

C-20643

SOUTHERN REGULAR CONTRACT ARBITRATION PANEL

In the matter of
an arbitration between:

National Association of)
Letter Carriers, AFL-CIO)
Union) Grievant: J. A. Barnett
and)
Case No. H94N-4H-C 95041405
Memphis, Tennessee
United States Postal Service)
Employer)

Before: Leonard C. Bajork, Arbitrator

Appearances:

For the Union: Lew Drass, Advocate

For the Employer: George Whitten, Advocate

Place of hearing: Memphis, Tennessee

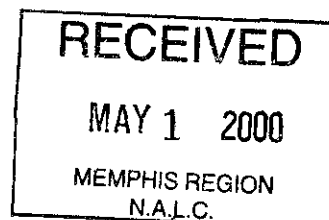
Date of hearing: January 13, 2000

Award: The Union's grievance is sustained.

Date of award: April 17, 2000

Statement of the Case:

The Union's grievance C-030-95-J arose on January 12, 1995 at the Employer's Raleigh Station, Memphis, Tennessee postal installation where Mr. J. A. "Andy" Barnett, the Grievant, is a regular full-time City Letter Carrier with 27 years service. All dates are 1995 unless otherwise specified.



On December 29, 1994, the Grievant, then President of Branch 1027, went to Raleigh Station the day before as a result of a telephone conversation with Mr. Larry Vaughn, steward. Mr. Vaughn told the Grievant that he had difficulty with accessing information relative to the performance of his steward duties.

The Grievant arrived at about 10:00 a.m. and asked a carrier where the station manager was. The carrier pointed to the racks whereupon the Grievant then saw Mr. Herbert Boyd, Customer Services supervisor. The two greeted each other after which Mr. Boyd asked the Grievant his reason for being at the station. The Grievant began to explain that he heard the steward was not getting access.. whereupon Mr. Boyd said, interrupting, "I tried to work with these people, looks like ..". At that, the Grievant entered Station Manager Donna Williams' office. Mr. Boyd, now joined with Mr. Vaughn, followed.

Mr. Boyd resumed by saying in reference to a grievance he was holding, "Look at this. I just don't understand". Mr. Boyd shut the door and backed up against it. The Grievant then said, "Herb, I want to leave this office". Mr. Boyd, maintaining his ground next to the door said, "You move me. Next time you come, you warn me". Ms. Williams said, "Calm down". The Grievant repeated that he wanted to leave when moving toward the telephone on Ms. Williams' desk when she said, "Don't use my phone, use the one in the lobby". Mr. Boyd said, "This is personal stuff - we're going to get this out of our way". Trying a third time to leave, the Grievant said, "Donna, will you get this fool out of my way"? Ms. Williams replied, "Don't call my supervisor a fool".

Later that day, the Grievant called the Postmaster but he was not in. He then called the Postal Inspection Service and spoke with an inspector. After reciting what had earlier taken place, the inspector asked, "Did he (Boyd) hit you? Did he threaten to kill you"? Afterward, the Grievant wrote a lengthy letter to Postmaster W. L. Harris, explaining the day's events in detail.

The Grievant spoke with an Inspector Collins after he had interviewed Ms. Williams. He said the Grievant could expect to receive a call from Mr. Boyd. On January 9, not having further heard from the Inspector, the Grievant again called the Inspection Service and was told that another

inspector was assigned. The Grievant received no reply from Postmaster Harris.

Positions of the Parties:

The Union:

The Employer violated Articles 15 and 19 of the National Agreement. In the latter regard, it violated the M-39, Section 115.3 and ELM Sections 661.53, 664 and 666.2 and the Joint Statement on Violence in the Workplace, the Joint Statement. The Employer bullied the Grievant.

The Union therefore respectfully requests that the Arbitrator sustain its grievance and direct Supervisor Boyd apologize to the Grievant and remove him from the supervision of all craft employees.

The Employer:

The Employer denies any violation of the referenced provisions.

While the three were in Ms. Williams' office, all were on the "same level", that is, there was no superior-subordinate relationship. There was no verbal or physical altercation. Ms. Williams was standing at her desk which was between the Grievant and Mr. Boyd. When the Grievant said he wanted to leave, he was permitted to leave. The Union overlooks that the Grievant called Mr. Boyd "a fool". If the Arbitrator finds fault with Mr. Boyd's conduct, then he must also find fault with the Grievant. Yet, the December 29, 1994 incident does not, in either case, rise to the level of a violation of the contract as claimed by the Union.

