C#17898

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION BETWEEN UNITED STATES POSTAL SERVICE AND NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievant: Curtis Harkins Post Office: Taylor, MI USPS No. J94N-4J-D 96072160 NALC No. GTS017347 Arb. Case No. 97/131

BEFORE: ELLIOTT H. GOLDSTEIN ARBITRATOR

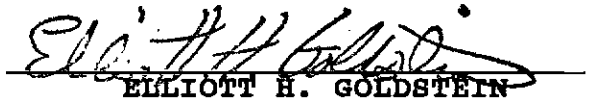
APPEARANCES:

For the Postal Service:	Brenda E. Johnson
For the Union:	Mark H. Judd
Place of Hearing:	Omaha, NE
Date of Hearing:	December 12, 1997

AWARD:

For the reasons stated above and incorporated as if fully restated herein, the grievance is denied in its entirety. The Service established that the Grievant was guilty as charged of presenting documentation that he knew or reasonably should have known was false, and of being absent without leave. The testimony of the Grievant and the mother of his son that she misled the Grievant for her own purposes and that the Grievant was ignorant of her falsification of the document is not credible. The offenses charged amply justified his removal, in light of the seriousness of the offenses, the Grievant's past disciplinary record (even after two disciplines were ameliorated by other arbitrators), and his very short service as a Postal Service employee. The Service fully and fairly investigated the incident, and had just cause to remove the Grievant.

Date of Award: February 2, 1998



ELLIOTT H. GOLDSTEIN
Arbitrator

I. INTRODUCTION

The hearing in this case was held on December 12, 1997, at the postal facility located at 24837 Goodard Road, Taylor, MI commencing at 10:00 a.m. before the undersigned Arbitrator who was duly appointed by the parties to render a final and binding decision in this matter. At the hearing the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. No formal transcript of the hearing was made. The parties waived the filing of post-hearing briefs, whereupon the hearing was declared closed. Both parties stipulated at the hearing as to this Arbitrator's jurisdiction and authority to hear this case and issue a final and binding decision in this matter. At the close of the hearing, the parties stipulated that the Arbitrator's award would be due on or before February 10, 1998, 60 days after the hearing.

II. ISSUE

The parties stipulated that the issue in this case is:

> Did the Postal Service have just cause to remove the grievant, Curtis Harkins, and if not, what shall be the remedy?

III. RELEVANT CONTRACT PROVISIONS

The following provisions of the 1994 - 1998 National Agreement are among those relevant to this dispute:

ARTICLE 16
DISCIPLINE PROCEDURE

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.

(Jt. Ex. 1)

Among the provisions of the ELM cited to me to me by the parties as relevant to this dispute are the following:

661 Code of Ethical Conduct
661.5 Other Prohibited Conduct
661.53 Unacceptable Conduct. No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. . . .

666 USPS STANDARDS OF CONDUCT
666.2 Behavior and Personal Habits
Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it is not the policy of the postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, courteous and of good character and reputation. Employees are expected to maintain satisfactory personal habits so as not to be obnoxious or offensive to other persons or to create unpleasant working conditions.

666.8 Attendance
666.81 Requirement for Attendance. Employees are required to be regular in attendance.

666.82 Absence without Permission. Employees failing to report for duty on scheduled days, including Saturdays, Sundays, and holidays, will be considered

absent without leave except in actual emergencies which prevent obtaining permission in advance. In emergencies, the supervisor or proper official will be notified as soon as the inability to report for duty becomes apparent. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or fails to provide satisfactory evidence that an emergency existed will be placed in a nonpay status for the period of such absence. The absence will be reported to the appropriate authority.

(Jt. Ex. 5)

The parties also cited the following provisions of Handbook M-39, among others:

115 Discipline
115.1 Basic Principle
in the administration of discipline, a basic principle must be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. The delivery manager must make every effort to correct a situation before resorting to disciplinary measures.

115.3 Obligation to Employees
When problems arise, managers must recognize that they have an obligation to their employees and to the Postal Service to look to themselves, as well as to the employee, to:

a. Find out who, what, when, where, and why.
b. Make absolutely sure you have all the facts.
c. The manager has the responsibility to resolve as many problems as possible before they become grievances.
d. If the employee's stand has merit, admit it and correct the situation. You are the manager; you must make decisions; don't pass this responsibility on to someone else.

