C# 14470

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	Alfreda Parker
between	Wheeling, Illinois
UNITED STATES POSTAL SERVICE	Case No. J90N-4J-D 95031311
and	NALC Case No.
NATIONAL ASSOCIATION OF LETTER CARRIERS	

BEFORE: Robert W. McAllister

APPEARANCES:

For the U. S. Postal Service: Colleen R. Kelly

For the Union: Neal Tisdale

PLACE OF HEARING: 250 West Dundee Road
Wheeling, Illinois

DATE OF HEARING: April 12, 1995

AWARD:

The above analysis requires a finding Management's actions with respect to holding the Grievant responsible for two (2) attendance related incidents that pre date the August 11, 1994, settlement agreement were arbitrary and not preserved by the terms of the settlement. The Grievant's actual record of three (3) tardies and two (2) unscheduled absences in an almost four month period does not support a removal. Accordingly, it is found that the Postal Service did not have just cause to issue the Grievant a Notice of Removal. She is to be reinstated with full back pay less interim earnings and benefits, and with no loss of seniority.

DATE OF AWARD: May 17, 1995

I. FACTS

Alfreda Parker, the Grievant, is a full-time letter carrier assigned to the Wheeling, Illinois, post office with seniority since June 8, 1989. On December 19, 1994, the Grievant was issued a Notice of Removal for failure to maintain a regular schedule. The notice cited seven (7) unscheduled absences [four (4) tardies and three (3) absences] between July 26 and December 19, 1994.

II. ISSUE

Did the Postal Service have just cause to issue the Grievant a Notice of Removal? If not, what is the remedy?

III. RELEVANT CONTRACT PROVISIONS

Article 16	Discipline Procedure
Article 19	Handbooks and Manuals

IV. POSITION OF THE POSTAL SERVICE

The Postal Service points out this six year employee has had numerous discussions dealing with her attendance. The Postal Service stresses Postmaster Terry Cardwell initiated an "amnesty" in 1993 in order to give all employees a fresh start. Notwithstanding, the Postal Service contends the Grievant was unable to improve her attendance and within a less than a two (2) year period received a Letter of Warning (LOW), a seven (7) day suspension and fourteen (14) day suspension for irregular attendance.

According to the Postal Service, the Grievant entered into a "Last Chance" settlement on August 11, 1994, following a removal notice issued on July 14, 1994. The Postal Service acknowledges the last chance settlement may not be one that is normally seen, but nonetheless, it was intended to be a strong warning about the consequences of her poor attendance. The Postal Service maintains the Grievant did not have to sign the settlement, but did so.

Now, the Postal Service notes the Grievant for the first time claims she was coerced into signing the document.

The Postal Service argues Supervisor Jose Santa had reached the "end of the rope," and the Grievant simply had to improve. The Postal Service contends the removal was issued because the Grievant's attendance had not improved despite numerous discussions and written warnings. The Postal Service avers improvement is the responsibility of the Grievant. Moreover, the Postal Service insists the record shows the Grievant was well aware of what Management expected from her. The Postal Service believes the medical documentation provided by the Grievant is self-serving. According to the Postal Service, the absences were unscheduled, notwithstanding documentation.

The Postal Service insists the Grievant was removed because she could not be consistently regular in attendance. The Postal Service submits that a basic principle of employment is to come to work as scheduled. The Postal Service states the Grievant did not, and her removal should be upheld.

V. POSITION OF THE UNION

The Union emphasizes Management witnesses stated there are no mitigating circumstances when an employee's absence is unscheduled even if the employee is sick. The Union points out the Grievant suffers from a bi-polar condition and had a right to use her accumulated sick leave.

The Union charges the last chance agreement signed by the Grievant is not worth the paper on which it is written. The Union claims it has no clarity and does not express a specific intent. The Union contends that, as written, this document does not deserve to be given any weight. The Union questions what the Grievant was supposed to live up to under the last chance settlement. The Union points out the Grievant sought help through the Employee

Assistance Program (EAP). Yet, Management refused to consider her medical situation. The Union maintains Management's refusal to consider the medical documentation presented to it renders her medical condition irrelevant, thus placing the Grievant in a no win situation.

VI. DISCUSSION

Postmaster Terry Cardwell testified that if an employee incurs an unscheduled absence, that absence will be used against the employee in any attendance related discipline regardless of the underlying reasons for the absence. This singular viewpoint was, likewise, expressed by the Manager of Customer Services, Thomas Koulentes. In response to a question from this Arbitrator, Koulentes said that once an employee incurs an unscheduled absence, it remains unscheduled and will be used in any future discipline.

Essentially, the Wheeling, Illinois, post office has unilaterally decided to embrace a no fault absenteeism policy without notice to the Union or its employees that such a system is now the case. Moreover, since Management has decided that no consideration will be given to the underlying reasons of a given absence, such a no fault system requires specific guidelines be promulgated in order for employees to be aware of what is expected of them. At a minimum, such guidelines would have to address time periods and the specific number of unscheduled absences or tardies that would trigger each step of this new disciplinary system.

This unilaterally imposed standard is in conflict with the National Agreement and the applicable Handbooks and Manuals. The decision to consider mitigating circumstances, such as injury, hospitalization, emergency, etc., is left to supervision under the National Agreement. The system used by Postmaster Cardwell prohibits any such consideration. Clearly, an individual employee's attendance record over a period of time can reach

the point that it would not be considered unreasonable for Management in that instance to reject consideration of the underlying reasons for an unscheduled absence because of a continuing pattern of excessive and chronic absenteeism.

