

C#01928

IN THE MATTER OF ARBITRATION BETWEEN
UNITED STATES POSTAL SERVICE (LOUISVILLE, KY.)
- and -
NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH #14

CASE #CEN-4T-D 33242 (Williams)
Louisville, KY

BEFORE MARSHALL J. SFIDMAN, ARBITRATOR

OPINION AND AWARD

This is a discharge case. On July 7, 1981 the grievant, Irwin H. Williams, received the following Notice of Charges - Removal which stated that:

"The reasons for this proposed action are:

Charge 1. On June 29, 1981, by your own admission, you knowingly and wilfully threw postage-paid bulk-rate advertising mail, specifically Huber Tire Company circulars, that was scheduled for delivery on that date into a trash dumpster at 720 E. Broadway, Louisville, Kentucky.

On June 29, 1981, bulk-rate advertising mail for Huber Tire Company, 205 Eiler Avenue, Louisville, Kentucky, 40214, addressed to residents of downtown route 314 was taken out for delivery by you since you served that route on June 29, 30, and July 1, 1981.

RECEIVED

FEB 24 1982

Jack R. Sebolt

On June 30, 1981, Mr. Mace Huber of Huber Tire Company called Mr. Lewis Parker, Manager of Delivery and Collection, to advise that some of his mail had been found in a dumpster at 720 E. Broadway by Mr. Brody of Prody Carpet Company, 720 E. Broadway, Louisville, Kentucky. Mr. Huber went to the dumpster and recovered 215 pieces of circular mail from Huber Tire Company from the dumpster at 720 E. Broadway.

Mr. James Montgorery, General Supervisor, downtown carrier section, Louisville, recovered the mail from Mr. Huber on June 30, 1981. He also went to the dumpster and observed other Huber Tire Circulars in the dumpster, but did not recover the mail because of the soiled condition.

On July 1, 1981 Mr. Montgomery and D. L. Salsman, Postal Inspector, went to the dumpster at 720 E. Broadway and observed some Huber Tire Circular mail in the dumpster. On that date you were interviewed after you had served your route. You were fully advised of your constitutional rights by execution of P.S. Form 1067 prior to any questioning. The interview was witnessed by Mr. Montgomery.

You examined the recovered mail and stated it was for delivery on your route. You also admitted verbally and by written statements throwing circulars that were not in sequence in the dumpster at approximately noon June 29, 1981."

The Union admitted that the grievant had thrown away the third class mail as charged and as admitted by him. In mitigation, the Union contended that for some time prior to his offense the grievant had been an alcoholic; that his alcoholism was known to the Service and to his immediate supervisors; that the grievant was drunk on the occasion in question and did not know what he was doing when he did the admitted act; that as a result of his drunkenness on the day in question the United States attorney, to whom the case was turned over for prosecution, declined to prosecute; that since the grievant was eligible for retirement in one year that he should be given a last chance for rehabilitation through the Program for Alcoholic Recovery and reinstated to his former position, but without back pay.

In its post hearing brief the Union stated its position as follows:

"Irwin Williams is a letter carrier with 31 years of government service, nineteen as a letter carrier. The only problems he has experienced in 19 years have been alcohol related.

Mr. Williams received the 30 day suspension in 1976 for being intoxicated while on duty. He was disciplined on one other occasion, for being off his route. That incident was also alcohol related.

Mr. Green, management's first witness, laid the groundwork

for management's position. Article XXXV of the National Agreement did not exist in Mr. Williams case as far as management of the Louisville Post Office was concerned. Mr. Green stated that Mr. Williams should be removed from the Service even though he was intoxicated when the incident occurred. He further stated that he reviewed the file and found no valid mitigating circumstances to cancel the removal action.

... It is apparent that management does not understand Article XXXV of the National Agreement. Arbitrator Dash concluded that: "Article XXXV need not be in the agreement if the parties concluded that it was not their mutual responsibility to try to combat the effect of alcoholism upon the Postal Service's employees."

... The grievant is just one year away from retirement. Arbitrator William Haber in his ruling stated that one would have to consider the length of service the employee has. We are aware of the serious nature of what he did. The Union is convinced that he was sick. However, he is on the road to recovery and deserved a chance."

Management responded in its post hearing brief as follows:

"The facts in this case are not in dispute. The grievant, Irwin H. Williams, was hired by the United States Postal Service on October 28, 1963 as a part-time City letter carrier. He was converted to full-time City carrier on October 23, 1965. He has remained in that job classification until the present. On June

29, 1981, while assigned to Route 314 out of downtown carriers station located at 7th and York Sts. Louisville, Kentucky, he wilfully and deliberately threw away approximately 500 pieces of deliverable mail in the garbage dumpster. ...

It was management's decision throughout the course of the hearing, that although the grievant had been employed with the Postal Service for a period of 18 plus years, that he had periodically received serious disciplinary actions for his unsatisfactory work performance. ...

At the arbitration hearing, the Union offered no reasonable mitigating circumstances for the employee to commit such an act. Their only defense of this employee was that he could have possibly been drunk or been drinking on the day that he threw away the mail. Under any set of circumstances, that reasoning, that excuse, would not be reason enough to mitigate his removal action.

City Letter Carriers are hired by the U.S. Postal Service to deliver the mails. Failure to deliver the mails, and the more serious example of throwing away deliverable mail, constitutes such a breach of the employer-employee relationship as to warrant the immediate removal of the employee.

It is the Unions position that somehow management should have been able to wave their magic wand and all of a sudden rehabilitate this individual. It is the employee's responsibility, after having

once identified his problem, to do something about it. In this case, the grievant, failed to do so."

