

REGULAR ARBITRATION PANEL

In the Matter of Arbitration) CLASS ACTION
Between) Post Office: Jackson MS
UNITED STATES POSTAL SERVICE) USPS No.: 4G 19N-4G-C 21456458
And) NALC DRT NO; 08-560611
NATIONAL ASSOCIATION OF LETTER CARRIERS) UNION NO. B217-0040-D21

BEFORE: F. David Alexander, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Kris Kelly, Manager (A), LR; Allysa Lewick, Labor Relations

For the National Association of Letter Carriers: Corey Walton, LBA; Cliff Stoddard, NALC

Place of Hearing: 1501 Jacksonian Plaza, Jackson, MS

Date of Hearing: June 8, 2022

Date of AWARD July 27, 2022; Amended October 20, 2022

This arbitrator previously issued an AWARD in this matter dated July 27, 2022. Upon consideration and consultation with the parties at the national level, the arbitrator hereby rescinds that award in its entirety and issues this amended award, which supersedes and replaces the Award of July 27, 2022. The arbitrator retains jurisdiction over implementation of this award for a period of 90 days.

This arbitration arose when Management and the Union, in the process of dealing with a grievance where violence occurred at work and the Joint Statement on Violence and Behavior in the Workplace came into play. Having reached resolution on almost all the issues, the Parties were at impasse on arriving at a remedy for punishing the management wrongdoer. The purpose of this arbitration was to provide a remedy for the parties. A remedy is provided.

F David Alexander

INTRODUCTION AND ISSUE

On June 8, 2022, the National Association of Letter Carriers, AFL-CIO (hereinafter “the Union”) and the United States Postal Service (hereinafter “the Service,” “the Agency,” “the Employer,” or “Management”) appeared in-person before the duly appointed arbitrator at the postal facility located 1501 Jacksonian Plaza, Jackson, MS. At the hearing the witnesses were sworn-in, the parties were afforded the opportunity to examine and cross-examine the witnesses and to introduce relevant exhibits. I recorded the hearing for my personal use, to be subsequently destroyed. The Parties chose to make oral closings. Both parties submitted arbitration cases for the Arbitrator’s review that were appreciated and used.

BACKGROUND

This is a class action grievance focusing on the remedy of an issue that was partially resolved at Step B and subsequently in Pre-Arbitration discussions, where an agreed upon impasse was reached to hold in abeyance issue 2 of the grievance to allow the full adjudication of the case at hand, grievance 21456458. This arbitration will assist the signatories to determine the proper remedy for grievance 21452300.

The incident that led to this grievance happened on June 25, 2021 when Manager Robert Felton and Letter Carrier Trevaughn Jones had a physical altercation that led to Felton having a verbal outburst, including stating “I wanna shoot your ass right now.” This case grievance (21456458) and Informal Step A was initiated on July 9, 2021. Felton was issued a Notice of Proposed Removal on August 27, 2021.

That Notice was reduced on January 12, 2021 by AL-MS District Manager June Martindale to a Letter of Warning in Lieu of a 14-day suspension. Also included was that “a review of this action will be conducted on 8/27/22. If no further corrective action of this nature is taken during this time, the Letter of Warning in Lieu of a 14 Day Suspension will be removed from all records and files. Due to the nature of your violation, I cannot agree to return you to your office of record, which is Lefleur Station, at this time.”

An incident date of August 26, 2021, led to Informal Step A initiated on September 9, 2021 along with related grievance 4G 19N-4G-C 21452300. Both 21456458 and 21452300 had Formal Step A meetings on November 2, 2021 and both arrived at Step B on December 3, 2021, with Decision Dates of January 25, 2022 and January 28, 2022 respectively.

There were four issues that came out in the Step B decision, as follows:

1. Did management specifically Robert Felton violate Article 14,15,16 and Section 115 of the M-39 Handbook via Article 19 of the National Agreement when they gave Letter Carrier Trevaughn Jones a 14 day for an incident that happened on 6/25/2021 and if so, what is the appropriate remedy?
2. Did management specifically Robert Felton violate the Joint Statement on Violence and Behavior in the Workplace, the postal Service Policy on Workplace Harassment, the Mississippi Performance Cluster Workplace Violence/Zero Tolerance Policy, section 115.4 of the M-39 Handbook and Section 665.24 of the ELM via Article 14 and 19 of the National Agreement with his actions on June 25, 2021 and if so, what is the appropriate remedy?
3. Did management violate Article 15,17 and 31 of the National Agreement by failing to furnish relevant requested information to the Union in a timely manner and if so, what should the remedy be?
4. Did management violate Article 17 and 31 of the National Agreement by failing to allow the steward to interview carriers on the clock and if so, what should the remedy be.?

The Step B Dispute Resolution Team (DRT) reviewed all the information in the case files and agreed to Resolve in Part the grievances. The DRT agreed management failed to carry out the burden of proof in issuing the discipline. The 14-day suspension issued on 08/26/2021 to Carrier Jones shall be rescinded and expunged from all files and records from the date of issuance.

The DRT agreed management specifically Robert Felton violated the JSOV, ELM 665.24, ELM 665.16 and M-39 section 115, Article 14 of the National Agreement by his actions on June 25, 2021. “Management shall cease and desist violating Article 14, JSOV, ELM 665 and M-39 section 115 per Article 19 of the National Agreement.” The Team found management did violate Article 17 and 31 by failing to provide and allow interviews on the clock. “Management shall cease and desist violating Article 17 and 31 of the National Agreement.” The local parties agreed in part in this case and management already agreed to pay the Steward for time worked off the clock.

