

## REGIONAL ARBITRATION PANEL

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 In the Matter of Arbitration

Between

United States Postal Service

And

National Association of Letter Carriers,  


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Grievant: Brownlee

Post Office: Memphis, TN., 38101

USPS No.: C16N-4C-D 19304154

Union No.: D47519J

BEFORE: Glenda M. August, Arbitrator

## APPEARANCES:

For the U.S. Postal Service

Le'ta H. Wicker

For the National Association of Letter Carriers

Corey Walton

Place of Hearing: 525 South B.B. King Blvd., Memphis, TN 38101

Date of Hearing: October 1, 2019

Briefs Received: October 22, 2019

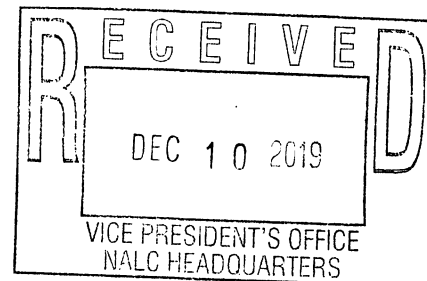
Date of Award: November 25, 2019

Relevant Contract Provision: Articles 16

Contract Year: 2016 - 2019

Type of Grievance: Discipline

AWARD: The grievance is denied. Management had just cause to issue The Notice of Removal to the Grievant dated June 6, 2019.



Glenda M. August  
 Glenda M. August  
 Arbitrator

## **I. ISSUE (s)**

Did Management violate Articles 15, 16, and 19 of the National Agreement when issuing a Notice of Removal for Unacceptable Conduct/Providing a False Statement in an official Postal Matter? 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 Service issued the Grievant, a City Carrier Assistant at the Memphis, Desoto Front Post Office, a Notice of Removal (NOR) dated June 6, 2019, charging him with Unacceptable

Conduct/Providing a False Statement in an Official Postal Matter. The basis of the charge was an alleged “robbery” which the Grievant contended occurred on March 29, 2019, and first claimed he was robbed at gunpoint and later changed his story. The Grievant was arrested for giving a False Statement to a Law Enforcement Officer in violation of T.C.A. 39-16-502.

The Union filed the instant grievance alleging that Management violated the National Agreement when they issued the NOR without “just cause”. The parties failed to resolve their dispute during the grievance process and it is now before this Arbitrator for decision pursuant to the 2016-2019 National Agreement between the parties.

#### **IV. MANAGEMENT’S CONTENTIONS**

Management contended that the Grievant, a City Carrier Assistant, was issued a Notice of Removal (NOR) dated June 6, 2019 charging him with Unacceptable Conduct/Providing a False Statement in an Official Postal Matter. According to Management, on March 29, 2019, the Grievant sent a message at 2:24 PM to Management at the Memphis Post Office stating “ROBBERY”; they further stated that the Grievant sent another message from his scanner at 3:31 PM which read, “I WAS ROBBED AND I CAN’T REPORT IT CAUSE THEY TOOK MY PHONE”.

Management further contended that the Grievant met with Agents of the Postal Inspection Service, who testified that the Grievant first stated that he was robbed of his cell phone at gunpoint; however, after inconsistencies were found in his explanation of what occurred, the Grievant was asked to submit to a polygraph test. The Service asserted that the Grievant later admitted that he was not telling the truth when he first notified them of the incident. They further asserted that the false statement cost the Memphis Police Department and Inspection Service countless man hours while they were looking for the thieves. Management contended that thousands of fliers were sent out and the local News Channels ran the story over and over to learn of any leads in the case. They noted that the Memphis Police Department charged the Grievant with filing a false report.

