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In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

ARBITRATION
OPINION
and
AWARD
of
ARBITRATOR

APWU

Case No. AB-E-1057-D
Northern Virginia SCF
John N. Bradbury, Grievant

ARBITRATION STIPULATION

Was the removal of John N. Bradbury for "just cause": Was Mr. Bradbury guilty of the offense as charged? If not, what shall be the appropriate remedy?

Introduction

At approximately 8:30 a.m. on October 31, 1973 Security Police Officer Walter J. Seidel approached three employees standing near a van in the Southeast Parking Lot at the Northern Virginia SCF. The Officer questioned the three men, learned that a Mr. Alderson, one of the three, was not then on duty, and ascertained that the other two men, including Custodian Employee John N. Bradbury, were on duty and assigned to cleaning up debris around the parking lot. While Officer Seidel was in discussion with Employee Alderson, Custodian Bradbury said something to the effect: "I had better get out of here before I get into trouble." The record shows that Officer Seidel agreed that this was a good idea. At this point Officer Seidel charges that Employee Bradbury raised his five-foot trash pick-up stick, with a nail in the end, and held it momentarily like a spear pointed at the Officer. However, it is to be noted that the Officer did nothing about

HEADING: RIGHT TO PERTINENT INFORMATION

this act at that point. Custodian Bradbury left the area, along with the third employee (Joseph Johnson), and proceeded to the Special Delivery parking area to pick up trash.

After finishing his conversation with Employee Alderson, Officer Seidel proceeded to the area where Custodian Bradbury was working. The Officer asked Employee Bradbury for his identification badge, which he contends was being improperly worn inside of the employee's jacket pocket. The Officer maintains that the employee was uncooperative, merely flashed his identification badgeso that the Officer could not identify it, and told the Officer that if he wanted to see the badge "he would have to take it." A second Officer (Security Officer McKinley Crudup), summoned via radio by Officer Seidel, arrived at the scene just after Officer Seidel got there. Officer Seidel asked Employee Bradbury for his pick-up stick which he released to the Officer who then threw it aside. It is contended that Employee Bradbury thereupon said something to the effect, "You can take this too," and threw at or struck at Officer Seidel in the upper body, or lower face, with the plastic bag he was carrying that contained a small amount of trash. Officer Seidel then took hold of one of Employee Bradbury's arms and Officer Crudup took hold of the other. During this action Employee Bradbury reached up and pulled Officer Seidel's break-away tie from his collar, and threw it aside. The two Officers then escorted Employee Bradbury to the elevator inside of the SCF.

Police Inspector J. C. Lee, and possibly other Local Postal management, immediately began an investigation of the incident. Statements were secured from the two Security Police Officers, and from a number

of employees.

Local Postal management checked the matter and late on the date of the incident Employee Bradbury was placed upon "off-duty status (without pay)" under Article XVI, Section 4 (EMERGENCY PROCEDURE) of the National Agreement.

On November 5, 1973 Postal Inspector J. C. Lee filed with Local Postal management an "INVESTIGATIVE SUMMARY" respecting the "alleged assault" of Security Police Officer Seidel by Custodian Employee Bradbury on October 31, 1973.

On November 7, 1973 an "Advance Notice of Discharge" was issued by management to Employee Bradbury that read:

> "You are hereby given 30 days advance written notice of discharge from the Postal Service. Based upon the facts set forth below, there is reason to believe that you assaulted a Postal Official and that your conduct was unbecoming a Postal employee.
>
> "FACTS: On October 31, 1973 at approximately 8:30 a.m., Officer W. J. Seidel noticed you and two other employees later identified as Mr. Joseph Johnson and Mr. Allen Alderson standing near a van in the SE parking lot. While he was asking Mr. Alderson who was not on duty for his name, you asked Officer Seidel if he was on duty. Officer Seidel made no reply and continued talking to Mr. Alderson. You then said something to the effect that you had better leave before you got into trouble and Officer Seidel agreed. As you were leaving you raised a stick you were carrying as if you were going to throw it at him. The stick was about 5 feet long and had a nail in it for picking up trash. After talking to Mr. Alderson, Officer Seidel approached you and Mr. Johnson to get your names and the names of your supervisor. You refused to show him your identification badge and refused to accompany him to the Tour Superintendent's office. He took the stick that you were carrying and as he was doing so, you struck him in the face with a bag of trash. You then grabbed him by the tie which came loose and threw it on the ground. Officer Crudup who was called to the scene earlier and Officer Seidel then took you into the building where you were taken to the Postal Inspector's office.

"Your attention is directed to the fact that, in accordance with Section 2 of Article XV of the National Agreement, you have 14 days from the date of this notice in which to file a grievance concerning this action.

"ss/ George G. Dunn
Acting Superintendent Building
Services"

The discharge notice was grieved by the employee, and the matter was submitted to the Grievance Procedure of Article XV. Hearings were held at Step 2-A and Step 2-B, provided for in Article XV (GRIEVANCE-ARBITRATION PROCEDURE), Section 2, but the grievance could not be amicably resolved. On February 4, 1974 the Union, through Francis S. Filbey, General President, filed the issue for arbitration.

