

REGIONAL ARBITRATION PANEL

In the Matter of Arbitration	)	Grievant:	Erika Johnson
	)		
Between	)	Post Office:	Glenwood, Illinois
	)		
United States Postal Service	)	USPS No.:	J11N-4J-D 18322412
	)		
And	)	Branch No.:	TC4618
	)		
National Association of Letter Carriers,	)		
	)		
BEFORE: Jo Ann Nixon, Arbitrator			

APPEARANCES:

For the U.S. Postal Service Lawrence Edwards, Jr.

For the National Association of Letter Carriers Carl F. Oefelein

Place of Hearing: 701 W. Holbrook Rd, Glenwood, IL 60425-1529

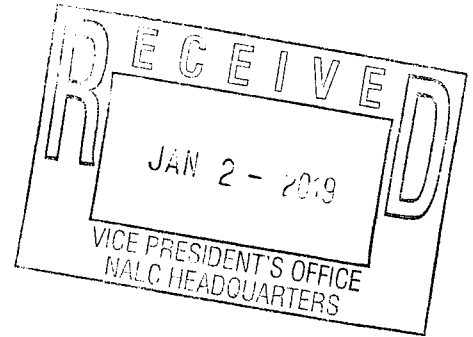
Date of Hearing: November 14, 2018

Date of Award: December 14, 2018

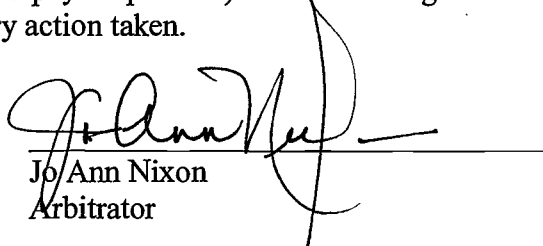
Relevant Contract Provision: Articles 16

Contract Year: 2016 - 2019

Type of Grievance: Discipline



AWARD: The grievance is sustained. The Notice of Removal issued to the Grievant on May 18, 2018 shall be rescinded, expunged from all records, and replaced with a 30-day Suspension without pay. The Grievant, Erika Johnson, will be immediately returned to work and made whole (with the exception of the 30-day non-pay suspension) for all loss wages and benefits as though she were not subject the disciplinary action taken.

  
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 Jo Ann Nixon  
 Arbitrator

## **I. ISSUE**

Did the Postal Service violate Articles 16 and 19 of the National Agreement by issuing FTR carrier Erika Johnson a Notice of Removal dated May 17, 2018, and if so, what is the proper remedy?

## **II. STIPULATIONS**

The parties agreed the following documents are to be considered as exhibits:

1. The Collective Bargaining Agreement between the National Association of Letter Carriers and the United States Postal Service – 2016-2019. (Joint Exhibit No. 1)
2. A packet of information containing memoranda and letters documenting the grievance (Joint Exhibit No. 2)
3. The Joint Contract Administration Manual between the National Association of Letter Carriers and the United States Postal Service-2016-2019. (Joint Exhibit No. 3)

## **III. RELEVANT CONTRACT PROVISIONS**

### **ARTICLE 16**

#### **DISCIPLINE PROCEDURE**

##### **Section 1. Principles**

In the administration of this Article, a basis 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.

### **ARTICLE 19**

#### **HANDBOOKS AND MANUALS**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

#### **IV. BACKGROUND**

This grievance was initiated by the National Association of Letter Carriers (NALC) and is before the Arbitrator for decision pursuant to the National Collective Bargaining Agreement between the parties. The hearing was held on November 14, 2018 at the Tri-City Post Office located at 701 Holbrook Rd., Glenwood, Illinois. The parties agree that this matter is properly before the arbitrator.

