

APPLICABLE PROVISIONS OF THE AGREEMENT

Employee and Labor Relations Manual

1.21 Give a full day's labor for a full day's pay; giving to the performance of duties earnest effort and best thought.

666 USPS Standards of Conduct

666.1 Discharge of Duties. Employees are expected to discharge their assigned duties conscientiously and effectively.

666.2 Behavior and Personal Habits. Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, courteous, and of good character and reputation. Employees are expected to maintain satisfactory personal habits so as not to be obnoxious or offensive to other persons to create unpleasant working conditions.

666.3 Obedience to Orders

666.51 Protest

“Employees will obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual will nevertheless carry out the order and immediately file a protest in writing to the official in charge of the installation, or appeal through official channels.”

M-41 City Carrier Duties and Responsibilities

112.24 Display a willing attitude and put forth a conscientious effort in developing skills to perform duties assigned.

STATEMENT OF THE MATTER

Richard E. Staley is a regular City Carrier working out of the Truman Station of the United States Postal Service's Independence Post Office. On July 15, 2002, the Grievant reported for duty and informed his supervisor that he had an EAP appointment for 12:00 Noon. The Grievant returned to the unit at approximately 1:45 p.m. and proceeded to his assigned route and was instructed by Management to return to the office by 4:30 p.m. When the Grievant informed Management that he estimated that he would not be able to complete his assignment until 7:00 p.m.-7:30 p.m., Management sent help and again informed the Grievant that he was to return to the office at 4:30 p.m. The Grievant stated that he was unable to contact the office at 3:55 and therefore contacted the main office and was advised to return to the office at 4:30 p.m. as instructed. Management states that Grievant was observed returning to the office at 4:05 p.m. Management placed the Grievant off the clock on July 17, 2002 and issued him a Notice of Removal on July 25, 2002 for the events that occurred on July 15, 2002.

A grievance was filed and consequently appealed to Arbitration and the matter moved to hearing on January 8, 2003. During the course of the hearing both sides were afforded a full and complete opportunity to be heard, examine and cross-examine witnesses, develop argument and present relevant evidence. Five (5) witnesses appeared before the Arbitrator as follows:

USPS

James A. Maynes
Supervisor, Customer Service

Sharon Sterrett
Supervisor

Carl C. Norwood
Manager, Customer Service

NALC

Teresa Eubanks
Mail Carrier

Richard Staley
Grievant

All witnesses were duly sworn. After the close of evidence record, arguments were submitted by both parties. The hearing was officially closed on January 8, 2003.

STATEMENT OF THE ISSUES

NALC: Did Management have just cause to discharge the Grievant? If not, what is the remedy?

STIPULATIONS

The parties agreed:

1. The Grievant was at work on July 15, 2002.
2. The Grievant was assigned Route 5708 on July 15, 2002.
3. The Grievant left work for an EAP appointment on July 15, 2002.
4. The Grievant left for the street at approximately 1:45 p.m. to carry route, 5708.
5. The Grievant is the utility carrier for Route 5708.

Management contends that the Service issued the Grievant a Notice of Removal on July 25, 2002 for (1) Failure to Follow Instructions; and (2) Unacceptable Performance. This contention was supported by the following testimonies of its witnesses:

JAMES MAYNES, Manager testified that he received a call from the Grievant at 3:55 p.m. stating that he could not complete the route by 4:30. Maynes stated he advised the Grievant to follow the instructions that he had been given, and he then phoned Manager Norwood and informed him of the telephone call from the Grievant.

SHARON STERRETT, Supervisor of Customer Service testified that as the Grievant's supervisor she prepared the Notice of Removal. Sterrett stated that she did not conduct the Grievant's "Day in Court" and her Manager instructed her to press forward with this action. Sterrett testified that the 3999 document was used to determine the Grievant's demonstrated performance on July 15, 2002, although it was not the sole basis for generating the removal, and she followed the Manager's order to request the removal.

CARL C. NORWOOD, Manager, Customer Service testified that the Service had exhausted every opportunity for the Grievant to change his conduct; on July 15, 2002 the Grievant did not show a diligent effort to perform his duties. Norwood stated that he conducted the Grievant's "Day in Court", discussed the case with labor and determined a recommendation for removal was needed. Norwood testified that he also reviewed and concurred on the Notice of Removal.

The Union contends that the actions of the Service in this matter are based on a false premise and conjecture, and supposition. The Union's contention was supported by evidence submitted and testimonies as follows:

RICHARD STALEY, Grievant, testified to events of July 15, 2002 which led him to determine that he could not deliver his mail and return to the office by the time allotted by his Supervisor and Manager. At this point he called and spoke with Maynes who advised him to follow the instructions he had been given. The Grievant stated that he attempted to do his best on July 15, 2002.

The Union argues that on July 17, 2002 Manager Norwood met with the Grievant to provide him his "day in court". The Union further argued that although Supervisor Sterrett issued the Notice of Removal to the Grievant, she testified that she did so as directed by the supervisor, Manager Norwood. Additionally, the Union contends that the Notice of Removal cited the charge of Unacceptable Conduct partly based on a previous issued 14-day suspension. The Union submitted, however, that the 14-day suspension had not been adjudicated when the Service issued its Notice of Removal making the basis for that charge invalid.

DISCUSSION

This is a discharge case. Under the National Agreement Article 16 Section 1 it states:

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause...