In the case of issue 2, the Team agreed to IMPASSE. “ The National Business Agent, Mr. Steve Lassan, upon receipt of this impasse may appeal this grievance to arbitration within fourteen days. The Step B Team has considered all arguments and and evidence in the case file and any and all of the material may be cited in the event of arbitration.”

In a Pre-Arbitration Settlement on April 19, 2022, it was agreed to full settlement of the above referenced case (s) as follows:

1. As stated in Step B resolution of the grievance.
2. “The remedy for issue 2 shall be held in abeyance until the full adjudication of grievance 21456458. At such time, the signatories of this grievance shall determine the proper remedy for the instant grievance.”

The arbitration hearing held on June 8, 2022 in-person in Jackson, MS was intended to be the fulfillment of the Pre-Abitration Settlement Team as the next step of full adjudication. At the June 8, 2022 hearing, the Service Advocate opened the hearing suggesting the grievance is not procedurally arbitrable because the remedy has already been decided via the Notice of Proposed Removal that was reduced to a Letter of Warning on January 12. Management contended this one incident did not indicate a pattern of behavior. The Service Advocate asked that only the arbitrability issue be heard at the hearing and the process be bifurcated to hear the merits. Arbitrator heard the Union protest of the arbitrability issue and directed that the merits be heard today, especially since witnesses were available and on standby. No decision was made at the hearing on arbitrability and the merits were fully heard.

Arbitrator has studied the arbitrability issue, including the cases on arbitrability provided by the parties, including Arbitrator Snow’s views. In this case, where the parties, in a joint pre-arbitration settlement meeting, agreed to use an arbitration decision to assist them to “determine the proper remedy” for a related grievance, this Arbitrator feels that mandate alone requires this arbitration to proceed in order to provide the remedy requested.

ISSUE

Did management specifically Robert Felton violate the Joint Statement on Violence and Behavior in the Workplace, the postal Service Policy on Workplace Harassment, the Mississippi Performance Cluster Workplace Violence/Zero Tolerance Policy, section 115.4 of the M-39 Handbook and Section 665.24 of the ELM via Article 14 and 19 of the National Agreement with his actions on June 25, 2021 and if so, **what is the appropriate remedy?**

The parties resolved the issues at Step B, agreeing that Manager Felton was in violation. The task of the arbitration is to determine the appropriate remedy.

RELEVANT PROVISIONS

Joint Statement on Violence and Behavior in the Workplace. February 14. 1992

We all grieve for the Royal Oak victims, and we sympathize with their families, as we have grieved and sympathized all too often before in similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies, or research projects. The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence. This is a time for a candid appraisal of our flaws and not a time for scapegoating, finger pointing or procrastination. It is a time for reaffirming the basic right of all employees to a safe and humane working environment. It is also the time to take action to show that we mean what we say. We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment intimidation, threats or bullying by anyone. We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. The need for the USPS to serve the public efficiently and productively and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. "Making the numbers" is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions. We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of our over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity respect and fairness are basic human rights, and where those who do not respect those rights are not tolerated. Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace. We pledge our efforts to these objectives.

NATIONAL AGREEMENT
ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted.

DOCUMENTS

8/27/2021 Robert Felton Notice of Proposed Removal

This is advance written notice that it is proposed to remove you from the Postal Service.

Charge: IMPROPER CONDUCT

Specification 1: On June 25, 2021, you raised your middle finger at employee Trevaughn Jones.

Specification 2: On June 25, 2021, you had a verbal outburst on the workroom floor during which you shouted and yelled on the workroom floor.

Specification 3: On June 25, 2021, you stated "I wanna shoot his ass right now," in reference to employee Trevaughn Jones.

Background Facts:

On June 25m, 2021, while in the performance of your duties as Manager of the Lefleur Station in Jackson,MS, you were involved in a physical altercation with one of your employees, Trevaughn Jones, which subsequently led to you stating that you wanted to shoot him.

Prior to that incident occurring, you admitted to placing two parcels into the employee's [Jones] work space, and when questioned by Jones why you did not place them in his hamper instead, you responded by flipping Jones off and smiling.

After this occurred, you went to the office window and returned to the Supervisor's desk after a short time. When you returned, you noticed Jones still in his work space, asked him why he had not pulled his mail down yet, and if he had clocked to the street, to which Jones told you to "look into your system." In your recollection of the Incident, Jones then grabbed you and pushed you against the shelving of his workspace.

When Jones let you go, you yelled at him "You are done." You repeated this phrase to another one of your employees, and repeated it once more when NALC Union President Moses Solar walked into the building from the parking lot. Mr. Bolar then prompted both you and Jones to go into a private office with him, so the issue could be discussed. While in the privacy of the office, you admitted to demonstrating on Mr. Bolar what Jones did to you in his [Jones] workspace. Jones continued to deny the allegation that he physically touched you, and you allowed him to find witnesses to corroborate his side of the Incident, After an estimated 5 minutes, you left the office to look for Mr. Bolar and Jones, and were approached by another employee [Lancaster], who asked you to allow Jones to return to work. You responded to Lancaster by saying "No, you don't put your hands on me."

In your Initial statement of what happened, written on June 25m, 2021, you did not mention saying "I wanna shoot his ass right now" during the incident. Initially, when questioned during an

investigative interview, held on August 2nd, 2021, you denied saying the phrase, but admitted that you may have said "I want to do something to you (Jones)". When questioned further about the statement, you claimed that whoever was saying you said "I wanna shoot his ass right now" was lying and trying to save Jones' job.

You were then given an opportunity to listen to a recording taken of the incident. On this recording, you can be heard saying "I wanna shoot his ass right now", and admitted that it was, in fact, your voice. Your actions are in violation of the following Postal Rules and Regulations including, but not limited to:

Employee and Labor Relations Manual (ELM) Section 666.11 — Loyalty...