#### **V. FACTS**

On April 19, 2018 and again on April 20, 2018, Management at the Glenwood Post Office conducted street supervision which included driver's license checks. Management alleges that the Grievant in this case, Erika Johnson presented a driver's license for Kiara Johnson on both dates. Following an investigation into the matter, Management found that Ms. Johnson's driver's license had been suspended on March 26, 2018; they held a PDI with the Grievant on April 28, 2018 and again on May 10, 2018. On May 18, 2018, the Service issued the Notice of Removal at issue in the instant grievance to Ms. Johnson, charging the Grievant with Unacceptable Conduct, Driving a Postal Vehicle with a Suspended License, and Failing to Report the Suspension of Your Driver's License. The Grievant had no prior discipline cited in the Removal action.

#### **VI. MANAGEMENT'S POSITION**

Management contended that in the case at bar, this is a disciplinary action grievance so Management bears the burden of proving by a preponderance of evidence that just cause existed for the discipline.

According to Management, the grievant is a short term employee with a seniority date of September 4, 2016. The Service contended that on April 17, 2018, Postmaster Robert Gavros began conducting quarterly driver's license checks on the city letter carriers at the Tri City Post Office. Postmaster Gavros averred that several carriers responded that their driver's license was not on their person, and this included the Grievant. According to the Service, all employees were instructed to have their license on them the following morning.

Management asserted that on April 19, 2018, the Grievant in this case presented to her Supervisor, Toni Brown, a driver's license for Kiara Johnson; they further asserted that the

Grievant's Supervisor immediately challenged Ms. Johnson on her claim that the license presented was her own. The Service contended that because Ms. Johnson insisted to her Supervisor that the license was her own, Ms. Brown allowed the Grievant to proceed about her deliveries for that day while she investigated the situation. They further contended that Ms. Brown conducted street supervision the following day, April 20, 2018 and the Grievant once again presented a license for Kiara Johnson.

It was the position of Management that the investigation into the validity of Ms. Johnson's driver's license led to her Supervisor contacting Labor Relations who informed Ms. Brown on April 20, 2018 at 5:06 pm that the license produced by Erika Johnson was not her own. According to Management, further investigation led to the discovery that the Grievant's driver's license had been suspended on March 26, 2018; at that point, Supervisor Brown conducted two (2) Investigative Interviews with the Grievant where she continued to maintain the license was her own. Management asserted that following the second interview Management issued a Notice of Removal to the Grievant on May 18, 2018.

Management argued that there is no question that the Grievant operated a postal vehicle on a suspended license from March 26, 2018 until April 20, 2018, and there is no question that the grievant failed to disclose the Grievant's driving status with postal management, and was dishonest throughout the investigation process. Management further argued that the Grievant had a chance to disclose her driving status on April 17, 19 and 20, 2018. They disputed the Union's request for leniency contending that it was a mistake; Management contended that a mistake is not an ongoing display of dishonesty.

Management maintained that the Grievant knowingly failed to disclose to the Postal Service the suspension of her driver's license which violated her obligation to the Postal Service. The Service argued that the Grievant's decision not to inform her Supervisor of the suspension of her driver's license shows her propensity for dishonesty and deceit and she can no longer be trusted to inform Management if a similar situation arises in the future. Management argued that they acted within the contractual provisions of the National Agreement. Management further argued that consistent with the principles of "just cause" that the following applies in the case at bar:

- Is there a rule? Yes. The M-41, Section 811.11 Illinois State Law, Chapter 1, and postal regulations require all drivers be qualified and maintain a valid state license.
- Is the employee aware of the rule? Yes, the Grievant's actions confirm she was well aware that she was not supposed to be driving on a suspended license; also the Grievant had been subject to quarterly driver's license checks throughout her postal employment.
- Is the rule reasonable? Yes, not only is it reasonable it is Illinois State Law.
- Is the rule consistently and equitably enforced? Yes. Driver's license checks are conducted on a quarterly basis for all postal employees with driving duties.
- Was a thorough investigation completed? Yes, the Grievant was interviewed twice about the incidents leading up to her removal and when presented with the invalid license, Supervisor Brown investigated to find out if it in fact belonged to the Grievant.
- Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? Yes. Management maintains that the Grievant not only violated postal regulation but state law. They argued that in the State of Illinois, driving on a suspended license is a Class A misdemeanor which is punishable by a maximum of 364 days in jail along with fines and court costs and presenting someone else's driver's license as your own carries possible imprisonment of up to five years and a 12-month suspension or revocation of driving privileges.
- Was it timely? Yes. Management contends that the discipline was timely issued and it took only a few weeks for the whole process but the result was a thorough investigation which documents had to be acquired to verify that Erika Johnson violated postal regulations and Illinois State Law.

