

REGULAR ARBITRATION PANEL

C# 17613

A+B

 IN THE MATTER OF THE ARBITRATION (GRIEVANT: COLEMAN, MICHAEL D.
) CASE NO. K94N-4K-D 97039187
 BETWEEN (GTS 8932
)
 UNITED STATES POSTAL SERVICE ()
)
 - AND - ()
) POST OFFICE: BETHESDA, MD.
 NATIONAL ASSOCIATION OF LETTER ()
 CARRIERS ()
 _____)

HEARING HELD AT: BETHESDA, MD. DECEMBER 2, 1997

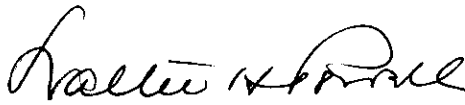
ARBITRATOR WALTER H. POWELL, Esq.

APPEARANCES: U. S. P. S: ROCHELL TALLEY, Labor Rel. Specialist

N.A.L.C. : ROBERT E. HARNEST, Advocate

AWARD: GRIEVANCE IS GRANTED IN PART AND DENIED IN PART.
THE EMERGENCY PLACEMENT IS REVERSED, GRIEVANT SHALL BE
PAID FOR THOSE THIRTY DAYS.
GRIEVANT SHALL BE REINSTATED WITH THREE ADDITIONAL MONTHS
PAY, AND RESTORATION OF ALL SENIORITY
GRIEVANT SHALL BE REQUIRED TO COMPLETE AN EAP PROGRAM
REQUIREMENT SET FORTH IN THE AWARD.

DECEMBER 16, 1997



 WALTER H. POWELL, Arbitrator

ISSUES

1. WAS THE REMOVAL OF MICHAEL COLEMAN FOR JUST CAUSE?

IF NOT, WHAT SHALL THE REMEDY BE?

2. DID THE POSTAL SERVICE HAVE JUST CAUSE TO ISSUE AN

EMERGENCY PROCEDURE IN ACCRDANCE WITH ARTICLE 16 SECTION 7?

IF NOT, WHAT SHALL THE REMEDY BE?

FACTS AND BACKGROUND

Michael Coleman was employed by the United States Postal Service as a Letter Carrier attached to the West Bethesda Station. On June 17, 1996, he was off duty due to an off the job injury. He was due and owing a check from the Postal Service that had been made as a settlement in a previous grievance. He was notified that the check had been sent to the West Bethesda Station. It should be noted that this was the third time that management had promised him that the check would be available.

At the Post Office, he was informed by Supervisors Blackman and Chung that they could not find his check. They explained that the check had not yet reached their office. The grievant was very upset, he said according to Ms. Blackman

"He was tired of the games that Chung and I (Blackman) were playing and that time was running out and when it does we would be sorry."

Ms. Chung testified and also gave a statement to the Postal Inspectors in which she stated that Coleman had said,

“I am tired of these games you are playing. That time is running out Your time is running and when it does, if I were you, I would not come to work.”

He then left the office. Shortly thereafter the check was found in the West Bethesda Post Office.

Ms. Blackman and Ms. Chung said that they felt threatened. They notified the Postal Inspectors who took statements from Ms. Blackman and Ms. Chung. Certain personal situations developed and Mr. Coleman was not interviewed until July 30, 1996. The Investigative Memorandum contained much information that was not admitted at the hearing. The previous history was inappropriate and no opportunity was available to cross examine people who made the included statements. These prior incidents were not part of grievant’s personal discipline record and therefore were held to be inadmissible.

Grievant testified that he had serious personal problems at the time of the incident. He was very frustrated that the check was not available. He was upset because he had been informed on at least three (3) prior occasions that the check would be available to him. He admitted that he became upset and angry when he was told that the check was not at the Post Office. He asserted that he had no personal animosity against either Ms. Blackman or Ms. Chung.

Grievant was permitted to work until September 24, 1996, some three months and seven (7) days after the event of June 17, 1996. The grievant was issued a Notice of Removal charging him with “Threatened Postal Officials.” A day

after the issuance of the Notice of Removal, Grievant was issued an Emergency Placement on September 19, 1996 denying him the thirty days pay and notice required under Article 16 Section 5.