Mr. Boyd did not deny making the statement to the Grievant, "Move me". However, he did not mean to create a hostile environment. Afterwards, both men parted and peacefully returned to their respective duties.

Finally, Arbitrator Snow's award but held that the Joint Statement was enforceable and that the Union was permitted access to grieve the alleged misconduct of supervisors. But the Snow award "does not relate in any way to a manager/supervisor being removed from their position".

Therefore, the Employer feels that the Union's grievance is without merit and respectfully asks the Arbitrator to deny it in its entirety.

The parties were unable to agree on the issues in dispute. The Union proposed three separate questions, that is, whether Supervisor Boyd's actions, whether Manager Williams' actions violated the Joint Statement and whether the Employer's actions, generally, violated the referenced provisions which includes the Joint Statement. The Employer, on the other hand, confined the issue to whether Supervisor Boyd's actions on December 29, 1994 violated the Joint Statement.

After a review of the formal papers, other documents and the record of testimony, I adopt the issues as proposed by the Union which, I find, more accurately reflect the parties' pre-arbitration discussions. Therefore, properly before arbitration for final and binding determination is on and after December 29, 1994:

Did Supervisor Herbert Boyd violate the Joint Statement?

If so, what is the proper remedy?

Did Manager Donna Williams violate the Joint Statement?

If so, what is the proper remedy?

Did the Employer violate specific provisions of the National Agreement as charged by the Union?

If so, what is the proper remedy?

Each party was given full opportunity to examine and cross-examine witnesses, to introduce relevant document evidence and to make closing oral argument. The parties instead submitted post-hearing briefs with certain case authority requested by the Arbitrator which were timely postmark due, reviewed and fully considered to the extent permitted by the case's facts.

Discussion and Findings:

First, attention is drawn to National Panel Arbitrator Carlton Snow's award in Case Nos. Q90N-4F-C 94024977, 942024038 (1996) in terms of its application to the present case's facts. Snow held that:

1. The parties' Joint Statement was not merely each party's gratuitous pledge to the other to rid the workplace from violence but is, instead, a valid, enforceable contract based on consideration each party offered to the other toward the objective of eliminating work place violence in all its forms. That contract proscribes certain misconduct, committed by any employee of the Postal Service, regardless of level, and contains the parties' express commitment "to do everything within (our) power to prevent further incidents of work-related violence".
2. In cases brought by the Union against supervisors or managers, the National Agreement's Article 15 is the proper mechanism for voluntary resolution or, failing that, arbitration of cases arising from the Joint Statement.
3. Consistent with foregoing 1. and 2., the Joint Statement constitutes the Employer's cause of action and both the Union's right and cause of action. The Employer's right of action is derived instead from Article 16, Section 1 to "discipline or discharge" employees "for just cause" in conjunction with the exercise of its Article 3 powers.

My understanding of the discretion the parties left with arbitrators for remedying supervisor/manager violations is for first offense: a forfeiture of rewards or promotions and, for second offense: removal from positions. With carrier employees, traditional disciplinary remedies resulting from equity considerations, may be applied.

A Question of Violation

I note that the Union filed Charge Against Employer on January 27, claiming a violation of Section 7 of the National Labor Relations Act. Section 7 provides several guaranteed rights, as a matter of statute, which protects

employees from employer interference when engaging in activities for "mutual aid and protection" and, generally, activities associated with representation for the purpose of collective bargaining. Presumably, the National Labor Relations Board Regional Director deferred the charge to resolution through arbitration. The Director's act to defer decision to arbitration anticipates that the Arbitrator will address and resolve through Award the statutory question of "interference". The record of the case's evidence is this:

Supervisor Boyd led the Grievant and Steward Vaughn to Manager Williams' office. The Grievant came to the station to presumably speak with Manager Williams in order to resolve the problem to which Steward Vaughn alluded to the Grievant the day before. Not only was Supervisor Boyd denying him access to information relative to grievance handling, but becoming angry upon his further attempts to obtain same. During the course of the hearing, there was a great amount of testimony gathered from the Grievant, Manager Williams and Supervisor Boyd. A review of the testimony of each compels the conclusion that the office was small, so small that Steward Vaughn quickly left.