Management maintained that they had just cause to issue the Grievant a Notice of Removal on May 18, 2018.

In support of their position, Management offered the arbitral opinion of Arbitrator Tobie Braverman where she opined in case number C11N-4C-D 17391573:

The offense of proven dishonesty is one for which progressive discipline is simply not required. Honesty is a basic requirement of the position of letter carrier. Letter carriers handle sensitive, valuable and personal mail items on a daily basis, and work long hours each day without supervision. It is imperative that they be honest. The grievant has demonstrated through her conduct she cannot be relied upon to possess the honesty required of the position of letter carrier.”

Management again cited the Union’s request for leniency in the instant case but they maintained responded that the Grievant is a short term employee and has not built a bank of goodwill with the Postal Service. The Service contended that Ms. Johnson waived any consideration of leniency when she operated a postal vehicle without a valid driver’s license, failed to report her status and repeatedly displayed dishonesty. Management cited the Employee and Labor Relations Manual at Section 665 which provides the standards of conduct expected of postal employees. They also cited the M-41 Section 8 which provides the responsibilities of all carriers when operating postal vehicles.

Finally, the Service argued that the Grievant has not taken responsibilities for her actions at any point during this grievance process including through testimony at the Arbitration hearing; they noted that there have only been attempts to pass blame. Management contended that they took the Grievant’s word that she had a valid driver’s license, until she presented another person’s license as her own. They further contended that if the Postal Service knew that Ms. Johnson’ license was suspended, should would not have been operating a postal vehicle; and once Management learned of the suspension, they did not allow her to drive a postal vehicle. The Service asserted that the Grievant broke numerous state laws, postal regulations and ultimately the trust of her employer. Management requested that the grievance be denied in its entirety.

## **VII. UNION’S POSITION**

The Union contends that Management did not have “just cause” to issue the Grievant, Erika Johnson, the Notice of Removal on May 17, 2018. The Union maintained that the parties stipulate the on April 19, 2018 and April 20, 2018, Erika Johnson was driving a postal vehicle on a suspended license and when asked to show her license, she presented the license of Kiara

Johnson. The Union asserted that the parties further stipulated that Erika Johnson was issued a NOR on May 18, 2018 and was allowed to continue to work until July 31, 2018.

According to the Union once Management investigated and found that the driver's license did not belong to the Grievant, Ms. Johnson admitted that her license had been suspended for not having insurance. The Union noted that the Grievant's driver's license was reinstated on May 7, 2018 and all of her issues with the State of Illinois have been resolved. The Union asserted that this case is not about denying the facts, but rather the issue is about "just cause". They argued that the Grievant is a very short term employee as argued by Management, but instead, Ms. Johnson was a City Carrier Assistant for 4 years and 7 months and has been a Full-Time Regular for 1 year and 4 months; therefore, a 6 year employee of the Postal Service that has built a bank of goodwill. The Union did not dispute that the Grievant initially misled Management; however, they maintained that Ms. Johnson later recanted and told the truth. The Union further argued that the NOR at issue in the instant grievance is the only discipline in the case file.

It was the position of the Union that Article 16 provides the types of actions that eliminate progressive discipline, and the incident in the case at bar is not one of them. The Union further cited Article 16 at Section 5 which provides that there shall be a 30-day period after the issuance of a NOR before the employee can be taken off the clock, they noted that the Grievant was allowed to work just short of 3 months following the Notice of Removal issued on May 17, 2018. The Union argued that obviously the level of trust required between the Grievant and postal management was not broken as she was allowed to work more than 2 months more than was required. In fact, the Union contended, the 30-day requirement is waived in the area of threats, violence, theft, etc. where the threat of jail is a possibility as listed under Article 16.6; the Union noted that the 30-day provision included in the subject NOR is an acknowledgment that there was no jail time anticipated.