Although the Service has strongly urged, both at the hearing and in its post-hearing brief, that Williams was neither drunk nor under the influence of alcohol at the time of his offense, in the grievance package submitted by it into evidence there appears Postal Service Form 2609 prepared by its Second Step designee in which he admits in Item 15. of the summary that the employee "was drunk on day in question." Williams testified that on the day in question that he had consumed a quart and two shots of alcohol prior to the incident. His supervisor advised the Union Steward that the United States Attorney had declined prosecution of Williams for the Federal offense of destroying United States Mail because he was drunk at the time he committed the offense. In view of this record, management's argument that Williams was sober at the time and thus wilfully and intentionally and knowingly placed the third class mail in the dumpster does not have the ring of clear and convincing evidence which is necessary to sustain a discharge.

I appreciate that just because there is a Program for Alcoholic Recovery in the National Agreement it does not mean in every case, just because either an alcoholic is involved or that the alcoholic was drunk or under the influence of intoxicants at the time he committed the act leading to his discharge, is sufficient to immunize him from such action. The Program for Alcoholic Recovery itself recognizes that an employee, even though

an alcoholic, and even though drunk or under the influence of intoxicants at the time he commits the offense in question, may be removed from the Postal Service under proper circumstances. The best indication of this is that section of the program itself which deals with the reinstatement of recovered alcoholics. This provision alone clearly indicates that alcoholics may be discharged for actions inimical to the Postal Service which they committed while an alcoholic and either drunk or under the influence of alcohol.

What then are the factors which would allow an arbitrator to mitigate the offense committed by the alcoholic which led to his removal from the Postal Service to order that he be reinstated to the Postal Service. The decided cases rely on several factors; First, that the act was done while the grievant was an alcoholic and at the time the act was committed he was either drunk or under the influence of alcohol; Second, that the grievant's prior work record is either relatively clear of disciplinary action or that all, or most, of the prior disciplinary actions occurred as the result of the grievant's alcoholism; Third, that the grievant is successfully participating in, and that participation has caused both his counselor and the officer in charge of the P.A.R. program to indicate that he is likely to be a successful candidate for rehabilitation; and Fourth, that the grievant has had a substantial length of Service with the Post Office, generally for a period of at least 10 years, with the likelihood of reinstatement increasing

if the period of prior service is 20 years or more.

In this case Williams satisfies each of these four criteria. He is presently in the P.A.R. program and his counsellors testified that he has been an outstanding participant and may now be classified as a recovering alcoholic. As Arbitrator Dash stated in Case #NCE 7910D decided December 12, 1977;

"An alcoholic, like a mentally unbalanced person in need of psychiatric care, is often the last person to realize that he needs outside, professional help to solve his problems. The alcoholic's addiction is often not realized by him until something drastic happens in his life. But when it does happen, and he voluntarily seeks the help that he should have sought much earlier, it does not contribute to his rehabilitation to conclude that his delay is fatal to his voluntary attempts to gain his self respect.

Quite to the contrary, the defeat of an alcoholic employee's attempts to straighten out his life, and prove his ability properly to perform the job he knows best by closing the door forever to his reinstatement to such job can make a perpetual burr of such a person, something the parties obviously do not expect to encourage in view of their understandings as expressed in Article XXXV of this Agreement."

Certainly nothing would be worse to Williams' successful attempts thus far to rehabilitate himself by participation in the P.A.R. program than to throw him out into the street at his age with no work experience outside of the Post Office. To do so would condemn him to a life without hope, and almost assure his return to the ways of an alcoholic, with all of the burdens that would place upon him and his family and the general society to care for his needs since he would be incapable for caring for them himself.

Williams testified, and the Union concurred, that he is presently enrolled in the P.A.R. program and realizes that throughout the remainder of his postal service he must continue to be enrolled in that program and fully participate in its activities. Williams further testified, and the Union concurred, that when he attains the age of 55 that he will be eligible for early retirement and will apply for such retirement. Both his P.A.R. counsellor and another P.A.R. counsellor testified they believed that Williams has successfully been enrolled in the P.A.R. program and has participated in its activities to such an extent that they are satisfied that he is rehabilitatable and would be able at this time to resume his regular full time postal duties. Both further testified that if they had the decisional authority that they would reinstate Williams to his former job at this time and that such reinstatement would materially contribute to his future rehabilitation. They

further testified that discharge at this time would likely make rehabilitation impossible.

Under the above facts and circumstances, and for the above reasons, I hereby order that within fourteen (14) calendar days from the date of this award that the Postal Service reinstate Williams to his former position, with full seniority, but without any back pay or the receipt of any other benefits from the date of his removal to the date of his reinstatement, conditioned upon Williams continuing to participate in the P.A.R. program and upon Williams, at the first opportunity under applicable Postal Rules and Regulations, to apply for early retirement.

If at any time subsequent to the date of his reinstatement Williams fails to successfully participate in the P.A.R. program and that fact is communicated in writing to the Postmaster at Louisville, Kentucky by the officer in charge of the P.A.R. program, with a copy thereof to Williams and to the Union, that upon the receipt of such information Williams shall be terminated from the Postal Service for cause without further recourse.

Further, if within thirty (30) calendar days of the date upon which Williams could first apply for early retirement as advised by the Postmaster at Louisville, Kentucky, Williams does not submit such an application, then without further resort to the grievance procedure he shall be subject to immediate termination

by the Postmaster at Louisville, Kentucky.

Marshall J. Seidman

Marshall J. Seidman
Arbitrator

Dated at Indianapolis, Indiana this 22nd day of February, 1982.