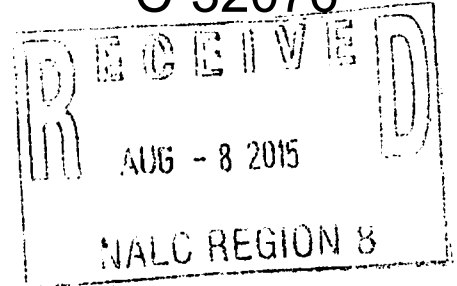


C-32076



REGULAR ARBITRATION

In the Matter of the Arbitration)	USPS Case #G06N-4G-C 12319863
)	
Between)	Branch Case #1M33HX9
)	
UNITED STATES POSTAL SERVICE)	DRT #08-248628
)	
And)	Grievant: Class Action
)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO)	Location: Gadsden, AL
)	

BEFORE: TOM MAIER, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Scott Brimer

For the Union: Corey Walton

Place of Hearing: Gadsden, AL

Date of Hearing: July 9, 2015

Date of Award: August 7, 2015

AWARD: Sustained

PANEL: Southern Area Region 8

RECEIVED

AUG 19 2015

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

AWARD SUMMARY

Station Manager Deitra Robinson violated the Joint Statement on Violence and Behavior in the Workplace by bringing a gun into the Alabama City Station on August 24, 2012. Management is directed to remove her from the Postal Service.

Thomas F. Maier

_____, August 7, 2015

INTRODUCTION

The instant case is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions set forth in the Collective Bargaining Agreement of the parties. A full hearing was held in Gadsden, AL on July 9, 2015. Both parties were given the opportunity to present evidence and conduct direct and cross examination of witnesses. The parties made oral closing arguments at the conclusion of the hearing and the record was closed on July 9, 2015. Management made an arbitrability challenge during their closing argument claiming the arbitrator had no authority to grant the Union's requested remedy in the case at bar. All witnesses were sworn or affirmed. The parties stipulated that the matter is properly before the Arbitrator.

ISSUE:

The Step 8 representatives framed the issue as follows:

Did Management (Station Manager Deitra Robinson) violate the Joint Statement on Violence and Behavior in the Workplace, M-01242, M-01243, M-01488, Arbitration Decision Q90N-4F-C 94024977/94024038, 18 OSC/USC Section 930, and ELM Section 651.4 via Article 19 of the National Agreement when Manager Robinson brought a hand gun in her purse into the Alabama City Post Office on August 24, 2012, and if so, what is the proper remedy?

Stipulations:

1. Issue #2, as stated in the moving papers is no longer relevant.
2. Joint Exhibit 2, p. 16: The second remedy will not be considered.
3. Joint Exhibit 2, p. 22, paragraphs 2 and 3 will not be considered.
4. Management Exhibit 2, Investigative Memorandum, pp.39-40, Written Statement of Brad Watkins, August 29, 2012, says what is says.
5. There is no video of anyone actually searching the desk of Station Manager Robinson.

BACKGROUND

The incident giving rise to the grievance at bar began while NALC Branch President/Shop Steward Jamey Cranmer was visiting Alabama City Station on the morning of August 24, 2012 in response to requests to see a steward. He went to the copy machine located next to the supervisor's desk to make a copy of Form 7020. While there he noted Station Manager Deitra Robinson's purse sitting on the desk and inside the purse he viewed a holstered handgun. He returned to the swing room where he was conducting Union business and asked fellow Letter Carriers Phillip Morgan, Gary Pruett and Robert Champion to go see the gun. They did and confirmed they saw a handgun in Robinson's purse. The incident was reported to the local police and to the postal inspectors. The police arrived first, interviewed Station Manager Robinson and conducted a search for the weapon. Ms. Robinson stated she owned a handgun but denied having it with her on Postal premises. They did not find a handgun. The inspection service arrived approximately 1 hour later and also interviewed Ms. Robinson and conducted a search. She denied ever bringing a handgun into Alabama City Station. They did not find a handgun.

The postal inspectors returned several days later and interviewed numerous station employees including the four letter carriers who witnessed seeing the weapon and Ms. Robinson. They each agreed to take a polygraph examination.

Station Manager Robinson's polygraph was conducted on September 6, 2012. The result is as follows:

Examination Results: Deception Indicated – No Confession Obtained

Remarks: An analysis of the physiological responses on the polygraph charts of Deitra Robinson indicated deception. It is the opinion of this examiner that she was not being truthful when she stated she did not bring a gun into the Alabama City Station on August 24, 2012. During a post-test interview, Ms. Robinson did not make any admissions. She failed to provide a logical explanation for the deceptive responses on her polygraph exam.

Letter Carrier Cranmer's polygraph was conducted on September 5, 2012. The result is as follows:

Examination Results: No Deception Indicated.

Remarks: An analysis of the physiological responses on the polygraph charts of Jamey Cranmer did not indicate deception. It is the opinion of this examiner that he was being truthful when he stated he saw a gun inside the purse of Deitra Robinson, which was located inside the Alabama City Station on August 24, 2012.

Letter Carrier Morgan's polygraph was conducted on September 5, 2012. The result is as follows:

Examination Results: Admin Opinion – Medical

Remarks: No opinion could be rendered by this examiner because Phillip Morgan was not given a polygraph examination due to his medical condition. During the pre-test portion of this exam, Mr. Morgan stated he is under the care of a psychiatrist for post-traumatic stress disorder. During interview, he continued to state he saw a gun inside the purse of Station Manager Deitra Robinson on August 24, 2012. He was adamant the gun was inside her purse at the Alabama City Station. During interview, Mr. Morgan stated he wanted an attorney and the interview was terminated.

