

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration )	(	Grievant: Natasha Bullock
Between )	(	Post Office: Buffalo Grove
UNITED STATES POSTAL SERVICE )	(	Case No 4J 19N-4J-D-21170917
and )	(	DRT No. 03-531788
National Association of Letter Carriers, AFL-CIO )	(	Union No. BG2103
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BEFORE: ARBITRATOR John A. Obee

APPEARANCES:

For the U.S. Postal Service:	John Karambelas
For the Union:	Ronny Morgan
Place of Hearing:	ZOOM Video Conference
Date of Hearing:	August 19, 2021
Date Briefs Received:	August 27, 2021
Date of Award:	September 15, 2021
Panel:	Illinois 1

**AWARD SUMMARY**

The Grievance is sustained. The Postal Service violated Article 16.7 of the Collective Bargaining Agreement, as the Notice of Placement on Non-Duty/Without-Pay Status failed to charge the Grievant with the "reasonable specificity" that Article 16.7 requires. The Emergency Placement is set aside and the Grievant is awarded back pay from the date of the EP until the effective date of the Notice of Removal. The Arbitrator retains jurisdiction for 90 days to address Remedy issues, only.



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John A. Obee, Arbitrator

## ISSUE

As set forth in the Step B decision, the issue was identified as follows: Did Management violate Articles 16.1, 16.4, 16.7 and 19 of the National Agreement when they placed the grievant on Emergency Placement and, if so, what is the proper remedy?

## STATEMENT OF FACTS

On January 28, 2021, two incidents occurred at the Buffalo Grove Post Office involving the Grievant, the first being in Postmaster Jae Cheon's office and the second on the workroom floor. There is little dispute as to what occurred in either instance, based upon the statements of those involved as well as the witnesses who either saw or heard what occurred, except for one person, the Grievant.<sup>1</sup>

### **INCIDENT 1: THE POSTMASTER'S OFFICE:**

It is undisputed that on the morning of January 28, the Grievant was called into the Postmaster's office. According to the Grievant's testimony at the Arbitration Hearing, one of the Union Stewards approached her and asked her to come to the Postmaster's office but did not tell the Grievant the reason for which she was summoned. When she arrived at the Postmaster's office, present in the office was the Postmaster, Jae Cheon, and two Union Stewards, Richard Serritella and Abraham Alba.

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<sup>1</sup> One witness to the incident on the workroom floor, Shardana Hardy, did appear to be supportive of the Grievant's position in this case. However, this Arbitrator notes that Ms. Hardy offered different statements at different times. During her Investigative Interview on February 5, 2021, she told the interviewer that the only statement that the Grievant made to the Postmaster was not to speak to her. She also indicated in that interview that the Grievant never go physical with the Postmaster. Apparently in a statement made to the National Business Agent, Michael Caref, Ms. Hardy told Mr. Caref that the Grievant never threatened the Postmaster as she never heard the Grievant say to the Postmaster: "I will fucking kill you," or "I will fuck you up." Finally, in a written statement made on March 25, 2021, Ms Hardy repeated what she said in her Investigative Interview that the Grievant indicated that she did not want to talk to the Postmaster.

It is undisputed the Postmaster Cheon served the Grievant with a Notice of Removal dated January 28, 2021, arising out of an incident that took place on January 19, 2021.<sup>2</sup> The Grievant testified that Postmaster Cheon “shoved” the NOR paperwork across the desk at her. She felt as if she had been ambushed and was upset that the Union representatives had not told her in advance what the meeting was for.<sup>3</sup> She testified that as Mr. Cheon was explaining the discipline to her, she was becoming more upset and felt that she did not need to hear anymore and got up and left and went out to the workroom floor.

Postmaster Cheon wrote in a statement dated January 28 that as he was trying to explain the NOR to the Grievant, the Grievant grabbed the paperwork and left the office. As she was leaving, he told her that he was not finished and in response the Grievant said: “I am not talking to you bitch.” In an Investigative Interview conducted by Supervisor, Tyler Aversano, on February 1, 2021, Union Steward Richard Serritella indicated that he was present when the Postmaster served the NOR to the Grievant. The Grievant was very upset upon receipt of the NOR, becoming verbally aggressive toward the Postmaster saying: “I’m not talking to you bitch.” Abraham Alba, the other Union Steward who was present in the Postmaster’s office, was also interviewed on February 1 as to what took place in the Postmaster’s office. He indicated that the Grievant “stormed” out of the Postmaster’s office saying: “I don’t need to read anything I’m not talking to you bitch.”

