



REGULAR ARBITRATION PANEL

In the Matter of the Arbitration )	Grievant: Edgeron
) )	
between                          ) )	Post Office: Marrero, Louisiana
) )	
United States Postal Service          ) )	USPS Case No.: G11N-4G-D 14016279
) )	4323-51-13
and                              ) )	
) )	NALC DRT: 08-290650
National Association of Letter       ) )	
Carriers, AFL-CIO                  ) )	

BEFORE: Louise B. Wolitz, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Bertha A. Brumfield
For the Union:	Corey Walton
Place of Hearing:	5351 Lapalco, Marrero, LA 70072
Date of Hearing:	April 17, 2014
Date of Award:	April 21, 2014

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VICE PRESIDENT'S OFFICE NALC HEADQUARTERS

Award Summary:

The grievance is sustained. The Postal Service has not borne its burden of proof that this Removal was issued for just cause. Brandon Edgeron shall be immediately returned to his position as a city carrier technician in Marrero, LA. This Removal shall be immediately expunged from all records of the Postal Service, as though it had never been issued. Mr. Edgeron shall be made whole for all pay and benefits lost as a result of this Removal, which was not issued for just cause.

*Louise B. Wolitz Arbitrator*  
Louise B. Wolitz, Arbitrator 4/21/2014

RELEVANT PROVISIONS:

2011-2016 National Agreement between the National Association of Letter Carriers & the United States Postal Service

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**Article 16**  
**Discipline Procedure**  
**16.1 Section 1. Principles**

*In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.*

**THE HEARING:**

The hearing on this matter was held at the Post Office at 5351 Lapalco, Marrero, Louisiana on Thursday, April 17, 2014. Each party had a full opportunity to present its evidence, witnesses and argument and to cross examine each other's witnesses. All witnesses were sworn and sequestered. The Postal Service called witnesses Theresa D. Reed, Supervisor and Alisa Leonard, Postmaster. The Union called the grievant, Brandon Michael Edgeron. Each party did an Opening Statement and a Closing Statement. The record was closed at the conclusion of the hearing.

**THE ISSUE:**

The issue, as defined by the Step B Team, is: Did Management violate Article 16, or Section 115 of the M-39 Handbook via Article 19 of the National Agreement when on October 23, 2013, Management issued Letter Carrier Brandon Edgeron a Notice of Removal dated October 21, 2013? If so what is the appropriate remedy?

**BACKGROUND:**

Grievant Brandon Michael Edgeron, a city carrier technician, has worked for the Postal Service for 7 years and 6 months. When he returned to the Postal Service from his route on October 12, 2013, he could not find his arrow key, which he had signed for in the morning. He could not be cleared by the accountables clerk because he did not have the key. He went back out to look for it on his route. He did not find it. He testified that the accountables clerk told him that she could not clear him and would have to report it to his supervisor. He then clocked out. He testified that the supervisor was not there.

Supervisor Theresa D. Reed testified that she was informed on October 12, 2013 that Mr. Edgeron had returned without his arrow key. She said that the loss of an arrow key is a very serious matter because the arrow key can open up all boxes in Louisiana. The person with the key can get into boxes in buildings and collection

boxes. Supervisor Reed said that the carrier is supposed to notify his supervisor immediately if he loses his arrow key. Mr. Edgerson did not notify his supervisor. When an arrow key is lost, they have to report it to the Postal Inspectors and to the Homeland Security Coordinator. Supervisor Reed held an Investigative Interview with Mr. Edgerson and did the Disciplinary Action Request on October 16, 2013. She issued a Notice of Removal, dated October 21, 2013, for *Unsatisfactory Work Performance*. The Notice said:

....

*On October 12, 2013, you were assigned carrier duties on City Route 7217. On this date, you signed for arrow key No. 18993. When you returned to the office on this day, you did not clear the cage, because you did not have the arrow key that was assigned to you. The lost key was reported to the cage clerk. At no time did you report the lost key to the supervisor on duty. When the clerk told you that she could not clear you, you clocked out and left for the day. Your performance was unsatisfactory when you lost the arrow key and failed to report it to the supervisor.*

*On the day that the key was lost, I had just given a service talk that morning on securing the mail, money and equipment entrusted to carriers. You were present for the service talk that morning. You had also attended previous service talks regarding carrier duties and responsibilities.*