According to Management, the Grievant’s story changed multiple times (at least 6 versions) over the course of this incident and subsequent grievance process, and noted that at the Arbitration Hearing, the Grievant actually reverted to his original story. They argued that the Grievant’s testimony lacked credibility as his testimony was disjointed, and evasive on cross examination and at times bordered on the incredible. They noted that the Grievant first stated that

the only persons he told that he had fabricated the original story was the Postal Inspectors, but un rebutted testimony by the Grievant's Manager revealed that the Grievant had come into his office to admit that he had fabricated the robbery story. The Service argued that the preponderance of the evidence demonstrated that the Grievant knew exactly what he was doing when he changed his rendition of the story over and over again, in order to accommodate each listener. They noted that each version was meant to "fix" or correct inconsistencies in the prior version. Management contended that if the Grievant had only admitted initially that he left the vehicle unsecured with the door unlocked, he would have no need to change his story over and over again.

It was the position of the Service that they take very seriously, any employee providing a false statement in an official matter. According to Management, the Grievant has disregarded everything that has been taught and to act with such hypocrisy, as has the Grievant is unacceptable. The Service noted that the Grievant was trained sufficiently and knew that falsifying a statement was against the code of ethical conduct, and received training on his role in protecting the sanctity and security of the mail. Management argued that the Grievant was well aware of the rules he violated and they contended that those rules are reasonable and equitably enforced. They further argued that a thorough investigation was completed which included a "day in court" (Investigative Interview), held on May 6, 2019.

It was contended by Management that the National Agreement requires that disciplinary action be corrective rather than punitive and, **"for most offenses"** Management must issue discipline in a "progressive" fashion; although not required for City Carrier Assistants. However, in the instant case, Management argued that the circumstances in the instant case reveals that the conduct of the Grievant cannot be corrected and there is little to no possibility of rehabilitation. Here, Management argued, the Grievant falsely reported being robbed while in the performance of his duties to protect himself from administrative action when he failed to secure his vehicle. They further argued that the severity of the discipline *was* reasonably related to the infraction, and Management would act similarly in issuing a Removal to any employee exhibiting similar conduct. The Service held that although the Grievant had no discipline on file prior to receiving the notice of Removal, the nature and severity of the offense, as well as the Grievant's contradictory responses, certainly warrant Removal.

In support of their position on Removal, the Service cited the fact that Arbitrators have long held that Removal is an appropriate first step for this type of offense. They offered the opinion of Arbitrator David Dilts where he noted, “in this Arbitrator’s considered opinion, the grievant’s admissions in this matter are sufficient to discharge the Service’s burden of proof that grievant was, in fact culpable in this matter.” Management further offered the position of the Arbitrator in the case at bar, where in case number G06N-4G-D 12289569, this Arbitrator opined:

The discussion provided by Arbitrator Holley provided the basis for an employer’s determination of the trust relationship established between them and their employees. If the Postal Service cannot rely on an employee to complete an application for employment honestly and completely, without falsifying information, then it cannot trust the employee to be honest and reliable while maintaining the sanctity of the mail. In the case at bar, the grievant’s action were determined by Management to be unacceptable, based on postal guidelines; especially since criminal activity was involved. The grievant’s involvement provided the basis for discipline, and in the case of a transitional employee, the National Agreement determined the discipline will be removal.”

Management further cited Arbitrator Patrick Halter in case number G06N-4G-12304958 where he offered the following opinion:

There is sufficient evidence of a probative nature that establishes the charge levied against the grievant, that is, grievant made a false statement in an official postal matter. There are several bases for this finding and conclusion. One is grievant’s ever-evolving story about the accident.

In further support that “just cause” existed and that Management had met the burden to prove that all elements of “just cause” had been satisfied, Management contended that the disciplinary action taken in this case was done so timely. According to the Service, the incident was March 29, 2019, the Inspection Service concluded their investigation into the matter, which revealed the Grievant’s lack of honesty, on April 30, 2019 and an investigative interview was held on May 6, 2019-five days following the date of the Inspection Service’s report. Management asserted that the Grievant’s Supervisor made the Request for Appropriate Disciplinary Action on May 13, 2019 and the Notice of Removal was dated June 6, 2019.