The Union held the position that discipline must be timely issued and as promptly as possible after the infraction. They noted that there was no police, OIG or postal inspector's report in this file; the pre-disciplinary interview took place on April 28, 2018; and all of the needed information was obtained by April 28, 2018; yet the discipline was not issued until May 18, 2018 a full month after the incident. The Union contended that the Grievant averred that she

was in financial trouble and that is why she was behind on her insurance and was afraid to notify Management because they would not work her and that would make her financial issues worse and she needed to make money. The Union further contended that the Grievant's fears were proven correct when Management, shortly after originally accommodating the Grievant decided to not allow her to work until her license was reinstated.

The Union contended that nothing in the case file established that the Grievant caused harm to the Service; in fact they maintained that the Grievant was misguided in her decision to provide a false driver's license but she made every effort to come to work and carry her route. The Union further contended that Yes, the Grievant made a mistake, however, the mistake was not so egregious as to warrant a removal and obviously Management agreed with that sentiment when they continued to work Ms. Johnson until July 31, 2017 and in their Formal A Contentions (Jx-2 Page 40) stated that Management offered the Grievant a Last Chance Agreement instead of Removal.

At Step B, the Union's Representative argued that it was not local Management but the Labor Relations Specialist who decided that the Grievant should be removed; the Union offered the email exchange between Supervisor Brown and Labor Relations Specialist Lawrence Edwards from page 32 of the Joint Exhibit-2, where on May 8, 2018, Mr. Edwards requested an update on the employee's status. According to the Union, it appeared as though it was Mr. Edwards pushing the discipline and not the Grievant's Supervisor as required in Article 16.8.

Finally, the Union argued that the National Agreement requires that discipline be "corrective and not punitive"; they offered the Joint Contract Administrative Manual (JCAM) at Article 16.1 which states:

Corrective Rather than Punitive The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

The Union further argued that the language of the JCAM was agreed to by the national parties



and they agreed that discipline must be corrective rather than punitive and is an essential element of the “just cause” principles. They noted that the parties further agreed that for most offenses management must issue discipline in a “progressive” fashion, issuing lesser discipline for a first offense and a pattern of increasingly severe discipline for succeeding offenses. The Union asserted that this arbitration is not about the NOR but more about the appropriate level of intermediary discipline and back pay. The Union requested the NOR issued to Erika Johnson on May 18, 2018 be removed and expunged from all records and the Grievant be immediately returned to work and made whole for all lost wages, overtime, benefits, and seniority.

## **VIII. DISCUSSION**

### **ARTICLE 16**

#### **DISCIPLINE PROCEDURE**

##### **Section 1. Principles**

In the administration of this Article, a basis 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.

Removals are the ultimate disciplinary action and termination of an employee after years of unblemished service is a penalty whose impact cannot be fully appreciated, especially in cases

where Management has deemed an incident so egregious that they opt to forego progression. In such cases, the burden of proof is heightened.

National Arbitrator Carlton Snow, in Case No. 840,187 offered the following:

One can ever underestimate the disruption that termination of a long term employee can have on the life of the worker who has been removed from employment. For over fifteen years, the grievant has enjoyed a steady income from his employment with the Postal Service. No doubt, he has incurred financial obligations commensurate with that income. Termination of employment can produce immediate economic and emotional effects in the life of an employee.

Partly in response to the enormity of such a decision, the burden of proof has been placed on the party asserting the affirmative side of the decision to terminate the employee. That is, the burden of proof is on the Employer who has also born a preliminary burden of making a prima facie case as well. The quantum of proof necessary to sustain a decision to discharge an employee over the years has been a relatively great one.

