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IN THE MATTER OF AN ARBITRATION)	Case Nos. WLN-5B-D-23625 and
Between)	WLN-5B-D-23636 S. Casey
)	ES&R.
)	
UNITED STATES POSTAL SERVICE,)	
SAUGUS, CALIFORNIA)	
)	
And)	AWARD OF THE ARBITRATOR
)	
NATIONAL ASSOCIATION OF LETTER)	
CARRIERS, AFL-CIO)	September 3, 1985

This matter came on for hearing in Saugus, California, on August 6, 1984, before Arbitrator William E. Rentfro, selected by the parties to hear and render a final decision on the issue in dispute.

The Union was represented by Leroy Collier, President of Branch 2200, NALC. The Postal Service was represented by J. Carson Moore, Labor Relations Representative.

A Letter Award was issued by the Arbitrator on September 14, 1984, setting aside the discharge, and reinstating the Grievant with a 30-day disciplinary suspension. This full opinion will supplement and further explain the Letter Award.

THE ISSUE

Was the Grievant, Sue Casey, emergently suspended and subsequently removed for just cause? If not, what is the appropriate remedy?

STATEMENT OF THE CASE

The Grievant, Ms. Sue Casey, has been employed by the Postal Service for approximately fourteen years, most of that

time as a full-time letter carrier. She has had an unblemished work record during the entire term of her employment.

On February 8, 1984, an incident occurred between Grievant and Street Supervisor Lou Mosley that is the subject of this arbitration. The confrontation on that date resulted in Casey being removed from the Postal Service. That incident was the last in a series of conflicts and encounters that had arisen between Ms. Casey and Mosley over the last decade.

Extensive testimony was presented at the hearing concerning past incidents. This history is important to a full and fair consideration of this case and the justification for the penalty of removal.

The first incident occurred early in the Grievant's career with the Postal Service when she was working as a part-time flex. Ms. Casey testified that Mr. Mosley approached her, put his arm around her and said, "I'll tell you how to become a supervisor." Mosley over the years had made other sexually suggestive remarks to the Grievant.

Mosley's behavior was corroborated by the testimony of a Ms. Terry Carter, a carrier for six years. She similarly testified that when she first began working for the Postal Service she was afraid to work alone with Mosley because he was constantly touching her and making suggestive remarks. Neither woman filed a formal grievance against Mosley, but both complained about his behavior to a supervisor or union shop steward. The response was, "That's just the way Lou is."

The next series of incidents all occurred during the course of street supervision by Mosley of Ms. Casey and other letter carriers. Street supervision entails observation of carriers for safety violations and driving practices. The supervisor is supposed to write up his observations on a 4584 form and submit it to the carrier's immediate supervisor, who will decide what to do with the report, and to directly approach the carrier.

The first street supervision incident occurred between Mosley and the Grievant when she was eating lunch at an outdoor restaurant with four other women letter carriers. Casey testified that Mosley approached them, told them he was watching them and that he was "writing them up." Casey, annoyed by Mosley's action, told her supervisors what happened and received permission to eat her lunch at home. After Grievant began eating at home, Mosley started coming to her house during the lunch hour.

Approximately three years ago Mosley came to Grievant's door during the lunch hour, rang her doorbell, and then looked in the windows. When she answered the door, Mosley told her she had been home an excessive length of time. According to Casey, Mosley got very upset and put his foot in the door. She testified she had to kick his foot out, slam the door and lock it. Mosley similarly came to her door on another occasion and told her he was writing her up. On other occasions Mosley

would park outside of her residence observing her house or her postal vehicle during her entire lunch period. Although Mosley had stated on three of these occasions that he was "writing her up," she never received any of the write-ups nor did her supervisors approach her with any complaints.

While Grievant did not file a formal grievance against Mosley, she did make several complaints to her supervisors about Mosley's behavior. Mary Vautrain, a Union Shop Steward, testified that she had known Grievant for six years and that during that time she had received several complaints from her regarding Mosley's supervision. Grievant told her that she felt unfairly and unjustly supervised, that Mosley was observing her a lot, and that she felt harassed. Vautrain went to the Grievant's immediate supervisor, Henry Wong, and told him of the complaints regarding Mosley. Wong told her that it was an unwritten agreement that when a manager from another office observed a carrier on the street doing something that he thought they weren't supposed to do, that he was supposed to write them up and send the report to the immediate supervisor. He told her they were not supposed to directly approach the carriers. However, Wong did not follow up on the Grievant's complaints.

The Grievant herself made similar complaints to the Postmaster, Francis Claffey. Claffey testified that in November of 1982, Ms. Casey had come to him complaining about

the character of the street supervision at her residence. He said that she told him that she felt harassed. Claffey did not investigate or follow up on the complaint.