(Jt. Ex. 7)

The parties also submitted to me General Order # 1/Detroit District 481 & 482/Dischargeable Infractions, which states, in relevant part:

Some infractions, by the severity of their negative impact upon the employer/employee relationship, may

constitute just cause for discharge, even for a single act. These include, but are not limited to:

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4. Falsification. (Presentation of false documentation, failure to provide information that would directly affect conditions of employment, entering false information on official documents/records, etc.)

(Jt. Ex. 4)

IV. FACTUAL BACKGROUND

The Grievant, a Part-Time Flexible Letter Carrier, has a service date of February 4, 1995. On May 1, 1996, the Grievant was issued a Notice of Charges - Removal (Non-Veteran), charging him with "Presentation of False Documentation" and "Absent without Official Leave" based on an absence that occurred on April 9, 1996. The Notice stated that the following additional elements of the Grievant's record were considered in reaching the removal decision: A fourteen-day suspension dated March 22, 1996 for AWOL/Failure to Follow Instructions; a fourteen-day suspension dated October 20, 1995 for AWOL; a three-day suspension dated September 8, 1995 for Discharge of Duties; a letter of warning dated August 25, 1996 for AWOL; a letter of warning dated July 28, 1995 for AWOL/Failure to Follow Instructions; and a letter of warning dated March 21, 1995 for Failure to Follow Instructions.

A grievance was filed at Step 2 asserting that the Service did not have just cause to remove the Grievant. The grievance was denied at Step 2. The Union submitted additions and corrections challenging the failure of the Postal Service to address at Step 2

either the AWOL charge or the contentions that the grievant was unaware of any falsification, had no intent to submit a falsified document and did not seek leave for personal benefit. The grievance was denied at Step 3, and the dispute was appealed to arbitration.

David Sledge, Supervisor of Customer Service at the Taylor Post Office, was the Grievant's supervisor in April 1996. He testified that the Grievant was absent from work without advance notice on April 9, 1996. The Grievant called in that day, and Sledge told him that he would have to bring in documentation to support his request for leave. When the Grievant reported to work on April 10, 1996 at 7:30 a.m., the Grievant gave him a document and filled out a 3971, requesting 8 hours of annual leave for April 9. On the 3971, the Grievant noted "No school for child/no one to watch child."

According to Sledge, the Grievant handed him the documentation without any envelope. The documentation contained the letterhead of the JB Day Nursery & Kindergarten, was dated April 10, 1996, and stated:

> To Whom It May Concern:
>
> Due to Sewage Problems on 4/9/96 all classes were cancelled. Sorry for the inconvenience.
>
> Thank-You
> Mrs. London

Sledge testified that he read the documentation, but it did not look right to him, because it was a copy of a copy, rather than an original. He obtained the phone number of the nursery school and

called to determine whether the letter was genuine. He asked to speak to Mrs. London, and a woman identifying herself as Ms. London told him that the school had not been closed on April 9, and that she had not written the note.

Sledge told Acting Supervisor Gutierrez about his call and Gutierrez called the school back and spoke to Ms. Stewart, a school administrator. According to Gutierrez, who also testified, Stewart repeated to him that the school had not been closed on April 9. Gutierrez also testified that the Grievant had given him the documentation at first, and the document was not in an envelope at the time.

Later that morning, Sledge testified, he called the Grievant into his office and told him that Ms. London had denied knowledge of the note and that the administrator said that the school had not been closed. He asked the Grievant whether the document was genuine and the Grievant answered yes. Sledge also testified that he asked whether the teacher and administrators were liars, and the Grievant said they were. Sledge then told the Grievant that the documentation was insufficient, his request for leave was denied and he would be deemed AWOL on April 9. According to Sledge, the Grievant told him that he had picked up the note from Ms. London that morning, and did not mention at the time anything about receiving it from his son's mother.

Sledge then contacted Officer in Charge Dave Charboneau. He told Charboneau what had happened. Charboneau went to the nursery school and obtained statements from Ms. Stewart and Mrs. Lillie

Gaston (who noted on her statement that she was known as Lillie London until March 14, 1996). Charboneau, who is no longer employed by the Postal Service, did not testify. On April 12, 1996, according to Charboneau's written statement, Charboneau also obtained samples of the school's letterhead and of the school's most recent newsletter. The "letterhead" on the documentation provided by the Grievant was in fact identical to the newsletter heading, but completely unlike the stationery letterhead used by the school.

