

STATEMENT OF THE CASE

This case involves the emergency suspension and discharge of Oscar Watkins, letter carrier for the Los Angeles, California, Post Office. He is charged with the mistreatment of mail matter while assigned the duty at Boyle Station. He was removed effective June 13, 1977, after twenty years' service with the Postal Service.

The facts concerning the incident of mistreatment of mail matter which triggered the discharge are not in dispute, and are set forth in the May 9, 1977 removal letter.

On April 19, 1977, at 12:00 midnight, when Officers of the Los Angeles, CA, Police Department, stopped a car in which you were a passenger, at First Street and Vermont Avenue, Los Angeles, CA, you told the officers that you were the owner of the car and that your identification and registration were in the trunk of the car. When the trunk was opened the officers observed two (2) 1' x 3' gray plastic trays in the trunk filled with letter-size mail, one canvas mail pouch with mail enclosed, and miscellaneous letters and magazines scattered in the trunk. That mail consisted of 498 pieces of First-Class mail, 105 pieces of Second-Class mail, 316 pieces of Third-Class mail, and 4 pieces of Fourth-Class mail. The above noted mail was for delivery by you on Route 33025, Boyle Station, on April 19, 1977 and you admittedly placed that mail in the trunk of your vehicle on April 19, 1977, after delivering mail on Brooklyn Avenue.

On April 20, 1977, you consented to a search of your residence at 2116 W. 94th Place, Los Angeles, CA, by Postal Inspector L. L. Larson and Special Investigator Richard Myers. As a result of that search, the following mail was found in your garage: 580 pieces of First-Class mail, 73 pieces of Second-Class mail, 87 pieces of Third-Class mail, 18 Dawn samples, and 23 Feminine Napkin samples. You admitted that the above noted mail was for delivery by you on April 18, 1977 on Route 33025 and that you put it in your garage on April 18, 1977, as you did not feel like delivering the mail because you had been to a party over the weekend.

Undisputed evidence adduced at the hearing indicates that the Grievant is an alcoholic. Although the Grievant's problems with alcohol date back many years, they only began to affect his work performance during the last two or three years of his service. The Grievant's supervisor described a pattern of irregular attendance that developed during that period. On many occasions, after reporting for work and performing his duties for a brief period of time, the Grievant would complain of various illnesses and return home. Usually the Grievant would be unable to work early in the week, after his days off.

The supervisor recognized that the Grievant's poor attendance was related to his alcoholism and advised him to participate in the PAR Program, which he did. PAR counseling enabled the Grievant to improve his attendance for several months, but then his absenteeism resumed. In addition to directing the Grievant to the PAR Program, his supervisor placed him on restricted sick leave, and in February, 1977, persuaded him to be hospitalized for detoxification and treatment of his illness. The hospitalization did not have lasting results, and on March 25, 1977, the Grievant was issued a letter of warning for reporting to work under the influence of alcohol and being unable to perform his duties.

The Grievant testified that despite these efforts he was unable to acknowledge that he was an alcoholic until he was

shocked into the realization that he had a drinking problem by the loss of his job. It is undisputed that the Grievant has undertaken decisive steps toward rehabilitation and has not had a drink since the day of his discharge (at least to the date of the hearing--some seven months).

POSITIONS OF THE PARTIES

The Postal Service

The Postal Service asserts that mistreatment of mail, in which the Grievant unquestionably engaged, is such a serious form of misconduct that mitigating factors pertaining to the Grievant's drinking problem and subsequent recovery cannot be considered.

The Postal Service insists that the case must be decided on the facts known as they existed at the time of the Grievant's discharge, and that evidence of subsequent rehabilitation is irrelevant.

Finally, it is argued that the Grievant's curtailment of mail on April 18 and 18, 1977, is unrelated to his alcoholism. The Postal Service in its brief reviews evidence demonstrating that the Grievant was in full possession of his faculties on those two days. The Grievant's confession of his misconduct to the Postal Inspectors is cited to prove he was cognizant of his wrongdoing.

