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IN ARBITRATION

LOCAL ARBITRATION

UNITED STATES POSTAL SERVICE,	) Case No. C1C-4F-D 31565
	) Arbitrator's File 84-90-1001
and	)
	) Date of Hearing:
AMERICAN POSTAL WORKERS UNION,	) December 4, 1984,
ETTA HELMS, Grievant.	) Columbus, Ohio.

APPEARANCES

Arbitrator:

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Date of Award: January 4, 1985.

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OPINION

Issue

Was Grievant discharged for just cause? If not, what shall the remedy be?

Facts

Grievant was removed from the Postal Service on June 5, 1984, for "absence without official leave". Grievant had been an MP/LSM clerk.

The first witness for the Postal Service was Grievant's supervisor. He testified that Grievant had commenced an absence from work on March 31, 1984. Although Grievant had called in to the Postal Service to report sick, she had given no medical documentation of the nature of her illness.

On April 11, 1984, the witness sent to Grievant a letter which was headed, "EXTENDED ABSENCE LETTER". It stated:

> "You have been absent from work since 03-31-84, and have not contacted this office since, concerning your absence.
>
> You are hereby instructed to notify this office immediately as to the reason for your extended absence and when you expect to return to duty. This information must be substantiated by acceptable evidence that you were unable to perform your duties here at work during the period of your absence.

Failure to comply with these instructions within five (5) days of your receipt of this letter, will result in your removal from the United States Postal Service."

The witness said that, at the time he sent Grievant the "Extended Absence Letter", he had no information concerning the reason for her absence.

When the witness had received no reply from Grievant by May 2, 1984, he authorized a Notice of Removal to be sent to Grievant. It stated:

"You are hereby notifed that you will be removed from the Postal Service on June 5, 1984.

The reasons for this action are:

ABSENCE WITHOUT OFFICIAL LEAVE

You have been absent from work since March 31, 1984. On 04-13-84, you received an extended absence letter dated 04-11-84 instructing you to notify this office immediately as to the reason for your extended absence and when you expect to return to duty. You were also instructed to substantiate your absences by submitting acceptable evidence that you were unable to perform your duties here at work during the period of absence. Furthermore, you were instructed to comply with these instructions within five (5) days of the receipt of the letter or you would be removed from the Postal Service.

To date, (05-02-84), you have not contacted this office or submitted any documentation concerning your absence and are being carried in an Absence Without Official Leave status.

Postal employees are required to be regular in attendance. Your continued absence reflects adversely on the efficiency of the Postal Service and will not be tolerated."

After Grievant's removal from the Postal Service, the witness received a copy of a workers' compensation claim in which Grievant reported that she had sustained a back injury. This

report was on Form CA-7.

On cross-examination, the witness testified that Grievant's call-ins were not sufficient to satisfy the requirements of the extended absence letter because they did not constitute documentation necessary to substantiate an absence due to a medical condition.

The witness said that he had never seen an accident report (CA-2) which Grievant might have filed. Further, he did not talk to the compensation office or to the nurse because he had never seen, nor was he aware that Grievant had filed, a CA-2.

On re-direct examination, the witness stated that he had considered issuing lesser discipline than removal, but had decided that, since Grievant was already absent from work, a suspension would have no impact.

The witness further stated that an employee has a responsibility after a three-day absence to provide documentation as to the nature of the employee's illness, the anticipated length of absence, and expected return-to-work date. Such information is necessary to permit scheduling of employees.

Grievant had been disciplined for failure to file documentation after three days, as required by the regulations. She had not been disciplined for failure to call in.

The first witness for the Union had been a steward, a chief steward, a vice president, and clerk craft director. He also handled Step 2 grievance hearings. It was his belief that progressive discipline was always issued when AWOL charges were

leveled. In some 8 or 10 instances that he knew of progressive discipline had been issued for absences.

The witness was not aware that regulations required documentation of absences after three days of absence. The practice in the Columbus Post Office was to call in to the tour office after an absence of three to five days. However, documentation was never submitted to substantiate these absences until after the employee returned to work.

The witness knew that Grievant had had a fitness-for-duty examination on April 17, 1984. Although the examination had allowed her to return to work, an employee could still refuse to work if the employee and/or the employee's own doctor felt it not advisable.

