

C-26138

REGULAR ARBITRATION

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

Grievant: T. Khong
 Post Office: Fort Worth, TX
 USPS Case No. G01N-4G-D 05062830

BEFORE: I. B. Helburn ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: J. B. Reeves

For the Union: Dana R. Culpepper

Place of Hearing: Fort Worth, TX

Date of Hearing: August 9, 2005

AWARD: The grievance is sustained in part and denied in part. Just cause did not exist for the removal. The grievant is to be reinstated with a three-day, on-paper disciplinary suspension for attending the seminar while on sick leave on December 18, 2004. Other than the three-day suspension, the grievant is to be made whole for wages lost through June 9, 2005, and all benefits and seniority lost as a consequence of the removal. The back pay liability of the Postal Service shall be reduced by any money earned by the grievant while in a non-pay status.

Date of Award: August 29, 2005

PANEL: Regular Contract and Discipline



RECEIVED

SEP 09 2005

VICE PRESIDENT'S
 OFFICE
 NALC HEADQUARTERS

REGULAR ARBITRATION

 In the Matter of the Arbitration)
)
 between)
)
 UNITED STATES POSTAL SERVICE)
 Fort Worth, Texas)
)
 -and-)
)
 NATIONAL ASSOCIATION OF LETTER)
 CARRIERS, Branch No. 226)

OPINION AND AWARD

OF THE

ARBITRATOR

USPS No. G01N-4G-D 05062830
 NALC DRT No. 10-051431
 T. Khong

APPEARANCES

For the Postal Service:

J. B. Reeves
 R. W. Thompson
 Milton J. Russell
 Jennifer Morgan

Labor Relations Specialist
 Postal Inspector
 Supervisor, Customer Services
 City Carrier

For the Union:

Dana R. Culpepper
 Ha Khong
 Gina Mendoza-Telck
 Lucinda J. Sapp
 Tommy V. Khong

Local Business Agent
 Grievant's Wife
 Steward
 Branch President
 Grievant

PERTINENT NATIONAL AGREEMENT PROVISIONS (JX-1)¹

ARTICLE 3 – MANAGEMENT RIGHTS

ARTICLE 15 – GRIEVANCE-ARBITRATION PROCEDURE

Section 2. Grievance Procedure—Steps

ARTICLE 16 – DISCIPLINE PROCEDURE

Section 1. Principles

Section 5. Suspensions of More Than 14 Days or Discharge

ARTICLE 17 – REPRESENTATION

ARTICLE 19 – HANDBOOKS AND MANUALS

¹ JX refers to Joint Exhibit.

BACKGROUND

Tommy V. Khong, the grievant and a City Carrier, was born in Vietnam in 1961. He testified that he grew up in a culture in which the boss' word was obeyed. Khong graduated from high school in 1979 and spent from December 1988 – May 1990 in a refugee camp in Malaysia before coming to the United States. While in the camp, Khong had English as A Second Language (ESL) class. He has had no formal English training in this country.

Prior to his employment with the Postal Service, the grievant held jobs as a cashier in two restaurants and as an Assistant Manager of a dry cleaning store. Khong stated that he received help from friends at his church when he filled out the Postal Service job application form and that he prepared for the exam taken as part of the application process for about a month. He scored 100 on the exam.

Khong testified that on September 20, 2004² he tripped coming down the steps of a house on his route. The next day he saw a Postal Service contract doctor, Dr. Morris, D.O., who diagnosed a right ankle sprain and told the grievant to wear a splint, to use crutches and not to put weight on his right ankle. Khong was released to limited duty and on September 22, signed a limited duty offer that involved no driving or lifting, no more than 2 hours standing, no walking or pulling/pushing. It was also noted that Khong was limited to non-ambulatory chores and that he was to elevate his right leg. According to the grievant, on September 22 his right foot became swollen and painful, so he went to the Arlington Emergency Clinic. Additional X-rays disclosed a fracture rather than a sprain. Khong's foot was put in a cast.

On September 29 the grievant accepted a limited duty offer that involved answering the phone and miscellaneous office work. He was allowed to sit and to use his hands and to stand and/or walk for an hour if he could tolerate that activity. Jason Russell, Khong's supervisor noted that the grievant was driving his own vehicle to work and that Khong offered to deliver express mail once or twice and to take mail to carriers on the street. Russell recalled that when the grievant said that driving fell outside his medical limitations, he was no longer asked to drive.

