

REGULAR ARBITRATION PANEL

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 In the Matter of the Arbitration \*  
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 between: \*  
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 United States Postal Service \*  
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 and \*  
 \*  
 National Association of \*  
 Letter Carriers, AFL,CIO \*  
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Grievant: B. Santee  
 Post Office: Metairie LA  
 USPS Case No: G11N-4G-D 15183237  
 NALC Case No: 5-4-RN-15

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Kawanyza Dorosan  
 For the Union: Corey Walton

Place of Hearing: Metairie, LA  
 Date of Hearing: October 28, 2015  
 Date of Award: November 24, 2015  
 Relevant Contract Provision: Article 16  
 Contract Year: 2011  
 Type of Grievance: Discipline

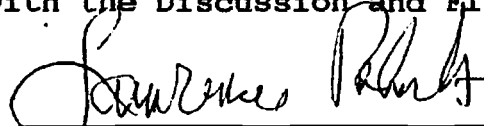
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Award Summary:

The Grievant in this case was issued a Notice of Removal Letter alleging "Unacceptable Conduct" and "Falsified Medical Documentation." The undersigned identified mitigating circumstances that should have been considered by the Employer prior to discipline being issued in this matter. Furthermore, the Employer failed to meet the just cause standard set forth in Article 16. The grievance is sustained in accord with the Discussion and Findings below.



Lawrence Roberts, Panel Arbitrator

**SUBMISSION:**

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 28 October 2015 at the postal facility located in Metairie, LA. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

**OPINION**

**BACKGROUND AND FACTS:**

The Grievant in this matter is employed as a City Carrier Assistant at a Metairie, LA Postal facility. She has been employed in that position by the Postal Service since March 2014.

On or about 13 May 2015, the Grievant received the following Notice of Removal Letter, signed by a Supervisor, Customer Services. That document, in pertinent part, reads:

"This is advanced written notice that you will be removed from the U. S. Postal Service effective June 12, 2015. However, if a timely grievance is filed on this issue, the effective date of the removal will be deferred until a decision is reached at Step B of the Dispute Resolution process or fourteen days following receipt of the appeal at Step B, whichever occurs first The reason for this action is:

**CHARGE 1: UNACCEPTABLE CONDUCT**

**CHARGE 2: FALSIFIED MEDICAL DOCUMENTATION**

DATE OF DR'S NOTE	STATUS OF DR'S NOTE
01/01/2015	FALSIFIED
01/19/2015	FALSIFIED
NOT LEGIBLE	FALSIFIED
02/18/2015	FALSIFIED
02/20/2015	FALSIFIED
03/18/2015	FALSIFIED

On Wednesday, April 8, 2015 at approximately 8:30 a.m. OIG Special Agents (SA) Melissa Mitchum and William (Billy) Kuhn arrived at the office and interviewed you. The OIG'S interviews was based on their investigation regarding your submission of suspicious medical documentation supporting your inability to report as scheduled or perform your city carrier assistant duties. During the QIG's interview you admitted that you fabricated doctor's notes to support your refusal to work additional hours when assigned or to perform your full duties as a city carrier. The altered medical documentation excused you from work and limited your duties as a carrier. Each medical documentation listed the doctor's name as Dr. Austin Stewart, MD F.A.C.P, 5278 Read Blvd STE 105, and New Orleans, LA 70127. Phone: (504) 481-1615 Fax: (504) 480-3300 along with the falsified or altered doctor's signature. The OIG searched your Personal vehicle and recovered blank doctor's notes similar to the completed notes you submitted to your supervisor. In addition, the OIG SA traveled to the address listed on the doctors slips and discovered that there is not any doctor's office at the location. It was discovered that the location consist of a vacant lot. After the OIG's interview was completed the agents briefed me on their findings.