The witness had never heard of a removal for the reasons given in Grievant's removal notice. He had heard of lesser discipline being issued, such as warning letters, for absence without leave, but not termination.

On cross-examination, the witness testified that he was not sure whether Grievant had contacted her supervisor or had merely called in.

On one occasion, the witness had had an extended absence of nine months, and had filed his documentation upon his return to work.

The next witness for the Union was Grievant. She testified that she had started to work for the Postal Service full time on November 24, 1980. Before that time, she had been a casual

employee in 1972, 1973 and 1974. She was absent from the Postal Service until 1980, at which time she had become a regular employee. She was an MP/LSM operator.

On March 30, 1984, she had sustained muscle spasms in her lower back at work. She was sent to the nurse, who then sent her to a nearby hospital emergency room. She returned to work, but shortly thereafter left work because of back pain. She was absent from work from March 30 until she received her notice of termination on May 2, 1984. However, she had called in to the Post Office at the call-in office about every three days to advise of her condition.

Grievant stated that she had filed a CA-2 (Notice of Injury) on April 22, 1984, when she claimed an on-the-job injury. She had also brought a doctor's slip to the compensation office on April 19. She was supposed to have returned to work on April 27, but did not do so because she was hospitalized at about that time. She called in from the hospital to report that her return date was uncertain. She was discharged from the hospital on May 30.

She received the notice of removal while she was in the hospital. She did not send any further medical reports to the Postal Service because of her removal.

The witness could have returned to work on June 3, 1984. She was unable to return prior to that because of back problems. She had had three instances of surgery for her back problems. She now needs more surgery.

On cross-examination, the witness testified that she believed that she was a good employee, and that she follows directions.

She introduced in evidence a number of medical reports, but stated that she had never given them to the Postal Service because she had been terminated.

Grievant admitted receiving the extended absence letter, but felt that she had responded to it by her call-ins.

On further cross-examination, she testified that her compensation claim had been rejected for lack of documentation, but she insisted that she had given the proper documentation to her attorney. She also stated that she had had two prior disciplinary actions in connection with absences or failure to follow instructions, but she had filed grievances, and her pay had been given to her. The two disciplines were for failure to maintain her schedule, and failure to perform her work in a safe manner.

The last witness for the Union was the president of the Local, who stated that he had been a Postal Service employee since 1970. He had become a full-time Union employee in February, 1983.

The practice in the Columbus Post Office was that, if an employee was absent for three days, he/she was to call in to report being sick. This call was made to the tour superintendent's office. It was only on return to work that documentation was produced.

On cross-examination, the witness was asked if the Employee

& Labor Relations Manual sets out this procedure. He replied that it did not, but that that was the way the procedure was done there.

The Postal Service called a rebuttal witness who testified that she was the supervisor of Delivery and Collections. She had held the job for one year. Before that, she had been a window clerk, and for 13 years had been in mail processing. She had been with the Postal Service for 17 years. In 1980, she had been absent for 4-1/2 months. She was required to provide documentation every month to justify her absence at that time.

She testified that the policy at the Columbus Post Office for an extended absence was to give documentation and to update it from time to time to show the reason for the absence.

On cross-examination, the witness stated that she had received a disciplinary action for her absence in 1980. She had grieved and lost, but the only issue was whether she could take LWOP while she still had sick leave or annual leave available. She wished to take LWOP and it was denied, and she had refused to take sick leave or annual leave. She had been charged with AWOL. She felt that that issue was not the same as the one here. She did state that she had not been fired, she was only disciplined.

Discussion and Award

Position of the Postal Service

It is the position of the Postal Service that Grievant had not substantiated her absence by acceptable evidence showing that

she was unable to perform her duties during her absence.

Her telephone calls could not be considered documentation. Additionally, they did not go to her supervisor. Further, her filing of a CA-2 form is not documentation, since that is a claim for compensation, and has none of the data in it which absence documentation requires.

Grievant's discharge was appropriate for two reasons. She had been given ample time to provide written documentation as to why she would be off work and when she would be back to work. Further, discharge would have more of an impact than would suspension, because a suspension would be meaningless in view of the fact that Grievant was already off work and in a non-pay status. Although she had the opportunity to do so, Grievant failed to give the documentation which was required of her, and her discharge should be sustained.

