

C# 18316

REGULAR ARBITRATION

In the Matter of the Arbitration	)	Grievant: Henry
Between	)	POST OFFICE: Burlington, CO
UNITED STATES POSTAL SERVICE	)	CASE NO: E94N-4E- <sup>D</sup> 96038530
And	)	NALC NO: 2
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	NALC BILLING NO: 0-7705/ Region 4

BEFORE: EDWARD E. HALES

APPEARANCES:

For the U.S. Postal Service: JON P. INGLIS

For the Union: SCOTT SUTTON

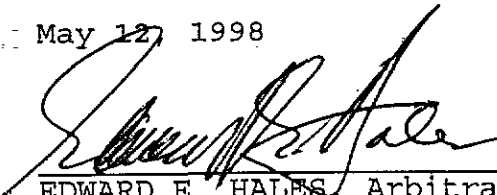
PLACE OF HEARING: 259-14th Street  
Burlington, CO

DATE OF HEARING: May 8, 1998

AWARD:

The grievance filed in this case is hereby sustained. Further, the fourteen (14) day disciplinary suspension issued to the Grievant shall be removed and expunged from her record. In addition, the Grievant shall be awarded back pay for all wages lost as a result of the improper fourteen (14) day suspension and interest shall be paid on such lost wages.

DATE OF AWARD: May 12, 1998



EDWARD E. HALES, Arbitrator

## BACKGROUND

The grievance in this case was filed by the National Association of Letter Carriers ("Union") on behalf of Constance S. Henry ("Grievant"), a Full-Time Letter Carrier, protesting the fourteen (14) day disciplinary suspension issued to her by the United States Postal Service ("Service" or "Management") on February 9, 1996 for alleged "Unacceptable Conduct." In its disciplinary letter to the Grievant, the Service claims that the charge of "Unacceptable Conduct" resulted from the following incident:

"CHARGE: UNACCEPTABLE CONDUCT as Evidenced by the following:

On September 7, 1995, you met with other union members and your local Branch President at the Pizza Hut in Burlington, Colorado for a meeting. At this meeting, as well as on other occasions, you told PTF Carriers Gina Hines and Teri Niedig to take their time and slow down. You further stated, "we need to slow down so we can get an auxiliary route." Your actions resulted in your attempt to coerce employees to retard or delay the delivery of mail service in Burlington, Colorado. Your actions adversely impacted the U.S. Postal Service."

The evidence presented in this case indicates that the charge of "unacceptable conduct" is based on the "investigative interviews" conducted on October 16, 1995 by Robin Hyatt, the Postmaster at Burlington, Colorado, with Part-Time Flexible (PTF) Carriers Gina Hines and Teri Niedig. The responses by the PTF Carriers to Hyatt's questions were reduced to writing by him, and they indicated that at the September 7, 1995 meeting, the

Grievant told them to "slow down" their pace of delivering mail on their routes to justify the need for an auxiliary route.

The evidence also reveals that Hyatt conducted "investigative interviews" with the Grievant and John Perry, likewise a Full-Time Letter Carrier, on October 17, 1995. Perry also attended the September 7, 1995 meeting, but the evidence reveals that during his "investigative interview," he denied that the Grievant told the PTF Carriers to "slow down" their delivery of the mail in order to establish the need for an auxiliary route. Further, the evidence indicates that the Grievant denied during her "investigative interview" that she told the PTF carriers to "slow down" in order to establish the need for an auxiliary route.

However, both PTF carriers testified that they did not "slow down" their pace of delivering the mail, as allegedly requested by the Grievant. Further, both PTF Carriers also testified that Perry did not ask them to "slow down" their pace of delivering the mail at the September 7, 1995 meeting, which was also attended by Bernard L. Hassman, President of the local union to which the Burlington Post Office letter carriers belong.

After the "investigative interview" with all four (4) carriers, Hyatt testified that he concluded that the Grievant was trying to undermine the Service by "slowing down" the delivery of the mail in order to establish the need for an auxiliary route.

The evidence reveals that sometime after the "investigative interviews," Hyatt left his position as Postmaster at Burlington, CO, and took another assignment with the Service. Further, the

evidence indicates that Hyatt was replaced at the Burlington, CO post office by Robert Otto as the Officer In Charge (OIC). In addition, the evidence indicates that Otto continued the investigation of the meeting of September 7, 1995 involving the Grievant, and he issued the fourteen (14) day disciplinary suspension in dispute in this case.

