

Regular Arbitration

IN THE MATTER OF THE ARBITRATION BETWEEN:

National Association of Letter Carriers, AFL-CIO

***Grievant:** Shynay Holland

USPS: K06N-4K-C12367173

-and-

United States Postal Service

DRT: 13-253286

BEFORE:

Mollie H. Bowers

APPEARANCES:

For the Union:

Alton R. Branson

For the Service:

Carlos R. Brown, Sr.

Place of Hearing:

Baltimore, Maryland

Date of Hearing:

March 6, 2013

Date of Award:

March 25, 2013

Relevant Contract Provisions:

Articles 15 and 19

Contract Year:

2006-2011

Type of Grievance:

Contract Interpretation

AWARD SUMMARY

The Arbitrator sustained the grievance finding that 204B Baldwin violated Article 19 of the National Agreement, including Section 115.4 of the M-39, and the Joint Statement on Violence and Behavior in the Workplace. However, the remedy requested by the Union has been modified. A full discussion appears below.

Mollie H. Bowers

Mollie H. Bowers, Arbitrator

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* The scheduling letter indicates that this is a "CLASS ACTION" grievance. Both parties, and the Grievant, agreed, at the outset of the Hearing, that this case involves Shynay Holland and that she is the Grievant.

ISSUE

Did 204B Baldwin violate, but not limited to, Articles 15 and/or 19 of the National Agreement, inclusive of Section 115.4 of the M-39 Handbook and the "Joint Statement on Violence and Behavior in the Workplace" (JSVBWP), when he demonstrated abusive behavior towards Carrier Holland on August 17, 2012, and if so, what is the appropriate remedy?

BACKGROUND

The Grievant had worked as a Letter Carrier at the Downtown Delivery Annex (DDA) in Baltimore, Maryland for about five years at the time of the events described herein. There is no indication that she had been disciplined during this tenure. The Grievant was not on the Overtime Desired List (ODL).

The events which gave rise to this proceeding occurred on August 17, 2012. On that date, the Grievant was carrying her regular route, 3113, had submitted a Form 3996 requesting 1 1/2 hours of additional time, and was approved for 1 hour. Also on August 17th, the Grievant was assigned a bump on another route that she said she had not delivered before and was not proximate to her regular route. This delivery was supposed to take one hour.

There is no dispute that, beginning at about 2:00 p.m. on the 17th, the Grievant began calling in to tell Phillip Baldwin, Acting Supervisor, Customer Service DDA, that she was not going to be able to complete her regular route within the time allotted even though an additional hour had been granted. There is also no dispute that Mr. Baldwin told her repeatedly to maintain her schedule and to complete her assignment. According

to the Grievant, Mr. Baldwin hung up on her at least once when she called in. The Grievant provided un rebutted testimony that the last time she called in was around 6:20-6:25 p.m. She said that she told Mr. Baldwin that she had just completed her regular route and that she still had an hour of forced overtime on another route. Once again, Mr. Baldwin's response was to maintain her schedule and to complete her assignment, and he hung up.

The Grievant returned to the office sometime between 6:45 and 6:50 p.m. She brought mail back, placed it in a U-cart, and placed the cart next to Mr. Baldwin's desk. According to the Grievant, Mr. Baldwin yelled at her to complete her assignment and to maintain her schedule. The Grievant said that she asked Mr. Baldwin if he was authorizing her overtime and he gave the same response. There is no dispute that Mr. Baldwin slammed his pencil down, got up, pointed his finger in the Grievant's face and then, as she turned to go to clock out, pushed the U-cart toward her. The Grievant claimed that the U-cart struck her in the left hip. This claim was not corroborated by any evidence or testimony in the record.

Mr. Baldwin has twenty-nine (29) years of service, about twenty-seven (27) of which were spent as a Letter Carrier in the office in question. When he was promoted to supervision, approximately a year and a half or so before the incident in question, Mr. Baldwin characterized this as a "rough transition" because he received "pressure from both ends"; meaning from both upper Management and from the Carriers. He acknowledged that he had to have help initially to learn how to handle various situations.. He said there was a lot of "turmoil" at the DDA in terms of getting mail ready for the street and getting it delivered timely.

The record contains four (4) 'cease and desist' resolutions reached regarding Mr. Baldwin's conduct. The first incident occurred on August 13, 2011. The incident was described as follows:

On 8-11-11 after Ms. Dawson [Sharon Dawson, Shop Steward] asked for clarification on instructions, Mr. Baldwin stated 'Do I have to treat you like a child?' on the work floor in front of case 3119. Violation Article 115.4 of the M-39.