² All dates are in 2004 unless otherwise noted.

Russell and Khong agreed that the grievant was not put on street time when he drove. Russell recalled that Khong did not pick up UBBM at each case and did not push UBBM in a gondola, but rather he spent most of the time answering the phone and working UBBM. The grievant stated that he delivered express mail about six times because his supervisor said that he needed help, that he picked up UBBM at the cases and put it on a cart.

On October 20, 2004, Khong was sent notice that OWCP had accepted his claim stemming from the September 20 accident and the diagnosis of a fracture, even though the Fort Worth District had attempted to controvert the claim. On October 22, a Texas Workers' Compensation Work Status Report indicated that the grievant was to wear a splint/cast at work, to use crutches at all times and was not to drive or operate heavy equipment. A November 4 Work Status Report indicated that Khong was to return to work without restrictions on December 4, but in early November he was not to stand and was to use the assistive devices noted above. Also at this time the grievant saw Dr. Chris Wong, who gave him exercises designed to wean Khong from the assistive devices. While Khong was not to lift, stand or push, he could walk for up to 2 hours. This was reflected in a limited duty offer accepted by the grievant on November 9. The offer listed answering the phone, working UBBM, doing office work and working in the accountable cage. Among the restrictions was a 2 hour limit on walking.

According to a "13" in evidence, on November 6, Station Manager Luis Tenorio saw the grievant walking from UBBM to the hamper area without crutches. The next day Tenorio saw Khong standing by the swing room without crutches. These observations, or perhaps others, resulted in Tenorio's call to the Postal Inspection Service because he felt that the grievant was exceeding his medical limitations.

Postal Inspector R. W. Thompson, who conducted the investigation and who followed Khong for several days, testified that the grievant would leave work and go to work on rental property that he owned. Later, when the grievant's schedule changed, Khong worked on the rental houses in the morning before his tour began. A contract fraud analyst was hired to conduct surveillance. Khong was videotaped on November 30 and December 1 while working at his rental property. The tape showed that the grievant was "walking, bending, twisting, lifting a door and kicking a trash pile with both feet, all

without the use of either a split/cast or crutches" (JX-2, p. 96). According to Thompson, when he interviewed Khong, the grievant initially said that he always wore a leg brace and used crutches, but when Thompson cautioned him to tell the truth, Khong said that he used the brace and crutches only at work. When the videotape was shown to Dr. Wong on December 17, the doctor said that he believed that Khong could work without restrictions.

On cross examination, Thomson noted that he had followed the grievant for several days and had not seen him work—that he had only watched the videotape. Thompson had not weighed the door or a bucket that the grievant also had lifted on the videotape.

Khong testified that on November 4, Dr. Wong had told him to go home and exercise and to try to walk without crutches and the boot when not at work, but to use these devices away from work if the grievant was in pain. Khong said that the door was small and hollow-core and that the paint bucket was empty, but that he wanted to keep the color. He explained that the door had almost fallen into the street, so he moved it slightly while putting his weight on his left foot. He had simply pushed carpeting and other trash with his feet. The grievant said that he had not violated his doctor's orders—that he had lifted more weight at the Post Office than at his home. A "13" written by Tom Sanders and dated November 29-December 13 noted that Sanders had observed the grievant walking from the UBBM to the hamper area, pushing the hamper and walking outside and to the restroom without using crutches.

A few days before December 18, Khong's request for annual leave for that day was denied. At about 7 A.M. on the morning of December 18, the grievant called for a day of sick leave because his son was ill. The parties agree that Khong spent the day at a seminar on mortgages at a Dallas hotel. He wore the boot and used crutches on Saturday but did not use them when he returned the next day. Khong and his wife testified that after the grievant called for sick leave, his son responded to medication and that Ms. Khong said that she would look after the boy. Khong testified that he did not go to work, which began at 10:30 A.M., because he had already called, although he knows now that what he did was wrong. On the following Monday, Russell asked Khong about his use of sick leave on Saturday and the grievant insisted that his son had been ill. Russell said

that he offered annual leave and that there would have been no problem if Khong had taken it. The grievant denied that he had been given an opportunity to take annual leave for the Saturday absence.

