

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)	GRIEVANT: Myers
)	POST OFFICE: Memphis, TN 38101
Between)	
UNITED STATES POSTAL SERVICE)	CASE NO.: C11N-4C-D 16038927
)	NALC NO.: D93215J
)	
THE NATIONAL ASSOCIATION OF LETTER CARRIERS)	

BEFORE: Glenda M. August, Arbitrator

APPEARANCES:

For the USPS:	Jackie Anderson
For the NALC:	Corey Walton
Place of Hearing:	Memphis, TN. 38101
Date (s) of Hearing:	May 25, 2016
Briefs Received:	June 6, 2016
Date of Award:	June 21, 2016
Relevant Contract Provision:	Articles: 15, 16 & 19
Contract Year:	2011-2016
Type of Grievance:	Discipline

AWARD SUMMARY: The grievance is denied. Management had just cause to issue the Notice of Removal to the grievant.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

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VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

I. ISSUE

Did Management violate Articles 15, 16 and 19 of the National Agreement when they issued the grievant a Notice of Removal date December 2, 2015? If so, what is the appropriate remedy?

II. RELEVANT CONTRACT PROVISIONS

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

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.

ARTICLE 19 HANDBOOKS AND MANUALS

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

III. FACTS

The grievant is a City Carrier Assistant at the Memphis Post Office and has been employed with the Postal Service since May of 2014. On December 2, 2015, the grievant was issued a Notice of Removal (NOR) for Improper Conduct. Management cited the grievant's improper use of the Voyager Fuel Card to make personal purchases of drinks and snacks as the basis for the Removal. The Union filed the instant grievance alleging Management violated the grievant's due process rights and did not have just cause to issue the Notice of Removal.

IV. MANAGEMENT'S CONTENTIONS

Management contended that the Employee and Labor Relations Manual (ELM) Section 665 provided the Standard of Conduct expected of all postal employees. They maintained that the grievant violated that standard when she used the Voyager Fuel Card on seven (7) occasions to purchase food and miscellaneous items. Management further contended that the Voyager Fuel Card is to be used only for goods and services purchased for postal vehicles. Instead, Management argued, the grievant utilized the card for personal expenses.

According to Management, when her Station Manager asked the grievant about the purchases she stated she received the items for free. Additionally, during the Investigative Interview, held on November 17, 2016, Management contended that the grievant admitted that she was aware that she could only use the Voyager Fuel Card for gas purchases and contended that the first purchase was a mistake made by the store employee. Management argued that once the grievant discovered she could use the card without being questioned, she used the card six more times. They cited one particular gas charge made at 18:46 on October 31, 2015; a day when the grievant clocked out from work at 17:50. Management stated that when asked about this charge during the Investigative Interview the grievant did not respond to the question.

In response to the Union's arguments that the grievant was not trained in the use of the Voyager Fuel card, Management responded that the CCA Training Academy Instructor would testify that training on Voyager Card use was included in her initial training; the training emphasized that the gas card is not to be used for anything other than postal fuel purchases. In response to the Union's argument that the instant discipline failed the principles of just cause since there wasn't a thorough investigation conducted, and because the discipline was not timely issued; Management

contended that an Investigative Interview was held on November 17, 2015, a request for appropriate action was submitted on November 20, 2015 and the Notice of Proposed Removal was issued on December 3, 2015. Management further contended that they considered the II, all reports, and all statements provided prior to initiating the instant Removal action. They argued that the Investigative Interview provided the grievant her "day in court".

To further support their position that "just cause" did exist to issue the Notice of Removal to the grievant, Management insisted the severity of the discipline is appropriate and consistent with the seriousness of the charges. They acknowledged that Article 16.1 provided that the basic principle of discipline should be corrective, not punitive; and supports the concept of progressive discipline which attempts to correct unacceptable conduct over a period of time through a series of escalating disciplinary actions. However, according to Management, there are types of conduct which are considered so severe that the first occurrence warrants removal; and in the instant case the grievant's inappropriate actions warranted the Removal issued. They added that the Joint Contract Administration Manual (JCAM) Page 16-12 instructs the parties that discipline must be corrective in nature; however, according to Management, the provisions also reveal that progressive discipline does not apply in the case of City Carrier Assistants.