*An investigative interview was held with you and Union Representative Greg Mosley on October 16, 2013. You acknowledged that you are aware of the requirement to protect all mail, money and equipment entrusted to your care and that you must return all mail, money and equipment to the post office at the end of the workday. You acknowledged receiving service talks, training or discussions on mail security. You said you did not know that the arrow key was supposed to be attached to your person. You said the last delivery you made was to 6212 East Judah at around 10:00 a.m. You acknowledged that there was a supervisor on duty when you returned to the office and failed to clear the accountable cage. You said you did not know why you did not notify the supervisor of the lost arrow key. You said you told the clerk. You said you are aware that the arrow key is an accountable item. You said you have been a carrier for eight years. You said you intend to correct this by looping the key on your belt. You said you did not have anything else to add. Your responses did not excuse or mitigate your behavior. You are charged accordingly.*

*Your actions are in violation of, but not limited to, the following regulations:*

*ELM 35, Employee and Labor Relations Manual:*

*665.13 Discharge of Duties*

*Employees are expected to discharge their assigned duties conscientiously and effectively.*

#### **665.15 Obedience to Orders**

*Employees must obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual must nevertheless carry out the order and may immediately file a protest in writing to the official in charge of the installation or may appeal through official channels.*

#### **City Delivery Carriers Duties and Responsibilities Handbook M-41**

##### **112.1 Efficient Service**

*Provide reliable and efficient service. Federal statutes provide penalties for persons who knowingly or willfully obstruct or retard the mail. The statutes do not afford employees immunity from arrest for violations of the law.*

##### **112.2 Diligence and Promptness**

*Obey the instructions of your manager.*

The Notice lists the following elements of Mr. Edgerson's past record that have been considered in arriving at the Removal decision:

<i>08/19/13</i>	<i>14-Day Suspension</i>	<i>Unsatisfactory Work Performance</i>
<i>07/11/13</i>	<i>14-Day Suspension</i>	<i>Failure to Follow Instructions</i>
<i>08/08/12</i>	<i>14-Day Suspension</i>	<i>Unsatisfactory Work Performance</i>
<i>04/24/12</i>	<i>14-Day Suspension</i>	<i>Failure to Follow Instructions</i>
<i>03/08/12</i>	<i>14-Day Suspension</i>	<i>Failure to Follow Instructions</i>

The Informal A was held on November 6, 2013. The Formal Step A meeting was held on December 2, 2013. The grievance was received at Step B on December 5, 2013. It was imposed at Step B on December 9, 2013.

#### **POSITION OF THE POSTAL SERVICE:**

The Postal Service argues in its Opening Statement that the Grievant failed to clear the accountables case, as required by postal handbooks and manuals, because he did not have the arrow key that was assigned to him. He lost the arrow key that was assigned to him and did not report it to the supervisor in accordance with established procedures. On the day the key was lost, October 12, 2013, the supervisor conducted a service talk that morning regarding securing the mail,

securing money and securing equipment entrusted to carriers. The Grievant was present during the service talk. The arrow key unlocks mail boxes in Marrero on the Grievant's assigned route. Its loss could cause potential harm to postal customers. The contents of those mailboxes were no longer secure and the sanctity of the mail was compromised.

The Grievant was charged with unsatisfactory performance because as a professional letter carrier, it is his responsibility to protect and secure all postal property issued to him and to notify management as soon as he becomes aware that the arrow key or any accountable item is lost. The Grievant failed to contact or notify management of the lost arrow key.

The Grievant in this case had reached the final step in progression of discipline. His unsatisfactory performance clearly warrants removal. He has destroyed the trust management had in him. Modification of the removal to a lesser sanction would send a clear signal to other postal employees that this type of conduct is acceptable.

The Union's argument that three other employees have lost arrow keys and have not been issued removals is baseless. The other employees have received some form of corrective action for similar offenses. The other employees did not have the Grievant's record of prior live discipline of 14 -day suspensions.