Sledge testified that in determining how to discipline the Grievant, he considered not only the falsification of the document, and the resulting absence without leave, but also the Grievant's prior record, which at the time included a March 1996 14-day suspension for AWOL/Failure to Follow Instructions, an October 1995 fourteen-day suspension for AWOL, a September 1995 three-day suspension for Discharge of Duties, an August 1995 letter of warning for AWOL, a July 1995 letter of warning for AWOL/Failure to Follow Instructions, and a March 1995 letter of warning for Failure to Follow Instructions. At the hearing, the parties stipulated that long after the removal, and even after the Step 3 decision in this case, an arbitration award reduced the 14-day suspension issued in October 1995 to a 7-day suspension, and that on December 23, 1996, an arbitration award rescinded the 14-day suspension issued in March 1996 was rescinded. However, Sledge testified that even had he known of these ameliorations to the Grievant's record,

he would still have recommended removal because of the seriousness of the offense of falsifying documentation.

Sledge testified that he was never told that Pamela Randolph, the mother of the Grievant's son, had prepared the document, even though he heard the grievance at Step 1, that he never saw Randolph's April 16, 1996 statement, and that he never even heard Randolph's name until the day of the arbitration hearing.

Pamela Randolph testified over the Postal Service's objection that she was never mentioned by name during the grievance process. She testified that she is the mother of the Grievant's son, who was 4 years old in April 1996. She testified that she had called the Grievant and told him that his son's school would be closed on April 9, so that he would take care of her son while she went out of town for a day to attend court. He told her that he needed a note from the school to take to the Postal Service. Randolph testified that she took the top of a recent newsletter from the school, copied it, and wrote the note quoted above, without telling the Grievant. She testified that she gave the Grievant the note in a sealed envelope, and denied that the Grievant had asked her to falsify the note.

According to Randolph, she had no idea that "London" was the maiden name of one of the teachers at the school, and learned that only a week later. She testified that on April 15, 1996, the Grievant asked her to write out a statement describing what she had done. (Her statement, which had not previously been given to the Postal Service, was offered into evidence at the hearing by the

Union over the Service's objections. It is consistent with her testimony in most aspects.)

The Grievant himself testified, consistent with Randolph, that she had called him on the evening of April 8, 1996, and told him that she needed him to take care of her son the next day because she was going out of town. When he told her he would pick up the child after school, Randolph told him that the school would be closed because of sewer problems. According to the Grievant, he asked her what time the school opened and she said it opened some time between 6:30 a.m. and 7:00 a.m. He agreed to take care of the child, and Randolph brought his son to him that night.

On April 9, the Grievant testified, he drove past the school sometime between 6:30 a.m. and 6:45 a.m. to see whether it was really school, but there were no lights on in the school and no cars outside. He drove home, called the Post Office, and told Sledge he would not be in that day. He said that he asked Sledge what kind of leave he could take and Sledge asked him what kind he wanted to take. When the Grievant said he didn't know, Sledge just told him to bring in documentation of the reason for the absence the next day. He took care of his son all day, he testified.

That evening the Grievant told Randolph that he needed to take documentation of the absence to work the next day, and Randolph told him she would have it for him when he dropped his son off at the school the next morning. When he dropped off his son at 6:45 a.m. on April 10, the Grievant testified, he walked the boy into his classroom, and Randolph was there with another woman whom he

assumed to be the teacher. Randolph gave him the letter in an envelope and told him it was the letter he needed for his job. The Grievant took it, and went to work.

According to the Grievant, the letter was still in the envelope when he gave it to Sledge. He and Sledge were by the time clock, he testified, and Sledge tore open the envelope and threw it away. The Grievant then filled out a 3971, and began to case mail. Later that morning, Sledge called him into the office, asked him where he had gotten the letter, and told him that the teacher and administrator said it did not come from the school. The Grievant testified that he told Sledge that if they had told him that he did not get it from the school they were lying. The Grievant further testified that he did not say who he had gotten it from, because he was not asked. Sledge told him that the school had been open, accused him of lying and sent him back to his case. Sledge did not say anything about his being AWOL, according to the Grievant.

Later that day, he met with his steward and Charboneau, and repeated his statement. He testified that Charboneau showed him the letter and he said that he could not recognize the handwriting. He called Randolph on April 10 and told her that the Postal Service said that the note from the school was fake, but she denied it. After he was put on administrative leave on April 11, he told Randolph that he was out of work and the school had said that they did not provide the note, and Randolph then confessed to him what she had done. He then asked her to write out a statement describing what she had done.