In conclusion, Management argued that the Grievant’s behavior was unacceptable. They further argued that the Service has established by the evidence of record that “just cause” existed to terminate the Grievant’s employment with the Postal Service. According to Management, the

Service must have complete trust and confidence that Letter Carriers will be honest, trustworthy, of good character and reputation to ensure the delivery of the mail entrusted to them. In this case, contended Management, the Grievant committed an egregious breach of his core duties, and as such, the instant grievance must be denied in its' entirety.

#### **V. UNION'S CONTENTIONS**

The Union contended that Management did not have "just cause" to issue the Notice of Removal (NOR) to the Grievant in the instant case. According to the Union, there was a fatal flaw in the removal action taken by Management at the Memphis Post Office.

The Union further contended that Management in the instant grievance charged the Grievant with Unacceptable Conduct/Providing a False Statement in an Official Postal Matter, alleging that he falsified being robbed on his route on March 29, 2019. The Union asserted that the Grievant made the claim of being robbed to the Postal Service and they reported the robbery to the Postal Inspectors and local law enforcement. They further asserted that after an extensive search for the alleged perpetrators of the crime and after being questioned by law enforcement, the Grievant admitted that he had been untruthful about his being robbed, and was later arrested by local law enforcement for filing a false report. He was also subsequently removed from the Post Office for his actions.

It was the position of the Union that while taking disciplinary action against the Grievant in the case at bar, Management committed a fatal flaw in the removal when they charged him with a criminal statute. According to the Union, the Grievant has not been charged with violating any criminal statute of the Federal Government, nor has he been convicted of violating any criminal statute of the Federal Government. Thus, the Union contended, he cannot be removed from his position as a City Carrier Assistant for the provisions cited against him, as well as a major procedural due process violation regarding the request and concurrence of the removal action. The Union offered arbitral opinion in support of their argument and cited Arbitrator Samantha Tower in case number K16N-4K-D 18292818 where she opined:

The Union asserts that there was no proper review of discipline because the initiating manager, Graham, was "the investigator, prosecutor, judge and jury. Management should have had the POOM, or another unbiased higher-level manager, to concur in this removal." (Union brief, p. 13) I agree. Here, Graham was involved in every step of the process from the initial discovery of the potential fraud to the concurrence. Graham, who discovered the fraudulent gas card charges, was the same person who conducted the Postal Service investigation and worked with OIG on their investigation. She also held the first POI and then served as the concurring official when McClean requested discipline for Grievant. I am not convinced that the circumstances of this concurrence satisfy the mutually agreed upon language in Article 16, which states: 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 level authority outside such installation or post office before any proposed disciplinary action is taken. (JI)

I agree with Arbitrator Roberts' analysis in Case No. H06N-4H-D 09346279, wherein he wrote, in part:

The Grievant was clearly placed at a disadvantage. The entire purpose of concurrence is to provide a fresh set of eyes, albeit a different lens, in which to consider the facts of the case. This is a basic concept of the due rights principle and, on a larger scale, part and parcel to the just cause requirements of Article 16. Whether or not minds would have

been changed is not the issue. Paramount is the fact that such an opportunity never arose. (Roberts, 2010)

The specific facts in this record support a finding that the Postal Service failed to provide an opportunity for a second set of eyes for the concurrence for discipline. Here, Graham was the initiating Manager, was involved in a majority of the investigation, conducted the first POI, and then "concurred" with the discipline. On these facts, I am not persuaded that Graham could conduct an "independent substantive review of the evidence prior to the imposition of a suspension or discharge." (JIA, Article 16.8 in JCAM) Thus, based on the unique circumstances in this case, I find that the Postal Service failed to follow the requirements in Article 16.8, Review of Discipline.

Given the above analysis, there is no need to address the Union's claims on timeliness or the claims on the merits. For the reasons expressed above, I find that the Postal Service did not have just cause to issue the February 27, 2018 NOR. The Postal Service failed to have concurrence of the discipline as intended by the parties in Article 16.8.1

It was the position of the Union that the issues cited in Arbitrator Tower's aforementioned decision are almost identical to the issues regarding due process in the case at bar except that the issues are far more egregious in the case at bar. The Union argued that the concurring official on the NOR was the same Management Official who issued the Notice of Emergency Placement, met with the Grievant and Postal Inspectors, and was Management's Representative at Formal A. They contended that there were no fresh eyes on this case as required by the National Agreement, and this was a violation of the Grievant's due process rights.