Employee and Labor Relations Manual (ELM) Section 666.16 — Behavior and Personal Habits...

Employee and Labor Relations Manual (ELM) Section 665.24 - Violent and/or Threatening Behavior- which states, in relevant part, "The Postal Service is committed to the principle that all employees have a basic right to a safe and humane working environment. In order to ensure this right, it is the unequivocal policy of the Postal Service that there must be no tolerance of violence or threats of violence by anyone at any level of the Postal Service. Similarly, there must be no tolerance of harassment, intimidation, threats, or bullying by anyone at any level. Violation of this policy may result in disciplinary action, including removal from the Postal Service."

Joint Statement on Violence and Behavior in the Workplace...

DATE: January 12, 2022

TO: Robert Felton Manager, Customer Services JCK-Lefleur Station Jackson, MS

RE: Letter of Decision—Notice of Proposed Removal

Dear Robert Felton:

I am issuing this letter to inform you that I have decided to mitigate the charge of Improper Conduct in the Notice of Proposed Removal issued to you on August 27, 2021

After considering the criteria for establishing a penalty for the charge I have decided to mitigate. I have decided to reduce the penalty proposed. This action will be effective immediately. The reasons for my decision are outlined below.

CHARGE: IMPROPER CONDUCT

After carefully examining the record, I find that the proposed charge of Improper Conduct stated in the Proposed Removal should be sustained.

Specification 1: On June 25, 2021, you raised your middle finger directed towards employee Trevaughn Jones: I find that the record supports this specification. On June 25, 2021, Jones reported that you raised your middle finger to him. In your investigative Interview with Bill Fariior on August

2, 2021, you admitted to having done this. When asked if you thought that this was appropriate, you answered no.

Specification 2: On June 25, 2021, you had a verbal outburst on the workroom floor during which you shouted and yelled on the workroom floor: I find that the record supports this specification. On June 25, 2021, you participated in a loud verbal altercation on the workroom floor with employee Trevaughn Jones that was witnessed by other employees.

Specification 3: On June 25, 2021, you stated, "I want to shoot his ass right now," in reference to, employee Trevaughn Jones: I find that the record supports this specification. Initially, you denied having made that statement, but in the investigative interview, when a recording of the incident was played for you, you were heard saying, "I want to shoot his ass right now, and you acknowledged that was your voice on the recording.

WRITTEN APPEAL

On November 29, 2021, I received a settlement offer from your NAPS representative, Tim Ford. The offer contained 3 tentative stipulations (listed below as written in the offer):

1. The Notice of Proposed Removal issued to Robert Felton dated 08/27/21 will be reduced to a Letter of Warning in Lieu of a 14 Day Suspension, the effective date to be 08/27/21, the same date as the Proposed Action.
2. MCS Felton be returned to his Office of Record, Lefleur Station Jackson MS as soon as practical.
3. A review of this action will be conducted on 08/27/22. If no further corrective action of this nature is taken during this time, the Letter of Warning in Lieu of a 14 Day Suspension will be removed from all records and files.

After carefully examining the record, including your representative's proposed settlement dated November 29, 2021, I find that the proposed charge of Improper Conduct stated in the Notice is supported by the record. However, I will mitigate the proposed removal to be reduced to a Letter of Warning in lieu of a 14-Day Suspension to remain in your file for a period of one year from date of issue to be removed on 8/27/2022 under the condition that no further corrective action is issued to you during that time. Due to the nature of your violation, I cannot agree to return you to your office of record, which is Lefleur Station, at this time.

The Proposed Penalty

I now turn to the appropriate discipline for the charge of Improper Conduct that I have reduced to a Letter of Warning in Lieu of a 14-Day Suspension. In reaching my decision concerning discipline, I considered the following factors:

I have considered the nature and seriousness of the offense, and its relation to your duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated. The offenses detailed as 3 specifications in the Proposed Removal were of the utmost seriousness. You violated ELM provision 665.24 pertaining to Violent and/or Threatening Behavior as well as the Joint Statement on Violence and Behavior in the Workplace by making the statement, "I want to shoot his ass right now" about an employee under your supervision. Additionally, you denied having made this statement up until the point during your investigative interview when you were confronted with an audio tape of the incident, where your voice was clearly heard making that statement. As a manager, it is your duty to set an example for the employees in your duty station and to uphold all Postal policies and regulations. I conclude that your actions were intentional and that your violations were malicious in nature.

I have considered your job level and type of employment, including supervisory or fiduciary role, contacts with the public and prominence of the position. Your job level is Customer Services Manager, EAS Level 20. Your position is one of special trust and responsibility. On June 25, 2021, you initiated the incident with craft employee Travaughn Jones by responding inappropriately to question by "flipping him the bird." You were heard calling the employee "boy" and saying that you felt like shooting him. Then, you denied having said that you wanted to shoot the employee until you were confronted with a recording of the incident. None of these actions are representative of how a manager should act.

I have considered your past discipline record. You have no other current live disciplinary action about which I am aware. This is the main reason that I am willing to mitigate the Proposed Removal down to a Letter of Warning in Lieu of a 14-day Suspension to remain in your file for a period of one year from date of issue under the condition that you receive no other disciplinary action during that time.

I have considered your past work record, including length of service performance on the job, ability to get along with fellow workers, and dependability: You have been with the USPS since 2014 and have been a member of the USPS management team since 2017. During the time that you have been an EAS employee, I see no evidence in the file to indicate that prior to the incident on June 25, 2021, your work performance was anything other than acceptable. But after reviewing your actions on June 25, 2021, I lack confidence in your ability to get along with fellow workers and in your dependability.

