

31406

REGULAR ARBITRATION

In the Matter of Arbitration)	)	Grievant: M. Suarez
Between	)	Post Office: Corona, CA
The United States Postal Service	)	Case No.: F11N-4F-D-13327295
And	)	DRT No.: 01-285614
The National Association of Letter Carriers, AFL-CIO	)	Union No.: CR-2918-13D
_____	)	

BEFORE: Arbitrator Nancy Hutt

APPEARANCES:

For the U.S. Postal Service: John Matson  
Local Business Agent, Region 1

For the Union: Richard Kaemerer  
Labor Relations Specialist

Place of Hearing: Corona, CA

Date of Hearing: May 7, 2014

AWARD:

Date of Award: July 1, 2014

PANEL: Regular

Award Summary

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*Nancy Hutt*  
\_\_\_\_\_  
Nancy Hutt

## I.

### INTRODUCTION

The arbitration of M. Suarez (Grievant) came on for an arbitration hearing on May 7, 2014 in Corona, CA. The arbitration arises pursuant to the national collective bargaining agreement under which Nancy Hutt was selected to serve as Arbitrator and under which her Award shall be final and binding upon the parties. The subject matter of the hearing concerns the termination of Grievant for her alleged Delay of Mail.

All witnesses appearing for examination were sworn under oath. The parties introduced relevant exhibits, and argued the issues in dispute. Both parties submitted the matter with closing briefs. The Opinion and Award in this matter is issued to the parties.

## II.

### ISSUE

Did the Employer violate the National Agreement, Articles 3, 5, 16 and 19, not limited to, by issuing a Notice of Removal to the Grievant without having just cause? If so, what would be the appropriate remedy?

## III.

### RELEVANT CONTRACT PROVISIONS AND REGULATIONS

#### **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 grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

**Section 5. Suspension of More than 14 Days or Discharge**

In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days.

Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) day advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

**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 US 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.

\* \* \* \*

**E. Article 16 - Discipline Procedure**

CCAs may be disciplined or removed within the term of their appointment for just cause and any such discipline or removal will be subject to the grievance arbitration procedure, provided that within the immediately preceding six months, the employee has completed ninety (90) work days, or has been employed for 120 calendar days (whichever comes first) of their initial appointment A CCA who has previously satisfied the 90/120 day requirement either as a CCA or transitional employee (with an appointment made after September 29, 2007), will have access to the grievance procedure without regard to his/her length of service as a CCA. Further, while in any such grievance the concept of progressive discipline will not apply, discipline should be corrective in nature.

**IV.**  
**BACKGROUND**

The Grievant, Margarita Suarez, was a CCA at the time of her termination.

For approximately ten years she had intermittent service as a casual, clerk and a transitional employee for the Postal Service. Grievant began as a CCA in Corona Citrus four months prior to her termination. On August 19, 2013 Grievant called the office from her route at 2:50pm and informed Supervisor Bostic the route would not be completed in a timely manner and needed assistance. This was the first time Grievant was sent to carry the whole route and a one-hour swing. At 3:35pm, according to Grievant, she discovered the FSS tray. Her direct Supervisor, G. Franco, first sent out one carrier to assist and a bit

later sent out another carrier. He called the Grievant about 5:00pm to see if assistance arrived. Grievant testified at this point she advised him of noticing an FSS tray of mail that she set aside. Franco, according to Grievant, instructed her to bring the tray back to the Post Office.

Assistance arrived and Grievant gave away two swings and took two swings herself and then returned to the office to unload her "stuff." Supervisor Bostic and Manager Francia, testified Grievant, were at the door to make sure the carriers returned by 6:00pm. Grievant testified upon arriving she talked to Danny, Gomez, Fernando and Angelina about the heavy mail volume that day and mentioned the returned tray, along with advising Franco. According to Grievant, she cleared her outgoing mail first and placed the discovered tray in a U-cart in front of Route 15.

Grievant again testified she told Franco about the mail when he called at 5:00pm, but that he must not recall the conversation. Moreover, Supervisor Bostic testified as the closing supervisor that he walked the floor and was able to confirm that no mail was delayed. If there was delayed mail, carriers are instructed to leave the mail on the route ledge and complete Form 1571. Grievant confirmed she neither left the mail on the ledge nor completed the form.

Franco testified Grievant never mentioned the found mail tray, and additionally, would never have directed her to return the mail. During the investigative interview and at the hearing, Grievant testified when Franco called at 5:00pm, she said, "Before I forget I found a tray of mixed mail and Franco responded, "bring the mail back." When Grievant returned to the office on the 19th, she admittedly failed to mention the delayed

mail to Francia or Bostic. Grievant testified there was no reason to tell management as Franco was already informed. Furthermore, Grievant stated she was in a hurry to leave.