The Union further argued that Management in their investigation failed to interview the Grievant's wife who was a "witness" to the incident, per the Grievant's statement that she was on the phone and overheard the alleged thieves tell the Grievant to "give me your phone". The Union maintained that another issue in the instant case is the issuing Supervisor testifying that she never considered any other discipline except Removal and had her mind made up at the Informal A Step. They stated that these issues come in addition to the fact that Management cited a federal criminal statute, as though the Grievant was convicted of a crime, and argued that the Grievant was never charged nor was he convicted of violating any federal criminal statute.

The Union held the position that the Service further violated the Grievant's due process rights when the Agents of the Postal Inspection Service failed to read the Grievant any of his rights required during interrogation by the Postal Inspection Service. According to the Union, there is no evidence in the case file that proves that the Grievant waived his rights since this is done by signature, contrary to Management's position. The Union argued that once the Grievant changed his story to the Polygraph Examiner, and was once again questioned by the Postal Inspection Service Agent, they were required to read him his rights (Miranda, Garrity or Kalkines). They further argued that Postal Inspectors violated the Grievant's rights by not reading him his rights and then using his testimony against him.

The Union disputed Management's position in their Closing Brief, where the Grievant's Manager testified that he offered EAP to the Grievant and he refused the assistance. According to the Union, on cross-examination, that same Manager, when asked by the Union if, "At any time did Mr. Brownlee reach out to you for EAP assistance?" responded "Yes, he did. And I furnished him the number." The Union contended that in their closing brief, Management had an obvious fabrication of the facts.



Based on the evidence presented, and, all arguments and contentions, The Union requested that the Arbitrator sustain the instant grievance in its entirety and grant their requested remedy. The Union requested that the Notice of Removal issued to the Grievant be rescinded and he be returned to work immediately. The Union further requested that the Grievant be made whole for all lost wages and benefits, without delay.

## **VI. DISCUSSION AND OPINION**

### **NALC-USPS**

### **JOINT CONTRACT ADMINISTRATION MANUAL**

### **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 Grievant in the case at bar is a relatively short term, non-career, employee with a little more than one (1) year of service with the Postal Service. On March 29, 2019, he notified Management that he had been a victim of an armed-robbery, had a gun pulled on him by two (2) alleged gunmen who told him to give up his cell phone. According to the Grievant's initial account of the incident, he could not report the crime because they had stolen his gun, and the evidence of record claims that the Grievant just continued to deliver his route. The only communication the Grievant made was through his scanner, sending text messages to Management at 2:24 PM ("Robbery"), 3:31 PM (I WAS ROBBED AND I CANT REPORT IT CAUSE THEY TOOK MY PHONE); messages that apparently were not acknowledged since the final message was "TOO LATE IM AT THE OFFICE NOW I CAN TRACK MY PHONE".

Management averred that the Grievant was first treated as a victim, with the Postal Inspection Service investigating along with local law enforcement (Memphis Police Department). Management maintained that both agencies spent numerous manhours trying to find the person (s)

responsible, in order to protect other postal employees and the public from possible repeat incidents. They further maintained that after distributing flyers, airing the incident on local news stations and completing other investigatory tactics, things apparently did not add up. The Grievant was asked to submit to a polygraph test and prior to the test, finally admitted that he had not been truthful. The Grievant's story changed to reflect the fact that what actually happened is he left his vehicle unsecured and someone stole his phone from the vehicle. Management contended that there were at least six (6) versions of the Grievant's story.