I have considered the effect of the offense upon your ability to perform at a satisfactory level and effect upon my confidence in your ability to perform assigned duties: Your actions have caused me to lack confidence in your ability to perform your job duties and to uphold the organizational mission. You have demonstrated that you are not dedicated to upholding the Postal Service's policies and regulations, that you are untrustworthy, and that you lack the self-control that is required of a USPS manager.

I have considered the consistency of the penalty with those imposed upon other employees for the same or similar offenses: I am not aware of any other management member with the entirety of similar violations who has received a lower level of corrective action.

I have considered the consistency of the penalty with any applicable agency table of penalties: The proposed discipline is consistent with Postal rules and regulations as they pertain to correcting EAS performance failures.

I have considered the notoriety of the offense or its impact upon the reputation of the agency: On June 25, 2021, you were seen and heard yelling outside the post office where your actions were possibly visible to the general public. Then because you said that you felt like shooting Jones and rushed to get into your own vehicle, Jones felt threatened, did not know for sure what you were going to do, and ran to a business across from the street from the post office to ask a member of the public to call 911. The public was able to see the arrival of the police at the post office, which could have been perceived by anyone in the vicinity as a violent and threatening incident happening at the USPS.

I have considered the clarity with which you were on notice of any rules that were violated in committing the offense or had been warned about the conduct in question: You are a fully trained manager who is completely informed about the Postal Service's Zero Tolerance Policy. In the investigative interview, you confirmed that you are aware of the policy. You also acknowledged that you participated in administering the service talk about the USPS policy about Violent and/or Threatening Behavior to employees at the Jackson Le Fleur Station both one week and two weeks before the incident with Jones on June 25, 2021.

I have considered the potential for rehabilitation. You have several years of managerial experience and training at the USPA, but during and after the incident with Jones on June 25, 2021, you exhibited inappropriate aggressive behavior, a lack of candor when you were being questioned about the incident, and a complete disregard for USPS conduct regulations. I am unsure at this time about your potential for rehabilitation, but in reducing the proposed removal to a letter of warning in lieu of suspension I am providing you with an opportunity to prove that you have learned from this experience and to regain my trust and the trust of employees under your management.

I have considered possible mitigating circumstances: No mitigating circumstances have been presented to me that would explain your improper conduct on June 25, 2021. I am unaware of any unusual job stress or personal problems that you may have been experiencing.

I have considered alternate sanction: In this Letter of Decision, I am imposing an alternate penalty to the removal that was proposed to you on August 27, 2021: the proposed removal is mitigated to a Letter of Warning in Lieu of a 14-Day Suspension to be removed from your record on August 27, 2022 under the condition that you receive no further disciplinary action during that time.

Thus, I have decided to mitigate the discipline recommended in the Notice. The Notice of Proposed Removal issued to you on August 27, 2021 is reduced to a Letter of Warning in lieu of a 14-Day Suspension to remain in your file for a period of one year from date of issue to be removed on 8/27/2022 under the condition that no further corrective action is issued to you during that time. However, due to the nature of your violation, I cannot return you to your Office of Record, which is Lefleur Station, at this time.

You may appeal this decision to senior Postal Service management in accordance with §652.2 of the Employee and Labor Relations Manual (ELM). You have fifteen (15) calendar days from your receipt of this decision to submit a written appeal...The reviewing official will issue a written decision and there is no further right of administrative appeal.

June Martindale, AL-MS District Manager

Statements from key parties to the incident

Letter Carrier Trevaughn Jones

On this day my manager Robert Felton called me on this day and threatened me with discipline papers for not reporting to the station at a certain time. When I arrived back at the mail station my manager Robert threw 2 packages onto my case and it hit my hands while I was casing. And also Robert flipped a middle finger at me and I asked him why didn't you through my packages in my tub and why did you give me the middle finger. He immediately got into my face so I defended myself by pushing him off me onto the mail case. My Union rep then tried to call us into my manager's office to try to resolve the issue. Robert then was demonstrating to my Union Rep Moses how I defended myself against Robert. Robert was pushing my union rep back into some file cabinets. I then was trying to go find witnesses because Robert did state that "Getting witnesses is the only way you was go keep your job." as I was leaving Robert yelled out in front of my coworkers and customers at another store across the street "I'm so mad right now that I can shoot him" (Meaning me the carrier). I do not know my manager's history or his intentions so therefore I would not like to work in the same building as him.

Because I fear for my life and my safety. Trevatighn Jones 6/30/21

Station Manager Robert Felton Friday June 25, 2021 Incident statement

On Friday June 25, 2021 at 10:02 am I called Trevaughn Jones and asked him where he was being that I instructed all carriers to be back at the office at 9:30am to begin casing their routes. He stated he had about 3 more parcels and he was headed to the office. I informed him that he needed to be back now and those were not the instructions. At 10:15 Trevaughn was back at his case, casing mail. I had two parcels that were mis thrown, so I took them to his route and put them on his ledge. He yelled across the floor and told me, "Hey my tub is in the floor" basically telling me where to put

his parcels. At 10:25 am I came back to him and ask was he moved to the street? He stated Go look and check in the system, getting smart and being facetious instead answering the question. I instructed him to go ahead and pull down and move to the street. I also told him I would be out on the route, being that we need street observations completed he stated we can go outside now. While I was speaking with him at his case he bumped me and then grabbed physical pent me to case with both arms. I couldn't move at all and he is bigger than me and I feared what would happen next. He held me in the case for about 10 seconds, Travis Thornhill seen what was going and asked, I don't know if they're playing or not. The Supervisor Pat Collins didn't see it because the 2 Amazon pallets in front of the case. Elizabeth Lancaster walked by as it was happening and asked what is going on after she heard me being pushed into the case. Trevaughn then walked out to exit the building.