The matter was heard by the undersigned Arbitrator in Washington, D. C. on April 1, 1974, at which the United States Postal Service's position was presented through Benjamin Falcigno, Labor Relations Representative, and the Union's through Richard I. Wevodau, Executive Vice President, Maintenance Craft Division. Witnesses were present on behalf of both parties, and a considerable amount of testimony and exhibits were made part of the record. A transcript thereof was forwarded to the Arbitrator under date of April 10, 1974, and post-hearing briefs, arranged for at the hearing, were received by the Arbitrator with transmittal notices dated April 22, 1974. The Arbitrator has used the record in arriving at his decision.

Opinion

In this case the Arbitrator finds it unnecessary to set forth in detail the parties' positions and arguments concerning all aspects of the grievance protesting Employee Bradbury's discharge. He does this

because he finds the Postal Service's case against this grievant procedurally defective in many important respects.

Article XV, Section 2 (PROCEDURE), Step 2-A and Step 2-B, constitute meaningful provisions of the "Grievance-Arbitration Procedure," which it is expected that the parties will use to seek resolution of discharge issues short of arbitration. These Steps are provided to afford the parties the opportunity to consider the facts of the case as they have developed them through their investigations, and to enable them to make full and complete disclosures to each other of all the pertinent facts at their disposal, so that they can bring all such to bear in arriving at a decision as quickly as possible on a protested discharge.

In this case, Local Postal management had at its disposal the November 5, 1973 "INVESTIGATIVE SUMMARY" of Postal Inspector J. C. Lee, with several attachments, which it used in formulating its November 7, 1973 "Advance Notice of Discharge" against Grievant Bradbury. In connection with that "INVESTIGATIVE SUMMARY," the record indicates that management had obtained several statements from a number of employees (they may or may not have been in affidavit form), which may or may not have assisted in disposing of the discharge grievance. The testimony in the record clearly proves that the management representative at the Step 2-A hearing did not make this material available to the Step 2 Union representative, whether or not he asked for it. While the record is contradictory as to whether such material was requested by the Union's Step 2-A representative, management has the burden to prove that it had "just cause" for the grievant's discharge,

and concomitant with that "burden of proof" was the requirement that it make available to the Step 2-A Union representative all of the pertinent material it had in its possession upon which it based its discharge decision. This it simply did not do.

The record also proves that management did not make available to the Step 2-B Union representative the November 5, 1973 "INVESTIGATIVE SUMMARY" of Postal Inspector J. C. Lee, and/or its attachments. The fact is that the Union was not provided with a copy of this very important document until it insisted on receipt thereof at the April 1, 1974 arbitration hearing.

It is quite obvious that the "Grievance Procedure" provided for in Article XV, Section 2, for the settlement of discharge cases, cannot operate effectively if Local Postal management fails to make full disclosure to the Union representatives of the documentation upon which it has based its discharge action. It is not proper for management to wait until the arbitration hearing to provide the Union with such material, for to do so will substitute the arbitration process for the prior steps of the Grievance Procedure, and completely nullify their effectiveness.

The record fully persuades the Arbitrator that the United States Postal Service's case against Grievant John H. Bradbury must be reversed on the grounds of defective procedures, because management failed, at Steps 2-A and 2-B of Article XV, to make available to the Union representatives the November 5, 1973 "INVESTIGATIVE SUMMARY" of Postal Inspector J. C. Lee concerning the confrontation between Grievant Bradbury and Security Police Officer Walter J. Seidel, the written statement

of Officer Seidel, and the possibly notarized statements of several alleged employee witnesses. Under the Agreement this is the kind of material the Union needs, and is entitled to receive, to defend a grievant against discharge during the initial Steps of the Grievance Procedure, and before the positions of the two parties have frozen into unyielding molds.

Step 2-A and Step 2-B of Article XV must be afforded their fully intended opportunity to assist the parties in resolving a discharge issue as quickly as possible. The Postal Service's failure to provide the Union representatives with the full documentation on which it decided upon the grievant's discharge requires the conclusion that its case against Grievant Bradbury has been procedurally defective and, therefore, that this discharge must be rescinded as lacking "just cause."

The Arbitrator's conclusions here are not intended to apply to the covering letter that accompanied the November 5, 1973 "INVESTIGATIVE SUMMARY" of Postal Inspector J. C. Lee, and which the Union sought to secure at the arbitration hearing. The Arbitrator finds no reason for making a finding on this particular facet of this issue in view of his findings above set forth. But if his findings had been different, the Arbitrator may well have requested at least an opportunity to inspect the covering letter to make certain that it did not violate the parties' understandings, set forth in a September 13, 1973 "IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING," wherein the parties have agreed that the Postal Inspection Department is "specifically prohibited from providing management with any recommendations or opinions as to the

disciplinary action management should take" in any particular case. But in this instance the Arbitrator deems it unnecessary to request that any steps be taken in this direction, since he finds the Postal Service's case against Grievant Bradbury so procedurally defective as to require that his grievance be sustained, and that he be returned to his former job with all rights intact, plus back pay for all time lost.

AWARD

1. Because of the proven defective procedures of the United States Postal Service in processing the discharge grievance of Custodian Employee John H. Bradbury through Steps 2-A and 2-B of Article XV, Section 2 of the July 21, 1973 National Agreement, his December 1973 discharge must be held as failing to meet the "just cause" criterion of Article XVI.

2. The discharge is rescinded, and the grievant shall be returned to his former job immediately with full seniority, with all benefits reinstated, and with back pay for all time lost.

G. Allan Dash, Jr.

G. Allan Dash, Jr.
Arbitrator

May 17, 1974