The evidence reveals that the Grievant was the Union steward at the Burlington post office, and during her testimony at the arbitration hearing, she stated that she told the PTF Carriers to "slow down" their delivery of mail for safety reasons and to avoid mistakes. Specifically, the Grievant testified that the PTF carriers complained of the heat and humidity while delivering their routes during the summer months, and she counseled them to "slow down" in order to cope with the heat and humidity. Additionally, the Grievant stated that she observed Hines running while delivering her mail route, and the evidence reveals that Hines was counseled by Hyatt for running while delivering mail.

Hassman testified that the September 7, 1995 meeting was not an "official" union meeting, but an informal meeting to discuss letter carriers' problems and concerns at the Burlington post office. Further, Hassman testified that the Grievant did not tell the PTF Carriers at the meeting to "low down" their mail deliveries in order to establish the need for an auxiliary route.

The Union, in defense of the Grievant, suggests that her comments to the PTF Carriers to "slow down" was for safety

reasons, and it was proper counseling of the PTF Carriers in her capacity as their Union steward.

The Union also raised in this case a procedural problem purportedly created by the Service's refusal to schedule a Step 2 grievance meeting, as established by Article 15, Section 2 of the National Agreement ("Agreement"). In its appeal of the grievance to Step 3 on February 26, 1996, the Union stated the reason for the appeal as follows: "Mr. Otto refused to schedule or hold step 2 meeting. He also refused to initial the step one decision." Thus, the Union suggests that Otto's refusal to schedule a step 2 meeting deprived the Grievant of her due process rights established by the grievance procedure in the Agreement. Therefore, the Union maintains that the fourteen (14) day suspension issued to the Grievant was defective, improper, and should be removed from her record. As a remedy in this case, the Union requests that the Grievant be made whole by the payment for all lost wages she incurred, with applicable interest.

Other relevant evidence presented in this case reveals that the Burlington, CO post office during the time of this incident contained a total of 14 or 15 employees, with two (2) Full-Time Letter Carriers and two (2) PTF Carriers. Further, as the Union steward, the evidence reveals that the Grievant was the only local union official at the Burlington post office...

### STIPULATED ISSUE

Did management have just cause to issue the Grievant a fourteen (14) day suspension on February 9, 1996? If not, what is the appropriate remedy?

### DISCUSSION AND FINDINGS

Since a procedural problem was raised by the Union in this case, it will be addressed before considering this matter on the merits. The Union argues that a procedural error was committed on the part of Management, because it did not schedule or hold a Step 2 meeting, and Hassman testified that he asked Otto to schedule a Step 2 meeting but he refused. Thus, the evidence is not disputed concerning the fact that no Step 2 meeting was held, and Management gave no reason at the hearing as to why no Step 2 meeting was scheduled and held.

The Agreement at Article 15, Section 2 outlines the various steps of the grievance procedure, and the applicable provisions involved in this case state in pertinent parts the following:

#### Article 15, Section 2, Step 1

(c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) day period. Within five (5) days after the supervisor's decision, the supervisor shall, at the request of the Union representative, initial the standard grievance form that is

used at Step 2 confirming the date upon which the decision was rendered.

(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. Detailed statement of facts;
2. Contentions of the grievant;
3. Particular contractual provisions involved; and
4. Remedy sought.

\* \* \*

#### Article 15, Section 2, Step 2

(a) The standard grievance form appealing to Step 2 shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.

\* \* \*

(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Step 2 appeal unless the parties agree upon a later date. In all grievances appealed from Step 1 or filed at Step 2, the grievant shall be represented in Step 2 for all purposes by a steward or a Union representative who shall have authority to settle or withdraw the grievance as a result of discussions or compromise in this Step. The installation head or designee in Step 2 also shall have authority to grant or settle the grievance in whole or in part.

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

From a reading of the applicable language of Article 15, Section 2, Step 2, it reveals that at Step 2 both parties are to make a full and detailed statement of the facts and contractual provisions involved or relied upon in the case. Thus, it is clear that Step 2 is an important stage of the grievance procedure. Therefore, since no Step 2 meeting was held, it reasonably indicates that the Union was not fully advised of Management's position in order to adequately represent and protect the Grievant's rights in this matter. Further, the evidence does indicate that Otto's refusal to schedule a Step 2 meeting, after being requested to do so by the Union, suggests a recalcitrance on the part of Management in this case to comply with the requirements of the Agreement. Consequently, the refusal to schedule a Step 2 meeting involving the issuance of a



serious disciplinary penalty does indicate that the Grievant may not have been afforded adequate due process as apparently intended by the parties' Agreement. Therefore, based on the evidence presented in this case, it is found that Management's refusal to schedule a Step 2 meeting denied the Grievant of her right to due process.