Position of the Union

The position of the Union is that Grievant had made numerous phone calls to the Postal Service, so that it could not be argued that she had abandoned her position or ignored the extended absence letter.

Additionally, the evidence was clear that, in the past, a charge of AWOL only warranted a letter of warning, whereas Grievant was discharged. No one previously had ever been discharged for such a violation.

Arbitrator's Discussion

It is my conclusion from the evidence presented that

Grievant did not provide the documentation called for by the extended absence letter. Her telephone calls were insufficient, since they were all oral. She did submit a document on April 19 which gave April 27 as a date for return to work. She could rightly claim that she had documented that absence. However, the absence from that point through all of May was not covered by any documentation. Again, her oral phone calls during that period were insufficient.

The issue which now remains to be determined - an issue which was recognized as such by the Postal Service - is that of whether Grievant's infraction merited discharge, or whether she should have been given some lesser penalty.

Grievant's supervisor was asked if he had considered a lesser penalty. He replied that he had, and had decided against it on the ground that he felt it would "have no impact".

The action of the supervisor in this regard is a violation of Article 16, Section 1, of the National Agreement. The first sentence of this Article states:

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

It has been held many times by other arbitrators that, for discipline to be corrective, it must be progressive.

This directive from the National Agreement is mandatory. It is not discretionary. Management does not have the choice as to whether it will issue corrective discipline or not. It must attempt to make discipline corrective. Here, Grievant's supervisor decided for reasons which appeared to him to be valid that

corrective discipline would be useless. He does not, however, have that discretion. He must attempt to issue corrective discipline even though he believes that it will be of no use.

The supervisor felt that, even though a discharge had been issued to her, Grievant had time to bring in the necessary documentation. The misconception in this line of reasoning is in thinking that an employee would believe that he or she had the right to bring in the documentation after a discharge. In point of fact, when Grievant was asked why she did not do so, she kept saying, "because I was discharged". In other words, she believed that, once she was discharged, she had no recourse but to file a grievance.

In effect, what the supervisor was trying to do was to use discharge as a type of corrective discipline by anticipating that, when the discharge was issued, Grievant would bring in the documentation. However, using discharge as corrective discipline in this fashion is a violation of the National Agreement, because the end result is discharge rather than an opportunity for an employee to correct errant conduct.

It should also be noted that many arbitration decisions hold that post-discharge conduct of a grievant cannot be used to set a discharge aside. A discharge cannot be judged in the light of actions subsequent thereto. So Grievant's action in submitting documentation after her discharge can be of no consequence. Grievant was correct in believing that, after discharge, it was too late to act, even though her supervisor apparently was willing to accept her documentation even then.

It is my conclusion that the Postal Service has violated Article 16, Section 1, of the National Agreement by not issuing corrective discipline to Grievant. Grievant therefore must be reinstated.

It must now be decided whether Grievant is entitled to back pay.

Grievant's own evidence was that she would have been unable to work until June 3, according to her doctor's statement. Therefore, in no event would she have been entitled to back pay prior to June 3.

However, in addition to that, at the time of the hearing, Grievant testified that she had had three back operations, and was awaiting surgery for another operation. Her testimony indicated:

> "Q Miss Helms, during the time from 3-30 through June 2nd, were you able to work?
>
> A I was not.
>
> Q Could you tell the Arbitrator why?
>
> A I have had three different surgeries for on-the-job injuries, and so my doctor was sending me to several other doctors for surgery and stuff that he could not perform until, so that he could put me in the hospital for my back for what he had to do. I had to go through different doctors first, before he can take care of me; which I am still waiting to go in now." (Emphasis added.)

From this, I would infer that Grievant was anticipating more surgery, and more hospitalization. I therefore conclude that Grievant, even at the time of the hearing, was unable to work. That being the case, Grievant's reinstatement will be without back pay.

Award

The grievance is sustained. Grievant is ordered reinstated without back pay, but with all other benefits to which she would be entitled.

The costs are assessed equally.

Dated this 4th day of January, 1985.

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