Letter Carrier Pruett's polygraph was conducted on September 6, 2012. The result is as follows:

Examination Results: Deception Indicated – No Confession Obtained

Remarks: An analysis of the physiological responses on the polygraph charts of Gary Pruett indicated deception. It is the opinion of this examiner that he was not being truthful when he stated he saw a gun inside the purse of Deitra Robinson on August 24, 2012 at the Alabama City Station. During a post-test interview, Mr. Pruett asserted he saw what he believed was a hammer of a gun with a strap around it inside Ms. Robinson's purse. He stated he could not be 100% certain that what he saw was a gun.

Letter Carrier Champion was not given a polygraph examination. In an email from Postal Inspector Julie Morgan to Labor Relations Specialist Scot Brimer, dated well after the fact,

September 17, 2013, she explains: "....As for why a polygraph examination was not conducted on Mr. Champion, my investigation did not deem it necessary to do so."

None of this information was shared with the Union.

Shop Steward Cranmer filed a Class Action grievance claiming Station Manager Deitra Robinson's actions violated the parties' Joint Statement on Violence and Behavior in the Workplace Agreement. They additionally claimed that Management violated Articles 17 and 31 by failing to provide information relevant to investigating and processing a grievance. The grievance proceeded through the steps of the Article 15 procedures unresolved and was heard in arbitration by Arbitrator Lawrence Roberts on August 16, 2013. Arbitrator Roberts conducted a full hearing including receiving sworn testimony and evidence from the parties. Arbitrator Roberts declined to rule on the merits of the dispute and instead remanded the grievance back to the parties at the Formal A level stating:

"I am of the considered opinion the only proper remedy to the second issue is to order the Employer to provide all the requested information cited above to the Union made in that 12 September 2012 request. And that information shall be provided within forty eight (48) hours upon receipt of this Award."

p. 12

In response to the Roberts Award Labor Relations Specialist, Scott Brimer, the management advocate in both the first hearing and the hearing here, provided the following:

The information listed below and attached is provided as required by Arbitrators Roberts decision, GATS # G06N-4G-C 12319863, dated September 10, 2013.

The request identified 8 items of requested information.

1. A copy of the Postal Inspection Service report is attached. The report is 42 pages.
2. A copy of the polygraph results for Robinson, Cranmer, Morgan and Pruitt are attached.
3. An email from Postal Inspector Julie Morgan is attached indicating the reason Champion was not administered a polygraph.

4. The Gadsden Police Department did not file a police report. The only thing received from the police department was a statement from Officer James Mitchell describing the incident. Officer Mitchell also explains this to Postmaster Bibbs in the video.
5. The reason why Deitra Robinson was not given an emergency placement was explained during the arbitration by PM Bibbs. The reason Bibbs indicated was because there was no gun found.
6. All documents, statements and video are attached or included in this response. There is one DVD which is video from the responding police officers and a CD which is an audio recording of the 911 call made by Phillip Morgan. I know of no other documents or video that exists.
7. According to PM Bibbs and during testimony at the arbitration, the threat assessment team was not contacted.
8. The reason why Deidra Robinson was not given any discipline was explained during the arbitration by PM Bibbs. The reason Bibbs indicated was because there was no gun found.

The grievance again proceeded through the steps with both parties presenting argument on the information noted above but as in the first time around, it remained unresolved.

POSITION OF THE PARTIES

Union:

The Union contends Station Manager Deitra Robinson violated the Joint Statement on Violence and Behavior in the Workplace Agreement when she was observed having a firearm in her purse inside the Alabama City Station.

The Union contends possession of a firearm on Postal property is prohibited by law.

The Union contends Management failed to take appropriate action to place Station Manager Robinson on emergency suspension pending the outcome of the investigation into the incident.

The Union contends Management failed to take any action at all against Station Manager Robinson after she was observed having a firearm in her purse inside the Alabama City Station. The Union contends the investigations performed by the local police and the postal inspectors are tainted.

The Union contends the continued supervision of letter carriers by Station Manager Robinson creates a hostile working environment.

The Union contends Management engaged in a cover-up to protect Ms. Robinson.

The Union contends Ms. Robinson presented false testimony while under oath regarding her polygraph examination during the Roberts arbitration.

The Union contends Ms. Robinson was not being truthful regarding her relationship with Police Officer Mitchell James.

The Union contends they have standing to ask for the removal of Station Manager Robinson and the Arbitrator has the authority to grant such a request.

The Union requests that the grievance be sustained and Station Manager Deitra Robinson be removed from the Postal Service.

Management:

Management contends Station Manager Deitra Robinson did not have a gun in her possession on Postal property on August 24, 2012, no gun was found, and therefore they had no justification to take any action against her.

Management contends the Union raised nothing more than a borderline slanderous, self-serving conspiracy theory regarding the adequacy of the weapon search conducted by the local police.

Management contends all of Manager Robinson's belongings were searched including her vehicle on the day in question.

Management contends a polygraph is used as a tool and is not absolute. In the instant case the polygraph examiner merely offered an opinion.

Management contends that while the Union will maintain their polygraph results indicated "no deception", if you tell yourself something over and over again you start to believe it yourself.

Management contends Station Manager Robinson was present during the arbitration hearing and she told the truth about the incident, regardless of the polygraph exams.

Management contends the Union takes the video totally out of context with respect to comments made by Police Officer Mitchell James.

Management contends it is irrelevant and makes no difference whether or not Station Manager Robinson dated Police Officer Mitchell James or his cousin as there were other officers on the scene and the fact remains there was no gun found during their search.

Management contends this Arbitrator has no authority to issue discipline to any member of the Postal Service, including Management.

Management contends adverse actions against managerial and supervisory personnel are the sole province of the Merit Service Protection Board and that an (arbitration) award imposing an adverse action would be a violation of supervisory due process rights.

Management contends the Union's remedy is improper as the decision to issue corrective action is a Management judgment rather than at the suggestion or demands of the Union. Management contends Article 16 of the USPS/NALC National Agreement does not apply to managerial and supervisory employees because Article 1 of the Agreement specifically excludes them.

Management contends arbitrators have no authority to impose, or grant requested remedies for adverse actions against employees not covered by the USPS/NALC National Agreement. Management requests the grievance be denied in its entirety.