Management contended that the Union's due process arguments also cited the fact that the grievant's immediate supervisor was not included in the discipline process. They argued that the Union contended that the grievance could not be resolved at the lowest level since the Supervisor was not involved in the issuance of the discipline. Management maintained that the Station Manager discovered the fraudulent charges on the Voyager Card and as such was the appropriate Manager to request the action. Additionally, according to Management, the disciplinary action had higher level concurrence, a requirement of the National Agreement; they stated that Article 16 of the National Agreement doesn't even suggest that an employee's immediate Supervisor is the only management official who can request discipline.

Management held the position that the Joint Exhibit 2 (Page 41, question 5) answered the Union's challenge of the grievant's answers during the Investigative Interview. They noted that the grievant answered yes when asked if she was aware that the Voyager Fuel Card was only to be used to purchase gas for postal vehicles; they also stated that Management in this case has no reason to lie

however the grievant's motive would be to protect her job. Management added that Arbitrators, when making credibility determinations, oftentimes consider whether a witness would have a motive to lie.

Finally Management asserted that they met their burden of proof in the case at bar and demonstrated that just cause existed to issue the Notice of Removal to the grievant. They argued that the disciplinary action issued was appropriate and merited since the Postal Service cannot continue to employ someone who willfully used postal funds for personal gain. The grievant's actions caused Management to lose confidence and trust previously placed upon the grievant. For those reasons, Management requested that this Arbitrator deny the grievance in its' entirety and do not mitigate the penalty imposed by Management since it is appropriate.

VI. UNION'S CONTENTIONS

The Union in this case contended that Management did not have just cause to issue the Notice of Removal (NOR) to the grievant. According to the Union, Management violated Articles 15, 16, and 19 of the National Agreement and violated the grievant's due process rights when they issued the NOR on December 2, 2015. The grievant's due process rights were violated when the disciplinary action was not proposed by the lower level supervisor and concurred by a higher level authority stated the Union. They noted that the Station Manager requested the discipline and this prevented the grievant's immediate supervisor from settling the matter at the lowest possible level of the grievance process.

Management failed to meet their burden of proof that just cause existed, according to the Union. They maintained that although discipline for City Carrier Assistants does not have to be progressive, it should be corrective in nature. In this case, the Union argued Management did not demonstrate the grievant had any training history on the use of the Voyager Card, nor did they show that a thorough investigation was completed. Additionally, according to the Union, Management failed to provide the grievant any information about the policy that she violated, thus she was never placed on notice. In support of this argument, the Union's Step B Team representative offered a decision by Arbitrator Lloyd Byars where in case number H01N-4H-D07100518/H01N-4H-D07137482 (C-27325AB) he decided:

However, an examination of the Grievant's training records does not show the topic is discussed. However; having a rule is not enough. Management must also make the employee aware of the rule and the consequences for following the rule.

The Union noted that the Notice of Removal refers to the grievant's behavior as being inconsistent with the training and instruction she received prior to the subject infraction, however they maintained that Management failed to provide any documentation of the training or instruction in the moving papers so therefore there has been no rule shown by Management which she was trained not to violate.

The Step B Union Representative also contended that Management attempted to justify their actions to request Removal in this case by stating that *"The question with Management is whether this employee can be trusted to handle mail for customers who trust the United States Postal Service to sort and deliver their mail and packages... what will she do when she is confronted with delivering credit cards to customers?...can she be trusted period."* The Union argued that Management, after making those statements, allowed the grievant to work until December 15, 2015. Additionally, according to the Union, Management contended that the grievant's situation *"did not fit Article 16-Emergency Placement"*; but the Union pointed out the Article 16.7 of the National Agreement reads in relevant part:

Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others.