## **INCIDENT 2: THE WORKROOM FLOOR:**

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<sup>2</sup> A Grievance was filed by the Union related to the January 28 NOR and that matter is still pending Hearing before this Arbitrator.

<sup>3</sup> The Grievant testified that she did not feel that the Union Stewards who were assigned to her facility were looking out for her best interests and that is why she later sought help from NBA Caref.

Three parties, Postmaster Cheon, Supervisor Tyler Aversano and the Grievant, testified at the Hearing as to what occurred on the workroom floor, after the Grievant left Postmaster Cheon's office.<sup>4</sup> According to Supervisor of Customer Services, Tyler Aversano, when the Grievant came back onto the workroom floor, she began to create a scene and was talking loudly with her co-workers about having been issued an NOR. Because of her disruptive behavior, Mr. Aversano went to the Postmaster's office to advise him of what was occurring. Mr. Cheon testified that he came to the workroom floor with the intent of sending the Grievant home on administrative leave, which is paid leave, but when he tried to tell the Grievant this, she became angry and started screaming at him: "I am not talking to you bitch. I am going to fuck you up." Mr. Cheon testified that the Grievant repeated her statement that she was going to "fuck" him up three or more times and moved toward him aggressively, pushing her stomach or body weight against him. Mr. Cheon testified that he directed Mr. Aversano to call the police. He indicated that several city carriers escorted the Grievant out of the building and as she was leaving, she continued to scream and yell: "I am going to fuck you up, fucking kill you bitch."

Mr. Aversano wrote in his written statement submitted on January 28 and testified that as the Postmaster tried to give instructions to the Grievant, she became very angry and hostile, cursing and yelling at him. She pushed her body weight against Mr. Cheon yelling and screaming: "Don't you even dare fucking talk to me. I don't give a fuck what you say." According to Mr. Aversano, the Grievant repeated over and over

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<sup>4</sup> In addition to their testimony, Postmaster Cheon and Supervisor Aversano prepared written statements on January 28 as to what occurred on the workroom floor on that date. Further, Postmaster Cheon had an Investigative Interview on February 2, 2021, and the Grievant had an Investigative Interview on February 5. Both of these Investigative Interviews were conducted by Supervisor Aversano.

that she was going to fuck up Mr. Cheon. Although on cross examination, Mr. Aversano had to acknowledge that no where in his written statement did he mention placing the Grievant on Emergency Placement, he testified that he told the Grievant that she needed to leave, as she was on Emergency Placement. Further, on cross-examination, Mr. Aversano testified that he did not hear the Grievant say anything about “killing” Mr. Cheon.

The Grievant acknowledged that she was upset and angry when she left the Postmaster’s office and also admitted yelling at Postmaster Cheon when he came out on the workroom floor. Initially, she denied use of any profanity in her interaction with Postmaster Cheon, but later admitted that after she told Mr. Cheon to get out of her face, she did tell him to “get the fuck out of my face.” In her testimony and in her responses to the Investigative Interview, she specifically denied ever hitting or bumping Mr. Cheon with her body. She also denied ever saying that she was going to “fuck up” Mr. Cheon or that she was going to “kill” Mr. Cheon. She also denied ever being told on January 28 that she was placed on Emergency Placement, but only learned of her Emergency Placement when she received written notice dated January 29, 2021.

#### **WITNESS STATEMENTS CONCERNING WORKROOM FLOOR INCIDENT<sup>5</sup>**

There were a number of witnesses who witnessed or heard what took place on the workroom floor on January 28. Some of these witnesses provided written statements as to what they witnessed or heard and were also interviewed by Mr. Aversano as part of the Investigative Interview Process. Others did not provide written

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<sup>5</sup> None of the witnesses whose statements will be summarized in this section of these Statement of Facts, testified at the Hearing. The parties entered into a Stipulation dated August 23, 2021, pursuant to which they agreed that had these witnesses testified at the Hearing, “they would have testified to what was written in their statements and to what their responses were in their interviews.”