We will begin with a review and findings regarding Management's claim that the Arbitrator lacks the authority to grant the Union's remedy to remove Deitra Robinson or to remove or discipline any member of Management from the Postal Service. For if it is determined that Management is correct there would be no need to consider the merits and the case would be dismissed on those grounds.

The Union submitted the following in support of their claim that the Arbitrator has the authority to remove Ms. Robinson from Postal employment:

National Arbitrator Carlton J. Snow, Q90N-4F-C 94024977/94024038, Washington, D.C., August 16, 1996

Regional Arbitrator Claude D. Ames, E90N-4E-C 94051426, Henderson, NV, February 19, 1999

Regional Arbitrator Leonard C. Bajork, H94N-4H-C 95041405, Memphis, TN, April 17, 2000
United States District Court for the Western District of Tennessee, United States Postal Service v. National Association of Letter Carriers, No. 00-2651 GV, Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Motion for Summary Judgment, September 28, 2001

Regional Arbitrator Raymond L. Britton, K94N-4K-C 98111598, Clinton, MD, April 13, 2001

Regional Arbitrator Lawrence Roberts, G06N-4G-C 12319863, Gadsden, AL, September 10, 2013

Regional Arbitrator Nancy Hutt, F11N-4F-C 14007488, San Mateo, CA, September 19, 2014

Management submitted the following in support of their claim that the Arbitrator does not have the authority to remove Ms. Robinson from Postal employment:

Regional Arbitrator Bruce Fraser, A98N-4A-C 00257265, Toms River, NJ, July 3, 2002

Regional Arbitrator Stephen J. Rosen, A01N-4A-C 03057175, Princeton, NJ, August 22, 2003

Regional Arbitrator Donald E. Olsen, Jr., F01N-4F-C 04017431

RELEVANT CONTRACT PROVISIONS

USPS/NALC National Agreement

Article 1 Section 2.1 – Exclusions

The employee group set forth in Section 1 above does not include, and this Agreement does not apply to: 1. Managerial and supervisory personnel.

Article 3.B – Management Rights

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations to: B. Hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees.

Article 15 Section 4.A.6 – Grievance-Arbitration Procedure. Arbitration

All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator.

Article 15 Section 4.D – Grievance-Arbitration Procedure. National Arbitration

Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.

Joint Statement on Violence in the Workplace

National Arbitrator Carlton J. Snow, Q90N-4F-C 94024977/94024038, Washington, DC, August 16, 1996

The Snow Award:

Issue: Does the Joint Statement on Violence and Behavior in the Workplace constitute an enforceable agreement between the parties so that the Union may use the negotiated grievance procedure to resolve disputes rising under the Joint Statement? If so, what is an appropriate remedy?

Article 1 Section 2 of the USPS/NALC Agreement makes it clear that managerial and supervisory employees are excluded from the terms and conditions of the parties Collective Bargaining Agreement (CBA). Therefore, Management claims by extension any Union grievance which involves an adverse action against a management employee explicitly violates not only Article 1 but Article 3 (Management Rights) and Article 15.4.D (requiring the Arbitrator to stay within the four corners of the Agreement).

However, Arbitrator Snow considered whether or not the Joint Statement on Violence and Behavior in the Workplace (hereinafter referred to as the Joint Statement) is an enforceable agreement through the USPS/NALC Collective Bargaining Agreement in light of Articles 1, 3 and 15. He ruled:

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Joint statement on Violence and Behavior in the Workplace constitutes a contractually enforceable agreement between the parties. Accordingly, the Union shall have access to the negotiated grievance procedure set forth in the parties' collective bargaining agreement to resolve disputes arising under the Joint statement.

Snow p. 23

Relying on the Restatement (Second) of Contracts, findings of the Supreme Court and other legal precedents Arbitrator Snow rejected the Employer's position that the Joint Statement was merely a pledge on their part to help eliminate violent behavior in the workplace rather than an enforceable agreement (Snow, p.14) and he concluded,

"The parties' conduct in negotiating the Joint Agreement added support to a justifiable conclusion that they exhibited an objective manifestation to be contractually bound.The language of the Joint statement itself as well as the objective conduct of the parties evidenced their mutual assent to be legally bound by the Joint Statement.The Joint Statement committed the parties to a course of action and created obligations for them. Even if the expression of the parties' intent in the Joint statement was less than perfect, the language they used was instinct with an obligation which overcame any asserted indefiniteness in the document. The Joint statement itself was clear in its manifestation of an intent to be bound; but even if one concluded that there was an imperfect expression of the parties' intent, the document was instinct with an obligation which supplied the binding requirement of the transaction. Moreover, courts have found that an agreement may be instinct with an obligation based on principles arising from the relationship of the parties and their course of conduct. See, Toussaint v. Blue Cross and Blue Shield of Michigan, 292 N.W.2d880 (1980). A reasonable person would have viewed the surrounding circumstances of this transaction as contractually obligating the parties to each other."

Snow, pp. 17-18

Arbitrator Snow turned next to the question of enforcing the Joint Statement. He reasoned that it was logical to presume that the parties intended to use standard enforcement mechanisms for disputes that might arise between the parties, namely, their negotiated grievance procedure set forth in the collective bargaining agreement (Snow, p. 19). He concluded,

"The inference is clear that the collective bargaining agreement is presumed by the parties to be the enforcement mechanism used to resolve their disputes, differences, disagreements, and complaints with regard to conditions of employment. The Joint statement did not provide an alternative means of enforcement. It is concerned with a condition of employment.