The Service's requirement of the Grievant to perform his duties in a satisfactory manner is a fundamental requirement of his duties as a city carrier. His actions of failing to properly secure the arrow key and notify management when the arrow key is lost, is severe misconduct warranting discipline. His prior live discipline mandated that the next level of discipline would be a Removal, based on his failure to offer a suitable explanation for his misconduct. There was just cause to issue him a Notice of Removal for unsatisfactory work performance. The Notice of Removal does not violate the national agreement. There are rules and the grievant is aware of his responsibility to provide efficient and reliable service in accordance with the M-41 Handbook. He has been made aware of the rules through stand-up talks, discussions, and issuance of prior live discipline for unsatisfactory work performance. The rule is reasonable that expects Postal employees to take care and control of all accountable items entrusted to their care. Employees that fail to perform their duties satisfactorily are disciplined. An Investigative Interview was conducted on October 16, 2013, and the employee was afforded an opportunity to explain what happened on that day. The Grievant's past live discipline was reviewed and taken into consideration. He has been issued a total of five disciplinary actions within the last two years including this removal. He was issued four (4) 14 day suspensions which show that he does not take his job seriously or he just doesn't care. Postal management has bent over backwards in an effort to work with this Grievant and correct his deficiencies. This effort has not caused the Grievant to show any improvement in his work performance. Based on the prior discipline received

by the grievant and his failure to correct his work performance, it is obvious that the Grievant cannot be rehabilitated.

The disciplinary action was timely. The incident occurred on October 12, 2013. The Investigative Interview was conducted on October 16, 2013. The Notice of Removal was issued on October 23, 2013. This grievance should be denied in its entirety.

Postal witness Supervisor Theresa D. Reed testified that on October 12, 2013, she was informed by an acting supervisor that Mr. Edgerson had returned without his key. He had lost it and was going to go back out and see if he could find the key. She issued the Notice of Removal. Her memory was refreshed that she had a stand up talk that morning on carriers' responsibilities when she was referred to Jt. X 2, page 70. Mr. Edgerson was present at that service talk, as shown by the TAKS report, Jt. X 2, p. 72. The Service talk specifically covered *M-41 112.3 Security*. It covered *112.31, Protect all mail, money, and equipment entrusted to your care*. It covered *112.32, Return all mail, money, and equipment to the post office at the end of the workday*. When an arrow key is lost, they have to determine who had it and who signed for it and report the loss to the Postal Inspectors. The carrier is supposed to notify his supervisor immediately. They also have to do an Incident Report. Mr. Edgerson did not notify his supervisor. The Postal Service also has to notify the Homeland Security Coordinator. An Incident Report was completed. The arrow key can open up all boxes in Louisiana. Whoever has it can get into buildings and collection boxes. They keep a daily key control log. The log shows that Mr. Edgerson signed out for the key and did not return it (Jt. X 2, p. 36) Supervisor Reed testified that she has issued discipline to other carriers for loss of the arrow key and for unsatisfactory performance. The arrow key should be attached to the carriers' belt loop on their pants. It should be on their person at all times. Supervisor Reed testified that acting supervisor Ronald Clark was on duty when Mr. Edgerson returned to the office. Supervisor Reed said that she conducted an Investigative Interview. She notified Mr. Edgerson of the charges. He has been issued discipline in the past. Supervisor Reed acknowledged that she has settled other discipline issued to Mr. Edgerson to try to give him another chance to improve himself.

On cross examination, Supervisor Reed acknowledged that there is no specific provision that she referred to that says specifically that a carrier must report a lost arrow key to his supervisor. She said that she told them that in her service talk. She acknowledged that the service talk on p. 70 does not specifically say that they must notify their supervisor. Mr. Edgerson clocked out and left. He looked for the key off the clock. There is language in the M-39 and the M-41 on accountables. Arrow keys are accountable items. Supervisor Reed acknowledged that it does not say that a carrier must report a lost item to his supervisor. She acknowledged that it does not say what carriers are supposed to do. Supervisor Reed said that at the Investigative Interview, Mr. Edgerson acknowledged that there was a supervisor on duty. It says in the Notice of Removal: *You acknowledged that there was a supervisor on duty when you returned to the office and failed to clear the accountable cage. You said you*