statements but were interviewed as part of the investigative process. Their statements can be summarized as follows:

- **Noor Mohammed:** Mr. Mohammed is a Lead Clerk and wrote a statement on January 28 in which he indicated that she saw three CCAs leading the Grievant out of the building and the Grievant was saying something in a loud tone, but because of where she was located, she could not hear her actual words.
- **Luke Etsey:** Mr. Etsey is a rural carrier and provided a written statement on January 28 and was interviewed on January 29 by Mr. Aversano. He wrote that he heard the Grievant yelling at the Postmaster, saying "I will fuck you up." In his interview, he indicated that he saw the Grievant being restrained.
- **Dan Leon:** Mr. Leon wrote in his statement on January 28 that he witnessed a City Carrier threaten to fuck up the Postmaster. In his Investigative Interview of January 29, he identified the City Carrier as the Grievant and also indicated that the Grievant had to be physically restrained, with people getting between her and the Postmaster and escorting her out.
- **Caitlin Sloan:** Ms. Sloan is a window clerk who provided a written statement on January 28 and was interviewed on February 1. She wrote that she heard the Grievant yelling and went to see what was happening and witnessed the Grievant screaming in the Postmaster's face, threatening to "fuck him up." She screamed this multiple times and some CCAs restrained her and escorted her out of the building, as she continued screaming threats. In her interview, she indicated that she did not witness the Grievant get physical with the Postmaster.
- **Abraham Alba:** Union Steward Abraham Alba was interviewed on January 29 as well as on February 1. In his January 29 interview, he indicated that he witnessed the Grievant being physically and verbally aggressive toward the Postmaster, making physical contact with him. He heard the Grievant tell the Postmaster that she was going to "fuck" him up and as she was being escorted out of the building she said: "I'm gonna kill you bitch." He indicated that carriers were holding the Grievant back.
- **Shelton Williams:** Mr. Williams is a Letter Carrier who was interviewed on February 1. He indicated that he could not hear what was being said between the Grievant and the Postmaster. He further indicated that the Grievant was not physical with the Postmaster "at first." He stated that the Grievant had to be restrained which meant that he walked her out of the building.
- **Shineka Terrell:** Ms. Terrell is also a Letter Carrier and was interviewed on February 5. She indicated that she heard yelling and that caused her to turn around. She stated that she walked the Grievant out of the building, along with others, and was talking to her "to calm her down."
- **Tijuana Howell:** Ms. Howell is a Letter Carrier who was also interviewed on February 5. She heard yelling but did not see the Grievant get physical with the Postmaster. She did not restrain the Grievant but did walk her out of the building.
- **Shardana Hardy:** Ms. Hardy is a Letter Carrier and was interviewed on February 5. In that interview she indicated that she heard the following being

stated by the Grievant: "I do remember her asking Jae do not speak to me, that's all I recall." She did not believe that the Grievant became verbally or physically aggressive with the Postmaster.

- **LaDonna Barton:** Ms. Barton was interviewed on February 9. She heard the Grievant getting verbally aggressive with the Postmaster telling him to get out of her face. She did not witness her getting physical with him. The Grievant had to be restrained, which consisted of walking her out the door.

#### **REQUEST FOR DISCIPLINE:**

On January 28, Supervisor Aversano filled out a form, requesting discipline for the Grievant and seeking concurrence. In his statement of the reason for the Request for Discipline, he summarized his written statement of January 28, i.e., the Grievant became angry and hostile toward the Postmaster, yelling and screaming at him, that she was going to "fuck" him up and using her body weight against the Postmaster as she continued to yell and scream. On the form, he asserted that the violations committed by the Grievant were "Unacceptable Conduct" and "Threat." Further, on the form, Mr. Aversano indicated that he did not tell the Grievant that he would be requesting discipline because "The employee was violent at the time." The type of discipline he was requesting was "EP." Benjamin Geise, Post Office Operations Manager, concurred in the request for discipline.