Accordingly, it is reasonable to conclude that the Union may use the negotiated grievance procedure to resolve disputes under the Joint statement on Violence and Behavior in the Workplace.”
Snow p.20

The Employer’s final argument was that using the negotiated grievance procedure was inappropriate because there was no quid pro quo, that the Union gave up nothing to receive this additional benefit. Arbitrator Snow rejected this approach reasoning that the courts do not test the economic equivalence of the bargain (Snow, p. 20). He concluded,

The rule that courts do not test the economic equivalent of a bargain is long standing. As another court observed, "the rule is almost elementary that where parties get all the consideration they bargained for, they cannot be heard to complain of the want or inadequacy of consideration." (See, Chicago and Atlantic Railways v. Derkes, 3 N.E. 239 (1885)). If there is consideration, there is no requirement of benefit to a party.The bargain theory of consideration supports a conclusion that the mutual exchange of promises in this case constituted consideration. The mutual exchange of promises involved a commitment from each party "to make the workroom floor a safer, more harmonious, as well as a more productive workplace." (See, Joint Exhibit No.4). Use of the negotiated grievance procedure was an incidental result of the promissory exchange between the parties. Moreover, there was unrebutted evidence that the Employer, in fact, has benefited from the exchange between the parties and has used the Joint statement in regional arbitrations against workers who exhibited behavior inconsistent with the Joint statement. There, in fact, was consideration in the bargained-for exchange between the parties. The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties. As the U.S. Supreme Court instructed:

There (formulating remedies) the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. (See, United steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960)). Snow pp. 21-22

The Binding Effect of a National Award:

There have been dozens of occasions where the parties have jointly informed Regional arbitrators that National arbitration decisions are binding and controlling in matters of interpreting contractual language. It is the Regional arbitrator's job to apply the Interpretive Award. This is usually done during the course of the hearing in opening or closing arguments; however, National cases have also been submitted as evidence with the instruction that the Award has the same binding effect as the Collective Bargaining Agreement and the arbitrator is bound by the Award even if he should disagree with it. It has even been the topic of USPS/Union panel discussions during meetings of the National Academy of Arbitrators.

The critical nature and binding effect of a National decision has been frequently cited by Regional arbitrators when rendering decisions in contractual matters. One Arbitrator, the late Ernest Marlatt, considered the impact of a National decision in an Award regarding the hiring of casual employees in lieu of career employees (See Ernest E. Marlatt, S7C-3N-C 31609/31630, Pensacola, FL, February 5, 1993). Arbitrator Marlatt wrote, "The real issue in this case is whether or not language purporting to interpret the contract in a National level arbitration becomes binding on Regional arbitrators as well as the parties themselves, or whether such arbitrators are free to ignore such interpretive language if they consider it outside the scope of the issue submitted to the National arbitrator" (p.5). He further stated,

"The National Arbitration Panel was designed and created by the parties for the purpose of resolving with finality any disputes as to the interpretation of the National Agreement. If the National arbitrator's interpretation is wrong, even egregiously wrong, so be it. The parties will have to deal with that in their next round of contract negotiations.

Interpretations of National arbitrators become incorporated into the language of the National Agreement just as if the parties had engrafted it themselves. In this way, there is nationwide consistency in the application of the contract, not regional applications or local applications. If arbitrators are free to whittle away at the interpretive language of these National decisions; the issues have not been settled and cannot be settled."

pp. 12-13

When Arbitrator Zumas interpreted Article 7.I.B.I. he may have used a cannon to kill a mosquito, but it is nevertheless an interpretive award. His decision drew its essence from the contract. He was not dispensing his own brand of industrial justice. His language was neither obscure nor ambiguous.

p.13

To paraphrase:

Zumas said it.

I believe it.

That settles it.

p.16

I agree with Arbitrator Marlatt. Accordingly, I find three things that can be determined after reading the Snow Award and considering the impact of a National Award:

- 1. The Joint Statement is an enforceable and binding Agreement between the parties.**
- 2. It is enforceable through the USPS/NALC negotiated grievance procedure.**
- 3. Arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties.**

After carefully considering the cites and the positions given to me by the parties I find that the grievance is arbitrable, and the remedy requested by the Union may be proper depending on the merits of the case.

With respect to the Management cites relating to the arbitrability question,

I reject consideration of Arbitrator Donald E. Olsen, Jr.'s F01N-4F-C 04017431, March 18, 2004 Award. It is not dispositive of the issue herein. He makes no reference to the Snow Award. It is unknown whether or not he considered it.

I also reject consideration of Arbitrator Stephen J. Rosen's A01N-4A-C 03057175 Award for the same reason noted directly above.

Arbitrator Bruce Fraser's A98N-4A-C 00257265 Award, July 3, 2002, considered the Snow Award. According to his understanding, the Snow Award did not give the arbitrator the right to impose discipline. He reasoned, "Were Snow to have so ruled, the result would have been a modification of Article 3 and been in violation of Article 15(4)(A)(6). ...If he had intended to rule that an arbitrator should have the authority to discipline management personnel, he surely would have specified it. Rather I read his language as simply suggesting that there is a wide range of remedies available to rectify an unacceptable working condition, including the removal of a non-Union employee from supervisor duties" (See p. 6). I respectfully disagree. In order to give meaning to a word, a sentence or a phrase the document must be read as a whole. Words and phrases cannot be read in isolation. Arbitrator Snow considered the impact his findings would have as viewed in context with Articles 1.2 (Exclusions) and 3 (Management Rights) and found the Joint Statement to be a jointly administered exception to Management's exclusive right to "....suspend, demote, discharge, or take other disciplinary action against such employees" (Article 3.B). Snow stated,

"The Joint Statement marked a departure from the past and pointed the way to organizational change. This was a document that evidenced an intent to take action rather than a mere statement of opinions and predictions. It was a "manifestation of intention to act" which justified a conclusion that a commitment had been made. After making strong promissory statements, the parties signed the document, signaling more than a gratuitous pledge."

Snow, p. 17

He determined that the "....grievance procedure of the National Agreement may be used to enforce the parties' bargain and arbitrators have available to them the flexibility found in arbitrable jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties" (Snow, p. 22). Taken in context with his obiter dicta, the plain meaning of words is preferred when construing language. It says what it says.