On December 17, Thompson issued an investigative memorandum (IM) that was concerned only with the supposed violation of medical restrictions. On December 23, Russell conducted an investigative interview with Khong, who was accompanied by steward Gina Mendoza-Telck. The interview lasted about two hours and according to Russell, was based on the IM and the 3971 covering the December 18 absence. The videotape was viewed. Mendoza-Telck testified that Russell's questions were lengthy and that Khong had a hard time understanding them, but Russell said that he saw no need for an interpreter. She also said that Khong tried to explain what had happened but was not given a chance, although she acknowledged that she was free to ask questions. The Union requested a copy of the videotape, but the tape was not provided.³

Because Russell concluded that the grievant was not honest or reliable and that his behavior was not correctable, the supervisor submitted a request for Khong's removal on December 27. Tenorio's written review and concurrence is dated December 29. The grievant was issued a Notice of Removal on January 19, 2005, with the removal to be effective on February 25, 2005. The Notice contained two charges. Khong was charged with violating the Code of Ethical Conduct/Standard of Conduct because he had engaged "in activities inconsistent with medical restrictions for an on the job injury claim" (JX-2, p. 123). This charge related to grievant's walking on the workroom floor without crutches and to the activities videotaped on November 30 and December 1. The second charge, AWOL, came from Khong's "providing false information on PS Form 3971 request for unscheduled leave/AWOL" (JX-2, p. 126).

The removal was grieved on February 9, 2005. Russell and Mendoza-Telck met at the Informal Step A but did not resolve the matter. Russell testified that he had the authority to settle the grievance, but could not and that he did not remember telling the steward that it was out of his hands. Mendoza-Telck disputed Russell's testimony. In the steward's notes on the meeting is the following: "Mr. Russell and I discussed the

³ Because the tape was never provided to the Union prior to the arbitration hearing, the Union's motion that the videotape not be accepted as evidence was granted.

complexity of the case and with Mr. Russell believing the documents provided and the Postal Inspector's involvement determining Mr. Khong's fate, we did not feel as though we could resolve at our level and therefore agreed to grieve to formal Step A" (JX-2, p. 71).

Lucinda Sapp, Branch President and the designee at Formal Step A, testified that Russell and Tenorio both said that the matter was out of their hands. However, it is undisputed that a Formal Step A meeting was never held and thus the Union moved the grievance to Step B. The Dispute Resolution Team reached impasse, as noted in a March 4, 2005 decision.

Thereafter the matter was advanced to arbitration and assigned to the undersigned regular panel arbitrator. The grievance was heard on August 9, 2005 in Fort Worth, TX. The parties stipulated that the grievance was properly before the arbitrator. Witnesses were sequestered, affirmed before testifying and made available for cross examination. Documentary and testimonial evidence was received. The grievant, accompanied by an interpreter, was present throughout and testified in his own behalf. The grievance was argued orally, thus the record was closed at the conclusion of the proceedings.

ISSUE

The stipulated issue is:

Did Management violate Articles 3, 15, 16, 17 and 19 with reference to the M-39, Section 115 and was there just cause for the Notice of Removal dated January 19, 2005 and received by the grievant on January 22, 2005. If there was no just cause, what is the appropriate remedy?

POSTAL SERVICE POSITION

For reasons noted below, the Postal Service asserts that the removal was for just cause and thus the grievance should be denied.

1. It is critical that Postal Service employees be honest. Khong was not honest with the Postal Service until he was presented with proof of his behavior.

2. Khong did not have a problem understanding English or communicating in English. Russell and Morgan both testified that the grievant understood them and

participated in conversations. There was no undue pressure put on the grievant by the Postal Inspector, who was able to communicate with Khong without trouble.

3. The Postal Service conducted a proper investigation. Russell was not obligated to repeat the Postal Inspector's work. Russell gave the grievant an investigative interview in which he showed Khong the video and talked about the sick leave taken on Saturday. Khong had a chance to clear the matter up, but refused to do so.

4. The Postal Service acknowledges that Khong was injured on the job and is not terribly concerned with his intermittent use of crutches. The Service is concerned that the grievant violated his medical restrictions and that he attended the real estate seminar after being granted sick leave to care for his child. Khong's conversation with Morgan shows that he knew better.

5. The Postal Service's failure to hold a Formal Step A meeting did not constitute harmful error. The Union moved the grievance to Step B as it had the right to do. The Dispute Resolution Team could have remanded the grievance to Formal Step A, but elected not to do so.

6. The grievant told his supervisor when asked to work out of his medical restrictions, but then did not do his limited duty job, as Morgan testified.