The Union

The Union does not dispute that the Grievant committed a serious offense by curtailing mail. It argues that the Grievant cannot be held fully accountable for his misconduct because it occurred during a period of "blackout" produced by a drinking bout the preceding weekend.

The Union's primary argument is that the Grievant's misconduct resulted from an illness that has subsequently been cured. The Union believes that Mr. Watkins' rehabilitation following his discharge is a significant achievement which should be given serious consideration in determining his future with the Postal Service.

At the hearing the Grievant acknowledged that the charges against him were correct. He requested that he be given "one last chance" to resume his duties as a mail carrier in order to finish his career with dignity.

DISCUSSION AND CONCLUSIONS

The issue to be resolved is whether the Postal Service violated the "just cause" provision of the Labor Agreement by discharging the Grievant. Cases of this nature present the Arbitrator with the difficult responsibility of upholding management's right to discharge an employee for proper cause while safeguarding an employee's legitimate interest in retaining his job. Within the framework provided by these competing interests the issues to be resolved in a discharge

case are usually two: Did the Company prove to the Arbitrator's satisfaction that the Grievant engaged in the misconduct with which he is charged; if so, is the discharge penalty appropriate or too severe? The first issue raised by this two-pronged inquiry presents no difficulty. The Union has conceded that the Grievant curtailed mail and the evidence produced at the hearing supports this concession.

The remaining inquiry is whether discharge for this misconduct is justified. The Union contends that the Grievant's behavior is attributable to his alcoholism and that lesser punishment is therefore required. The Postal Service has taken the position that the Grievant's drinking problems had nothing to do with his actions on April 18 and 19.

A careful review of the evidence convinces this Arbitrator that the Grievant's alcoholism was primarily responsible for the misconduct giving rise to his discharge. That the Grievant is an alcoholic and has been one for sometime is undisputed. The Grievant's supervisor was aware of this illness and its effect on Mr. Watkins' work performance for 20 years. His record overall was a good one, with no suggestion but for this incident of mistreating mail that he was anything other than a responsible and trustworthy employee. The only blemishes on his record were his absences of the past two years, and these were clearly related to alcoholism.

The Grievant's behavior on April 18 and 19 was consistent with his previous inability to perform his duties early in the week. Mr. Watkins testified that he had been drinking over the weekend and consequently was not feeling well when he showed up for work on Monday and Tuesday mornings. As usual, he cased and began to deliver his mail, and then realized he could not continue to work. Instead of reporting his illness to his supervisor and requesting permission to go home, as he had done on too many occasions, Mr. Watkins took the undelivered mail home with him with the idea of delivering it later in the week when he felt better. This imprudent action was no doubt prompted in part by his fear of admitting to his supervisor that he was again unable to perform his duties, especially since he had already been given auxiliary assistance for those days.

The Union insists that Mr. Watkins' behavior is attributable to an alcohol-induced "blackout," while the Postal Service characterizes it as a calculated measure to hide his inability to work. This Arbitrator finds it unnecessary to label the Grievant's conduct as one or the other. Alcoholism is a social disease with symptoms additional to chronic drunkenness. Among these additional symptoms are the compulsion to take a drink, impairment of ability and illness due to hangover, and a need to conceal one's problems with alcohol from oneself and others. The Grievant's curtailment of mail, although perhaps not done in an alcoholic stupor, is clearly

attributable to one or more facets of alcoholism. This much is implicit in a statement made by Mrs. Watkins' supervisor at the hearing: "If he would overcome his alcoholic problem, I believe that he would be a good employee." (Tr. p. 63)

In seeking modification of the discharge the Union stresses the Grievant's rehabilitation while the Company insists that the facts must be taken as they existed on the date of removal. Arbitrator Paul Prasow in a similar case involving the reinstatement of a recovered alcoholic ruled as follows on this admittedly difficult issue:

It is true that in most grievance arbitrations, the basic issue to be determined is whether management's action was proper based upon the facts known at the time the action was taken. Normally the clock stops at that moment, and anything that occurs subsequently is irrelevant. However, there are occasions, especially in discharge cases, where events occurring after the incident giving rise to the grievance are given some weight by arbitrators. For example, the conduct of an employe after he has been discharged may be considered significant either for its mitigating or aggravating influence in determining whether the penalty should be modified.