V. THE PARTIES' CONTENTIONS

A. The Service

The Service contends that there was just cause to remove the Grievant for falsification of documentation and being AWOL. The Grievant provided documentation for his April 9 absence, as instructed, but there are numerous inconsistencies in his story that indicate that he knew that the documentation was false, and that the Postal Service properly deemed him AWOL on April 9. First, although the Grievant testified that he received the document from his girlfriend in an envelope and gave it to his supervisor in that envelope, without looking at it, Randolph said nothing about an envelope when she wrote a statement for him only a few days later. Second, the Grievant had no reason to drive past the nursery school on April 9; he knew its name and address, so he could have gotten the phone number and called instead.

The Service thoroughly investigated the incident, it insists. After getting the note, Sledge and Gutierrez each called the school, and learned that the school had not been closed and that the former Ms. London had not written the note. OIC Charboneau went to the school two days later, interviewed London and Stewart, and obtained samples of the stationery letterhead and the heading used for the school newsletter, confirming that the note had not been prepared on school letterhead. Sledge interviewed the Grievant and gave him the opportunity to give his explanation. Thus, the Postal Service did not deprive the Grievant of due process in the investigation.

As to the merits, the Service emphasizes that the Grievant first told Sledge that he had obtained the note from the nursery school, and only later admitted that he had gotten it from Randolph, so it is clear that he lied to the Service. The Service also properly denied his request for leave for April 9 because of his failure to document the request properly. Moreover, the Service properly relied on the discipline then in his record because the rescission and reduction were awarded only long after the removal. Finally, the District General Order makes it clear that presentation of false documentation is a removable offense. There were no mitigating factors here. The Service requests that the grievance be denied and the removal sustained.

B. **The Union**

The Union contends that the Service did not have just cause to remove the Grievant. The Service failed to meet its burden of proving by clear and convincing evidence that the Grievant falsified documentation.

With respect to the falsification charge, the Union asserts that Randolph and the Grievant agreed that the Grievant did not knowingly present a false document. Randolph's testimony is admissible here, the Union contends, because the Union informed the Service at Step 2 that she, rather than the Grievant, had prepared the document. It is not credible that the Grievant would have had Randolph falsify a document in order for him to get a day off, when he could have simply called in sick and gone to a doctor for a certificate.

The Union contends that the Postal Service has failed to prove that the Grievant had any knowledge that the documentation was false or any intent to deceive the Service. In addition, management failed to conduct an adequate investigation. Even though they knew that the Grievant had received the documentation from Randolph, they never interviewed her. Even if the Grievant did not volunteer her name, they could have asked. Management never interviewed the staff of the school in person either.

Although falsification is a serious charge, removal is not the mandatory penalty. The supervisor retains the discretion to select a different level of discipline, even under General Order #1. Management did not treat this as a serious offense: They did not call in the Postal Inspectors or bother to interview Randolph or the school staff in person. Where there is no proof of the Grievant's fraudulent intent, removal is too harsh a penalty.

In addition, when Sledge recommended removal, he was relying on a record including one 14-day suspension that was later rescinded and one 14-day suspension that was later reduced. Removal was not actually the next step of progressive discipline.

Finally, the Union objects to the absence of the supervisor who actually did the investigation, Charboneau. Sledge, the Union asserts, did not do a complete investigation, but relied on Charboneau who did not testify. Based all of these considerations, the Union urges that I find that the Service failed to meet its burden of proof of just cause, and sustain the grievance, reinstating the Grievant and making him whole.

VI. DISCUSSION AND FINDINGS

The Grievant was removed for committing two offenses -- presenting false documentation for his absence on April 9, 1996, and for being AWOL that day when his request for leave was denied because of the inadequate documentation. After careful consideration of the record properly before me, I find that the Service established that the Grievant was guilty of the offenses charged and that there was just cause to remove the Grievant.

One critical fact here is undisputed: the note that the Grievant gave to Supervisor Sledge to support his absence on April 9, 1996, was false and had been falsified. The mother of the Grievant's son, Pamela Randolph, testified credibly that she took a copy of the nursery school newsletter, photocopied the heading with the school's address and logo as letterhead onto another piece of paper, and wrote the note "To Whom It May Concern" stating that the school had been closed on April 9 due to "sewage problems." Randolph signed the note "Mrs. London."