The Union contended that Management argued that the grievant presented a credible threat to the security of the mail, but then contended that she did not fit the definition of Article 16.7 of the National Agreement. They further contended that if the grievant's actions did not rise to the level of an Emergency Placement then there was no reason to justify that it rose to a level of Removal.

Finally, at hearing, the Union maintained that Management did not show that just cause existed to issue the Notice of Removal in this case. They averred that the Station Manager who

requested the discipline was not allowed to resolve the grievance at the lowest level and told the Union Representative that her MCO instructed her to move the discipline forward; this action, they stated, violated the grievant's due process rights. The Union offered all prior contentions and arguments in support of their position and requested the Arbitrator to sustain the grievance and make the grievant whole.

VII. DISCUSSION AND OPINION

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

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ARTICLE 16

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The instant case reveals the undeniable actions of a grievant who is a City Carrier Assistant in the Memphis Post Office. The grievant was found to have charged personal items on a Credit Card used to fuel postal vehicles for delivery. The Voyage fuel card, according to Management, was an

accountable item whose use was to be exclusively for products and services associated with the delivery vehicles used by Letter Carriers.

On seven (7) separate occasions, the grievant charged snack on the card which was provided to her, the first of which she stated was a "mistake" by the clerk. Following the "mistake" the grievant charged items six (6) additional times including one time after she had clocked out for the day. The Union's defense of the grievant included the fact that she was not aware that she could not make personal charges on the fuel card; a claim Management denies and offered the grievant's initial training as a CCA which included instruction on the use of the Voyager Card.

The Union further defended the grievant by arguing that her due process rights were violated since her immediate supervisor did not initiate the discipline in this case, a thorough investigation was not completed and the Station Manager who did initiate the discipline was not allowed to settle the matter at a lower level but was instead instructed by her supervisor to move the discipline forward. Regarding the request for discipline, in the Joint Contract Administration Manual (JCAM) Page 16-9 at Article 16 Section 8 the parties agreed:

16.8 Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

In post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

In the JCAM the parties' review of this section for administration of the contract stated:

Concurrence is a specific contract requirement to the issuance of a suspension or a discharge. *It is normally the responsibility* of the immediate supervisor to initiate disciplinary action. Before a suspension or removal may be imposed, however, the discipline must be reviewed and concurred in by a manager who is a higher level than the initiating, or issuing, supervisor. This act of review and concurrence must take place prior to the issuance of the discipline. While there is no contractual requirement that there be a written record of concurrence, management should be prepared to identify the manager who concurred with a disciplinary action so he/she may be

questioned if there is a concern that appropriate concurrence did not take place.

Note that in their agreed upon interpretation of the Contract, the parties stated that it is "normally" the responsibility of the immediate supervisor to initiate discipline. The parties fell short of declaring that the *immediate* supervisor "must" or "shall" have the responsibility of initiating discipline. In this case, the manager who discovered the inappropriate charges was the person who initiated discipline. This would not be a violation of the terms of the National Agreement at Article 16.

Regarding the investigation into the grievant's actions; Management discovered the inappropriate charges then provided the grievant an opportunity during an Investigative Interview held on November 17, 2015, to provide "her side of the story". The explanation provided by the grievant included responses such as: "the first charge was a mistake by the clerk"; the charge made after the grievant's end of tour garnered no response, and when asked what she bought on another occasion, the grievant answered: Energy Shots, water bottle, and chips. During the interview, the grievant was asked if she was aware that she could only use her gas card for gas purchases and her response was yes. (In light of the Union's arguments that the grievant did not answer yes to the question, the answer is written the same as all other answers to the list of questions and there does not seem to be any alterations made in that area. The grievant's answer was clearly a "yes" to that question.) Based on the charges brought forward in the Notice of Removal, a thorough investigation was completed.