*did not know why you did not notify the supervisor of the lost arrow key. You said you told the clerk.* The notes on the Investigative Interview (Jt. X 2, p. 42) do not say that he said that a supervisor was on duty. Question 5. asks : *Upon return to office did you clear the accountable cage? Was the supervisor on duty notified that you lost your arrow key. If not why?* Mr. Edgerson answered: *yes. I don't know. I told the clerk.* We note that, in fact, he said he didn't know if a supervisor was on duty. Supervisor Reed said on cross examination: *Guess he didn't acknowledge it.* Supervisor Reed acknowledged that in the Investigative Interview, she did not specifically ask Mr. Edgerson about *ELM 665.13 Discharge of Duties*. She said that she did ask him about *ELM 665.15 Obedience to Orders*. She acknowledged that neither of these provisions were referred to in her notes on the Investigative Interview (Jt. X 2, p.42) Supervisor Reed also acknowledged that she did not specifically ask him about *M-41 112.1* or *112. 2*. We note that the first question on the Investigative Interview reads: *Are you aware of the M-41, 112.3, 112.31, and 112.32 Security, that you must protect all mail, money and equipment entrusted to your care and that you must return all mail, money, and equipment to the post office at the end of the workday?* Mr. Edgerson answered, *yes*. Supervisor Reed said that she did the Disciplinary Action Request (Jt. X 2, pp. 40-41) on the same day as the Investigative Interview. The Disciplinary Action Request lists the Rule violated as: *ELM 665.13, 665.15, M-421 112.1, 112.31, 112.32*. Supervisor Reed acknowledged that she did not ask him about these rules at the Investigative Interview. With the exception of *M-41 112.31* and *112.32*, she never asked Mr. Edgerson about the rules cited in the Notice of Removal. (We note those rules are *M-39 665.13* and *665.15* and *M-41, 112.1, 112.2*).

Supervisor Reed further acknowledged that the Fourteen Day Suspension cited in the Notice of Removal that was issued on August 8, 2012 was no longer active. It should have been removed from Mr. Edgerson's records on August 11, 2013. We note that this pre-arbitration settlement agreement (Jt. X 2, p. 48) said: *The Notice of Proposed Removal dated August 8, 2012 for unsatisfactory work performance is reduced to a 14 days not time-off suspension to remain in the Grievant's files for a period of one year from date of issuance (August 11, 2012). The Grievant will not receive any back pay. The Grievant will report to work effective Saturday, December 22, 2012. The parties agree this settlement is full and complete settlement of this matter. The parties also agree this settlement is without precedent or prejudice to either party and cannot be cited in any forum official or administrative for any purpose other than to show settlement occurred.* However, it was improperly cited and considered in the Disciplinary Action Request and in this Notice of Removal. Supervisor Reed also said that the requirement to attach the arrow key to the carrier's person is not an article.

On redirect examination, Supervisor Reed said that employees have been instructed what to do about lost keys or lost accountable items. Loss of an arrow key is serious. It is part of the basic duties of a letter carrier to have the key on him. Reporting the loss of the key is also part of the duties and responsibilities of a letter carrier. The arrow key was included in the word *equipment* in the stand up talk. The carriers were instructed to attach the key to their clothing.

On recross examination, Supervisor Reed acknowledged that she does not see anywhere in the case file where it says that carriers are to attach the arrow key to their belt loop or pants. She acknowledged that this is also not in the service talk (Jt. X 2, pp. 70-71). It doesn't say to attach it to your belt. It is, however, in the instruction to managers. Supervisor Reed said that she gave that instruction to everyone on the day of the service talk.

The Postal Service's second witness was Postmaster Alisa Leonard. She was the concurring official on the Notice of Removal (signature on p. 17) and the Formal A representative of the Postal Service. She said that the loss of an arrow key is a serious offense. It compromises the sanctity of the mail. It would give access to mail boxes and personal property to anyone who had it. It is part of a carrier's duties and responsibilities to be accountable for everything entrusted to their care. Arrow keys are discussed in stand up talks. She has to file an Incident Report to the Homeland Security Coordinator regarding the loss of accountable items. She filed the Incident Report (Jt. X 2, pp. 45-46) to the Homeland Security Coordinator and the Postal Inspectors. She completed the Incident Report. Carriers should notify their supervisor if they lose an accountable item. Their supervisor is their initial contact. Mr. Edgerson has been issued a Removal before. She settled a Removal issued on August 19, 2013, reducing it to a Fourteen (14) Day Suspension, to give him an opportunity to improve and not lose his job.

On cross examination, Postmaster Leonard acknowledged that she wrote in the Formal A contentions that Mr. Edgerson has 5 previous 14 day suspensions. She believes that if she wrote it, it was accurate at that time. She acknowledged the pre-arbitration settlement (Jt. X 2, p. 48) and that, according to that settlement, the 14-day suspension dated August 8, 2012 would have been removed from his record on August 11, 2013, and would not have been live in October 2013. Postmaster Leonard testified that she was aware of this incident on the day it occurred. She did the Incident Report. She was able to do her concurrence investigation quickly because she already had knowledge about what had occurred.