The central question here is whether the Grievant can be held responsible for that falsification and his resulting AWOL status that day, and if so, whether his offenses justify his removal. I realize that the Grievant testified that he was completely unaware that Randolph had lied to him about the nursery school being closed, or that she had given him a false document until April 11 or 12. Although Randolph differed with him as to the date she allegedly "confessed", she otherwise corroborated his story, I also note. The Grievant even testified that he drove past the school on

the morning of April 9 between 6:30 a.m. and 7:00 a.m. and saw no lights on or cars at the school, the record shows. The Postal Service admittedly has no direct evidence demonstrating the Grievant's fraudulent knowledge or intent, I therefore find. There is, however, extremely probative circumstantial evidence that does show knowledge and intent on Grievant's part, I rule, for the following reasons.

First, in other cases, grievances have been sustained where documentation provided by an employee was false, altered or otherwise fraudulent, but where the Service failed to meet its burden of proving that the employee knew or should have know of the deception. For example, in USPS and NALC, Case No. J94N-4J-D96022134 (Grievant T. Miller, Plymouth MI)(Arb. T. Erbs, April 12, 1996), the Postal Service was unable to prove that the employee was unaware that his wife, a nurse, had actually written and signed with a false name the medical certificate he submitted, stating that the employee had been seen at the clinic where she worked. In that case, however, there was convincing proof that the Grievant not only had been ill but had in fact been examined by a clinic physician. As Arbitrator Erbs noted, the document was "false" because of who signed it and not because of the contents. On that record, Erbs found that the employee did not know of the document that it was false, and thus there was no evidence that the employee knowingly submitted a false document. The Arbitrator refused to sustain the removal but denied the employee back pay in that case,

due to Grievant's "negligent failure" to examine the note before giving it to the Postal Service.

Second, in another case cited by the Union, USPS and APWU, Case No. C7C-4M-D 11010 (Grievant D. Blank, Flint MI)(Arb. B. Dobranski, February 9, 1990), the Service demonstrated that words requiring bed rest had been added to a return to work certificate that were not on the copy in the physician's file. The Service was unable to prove that the employee knew or should have known that the words did not appear on the original, where the physician testified that he might have recommended bed rest, and where there were many nurses in the clinic who might have added the words, not all of whom were interviewed during the Service's investigation, Arbitrator Dobranski found. Additionally, the Arbitrator concluded that there was not even circumstantial evidence that grievant knew the words had been falsified, or that she knew or reasonably should have known that the slip was falsified. Hence, the existence or lack of circumstantial evidence to show knowledge and intent is often the key element of proof in cases of this sort, I note.

Finally, in my own decision in USPS and NALC, Case No. C1N-4A-D 18704 (Grievant K. Cahanin, LaGrange, IL)(January 10, 1984), I found that the Service failed to prove that an employee knowingly submitted false medical reports to support claims for Worker's Injury Compensation, even though there was evidence that the employee had told a supervisor that her back problems were due to moving furniture at home and that she did not bother to see a chiropractor until after medical documentation was demanded. The

medical reports she submitted from the chiropractor, stated the chiropractor's opinion that her condition was work-related. I held that based on his conclusion, the employee could reasonably believe that she had a basis for a valid claim, and thus the Service had failed to prove that her "actions in filing Workers' Injury Compensation claims were motivated by dishonesty and a desire to obtain benefits falsely." I made this finding, despite my decision in the same case that the employee had falsely claimed to have been disabled from work due to back pain on the specific day before she went to see the chiropractor.

Thus, a critical element of the Service's case is that it must prove, not merely that the document was falsified, but that the Grievant either knew or should have known that the document was false or falsified, I repeat. However, unlike the cases described above, the Service has sustained its burden here, because of the totality of the circumstances and the probative circumstantial evidence to that effect, I rule. After all, it is no longer disputed that the school was open on April 9 and that the note provided by the Grievant was both false (the school was not closed) and falsified (being written by Randolph rather than "Mrs. London"). The Service also established that there is a teacher at the school, now known as Lillie Gaston, whose name until only two weeks earlier was Lillie London. Randolph, the writer of the note, plainly intended to deceive the Grievant's employer, the evidence discloses. The question is whether the Grievant also knew and shared that intent, I stress.

