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NALC REGION 8

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration \*  
\*  
between: \*  
\*  
United States Postal Service \*  
\*  
and \*  
\*  
National Association of \*  
Letter Carriers, AFL,CIO \*  
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Grievant: C. Churchwell  
Post Office: Nashville, TN  
USPS Case No: C06N-4C-D 12097464  
NALC Case No: B4-00030-12

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Ronnie Patton

For the Union: Corey L. Walton

Place of Hearing: Postal Facility, Nashville, TN

Date of Hearing: September 19, 2012

Date of Award: October 17, 2012

Relevant Contract Provision: Article 16

Contract Year: 2006

Type of Grievance: Discipline

Award Summary:

This is a case that involves a Letter Carrier that was issued a Notice of Removal after admitting responsibility to his runaway postal vehicle. The arbitrator found the discipline to be punitive rather than corrective and reduced the removal action to a three day suspension.

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VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

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 19 September 2012 at the postal facility located in Nashville, TN, beginning at 9 AM. 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 Letter Carrier at a Nashville, TN Postal facility, the Melrose Delivery Unit. He has been employed by the Postal Service for some thirty three years.

On Saturday, 17 December 2011, the Grievant was involved in a vehicle accident on his route. The accident was a rollaway the Grievant failed to report it immediately to Management. On that following Monday, the Grievant was off and the Relief Carrier noticed that the postal vehicle was damaged and reported it to Management.

On 20 December 2011, the Grievant was interviewed by Management and admitted to a rollaway accident and his failure to immediately report it.

Following an investigation that included a Management interview of the Grievant, the following Notice of Proposed Removal, signed by a Manager, Customer Services, was issued to the Grievant on 17 January 2012, which, in pertinent part reads:

"This is advance written notice that it is proposed to remove you from the United States Postal Service no sooner than 30 calendar days from the date of your receipt of this letter. However, as a result of the USPS-NALC Dispute Process, the decision in this case will be deferred until after the Step B decision has been rendered or fourteen (14) calendar days after the appeal is received at Step B, whichever comes first.

This action is based on the following reasons:

**Charge 1: You are charged with Violation of the Postal Service Standards of Conduct - Unsatisfactory performance.**

On December 17, 2011, you were involved in a rollaway/runaway at 913 Lawrence Avenue, Nashville Tennessee. Before dismounting your vehicle, you failed to engage the parking brake and curb the wheels, and failed to remove the keys from the ignition. The vehicle was on a decline, and it rolled about 10 feet and struck a fire hydrant with the right side of your LLV. During the investigative interview, you admitted that this was a rollaway/runaway, and that you failed to follow the proper dismount procedures. You are aware of the procedures to take in avoiding rollaways/runaways. You failed to follow those procedures.

**Charge 2: You are charged with Violation of the Postal Service Standards of Conduct - Disobedience to Orders.**

You have been instructed to immediately report all incidents on your route. However, you failed to report that you had a rollaway/runaway on December 17, 2011, to management. After the rollaway/runaway incident, you left the scene and continued to deliver your route.

In addition, the following elements of your past record have been considered in arriving at this decision:

1. You were issued a Letter of Warning on June 9, 2011, charging you with unsafe act/not wearing seat belt."

The Letter goes on to advise the Grievant of his appeal rights. The Union filed the instant grievance in protest.

The Parties were unable to resolve the matter at the lower steps of the grievance procedure and the grievance was elevated to the Dispute Resolution Team. The DRT issued an impasse on 24 February 2012.

The matter is now before the undersigned arbitrator for final resolution.

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 presentation of oral closing arguments by the respective Advocates.

**JOINT EXHIBITS:**

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.

## 2. Grievance Package

### COMPANY'S POSITION:

The Employer contends there is just cause to support the removal of the Grievant. It is Management's assertion that the discipline issued was justified and warranted.

Management indicates the Postal Service places a lot of trust in its employees and the Grievant has broken that trust in this case.

The Agency does not expect the Grievant can properly perform nor does the Agency feel it can trust the Grievant any longer in the performance of his duties.

According to the Employer, there is no dispute that the Grievant had an accident. Management alleges that when the Grievant failed to properly dismount, his postal vehicle rolled and hit a fire hydrant. Management claims the facts to be clear that the Grievant did not properly dismount his vehicle.

The Agency asserts that the Tennessee District has a policy for proper dismount procedures. And Management implied that the evidence will show the Grievant failed to follow those instructions, and, as a result, had a rollaway vehicle accident.

Furthermore, Management claims the evidence will show that after failing to properly dismount his delivery vehicle, the Grievant went on to deliver his assignment. The Grievant, according to the Employer, failed to immediately notify Management of his accident. According to the Employer, the Grievant should have notified Management so a proper accident investigation could have been performed.

And even upon his return to the office, the Service purports the Grievant failed to notify Management of his accident. In fact, the Employer points out that it was another Carrier, while performing his required vehicle check, noticed the damage to the vehicle.

Management believes the Grievant left the unreported damage to hopefully not be noticed and become someone else's responsibility.

It is the opinion of the Employer that by not notifying Management of the accident, the Grievant again failed to follow instructions and also broke a state law pertaining to accidents. The Agency indicates the state requires that all vehicle accidents be reported.