#### **EMERGENCY PLACEMENT LETTER:**

On January 29, 2021, Mr. Aversano sent the Grievant a Letter by Express and First Class Mail the Subject of which was the following : NOTICE OF PLACEMENT IN A NON-DUTY/WITHOUT-PAY STATUS. The letter indicated that pursuant to Article 16.7 of the National Agreement, the Grievant was being placed on non-duty status, effective January 28, 2021, for the following:

You may be injurious to yourself or others

Following the notation that the Grievant may be injurious to herself or others was this statement:

This is based on information that I have received that indicates that you **may have displayed unacceptable conduct.**

### **POSITIONS OF THE PARTIES**

**POSTAL SERVICE'S POSITION:** The Postal Service in its Opening Statement and in its Post-Hearing Brief asserts that this case is a straightforward matter. The Grievant threatened the Postmaster. Threats of violence are not tolerated by the Postal Service nor should they be tolerated in any working environment. According to the Service, on the day the Grievant made her threats, January 28, she was verbally placed on Emergency Placement. On January 29 the Grievant's supervisor sent her a letter confirming that she was on Emergency Placement. The Service began an investigation of the Grievant's actions, which investigation was thorough, involving obtaining written statements from witnesses to the incident, as well as conducting investigative interviews. All of the evidence, despite the Grievant's denials to the contrary, demonstrates that the Grievant made threats and physically interacted with the Postmaster, justifying the Service's putting the Grievant on Emergency Placement. The Service cites the following Arbitration Awards in support of its position:

H8N-5L-C-10818 (Mittenthal, 9-21-1981)  
K16M-1K-D-19502986 (Oliver, 1-14-2021)  
J15C-1J-D-19009970 (Morris, 10-15-19).  
G98V-4G-D-01244045 (August, 2-14-02)  
J11N-4J-D-17573512 (12-17-17)  
J16N-4J-D-19218058 (Vonhof, 1-31-20)  
J01N-4J-D-03216595 (Cohen, 3-01-04)

**UNION'S POSITION:** The Union makes two arguments as to why the Service lacked just cause for the placement of the Grievant on EP. In its Opening Statement, the



Union asserted that the investigation by the Service was not thorough or objective, as appropriate questions were not asked of witnesses during their investigative interviews. In addition, for its primary argument for setting aside the EP, the Union focuses on the Service's letter of January 29 advising in writing that the Grievant was being placed on EP. The Union argues that the letter is vague and ambiguous, as it does not set forth a factual predicate for a violation on the part of the Grievant. Further, the letter does not identify any specific Postal Service rule or regulation that was violated by the Grievant, justifying her placement on EP. The failure to cite a factual basis for the EP and the failure to cite a rule violation constitutes a violation of the Grievant's fundamental Due Process rights, requiring that the EP be set aside. The Union cites the following Arbitration Awards in support of its position:

H4N-3U-C-58637 (Mittenthal, 8-3-90)  
C16N-4C-D-19335295 (Roberts, 2-16-20)  
K16N-4K-D-19211550 (Cavallo, 2-17-19)  
K06N-4K-D-9433698 (Bowers, 9-20-10)

### **ANALYSIS AND CONCLUSIONS**

The present case presents that classic collision of rights that are delegated to Management by the Collective Bargaining Agreement, i.e., the right to immediately remove an employee from the facility based upon that employee's specific actions, and the due process rights of that bargaining unit member when she is removed from the facility. In the first instance, Article 16.7 of the National Agreement gives the Postal Service the right to immediately place an employee, the Grievant in this case, on off-duty status, where she "may be injurious to self or others." The Postal Service asserts that this is exactly what it did in the present case. It placed the Grievant on Emergency

Placement based upon her behavior on January 28, 2021. The Service asserts that it had "just cause" for such placement.

In support of its position, the Service points to Article 16.1 of the JCAM, which sets forth the six criteria that the Service must establish in order to prove that it had just cause for the Emergency Placement. First, there is a rule, i.e., the Postal Service has a Zero Tolerance Policy for violence or threats of violence and even in the absence of such specific rule, threats of "fucking up" a supervisor or "killing" a supervisor are of such a nature that an employee will inherently know that she will be disciplined for such actions. Second, the rule is reasonable, i.e., the Service has a right and obligation to create a safe workplace for all of its employees, free from threats of violence. Third, according to the Service, the Service takes threats and violence in the workplace very seriously and takes immediate action when such threats or violent acts take place. Fourth, the Service conducted a thorough and objective investigation, obtaining written statements from workers who witnessed or heard what had taken place and also conducting investigative interviews of all such witnesses. The Grievant herself was given an opportunity in her investigative interview to explain her actions on January 28. Fifth, the discipline in the present case, i.e., Emergency Placement, was reasonably related to the Grievant's actions in threatening her supervisor and her prior disciplinary record was taken into account. Sixth, the disciplinary action was taken timely, as the Grievant was verbally placed off work on the 28<sup>th</sup> with a follow up letter on January 29<sup>th</sup>.