It is a well accepted principle in arbitration and industrial relations that the primary purpose of industrial discipline is not to inflict punishment for wrongdoing, but to correct individual faults and behavior and to prevent further infractions. Both the Company and the employe lose when the employe is terminated. It is for this reason that discharge is normally invoked only as a last resort, after it has become abundantly clear that corrective measures will not succeed. (Texaco, Inc. and Oil Chemical & Atomic Workers International Union, Local 1-128, 64-2 ARB ¶ 8443)

The Arbitrator believes that this is one of those cases where events after the incident are properly given some weight.

The Grievant's misconduct of curtailing mail is severe. Both federal law and Postal regulations make it plain that this is one of the more serious infractions which a mail carrier can commit. Nevertheless, the Arbitrator is persuaded that although the Grievant's conduct cannot be condoned, the presence of substantial mitigating factors requires leniency. An examination of similar cases conclusively demonstrates that even serious misconduct will not merit discharge if appropriate mitigating circumstances exist. See USPS and NALC, Branch 825 (Discharge of Stephen Turley), March 14, 1978, Decision of Albert E. Epstein.

The reasoning in the above-cited arbitration award is instructive here. In that case the employee suffered from a different illness (physical and emotional difficulties stemming from surgery that resulted in a colostomy). His health problem, like that of Mr. Watkins in the instant case, caused him to miss work and to fail to complete his work because he didn't feel up to it. On the day in question he took the mail out, but felt ill and decided he couldn't deliver it. Instead of taking it back to the Station (fearing the consequences because of previous warnings about doing his assigned work) he put the undelivered mail in his personal car and later threw it in a trash container. The arbitrator, after considering all the circumstances, decided that "this one act of serious misconduct did not appear to be the act of a

person operating under normal physical and emotional conditions"; that his condition on the day in question justifies leniency; and that "mitigation would be humane and equitable under the circumstances." The employee was reinstated without back pay.

As explained above, the Arbitrator is convinced in this case that but for Grievant's drinking problem he would not have committed the very foolish and serious acts involved. The evidence indicates that he now fully appreciates the problem and, through great personal effort, has complied with the requirements of the rehabilitation program and maintained sobriety for a long period of time. The record in this case, including Grievant's straightforward testimony, indicates that the prognosis for the future is good. These factors along with Grievant's twenty years of service persuade this Arbitrator that discharge was too severe in this case.

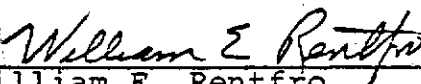
This does not mean that the misconduct here can be condoned or its seriousness minimized. Also, it must be recognized that there are limits to which any employer can be expected to go to help an alcoholic employee overcome his problem. The time does come when an employer may reasonably conclude that its efforts to encourage rehabilitation have failed and that prospects for substandard improvement are so slim that the employment relationship must be terminated.

In view of the above, it is determined that Grievant should be reinstated, but without back pay, and with the period since his termination recorded as a disciplinary layoff.

It is hoped that reinstatement of the Grievant will be beneficial to the Postal Service and the Grievant; that Mr. Watkins will prove by his actions and his uninterrupted continuation in the rehabilitation program that this decision is reasonable. Should this not prove to be the case, and Grievant again becomes unable to properly perform his duties because of involvement with alcohol, he should understand that he has had his last chance, and termination would be warranted.

AWARD

The removal of the Grievant, Oscar Watkins, was not for just cause. He is reinstated without back pay.



William E. Rentfro
Arbitrator