The Union further alleged a violation of the grievant's due process rights because the Station Manager advised them that her supervisor told her to move the discipline forward. This has also been addressed by the parties in the JCAM. Page 15-3 at Section 15.2 Informal Step A (b) reads:

(b) In any such discussion the supervisor shall have authority to resolve the grievance. The steward or other Union representative likewise shall have authority to resolve the grievance in whole or in part. The local parties are not prohibited from using the Joint Step A Grievance Form to memorialize a resolution reached at an Informal Step A Meeting. No resolution reached as a result of such discussion shall be a precedent for any purpose.

The parties agreed on interpretation of that section to mean:

During the Informal Step A discussion the supervisor and the steward (unless the grievant represents him/herself) have the authority to resolve the grievance. Both parties must use the JCAM as their guide to the contract. A resolution at this informal stage does not establish a precedent. While either representative *may consult with higher levels of management or the union on an issue in dispute, this section establishes that the parties to the initial discussion of a grievance retain independent authority to settle the dispute.*

Although the Station Manager chose to consult with her superior, and allegedly her supervisor told her to "move the discipline forward", that consultation does not supersede the National Agreement which provided her with the full authority to settle the grievance at the lowest level. There is a reason the parties stated that both the Union and Management at Informal A *"must use the JCAM as their guide to the contract"*. The JCAM establishes the authority provided both parties to settle any grievance at this lowest level of the grievance process. The fact that Management's representatives chose to consult with her supervisor, did not in and of itself, violate the grievant's due process rights. Absent any due process violations, Management's burden rested on proving the charges brought forth in the Removal, specifically Improper Conduct as it related to making unauthorized purchases on the Voyager Card assigned to the grievant. In the Investigative Interview the grievant admitted to making personal purchases and also admitted that she knew she was only authorized to make gas purchases for her postal vehicle with that card. The Union's argument that the grievant was not aware that she could not make those personal purchases does not sit well in the face of her own admission. Quite frankly, even if she had not admitted she knew better, she should have known better anyway. Use of another's credit card is never authorized for personal purchases. The rationale that she did not know better lends itself to the theory that Management brought forth; they did not trust her to handle mail which could hold credit cards belonging to customers of the U.S. Postal Service. Couple this with the fact that the grievant had not built a bank of goodwill for Management to judge her by and possibly mitigate her actions in this case. Simply put, the charges were proven to be fact that the grievant used her Voyager Card to make personal purchases even though she knew she was not supposed to use the card for her personal gain.

The final issue to be addressed is whether the punishment fit the crime and in this case Management contended that although this is a first offense, the grievant's actions were so egregious

that Removal was the only option. They offered case number F00V-1F-D 06095277 and 06171408 where Arbitrator Joseph Duffy reviewed a case that similarly involved unauthorized use of the Voyager Credit Card for fuel and personal items. In that case Arbitrator Duffy opined:

The record shows that the grievant used the credit card without authorization to purchase fuel for a private vehicle 109 times between October 24, 2005 and February 23, 2006. Although the grievant questioned some of the charges after January 1, 2006, the evidence strongly supports the conclusion that the grievant made the charges or allowed someone else to make the charges. Therefore, over the course of about eighteen weeks, the grievant made unauthorized fuel purchases using the credit card on average about six times per week. Therefore, the use was not incidental or minor.

Arbitrators have often ruled that theft of the employer's property is not conduct that can or should be subject to progressive discipline. In addition, theft of a substantial amount of the employer's property significantly interferes with the employer's interests. In this case, the employer reasonably concluded that the grievant could no longer be trusted with Postal property. Based on the evidence presented, I can find no basis to disagree with the employer's conclusion.

Likewise in the case at bar, the grievant demonstrated a disregard for the property of her Employer, and used the Voyager Card to make personal purchases without authorization. This is a case where Management has to forego progressive discipline in favor of an action which fits the offense. In this case it was Removal. The instant grievance is denied.

AWARD

The grievance is denied. Management had just cause to issue the Notice of Removal to the grievant.

Glenda M. August

GLENDAM. AUGUST
Arbitrator

June 21, 2016
New Iberia, LA