The resolution reached was "cease & desist". At the Hearing, Mr. Baldwin acknowledged that it was "wrong to belittle Dawson" in front of peers. He explained that she annoyed him when she put a DPS try on top of parcels in an orange hamper and asked if it was safe? He believed that she should have known very well that it was not a safe practice.

The second incident occurred on January 19, 2012. The allegation was "Violation of Article 19, M-39, 115.4. On that date, after being asked a question concerning safety, 204B Supervisor Baldwin raised his voice and responded, you want it out, you move it". Mr. Baldwin explained that, initially, he had an "explosive relationship" with Shop Steward Sharon Dawson. He said that when Steward Dawson brought up the safety issue, he responded "are you willing to volunteer to relieve the safety issue?" and Ms. Dawson "got frustrated and walked away". A "cease & desist" resolution was reached on February 2, 2012.

The third incident occurred on July 6, 2012, and involved alleged "violations of Article 19, M-39 115.4, involving 204B Supervisor Baldwin. No specifics were provided in the record. Nevertheless, on September 27, 2012, a "Cease and desist" resolution was reached and the Maintain Mutual Respect Atmosphere was quoted. At the Hearing, Mr. Baldwin explained that this matter involved a Carrier named Ms. Higgins who had

recently returned from light duty. Although she had not been at work on the 6th, Mr. Baldwin said that, around 4:00 p.m., Ms. Higgins came to the office and asked for her pay check. He said there was a new system in place and he could not get into the front office where the checks were kept. Mr. Baldwin then proceeded to question Ms. Higgins about where she had been that day and was told it was none of his business. The Union filed a complaint. This matter was resolved, on September 17, 2012, by a "Cease and desist" resolution also containing the "Maintain Mutual Respect Atmosphere" language.

The fourth incident occurred on July 28, 2012, when allegations were made of "violations of Article 19, M-39 115.4 and ELM 665.24, involving 204B Supervisor Baldwin". A resolution was reached, on September 27, 2012, which included "cease and desist". Also recorded was the following:

Maintain Mutual Respect Atmosphere

The National Agreement sets out the basic rules and rights governing management and employees in their dealing with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

Violent and/or Threatening Behavior

The Postal Service is committed to the principle that all employees have a basic right to a safe and humane working environment. In order to ensure this right, it is the unequivocal policy of the Postal Service that there must be no tolerance of violence or threats of violence by anyone at any level of the Postal Service. Similarly, there must be no tolerance of harassment, intimidation, threats, or bullying by anyone at any level. Violation of this policy may result in disciplinary action, including removal from the Postal Service.

At the Hearing, Supervisor Baldwin explained that there was a call for assistance at the Highland Town office. Sometime between 5:00 and 5:20 p.m., a PTF named Joyce Harris had returned from the street. Supervisor Baldwin testified that he asked her to go to Highland Town, she refused, and Carrier Harris said she was going home because she

did not feel well. He admitted that voices became elevated, he got up from his chair, and "politely" told her that she needed to document the reason(s) why she could not go to Highland Town. Supervisor Baldwin said that he then returned to his chair. His version of what transpired is not identical to the description contained on page 23 of Joint Exhibit 3 (the moving papers).¹

According to the Grievant, she clocked out, at about 7:00 p.m. and went home after the altercation with Supervisor Baldwin on August 17, 2012. She said she tried to call Shop Steward Dawson, but there was no answer. She also said that she would have called the Postal Police, but she did not know the number. The next morning, the Grievant testified that she called the Union, then went to her station, and called the Postal Police. Officer Daniel E. Stull, Jr. took the report at 10:45 a.m. Under "Facts", Officer Stull wrote:

On 8/18/12 at 1045 hours, I responded to the Downtown Delivery Annex in reference to an employee wanting to submit a voluntary statement. Upon arrival I met employee Shynay Holland who stated that Supervisor Philip Baldwin had struck her with a U-Car. Ms. Holland stated that this had happened on Friday 8/17/12 at 6:55 pm. I had Ms. Holland fill out a voluntary statement form. I then spoke with Supv. Baldwin who stated that he had pushed a U-Cart but that it had not hit her. Mr. Baldwin also filled out a voluntary statement form. I contacted Sgt. Meyers who stated that he would refer it to the Workplace Violence Team. End of report.