Management also claims the Grievant provided conflicting information regarding whether or not the key was left in the ignition. The Service points out that all Employees are to be truthful and honest about any situation and cooperate fully in investigations.

Instead, it is the assertion of the Employer, that the Grievant only hindered the investigation.

Therefore, Management feels that the Notice of Removal is for just cause and that the Grievant has failed to follow proper procedures for numerous infractions.

The Employer respectfully requests that the instant grievance be denied and dismissed in its entirety.

**UNION'S POSITION:**

The Union contends the Notice of Removal was issued without just cause. It is the argument of the Union that, first, a thorough and objective investigation, as outlined in the Joint Contract Administration Manual, was not conducted.

The Union admits the Grievant was involved in a rollaway accident that he failed to report it to the Employer. However, the Union insists that when questioned later by Management, the Grievant was truthful and forthcoming as to what took place.

It was pointed out by the Union that, until this removal action, the only discipline issued to the Grievant was a letter of warning dated June 2011.

It is asserted by the Union that Management's burden of proof carries on after the finding of guilt. In the opinion of the Union, that finding must be followed by discipline that is corrective in nature rather than punitive. In support of their argument, the Union relies on various sections of the JCAM as well as the M-39 Manual.

The Union claims the evidence will clearly show that Management's discipline in this case was punitive rather than corrective and that it was not progressive.

The Union also mentions that the Grievant's immediate supervisor was not involved with the issuance of this discipline. And, according to the Union, this must be fatal to Management's case.

The Union will prove the discipline issued in this case was not for just cause. The Union asks the instant grievance be sustained, the Grievant be returned to full duty and be compensated for all lost wages and benefits.

**THE ISSUES:**

Did management violate Articles 16 and 19 of the National Agreement and Section 115 of the M-39 Handbook when they issued the grievant a notice of proposed removal dated 1/17/12 followed by a decision letter (one of removal), dated 1/31/12, alleging that he violated the Postal Service Standards of Conduct - Unsatisfactory Performance - Disobedience to Orders? If so, what is the appropriate remedy?

Did management violate Articles 14 and 29 of the National Agreement when they failed to make every reasonable effort to assign the grievant to non-driving duties after they suspended/revoked his driving privileges at work? If so, what is the appropriate 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.

There are certain acts of misconduct 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. Incidents such as theft and misappropriation of funds are certainly acts that are not deserving of any progressive discipline whatsoever.

However, in this particular case, I was not convinced that the discipline was corrective in nature. As mentioned in the Parties own Joint Contract Administration Manual, **"The mere fact that an employee was involved in a vehicle accident is not sufficient to warrant automatic suspension or revocation of driving privileges or the automatic application of discipline."**

Furthermore, the Grievant is a long term Employee and it was obvious the Employer failed to include this very important factor in their consideration of discipline.

And according to Article 16, part of that just cause standard includes a showing the discipline was corrective rather than punitive. And in this particular case, I was certainly convinced the action of the Agency was certainly punitive rather than corrective in nature.

In Management's Position, it is mentioned this is the Grievant's fourth accident in three years. However, there is nothing on this record to show that the Grievant was either at fault or had been disciplined. This indicates to me that the Employer has fallen short in meeting the progressive discipline standard of Article 16.

And without a previous record for similar infractions, I do not consider a runaway/rollaway one of those egregious acts deserving of removal on the first offense. The progression in this case went from a written warning for a seat belt infraction to a removal action. The accident in this case, given the Grievant's work record and past discipline, or lack thereof in this case, is certainly not deserving of removal action.

In fact, the Employer's own "PS Form 1769/301 Accident Report" indicates a "Preventative Action" to be "Provide Training/Instruction." That same Form did not characterize the accident as being "Serious" in nature. This simply does not coincide with the discipline that was issued in this case. Given the fact the accident was labeled as not being serious, I am of the considered opinion that removal action taken by the Service in this instance is clearly punitive.

That same Report indicated the Grievant had left the keys in the ignition, however, there wasn't any other evidence either in the case file or produced at the hearing to substantiate that claim.

The Union insisted that the vehicle moved as the Grievant returned. It was the Union's explanation that the vehicle would have moved as soon as the Grievant dismounted had it not been placed in park and the brake set. To that end, I agree. However, if the dismount procedure was properly followed, with the wheels turned toward the curb, the vehicle would have stopped short of striking the fire hydrant.

Management also claimed there to be a Zero Tolerance Policy within the Tennessee District regarding violations of proper

dismount procedures. However, other than a verbal mention, there was no evidence in this case file to show the existence of such a Policy.

Even though the discipline was clearly punitive does not absolve the Grievant of all responsibility. For I am of the considered opinion that had the Grievant curbed the wheels, a rollaway/runaway would not have occurred.

In this case, it's really insignificant whether or not the Grievant had the keys in hand, whether or not the vehicle was running or the brake was set, etc. The fact of the matter is, that a runaway occurred and could have probably been prevented by the Grievant. And with that reasoning, the Grievant must accept some responsibility.

Furthermore, the Grievant should have immediately reported the accident to Management. There was absolutely no excuse for that not happening in this instant case.

This case is certainly deserving of corrective discipline. And with that in mind, the Removal action of the Employer is reduced to a three (3) day suspension. The Grievant shall be made whole in all other respects.

**AWARD**

The grievance is sustained in accord with the above.

Dated: October 17, 2012  
Fayette County PA