The Postal Service cites several Arbitration Awards in which Arbitrators upheld Emergency Placements for employees who made threats of violence to co-workers and supervisors. In USPS # J11N-4J-D-17573512 (Jordan, 12-17-17), Arbitrator Jordan

found that threats of violence made in a videotaped phone call justified placement of an employee on EP. Further, the notice that was sent to the Grievant of the Emergency Placement was not deficient, as it set forth with specificity that that the Grievant was being charged with threaten ing other employees with bodily harm. Similarly, Arbitrator Jeanne Vonhof in USPS # J16N-4J-D-19218058 (Vonhof,1-31-20), upheld an Emergency Placement where multiple employees had reported threats of violence, justifying the Service in taking immediate action under Article 16.7. As with Arbitrator Jordan, Arbitrator Vonhof found the following statement contained in the written notice that the Grievant received when she was placed on EP as sufficient under Article 16.7:

On Monday, April 1, 2019, you [name withheld] approached three postal employees threatening them with bodily harm.

Lastly, in USPS #J01N-4J-D-03216595 (Cohen, 3-1-04) Arbitrator Vicki Peterson Cohen upheld an Emergency Placement where an employee made physically threatening moves toward his supervisor, stating among other things, "I am going to fuck her up."<sup>6</sup>

How does the Union respond to the Service's "just cause" assertion? It makes two arguments. In its Opening Statement and in its Post-Hearing Brief, the Union argues that the investigation that was conducted in this case was neither thorough nor was it objective. In support of this argument, while noting that at least ten employee interviews were conducted of those who witnessed or heard what took place on January 28, the Union asserts that the questions that were asked of these employees lacked the objectivity necessary for a proper investigation. The argument is meritless. The investigation that was conducted in this case was commenced on January 28. On

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<sup>6</sup> In Arbitrator Cohen's Award, the question of what was contained in the written notice to the Grievant of his Emergency Placement was apparently not an issue, as it is not mentioned in the Award.

January 28, the Service had received witness statements from the two supervisors who were involved with the Grievant, as well as written statements from four employees who either heard what took place between the Grievant and the Postmaster or who witnessed the interaction between the Grievant and the Postmaster. In addition, on January 29, the date that the EP notice letter was sent out, Supervisor Aversano interviewed two of the employees who had provided written statements, as well as one of the Union Stewards who was also a witness to the events of January 28. Investigative Interviews continued on February 1 through February 9, including the Investigative Interview of the Grievant on February 5. The questions that were asked of those who were interviewed were reasonable and designed to elicit information in an objective manner. The Union has failed to establish any evidence that the investigation was not thorough and objective.

The Union's second argument that the Grievant was provided inadequate notice of her EP resonates in context. Initially, based upon the testimony of the Grievant, the Union argues that while the Grievant was escorted from the premises on January 28, she was never told that she was on EP. The Grievant's supervisor, Mr. Aversano, testified that he told her that she was on EP. While this Arbitrator finds that the testimony of the Grievant lacks credibility for the most part, as she denies making threatening statements to the Postmaster, when there was credible evidence from virtually all of the witnesses who wrote statements and a significant number of those who were interviewed that she threatened the Postmaster, there is some evidence to suggest that Mr Aversano did not in fact advise the Grievant that she was on EP. That

evidence is found in Mr. Aversano's January 28 Request for Discipline, which reads in part as follows:

4. Did you tell the employee you would be requesting discipline? If you did not, please explain in the space provided below.

If not, why not.

The employee was violent at the time

Further, in the same form, Mr. Aversano indicated that he was seeking EP, as the "Type of Discipline Requested." If, as Arbitrator Mittenthal has ruled, EP in a context such as the present one, constitutes discipline, Mr. Aversano's statement on the form appears to indicate that he did not in fact advise the Grievant that she was being placed on EP. While the evidence is equivocal as to whether the Grievant was told verbally that she was on EP, the evidence is clear from the Notice of Emergency Placement that was mailed on January 29 that she was not informed of the reasons why she was placed on EP with "reasonable specificity."