Third, despite any external evidence from the Service, I must find that unlike the cases cited above, the circumstances here demonstrate that the Grievant acted in collusion with Randolph to forge documentation to provide him with a false excuse for his absence on April 9. Randolph herself was not credible in claiming sole responsibility for the incident and in declaring the Grievant's innocence. She explained that she deceived the Grievant about the school being closed all day on April 9 because she needed him to watch their son that day while she went out of town. But this story, and the Grievant's corroboration of their conversations, simply do not make sense, I find. Both testified that when Randolph told the Grievant on the evening of April 8 that she had to go out of town the next day and needed him to take care of their son, the Grievant said he could pick up the child after school. In other words, it is plain from their testimony that Randolph did not have to tell the Grievant (falsely) that the school was going to be closed all day in order to have child care for her son.

Nothing in Randolph's testimony or the Grievant's explains why the child's usual routine of attending nursery school for part of the day was not acceptable for April 9. On April 10, the Grievant was able to stop at the school at 6:45 a.m. to pick up the note from Randolph and still get to work by the beginning of his shift at 7:30 p.m., so the Grievant apparently could have dropped the child off at school on April 9 and still gotten to work on time, as I read the record evidence.

Randolph and the Grievant simply cannot be believed, I therefore determined. The inescapable conclusion from the proofs of record is that Randolph gained nothing by this deception, I also note. The only person who stood to benefit from the lies was the Grievant himself, I stress, who thereby would gain leave for a personal day off at a time when his record showed not one but two recent 14-day suspensions for being AWOL. Even though the discipline was later reduced as a result of arbitration decisions, those decisions were not issued until six and eight months later.

Fourth, the Grievant's insistence that he had no reason to deceive his supervisor rings hollow, under these factual circumstances. Even Grievant's testimony that he drove by the school between 6:30 a.m. and 7:00 a.m. on April 9 and thought it looked closed is difficult to believe, under the circumstances: the school was open, and even if the staff was late, other parents and children would be there waiting to get in. (In light of the efforts of Randolph and the Grievant to deceive both the Service and this tribunal, I find it difficult even to believe that the Grievant's son missed school on April 9. From an off-hand comment by Randolph, it appears that Service management did try to determine that from the school staff, but they refused to give out any information about Randolph's son except to her.)

In sum, I hold that Grievant had motive, opportunity, and, similar to Arbitrator Erbs' case in T. Miller, supra, I conclude that there was a duty to examine the particular note granting Grievant an excuse, under the narrow facts of this case, which the

Grievant did not do, the inconsistencies and conflicts in the testimony of both Randolph and Grievant, as detailed above, also cause me to determine there is sufficient evidence to infer knowledge and intent on the part of the Grievant. I also do not believe the Grievant's testimony that he was unaware that Randolph lied when she told him that his son's school would be closed on April 9 and had given him a falsified document to support his absence. I find that he knowingly and intentionally gave the Service a false document to support his absence on April 9, based on the facts of record.

Consequently, I hold that this was a blatant violation of the Code of Ethical Conduct, Section 661.53 of the ELM, and the USPS Standards of Conduct, Section 666.2 of the ELM. As I have observed repeatedly, the Postal Service must have in its employ "scrupulously honest persons." USPS and NALC, Case No. I94N-41-D 9708100 (Grievant D. Childs, Omaha, NE)(1998), quoting USPS and NALC, Case No. C4N-4E-D 5043 (Grievant W. McAfee, Massillon, OH)(1986). Falsification of documentation is a fundamental breach of the trust that the Service must be able to respond to from its employees. This is true whether the grievant was the author of the forgery or falsehood, or merely submitted the document knowing that it was false. See, e.g., USPS and NALC, Case No. C8N-4B-D 35470 (Grievant D. Kroeyr, Taylor MI)(Arb. N. Bernstein, May 10, 1982); USPS and NALC, Case no. C7N-4B-D 10001 (Grievant P. Truran, Lavonia MI)(Arb. J. Martin, July 3, 1989); USPS and APWU, Case No. C1C-4A-D 15315

(Grievant M. Smith, Chicago, IL)(Arb. A. Epstein, January 26, 1984).

The seriousness of the offense is reflected in the District's General Order # 1, which provides that removal may be the appropriate remedy for falsification, even in case of a first offense, I further note. That General Order is consistent with numerous arbitration cases, including those just cited above. In light of my conclusion there was an intentional and elaborate scheme to deceive by Grievant and Randolph, which Grievant pursued all the way through the arbitration, and his weak record even after the mitigation of the two 14-day suspensions, I find that the Service had just cause to remove the Grievant for this offense.