The OIG's investigation was conducted as a result of you presenting medical documentation to Supervisor (A), Corey Bastoe to substantiate your need for job restrictions. You submitted medical documentation dated January 1, 2015 restricting you from heavy lifting for 4-6 weeks and walking limitations of 3-5 hours a day due to heavy bleeding complications. You submitted medical documentation dated January 19, 2015 with walking limitations of 2-5 hours daily and "Restrictions still remain the same" handwritten next to other. You submitted medical documentation dated February 18, 2015 with walking limitations of 3-5

hours and "Follow up 02/20/15 last app" next to other. You submitted medical documentation dated February 20, 2015 with walking limitations of 3-5 hours of walking and "Follow up March 6, 2016" next to other. You submitted medical documentation dated March 18, 2015 with walking limitations of 3-5 hours daily and "follow up April 6, 2015" next to other. Each documentation contained a signature implying that the documentation was authentic. Your conduct was unacceptable when you falsified medical documentation.

After the OIG briefed me, at approximately 11:00 a.m. I conducted an Investigative Interview with you and your representative Ronald Norris. I asked if you admitted to the OIG to falsifying doctors notes to support your absences. You answered no. I asked if you presented fake doctors notes to your supervisor. You said the notes weren't fake. I asked if all the doctors notes you submitted to your supervisor were real. You said all except one. I realized that your responses to my questions were different from what the OIG had briefed me on.

I placed you in a non-duty, non-pay status because your submission of falsified and altered medical documentation caused the postal service to work other employees' additional hours because of your absences.

On Tuesday, April 28, 2015, Supervisor (A) Corey Bastoe conducted a second investigative interview with you and your representative Ronald Norris. I informed you that this investigative interview was due to the findings of the OIG's Investigation Report dated April 6-14, 2015 regarding you submitting false medical documentation. I informed you that your responses could lead to corrective action up to and including removal. You said you understood. You said you were aware of your responsibility to follow instructions of your supervisor. You said you weren't aware that failure to be regular in attendance could result in disciplinary actions up to removal. You said you were aware that your absences greatly affect the unit by creating extra work among fellow carriers. You agreed that you were allowed off for most of your scheduled doctor's appointments. You agreed that you were interviewed by the OIG on April 8, 2015. I asked if you admitted to the OIG that you submitted false doctors notes to your supervisor. You answered yes. I asked how many doctor's notes did you fabricate and

turn in to your supervisor. You said you told them and you didn't remember.

I asked if you were aware that falsifying doctor's notes is a serious offence. You said you weren't aware. I asked if you forged the doctor's signature on the doctor's note. You said no. You said the doctors notes were signed by Doctor Austin Stewart. I asked the address for the doctor's office located at 5278 Read Blvd. You stated, "That's what I was told." I asked if you were aware that that the address you provided for the doctor's office was a vacant (at. You said you weren't aware. I asked how you were aware of Dr. Austin Stewart and you said Dr. Stewart was a family member's friend. I asked where you got the doctors notes with the address that you submitted to your supervisor. You said a family member's friend. I asked if you were aware that Dr. Austin Stewart provided a sworn signed statement stating he has never seen those doctor notes with his name and phone number nor does he know you in any profession or social capacity. You answered no. You were not interested in resigning from the United States Postal Service when offered the opportunity. I asked if you needed the number to EAP. You already had the telephone number to EAP. I asked if there was anything you wanted to add. You admitted you were wrong. You said you did not think that you should be fired. You also said you are going through a hard time. The explanation you provided does not excuse or mitigate your unacceptable conduct and submission of falsified medical documentation to postal management giving you restrictions and limiting your city carrier duties.

As a postal employee, you are expected to discharge your assigned duties conscientiously and effectively and required to follow instructions including all rules and regulations of the United States Postal Service. You are reminded that we have a joint commitment in achieving the goals of the Postal Service. Postal rules and regulations require you to be an honest and trustworthy individual. Employment with the Postal Service requires you to perform your duties efficiently and be of good character and reputation. Furthermore, you are expected to conduct yourself during and outside work hours in a manner which reflects favorably upon the Postal Service.

Postal employees are prohibited from conduct which impedes the efficiency of the Service. All employees

are required to maintain an atmosphere of dignity and respect. Your actions violate this requirement. Intentional misstatements of material fact to obtain undeserved valuable benefits constitute fundamental dishonesty that, absent extraordinary circumstances, permits termination for a first offense. Therefore, your removal is warranted."