Each of the Union's cites, Regional Arbitrator Claude D. Ames, E90N-4E-C 94051426, Henderson, NV, February 19, 1999, Regional Arbitrator Leonard C. Bajork, H94N-4H-C 95041405, Memphis, TN, April 17, 2000, United States District Court for the Western District of Tennessee, United States Postal Service v. National Association of Letter Carriers, No. 00-2651 GV, Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Motion for Summary Judgment, September 28, 2001 (upholding the Bajork Award), Regional Arbitrator Raymond L. Britton, K94N-4K-C 98111598, Clinton, MD, April 13, 2001, Regional Arbitrator Lawrence Roberts, G06N-4G-C 12319863, Gadsden, AL, September 10, 2013, Regional Arbitrator Nancy Hutt, F11N-4F-C 14007488, San Mateo, CA, September 19, 2014, made the same or similar conclusions and findings as the undersigned.

MERITS

Joint Exhibits:

1. National Agreement
- 1A. Joint Contract Administration Manual (JCAM)
2. Grievance Package, consisting of 357 pages
3. DVD 911 Call, August 24, 2012
4. DVD Police Cam Video

Management Exhibits:

1. Excerpt from Postal Inspector's Investigative Memorandum, Polygraph Exam Results
2. Postal Inspector's Investigative Memorandum (IM), September 28, 2012

Union Exhibit:

1. Email from Scott Brimer, USPS Labor Relations Specialist to Tracey M. Bibbs, Postmaster, Gadsden, AL, Subject: Arbitrator's decision, September 23, 2013

RELEVANT TESTIMONY

Jamey Cranmer, 20-year Letter Carrier and NALC Branch President/Shop Steward testified to his interpretation of Joint Exhibit 4, the Police Video. He maintained that Station Manager Robinson was not being truthful when she was interviewed by Postal Inspector (PI or Inspector) Morgan. According to Cranmer Ms. Robinson told Inspector Morgan she and Police Officer Mitchell James entered her office where she instructed Officer James to "treat it like a warrant, look thoroughly in the office. Open the drawers." (quoting from Inspector Morgan's Memorandum of Interview of Deitra Robinson, Joint Exhibit 2, p. 69) Cranmer testified that the gun was not in her office when it was seen, it was in her purse on the supervisor's desk on the workroom floor. Cranmer testified according to the video Robinson was not telling the truth when Inspector Morgan asked her if Officer James would have taken the gun out of the post office for her or even offered to do that. She responded, "No. Not even close. I don't think he would even feel comfortable doing that. He doesn't know me good enough. Not even close. Not even close. And I don't know him well enough to confide in him (if I did have a gun). That never happened. Truthfully" (quoting from Inspector Morgan's Memorandum of Interview of Deitra Robinson, Joint Exhibit 2, p. 70). Cranmer indicated that in the video Officer James is seen and heard stating Ms. Robinson used to date his cousin, he had known her for years and that if she had a gun he (Officer James) would see what he could do and take it out of the office for her. Cranmer testified that after reviewing Manager Robinson's polygraph results, as contained in the Investigative Memorandum (IM), she did not tell the truth while under oath during the first hearing when she told Arbitrator Roberts she passed the polygraph test. Cranmer testified the Postal Inspector's investigation was tainted. He claimed that after finally receiving the Investigative Memorandum more than a year after requesting it, and even then only because Arbitrator Roberts ordered it, he read it and observed that the September 28, 2012 Investigative Memorandum contained a brief reference to Manager Robinson's polygraph examination that, "On September 6, 2012, Ms. Robinson agreed to undergo a polygraph examination. No new information was obtained" (quoting from Inspector Morgan's IM, Joint Exhibit 2, p. 62). Cranmer implied that the Postal Inspector's investigation was tainted. Cranmer furthered his contention that the IM was tainted as evidenced by their attempt to make him out to be a dishonest person. After an interview with Letter Carrier Judy Boswell Inspector Morgan wrote, "Boswell stated Jamey Cranmer would pay people off to write

statements.Boswell further claimed Cranmer is supposed to split the money, but he doesn't" (quoting from Inspector Morgan's September 4, 2012 Memorandum of Interview, Joint Exhibit 2, p. 108). After receiving the Inspector's version of her interview more than a year later Boswell wrote a statement denying what Inspector Morgan wrote. She stated, "I never said Jamey Cranmer told me to write a statement so I could get paid... If I said they call Cranmer it is to ask what they need to do. I feel like some of the things in the interview were twisted. Some things I know I did not say" (quoting from Judith Boswell Statement, Joint Exhibit 2, p. 111).

Under cross-examination Jamey Cranmer testified that it wasn't likely when asked whether it was possible that Officer James was simply using a ploy to get Manager Robinson to give him the gun. He stated that he was alone when he saw the gun, he did not call the police, he told Letter Carriers Champion and Morgan to "Go look in Ms. Robinson's purse", left the building to work his route and called the postal inspectors. He admitted the gun was never found.

Phillip Morgan, 19-year Letter Carrier (retired) testified that he wrote his statement the morning of the incident. He later made a statement for the postal inspectors. He served as a United States Air Force Special Policeman and carried a side arm. He has law enforcement experience. He was one hundred per cent positive he saw a gun in Manager Robinson's purse on the morning of August 24, 2012. The gun was prominently displayed in plain view. He called the police.

Under cross-examination Mr. Morgan stated that he did not see the police search for the gun. He admitted that the gun was not found.

