

19981A-B

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	GRIEVANT:	Niles
	)	POST OFFICE:	Sugarland, TX 77479
Between	)	CASE NO.:	G06N-4G-D 12041665 A
UNITED STATES POSTAL SERVICE	)		G06N-4G-D 12112265 B
and	)	NALC NO.:	01247911D
	)		01347911D
THE NATIONAL ASSOCIATION OF LETTER CARRIERS)		

BEFORE: Glenda M. August, Arbitrator

APPEARANCES:

For the USPS: Manoj A Menon

For the NALC: Vorris Malveaux

Place of Hearing: 3130 Grants Lake Blvd., Sugar Land, TX 77479

Date (s) of Hearing: April 10, 2012

Briefs Received: April 16, 2012

Date of Award: May 16, 2012

Relevant Contract Provision: Articles: 16

Contract Year: 2006-2011

Type of Grievance: Discipline

AWARD: The grievance is sustained. The Letter of Emergency Placement and the Notice of Proposed Removal will be reduced to a Letter of Warning. The grievant will be returned to work immediately and made whole for all loss wages and benefits.

Glenda M. August

GLEND A. M. AUGUST
Arbitrator

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VICE PRESIDENT'S
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MAY 25 2012

Country Baldwin
National Business Agent
N.A.L.C.
Dallas Region #10

I. ISSUE

- (1) Did Management have just cause to issue the grievant an Emergency Placement letter in accordance with Article 16.7 of the National Agreement? If not, what is the proper remedy?
- (2) Did Management have just cause to issue the grievant a Notice of Proposed Removal dated December 16, 2011, for the charge of "Delay and/or Failure to Deliver Mail/Failure to Follow Instructions? If not, what is the proper remedy?

II. STIPULATIONS

- (1) The parties agreed that the Arbitrator would combine both the Article 16.7 and the Article 16.1 cases.
- (2) The parties stipulate that the only issue under Article 16.7 discipline is the grievant's failure to advise management of the mail (in the LLV).
- (3) The parties agreed that the Arbitrator would not consider the specific contents (class) of the mail; only that mail was left in the LLV.

III. RELEVANT CONTRACT PROVISIONS

ARTICLE 16 DISCIPLINE PROCEDURE

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

IV. FACTS

On November 8, 2011, the grievant was assigned to deliver mail on route 7914 in Sugarland, TX. The grievant requested 2 hours overtime and was told he would have to deliver additional mail on route 7904. On the afternoon of November 8th, the grievant's supervisor informed him that he would send help and the help did arrive at 6:05 pm. The carrier providing assistance delivered approximately 10 minutes of mail and then returned to the station. The grievant returned to the station with undelivered mail which was left in the LLV and locked up.

V. MANAGEMENT'S CONTENTIONS

Management contended that the grievant was assigned to deliver mail on route 7914 on November 8, 2011, but failed to deliver all the mail on his assignment. According to Management, instead of notifying Management that he did not deliver the mail, he left the mail in the postal vehicle. Management added that on the morning of November 9, 2011, the postal vehicle used by the grievant on November 8th was transported to the Richmond Post Office by a contract service provider and inside the vehicle, the contractor found the deliverable mail still in trays and tubs prepared for delivery by the grievant.

It was the position of Management that by leaving the mail in the LLV overnight, the grievant opened the door for a potential loss of mail. Management contended that the grievant put in for

overtime which was denied and brought back 3 hours of mail. Management further contended that the grievant stated that the supervisor told him to bring back the mail and return to the Post Office by 6:30pm. Management noted that the Supervisor acknowledged that he instructed the grievant to curtail the Advos, however Management argued that the Supervisor did not authorize the grievant to curtail any other mail. According to Management, the grievant's supervisor stated that the grievant did not say anything or show him any mail being returned. Management added that no member of Management was notified of mail being returned to the office undelivered.

Management argued that the grievant stated he informed his supervisor in the parking lot that he was returning undelivered mail. It was the position of Management that if he did inform the supervisor about the undelivered mail in the parking lot, at that point he had already failed to deliver the mail without prior authorization and had failed to follow instructions to curtail the Advos but deliver the rest of the mail. Management noted that whether he was told to leave the mail in the truck or not, the grievant had already delayed delivery of the mail that had been entrusted to him when he drove back to the Post Office with the mail.