The Letter goes on to cite alleged violations of various postal manuals as well as describing the options and rights available to the Grievant to protest the Removal action.

The Grievant, as well as the Union, refute the charges. The instant grievance was filed in protest. The Union asks the Grievant be returned to work and made whole in every respect. In rebuttal, the Agency argues the evidence supports their removal action and requests their initial decision be upheld.

Obviously, the Parties were unable to resolve this dispute during the prior steps of the Parties Grievance-Arbitration Procedure of Article 15. An impasse was declared by the Step B Team on 8 June 2015.

It was found the matter was properly processed through the prior steps of the grievance procedure. Therefore, the dispute is now before the undersigned for final determination.

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine

witnesses. The record was closed following the receipt of oral closing arguments from the respective Advocates.

**JOINT EXHIBITS:**

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.
- 1A. USPS - NALC Joint Contract Administration Manual (in pertinent part)
2. Moving Papers

**COMPANY'S POSITION:**

The Employer contends there is just cause to support the removal action and the instant grievance should be denied. Management insists the physician's documentation was fraudulent and authored by the Grievant.

According to the Agency, the Physician's business address was a vacant lot. Additionally, the Service claims that a consensual search produced blank doctor slips along with practice notation used by the Grievant to falsify the notes.

The Agency argues the Grievant has admitted to the falsification.

The Employer requests the instant grievance be denied based on the Grievant's submission of falsified medical documentation. Management points out the premise of the entire Postal Service are based on honesty and integrity.

The Agency insists the falsification of medical documentation is one of those instances that allow removal on the first occurrence.

The Employer asks this instant grievance be denied in its entirety.

**UNION'S POSITION:**

The Union insists the evidence in this matter will show that Management's case lacked just cause, which is a necessity when dealing with any discipline, especially the ultimate penalty, removal.

Various portions of the Joint Contract Administration Manual were quoted by the Union in support of their position.

The Union references a just cause definition as being divided into six sub-questions.

The Union contends that a thorough investigation was not completed, instead, in this instant matter, inept at best. The Union insists the Grievant was essentially robbed of her proverbial "day in court" as it pertained to her being allowed to answer the charges against her.

In the view of the Union, the discipline in this matter was not issued in a timely manner. According to the Union this removal action took almost two months from the date Management suspected any wrongdoing.

The Union feels that the most important element of any discipline is that it has to be corrective rather than punitive. In that regard, the Union also relies on the language of the JCAM.

The Union also mentions the Grievant had no active discipline on her record at the time of her removal. The Union insists this alone clearly violates the provisions set forth in the JCAM. The Union insists the evidence will show Management's claims of the Grievant receiving some form of benefit from not being at work are completely unfounded.

The Union mentions that Management was put on notice concerning the Grievant's medical events. The Union points out the Grievant did seek EAP assistance, yet, the Employer gave it no consideration in their decision to move the Grievant from her job.

The Union claims the evidence will also show where the Office of Inspector General's investigation was not one of obtaining the truth but one of placing guilt on the Grievant.

Once again, the Union insists the Grievant was denied due process as well as a lack of just cause being present.

The Union asks the instant grievance be sustained in its entirety and grant its requested remedy, that is removal action be reduced to a letter of warning for two years and the Grievant be paid the average number of hours worked in a week for each week she was not employed.



**THE ISSUE:**

Did Management violate Articles 15, 16, and 19 when issuing CCA Brittany Santee a Notice of Removal dated May 13, 2015? If so, what is the remedy?

**PERTINENT CONTRACT PROVISIONS:**

**ARTICLE 16  
DISCIPLINE PROCEDURE**

**DISCUSSION AND FINDINGS:**

This matter involves an issue of removal wherein the burden of proof falls on Management to establish just cause for their actions.

While Article 3, Management Rights, provides the Employer with the power to "suspend, demote, discharge, or take other disciplinary action..." the Employer is limited in any decisions as restricted by other Articles or Sections of the Agreement.