After I informed the Union President Moses Bolar that Trevaughn, needed to leave the Post office for putting his hands on me, Moses asked me to 1st just calm down and you both come in the office, so we can talk, and I agreed. When we all came in I was telling Moses that, he shouldn't have put his hands on me, Trevaughn stated he doesn't have any witnesses. And stated that he had witnesses that he didn't do anything at all. I allowed him to go out and find the witnesses that he said he had. After about 5 mins I walked outside to see what the hold up with him locating his witness. He was standing outside just taking to the carriers making a scene. A few carriers were asking me to let him return to work, I informed them NO he is going home, you do not put your hands on me. I was getting more upset by this confrontation, so I was walking back inside when he kept saying he was in the right. I walked to get in my truck and left, Trevaughn ran across the street. I wanted to make sure I was secure, so I left, when I heard Patricia Collins on the telecom, stating she needs the Post Master. I immediately turned around and came back to the Post Office where I met the Post Master Betty Collins and the Jackson Police Department. The Post Master Betty Collins diffused the situation and finally got the badge from Trevaughn and informed him is on Emergency Placement.
Robert Felton

Union President Moses Bolar Jr

On 6-25-211 came out of the washroom when I heard Trevaughn Jones say to station manager Robert Felton my tub is over there. Then Mgr. Robert Felton gave him the middle finger and smiled at Mr. Jones and went to his office and Trevaughn was working his mail, then I went outside to load my promaster.

I came back about 15-20 minutes later and both Mr. Jones and Mgr. Felton were talking loudly. I then took them both to the office off the workroom floor. I told them both about the zero work tolerance and I asked them both to take a deep breathe. Mgr. Felton then said you have no witnesses, if you want to keep your job, you need witnesses. Mr. Jones said I have some witnesses and Mgr. Felton told him to go get them then. Mr. Jones left to go get witnesses, and then Mgr. Felton followed him out of the office all the way into the parking lot where a few carriers were still loading their vehicles and had not left to go to their route yet.

One of the carriers asked Mgr. Felton why he was putting Mr. Jones on emergency placement. Mgr. Felton then got angry and loud and said keep that boy away from me. Mgr. Felton then said right now I would shoot him (Mr. Jones). Mr. Jones then ran towards across the street to a business.

I told Mgr. Felton to go inside the building two or three times. Robert then told me to stop making a scene, and I said you already done that to yourself and the ladies across the street was looking over and could hear him. I finally convinced Mgr. Felton to go inside and then he dipped back out of a different door back outside and went to his truck. I tried to stop him from leaving but he said he wanted to go home and so he left to go home. I advised Mr Jones to stay here because of the situation escalating to Mgr. Felton talking about shooting Mr. Jones. A few minutes later a lot of police cars came to the parking lot. Around this same time, Mgr. Felton showed back up and by now the PM Betty Collins showed up. The police asked if the situation was under control at this time. PM Collins took Mgr. Felton to the office and I took Mr. Jones to the break room. I don't understand why Mgr. Felton was not placed on EP for threatening to shoot Mr. Jones. I don't think the PO handled zero policy correctly. Moses Baler Jr

Statement from Mail Clerk "Lillie" Michelle Dixon July7, 2021

On Friday June 25, 2021, Travaughn called to let me know what had went on that day at LeFleur station. He then asked me for Terrance phone number and stated he was trying to get statements overall concerning our work environment. I advised Travaughn that I would call and ask Terrance before giving his number out. And I did just that. Terrance stated that it would be ok to give his number to Travaughn.

On Tuesday, June 29, 2021, I received 2 "No Caller Id" calls at 4:06am. I didn't answer and the person called back at 9:31 and left a voicemail this time stating that ..." You keep poking you nose around you're going to get what you are looking for. Keep putting your nose in other people's business and you're going to get exactly what you want. keep doing that you're going to get exactly what you're looking for"

I do believe that these phone calls and the message that was left to be Robert Felton. Robert has announced on several occasions that he has a body on him and to ask about him. He is not to be taken light. News reports states that in 2004, he did kill a man at a night club and that was the body he was speaking of.

I then went to the Jackson Police Dept and filed charges for creating fear. Since the incident has happen, I have been out on leave due to fear of safety, stress and anxiety. Lillie Michelle Dixon

MANAGEMENT'S CONTENTIONS

Management contends the grievance is not properly before the Arbitrator. The grievance should be barred from arbitration because the remedy has already been addressed by Management.

It is Management's position the Union wants another bite of the apple when they are insistent on advancing this grievance to arbitration although the remedy has already been resolved. They want to punish the man all over again. The issue is now MOOT. This is a matter of res judicata in which the Union is seeking a Do-Over for an action that Management has already addressed.

Manager Felton was issued a Notice of Proposed Removal (NOPR) as his conduct on June 25, 2021 (pg 363,364,369) was inconsistent with Postal rules and regulations. The Union is aware of this and addresses it in their contentions of the Step B Decision (page 7). "The postal service investigated and found Manager Felton violated the Joint Statement on Violence by his actions on 6/25/2021 and cited on a Proposed Removal dated 8/27/2021..."

Subsequently, the deciding official reduced the NOPR to a LOW in lieu of 14 Day Suspension. Deciding official also imposed Mr. Felton not to be returned to his office of record. He is also not supervising directly or indirectly city letter carriers. The Union is well aware of this.

.In a regional award DR 31-88, National Arbitrator Zumas denied a grievance after the Service issued as second Notice of Removal to a grievant. The Union, contended that the Service may not issue a second Notice of Removal, asserting that the arbitrator's decision was dispositive of the grievance under the doctrine of res judicata, and otherwise constitutes Double Jeopardy (pg 2). Management contends the Zumas arbitration is similar to the case at hand.