The record does not contain the full Incident Report.

On cross-examination, Mr. Baldwin:

- Denied that he told the Grievant to "maintain your schedule;
- Said he did not have a full understanding of what the Grievant's workload was on August 17, 2012;
- Denied saying "That Shynay is really getting on my nerves. Something needs to be done about her. Like Book needs to fire

¹ The record contains written statements prepared by various people, including Steward Dawson, regarding the three incidents described above.

- her ass";
- Denied raising his voice to the Grievant; and
- Said that he did not give the Grievant a PDI or discipline her for failure to follow instructions and/or for delay of the mail on August 17, 2012.

The record contains written statements prepared by the Grievant, Letter Carriers Debbie Toni and Cleveland Powell, and Carrier Technician Dennis Style. A rough map of the work area was included on page 53 of Joint Exhibit 3. Debbie Toni testified that she was working in the Mark-up area when the incident occurred on August 17, 2012. Carrier Technician Style testified that Carrier Toni was across the room at one end of the supervisory area. Both Carrier Toni and Carrier Technician Style agreed that Carrier Cleveland Powell was at his case for route 220, behind and to one side of the supervisory area. Carrier Technician Style testified that he was at his case, number 263, in front of and to one side of the supervisory area. There were differences of opinion about what each of these people could see and/or hear from their alleged vantage points at the time of the incident at bar in this case. The witnesses that testified did agree that the confrontation between the Grievant and Mr. Baldwin was loud. Testifying for the Service, Carrier Technician Style was emphatic, as he was in his written statement, that the U-cart pushed by Mr. Baldwin did not hit the Grievant.

On September 26, 2012, the Union filed a grievance. The parties agree that the matter was properly processed through the negotiated procedure.² When they were unable to reach a mutually acceptable agreement, the dispute was advanced to the Step B Team, on November 13, 2012, for consideration. On November 27, 2012, the Step B

² Consequently, and given no showing to the contrary, the Arbitrator gave no further consideration to the Union's claim that Article 15, Grievance-Arbitration Procedure, of the National Agreement had been violated.

Team declared impasse. Thus, the dispute was advanced to arbitration for a final decision.

POSITIONS OF THE PARTIES

Union Position:

The Union contends that it has satisfied its burden of showing that Supervisor Baldwin, on August 17, 2012, violated Articles 15 and 19 of the National Agreement and, by extension Section 115.4 of the M-39 Handbook and the Joint Statement on Violence and Behavior in the Workplace (JSVBWP). It is clear from the record that Supervisor Baldwin has a history of engaging in rude, disrespectful, bullying, and abusive behavior in his management of Carriers at the DDA in Baltimore. No matter how many times he has been taken to task, Supervisor Baldwin has demonstrated repeatedly that he is neither willing nor able to correct his behavior.

As shown, again, on August 17th, 'cease and desist' orders have done nothing to deter or to correct his behavior. The fact is that Supervisor Baldwin had been coming to the boil all day as the Grievant made repeated calls to advise him that she could not finish her own route, much less deliver the bump she had been assigned, in the time allotted. She asked for guidance, but all Supervisor Baldwin kept telling her was to deliver the mail and to maintain her schedule -- instructions that were clearly at odds with the Grievant's work assignments on that date; assignments which Supervisor Baldwin admitted that he was not aware of fully.

When the Grievant arrived back at the office at about 6:50 p.m., Supervisor Baldwin continued to give her the same conflicting instructions. If she had gone back to the street then, and delivered the rest of the mail, the Grievant surely would have been

charged with unauthorized use of overtime; and disciplined as a result. Supervisor Baldwin knew, or should have known this, based upon his many years of service as a Letter Carrier. Equally important, Supervisor Baldwin acted out, once again, by slamming down his pencil, getting up, pointing a finger at the Grievant, and pushing the U-cart into her hip. These actions, the Union maintains, are clear evidence that that the Grievant was subjected to treatment contrary to Article 19 and the related M-39 handbook, as well as the JSVBWP.