According to the Agreement, no Employee may be disciplined or discharged except for just cause. In my view the "just cause" provision is ambiguous; however, its concept is well established in the field of labor arbitration. The Employer cannot arbitrarily discipline or discharge any Employee. The burden of proof is squarely on the Employer to show the discipline imposed was supported with sound reasoning.

In addition, the just cause standard cannot be gauged in the same matter in all cases since each discipline case is unique to its own set of facts and circumstances.

The chief negotiators of Article 16 suggest progressive discipline. In many cases, that guideline prevails and progressive discipline works to serve both the Employer and Employee. As an example, absenteeism is oftentimes corrected with progressive discipline.

Then, there are those infractions, whereby progressive discipline, is simply improper. Theft would certainly be a good example of one of these instances. In this business, such an act would be intolerable and removal following the first occurrence would only be appropriate. I'm sure the chief negotiators would agree with this reasoning.

However, each matter of discipline rests solely on its own merits. What is found to be applicable in this case cannot be applied evenly to other similar issues. In fact, this case is totally unique when compared to other matters of discipline that I've decided throughout my arbitral career.

The one constant is the burden of proof rests with the Postal Service. It's their obligation to establish just cause or, at the very least, via their case in chief, demonstrate the presence of clear and convincing evidence.

It is not up to the Union to prove innocence, instead, for the moving party to establish guilt. In order to prevail however, Management need not prove their case beyond a reasonable doubt.

Instead, in arbitral matters, the preponderance of evidence rule applies. Clear and convincing evidence is proof via the preponderance. Regardless of the specific term employed, this Agreement, like most others, requires a showing, via evidence, that, more likely than not, the Grievant is guilty as charged.

This is based on the probability of the evidence, it's probable truth and accuracy, not necessarily the quantity. In any case, the meaning is somewhat subjective and this forum lacks a steadfast rule that can be applied to all cases. Instead, only a guideline delineates the evaluation of the evidence and accordingly, is considered on a case by case basis.

This particular Article 16 case involves one of an alleged misconduct. There are certain acts that are certainly

dischargeable offenses, even on the first occurrence. While progressive discipline is certainly recommended by the negotiators, that particular theory of discipline is based on the infraction and is to be determined on a case by case basis.

After careful review and consideration of all the evidence in this matter, I am of the considered opinion, Management did not conduct a thorough investigation, the discipline was punitive rather than corrective, and the punishment was too severe considering the infraction.

In my view, had the Service conducted a thorough investigation and properly considered the Grievant's condition during this clear phase of personal trauma, the thought of removal action would not have even entered any reasonable mind. It was clear the Employer acted in haste and without consideration to all the facts and circumstances in this matter.

The Grievant is charged with "Unacceptable Conduct" and "Falsified Medical Documentation." The Union argued the Grievant was not aware of the applicable JCAM language or the various Postal regulations. And to that end, I agree with the Union's point in that regard. I was simply not convinced the Grievant was fully cognizant of all the Postal regulations referenced by the Employer as being violated.

However, even with that, as I've said in many past Decisions, there is a premise of consideration, that remains unspoken, in any Employer-Employee relationship. Proper conduct and honesty stand at the forefront of that understanding. And it is a mutual expectation on the part of both Parties to live up to that very basic covenant of any Employer-Employee relationship.

As previously mentioned, the term "just cause" remains undefined by the negotiators of this particular Agreement. And again, the very definition oftentimes varies on a case by case basis. And that variation is certainly applicable to this instant case.

Prior to proving fraud or misconduct, the Employer must first show the Grievant was aware of the wrongdoing. In this case, I was not convinced the Grievant was aware of the fact that any of her actions violated any rule or regulation. To that end, quite the opposite was found to be true.

As an example, the Employer argued vehemently that some of the medical documentation submitted to them by the Grievant was authored by someone other than a legally licensed physician. And based on the evidence introduced by the Employer, I was convinced the "Doctor" was not properly licensed.