I am aware that the Union asserts that the Service did not adequately investigate the charge in this case before imposing discipline, contending that no one from management interviewed the staff at the school in person, but only over the telephone. Even if the telephone interviews were insufficient, which I need not determine here, the Union's position misstates the record, I rule. OIC Charboneau did go to the school and he interviewed the former Ms. London and the school administrator, and obtained samples of letterhead and the newsletter, the record shows. This was sufficient to satisfy the due process requirement for a fair investigation, I hold.

Charboneau is no longer employed by the Service and did not testify, I note. However, although the testimony about Charboneau's actions was largely hearsay, as were the written statements

from the school staff, this evidence was almost entirely cumulative and was specifically cited in the Notice of Charges, I further note. The physical evidence of the letterhead and newsletter exemplars was not disputed.

In light of the flexible approach to evidence followed generally by arbitrators under the National Agreement and the fact that this evidence about what Charboneau did was cumulative and known to the Grievant and the Union from the time the charges were made, I find that the fact that Charboneau visited the school as part of the Service's investigation is properly in evidence, and I may consider the written statements of Ms. London and Ms. Stewart, and the stationery and newsletter samples he obtained. Sledge interviewed the Grievant at several points, both on April 10 and after Charboneau's trip to the school, so the Grievant also had an opportunity to tell his side of the story. Particularly because the Grievant never offered the Service Randolph's statement dated April 15, 1996, until the very day of the hearing, I credit the Service witnesses' testimony that Randolph was never mentioned by name or described as the maker of the document during the investigation. The Service conducted a sufficient investigation here, in contrast to USPS and NALC, Case No. NC-W-15,975-D (Grievant H. Saunders, Yucaipa, CA) (Arbitrator W. Rentfro, April 9, 1979), where the Postmaster refused to interview the employee and relied only on newspaper reports and an official court file.

Finally, the Union objects that Sledge did not really rely on the Grievant being AWOL in deciding to recommend removal, and that

the Service did not mention that charge in reaffirming the removal at Step 2. I agree with the Union that Sledge's testimony and the Step 2 answer leave the impression that management's principal focus was on the submission of a false document, but the record is clear that Sledge also gave serious consideration to the Grievant's AWOL status for April 9. At the time of the incident, the Grievant's record of approximately 15 months of employment with the Postal Service included two 14-day suspensions for AWOL, a three-day suspension for AWOL and two letters of warning for AWOL, and Sledge was aware of that record when he recommended removal. Even though the two 14-day suspensions subsequently were ameliorated to a single 7-day suspension, the Grievant still had a very weak attendance record for a short-term employee, with three incidents of discipline for AWOL within barely 12 months of service.

Contrary to the Service, however, I find that its failure to mention the AWOL charge in its Step 2 answer estops the Service from relying on that charge at arbitration. That is because the National Agreement dictates that result, I rule. Therefore, on the merits, the AWOL cannot be considered as part of just cause to fire Grievant, I rule.

The basis of that charge, however, that the Grievant's documentation for his absence was inadequate because it was falsified, was so inextricably entwined with the falsification charge itself that a separate explicit mention of the Grievant's resulting AWOL status was not necessary to permit the Service to reject mitigation in the Step 2 denial. Although the Union did

convince me that the Grievant's April 9 AWOL charge was not or should not have been allowed as a basis for the removal, the result here does not change: the initial charge of presenting a false document is sufficiently serious to warrant removal, in light of the circumstances discussed above, I rule. My award follows.

VII. STATEMENT OF AWARD

For the reasons stated above and incorporated as if fully restated herein, the grievance is denied in its entirety. The Service established that the Grievant was guilty as charged of presenting documentation that he knew or reasonably should have known was false, and of being absent without leave. The testimony of the Grievant and the mother of his son that she misled the Grievant for her own purposes and that the Grievant was ignorant of her falsification of the document is not credible. The offenses charged amply justified his removal, in light of the seriousness of the offenses, the Grievant's past disciplinary record (even after two disciplines were ameliorated by other arbitrators), and his very short service as a Postal Service employee. The Service fully and fairly investigated the incident, and had just cause to remove the Grievant.

ELLIOTT H. GOLDSTEIN
Arbitrator

February 2, 1998