The Union maintains that it, and especially the bargaining unit employees, have put up with Supervisor Baldwin's abusive, bullying, demeaning, and even violent behavior long enough. It has signed numerous 'cease and desist' orders trying to work out previous situations and to correct Supervisor Baldwin's behavior. None of these efforts have come to any avail. This time, therefore, the Union is not just asking for a 'cease and desist' order. These have been ignored repeatedly by both Supervisor Baldwin and upper level Management. Instead, the Union is seeking, as remedy, that Mr. Baldwin be removed from his 204B position and be returned to the Carrier craft

. . . until he receives anger management training and not just an online training class and the Union be provided documentation that he has successfully completed the anger management class and he be not allowed to supervise any craft employees for a period of two years after successfully completing the anger management class.

The Union provided two court cases: *United States Postal Service v. National Association of Letter Carriers, AFL-CIO*, U.S. Court of Appeals (6th cir.) No. 02-5050, June 8, 2003; and *United States Postal Service v. National Association of Letter Carriers, AFL-CIO*, U. S Court of Appeals (4th cir.), No. 02-1159, November 5, 2001. It also

submitted three regional arbitration awards: K94N-4K-C98111598 (Britton, 2001; H94N-4H-C95041405 (Bajork, 2000); and I94N-4I-C99136168 (Fields, 2000) in support of its position. It asks that this grievance be sustained and that the remedies requested be granted in their entirety.

Service Position:

The Service maintains that this grievance should be denied in its entirety. It relies on two major arguments to support its position. The first is Article 3 of the National Agreement that gives Management the rights, *inter alia*:

- A. To direct employees of the Employer in the performance of official duties;
- B. To . . . assign . . . employees . . .
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;

. . .

According to the Service, Supervisor Baldwin acted in accordance with Article 3 when he directed the Grievant to deliver the mail and to do so while maintaining the schedule that she had been given. These were clear instructions and the Grievant did not abide by them.

The second major argument that the Service advanced is that the mutual respect provisions of Article 19, including the M-39, and of the JSVBWP work both ways. It alleges that the Grievant is a combative employee who has shown no respect for Supervisor Baldwin. This was confirmed by Carrier Technician Style's testimony that the loud altercation that occurred between the Grievant and Supervisor Baldwin, on August

17, 2012, was a repeat of a "movie" shown before.³ In the instant case, the Grievant went so far as to trump up the claim that Supervisor Baldwin hit her with the U-cart in order to deflect attention from the fact that she failed to follow his instructions. The Service asks the Arbitrator to note that neither evidence nor testimony was provided by the Union to support the Grievant's claim and, thus, the Union is only assuming that a threat to the Grievant was made. Assumptions do not constitute proof and, thus, the Service maintains that the Union has failed to shoulder its burden of proof necessary to sustain this grievance.

Furthermore, the Service asks the Arbitrator to consider Supervisor Baldwin's circumstances. He is a 204B Supervisor in the same office where he had worked for many years as a Letter Carrier. He was honest in testifying about the problems he had in adjusting to this position. Supervisor Baldwin also was forthright in explaining the efforts that he had made to correct his behavior to fit the requirements of a 204B.

Therefore, the Service asks that this grievance be denied in its entirety as without merit on any point. In support of this position, the Service provided the following arbitration awards: K01N-4K-C03019595 (Arbitrator Bowers, 2003); C98N-4C-C02061455 (Arbitrator Conway, 2004); and H01N-4H-C03070199 (Arbitrator Eisenmenger, 2004).

DISCUSSION AND ANALYSIS

Allegations, if proven, of disrespectful, harassing, bullying, violent, and other related behaviors have been taken very seriously by both parties for decades. When employees are alleged to have engaged in such behaviors, Service Management has

³ The Service asked that note be taken that Carrier Technician Stylic is a bargaining unit employee who was subpoenaed to appear on its behalf at this Hearing.

quickly put them on Emergency Placement, often with discipline, including discharge, to follow. As demonstrated by this case, and others, the Service has not been as energetic where allegations of such misconduct, even if proven, are made against Management personnel. This has seriously compromised its position that enforcement of Article 19 of the National Agreement, including the M-39, and the JSVBWP is a two way street.

Based upon the credible evidence and testimony provided in this proceeding, the Arbitrator determined that the Union has met its burden of proving that Supervisor Baldwin was culpable for his behavior on August 17, 2012. By his own admission, Supervisor Baldwin was having problems adjusting to being promoted to a Management position in the same office where he had served for many years as a Letter Carrier. This is not an uncommon experience, in many employment settings, where a person from the bargaining unit has been advanced to supervision, at the same site, sans any training on how to manage the responsibilities of the new position, Supervisor Baldwin was credited for his honesty in testifying that he had difficulty making the transition, especially given the pressures from both upper level Management and the Carriers, well as the circumstances at the DDA at that time.