In arguing that the Notice of Emergency Placement lacks any specificity as to why the Grievant was put on EP, the Union looks to the very language of the January 29 letter. The letter indicates that the Notice of Placement in a Non-Duty/Without-Pay Status was being taken because:

You may be injurious to yourself or others

The statement that the Grievant "may be injurious" to herself or "others," is followed by the following statement:

This is based on information that I have received that you **may have displayed unacceptable conduct.**

What do these two statements taken individually or taken together tell the Grievant and the Union why she is being put on EP? Absolutely nothing. The statements are vague. There are no specifics of any kind. The Union argues quite correctly that this notice does not provide the Grievant or the Union with any specific, substantive reasoning as to why this Grievant was put on Emergency Placement.

In looking to whether a proper and reasonable notice was given to a Grievant, who has been placed on Emergency Placement, the starting place is always the logic and wisdom of Arbitrator Mittenthal, who stated in H4N-3U-C-58537 (Mittenthal, 8-3-90), the following:

The fact that no "advance written notice" is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has a right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why Management has invoked Section 7. He surely is entitled to such notice within a reasonable time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management's action.

Undoubtedly in serving the notice of the Emergency Placement on January 29, the Service acted in a timely manner. However, there is nothing in the January 29 letter that "formally" makes the Grievant aware of the charge against her. There is nothing in the January 29 letter that provides any specific "reason" as to why the Service has invoked Article 16. Asserting that the Grievant "may have displayed unacceptable conduct" does not tell the Grievant and the Union that she in fact did display unacceptable conduct, nor does it tell the Grievant and the Union what in fact was the unacceptable conduct that the Grievant allegedly displayed. As Arbitrator Mittenthal held, the failure to provide such reasonable, adequate notice of the charges against the

Grievant, denies her a fundamental due process right under the Collective Bargaining Agreement.

The Union cites to persuasive arbitral authority that refines the reasoning of National Arbitrator Mittenthal. In USPS # C16N-4C-D-19335295 (Roberts, 2-16-20), Arbitrator Lawrence Roberts addressed a notice of Emergency Placement that was served upon a Letter Carrier, with the notice setting forth that Grievant was involved in a rollaway accident with his postal vehicle. While clearly the notice in Arbitrator Robert's case provided a greater factual basis for the charges against that Grievant than does the notice in the present case, Arbitrator Roberts, citing Arbitrator Mittenthal, found the notice lacked sufficient specificity to put the Grievant and the Union on notice of the charges against the Grievant. As he noted, the "Notice Letter sets the benchmark" and the Service is required to provide specificity. Award at p. 14. Similarly, in USPS # K16N-4K-D-192111550 (Cavallo, 9-17-19) Arbitrator Cavallo set aside an Emergency Placement that was issued because the notice that was provided to the Grievant violated the Collective Bargaining Agreement.<sup>7</sup> Arbitrator Cavallo noted that in Emergency Placement situations, the Service cannot be required to provide a long or very detailed factual notice, but the notice must set forth the facts with "reasonable specificity." Award at p. 9. The "reasonable specificity" standard is the standard that should be applied in EP cases and in the present case, it can hardly be said that there was any specificity, let alone "reasonable" specificity.

Lastly, there is the Award in USPS # K06N-4K-D-09433698 (Bowers, 9-20-10), in which Arbitrator Mollie Bowers had to address an Emergency Placement that mirrors

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<sup>7</sup> It should be noted that Arbitrator Cavallo heard both the Emergency Placement Grievance as well as the Notice of Removal that arose from the same factual scenario involving the Grievant in his case. While he set aside the Emergency Placement, he upheld the Removal.

the Emergency Placement in the present case. In Arbitrator Bowers case, the Grievant was accused by her supervisors of acting belligerently and aggressively toward them, using profanity, and threatening them. The Emergency Place Notice that was sent to the Grievant in the Bowers case stated in a similar fashion to what was stated in the present case, i.e., “It is believed that your [sic] may be injurious to self or others.” Award at p. 6. The Notice of Removal issued to the Grievant in the Bowers case charged the Grievant with “Improper Conduct/Violation of Zero Tolerance Policy.” Award at p. 9. In setting aside the EP, Arbitrator Bowers ruled that the statement on the EP that the Grievant “may be injurious to self or others” did not constitute proper notice to satisfy the Grievant’s Due Process rights, holding:

This statement fails absolutely to meet the requirement for specificity. It does not provide the Grievant with enough information to exercise her due process right to mount an affirmative defense to challenge the action.