The National Agreement between the parties, at Article 16, requires that disciplinary action be taken only where "just cause" exists. Where the action involves removal or termination, a higher level of proof is required to meet the burden that "just cause" existed to take this "final" action. In order to meet that burden, Management must provide clear and convincing evidence that an employee, willfully and knowingly violated the cited rules. The principles of "just cause" go on to specifically mandate that certain tenets be reviewed prior to the issuance of any disciplinary action. The Service must first prove that there was a rule, and that the rule was reasonable and equitably enforced. Management has the added burden to prove that a thorough investigation was conducted, and that the severity of the discipline was in line with that usually administered as well as in line with the Grievant's past disciplinary history. Finally, they must ensure that the discipline was timely issued and that it was corrective in nature; not a punitive action.

In the instant case Management charged that the Grievant was guilty of violating the ELM Sections 661.2, 665.13 and 665.16. Obviously, the cited rules are reasonable rules, and there was no evidence in the record, or testimony by the Grievant or the Union which cited any similarly situated employees who were charged as the Grievant was and not terminated. The Union nor the Grievant disputed the investigation conducted by Management and acknowledged the Investigative Interview conducted to allow the Grievant his "day in court". Regarding the severity of the discipline issued, Management argued that the egregiousness of the Grievant's actions gave rise to their actions to remove the Grievant, despite the fact that there were no elements of prior discipline in his postal employment history.

The Grievant nor the Union provided any mitigating circumstances for his actions based on the March 29, 2019 incident. In fact, the Grievant testified at hearing that his first account of

the details of alleged robbery was the correct version and was truthful. According to the Grievant, he changed his story just prior to the polygraph test because he was coerced to do so; the Grievant held that his original statement is what truly occurred. In addition to coercion, the Union argued that the Grievant's due process rights were violated since the Agents of the Postal Inspection Service failed to notify the Grievant of his basic rights before he participated in an interview which could serve to incriminate him. They further argued that the Agents used the information gained in that interview to incriminate the Grievant. However, there was no evidence in the record to show that the Grievant waived his Miranda Rights, or requested representation and was not allowed to have a representative at the Postal Inspection Service interview. Additionally, during the Investigative Interview, the JCAM provides that there is no requirement for the Service to inform the employee of his Weingarten right to representation; the employee himself has the right and should exercise it, to refuse to answer questions until he has Union representation.

The Union further alleged a due process violation when the Grievant's Manager served as the concurring official on the Notice of Removal after having issued the Notice of Emergency Placement, met with the Grievant along with the Postal Inspectors, and served as Management's Representative at Formal A. They offered the National Arbitration decision of Arbitrator Dana Eichen (C-23828-NRLCA) regarding concurrence on disciplinary actions, which stated in pertinent part:

**Issue No.1:** Article 16.6 review of Discipline of the extension to the 1995-1999 Usps Nrlca National agreement:

- a) Is not violated if the lower level supervisor consults, discusses, communicates or jointly confers with the higher reviewing authority before deciding to propose discipline.
- b) Is violated if there is a "command decision" from higher authority to impose a suspension or discharge;
- c) Is violated if there is a joint decision by the initiating and reviewing officials to impose a suspension or discharge;
- d) ..
- e) Is violated if there is a failure of either the initiating or reviewing official to make an independent substantive review of the evidence prior to the imposition of a suspension or discharge.

**Issue No. 2(a)** proven violations of article 16.6 as set forth in issues 1 (b), 1(c) or 1(e) are fatal. Such substantive violation invalidates the disciplinary action and

require a remedy of reinstatement with “make-whole” damages.

The Union also alleged that the Grievant’s Manager met with the Grievant’s Supervisor and they jointly decided to issue the removal to the Grievant. Even if there was evidence in the case file of this occurring (which there is not), Arbitrator Eichen ruled in the aforementioned cited grievance that “**it is not**” a violation if lower level supervisors, “consults, discusses, communicates or jointly confers with the higher-level reviewing authority before deciding to propose discipline. A violation is said to have occurred where there is a “**command**” from higher authority to impose a suspension or discharge. Additionally, there simply was no evidence in the case file to demonstrate that the Grievant’s due process rights were compromised by the Manager serving as reviewing official and meeting again at Formal A. The National Agreement requires that the evidence provided to request appropriate disciplinary action undergo an independent review by a higher-level official. It does not require that the reviewing official know nothing about the investigation, but rather that they alone objectively review the evidence provided by a thorough investigation, which is a requirement for meeting the burden of “just cause”. The JCAM at Article 16.8 provides guidance for the parties regarding concurrence and states:

**JCAM**

**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.

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.