The Arbitrator also took judicious note that the Union had worked to correct Supervisor Baldwin's behavior, on four occasions, by signing 'cease and desist' agreements to resolve grievances filed against him prior to the instant case. None of these efforts came to any avail. She further noted that upper level Service Management neither took notice of these agreements nor took any steps to provide Supervisor Baldwin with management skills that would help him to correct his behavior.

The Union does not dispute the Management Rights set forth in Article 3, of the National Agreement. Specifically, with respect to August 17, 2012, it agrees that Supervisor Baldwin had the right to respond to the Grievant's Form 3996 by granting only an additional hour to serve her regular route. However, as soon as the Grievant knew that she could not deliver this route within that time allotted, she began calling Supervisor Baldwin to advise him of same. There is no dispute that Supervisor Baldwin responded, each time, that the Grievant should deliver her route within the time allotted and, after giving these instructions repeatedly, he began to hang up on her calls

In the meantime, the Grievant had been assigned to deliver a bump. By Supervisor Baldwin's own admission, he did not know about this when he gave instructions to the Grievant in response to her calls. This gives credence to the Grievant's testimony that Supervisor Baldwin became increasingly frustrated with her repeated calls to request additional time and that he hung up on her. It also reinforces the credibility of Carrier Toni's testimony that Supervisor Baldwin said "That Shynay is really getting on my nerves. Something needs to be done about her. Like Book needs to fire her ass". These behavior provide motivation for Supervisor Baldwin's behavior once the Grievant returned to the DDA, at about 6:50 p.m., with undelivered mail.

Supervisor Baldwin only authorized the Grievant time, until 7:00 p.m., to deliver her regular route. She brought mail back from the bump, put in it a U-cart, and brought it over to Supervisor Baldwin's desk. He, again, told her to deliver the mail and to do it timely. The Arbitrator determined that Supervisor Baldwin's directive was both uninformed and inconsistent in terms of the Grievant's circumstances. Employees can only be expected to comply with legitimate directives given by their supervisors.

Supervisor Baldwin's instructions to the Grievant did not meet this test. And, as the Union argued, Supervisor Baldwin knew or should have known that, if the Grievant had complied with his directive, she would have likely have been disciplined for unauthorized use of overtime. While comply now and grieve later is the standard, the Arbitrator, under the specific circumstances of this case, cannot fault the Grievant for not going back on the street as Supervisor Baldwin directed. She not only had been subjected to his hostile behavior, but also judicious note was made that Supervisor Baldwin took no steps to discipline the Grievant for either failure to deliver the mail or insubordination; or both.

When the Grievant returned to the office, an altercation occurred between Supervisor Baldwin and her. This was an example of the "movie" that Carrier Technician Stylc testified about -- a "movie", the record shows, that was not limited to the subject confrontation with the Grievant. There is no evidence in the record that she was a "combative" employee, as described by Supervisor Baldwin.

Based upon the credible testimony and evidence of record, the Arbitrator concluded that Supervisor Baldwin, again, engaged in errant behavior to the extent that he violated Article 19, of the National Agreement, including the M-39, and the JSVBWP. It is irrelevant whether or not, when Supervisor Baldwin pushed the U-cart toward the Grievant, that it hit her. The credible record is persuasive that Supervisor Baldwin was loud, slammed his pencil down, got in the Grievant's face, and pushed the U-cart toward her. If behavior like this was engaged in by an employee in the bargaining unit, he/she would have been put on Emergency Placement immediately; pending further discipline. There is no evidence that, even when a grievance was filed, upper level Management sought to discipline Supervisor Baldwin for violating Article 19, the M-39, and the

JSVBWP and/or to provide him with assistance that would enable him to perform his supervisory duties in a professional and **mutually** respectful manner. Employees in the bargaining unit do not deserve to be subjected any more to Supervisor Baldwin's misconduct. As a result of the Service's delinquency, and for the first time, this Arbitrator finds not only that the grievance must be sustained, but also that remedies related to those requested by the Union must be awarded.

AWARD

The grievance is sustained.

The remedy asked for by the Union is modified. The Arbitrator's ruling is that the Service must demote Supervisor Baldwin to his previous Letter Carrier position; effective immediately.

DATE: March 25, 2013

Mollie H. Bowers

Mollie H. Bowers, Arbitrator