The Union is fully aware of the actions taken against Manager Felton and the Union has refused to withdraw this grievance. The authority to appeal or withdraw grievances on behalf of union members is given to the Union per Article 15 of the National Agreement. Under Article 15 of the National Agreement only the Union can withdraw a grievance once it has gone beyond Step 1 of the grievance procedure.

Arbitrator Snow stated in National Award H4C-4H-C 25455(pg 11): "Rules of claim preclusion prevent a party from pursuing a later action on the original claim, and a final decision in favor of a party bars the other party from obtaining a second decision on the same claim." Based on this, the common law doctrines prevent an arbitrator from reaching the merits of the case. There is no remedy for you to decide since Management has already addressed Manager Felton since the onset

of this grievance being initiated. Management respectfully requests you find this grievance not arbitrable and dismiss it in its entirety.

UNION'S CONTENTIONS

To support its contentions, the Union uses National Arbitrator Carlton Snow's AWARD (Q90N-4F-C 94024977/94024038, 1996). Some of the excerpts the Union used are shown below:

...An examination of the purpose for the Joint Statement, the actual verbiage itself, and dispute resolution processes used by the parties provide objective manifestations of their intent. It is un rebutted that the principle purpose of the parties in publishing the Joint Statement was to lend their mutual weight to an anti-violence campaign in the workplace. Words used by the parties expressed their concern that combating violence in the workplace was such a high priority it was necessary to take an unprecedented step of jointly issuing a credo against violence. To convey the intensity of their commitment to reducing violence in the workplace the parties stated:

The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.' 'But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect and fairness are basic human rights, and where those who do not respect those rights are not tolerated. At pp 14-15

The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties. As the U.S. Supreme Court instructed: There [formulating remedies] the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. (See, *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (3.960)).

"Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Joint Statement on Violence and Behavior in the Workplace constitutes a contractually enforceable agreement between the parties. Accordingly, the Union shall have access to the negotiated grievance procedure set forth in the parties' collective bargaining agreement to resolve disputes arising under the Joint Statement. It is so ordered and awarded.

Management contends these arbitrator Snow excerpts address the Union's objections to the employer's claim that the Joint Statement is not enforceable through the collective bargaining agreement. These excerpts clarify that the National Agreement grievance procedure may be used to

enforce the bargained Joint Statement on Violence, and that arbitrators may formulate remedies, including removing a supervisor from his or her duties

The Union contends that in the Step B process and the Pre-Arbitration Settlement process of April 19, 2022, the issues and remedies were agreed upon, and for Issue 2, the violations that Robert Felton committed were agreed upon, but the remedy for Issue 2, subject grievance 21456458, was properly left for arbitral adjudication to allow the signatories to determine the proper remedy for grievance 21452300.

DISCUSSION AND OPINION

The one task of this arbitration is to provide a remedy to the violations Manager Robert Felton incurred when he had an altercation with a letter carrier under his supervision on June 25, 2021 at the Lefluer Station in Jackson, M. The parties have agreed that he violated a number of policies and regulations, the most important of those being the violation of the Joint Statement on Violence and Behavior in the Workplace. He was issued a Notice of Proposed Removal (NOPR) on August 27, 2021 which was reduced on January 12, 2022 by the AL-MS District Manager to a Letter of Warning in Lieu of a 14-Day Suspension.

At the same time, the Union and Employer had two grievances in process related to this one incident, the first one initiated with Informal Step A on July 9, 2021. The second, with an incident date of August 26, 2021, was initiated with Informal Step A on September 9, 2021. Both grievances had Formal A on November 2, 2021 and were received at Step B on December 3, 2021 with a Decision date of January 28, 2022. Subsequently, there was a Pre-Arbitration Settlement process that was completed on April 19, 2022. The Arbitration hearing was held on June 8, 2022.

Each grievance had four similar issues. Issues 1,3 and 4 resolved and their remedies established in Step B and the Pre-Arbitration Process. For Issue 2 the violations that Robert Felton committed were agreed upon, but the remedy for subject grievance 21456458 was left for arbitral adjudication to allow the signatories to determine the proper remedy for grievance 21452300.

There are two current possible remedies: One is the remedy the Service determined when Robert Felton was issued a Notice of Proposed Removal that was reduced to a Letter of Warning in Lieu of a 14-Day Suspension, along with “ a review of this action will be conducted on 8/27/22. If no further corrective action of this nature is taken during this time, the Letter of Warning in Lieu of a 14-Day Suspension will be removed from all records and files. Due to the nature of your violation, I cannot agree to return you to your office of record, which is Lefluer Station, at this time.” Management contends this is the remedy that has already been implemented, making another remedy unnecessary.

The other possible remedy is that suggested by the Union, stated as follows:

That Robert Felton be immediately removed from his managerial position at the Jackson, MS Post Office and not be allowed to supervise/manage city letter carriers directly or indirectly for the rest of his USPS career due to his habitual violation of the Joint Statement on Violence and Behavior in the Workplace, the Postal Service's Policy on Workplace Harassment, the Mississippi Performance Cluster Workplace/Zero Policy, Section 115.4 of the M-39 handbook, and Section 665.24 of the ELM via Articles 14, 15, and 19 of the National Agreement.