The mail must be delivered even if it entailed overtime or even penalty overtime, stated Franco. He testified Grievant failed to call during her route to even advise management she was unable to locate a third flat, which was her responsibility to know if mail was missing, especially since the Post Office, stated Franco, receives FSS mail on a daily basis, which Grievant certainly knew as a CCA. The carriers work out of three trays, one tray being the FSS flats. Following the discovered mail at allegedly 3:35pm, Grievant admittedly failed to call the office to inform a supervisor. When asked why, Grievant explained she was in a hurry to finish the route and return by 6:00pm.

Manager Francia testified Grievant has been the subject of several discussions concerning her “unsatisfactory work performance” and that approximately three investigative interviews took place. However, discipline was not meted out, but rather management worked along with Grievant to correct her performance.

A clerk found the returned mail the next morning, August 20, 2013, in the notice left parcels area and informed Franco, the opening supervisor. He called Manager Francia and Bostic to see whether either were aware of the delayed mail and authorized it. Both responded no. Next Franco called Grievant. According to Franco, Grievant stated Bostic was aware of the delayed mail, but a quick return call to Bostic indicated he had no knowledge of any mail being delayed. Grievant denied saying Bostic was notified about the delayed mail to Franco.

Grievant testified upon returning to the Post Office she spoke with Danny, Gomez, Fernando and Angelina about the heavy mail volume that day and mentioned the

returned FSS tray, along with advising Franco. At the hearing Angelina Gomez, who no longer works for the Post Office, testified the conversation took place and she also allegedly returned mail that day.

Supervisor Franco conducted an Investigative Interview on August 20, 2013. Grievant stated she found the FSS tray around 4:00pm. and notified Franco when he called at 5:00pm, who allegedly directed her to bring it back. Grievant stated since she informed Franco about the mail over the phone when returning to the station, there was no need to inform the closing supervisor or manager. Furthermore, Grievant for the first time indicated the mail was not in order, which was the impetus for returning the FSS tray. The tray contained, among other mail, first class mail.

Six days later, on August 26, 2013 Grievant was issued the following Notice of Removal, in part, for the Delay of Mail:

Specifically, on Monday August 19, 2013 you failed to deliver all committed mail on your assignment, route 7915. You returned from the street at approximately 5:59pm that day with a full tray of FSS mail consisting of mixed classes of mail addressed for the business portion of the route. You ended your tour at 5:59pm and left without notifying your supervisor of the delayed mail. The mail was discovered the following morning, August 20, 2013 in a u-cart pushed behind some parcels.

On Tuesday, August 20, 2013 an investigative interview was conducted with you in the presence of your union representative Irma Guzman. During the investigative interview you admitted that you did not deliver available mail on your route on August 19, 2013. You acknowledged that you did in fact bring back a "tray of FSS" mail. When asked if you told either the supervisor or the manager on the floor that you brought back mail you responded "no." You stated that you completed delivery for the business section of the route at "about 2:50pm," but didn't notice the mail was out of order until "about 4pm;" approximately 1 hour

and 10 minutes after you completed delivery for that section. You stated that you informed supervisor Genaro Franco telephonically at approximately 4:00pm upon finding the tray of FSS mail; however Supervisor Franco indicates that no such notice was ever provided. You acknowledged that you have been made aware of your obligation to deliver all mail in your possession daily as well as follow your supervisor's instructions. You also stated "yes" when asked if you are supposed to report undeliverable mail to your supervisor. You further acknowledged that you understand that the ELM requires you to be truthful in your responses, but did not respond truthfully when asked questions pertaining to the cause of delayed mail on August 19, 2013. Not only have you failed to follow instructions given to you, but your actions are also in violation of the following USPS rules and regulations:

\* \* \*

Your actions are clear evidence of delaying all classes of mail without management authorization. It is also evident that you had every available opportunity to alert management if you were unable to deliver all of the mail entrusted to you for delivery.

Additionally, you have failed to provide any reasonable explanation or mitigating circumstances to justify your actions. Your prior training, years of experience and employment have given you ample notice of your responsibility to perform your daily job duties effectively, yet you refuse to comply. I find that your actions as well as responses during your investigative interview show little potential for rehabilitation. There is no question that you have been put on clear notice of what is expected of you with regard to performing your duties as a mail carrier and complying with Postal rules and regulations.

A grievance challenging the removal was subsequently initiated on behalf of the Grievant. The grievance was denied at Informal and Formal Step A. An impasse was declared by the Step B Dispute Resolution Team.



V.

**POSITIONS OF THE PARTIES**

**Postal Service**

The Postal Service contended there was just cause for the removal of Grievant from her CCA position. Under Article 16 a CCA is **does have included in their protections under Article 16 just cause, but not the right to progressive discipline.** The Grievant, without question, admittedly delayed the mail. However, the Grievant never notified management of the third flat, which included first class mail. Rather, the Service contends she returned to the office and hid the flat behind parcels in a non-FSS area, which was an intentional act. The actions of Grievant were egregious. Federal regulations dictate that Grievant's performance was serious and punishable as well as Service rules and regulations.