NALC-USPS Joint Contract Administration Manual - July 2014 Page 16-9

For additional information on the 'Review of Discipline' section, see National Arbitration Eischen, E95R-4E-D-01027978, December 3, 2002, C-23828. (Note that this is a NRLCA case. The NRLCA's 'Review of Discipline' is in their Article 16.6 and requires written concurrence.)

The JCAM specifically states that except in offices with twenty (20) or less employees, or where there is no higher-level Supervisor, the concurring party will be the Installation Head or their designee. This language is designed to have the decisions be made inside of the affected office and, in more cases than not, all parties will have been involved at some level in the investigation of, or have knowledge of the investigation, prior to receiving the request for discipline. Additionally, the cited national arbitration decision of Arbitrator Dana Eichen acknowledged that there could be communication between the requesting supervisor and the higher-level concurring official at times, without a violation occurring. Where the fatal flaws occur is when the requesting supervisor may be inclined to choose a lesser penalty and there is evidence that the higher-level concurring official "demanded" that the supervisor increase the penalty, to Removal for example.

The fact of the matter is that the Grievant in this case, decided to be less than truthful about an incident that occurred while he was delivering his route. It may have been a bad judgement decision on his part, but nonetheless, it was a situation that resulted in him choosing to deceive his employer in order to avoid being charged with a failure to secure the mail entrusted to him. The issue was compounded by the length of time the Grievant continued to deceive, not only his employer, but local law enforcement, his fellow employees and the public who was placed on alert to such an issue via local newscasts searching for leads. The Grievant's actions affected numerous people, and I believe his lack of candor continued as late as the Arbitration hearing where the Grievant averred that his original story was actually the true details of what occurred during the alleged "robbery" on March 29, 2019.

The ELM Section 665.16 requires all postal employees to "conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service". It further requires that "postal employees be honest, reliable, trustworthy, courteous, and of good character

and reputation.” The fact that the Grievant knowingly provided false information to his Managers, the Postal Inspection Service and local law enforcement, and continued to allow them to believe it was accurate information, displayed a total lack of candor on his part. Arbitrators have consistently found that where employees have provided false information, falsified documents or otherwise have proven to be untrustworthy, Management has “just cause” to terminate their employment even where there is no prior discipline. Arbitrator David A. Dilts reviewed such an issue in case number E01N-4E-D 04151512 and concluded:

The record shows that the grievant thrice renounced the truth, and replaced fact with fabrication.

Told once, a tale diverging from the truth, may be a lack of good judgement or the result of fear. However, the grievant had time to reflect, to consider his words and the truth, and again, subsequently failed to be truthful. This second fabrication exacerbates his offense, he has now a propensity to substitute fiction for fact, in this Arbitrator’s opinion. Finally when challenged by management, the grievant, for the third time, denies the truth and fabricates a tale embellished with a wheel chair on the third telling. In this Arbitrator’s considered opinion, the fact now is the grievant’s conduct is no longer merely exhibiting a propensity to falsehood, but now leaps to a level of habitual.

Habitual falsehoods are a very serious offense for which the local management should be alarmed and should take action to remove the grievant from a position of trust. In reviewing the nature of the offense, its prolonged nature and its implications for the Service this Arbitrator has no alternative save to find that just cause exists for discharge.

The grievant is a short service employee and the Arbitrator can find no mitigating circumstances in this record upon which to base a finding to disturb this penalty.