On redirect examination, Postmaster Leonard said that she has worked with this employee in the past on his disciplinary actions. He has four (4) fourteen day suspensions. She has made every effort to try to save his job, but she cannot do it for him.

In its Closing Statement, the Postal Service said that Mr. Edgerson failed to secure postal equipment entrusted to his care. This is part of his duties and responsibilities. The key should have been secured to prevent it being lost. He should be aware of his duties and responsibilities as they relate to accountability items. He has been issued five disciplines in two years. The managers tried to work with him to correct his deficiencies to no avail. His live prior disciplines did not correct his deficiencies. He has shown a blatant disregard for the performance of his duties and does not take the job seriously. The discipline was timely, an investigation was done, and the



discipline was progressive. He has four (4) 14 day suspensions. Management has bent over backwards to work with him, but it did not correct his performance deficiencies. The fact that management cited a 14 day which was no longer active is not a fatal flaw. He still has four (4) other live disciplines. He did not perform his duties in a satisfactory manner. It would not be corrective to bring him back. It would give other carriers the wrong impression. Back pay would only reward his behavior. This grievance should be denied in its entirety.

#### **POSITION OF THE UNION:**

The Union argues in its Opening Statement that when Mr. Edgerson returned to the Post Office on October 12, 2013 after delivering his route, he realized that he had lost his arrow key. After reporting the lost key to the accountable clerk, he went back to his route and retraced his route several times but could not locate the key. The Postal Service did an investigation and issued a Notice of Removal on October 21, 2013, There is a procedural due process violation that must be fatal to this Removal. In the Notice of Removal, management has cited a 14 day suspension that had been removed from Mr. Edgerson's file and was no longer active at the time of the discipline. A Step 4 settlement, M-00889, January 5, 1989, provides that: *A notice of discipline which is subsequently fully rescinded, whether by settlement, arbitration award, or independent management action, shall be deemed not to have been "initiated" for purposes of Article 16.10, and may not be cited or considered in any subsequent disciplinary action.* Arbitrator William J. LeWinter, in case S1N-3W-D 33828, stated in his decision: *A review of the past record, might in other cases, warrant his removal. However, the improper use of past record in this case requires that management bear responsibility for its violation of the contract. Accordingly, I will disallow the discharge.* The Union argues that management has "poisoned the well" of this Removal by improperly citing and considering past discipline that was no longer active at the time of the incident. The Union argues that this procedural due process violation must be fatal to this discharge.

The Union also argues that management has violated Mr. Edgerson's due process rights by failing numerous just cause principles when issuing this discipline. Mr. Edgerson attempted to locate the key. Losing the key was not an intentional act. This grievance should be sustained in its entirety. The Notice of Removal dated October 21, 2013 should be rescinded and expunged from all Mr. Edgerson's files immediately. Mr. Edgerson should be immediately returned to work and made whole for all lost wages and benefits.

Grievant Brandon Michael Edgerson testified that he has worked for the Postal Service for 7 years and 6 months. On the day in question, he came into the office and took all his mail out of his truck and put it in a gurney. He noticed that he did not have his key in his pocket. He went back to his route, to two apartment complexes and his curbside deliveries. He had 45 minutes before he had to clock out. He went to his park points. He came back in and told the clerk that he could not find the key. She said that she could not clear him. She said that she was going to have to report it

to the supervisor. Mr. Edgeron then clocked out. The supervisor was not there. He was never told to attach the key to his belt in a stand up talk. Management in the Investigative Interview never asked him any questions about the contractual language cited in the Notice of Removal, except the provisions at the top of the Investigative Interview notes.

On cross examination, Mr. Edgeron said that he was not aware that he needed to keep the key on his person. He knows that he has to return the key to the Post Office. He was not aware that it was not proper to place the key on the lapboard of the truck. He was not aware of the procedure for securing the arrow key. He knows he is supposed to report the loss of the key to the supervisor. He did not report the key to the supervisor on that day.

On redirect examination Mr. Edgeron said that the supervisor was not present when he came back to the office.

On recross examination, Mr. Edgeron said that he looked for the supervisor.