The Grievant's testimony was self-serving and not credible. It makes no sense for a carrier who delivers out of three trays not to notice a FSS tray was missing, especially while delivering the business route that was completed by 2:50pm. and the tray not being discovered for over an hour later. Moreover, a carrier who evaluates her mail to determine if assistance was necessary would notice a missing tray. Grievant failed to notify management immediately and subsequently upon her return to the office also failed to advise management of the delayed mail. The carrier failed to deliver the mail once she allegedly discovered it about 3:35pm, even though two carriers were sent to assist on the route. The removal of Grievant was not arbitrary and capricious, but reasonable. There is no evidence that management was aware of the delayed mail until the next day when the hidden mail was discovered. Grievant's delay of mail was a serious

offense and the Service lost confidence and trust in Grievant. The Service requests the grievance be denied in its entirety.

### **Union**

The Union contended the Postal Service violated Articles 3 and 16 and the M-39.115 when Grievant was removed without just cause. The Service failed to fully investigate and verify Grievant's responses during the interviews. Grievant worked at Corona for four months and the Union contends other installations where she worked may have different procedures. The removal was punitive and not corrective in nature. The actions of Grievant did not merit removal.

Arbitrator Das differentiated "the rights of CCAs from those of career Carriers is a provision that the requirement for progressive discipline does not apply to CCAs, but the agreement still provides that discipline should be corrective....does not nullify the JCAM requirements that discipline be appropriate to the offense and corrective, and the latter requirement is reaffirmed in the Das award." The Union contended the removal was not corrective as it is final and there was no showing that Grievant was incorrigible by the Service. The Union requests the grievance be sustained, the NOR be rescinded and the Service make Grievant whole for all lost wages and fringe benefits beginning 8/20/2013 and to provide copies of the pay adjustment forms utilized to the local Union within 14 days of the resolution of the instant grievance.

## **VI.**

### **DISCUSSION**

An arbitrator is authorized, and indeed directed, to view all the circumstances of a case in determining whether there is just cause. I reject the Union's argument that relying

on the very terms set forth in the Das Award that removal is per se not corrective. The Union alleges that a decision to remove must be based on a fair and thorough investigation of the facts. I conclude that the Grievant was not denied due process.

It is recognized that proving a violation of a work rule does not, by itself, constitute just cause for discharge. The arbitrator must still determine whether the severity of the conduct satisfies the just cause requirement for termination. There are varying degrees of discipline including those that merit summary discharge. However, the arbitrator must examine the specific facts in each case to determine whether removal rather than a corrective action was for just cause.

Herein, the conclusion was reached that Grievant's conduct was willful based on her numerous and changing scenarios plus the discovery of the FSS mail hidden in a u-cart under parcels. The Postal Service substantiated the removal in several ways:

1. Grievant failed to recognize the FSS flat was missing even though she completed delivering business mail.
2. If Grievant discovered the mail at 3:35pm, there was time to call for additional assistance.
3. Grievant failed to call the Post Office to notify management of the discovered FSS flat.
4. Grievant was well aware of the rules and regulations concerning the delay of mail.
5. Grievant was aware that permission from a supervisor was mandated in order to return mail.
6. Grievant was aware that returned mail must be placed on the ledge and a Form 1571 completed, but failed to do so.
7. The evidence was convincing that Grievant never told Franco about the FSS tray, even though the opportunity presented itself when she spoke with Franco at 5:00pm.
8. When Grievant returned from her route, she failed to advise Bostic or Francia of the returned flat.

- 9 Grievant testified she returned to the Post Office at 5:59pm and was in a hurry. Grievant's assertion she told four carriers about the delay of mail is suspect.

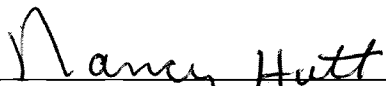
Herein, Grievant blamed Franco for allegedly having no recall that Grievant was bringing back a tray of FSS mail. Franco's believable testimony, and that of Bostic and Francia, support their surprise at finding any delayed mail the following morning by the substantiated back and forth telephone calls and the convincing evidence of record.

The whole point of corrective action is to provide an employee a reasonable opportunity to correct a deficiency. The mail in the FSS flat was delayed in being delivered to customers, which is prohibited by federal regulations and the rules and regulations of the Postal Service. Employees must perform their duties effectively and conscientiously in order for the Service to provide efficient service. It is well accepted that the penalty for misconduct must fit the crime. The Union contends removal is not reasonably related to the seriousness of the misconduct. I disagree. There is simply no reason to believe that corrective discipline would rehabilitate Grievant.

## VII.

### AWARD

Having received and considered all of the evidence and arguments relevant to this matter, I find just cause for the removal. The grievance is denied.

  
Nancy Hutt, Arbitrator