POSITION OF THE POSTAL SERVICE: Behavior such as harassment, intimidation, threats of bullying by anyone will not be tolerated in the Postal Service. A joint statement on Violence and Behavior in the Workplace was entered into by and between postal officials, union officials, and associations representing other employees within the post office system. A subsequent Memorandum for all Employees was issued for Capital Cluster employees reinforcing a Zero Tolerance against violence in the workplace. Those activities that are to be considered as evidence of violence include:

- any acts of physical violence
- any direct, implied or veiled threat made seriously or in jest.
- any employee harassment or intimidation, including verbal, psychological and sexual.

The remarks made by the aggrieved were considered as hostile and threatening to both supervisors. The outburst was an expression of intended or threatened violence. It is the obligation of the Postal Service to provide a safe environment for all of its employees. Uncontrollable behavior exhibited by the grievant creates a fearful atmosphere. His supervisors were frightened and did not want to work with him.

POSITION OF THE UNION: There were no threats made to either supervisor. Here is an employee who has serious personal problems. He needed back pay due and owing to him. He called the Personnel Department and on several prior occasions was given a run around. He was assured that the checks were waiting for him at

the Bethesda Post office. The check was at the Bethesda Post Office. Neither supervisor could locate it. The grievant had made a special trip to get the check and he believed that again he was being given deliberately false answers. He vented his frustration by yelling and shouting. Nothing was said to him until three months later when he received a Notice of Removal.

Grievant was permitted to work the entire period between the date of the alleged threat to the day of removal. He was denied the provisions of Article 16.5. The Postal Service never issued an 'Emergency Placement' in accordance with Article 16.7 until the day after his Notice of Removal. The aggrieved could not have been a threat to himself or to others and still be allowed to work. Why the delay? The Postal Service through its supervisors has failed to adhere to the strict dictates of Article 16. They have failed to prove that the grievant's statements were a threat. They took no action to protect either themselves, other employees or Postal property.

There was no substance to the allegation that the grievant threatened his supervisors. The Investigative Memorandum was filled with inadmissible materials that were outdated and had never been carried to any adjudication against the aggrieved. This is an abuse of discretion and disciplinary powers. Article 16 directs the Post Office officials that discipline should be corrective and not punitive, the actions taken herein were contrary to Article 16 in every respect. Grievant should be reinstated with full back pay and the restoration of all benefits.

DISCUSSION AND OPINION

Pertinent and relative portions of the National Agreement read as follows:

ARTICLE 16 DISCIPLINE PROCEDURE

Section 1. Principles. In the administration of this Article, a basic principle shall be that discipline should be corrective in nature rather than punitive.....

Section 5. 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 him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days.....

Section 7 Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remains on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or fraud, or where the employee may be injurious to self or others.....

Two questions must be answered in deciding the issues presented in this matter. The first question to be answered, is whether the Postal Service violated the National Agreement in failing to follow the established procedures set forth in Article 16. By ignoring the protections they deprived the aggrieved of due process. The second question relates to the substantive issue, whether the grievant did threaten his supervisors.

It is incomprehensible how this matter could have drifted for a three month period before any action was taken. The Postal Service has been very conscious of its responsibilities to its employees in providing a safe work place. They have issued very strong statements against violence in the work place. They have

defined violence in the broadest sense possible. This arbitrator has no quarrel with those dictates. The work place must be a safe one for all employees. No one should be asked to work in a hostile work environment. One cannot work efficiently in a hostile environment. Each employee should feel safe and comfortable in his or her work environment.

If the statements made by the aggrieved were threatening and breached the standards of a safe environment, he should have been immediately removed from the Postal Service. Article 16 Section 7 permits an immediate emergency placement. The time span allowed also permits the Postal Service or the Postal Inspectors to make a complete investigation of the circumstances surrounding the alleged threats. Nothing in the post threat period was timely. If the aggrieved posed a threat he should not have been permitted to work in the interim period. He not only was permitted to work throughout the three month period but was supervised as well by the same supervisors who allegedly were threatened.

After some three months at work someone decided that he should be removed. There were no new allegations. There was nothing in the Investigative Memorandum to lend weight to the incident of June 17, 1996. Granted there were reasons that delayed interviewing the grievant, action still could have been taken in the interim period. When the Notice of Removal was finally sent, there was no discussions with the aggrieved. Due process requires that the aggrieved be informed of the charges against him. He had no opportunity to rebut the charges.. He was not given the opportunity to confront his accusers. It was simply a ruthless act of discharge.