7. While the Union claims that Russell said that the matter was out of his hands at the Informal Step A meeting, the supervisor testified that he had the authority to settle the grievance. Both designees agreed to send the grievance on.

8. Khong knew the rules, which were reasonably applied. There is credible evidence that he violated the rules, including the Code of Conduct, and that he was AWOL. Khong's supposed difficulties with English, his upbringing in a very different Vietnamese culture and the lack of an interpreter do not serve to mitigate, as the grievant committed infractions for which summary discharge is appropriate.

9. The Postal Service submitted five regular panel awards in support of various contentions made.

UNION POSITION

For reasons summarized below, the Union insists that the removal was not for just cause and thus the grievance should be sustained and the grievant should be reinstated and made whole.

1. The parties are required to make full disclosure at Formal Step A. Management must hold a meeting and disclose arguments and evidence. Simply because the grievance was moved to Step B does not mean that due process violations did not occur.

2. Both the supervisor and the Station Manager told Union officials that they did not have the authority to settle the grievance. This is a serious due process violation, as was the failure of the Postal Service to provide the video tape taken during the investigation.

3. The long investigative interview and the confusion involved show that Khong had trouble understanding English. Morgan said that the grievant was hard to understand at times. Also, Khong needed help to fill out his application form.

4. The grievant was not dishonest. He had been trusted to handle money by previous employers and he was forthcoming during the investigative interview, admitting that he was wrong to have gone to the real estate seminar after calling for and receiving sick leave. Khong stated that he had learned from his mistake and would not repeat it in the future.

5. The Postal Service has not shown that the grievant violated medical restrictions. He used crutches and the boot at first. After receiving new instructions from his doctor, Khong did not always use crutches and the boot. The Postal Service assigned the grievant duties inconsistent with his limitations.

6. Charge 2 is poorly worded and does not provide justification for removal. The grievant was properly charged with AWOL, but one AWOL does not support the removal decision, which is punitive and not corrective.

7. Morgan's statement and testimony were not credible, as she showed herself to be paranoid. It is noteworthy that she spoke about "Asian people."

8. Not only can the Postal Service not show that Khong violated regulations, but also his due process rights were violated. The grievant was not provided an interpreter. There was no full investigation. The Union's request for information was not fully met.

9. Five regular panel awards were submitted in support of various Union contentions.

DISCUSSION

For reasons discussed below, the grievance is sustained in part and denied in part, so that the removal is reduced to a three-day disciplinary suspension.

Due Process Issues

The failure of the Postal Service to schedule a Formal Step A meeting, while contrary to the letter and the spirit of the National Agreement, is not a due process violation. The parties themselves have determined how such an eventuality is to be handled: Management's failure to hold a Formal Step A meeting moves the grievance to Step B. Had the Union violated time limits or refused to meet at Step B, the grievance would have been waived. The contrast between these approaches provides strong evidence that the parties did not intend for Management's failure to hold a Formal Step A meeting, in and of itself, to constitute fatal error. It would be presumptuous of the arbitrator to overrule the parties' own agreement. Furthermore, as the Postal Service advocate noted, had the DRT felt that the file was not fully developed, the grievance could have been remanded to Formal Step A for additional consideration. This did not happen. Finally, the joint file in this case is extensive, leaving no room for a conclusion that the Union's ability to defend Khong either at Step B or at arbitration was compromised by the lack of a Formal Step A meeting.

I cannot conclude that either Russell or Tenorio lacked the authority to settle the grievance. Russell testified that he did not so indicate to Mendoza-Telck. While the steward's testimony contradicts Russell's, the steward's written statement set forth in the Background section above, includes the information that "we did not feel as though we could resolve at our level and therefore agreed to grieve to Formal Step A" (JX-2). The written statement does not support a conclusion that Russell did not have the authority to settle the matter—only that he would not, at least on the Union's terms. Sapp testified

that Tenorio said that the matter was out of his hands. However, no context for the alleged remark was provided. Particularly when there was no Formal Step A meeting, and because Sapp did not indicate that she and Tenorio actually ever discussed the case, I cannot find evidence sufficient to justify a finding in the Union's favor on this point.