Additionally, Management argued that the grievant did not complete a PS Form 1571 (Undelivered Mail Report) which was clearly his responsibility under the M-41 Section 131.45. Management added that after being instructed to curtail mail, the carrier must record the facts on a Form 1571. Management averred that they have the sole authority to curtail or delay delivery of mail. According to Management the grievant was not authorized to delay delivery of the mail entrusted to him and he left the undelivered mail in a vehicle that was ultimately not in the Postal Service's possession when picked up by the contract service provider. Management argued that therefore, they had just cause to issue the emergency placement and later the Notice of Removal to the grievant. Management requested that based on the facts and circumstances of the instant case the grievance be denied.

VI. UNION'S CONTENTIONS

It was the position of the Union that the emergency placement and Notice of Proposed Removal in the instant cases were issued without just cause and the grievances should be sustained.

According to the Union on November 8, 2011, the grievant was assigned to Route 7914 when he advised his Supervisor that overtime would be required to complete his route and was told to do his best and if he had problems to cut back the ADVO circulars. The Union noted that the grievant was instructed that he would also have additional deliveries from Route 7904. The Union averred that the grievant was told by his Supervisor at approximately 4:30 pm that he would send him some help. Another carrier arrived at 6:05pm and provided about 10-20 minutes of assistance before he had to return to the Post Office. The Union averred that the grievant also returned to the station because he stated it was simply too dark to continue safely.

The Union contended that upon return to the Post Office, the grievant notified his Supervisor that he was unable to complete delivery on his route and the Supervisor instructed him to leave the mail in the LLV since he would be delivering the same route on the next day. According to the grievant's statement, he removed his empty equipment, raw mail and other review mail for Route 7904 then locked up his vehicle as instructed.

It was the position of the Union that on the morning of November 9, 2011, the grievant noticed that the LLV used on the previous day was not assigned to him on that day. According to the Union, the grievant asked his supervisor what happened to the vehicle and was advised by the Supervisor that he would "take care of it" and "get the mail to him". The Union averred that later that day, the grievant was instructed to return to the Post Office at which time he was placed on Emergency Procedure and sent home due to "potential loss of mail".

According to the Union, if the Contractor had not been assigned to pick up the LLV, there would be no grievance today. The Union argued that another Carrier heard the Supervisor discussing the mail left in the vehicle with the grievant and stated that the Supervisor said that "he would take care of it later". The carrier who testified at hearing stated that the Supervisor said the mishap occurred due to "bad communications".

The Union contended that the carrier sent to assist the grievant with delivery on November 8, 2011, also informed the Supervisor that the grievant had "a lot of mail left". The Union noted that the Union Steward asked the Supervisor if he instructed the grievant to leave the mail in the LLV and he stated "he didn't remember" but the steward also noted a call from the Supervisor to the grievant at 6:15pm.

Finally, the Union argued that the grievant had no prior discipline in his record and this case would not be before the Arbitrator if the vehicle had not been picked up. According to the Union, the Supervisor instructed the grievant to leave the mail in the LLV. They stated that the supervisor was aware there was a lot of mail remaining for delivery on the route because he spoke with the grievant and the carrier that went to assist the grievant. The Union added that the grievant was an unassigned regular and did not know if he would be assigned to the same route on the next day so he had nothing to gain by leaving the mail in the LLV. The Union further argued that there was no emergency present to immediately remove the grievant from his duties as a letter carrier on November 9, 2011, and no just cause to issue the Notice of Proposed Removal dated December 16, 2011. The Union asked that both grievances be sustained and the grievant returned to duty and made whole for all loss wages and benefits.

VII. DISCUSSION AND OPINION

ARTICLE 16

DISCIPLINE PROCEDURE

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employee, the emergency action taken under this Section may be made the subject of a separate grievance.

Article 16 of the National Agreement requires that discipline be issued only when just cause exists. Section 7 of the Article further expands the discipline process by offering Management an option when emergency situations do not allow for the normal suspension procedures outlined in Article 16. Section 7 is clear regarding the situation where these emergency procedures can be invoked, thereby the test for this article is whether Management had reason to believe the situation existed to the extent that it “involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others.”