To add to the procedural violations in the previous paragraph, the Postal Service decided the day after his removal to exercise the Emergency Procedure of Article 16 Section 7. Their purpose so that they could nullify the requirements of a thirty (30) day notice required by Article 16 Section 5. This is not the purpose of Article 16, Section 7 and the Emergency Procedure must be reversed.

The grievant admits that he was frustrated and angry when he appeared at the post office on June 17, 1996. He admitted yelling at his supervisors. He stated that there was no hostility against them, he wanted his check and the Post Office failed to have it for him as promised. His remarks were aggressive and could be interpreted as hostile and a possible threat. Grievant is excitable and he has a very short fuse. His reaction to adversity is not one of acceptability, to the contrary he starts yelling.

Even during cross examination at the hearing, grievant became highly distressed and became visibly upset. His reaction was to shout an angry response. However, that response while inappropriate could not be taken as a threat. It could not be conceived as a violation of the Zero Tolerance to Violence Policy enunciated by the Postal Service. It is understandable that those around him could consider his out spokenness and his temper a threat. The supervisors were justifiably upset. They called in the Postal Inspectors. After that, nothing was done. There is no report of any internal investigation. There were no recorded conversations with the aggrieved or with the union as to any contemplated action. Despite any fears and concerns by the supervisors they knowingly permitted the grievant to work full time for the three months following the incident.

Having analyzed the evidence submitted, this Arbitrator must next address himself to the proper penalty. Arbitrators are reluctant to modify a penalty when a wrongdoing has been established. A standing rule is that in determining just and proper cause for discipline, an Arbitrator will not substitute his judgment for that of management in cases where the offense has been proven.

In this case pending before me, arbitral judgment is essential given the evidence in the charge. The Arbitrator has found no basis for the Emergency Suspension. The Postal Service has not sustained its burden of proof that the aggrieved was a danger to himself or to others. Quite to the contrary management permitted him to work for three months after the alleged charge of threatening his supervisors.

No one in management spoke to the grievant about the incident in the three month hiatus between the time of the incident and the Notice of Removal. There is no evidence that either supervisor found it difficult to work with the aggrieved after the initial incident. While his behavior was unacceptable the failure to make a thorough and timely investigation is inexcusable. Excess delay in imposing a penalty is contrary to our idea of justice and fairness. In this case the employee had no knowledge that any penalty was proposed or forthcoming.

The conduct of the grievant in yelling at his supervisors constituted a judgmental error. The improprieties that occurred in this case characteristically occasion a notice to the employee that such behavior is unacceptable and that any repetition will warrant a severe penalty. The aggrieved believes and with good reason that his frustrated outburst has been escalated to a major incident. He

must be cautioned that any recurrence of emotional outbursts will not be tolerated. His conduct clearly subjected him to stringent disciplinary measures. However the misconduct did not rise to the level of severity where under the just cause standard discharge was warranted.

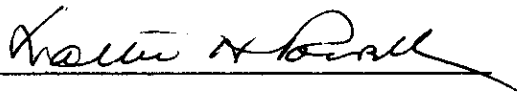
Both for the good of the grievant and for the protection of the Postal Service, behavior modification on the part of the grievant must be accomplished. Such control of his future behavior is an essential part of this decision. To bring about the change, the grievant must agree to participate in a prescribed structured program of the Employee Assistance Program of the U.S. Postal Service. That program is to provide assistance to the aggrieved in controlling his behavior.

Grievant shall be reimbursed in full for the thirty days of pay denied to him for the thirty (30) day period after being given his Notice of Removal. The removal of the grievant was without just cause. His conduct warranted a suspension without pay. It is to be hoped that that will impress upon him the necessity that he controls his behavior and participates fully in the EAP Program. He shall be offered reinstatement with three (3) months back pay, full seniority for the time lost and other benefits.

AWARD

- 1. GRIEVANCE IS GRANTED IN PART AND DENIED IN PART.**
- 2. THE EMERGENCY PLACEMENT IS REVERSED, GRIEVANT SHALL BE PAID FOR THOSE THIRTY DAYS.**
- 3. GRIEVANT SHALL BE REINSTATED WITH THREE ADDITIONAL MONTHS PAY, AND RESTORATION OF ALL SENIORITY.**
- 4. GRIEVANT SHALL BE REQUIRED TO COMPLETE AN EAP PROGRAM REQUIREMENT SET FORTH IN THE AWARD.**

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