No error can be found in the absence of an interpreter at the investigative interview or the interview with the Postal Inspector. Khong had the right to Union representation when interviewed by Thompson, who testified without contradiction that the grievant did not ask for a steward. Nor is there any indication that the grievant did not understand Thompson. Mendoza-Telck represented Khong at the investigative interview. Russell's notes and the steward's notes indicate that she asked questions. Mendoza-Telck was not prohibited from trying to be certain that Khong understood the proceedings. She said that he did not, but she did not ask for a postponement until an interpreter could be found. Russell seemingly had no indication that the grievant was having difficulty comprehending, thus he was not obligated to find an interpreter or delay the meeting until the grievant found one.

The investigation was sufficient. Russell was not obligated to retrace the Postal Inspector's steps and to redo the investigation. The supervisor was obligated, as his part of the investigation, to give Khong his "day in court" and allow him to respond to the charges. The grievant was given an extensive opportunity in an investigative interview that all agreed was unusually long to respond to the allegations that he exceeded his medical limitations and that he wrongfully claimed sick leave on December 18. Thus the Postal Service met its obligation to conduct a reasonable investigation.

Evidentiary Issues

The videotape needs little discussion. While it was shown at the investigative interview, the Union was not given a copy then and later requests for a copy went unfulfilled. The National Agreement clearly requires both parties to make existing available evidence and argument during the grievance procedure and to jointly assemble the grievance file. When legitimate Union requests for information were not met and when the requested information was not in the joint file, the Postal Service should have no realistic hope of having the evidence admitted at arbitration. It does not matter whether the evidence was not forthcoming because of bad faith or simply administrative

oversight. Either way, the National Agreement tells the arbitrator not to admit the disputed evidence if an objection is raised.

The two statements from Khong's co-worker, Jennifer Morgan, are not viewed as relevant. Neither has been considered. I am satisfied, based on the testimony of Mendoza-Telck and Sapp, that the Union had never seen Morgan's lengthy statement introduced by Management. It was written in December 2004 and was in Management's hands before the grievance was filed. The statement was not given to the Union during the grievance procedure, was not in the joint file and thus is not ripe for consideration in arbitration. The shorter statement, written by Morgan and dated January 25, 2005, was not a part of the joint file and thus is not ripe for consideration. Furthermore, Morgan's testimony that Khong attended the seminar on December 18 has been confirmed by the grievant himself. Whether or not Khong used a boot and crutches is irrelevant, as he has not been charged with not using these devices on the days in question.

Substantive Issues

With regard to the charge that Khong violated medical restrictions, three factors prevent the Postal Service from meeting its burden of proof. Most critical may be the need to honor the language of Article 15.2 of the National Agreement and exclude the videotape, which may have been the best evidence. The second factor is related. In a previous case I have watched with amazement videotape of a Postal Service employee who allegedly had exceeded her medical limitations because the tape supported the grievant's contention that she had not been in violation, when the investigating Postal Inspector had testified that the tape showed she had. This prior experience is recounted not to suggest that Inspector Thompson has testified inaccurately in this case. Rather, the lesson drawn from that experience is that it is the arbitrator who signs the award and for that reason has the responsibility to be confident that the evidence supports the award. Finally, the documentary evidence supports the grievant's testimony that on November 4, 2004 he was told by Dr. Wong to begin to wean himself from the boot and crutches. One cannot wean himself from these devices by continuing to use them every waking hour.

The observations of Russell and Tenorio that Khong walked and stood on the workroom floor without crutches are not critical to the outcome of this case. While the observations are accepted as accurate, at best they show the grievant as lax about the use

of the devices, but not as deliberately attempting to avoid his restrictions. From the brief notes, it cannot be determined whether Khong walked a few steps or many yards or whether he stood for a few minutes with his weight on his left foot or a much longer time with his weight on both feet. Furthermore, these observations came at a time when Dr. Wong had told the grievant to wean himself from the boot and crutches. Moreover, there is no dispute that Khong delivered express mail and took mail to carriers already on the street, driving his own vehicle to accomplish these tasks at a time when he was medically restricted from driving. Whether the grievant volunteered to drive or agreed to a supervisor's request, Management was obligated to assign the grievant work within his limitations. There is significant irony in the fact that Management assigned the grievant work outside of his medical restrictions, but at a later date, sees nothing wrong with using the grievant's standing and walking without crutches as partial support for a removal.

As for the videotape, in his written statement, Khong wrote that on November 30, 2004, he was shown simply walking from a car to his house. This was not contradicted. Almost a month after being told to wean himself from the boot and crutches, it cannot be concluded that he was actually violating doctor's orders, even if there was a technical violation of medical limitations because they had not been changed to reflect "weaning."