In reviewing the merits of this case, it is revealed that the evidence is in conflict as to whether the Grievant counseled the PTF Carriers to "slow down" in order to justify the need for an auxiliary route. The Service maintains that the PTF Carriers were told to "slow down" in order to obtain an auxiliary route. To the contrary, the Union contends that the Grievant's request to the PTF Carriers to "slow down" was made for safety reasons and to avoid mistakes. Thus, the Union claims that the Grievant's counseling of the PTF Carriers was proper activity in her role as their Union steward. Nonetheless, the evidence is not in dispute concerning the fact that no "slow down" did occur by the PTF Carriers.

The Service contends that, although there was no "slow down" of delivering the mail by the PTF Carriers, such factor is not a justifiable defense to the Grievant's actions in this case. In support of the position that an absence of a "slow down" is of no significance in this matter, as a defense, the Service cites as authority for its view Case No. 28C-4K-D3452 (1979), an award by Arbitrator Syd N. Rose in an American Postal Workers Union (APWU) case. In the award by Arbitrator Rose, it is revealed that the

local Union president advocated a strike and a work "slow down" in violation of the parties' labor agreement. Further, the Union president brought printed material to the post office for distribution to bargaining unit members advocating a strike and other forms of job action. In addition, in a meeting with management personnel, the Union president admitted that he was advocating a strike and other forms of job action in violation of the labor agreement. As to any disciplinary action for his conduct, the Union president stated that he was prepared to risk any disciplinary action issued to him in order to obtain better rights for members of the Union.

Thus, from an analysis of the award by Arbitrator Rose in the APWU case, it clearly reveals that the facts of the case are vastly different from the circumstances in the instant case. In the instant case, the evidence is disputed concerning whether the Grievant's action constituted a violation of the parties' Agreement. Further, other than the PTF Carriers' impression that they were to "slow down" in order to establish the need for an auxiliary route, no other factors are present in this case to suggest that such was the Grievant's intent. Therefore, the award by Arbitrator Rose in the APWU case is clearly distinguishable from the facts in the instant case, and is not found to be persuasive as authority in this matter.

The evidence in this case reveals that Management conducted "investigative interviews" after it became aware of the September 7, 1995 meeting of the Union members and was advised of the

matters discussed at the meeting. However, it is assumed that the purpose of the "investigative interviews" was to obtain information to determine whether a violation of the parties' Agreement occurred at the September 7, 1995 meeting. But, the two (2) Full Time Carriers indicated during their testimony at the arbitration hearing that their "investigative interviews" were not fair and objective interviews. Thus, from a careful reading of the "investigative interviews" conducted by Hyatt, some question may be raised concerning the objectivity of the interviews.

In reviewing Hyatt's written recording of the "investigative interviews," it is revealed that the following statement appears as the first paragraph in all four (4) of the interviews:

"This is an investigative interview. This interview could lead to corrective and/or disciplinary action, up to and including removal. I have some questions to ask and you will be given the opportunity to answer them if you wish to do so. This is your opportunity to explain to me the how, what, where, when and why of this particular incident or incidents."

In the interviews conducted with the two (2) PTF Carriers, the following statement appears:

In your particular case this investigation is not directed at you. However, you may have information that is directly related to this incident which may have impact upon this investigation. Thank you, in advance, for your cooperation and honesty.

However, in the interviews conducted with the two (2) Full Time Carriers, the statement informing the two (2) PTF Carriers that

they were not the targets of the investigation was omitted from the Full Time Carriers' interviews. Thus, this factor reasonably suggests that Hyatt may have given credibility to the two (2) PTF Carriers' view of the September 7, 1995 meeting prior to obtaining the two (2) Full Time Carriers' views concerning the meeting. In addition, the type of questions asked of the two (2) Full Time Carriers suggests that Hyatt's "investigative interviews" with them was significantly accusatory by the content of the questions, as revealed by the following questions asked of the Grievant:

"4. On September 7, 1995 you attended a "Union" meeting at the Pizza Hut in Burlington, Colorado. Several people were present including, Gina Hines, John Perry, Teri Neidig, Butch Hassman and yourself.

I have corroborating statements that indicate the main topic of discussion at this meeting was the intent to convince and coerce members into intentionally retarding, slowing down or delaying the delivery of mail for the purpose of forcing management at Burlington into the position of establishing an auxiliary route.