In the case at bar, the grievant allegedly left mail in an LLV overnight and the vehicle was picked up by a service Contractor to be transported to another Post Office. According to Management, they were not aware that the mail was left in the vehicle; but the grievant stated that he was instructed to leave the mail in the vehicle. The test in the instant case will be the credibility of the statements and testimony provided.

There was a statement from a letter carrier, other than the grievant, who validated that the Supervisor acknowledged that he realized there was mail in the vehicle, which was picked up by the Contract Service Provider, and stated he “would take care of it later”. The statement from the other carrier corroborated the grievant’s story and lent credibility to the fact that he was instructed by his supervisor on the previous evening to leave the mail in the LLV until the next delivery day. Additionally, the conversation between the Supervisor and the grievant in which the supervisor stated he would send help out to the grievant established that the Supervisor was further aware of the fact that there was more mail than the employee could deliver on that day. The carrier that provided assistance also testified that he went out to assist and notified the Supervisor that the grievant had a lot of mail left. The record indicated that this carrier was only able to provide about 10-20 minutes of help. Based on the foregoing facts, the Supervisor should have known, if he did not know, that the employee had more than circulars left since delivery could not be completed prior to the

employees returning to the Post Office due to darkness. The fact circumstances, and the testimony and statements of the witnesses, all seem to validate the account provided by the grievant in the case at bar. The testimony of the Supervisor was clouded by the fact that he first stated that he himself provided the keys to the Contract Service Provider who picked up the vehicle then later changed that story.

Although I believe the grievant was advised by his Supervisor to leave the mail in the vehicle overnight, it was clearly the responsibility of the grievant under the M-41 Section 131.45 to record any undeliverable mail on PS-Form 1571. There is a reason the form exists, and had a 1571 been properly completed by the grievant on November 8, 2011, there would be no doubt that Management had been notified of the undelivered mail. This required form is as much a protection for the employee as it is for the sanctity of the mail; especially in this instant case where there was no indication of malice or pilferage for personal gain.

In case number J98N-4J-D 00086660 and J98N-4J-D 00128341 Arbitrator Karen H. Jacobs decided a case with some similarity to the case at bar in which the grievant did not demonstrate any malice in returning mail to the Post Office. In the award, Arbitrator Jacobs opined:

Grievant was not authorized to bring mail back. That clearly is an infraction of the rules. Prompt delivery of the mail is the essential purpose of the Postal Service. He should have notified his supervisor, and obtained authorization, or other instructions. On the other hand, he did talk to the supervisor about 5, and the supervisor knew how much mail he had. (The arbitrator's confidence in the supervisor's estimate of time to deliver the mail is undermined by his written statement concerning the amount of mail he had delivered the day before, and the amount of time it took.) Grievant's infraction does not rise to the level of the employee who had first class mail 2 years old in his personal vehicle (Arb. Bernstein, C8R-4H-D 31949 and 31953 in which a removal was sustained) or even the 4 year employee with first class mail in his own vehicle for 5 days when that vehicle was stolen (Arb Seidman, C8N-4D-D 32154 in which removal was sustained).

Similarly, in the case at bar, regarding the Emergency Procedure, the Service did not prove that the grievant posed any immediate threat to Postal Service property; nor did Management provide any indication that the grievant was injurious to himself or others. The allegations in the instant case also did not involve intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations.

In the Notice of Proposed Removal, the charges were (1) failing to complete the disposition of the mail assigned to him and (2) failure to report to Management that he brought back undelivered mail. In this Arbitrator's opinion, the Supervisor knew and I believe instructed the employee to leave the mail in the vehicle on the night of November 8, 2011. This action also demonstrated that he knew the grievant failed to complete delivery and brought back undelivered mail.

Therefore, there was no just cause to issue an Emergency Placement or Notice of Proposed Removal to the grievant. The grievant's failure to complete the PS Form 1571 did demonstrate a performance failure, but did not rise to the level of Removal.

For the foregoing reasons I must sustain the grievance. The Letter of Emergency Placement and the Notice of Proposed Removal will be reduced to a Letter of Warning. The grievant will be returned to work immediately and made whole for all loss wages and benefits.

AWARD

The grievance is sustained. The Letter of Emergency Placement and the Notice of Proposed Removal will be reduced to a Letter of Warning. The grievant will be returned to work immediately and made whole for all loss wages and benefits.

Glenda M. August

GLENDAM. AUGUST
Arbitrator

May 16, 2012
New Iberia, LA