that she had just signed it. The Manager responded the first form signed was for January and the second form was for that day, May 2, 1996. Grievant was curious because it is
normal procedure to sign the form that day, but gave it no more thought until she received the removal notice.

Grievant testified she was on limited duty and felt as if the Employer was trying to get rid of her. As an example, Grievant testified she took a key home from work inadvertently and received a letter of warning. According to Grievant, and unrebutted, other employees had been called and told to return the key and were not disciplined for their action.

According to Supervisor Common, the generally accepted guideline at Metro Station is up to 10 unscheduled absences a year, but that it depends on the circumstances. Common affirmed that Grievant had three unscheduled absences the first quarter and two unscheduled absences the second quarter of 1996, which included the four tardies. When asked if Common took into consideration a car accident when reviewing Form 3971s, Common stated it depended on the record of the employee. Common was not in the unit at the time of Grievant's accident and had no knowledge concerning the circumstances. Common testified she did not consider the car accident regarding Grievant on February 26 when it was included in the removal notice. All in all, Common testified that Grievant had "very unsatisfactory attendance", and that progressive discipline had been applied.

The Manager of Customer Services, Sumpter, concurred with the removal of Grievant. He testified progressive discipline had been applied and she had not reached a satisfactory level of attendance.
The Manager stated he reviewed the 3971s, the 3972s back to 1993, and prior discipline, including the fact that Grievant was unable to comply with the agreement that had placed her fourteen day suspension in abeyance and then reissued. Sumpter agreed that another employee in the office had been treated differently than Grievant regarding his attendance difficulties and offered no explanation.

The Manager was questioned about why the write up of the original "investigatory interview" did not state so across the top of the document, while the copy provided the Union did. The Union suggested that the Employer doctored the document and the meeting was actually a discussion. The Union based this assertion on the fact that Commons checked off on the informal "Supervisor Worksheet for Discipline" that the employee was forewarned by discussion on May 2, 1996. There is no box for investigatory interview and Commons noted it was a work sheet only. The Manager responded that he just signified what it was across the top when he placed it in the discipline package, but it was stated in the body of the document that it was an investigatory interview. The body of the contemporaneous note supports the testimony of the Employer.

Shop Steward Tyree testified in early 1995 there was a stand-up talk on attendance wherein the carriers were notified if there were more than two absences per quarter that management would have a discussion with the offender. He had no memory of the Employer disciplining anyone who had no more than two in a quarter.
Although the Steward agreed that Grievant had not lived up to the agreement concerning her fourteen day suspension, he firmly believed the tardiness was simply not severe enough for removal. Moreover, through the testimony of Tyree, 3972s of a few other employees and the discipline imposed were compared to the record of Grievant. The Union demonstrated that an employee with a similar record received less discipline (for example, a thirty day suspension rather than removal for a worse record). The other documentary evidence raised questions as to how discipline was imposed.

POSITION OF POSTAL SERVICE

The Employer contends there was just cause to remove the Grievant based on her irregular attendance record. The Employer argues that reasonable corrective steps were taken to place Grievant on notice that the consequences of her irregular attendance may be removal. Essentially, the position of the Service is the only alternative was removal of the Grievant to promote the efficiency of the Postal Service.

POSITION OF THE UNION

The Union contends the record of Grievant does not rise to the level of just cause for removal and the discipline issued was not progressive nor corrective in violation of the Agreement. Rather, the Union believes the four tardies cited are a tardiness issue
which represents minor infractions and should not be confused with Grievant's past elements of absenteeism. The Union suggests the so-called "Investigatory Interview" was actually a discussion and that Grievant was not provided due process. Finally, the Union contends that Grievant was treated disparately and the Employer jumped at the opportunity to remove her.

STIPULATED ISSUE

The parties stipulated at the hearing that the issue before the arbitrator is as follows:

Was the grievant removed for just cause? If not, what is the appropriate remedy?

DISCUSSION

The Arbitrator concludes the Employer failed to establish that the removal of the Grievant was for just cause. The imposed punishment of removal based on the documentary evidence and testimony of record was not corrective in nature and applied in a disparate manner. There was no dispute about Grievant's unscheduled absences and no doubt that Grievant must comply with the requirements of regular attendance to maintain her status as an employee of the Postal Service.

The Grievant was charged and removed for irregular attendance. The Grievant did not deny the incidents set forth in the notice concerning her tardies and emergency annual leave. Evidence put
forth by the Union and the Employer established that Grievant was indeed tardy four times for a total of .61 hours and was granted emergency annual leave for 8 hours. In fact, the Grievant admitted that she had an attendance problem which she was working to correct. The Grievant offered her personal home circumstances as an excuse for her delays in arriving work at her scheduled time. The personal situation of Grievant, although certainly understandable, is not a persuasive justification for irregular attendance.

The real crux of this grievance is the subject of corrective verses punitive discipline. The Employer maintained that Grievant's attendance was unacceptable and that all means to regulate her attendance had previously been attempted to no avail. The Union argues that Grievant's absences during the first two quarters do not rise to the ultimate and final action of removal. Article 16, Discipline Procedure, of the Agreement states the "basic principle shall be that discipline should be corrective in nature, rather than punitive." The record of progressive discipline speaks for itself: a letter of warning, followed by a seven day suspension, and finally a ten day suspension. Grievant's absentee record is not commendable and certainly she was aware of her steady progress towards removal if she did not clean up her work schedule and become a dependable employee. However, the record contains no information that Grievant was advised the next step was removal or that removal follows a ten day suspension after
4 tardies and one EAL considering the articulated office policy.

The penalty of removal was not a reasonable reaction to the cited offenses in the Notice of Removal considering the evidence presented during the hearing. First, there was unrebutted testimony the generally accepted unscheduled absences at Metro Station was 10 per year and/or two unscheduled absences each quarter. It was not logical or rational, even in view of the prior record of Grievant, for her to be on notice that removal was pending. It appears as if the Employer simply lost faith that Grievant could rehabilitate or at least be given the maximum chance to do so before the serious removal action was taken. In fact, it is unclear as to whether Grievant responded to prior discipline as her attendance record shows minimal improvement. However, based on the expectations and apparent rules of the station, removal was a rather severe step. The Employer was not persuasive that it had fulfilled the intent of Article 16 of imposing corrective discipline.

The Union also argues convincingly that Grievant received disparate treatment. The Union established through unrebutted evidence at least one other employee, with a similar past record, received a thirty day suspension for a worse absentee record than Grievant. The Employer admitted the other employee was treated differently and offered no mitigating or aggravating circumstances to justify the disparate treatment. Moreover, there was unrebutted testimony that two other employees were not removed for similar
records and conduct. Based on this record, the Employer did not impose discipline in a consistent manner for similar conduct. However, the long standing absentee issue surrounding the employment of Grievant is serious and does justify significant disciplinary action.

AWARD

The Arbitrator concludes after review of the evidence the Employer did not have just cause to remove Grievant. Grievant shall be reinstated with full back pay and benefits, less thirty (30) work days, which shall represents a disciplinary suspension.

December 31, 1996