JX-4 is a rough drawing of the office which shows (facing the door from the inside) Manager Williams' desk, a narrow aisle between her desk and two pieces of furniture against the left wall. The office's door is immediately to the left of the desk. The Grievant and Manager Williams testified that Supervisor Boyd positioned himself with his back immediately to the door. Supervisor Boyd first denied standing with his back up against the door, but then later changed his testimony. Judging from the office's description and, especially Manager Williams' testimony, a person "could not move out the door without moving Herb."

The Grievant said that he tried to leave three times but was blocked by Supervisor Boyd who admitted that he knew the Grievant wanted to leave the office but saying instead, "move me." Supervisor Boyd also admitted that there was "an altercation" and all three "raised their voices." He however denied moving toward the Grievant in a threatening manner. Further, Manager Williams said that Supervisor Boyd always "speaks with his hands." The Grievant, on the other hand, forcefully testified that, far more than Manager Boyd wagging his finger at him, he was literally "in my face" when doing so. Manager Williams recounted

that the Grievant asked to leave but once. Supervisor Boyd testified that he "couldn't remember any of the details" but did characterize his behavior as "sarcastic."

In review, I credit as true and accurate the testimony of the Grievant. As the Union argues for his credibility, he committed to writing the day's details immediately afterward. His testimony is consistent with his December 29, 1994 letter to Postmaster Harris. Furthermore, and again as the Union argues, Manager Williams' and Supervisor Boyd's testimony was vague if not evasive.

Regarding Supervisor Boyd's characterization of his conduct, I noted that, at hearing, he seemed to move away from his position that he "did nothing wrong" to a position that "it wasn't the way it appears" [Arbitrator's emphasis]. Sarcastic behavior connotes the description of a person who is, above everything else, in control of his/her emotions. That is not the picture I get from a review of the evidence. It is the "out-of-control" feature of Supervisor Boyd which makes the case for the Union - he was dangerous to be around. For the record, while the Grievant is not a small man, Supervisor Boyd is impressively tall with long arms.

As a result of Supervisor Boyd's change in testimony, I asked the parties to send for my review, cases which involved the Union's defense of carriers arising from alleged violations of the Joint Statement.

In its brief, the Employer lists eight cases. Six were either considered to be violations of the Joint Statement by arbitrators or involved voluntary resolution with reduced penalties. Two were decided as no violation. Penalties to carriers ranged from 30-day suspension to removal. The Union in turn listed six earlier cases. Of this number, three overlapped the Employer's submission. Penalties ranged from 14-day suspension to removal. Considering that there were three cases commonly submitted, it appears that the Memphis Office has a total of eleven case experiences dealing with carriers because of alleged violation or violation of the Joint Statement as far back as 1992. Expressions of violence took the form of actions, gestures or utterances. However, in those decided cases, not one arbitrator excused the subject's conduct on the basis of what the subject later said he meant. In this regard, I have consistently held in the past that violation

is not in the eye of the beholder. Relevant evidence consists of what was said or done within the context of what was said or done.

Without question here, Supervisor Boyd's December 29, 1995 gestures and words combine to comprise a clear violation of the Joint Statement. Not only did he treat the Grievant with disrespect, he came very close to starting a physical fight. But it is the context within which the violations occurred which distinguishes this case from others. It is the statutory consideration to which I earlier alluded. The Grievant was at the Raleigh Station to resolve a problem with the Union's access to information relative to its representative role. In a statutory context, the injury suffered was by the carrier. It was the carrier whose grievance was prejudicially put at risk.

Next, there is a question of Manager Williams' and, generally, the Employer's violation. The Union argues that Manager Williams was but "lukewarm" in her attempt to subdue Supervisor Boyd's outburst toward the Grievant. The Union then generally contends that the Employer organization was slow to react to Supervisor's Boyd's demonstrated hostility. It argues, had a carrier and not Supervisor Boyd committed the offense, the carrier would have been put off the clock and an in-depth investigation begun. Combined, the Union sees here the Employer's reluctance "to move against its own". [Arbitrator's emphasis] Judging from my previous case experiences involving the Joint Statement, I would agree.

The thread, common to both Williams and the Employer organization leads directly to Postmaster Harris. The Grievant's December 29, 1994 letter to the Postmaster, detailing the referenced events and activities, asks in conclusion, "Please inform me as to how you intend to deal with this situation". The Grievant testified that he received no reply. Postmaster Harris did not make an appearance. Yet, according to the Grievant, Supervisor Boyd was detailed to another station the following week before being promoted to station manager. According to the Grievant, "That's the message I got" in reference to not having heard from the Postmaster. It was they who, by necessity of their held positions, approved Supervisor Boyd's transfer and promotion to Station Manager of another station within the Memphis Office, either before the Union's grievance or in its wake, the record is unclear.