The basic principle to discharge an employee must be proven by clear and convincing evidence. This evidence must establish “just cause” before the discharge can be upheld.

The Postal Service argues that it had “just cause” to issue the Grievant the Notice of Removal. The Postal Service asserted that the Grievant is charged with Unacceptable Conduct and Failure to Follow Instructions. The Postal Service argues that the Grievant’s conduct has constituted a blatant disregard of the requirements that an employee must follow and obey the instructions of their supervisors. In addition, the Postal Service asserts that the discipline was progressive in nature because the Grievant had previously received a letter of warning, a seven-day suspension and a fourteen-day suspension for similar offenses.

The Union argues that the Grievant did not act as charged. The Union asserted that the Grievant made numerous attempts to contact his supervisors, when he determined that he was not able to complete his deliveries in the time he was instructed. The Union asserted that the Grievant called Mr. Maynes, a supervisor, telling him that he (the Grievant) was unable to reach any of his supervisors. The Union argues that it was Mr. Maynes who instructed the Grievant to follow the previous instructions given and return to the station by 4:30 p.m. In addition, the Union argues that the Grievant was never unwilling to complete his deliveries, in fact upon returning to the station the Grievant asked his supervisor if he should go back out and complete his deliveries. The Union contends that the supervisor ignored the Grievant’s request for additional instructions. The Union contends that the fourteen-day suspension was not finally adjudicated and should not have been cited in the Grievant’s past elements.

The Arbitrator must point out that in order for the Postal Service to establish “just cause” for the removal of the Grievant for Unacceptable Conduct and Failure to Follow Instructions, their order must be: (1) clearly expressed as an order, (2) apply to a valid subject matter, (3) be understood by the employee, and (4) the failure to follow the instruction was willful in defiance or rejection of authority.

The Postal Service offered no showing to the record that they established that the Grievant willfully disobeyed his supervisor’s instructions. However, inexcusable the Grievant’s behavior may have been in the eyes of his supervisors, the evidence did not establish that the Grievant was acting in defiance of authority. The evidence did not support a conclusion that the Grievant’s offense was willful. Again, the Arbitrator must point out that Webster Dictionary defines willful as “obstinately and often perversely self-willed” or done deliberately or intentionally.

Certainly the Grievant’s act was poor judgement as opposed to self-willed. The evidence to the record did not establish that the Grievant’s conduct was deliberately or intentionally rejecting authority. Consideration must be given to the fact that the Grievant did make an effort to get additional instructions from Mr. Maynes.

Furthermore, it would have taken his supervisor only a moment to find out what the problem was that caused the Grievant to return before the instructed time without completing his deliveries. Here, the supervisor failed to adequately investigate the facts and circumstances regarding the Grievant’s problem. In addition, the supervisor admits to ignoring the Grievant’s request for further instructions. The supervisor’s lack of response

to the Grievant for additional instructions was much more about her emotions rather than her reasoned judgement.

Under the circumstances it appears that the supervisors made a hasty and ill-reasoned judgement about the Grievant's conduct which was not in defiance of authority. The Postal Service did not offer any evidence to the record that the Grievant's conduct was a premeditated one, designed to challenge his supervisor's authority.

Furthermore, a review of the questions asked the Grievant during the 'day in court' were found to be more accusatory in nature rather than fair and objective, designed to elicit the facts as seen by the Grievant. For example:

Why did you not follow instructions and deliver all the business on 291 Highway from 1530 to 1630?

Why did you only make 3 deliveries between 1530 and 1600?

Why did you pull up to Sprint at 1600 and not deliver the mail?

Why did you deviate from the line of travel to deliver your business?

The essence of these questions establishes that the Grievant's 'day in court' was not a fair and objective interview, which is the purpose of a predisciplinary interview.

Finally, the record shows that the Postal Service engaged in procedural errors. These errors include the fact the supervisor did not make the decision to remove the Grievant on her own, but rather in concert with her manager. Article 16.8 was violated and breached when the supervisor sat down with her manager and together they made the decision to remove the Grievant. Article 16.8 requires a two-tiered disciplinary process

whereby someone not directly involved with Grievant will coolly and dispassionately make an independent judgement as to whether or not discipline should be issued. Further, it was Manager Norwood who was the concurring official, who met with Supervisor Sterrett and jointly they decided to issue the removal to the Grievant, thus establishing that it was the concurring official who issued the removal and the supervisor merely concurred in it because she was not going to challenge her supervisor's order. Moreover, the supervisor admitted at hearing that her supervisor instructed her to prepare the request for removal.

The Union was correct when it contended that the Postal Service relied on a fourteen-day suspension that was scheduled to be heard by the DRT's Step B Team. The basic principle of the DRT Team is that a suspension is deferred upon the filing of a grievance until the DRT Step B Team rendered its decision. Until the fourteen-day suspension cited in the Grievant's past element had been finally adjudicated it had no standing as a cited element. The record shows that the fourteen-day suspension cited in the Grievant's past elements was not finally adjudicated until September 23, 2002, only at that time could it be cited.

After a close review of the errors and evidence the Arbitrator has concluded that the Postal Service did not establish "just cause" for the Grievant's removal. Therefore, the grievance is sustained.

AWARD

The grievance is sustained. The Grievant will be reinstated, made whole with back pay and seniority restored.

Date of Award: January 22, 2003
Compton, CA


Janice S. Irving, Ph.D.