This discussion because of, and due to the intent of plans discussed constitutes a conspiracy. In this case, to defraud the US Postal Service of value and/or assets.

Why did you not only as a postal employee, but as a Union representative, conspire against the US Postal Service in an effort to slow down mail service in lieu of personal gain?

(answer)

No. I never did conspire. For the meeting, I had no intention of conspiring. We were having a conflict of interest. What I wanted to know was to have Butch (Hassman) from Wray, come down to clarify some things between the four of us. I had no intention

of conspiracy. If that's what it sounded like, it wasn't intentional."

\* \* \*

12. Are you aware conspiracy violates State and United States law, is prosecutable as a felony crime and punishable with severe penalties including substantial fines and prison terms?  
(answer)

Yes, I do."

Additionally, the evidence indicates that similar accusatory-type questions that were asked of the Grievant were also directed to Perry, as revealed by the following exchange:

"1. On September 7, 1995 you attended a 'Union' meeting at the Pizza Hut in Burlington, Colorado. Several people were present including, Gina Hines, John Perry, Teri Neidig, Butch Hassman and yourself.

I have corroborating statements that indicate the main topic of discussion at this meeting was the intent to convince and coerce members into intentionally retarding, slowing down or delaying the delivery of mail for the purpose of forcing management at Burlington into the position of establishing an auxiliary route.

This discussion because of, and due to the intent of plans discussed constitutes a conspiracy. In this case, to defraud the US Postal Service of value and/or assets.

As a postal employee why did you conspire against the US Postal Service in an effort to slow down mail service in lieu of personal gain?

(answer)

I didn't know what was going to be discussed. The meeting wasn't organized for that purpose. The only thing that was discussed. On a 3996, if you ask for 2 hours, you need to make sure you need 2 hours. Don't skip lunches or breaks. Don't "run": Once you're behind and time is lost, something has to change. You're not expected to make up the time. If you're ahead of the route

.....I take the same pace all the time. I don't push when I'm behind and I don't slow down when I'm ahead.

\* \* \*

9. Are you aware that because of the fact you attended the September 7<sup>th</sup> meeting at Pizza Hut in Burlington, you are implicated in a conspiracy to defraud the U.S. Postal Service? That this is a crime against State and United States laws classified as a felony and is punishable by severe fines and prison terms?

(answer)

No."

In reviewing the "investigative interviews" of the two (2) Full-Time Carriers conducted by Hyatt, it reasonably suggests that Hyatt had determined that the Grievant had committed an offense before he had given her a chance to explain her version of the September 7, 1995 meeting. Therefore, after a careful review of the "investigative interviews," it is found that Hyatt's interview of the Grievant and Perry did not meet the standard required for a fair and objective investigation.

Since this case concerns a disciplinary matter of the Grievant, the burden is placed upon the Service to establish that her conduct resulted in a violation of the parties' Agreement. The evidence presented in this case reveals that the parties have submitted conflicting versions of the nature and purpose of the September 7, 1995 meeting. However, the evidence appears to be clear that items other than slowing down the pace of the delivery of mail were discussed at the meeting. Further, although the "investigative interviews" conducted by Hyatt of the two (2) PTF Carriers appeared to suggest that the Grievant advocated a "slow

down" in order to obtain an auxiliary route, their testimony at the arbitration hearing on that specific point was not clear and convincing. Further, there was no testimony from either PTF Carriers at the hearing which revealed that the Grievant specifically told them to "slow down" in order to establish the need for an auxiliary route. Likewise, both PTF Carriers testified that the Grievant had talked to them about not running on their routes and about slowing down when the weather was hot and humid. Additionally, with the questionable objectivity of the "investigative interviews" conducted by Hyatt, it is found that the Service has not credibly established that the Grievant advocated the "slow down" of the delivery of the mail to obtain an auxiliary route. Furthermore, it is found that the evidence more credibly reveals that the Grievant did counsel the PTF Carriers to "slow down" for safety reasons, and that her counseling to "slow down" was proper activity in her role as the Union steward at the Burlington, CO post office.

#### AWARD

The grievance filed in this case is hereby sustained. Further, the fourteen (14) day disciplinary suspension issued to the Grievant shall be removed and expunged from her record. In addition, the Grievant shall be awarded back pay for all wages

lost as a result of the improper fourteen (14) day suspension and interest shall be paid on such lost wages.

May 12, 1898  
DATE

Edward E. Hales  
EDWARD E. HALES, Arbitrator