Regardless, Supervisor Boyd's promotion is a consideration for scope of remedy since it occurred one week after December 29, 1994 and flies in the face of the Joint Statement which states:

We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated. [Arbitrator's emphasis]

Supervisor Boyd's promotion to station manager, I find, is tantamount to the Employer's "wink and nod" of his described behavior immediately following the December 29, 1994 incident. So also was their uncharacteristically slow response to a clear act of violence. While Manager Williams telling Supervisor Boyd to "calm down" once, if not twice, is commendable, it does not alter her part in approving the Grievant's promotion. Nor may Postmaster Harris be excused considering his position authority in that regard. His failure to immediately reply to the Grievant's letter indicates a disdain for the Union as an institution and, in particular, the Grievant's reproaching him about Supervisor Boyd.

A Question of Remedy

The Union, in its post-hearing brief, devotes a great deal of attention to remedy. National Business Agent Ben Johnson's opening testimony provided the landscape within which to essentially consider the parties' resolve to their zero tolerance policy and the extent of discretion allowed to arbitrators by that policy's declaration.

I have already discussed the applicable elements of the Snow decision which, I find to be included in the parties' Joint Statement, an enforceable contract. Unlike those cases involving charges against carrier employees, remedies for supervisor/manager infractions are contractual, not grounded in equity as are cases arising out of discipline or discharge for just cause. To the extent that they are, arbitrators have less discretion to fashion remedies.

There is no record of the three having been in violation of the Joint Statement in the past - all are first time offenders. Therefore as remedy:

1. Manager Boyd will be reduced in position to supervisor, Customer Services, the position which he occupied before his promotion or to an equivalent position outside the bargaining unit. If he returns to his former position, it will be to a different station within the Memphis Office or to another office. Further he will not be "rewarded or promoted" for a period of five years from receipt of Award, the period which corresponds in time to the pendency of the Union's grievance. Excluded from "rewards" are normal, across-the-board salary increases, the amounts of which constitute adjustments for inflation or "competitive salary" considerations. Had Postmaster Harris replied to the Grievant, Supervisor Boyd's promotion may have been properly averted.
2. One copy of this Award will be placed in the personal file of Supervisor Boyd, coextensive with the foregoing five year period.
3. The Employer will post one copy of this Award in a conspicuous location for 60 days following its receipt. The Employer will also immediately prepare and post for such time a letter from Postmaster Harris, on behalf of all the operations managers and supervisors, Memphis Office, to the officers of NALC Branch 1027 and NBA Ben Johnson. The letter will state:

Operations management of the Memphis Office acknowledge that the Joint Statement On Violence and Behavior In the Workplace, the Joint Statement, considers the acts, gestures and utterances from individuals which constitute disrespect, if not violence, toward others, are repugnant to the Employer's and the Union's mutual commitment to rid the workroom floor from violence and its causes.

Employees, regardless of position rank or affiliation, who choose by their actions, gestures and words to violate

the express provisions of the Joint Statement in the future will be swiftly and severely dealt with. This means that supervisors and managers will be subject to forfeiting bonuses, promotions and to removal from their positions; employees of the City Letter Carrier Craft, to discipline or removal from employment.

I personally believe that violence and its causes are the common enemies of the Employer and the Union. Therefore, enforcement of the Joint Statement will be uniformly applied to everyone.

I, also on behalf of Station Manager Williams and Supervisor Boyd, personally apologize to the Grievant.

In this case, the roots of the violent behavior of one supervisor has been shown to run deep. Bullies cannot exist unless the local Employer organization tacitly permits or encourages bullying behavior. If promotions and rewards are based on the positive contributions of individuals to operations efficiency, so also must accountability extend to the behavior of certain employees within the Employer organization which evidence shows violates the Employer's commitment to act in accordance with the Joint Statement and its related policies and regulations. Based on the evidence of this case, I hold that superiors of a supervisor or manager identified in a grievance may likewise be subjected to the Joint Statement's twin remedies absent any exculpatory evidence of their violation.

Without question, while a strict application of the Joint Statement may have resulted in Postmaster Harris' and Manager Williams' forfeiture of rewards and promotions, its intended objective, I believe, is not to punish, but to first encourage all individuals to self-police their behaviors. I find that supervisors and managers have the primary responsibility to lead this effort.


Leonard C. Bjork, Arbitrator