Likewise, in the instant case, the Grievant is a short-term employee who has built no “bank of goodwill” upon which the Service could rely to convince them that this may have been simply a “lapse in judgement” on his part. Additionally, as in Arbitrator Dilts cited case, the Grievant not only provided false information, but continued to do so, even in the face of multiple agency investigation into the alleged robbery, and changed his account of the details of the incident multiple times. This Arbitrator has decided numerous cases where employees have been found to falsify documents or been accused of false statements and lack of honesty. In one such case, G06N-4G-D 12289569, I provided the following opinion regarding this issue:

In support of Management's charge of Unacceptable Conduct, the grievant's supervisor stated that he found the grievant not to be trustworthy and honest. He further stated that the grievant's involvement in the false prescription incident, and her subsequent arrest for her actions, made him lose faith in her ability to be a reliable and dependable carrier.

A finding of Unacceptable Conduct is not contingent upon a criminal conviction based on the charges outlined in the arrest warrant. While entrance into the diversion program did not require a true guilty plea, it did not discount the reason for the arrest, when at her own admission, the grievant stated she did obtain the drugs with what was found to be a false prescription. That action alone, when the information was provided to Postal Service Management, was enough to have her supervisor determine that he could no longer trust the grievant's actions. There is no way to determine what level of action would be required to ruin the trust relationship between employee and employer, but in the instant case, the grievant apparently did not have a sufficient bank of goodwill after only five-years of service as a transitional employee.

The Union cited case number F06N-4F-D 11423739 where Arbitrator Jonathan Monat, Ph.D. sustained the grievance, citing Management did not have just cause to remove the grievant since the charges against the grievant were dismissed. While the instant case is similar, in the case at bar, Management did not charge the grievant with the crime she allegedly performed, but rather with Unacceptable Conduct based on her involvement in the false prescription incident. Additionally, the grievant in the Monat case was a 17-year career employee, sufficient time to establish a pattern of behavior and build a bank of goodwill.

Comparatively, in Case number H94C-1H-D 97018537, Arbitrator William H. Holley, Jr. denied the Union's grievance and upheld Management's decision to issue a Removal in that case. In his opinion, Arbitrator Holley determined:

There were two pieces of evidence which were not damaging to Ms. Rowe's testimony. While most of the time and arguments at the hearing was devoted to the explanation about the inclusion or the exclusion of the traffic violations on the employment application. There was another important item on the list: "Giving Police False Information." Even if Ms. Rowe was confused about whether to include the traffic violations on her employment application. The omission of the item, "Giving police False Information," in this arbitrator's view goes to the core of intent because there is a strong possibility that knowledge of this charge would have caused the Agency not to employ Ms. Rowe. **Moreover, giving false information to police is consistent with providing false information to the Agency.**

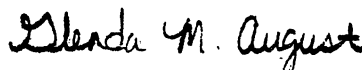
The second item of evidence which raises suspicion of her actions was the late entry of explanation about a phone call made to the Agency's office, the message she receive, and the fact she identified no one to contact to verify her version. Her story was certainly self-serving and its late entry calls to question its validity.

The discussion provided by Arbitrator Holley provided the basis for an employer's determination of the trust relationship established between them and their employees. If the Postal Service cannot rely on an employee to complete an application for employment honestly and completely, without falsifying information, then it cannot trust the employee to be honest and reliable while maintaining the sanctity of the mail. In the case at bar, the grievants actions were determined by Management to be unacceptable, based on postal service guidelines; especially since criminal activity was involved. The grievant's involvement provided the basis for discipline, and in the case of a transitional employee, the National Agreement determined that the discipline will be removal. No other actions were appropriate.

In the case at bar, the Grievant's actions in handling the March 29, 2019 incident went beyond a simple lapse in judgment; he continued the untruths in order to save himself, which eventually led to local law enforcement charging him with a crime. Management in this case decided that they could no longer rely on this employee as the trust relationship had been severed. As stated by Arbitrator Dilts in the aforementioned cited case, this Arbitrator "can find no mitigating circumstances in this record upon which to base a finding to disturb this penalty." As such, the grievance is denied.

#### **AWARD**

The grievance is denied. Management had just cause to issue The Notice of Removal to the Grievant dated June 6, 2019.



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GLENDAM. AUGUST  
Arbitrator

November 25, 2019

New Iberia, LA