But this is not the situation presented by the Grievant as reflected in the limited record before the Arbitrator. The Notice of Removal establishes the Grievant's current problems with attendance began with an LOW issued September 16, 1993. On February 17, 1994, the Grievant was issued a seven (7) day suspension for attendance. Then, on July 14, 1994, the Grievant was issued a Notice of Discharge for attendance. The Grievant was in fact issued a fourteen (14) day suspension on May 11, 1994, for a non-attendance matter. The removal notice ignored the Grievant's attendance between February 17 and May 2, 1994. Instead, Management "cherry picked" a period of measurement beginning May 3 and ending July 12, 1994. There is no evidence the Grievant incurred any unscheduled absences between February 17 and May 2, 1994, a period of well over two and one-half (2 1/2) months. The July 14, 1994, removal lists three (3) eight hour absences in May. It then shows no further absences. On July 7 and 12, the Grievant was late 10/100 of an hour or six minutes. This questionable removal notice was grieved. On August 11, 1994, the parties and the Grievant entered into a grievance settlement, as follows:

> This is notice that you will serve a suspension of (2) two weeks beginning Saturday, August 13, 1994, and return to duty on Saturday, August 27, 1994.
>
> This settlement is final and grievant agrees to discontinue pursuing all actions. Employee also agrees to withdraw any pending or current E.E.O. Complaints. This is a last chance agreement.
>
> As final and complete settlement of the subject grievance and without prejudice to either party's position in this or any other grievance, and with the understanding that neither party shall cite this as a precedent, the subject grievance has been

> resolved on the basis that the union has agreed to withdraw this grievance from the grievance procedure and the resolutions entered into by all parties.

Prior to entering into this settlement, the record shows Management was made aware the Grievant was hospitalized from July 30 to August 3, 1994. The Grievant was diagnosed as having a bi-polar disorder that was being treated with medication (Prosac and Lithium). Postmaster Cardwell sent the Grievant to Dr. Philip Foley, a medical officer for the Postal Service, on August 5, 1994. Dr. Foley, by letter dated August 8, 1994, informed Cardwell the Grievant ". . . has been in treatment and is now suitable to return to work."

Analysis of the document loosely characterized as a "last chance" settlement reveals it to be non-specific in terms of what is expected of the Grievant in the future. The Postal Service maintains the settlement was intended to give the Grievant "one last chance to improve her attendance . . . ". Union President Michael Losurdo was called upon by the Postal Service to fill in the blanks of the non-specific, July 14, settlement. He said the Grievant's attendance was discussed. He also said the Grievant was told she had to be "regular" in attendance.

The August 11, 1994, settlement does not address the Grievant's hospitalization (Un. Ex. 1) or a 25/100 tardy on July 26, 1994. Nonetheless, Management reached back beyond the date of the August 11 settlement and cited the July 26 tardy and the Grievant's hospitalization as incidents supporting a decision to remove the Grievant. The August 11, 1994, settlement is at best a ambiguous document drawn up by Postal Management. If local Management wanted to preserve the unscheduled tardy of July 26 and the unscheduled hospitalization of the Grievant, it was incumbent upon them to do so with a clear and unambiguous statement to that effect since Management was the author of the August 11 document. But, even if local Management had

had the foresight to address the Grievant's hospitalization, their insistence upon holding her accountable for that unscheduled absence was unreasonable and not supported by the record. Clearly, local Management has failed to show the Grievant's attendance record had reached a point whereby it could be viewed as random, excessive, and chronic, thereby justifying its inclusion of the Grievant's hospitalization in the removal notice. As indicated above, if such was the case, it may very well be found reasonable for Management to no longer give consideration to the actual reason for a given absence.

Herein, however, such is not the case. More importantly, the ambiguous settlement must be construed against the authors who failed to preserve Management's right to reach back prior to the date of the settlement in any future evaluation of the Grievant's attendance.

Thus, we are faced with a record of three (3) tardies and two (2) absences, all of which were unscheduled. Supervisor Koulentes testified, "We expected some improvement." Three tardies and two unscheduled absences over close to four months may not be perfect attendance, but such a record falls far short of establishing the Grievant's attendance record was chronic and excessive.

Local Management appears to have a quick trigger when it comes to its evaluation of the Grievant's actual record. I am unfortunately unable to go behind the July 14, 1994, removal. Nevertheless, Management's use of an artificial measuring period emphasizing three (3) unscheduled absences plus two (2) six minute tardies in a two and one-half month period gives insight into the system they are attempting to impose upon unit employees. Upon signing the non-specific settlement of August 11, 1994, the record evidences no citable instances Management thereafter informed the Grievant her record was reaching a point where any further absence(s) would lead to her

discharge. Had such an effort been made, the Grievant and the Union would have been put on notice that Management intended to measure her improvement or lack thereof by using the July tardy, as well as her pre-settlement hospitalization. As it turns out, this improper reliance was not revealed until the Grievant was removed.

Moreover, there is no evidence anyone in local Management told the Grievant or any other unit employee it was administering attendance on a no fault basis or that, in Management's viewpoint, the Grievant's record had reached such a point of unreliability that it would not consider any reason, including her hospitalization, as a mitigating factor for an unscheduled absence. Instead, Management told the Grievant she had to be regular in attendance - period. As indicated above, her record between August 11 and the removal was not perfect yet it clearly does not support this removal action.

VII. AWARD

The above analysis requires a finding that Management's actions with respect to holding the Grievant responsible for two (2) attendance related incidents that pre date the August 11, 1994, settlement agreement were arbitrary and not preserved by the terms of the settlement. The Grievant's actual record of three (3) tardies and two (2) unscheduled absences in an almost four (4) month period does not support a removal. Accordingly, it is found the Postal Service did not have just cause to issue the Grievant a Notice of Removal. She is to be reinstated with full back pay less interim earnings and benefits, and with no loss of seniority.