In its Closing Statement, the Union said that management paid Mr. Edgeron past the time in the contract. Management did not have the discretion to pay him. He was in a pay status until January. The Union argues that management "poisoned the well" of this Removal action by considering a 14-day suspension that was no longer active. This is fatal to the Removal. It is clear that this 14-day suspension may not be cited or considered. This is a due process violation fatal to management's case. The language of the Step 4 settlement is clear. That Removal may not be cited or considered.

The Union further argues that this Grievant is being held to a standard like nobody else, a standard of perfection which nobody can meet. His prior 14 day suspensions were for a missed ADVOC scan and missed Express Mail. He is being issued 14-day suspensions or Removals for the smallest of infractions. Moreover, provisions were cited in the Removal that Mr. Edgeron was not asked about in the Investigative Interview. Different provisions were cited in the Investigative Interview, the Disciplinary Action Request, and the Removal. It is not enough to say everyone knows the rules. The Postal Service did not prove that Mr. Edgeron knew the rule. It is not in the case file that he was aware of the rule. He was not asked about the contract language cited in the discipline. Different rules were cited in the Investigative Interview. No language was cited saying that a carrier must report a lost key to the supervisor. It says in the Notice of Removal that Mr. Edgeron acknowledged that there was a supervisor on duty when he returned to the office and failed to clear the accountable cage, but he never acknowledged that. In answer to the question asked at the Investigative Interview, Mr. Edgeron said that he doesn't know if the supervisor on duty was told that he lost the arrow key and that he told the clerk. He does not say that there was a supervisor on duty. He never acknowledged that there was a supervisor on duty when he returned to work. It is also erroneous to have said in the Notice of Removal that he had five (5) previous

14-day suspensions. He did not have five ( 5) previous 14-day suspensions. He said at the Investigative Interview that his plans to correct his behavior were to put the key on his belt. He knew what to do to correct the situation. It is preposterous to say that he was asked that question in case he was put back to work. The investigation was not thorough. It was done in half a day. The Disciplinary Action Request form (Jt. X 2, p. 40) says, *All notification to District personnel were made at close of business on 10/12/2013.* But this is not a true statement. The Incident Report (Jt. X 2, p. 45), whose instructions say it must be completed *immediately* and mailed to the Inspection Service with a copy to the District *within 24 hours*, was dated 10/15/13. The incident occurred on 10/12/13.

The Union also argues that Mr. Edgeron was treated disparately. The Union raised the argument that other carriers were not removed for losing an arrow key and management did not rebut it.

There are overwhelming procedural issues in this case. The grievance should be sustained. The Notice of Removal should be rescinded and Mr. Edgeron should be immediately returned to work and made whole.

#### DISCUSSION:

The Postal Service must prove that this Removal was issued for just cause. In order to do that, it must prove that the allegations and charges in the Notice of Removal are true and correct. We must find that the Postal Service has failed to do so in this case.

It is true and correct that Carrier Brandon Edgeron returned to the Post Office on October 12, 2013 without his arrow key. Although he went back out to look for it, he did not succeed in finding it. It is true and correct that Carrier Edgeron was responsible for returning the key to the accountables clerk at the end of the day. He could not do so because he did not have the key. He told the accountables clerk that he did not have the key. He testified that the accountables clerk told him that she could not clear him and would have to report it to the supervisor. He then left the premises. The Notice of Removal says: *You acknowledged that there was a supervisor on duty when you returned to the office and failed to clear the accountable cage.* But this statement is erroneous. Under cross examination by the Union, issuing supervisor Theresa Reed acknowledged that her notes of the Investigative Interview did not support that he acknowledged that a supervisor was present. Rather, those notes say, in answer to the question, *Upon return to office did you clear the accountable cage? Was the supervisor on duty notified that you lost your arrow key, if not why?* His answer, in her notes (Jt. X 2, p. 42) was: *yes. I don't know. I told the clerk.* So he did not acknowledge that a supervisor was present. He said he did not know if a supervisor was present. He also said that he told the clerk. The Postal Service did not bring forward any witness to testify that a supervisor was present when Mr. Edgeron returned to the office, nor did they bring forward any supervisor who testified that he was present when Mr. Edgeron returned to the office.