Award at p. 19. Arbitrator Bowers reasoning is certainly applicable in the present context, where there was no reasonable specificity of the charges against the Grievant.

As the three cases that the Union cites provide support for setting aside the EP in the present case, there is also support from a different source, i.e., the arbitral authority cited by the Service in support of upholding the EP. In at least two of the cases, there was a challenge by the Union to the notice that was provided to the Grievants in those cases. In Arbitrator Jordan’s case, USPS # J11N-4J-D-17573512, **supra**, the EP in his case was based upon a “threat.” There is no such reference to a threat in the present case. Additionally, in Arbitrator Vonhof’s case, USPS # J16N-4J-D-19218058, **supra**, Arbitrator Vonhof found that the following language satisfied the reasonable notice requirement under Article 16.7:



On Monday, April 1, 2019, you [name withheld] approached three postal employees threatening them with bodily harm. There is nothing with comparable specificity in the present case to satisfy the requirements of Due Process.

This Arbitrator further notes that Supervisor Aversano could easily have included language in the EP Notice in the present case with the “reasonable specificity” required by Due Process. On the day of the incident, he and Postmaster Cheon had prepared written statements about their interaction with the Grievant. Reference to the threats as set forth in those statements may very well have established the Notice requirement under Article 16.7. In addition, on January 28, Supervisor Aversano had written statements from three arguably neutral witnesses who corroborated Management’s statements. Reference to these written statements could have been made by Supervisor Aversano. Further, on January 29, Supervisor Aversano had conducted Investigative Interviews of two of the employees who had provided written statements on January 28, and he also conducted an Investigative Interview of Steward Abla on January 29. While it is clear from arbitral authority that the Service is not required to meet the same standard of specificity in an EP notice that may be required in a Notice of Removal, because of the immediacy aspect of an EP notice, in the present case, the Service had the factual predicate for establishing a basis for the EP at the time but failed to set it forth. This Arbitrator notes that in the NOR that was subsequently issued the Grievant on February 23, 2021, Supervisor Aversano made specific reference to the written statements that he possessed on January 28 as well as the Investigative Interviews that he conducted on January 29. There was no reason why a statement

could not have been included in the EP notice and the failure to do so is fatal to the Service's issuance of the Emergency Placement in this case.

Anticipating the Union's arguments in this case, the Service in its Post-Hearing Brief asserts that factually this is a very "egregious" case and that the Grievant "knew" from her actions why she was being placed upon EP. Addressing this latter argument first, it could be argued in any case, including Arbitrator Bowers', Arbitrator Jordan's and Arbitrator Vonhof's cases that the Grievants in those cases "knew" what they had done, which would obviate the need to provide any notice to the Grievant of the reasons for the EP. This is wholly contrary to the mandate laid down by Arbitrator Mittenthal and refined by Arbitrator Cavallo into the "reasonable specificity" rule. Further, charging the Grievant with the knowledge of the offense without identifying the offense turns the concept of Due Process on its head, as the burden is not on the Grievant or the Union but rather the burden is on the Service to provide Due Process when subjecting its employees to disciplinary action. Lastly, addressing the "egregious" nature of this case, Due Process does not distinguish between bargaining unit members who commit "minor" offenses, or "serious" offenses, or even "egregious" offenses. Due Process rights are the cornerstone of the Collective Bargaining Process and when such rights are violated as they were in the present case, Arbitrators must set aside actions based upon Due Process violations.

The Grievance is sustained. The Emergency Placement is set aside, as the Service failed to provide notice with "reasonable specificity" of the basis for which the Grievant was put on Emergency Placement. The Grievant is to receive back pay from

the date of the Emergency Placement until the date that the Notice of Removal became final. The Arbitrator retains jurisdiction for 90 days to address Remedy issues, only.