However, as a foundation for such an argument to impact my decision, the Employer must satisfy a more simple requisite. The evidence must first establish the fact the Grievant was aware the documentation was authored by someone other than a licensed physician. And in this matter, the Employer failed to satisfy that most basic requirement.

There was no evidence showing the Grievant was aware the documents were fraudulent in any way. There was simply no evidence whatsoever showing the Grievant knew the slips were written by someone other than a licensed physician instead of a medical student.

Instead, I found the Grievant's own testimony credible. I was convinced the Grievant was totally unaware the author of her medical documentation was not a licensed physician. In my view, I believe quite the opposite was true. There was no reason for the Grievant to question his credentials. The medical student whose name was on the medical slips was a friend of the grievant's sister's boyfriend and there is no evidence that her sister was questioned about the grievant's medical slips. And I was not convinced that the medial student was truthful when interviewed by the OIG Agent.

But paramount, the Employer was unable to show the Grievant knowingly and willfully committed a fraudulent act. Yet, the very basis of the charge was summed up in the Notice of Removal by the following conclusion authored by the Customer Services Supervisor:

**"Intentional misstatements of material fact to obtain undeserved valuable benefits constitute fundamental dishonesty that, absent extraordinary circumstances, permits termination for a first offense."**

It was the Employer, via the above statement, that laid out the foundation of proof required to establish just cause in this case. "Intentional misstatements" were never proven by the Service.

In fact, when questioned about using the title of "MD" the medical student was able to provide an answer to the OIG Agent, that being "that he graduated medical school. I'm certain the Grievant did not ask for any credentials. In that regard, is the fact I was not convinced the Grievant was even remotely aware of the medical student was not a licensed physician. And this is only one example of where the Employer investigation lacks the required thoroughness of investigation.

The Grievant also testified the medical student gave her two completed slips and told her to fill the other ones out in a

similar manner, if needed. Again, I was convinced the Grievant believed the medical student was a licensed physician, that she was following doctor's orders and had no idea as to the severity of her actions. However paramount, I am of the considered opinion the Grievant felt her action was acceptable. And this is really the controlling matter in this case.

Included as a part of Joint Exhibit 2 is a document produced by the American Psychological Association, which, in pertinent part and as it relates to this matter, provides:

"Because it is medically common, the impact of miscarriage is often underestimated," says Janet Jaffe, PhD, a clinical psychologist at the Center for Reproductive Psychology in San Diego and co-author of the 2010 book "Reproductive Trauma: Psychotherapy with infertility and Pregnancy Loss Clients. "But miscarriage is a traumatic loss, not only of the pregnancy, but of a woman's sense of self and her hope and dreams of the future. She has lost her 'reproductive story,' and needs to be grieved."

A woman who has a miscarriage is at risk for depression and anxiety symptoms in subsequent years, says University of Rochester Medical Center psychiatry professor Emma Roberts on Blackmore, PhD. In addition, even after having a healthy child, women who miscarry have a higher risk of postpartum depression, Robertson Blackmore has found. In a paper published in 2011 in the British Journal of Psychiatry, she followed more than 13,000 women for three years post-birth. Of the 2823 who had miscarriages, about 15 percent experienced clinically significant depression and/or anxiety during and after pregnancies for up to three years."



The above provides, what I believe to be, the only conclusion to be reached in this matter. As previously stated, I am convinced the Grievant's trauma placed her into something other than a normal state of mind, which certainly carried over to her work environment.

This fails to excuse the submission of altered medical documentation by the Grievant, but does provide any rational mind a reason to mitigate those actions. I believe the Employer simply failed to properly investigate and then deliberate and properly consider this entire matter.

Therefore the Union's requested remedy is hereby granted.

The Notice of Removal is reduced to a letter of warning that will remain in the Grievant's file for a period of two years. Furthermore, the Grievant shall be made whole to the extent of being reimbursed for the average number of hours worked by the other City Carrier Assistants for each week the Grievant was not working as a result of the Employer's removal action.

**AWARD**

The grievance is sustained in accord with the above.

Dated: November 24, 2015  
Fayette County PA