Article 16 provides that, "No employee may be disciplined except for just cause . . . ." The principle of "just cause" is one of the most important guarantees in the contract between the parties. It provides a high level of job security guaranteed by the National Agreement. The term "just cause" as used in the Collective Bargaining Agreement can be loosely defined as follows:

**“. . . whether a reasonable [person] taking into account all relevant circumstances would find sufficient justification in the conduct of the employee to warrant discharge.”**

The Joint Contract Administration Manual (JCAM) provides guidance on the application of Article 16 and the "Just Cause" principle.

#### **Just Cause Principle**

*The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable (emphasis added) justification for discipline.*

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently place the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause.

*The following criteria are the basic considerations that the supervisor must use before initiating disciplinary action;*

***1. Was the Grievant given forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct? An employer cannot punish an employee if it hasn't prohibited the conduct at issue. If there is no rule, or the rule is vague, this fundamental requirement of just cause will not be satisfied (unless the conduct is indisputably intolerable: for example, stealing from the employer or selling drugs on-the-job).***

***2. Is the rule reasonably related to the orderly, efficient, and safe operation of business? The rule in question must be a rule that is related to business or safe operations of the business.***

***3. Was there a thorough investigation, before administering discipline to determine whether the Grievant did in fact violate or disobey a rule or order of management? The employer must conduct an investigation that includes hearing the Grievant's side of the story.***

***4. Was the investigation conducted fairly and objectively? The National Agreement requires a fair and objective presentation of the facts surrounding the discipline. Implicit in a fair investigation is the timeliness of the investigation.***

***5. Did the investigation result in proof that the Grievant was of the subject conduct? Following the investigations, the decision maker must, with the results of the investigations be able to conclude that the Grievant was guilty of the conduct.***

***6. Does the Agency apply the penalty evenhandedly without discrimination to all employees?***

***7. Was the degree of discipline administered by the Agency in a particular case reasonably related to the seriousness of the employee's proven offense and the employee's record in service with the company? In two words, "just cause" requires "progressive discipline." Management's response to the discipline must not only be evenhanded but appropriate under the circumstance. The response to a minor infraction is not the same as the response to a more serious life threatening problem.***

In the case at bar, there is no dispute that the grievant, City Letter Carrier, Erika Johnson, drove a postal vehicle on April 19 and April 20, 2018 while her license was under suspension by the State of Illinois. Further aggravating the situation was the fact that Management at

Glenwood, on the dates at issue, was conducting driver observations and performing driver's license; once her license was requested, Ms. Johnson chose to present the driver's license for another person, Kiara Johnson. Management, on suspicion that the license did not belong to the Grievant, began their investigation which proved that Erika Johnson's license had been suspended; they then proceeded on the path of discipline for the Grievant.

The Union in this case discounts that it was the Grievant's Supervisor who moved to request the Notice of Removal, citing the involvement of the Labor Relations Specialist in the decision to even issue discipline. To support that position, the Union cited an email communication between Supervisor Brown and Labor Specialist Edwards. Management disputed the claim and contended that all Requests for Discipline must go through Labor Relations and the Supervisor initially reached out to that department for assistance in investigating the validity of the Grievant's Driver's license.

Management argued that they had just cause to issue the NOR to Ms. Johnson, because they had met the principles of "just cause". According to the Service the following principles had been satisfied by the evidence of record and testimony provided in this case:

- Is there a rule? Yes. The M-41, Section 811.11 Illinois State Law, Chapter 1, and postal regulations require all drivers be qualified and maintain a valid state license.
- Is the employee aware of the rule? Yes, the Grievant's actions confirm she was well aware that she was not supposed to be driving on a suspended license; also the Grievant had been subject to quarterly driver's license checks throughout her postal employment.
- Is the rule reasonable? Yes, not only is it reasonable it is Illinois State Law.
- Is the rule consistently and equitably enforced? Yes. Driver's license checks are conducted on a quarterly basis for all postal employees with driving duties.
- Was a thorough investigation completed? Yes, the Grievant was interviewed twice about the incidents leading up to her removal and when presented with the invalid license, Supervisor Brown investigated to find out if it in fact belonged to the Grievant.
- Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? Yes. Management maintains that the Grievant not only violated postal regulation but state law. They argued that in the State of Illinois, driving on a suspended license is a Class A misdemeanor which is punishable by a maximum of 364 days in jail along with fines and court costs and presenting someone else's driver's license as your own carries possible

imprisonment of up to five years and a 12-month suspension or revocation of driving privileges.