The parties stipulated that the August 25, 2012 written statement of Brad Watkins says what it says. In relevant part (unedited) Mr. Watkins states, "...There was 4 police officers from the City of Gadsden and 1 officer from Attalla City. The police chief of Gadsden was also there. ... At

that time she was asked to go into her office and only one officer went into the office with her. The officer was a tall black man who appeared thru the large glass window in the office to be questioning Mrs. Robinson. She threw up her hands outward, shrugged her shoulders and shook her head (no) side to side. Within 30 seconds to one min they both exited the office and went to her desk. Mrs. Robinson picked up her purse and moved it from the left side to the right side of the desk and said "this is my personal space" to the black gentlemen police officer. The black gentlemen police officer then walked to the huddle of other officers at the front door of the post office. ... The police chief said "there is no gun" and went on to say "this is a postal inspector matter." ... The problem with that is I Michael Brad Watkins witnessed the entirety of the investigation and I never once saw any of the officers search the office, or her purse, or any other personal belongings. From my witness of the events I was no more than 10 – 15 Ft from everything that took place and also I can assure that there was no investigation by the policemen on the scene that day in Alabama City Post Office.

Management Exhibit 2, pp. 39-40

(Arbitrator's note: The Watkins statement is consistent with Inspector Morgan's September 4, 2012 Investigative Interview, Management Exhibit 2, pp. 36-39.)

Robert Champion, 27-year Letter Carrier testified he was one hundred per cent positive he saw a gun in Manager Robinson's purse on the morning of August 24, 2012 and he wrote a statement to that effect immediately after seeing it. He stated that he served as a United States Marine and he has been around guns.

Under cross-examination he testified that he was out on his route when the police arrived. He replied, I don't think so when asked if a gun was found.

Tracey Bibbs testified she is a 30-year Postal employee and currently the Postmaster in Center, AL. During the time in question she was assigned as the Officer in Charge in Gadsden, AL. She

was the Management Formal A representative after the grievance was remanded by Arbitrator Roberts. She testified that Officer Mitchell James conducted a search of Manager Robinson's office and her purse and found no gun.

Under cross-examination in response to the contentions she made in the remanded grievance regarding Manager Robinson's polygraph results she testified that she doesn't know that Robinson failed the polygraph or showed deception. She further stated that she doesn't know about Robinson's testimony regarding the polygraph test results in the previous arbitration. When given a copy of Union Exhibit 1, the September 23, 2013 email from LRS Brimer to her explaining that (unedited), "There was some new information discovered when the inspection service provided the polygraph results. One that is troublesome is Deidra Robinsons. The polygraph examiner stated that she was not telling the truth when she stated that she did not bring a gun into the Alabama City Station on September 24, 2012.", she replied, "I don't remember it." She later explained that she receives 150 emails a day and she could have deleted it even though it was tagged "High Importance". She further testified that she didn't remember seeing the polygraph test results. When asked about her contention regarding polygraph examinations, "Also, if you tell yourself something over and over again you start to believe it yourself. Once again the examiner stated that the test results were his opinion.", she stated she never had a polygraph and didn't really know how they worked. She stated she never viewed the video in its entirety. She assumed that Officer James was testing Robinson when he offered to take the gun out of the office for her. She stated she believed Manager Robinson told the truth when Robinson stated or acted like she did not know Officer James.

Deitra Robinson testified that she is a 28½-year Postal employee and currently Postmaster in Albertville, AL. During the time in question she was the Alabama City Station Manager. She testified that she did not have a gun in her possession in the Alabama City Station on the morning of August 24, 2012. She stated the police conducted a search and found no gun. She stated she did not receive an Emergency Placement nor any discipline because she did not have a gun.

Under cross-examination she testified that she doesn't remember any police officer telling her to give them her gun. In response to why she told Arbitrator Roberts she passed her polygraph examination she stated she thought she passed it. She stated that she does not know Police Officer James personally and that she never dated his cousin. When given a copy of her statements (Joint Exhibit 2, pp. 141-143) she was asked if she personally wrote them. She replied yes. When she was asked to define the word "indubitable", a word she used in her statement, she replied, I don't know what it means.

DISCUSSION AND FINDINGS ON THE MERITS

The local police were the first to respond to the incident on August 24, 2012 and there is considerable controversy over what was said and done. For example, when being interviewed the second time (August 29, 2012) by Postal Inspector Morgan, Station Manager Robinson stated she had seen Officer James 3-4 times but she does not know him personally. Yet, the police-cam video clearly recorded Officer James stating "I've known her for years. She used to date my cousin." Somewhat later in the interview Robinson tells Inspector Morgan that she believed the door remained open when she and Officer James went into her office to search for the weapon. The police-cam clearly shows Officer James closing the office door after they entered. Further into the interview Inspector Morgan asks whether Officer James ever offered to take the gun out of the post office for her. Ms. Robinson replied, "He doesn't know me good enough. Not even close. And I don't know him well enough to confide in him if I did have a gun. That never happened. Truthfully." The police-cam clearly records Officer James whispering to his Lieutenant, "I told Ms. Robinson if she had a gun I would see what I can do and take it out of the office."

There is also considerable controversy regarding the Postal Inspector's investigation. For example, in addition to interviewing Station Manager Robinson and the 4 Letter Carriers who witnessed the incident, Inspector Morgan and her partner conducted equally comprehensive interviews with employees Richard Cushing, Felichia Powe, Judy Boswell, Brad Watkins and Angela Kuykendall, all of whom did not witness the incident. They even came back and interviewed Ms. Powe a second time. These interviews seem to suggest that the focus was more on Letter Carrier Cranmer and his role as NALC Branch President or other bargaining unit

employees who might have had some reason to participate in some get even conspiracy or general workroom floor drama than it does on Ms. Robinson. It could be said that they did this in the interests of performing a full investigation. However, it simply defies reason that Inspector Morgan did not deem a polygraph was "necessary" for Letter Carrier Champion (Management Exhibit 1, p. 1). After reading the entire Investigative Memorandum, it is my considered opinion that nothing could have been more necessary. According to the record he had nothing to gain and no axe to grind against Management in general or Ms. Robinson in particular. Inspector Morgan also chose not to include her rationale for not conducting the exam in her report.