Moreover, there is no indication that Mr. Edgerson was trying to cover up the fact that he lost the key. There has been no rebuttal to his testimony that he told the accountables clerk and that she said that she would notify the supervisor. A supervisor called Mr. Edgerson about an hour and a half later. Supervisor Reed was clearly notified of the loss of the key. The Postal Service has presented no rule in the case file that specifically instructs a carrier to notify his supervisor immediately upon the loss of an arrow key. Supervisor Reed acknowledged this upon cross examination by the Union, although she testified that she told carriers that in her service talk. No witness was called to substantiate that she specifically addressed the loss of an arrow key in her service talk. She did, however, cover *112.3 Security* and included *112.31 Protect all mail, money, and equipment entrusted to your care,* and *112.32 Return all mail, money, and equipment to the post office at the end of the workday.* (Jt. X 2, p. 71). Mr. Edgerson acknowledged that he was aware of these responsibilities.

We note that Mr. Edgerson was honest about having lost the key. He reported it promptly to the accountables clerk. There has been no proof that he saw a supervisor when he returned from the street. The accountables clerk said that she would report the lost key to the supervisor. Mr. Edgerson clocked out. Perhaps he should have tried harder to locate a supervisor before he left, but his failure to do so did not indicate any intentional dishonesty or attempt to cover up. He also understood that the supervisor would be notified by the accountables clerk. Supervisor Reed acknowledged on cross examination that she could not identify any specific provision that required carriers to notify their supervisor in the event that they lost an arrow key, but she said that she had instructed them to do so in her service talks.

The Postal Service also did not cite in this case file any regulation which required carriers to attach an arrow key to their belt loop or person. Supervisor Reed said, on cross examination, that she was unaware of any such provision. She again said that she instructed carriers to do that in her service talks. Carrier Edgerson has consistently testified that he was unaware that he was required to attach the arrow key to his person on his belt loop. He said at the Investigative Interview that the arrow key was not attached to his person *Because I didn't know that I was suppose to.* He also said at the Investigative Interview that he would correct this by *Keep my key on my belt.* He testified at the arbitration hearing that he was not aware that it was not proper to place the key on the lapboard of his truck. He was not aware of the procedure for securing the arrow key. The Postal Service has offered no proof that Mr. Edgerson was specifically instructed to keep the arrow key on a loop fastened to his belt. The Union did offer evidence at the arbitration hearing, (UX1), to which the Postal Service did not object, from the M-41 of a provision that required this, but there is no reference to this provision in this case file by management. *M-41 261.21 Keys, says, in part....you will be given a set of Arrow and/or padlock, and/or truck keys. (In some instances, a signature is used in place of a numbered check.) The keys are on a chain which must be securely fastened to a belt or clothing. Keys must be returned at the end of the tour of duty.* Again, the Postal

Service has made no reference to this provision in its charges and cannot prove that Mr. Edgeron was aware of this rule.

The Union points out in its brief that the Postal Service cites different provisions in the Investigative Interview, the Disciplinary Action Request, and the Notice of Removal and that it never questioned Mr. Edgeron on the provisions he is charged with violating in the Notice of Removal (*ELM 665.13; ELM 665.15; M-41 112.1 and ELM 112.2*). Supervisor Reed acknowledged on cross examination that she did not ask Mr. Edgeron about violating these specific rules at the Investigative Interview. The Union points out that this is a violation of Mr. Edgeron's due process rights to be informed of the charges against him and to be able to provide a defense against these charges. The Investigative Interview is his opportunity to do that, but he was not asked about the provisions which he was charged with violating. We note a companion problem to this. The Postal Service has not proven that Mr. Edgeron has violated the provisions he was charged with violating, with the possible exception of *665.13, Employees are expected to discharge their assigned duties conscientiously and effectively*. It can be argued that losing an arrow key is a failure to discharge the duty to protect the arrow key conscientiously and effectively. However, *665.15 says Employees must obey the instructions of their supervisors*. The Postal Service has failed to prove that Mr. Edgeron was ever specifically instructed to report the loss of an arrow key to his supervisor or to keep the arrow key fastened to his belt or clothing. *M-41 112.2* also says, *Obey the instructions of your manager*. There is no evidence in this case file that Mr. Edgeron ever disobeyed the specific instruction of a manager. The remaining provision on the letter of charges is, *M-41 112.21 Provide reliable and efficient service. Federal statutes provide penalties for persons who knowingly or willfully obstruct or retard the mail. The statutes do not afford employees immunity from arrest for violations of law*. There is no allegation that Mr. Edgeron knowingly or willfully obstructed or retarded the mail or violated any law. Mr. Edgeron lost his arrow key. There is no allegation that he did so willfully or deliberately. It was an accident.