- Was it timely? Yes. Management contends that the discipline was timely issued and it took only a few weeks for the whole process but the result was a thorough investigation which documents had to be acquired to verify that Erika Johnson violated postal regulations and Illinois State Law.

A review of the evidence of record demonstrates that the parties stipulate to the much of the facts in this case and as a result, most of the principles of “just cause” have been satisfied sufficiently to show that discipline was warranted in the instant case. However, in the case of Removal, as cited in Arbitrator Snow’s opinion, “The quantum of proof necessary to sustain a decision to discharge an employee over the years has been a relatively great one.” In other words, “just cause” in discharge cases require a higher level of proof, by clear and convincing evidence that *the severity of the discipline was reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee’s past record.* In the instant case, I am not convinced that the Grievant’s actions as well as the actions of Management, following the incident, could be found to rise to the level of Removal.

While trust or the lack thereof, is a key factor in maintaining the employment relationship, the national parties did not see fit to list the “loss of trust between a supervisor and an employee” as a reason for foregoing progression in discipline. Although it remains a key factor in deciding discipline, the act, incident or behavior the employee displayed must be the first deciding factor. In this case, the Grievant is not only accused but acknowledges that she drove a postal vehicle while her license was suspended and also presented a false document to her supervisor, claiming that it was her own. While egregious, it was not representative of her employment with the Service. While Management claims Ms. Johnson is a short-term employee of the Service, the fact of the matter is that she served for 6 years in her position, albeit the first four was as a City Carrier Assistant. Nonetheless, she performed the same duties as in her current position as a Regular Letter Carrier, and apparently without receiving any discipline. This demonstrates that she does not have a history of deceit, or a pattern of driving under suspension.

The Union contended that Ms. Johnson’s situation was a result of non-payment of her car insurance which led to a citation, and then the cycle continued with the non-payment of her fines

which then led to the suspension. Again I quote Arbitrator Snow where he opined about the employee facing termination; “No doubt, he has incurred financial obligations commensurate with that income. Termination of employment can produce immediate economic and emotional effects in the life of an employee.” It would make sense to a reasonable person, including the parties to the National Agreement, that there would be times that an employee, facing the possibility that they may not be able to work, especially while in the midst of a financial “situation”, might choose-although unwisely-to not be forthcoming about their situation.

The parties to the National Agreement, understanding that there were levels of certain actions that require discipline, placed a requirement on Management and that is to ensure any disciplinary action was corrective rather than punitive. The Union argued that Section 16.1 (cited below) required that Management use progression in the action taken.

**Joint Contract Administrative Manual (JCAM) at Article 16.1 which states:**

Corrective Rather than Punitive The requirement that discipline be “corrective” rather than “punitive” is an essential element of the “just cause” principle. **In short, it means that for most offenses management must issue discipline in a “progressive” fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge).** The basis of this principle of “corrective” or “progressive” discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

Management provided arbitral support for their position and cited case number E98N-4E-C 02110891 & E98N-4E-D 02138130 where Arbitrator Stanley H. Michelstetter II, reviewed a similar case and offered the following opinion:

Accordingly, I am satisfied that Mr. Reed failed to timely inform the Service his license was revoked and I am satisfied that he drove a postal vehicle while he so clearly should have known his license was revoked that he will be treated as if he did know. The penalty of removal is appropriate because of the seriousness of the offense, because Mr. Reed is really a short-term employee and because the offense has been aggravated by Mr. Reed’s repeated untrue statements to the Service and untrue statements at the hearing before the arbitrator. It is also aggravated by the fact that Mr. Reed’s testimony shows that he continues to fail to recognize that his employer has legitimate interests in being timely told that his license had been revoked. For example, he simply does not recognize that the Service needed notice in order to be able to plan to have licensed drivers regularly available to cover his route and also to plan as to how to provide work for Mr.