Moreover, it can only be misleading if not disingenuous for Inspector Morgan to write, "On September 6, 2012, Ms. Robinson agreed to undergo a polygraph examination. No new information was obtained." (Management Exhibit 2, p. 2) Clearly, on numerous occasions Robinson stated she did not bring a gun into the Alabama City Station on the morning of August 24, 2012. With crystal clarity Polygraph Examiner Meyle states, "It is the opinion of this examiner that she was not being truthful when she stated she did not bring a gun into the Alabama City Station on August 24, 2012." (Management Exhibit 1, p. 8) This is new information regardless of how you spin it.

As it further relates to the way Inspector Morgan chose to word her Investigative Memorandum, I find it disturbing when I compare her explanation of the Robinson polygraph results against her explanation of Letter Carrier Pruett's polygraph results. She wrote, "No new information was obtained" in Robinson's case but wrote, "...As a result of the polygraph, Mr. Pruett recanted that he was certain he saw a gun and changed his statement to he saw what he thought was a gun." (Management Exhibit 2, p. 3) Why quote the polygraph examiner in Pruett's case and not quote the polygraph examiner in Robinson's case if not to influence the reader's perception of the facts?

Yet another disturbing element in the Postal Inspector investigation is the single reference to the Police-cam video. They obtained a copy of it and viewed it (Management Exhibit 2, p. 5). Inspector Morgan made numerous references in her Investigative Memorandum to allegations of what was said in conversation between Officer James and Ms. Robinson and between Officer

James and his lieutenant (Management Exhibit 2, pp. 1, 5, 9, 10, 12). The video plainly records and shows precisely what Officer James said regarding his offer to take the gun out of the post office for Ms. Robinson. It directly conflicts with what Ms. Robinson told Inspector Robinson during her August 29, 2012 Investigative Interview (Management Exhibit 2, p. 10). Nothing is written about it in the Investigative Memorandum.

The final disturbing element in the Investigative Memorandum is the exaggeration of the "search" for the gun. Again, Inspector Morgan makes several references to a search being conducted by the police and the inspectors but no gun was found. Bluntly stated, this was not an exhaustive effort to find a weapon. A purse, a vehicle and arguably a desk were searched. There are a hundred places inside a post office where one might conceal a handgun that was small enough to fit inside a purse. It could have been in the "unsearched" supervisor's desk on the workroom floor where the gun was first seen. Yet, Inspector Morgan portrays the search as something more than it actually was. ... "Ms. Robinson said that GPD officers searched her purse and her office and that no gun was found. (This was verified by Inspectors with two of the responding GPD officers, Lieutenant Mike Moon and Officer Mitchell James)... Inspector Morgan was given consent by Ms. Robinson to look at the contents of her purse. No firearm was located by Inspectors. Ms. Robinson also gave consent to Inspectors Mayhew and Morgan to search her personally owned automobile, which was a pick-up truck with Alabama license plate 31D68V4... No weapons of any kind were located inside of the truck... No gun was ever found during the searches by Gadsden PD or postal inspectors... However, inspectors obtained GPD video footage of the incident and the video shows at least three police officers present during the search of Ms. Robinson's purse. No gun was found." (Management Exhibit 2, pp. 1 and 5)

Unfortunately, and for whatever reason, Management chose not to have Police Officer James or Postal Inspector Morgan appear and testify to clarify the disturbing elements and the obvious contradictions and respond to the Union's allegations in this case. Instead, they rely solely on the record and attempt to demean the Union's case rather than present the best evidence in building their own. They have known with a certainty since at least September 23, 2013 that these matters would come up again in the next arbitration (See Union Exhibit 1).

The testimony of then OIC Bibbs and then Station Manager Robinson did nothing to enhance Management's credibility in this matter.

Ms. Bibbs offered very little in direct testimony and she displayed a selective memory when asked questions under cross examination. Her concept of polygraph examinations and what a polygraph examiner does is, in a word, uneducated. Regardless of whether she did or did not know that Ms. Robinson failed the polygraph examination or showed deception or that she didn't know about Ms. Robinson's testimony during the first hearing or that she didn't watch the police-cam video in its entirety, it was her duty to know and to take action. She was the Officer in Charge at Gadsden and the Management designee in the grievance procedure. She performed no investigation of her own. She did not take precautionary action for safety reasons and place Ms. Robinson off the clock, with or without pay, pending a complete investigation into the incident. She simply accepted the search results over the word of 4 of her own employees. Her testimony that she could have deleted without reading the September 23, 2013 "High" importance email informing her that Ms. Robinson failed the polygraph examination does not serve her well. I find it exceedingly unlikely that an email with the subject: Arbitrators decision – 12319863JSV – Gadsden containing sensitive information including the Award, the Inspection Service Investigative Memorandum, the polygraph results and Officer James' statement, regarding such a potentially volatile situation would simply have been deleted.

Ms. Robinson also displayed a selective memory in the key elements of her testimony. She flatly denied having a gun on postal property. But, beyond that she was hesitant when responding to questions. She had a motive and an interest in the outcome, her job was on the line. She offered no explanation except to say she didn't remember Officer James telling her to give him her gun and he would take it out for her. She offered no explanation for why she told Arbitrator Roberts she passed the polygraph test, when in fact she did not, except to say that she thought she passed it. She offered no explanation for Police Officer James' comment that he'd known her for years except to say that she didn't know him personally. She offered no explanation for Police Officer James' comment that she used to date his cousin except to deny it. She offered no explanation, either in direct testimony or cross examination, for why she failed the polygraph exam.

Her response during this hearing, "I thought I passed it", when questioned why she told Arbitrator Roberts she passed the polygraph test does not correspond with the record. Jamey Cranmer, NALC Formal A representative, witness to the event and polygraph subject, wrote (unedited), "...right after the polygraph exam is over the postal inspector administering the polygraph exam told each person that took a polygraph exam the results of and if they failed or passed and if any deception was indicated..." (Joint Exhibit 2, p. 18). Both hearing advocates are intimately familiar with the case and were the advocates in the original Roberts hearing. The Cranmer comment was unchallenged by Management.