Prior to analyzing the two possibilities and considering the possibilities of formulating a third remedy, Arbitrator reviewed some of the recommended precedent cases provided by the advocates. Here are some findings, with names disguised in some cases:

Arbitrator Glenda August G16N-4G-C 20139761 April 21, 2021 Clinton, MS

...in the instant case, the file evidence regarding Mr. R's past behavior, was not admitted to support the allegation that this Postmaster violated the JSOV on January 27, 2020, but to support the Union's allegation and subsequent DRT defined issue that Mr. R has demonstrated a pattern of behavior which has manifested itself into a violation of the JSOV and the January 27, 2020, incident was the catalyst. It has been well established in arbitral history that the 1992 Joint Statement on Violence and Behavior in the Workplace was an agreement between the signatories which is subject to the grievance procedure. Arbitrator Jacobs, in his award, made it clear that evidentiary consideration of past issues may be used to determine the appropriate remedy to be imposed, once a finding of a violation of the JSOV has been established. Here, PM R has presented a pattern of behavior which has led to such a finding, with the January 27, 2020 incident becoming the catalyst to show that his behavior has not changed, even after clear instructions, DRT resolutions, Arbitration Awards and grievance resolutions. The Union requested multiple sources of remedies to compensate for the harm caused to the employees of the Clinton, MS. Post Office. The following requests are hereby granted:

7. By request of the Union, Postmaster R shall be immediately removed from his position as Postmaster at the Clinton Post Office. Management may immediately assign Mr. R in any other position which does not require him to supervise employees, nor have interaction with employees over which he has responsibility for disciplinary decisions or may affect their continued employment with the Postal Service. He also shall not be allowed to supervise/manage city letter carriers directly or indirectly for a period of two (2) years, over which time the Service is ordered to provide training and basic human resources assistance to prepare Mr. R for future Management positions which will require him to supervise employees. Over the same two-year period, Postmaster R shall be personally and directly monitored by a manager of higher level, whenever Mr. R is required to have contact with bargaining unit employees. This condition is based on a history of ineffective employee communication, and a pattern of bullying and intimidation to accomplish his own work goals.

Caution should be used in the placement of this Manager to ensure that the position meets with Mr. R's knowledge, skills and abilities, or lack thereof, so that he is not allowed to adversely affect the working conditions of employees and membership of the NALC.

Note: Arbitrator August decided the merits as well. The pattern of behavior was key.

Arbitrator Glenda August G16N-4G-C 18316064 February 4, 2019 Hattiesburg, MS

AWARD: The grievance is sustained. Management violated the National Agreement, specifically the Joint Statement on Violence and Behavior in the Workplace, as well as the Postal Service's Policy on Workplace Harassment and other postal policies, when employees at Hattiesburg, MS were harassed and intimidated according to the January 23, 2018 Climate Survey Report by the Mississippi District Manager of Human Resources. The remedy for that violation shall be enforced as stated in the body of the Award...

REMEDY:...

8. Manager J H shall be immediately removed from his managerial position at the Hattiesburg Downtown Station. Management shall place Mr. H in a position to be decided by the Postal Service and Mr. H; the location shall be outside of any Post Office in Hattiesburg, MS. He also shall not be allowed to supervise/manage city letter carriers directly or indirectly based on a history of ineffective employee communication which has led to decreased morale and an overall perception of harassment among letter carriers in the offices that he has managed. Caution should be used in the placement of this Manager to ensure that the position meets with Mr. H's current skills and abilities and will not adversely affect the working conditions of other employees that may be subject to Mr. H's supervision.

Note: Arbitrator August decided the merits as well.

Arbitrator Louise Wolitz G11N-4G-C 13330774/289613029 August 24, 2015 Cleveland, MS

ISSUE/FINDINGS: 1) Did Supervisor R G again violate the Joint Statement on Violence and Behavior in the Workplace, ... through his actions on August 13, 2013, and by the pattern of behavior that has developed in the Cleveland, MS Installation, and if so, what should the remedy be? We must answer yes to this question as it relates to a violation of the Joint Statement on Violence and Behavior in the Workplace and the ... We find that Supervisor R G clearly violated the Joint Statement on Violence and Behavior in the Workplace. He did so by forcibly grabbing S C's arm, causing pain and bruising, which showed up on pictures and X-rays. He did so, not to guide her, but in anger. We further find that instead of assisting her when she fell on the floor, he called the Postmaster and told him that the psychotic bitch is at it again. He acknowledges the statement, but still does not acknowledge that he grabbed her arm, causing pain and bruising, or that he did so in anger. MR testimony continues to be he is not credible... Moreover, this was the most serious

incident in a history of inappropriate behavior by Mr. G for which he has been issued seven cease and desists dealing with his hostile behavior and four mandates to stop his inappropriate behavior. He has been ordered to take all available training. Yet, this incident still occurred. We cannot fail to note that the unacceptable incidents cited in this file all involved S C. We have no documented complaints in this file from any other letter carrier. Therefore, in fashioning a remedy, we are most concerned that Supervisor G never again is placed in a position in which he supervises S C.

REMEDY 1: The Postal Service is hereby directed to never again place R G in a position in which he has any direct or indirect supervisory or management authority over Letter Carrier S C. His continued inability to treat her professionally and safely mandates this directive for her personal safety.

REMEDY 3: R G is to write a letter of apology to Letter Carrier S C in which he acknowledges his inappropriate physical touch...

Arbitrator Findings

Arbitrator notes that the parties agree that Manager Robert Felton violated the Joint Statement on Violence and Behavior in the Workplace and several other specified Policies and Regulations.

Arbitrator notes the Service identified in its January 12, 2022 Letter of Decision the improper conduct as follows:

Specification 1: On June 25, 2021, you raised your middle finger directed towards employee Trevaughn Jones

Specification 2: On June 25, 2021 you had a verbal outburst on the workroom floor during which you shouted and yelled on the workroom floor.

Specification 3: On June 25, 2021 you stated “I want to shoot your ass right now” in reference to employee Trevaughn Jones.