Finally, the Union places most of the emphasis in its challenge to this Removal on the fact that included in the Notice of Removal is an element of Mr. Edgeron's past record that had been removed in August 2013 and that was improper to refer to, cite or include. This is the *08/08/12 14-Day Suspension for Unsatisfactory Work Performance*. Both Supervisor Reed and Postmaster Leonard acknowledged, when confronted with the settlement agreement, that this suspension should not have been included. That again is an element in the Notice of Removal that is not true and correct. Along with the problems discussed above, it shows unacceptable carelessness and lack of attention to detail in writing a Notice or Removal that puts an end to a letter carriers' career. What is in that Notice must be true and correct if the Removal is to be for just cause. It is also a violation of Mr. Edgeron's due process rights to cite a discipline that is not citable.

The Postal Service offers several arbitration awards in which Removals have been upheld. We want to distinguish the situation here from the situation in those

awards. An award by this arbitrator in Metairie, LA, G06N-4G-D 11018527 0304710, NALC DRT 08-186660, June 3, 2011 upheld the removal of Grievant Daniel Brocato. Here, the Postal Service bore its burden to prove that the discipline was issued for just cause. Mr. Brocato repeatedly ignored clear instructions to call or return for instructions prior to working overtime beyond that which was authorized in a 3996. The Postal Service could not get Mr. Brocato to follow their clear and repeated instruction. They had given him repeated progressive discipline for his failure to follow instructions. In the case before us here, there is no evidence that Mr. Edgerson has ever been clearly instructed to notify his supervisor if he loses an arrow key or to secure the arrow key on his belt. In E06N-4E-D 08073688, Arbitrator Karen H. Jacobs, Wichita, KS, November 5, 2008, the grievant was fully aware that she was delaying mail and not making the required reports or request for assistance. The arbitrator concluded that she had full knowledge of what she was doing and the intent to do what she did. In the case before us here, Mr. Edgerson did not intentionally violate any rule nor did he intentionally lose the arrow key. In C8N-4D-D3910, Chicago, Il., Sept. 1979 Arbitrator Peter DiLeone found that the grievant gave conflicting stories about how he lost his arrow key, and was intoxicated on duty. In the case before us here, the grievant has simply said consistently that he lost the key and could not find it after re-visiting his route. In G01N-4G-D 03065540, DRT 10-043771, June 23, 2003, the grievant had consistent failure to timely case and deliver his assigned mail, mis-deliveries of mail on various dates and failed to return his USPS issued credit card, a deliberate failure. Arbitrator Soll upheld his discharge. Mr. Edgerson did not deliberately lose the arrow key.

In the case before us, Mr. Edgerson has four live 14-Day Suspensions, one for Unsatisfactory Work Performance and three for Failure to Follow Instructions. We know only that one involved failure to properly make a timely scan for ADVO deliveries and another involved Express Mail. Neither ADVO scans or Express Mail was involved in the Removal before us here. It is troubling that a carrier has so many 14-Day Suspensions. The Postal Service has concluded that Mr. Edgerson has shown a blatant disregard for the performance of his duties and does not take his job seriously and, therefore, cannot be rehabilitated. However, there is no evidence to support that conclusion in this hearing. He has not repeatedly made the same mistake. This case did not involve ADVO scans or Express Mail, so he must be paying more attention to his responsibilities there. His loss of the arrow key was certainly not intentional. The Postal Service could not prove that he failed to follow any instruction to attach it to his person or that he knew that he should attach it to his person. He did not intentionally repeat the same infraction over and over in spite of repeated discipline.

Mr. Edgerson is advised to pay very careful attention to every aspect of his duties and responsibilities in the future and to be always attentive and alert to performing all of his duties. He must not be careless. The presence of four 14-Day Suspensions on his record places his Postal employment in jeopardy. However, we cannot uphold the Removal in this case because we must find that the Postal Service has not borne its burden of proof for all of the reasons discussed above.

**DECISION AND AWARD:**

**The grievance is sustained. The Postal Service has not borne its burden of proof that this Removal was issued for just cause. Brandon Edgerson shall be immediately returned to his position as a city carrier technician in Marrero, LA. This Removal shall be immediately expunged from all records of the Postal Service, as though it had never been issued. Mr. Edgerson shall be made whole for all pay and benefits lost as a result of this Removal, which was not issued for just cause.**