I reject Management's theory in closing argument that employees changed statements, different employees claim they saw a gun at different times, all of the employees after supposedly seeing a gun waited, got a story together and then only one of them called the police. The record shows otherwise. Numerous Memorandums of Interview begin with the comment or words to the effect, "On Friday, August 24, 2012, Atlanta Division Headquarters received several phone calls in reference to Deitra Robinson, Station Manager for the Alabama City Station of the U.S. Postal Service, possessing a firearm inside the Alabama City Station." (See Management Exhibit 2, pp. 7, 9, 11, 16, 19, 24, 27, 29, 31, 33, 36 and 41.) Clearly, the record shows that not only were the police called but several employees reported the incident to the postal inspectors.

I further reject Management's theory that the Union relied on the failed polygraph test results of Ms. Robinson while remaining silent on the failed polygraph test results of Letter Carrier Pruett. I differentiate between the two exam results. In Robinson's case she made no admissions and failed to provide a logical explanation for the deceptive responses on her polygraph exam. In Pruett's case he asserted he saw what he believed was a hammer of a gun with a strap around it inside Ms. Robinson's purse, stating he could not be 100% certain that what he saw was a gun. In Robinson's case, she was found to be untruthful about bringing a gun into the Alabama City Station on August 24, 2012 and she offered no explanation for the findings. Pruett's explanation for his deceptive responses is consistent with his original assertion that he saw a gun. His description of what he believed he saw is consistent with other eye witnesses.

Management argued that Pruett thought he saw a gun and because he has never owned a gun he couldn't be sure it was one is akin to saying, I never owned an airplane, so I can't describe one. This may or may not be true. However, using that same logic one could also draw the analogy, to say that Letter Carrier Champion (who volunteered but was not given a polygraph because it was determined to be "unnecessary" by the postal inspectors), a US Marine veteran who has been around guns and Letter Carrier Morgan (who also volunteered but was not given a polygraph for medical reasons), a US Air Force Military Police veteran who carried a sidearm, would not recognize a handgun when they saw one would be the same as saying Frank Lloyd Wright would not recognize a blueprint if he saw one.

In conclusion, I find that the testimony of Tracey Bibbs lacks credibility. I find that the testimony of Deitra Robinson lacks all credibility. I find the testimony of Jamey Cranmer, Phillip Morgan and Robert Champion credible. I find the investigation performed by the postal inspectors, except for the polygraph examiner, to be a sham. Accordingly, after careful consideration of all of the evidence and testimony of record I find that Station Manager Deitra Robinson violated the Joint Statement on Violence and Behavior in the Workplace by bringing a gun into the Alabama City Station on August 24, 2012.

REMEDY

This is not a case of first impression. To be sure bringing a gun into a postal facility or onto postal grounds is a serious matter. It is common knowledge in every post office in the country that firearms are prohibited inside a post office or on postal property. It is addressed in every Newcomer's Orientation for newly hired employees and posters are permanently and prominently displayed prohibiting such action. In light of the history of tragic events within the postal and public communities and the significance that the parties place on addressing violence in the workplace, no incident can go without reproach. The question herein is the degree of remedy requested by the Union.

In a recent Award in a similar situation involving a letter carrier who brought a gun onto postal property Management argued (in a complete role reversal from the instant case) that removal,

based solely on the fact that the Grievant brought a gun onto postal property, was the only appropriate remedy. The Union (in a complete role reversal from the instant case) argued that the removal lacked just cause, was punitive rather than corrective and advocated that a letter of warning would have satisfied the violation. I disagreed with both parties. I reduced the removal to a 14-day suspension based on mitigating factors (See my Award in G11N-4G-D 15067599, New Orleans, LA, July 18, 2015). Here there are no mitigating factors. Moreover, the stipulated issue framed by the parties does not ask the Arbitrator to consider mitigating circumstances or other just cause factors that are found in cases grounded in alleged violations of Article 16. In this regard, I agree with the Management contention that Article 16 of the USPS/NALC National Agreement does not apply. The question the parties asked was whether Ms. Robinson violated the Joint Statement by bringing her gun into the Alabama City Station and if so, what will the remedy be. Accordingly, the answer to the remedy will be found in the Joint Statement.

This Agreement can only be described as a powerful restatement of the parties' joint commitment reaffirming the basic right of all employees to a safe and humane working environment. To put emphasis on their pledge they state, "...It is also the time to take action to show that we mean what we say... ...there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service... ...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 our 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."

According to the cites provided by the Union (noted previously herein), there is no discernable pattern for remedy.

Arbitrator Roberts, who initially heard and remanded the case at bar in September, 2013 stated,

"Arbitrator Snow points out the authority of the undersigned to grant the Union's remedy in this case. And the alleged violation argued by the Union in this matter is

quite serious, and if the burden of proof is met, the undersigned would not hesitate to grant the Union's requested remedy in that regard."

p. 6

Arbitrator Bajork awarded that the offender be reduced in rank for a period of five years as a first time offense. He further directed that his Award be placed in the offender's file for the duration of the five year period and that his Award and a letter reiterating the terms and the consequences for proven violations of the Joint Statement be posted in a conspicuous location for 60 days.

Arbitrator Britton directed the Employer to remove the offender from the Postal Service.

Arbitrator Ames directed the offender to submit to a fitness-for-duty physical and mental examination. If he was found to be fit for duty, he would be prohibited from exercising supervisory control or authority over employees in the Letter Carrier Craft.

Arbitrator Hutt restricted the offender from performing supervisory duties over employees in the Letter Carrier Craft.

After carefully considering the record of evidence and testimony I make the following

AWARD

For the reasons noted herein, the grievance is sustained and the remedy requested by the Union is granted. The Employer is directed to remove Deitra Robinson from the Postal Service.

The Union shall provide a copy of this Award upon receipt to the Gadsden Postmaster who will immediately post the Award in a prominent and conspicuous place adjacent to a copy of the Joint Statement on Violence and Behavior in the Workplace in the Gadsden Post Office and all of its stations and branches for a period of 60 days.