Arbitrator notes the Dispute Resolution Team that includes both Management and Union, agreed at Step B of the grievance process also found that Manager Robert Felton’s action on June 25, 2021 violated the Joint Statement on Violence and Behavior in the Workplace and several other specified Policies and Regulations.

Arbitrator notes that AL-MS District Manager acting as Deciding Official on the reduction of the NOPR to a Letter of Warning in Lieu of a 14-Day Suspension, acted on a settlement offer from Felton’s NAPS representative to arrive at the January 12, 2022 remedy. At the hearing, on cross examination, her testimony was that before deciding the remedy she had not personally spoken “to Felton, to Jones, or anyone” and had not been given the case file.

Arbitrator notes the two separate processes applied in this case to reach resolution. Arbitrator finds the process used by Management and the Union, with Informal A to Formal A to Step B to Pre-Arbitration Settlement, each involving both parties, is more in line with what this Arbitrator and Arbitrator Snow, and hopefully the statement creators, jointly envisioned for implementation of the Joint Statement on Violence and Behavior in the Workplace.

Arbitrator notes the factors used by the Deciding Official in the January 12, 2022 Letter of Decision to determine the penalty and the several stern comments/warnings to Mr. Felton:

- ...it is your duty to set an example for the employees in your duty station and to uphold all Postal policies and regulations. I conclude your actions were intentional and that your violations were malicious in nature.
- After reviewing your actions on June 25, 2021, I lack confidence in your ability to get along with fellow workers and in your dependability.
- Your actions have caused me to lack confidence in your ability to perform your job duties and to uphold the organizational mission. You have demonstrated that you are not dedicated to upholding the Postal Service policies and regulations, that you are untrustworthy, and that you lack the self control that is required of a USPS manager.
- ...you were seen and heard yelling outside the post office where your actions were possibly visible to the general public. Then, because you said that you felt like shooting Jones and rushed to get into your own vehicle, Jones felt threatened, did not know what you were going to do, and ran to a business across the street from the post office to ask a member of the public to call 911. The public was able to see the arrival of the police at the post office, which could have been perceived by anyone in the vicinity as a violent and threatening incident happening at the USPS.
- ...you exhibited inappropriate aggressive behavior and lack of candor when you were being questioned about the incident, and a complete disregard for USPS conduct regulations. I am unsure at this time about your potential for rehabilitation, but in reducing the proposed removal to a letter of warning in lieu of suspension, I am providing you with an opportunity to prove that you have learned from this experience and to regain my trust and the trust of employees under your management.

Arbitrator notes the statements provided in this document from Letter Carrier Trevaughn Jones, Mail Clerk Lillie Michelle Dixon, and Union Steward Moses Bolar, Jr, along with the supporting testimony from Mr. Jones and Ms. Dixon. Arbitrator especially notes from testimony that when Manager Felton entered Carrier Jones' space, he was angry and got into "my space nose to nose," leading to the pushback by Mr. Jones. Arbitrator also notes the allegation in her statement and testimony of receiving on June 29, 2021, two unanswered phone calls at 4:06 am followed by a third at 9:31 with a voice mail she was certain was Robert Felton warning her that "Keep your nose around

you going to get what you want_ keep poking around other people business you're going to get exactly what you want keep doing that you're going to get exactly what you're looking for..." Arbitrator also notes the 12+ written statements in the case file from witnesses of the June 25 incident.

Arbitrator notes that the Deciding Official made this statement regarding Manager Felton's discipline record: "You have no other current live disciplinary action about which I am aware. This is the main reason I am willing to mitigate the Proposed Removal..." The Union did not dispute the statement on discipline.

Arbitrator notes this remedy comment by Arbitrator David Stanton and remembers experiences with cases from the Merit Systems Protection Board (MSPB) where it was found very unusual that MSPB would accept a first offense removal unless it were very egregious, as in violence inflicted

Arbitrator David Stanton C16M-1C-C 20049304 February 27, 2021 Philadelphia NDC

REMEDY: Even though a violation of the JSOV has not been found, the Union's requested remedy warrants comment. The Union has also asked that G be prevented from supervising postal employees. In one of the cases cited by the Union in support of their position in this case, Arbitrator Raymond Britton required the Postal Service to fire a Postmaster who forcibly touched an employee on the arm. The Britton arbitration decision, however, was not the end of the story. After a period of protracted litigation, the Merit Systems Protection Board (MSPB) ultimately determined the Postal Service violated Postmaster Derrick Hatten's due process rights by following the Arbitrator's decision. In the aftermath of the Hatten MSPB decision, it became quite clear that an arbitrator's decision to punish a supervisor, to the extent the punishment constituted an adverse action, would be overturned. Prohibiting a supervisor from supervising all postal employees is likely an adverse action. Therefore, this remedy is unavailable to arbitrators. Nevertheless, other creative remedies are available for violations of the JSOV and the managers who are responsible for the violators.

REMEDY

Arbitrator, after due consideration of the evidence and findings, and consultation with the parties at the national level, provides the following Amended Remedy for Issue 2:

Robert Felton will not supervise at LeFleur Station for a period of 2 years from the date of this amended award, unless otherwise agreed to by the parties.

Management will provide the Region 8 NBA with a copy of the PS Form 1723 for Supervisor Felton's assignment once moved from LeFleur Station and whenever his official assignment changes for 2 years from the date of this amended award.

Robert Felton will not supervise directly or indirectly in the city letter carrier craft for 18 months from the date of this amended award, unless otherwise agreed to by the parties.

Robert Felton will receive training on workplace conflict and communication no later than February 24, 2023 with documentation of same provided to the Region 8 NBA.

AWARD

Amended Remedy above is provided for Grievance 4G 19N-4G-C 21456458.

The arbitrator retains jurisdiction over implementation of this award for a period of 90 days.

F David Alexander