The main thrust of the Postal Service's charges relates to Khong's activity on December 1, 2004, which the grievant wrote, without contradiction, took place over seven minutes. Khong testified that he moved a hollow-core door and a nearly empty bucket of paint. A solid wooden door and a nearly full bucket of paint are far heavier than a hollow-core door and a nearly empty bucket of paint. Viewing the videotape may have allowed a determination of what the grievant handled since heavy objects are generally not lifted and moved with the same ease of movement as are lighter objects. As for kicking versus moving trash, again the videotape would be the best and only persuasive evidence.

It is also critical to note that Dr. Wong anticipated that Khong would be released to return to carrier duties without restrictions on December 4, 2004. The videotape was shot on December 1, 2004, presumably after almost a month of exercises and weaning from the boot and crutches. Thus it should have been expected that at this point in time Khong's activities would have approached normal. Either the Postal Service did not

consider this at all, or this was considered and rejected. Surely Dr. Wong would not have expected Khong to adhere slavishly to all of the prior restrictions up until December 4 and then to be able immediately to take up all of his regular carrier duties.

Morgan's testimony that the grievant did not do his limited duty job is viewed as irrelevant since the grievant was not charged with not doing that work. Also, Morgan's relationship with Khong did not mark her as the kind of objective observer who could be relied on for accurate testimony about what work the grievant did or did not do.

I am mindful that Dr. Wong saw no need for medical restrictions after viewing the videotape. This would have been consistent with his projection on November 4, 2004 and does not establish a breach of the medical restrictions on December 1, 2004. In the final analysis, the evidence does not leave the arbitrator confident that the Postal Service has shown that Khong knowingly disregarded medical limitations or even that he had been malingering.

As Khong has acknowledged in so many words, the AWOL charge is fully justified. When his wife said that she would take care of their son on December 18, 2004, the grievant then had two legitimate options: 1) report for duty or 2) obtain proper leave to cover his absence. Khong did neither, but improperly used sick leave to attend the seminar. In addition, I accept as credible Russell's testimony that when given an opportunity the following Monday, Khong would not set the record straight, but persisted in his dishonesty. This justified discipline.

The Remedy

Certainly the ethics charge stemming from the alleged disregard of medical limitations is the more serious of the two charges. Because it has not been proven, the removal is not justified. In some instances, the AWOL itself and a possible written warning would be sufficient discipline. In this case, even with Khong's belated acknowledgement that he used bad judgment, a suspension is justified because of the deliberate wrongful use of sick leave and because of his dishonesty the following Monday. Unlike Postal Management, I do not accept the notion that Khong's dishonesty means that he cannot be trusted in the future. He had no prior discipline in the approximately five years he worked for the Postal Service and seems able to profit from the corrective discipline that the parties have established as a basic principle.

The suspension is to be a paper suspension, without loss of money. This is because on June 6, 2005 the advocates signed the following agreement (JX-4):

Without prejudice to either party's position on the merits of the case, the grievant is unavailable for the hearing scheduled on June 9, 2005. The NALC has requested a postponement and the U.S. Postal Service has agreed to the postponement with the understanding that any liability for back pay for this grievant will end on June 9, 2005.

The effect of the agreement, which is clear and unambiguous and must be enforced, is to cut short the make-whole remedy that would otherwise be issued. Under the circumstances, no purpose is served by adding an additional three days to those for which the grievant will not be made whole. This will not diminish the fact that the suspension will be a part of the grievant's record and available as a past element should circumstances require its use.

AWARD

The grievance is sustained in part and denied in part. For reasons noted above, just cause did not exist for the Notice of Removal. The grievant is to be reinstated with a three-day disciplinary suspension on paper (no loss of pay) for attending the seminar while on sick leave on December 18, 2004. The grievant is to be made whole for wages from the date he was removed from the active payroll through June 9, 2005, and for all benefits and seniority lost as a consequence of the removal. The back pay liability of the Postal Service shall be reduced by any money earned by the grievant while in a non-pay status through June 9, 2005. Money earned by the grievant thereafter is not to be used to offset back pay. The grievant is to be returned to work at the very earliest opportunity. Any prolonged delay in returning the grievant to the active payroll will restart the back pay liability of the Postal Service, unless the delay is attributed to the grievant. The arbitrator will retain jurisdiction to resolve problems that may arise from the implementation of the award.



I. B. Helburn, Arbitrator

Austin, Texas
August 29, 2005