Reed which did not require that he drive. Accordingly, Mr. Reed has also proved that he continues to be untrustworthy as an employee.

The instant case while similar to that reviewed by Arbitrator Michelstetter II, has distinct differences in fact circumstance. The Grievant in that case was very short-termed 3 years, versus the Grievant in this case who had worked a total of 6 years for the Postal Service, in pretty much the same position. While 6 years is not the longest-term employee, it is sufficient to build a bank of goodwill, when the employee has not engaged in behavior where it was necessary to issue discipline. The evidence of record here did not provide any prior discipline for Ms. Johnson. Also distinguishable from the cited case is the fact that the Grievant here, after her initial actions to mislead Management, did come forward to provide the truth regarding the false license presented. Unlike Arbitrator Michelstetter II in his case, I am satisfied that the Grievant is aware that any future actions of this sort would result in severe disciplinary action and should be a huge deterrent for the Grievant to be untrustworthy in the future. In fact, it is my impression that local Management at Glenwood had the same impression as the Postmaster offered the Grievant a Last Chance Agreement and an ability to stay employed which he acknowledged in Management's Contentions at Formal A.

While the evidence of record does not support "just cause" in the case of removal, based on Management not satisfying their burden to prove that *the degree of discipline administered by the Agency was reasonably related to the seriousness of the employee's proven offense and the employee's record in service with the company*, I do believe there is cause for disciplinary action. The Union offered the decision of Arbitrator Robert Tim Brown in case number C11N-4C-C 13249260, where he reviewed the corrective nature of the Notice of Removal issued to the Grievant in that case and concluded:

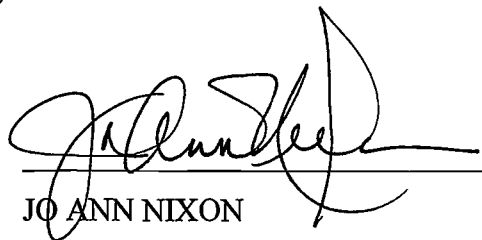
There was not just cause for removal, because removal is not corrective in nature and there was no showing her that Grievant was incorrigible or had committed an offense that rose to the level of one justifying immediate removal. The removal is to be rescinded and expunged from the record, and its place there shall be substituted a 7-day suspension. Grievant is to be restored to her position and status, made whole for losses suffered as a result of the removal, and the measure of such losses including loss of benefits is to be her employment history (work hours) during a reasonable period prior to the removal.

Likewise in the instant case, a suspension is in order for the Grievant, based on her violation of postal regulations and State Law while driving under suspension and the submission of another person's driver's license as her own.

Based on the foregoing arguments and contentions, as well as the evidence of record and my conclusions regarding same, the grievance is sustained. The Notice of Removal issued to the Grievant on May 18, 2018 shall be rescinded, expunged from all records, and replaced with a 30-day Suspension without pay. The Grievant, Erika Johnson, will be immediately returned to work and made whole (with the exception of the 30-day non-pay suspension) for all loss wages and benefits as though she were not subject the disciplinary action taken.

**AWARD**

The grievance is sustained. The Notice of Removal issued to the Grievant on May 18, 2018 shall be rescinded, expunged from all records, and replaced with a 30-day Suspension without pay. The Grievant, Erika Johnson, will be immediately returned to work and made whole (with the exception of the 30-day non-pay suspension) for all loss wages and benefits as though she were not subject the disciplinary action taken.

  
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JO ANN NIXON  
Arbitrator

New Iberia, Louisiana

December 14, 2018