The Grievant testified that because she was becoming increasingly afraid of Mosley, she and her husband decided to move to a new home. They did not put in a change of address with the post office and instead got a P.O. Box. The Grievant received continuing permission from Henry Wong to take her lunch at home.

On February 8, 1984, the incident that is the subject of this grievance occurred. Ms. Casey was observed and followed by Mosley to her new address at approximately 12:00 p.m. Because it was unusual to see a postal vehicle parked at a private residence at that time of day, Mosley returned to his post office and placed a call to Henry Wong. Wong told Mosley that the postal vehicle belonged to the Grievant and that she had authorization to take her lunch at home. Mosley asked Wong if he wanted him to follow up on the street supervision of Grievant. Wong told Mosley to go ahead if he had other business in the neighborhood, but to just write up his observations and give them to Wong, not to approach or harass the Grievant--just to "leave it alone."

Letter carriers generally receive thirty-minute lunch periods. On the day in question, however, Grievant had a medical emergency and took approximately one hour for lunch.

Thus, when Mosley returned to the Grievant's house he found her jeep still parked in the driveway. Shortly thereafter Grievant emerged from her house and Mosley followed her to a gas station. Grievant pulled up to a pump to get gas and Mosley pulled up directly behind her, parked his car, and shut off the ignition.

It was at this point that Grievant noticed Mosley. She exited her Jeep calling Mosley's name. Mosley testified that he saw Grievant coming toward him. She testified that Mosley never looked up as she called his name. In either case, when she arrived at his car she reached in the window and grasped him by the shirt and tie area. In the process a button on his shirt either popped off or got torn off. Angry words were exchanged. The Grievant swore at Mosley, asked him why he was following her, and told him to leave her alone and stop harassing her. Mosley also testified that Grievant told him that he was the reason she had moved. As Mosley was attempting to leave, somehow Grievant's finger made contact with Mosley's face, leaving a red mark. Grievant testified that as she was trying to back away he turned his face into her finger which she was pointing at him. Mosley testified that the Grievant deliberately poked him in the face, creating puncture wounds. Mosley then told the Grievant, "See what you did, we'll see about this." Both parties returned to their respective post office stations.

Mosley reported the incident to Herb Gilliard, the Station Manager, who was acting as Postmaster because Claffey was on vacation. Gilliard decided that pictures should be taken of the "cheek wounds." Pictures were taken approximately thirty minutes after Mosley's return to the post office. Gilliard then called for advice concerning the proper course of action. He was told to call Henry Wong and place Grievant on immediate administrative leave pending a further investigation of the incident. Gilliard called Wong with these instructions and told him Mosley was still bleeding from the face.

When Grievant returned to her post office, Wong immediately approached her and asked her what happened. She told Wong that she had barely touched Mosley. Wong called E&LR and confirmed that the Grievant should be placed on indefinite administrative leave. Wong testified that he had no trouble with the fact that Grievant had extended her lunch period, but was only concerned with the incident. He stated that Grievant was a good worker and that he was willing to take her back.

When Francis Claffey, the Postmaster, returned from vacation Gilliard informed him of the incident. Claffey concurred in the decision to place Casey on administrative leave so that she would not have to suffer a pay loss during the investigation. After receiving the Postal Inspector's report, the decision was made to remove her. Casey was sent both a

removal letter and a letter placing her on emergency leave, non-pay status. The emergency leave went into effect on March 13, 1984. Claffey testified that both he and Wong concurred in the removal decision despite Grievant's excellent work record.

After she was placed on leave on February 8, 1984, Grievant made an appointment with her gynecologist. She has been diagnosed as having Premenstrual Syndrome, from which she was suffering on the day of the incident. Her doctor's statement indicates that the condition could have the effect of making Grievant extremely nervous and irritable on the day of the incident.

POSITIONS OF THE PARTIES

Postal Service Position

The Postal Service maintains that the street supervision by Mosley was proper; that Grievant's behavior amounted to an intentional and unprovoked assault made without justification. It asserts that if Grievant had a complaint about Mosley, she should have filed a formal grievance. The Service further contends that despite Grievant's unblemished work record, removal was proper. It characterizes the offense as most serious in nature, striking at the heart of the employment relationship. It argues that any discipline less than removal would effectively condone Grievant's behavior, undermining the Postal Service's ability to conduct its business.

Union Position

It is the Union's position that the emergency suspension and subsequent removal of Grievant were not for just cause. It contends that Grievant's actions on February 8, 1984 were caused by a cumulative feeling of fear and harassment by Mosley. The Union, while acknowledging the seriousness of Grievant's behavior, argues that there are several mitigating factors. Grievant was suffering from Premenstrual Syndrome, a condition that contributed to her inappropriate behavior. By failing to follow up on the complaints about Mosley, the Postal Service has contributed to an unhealthy working environment where incidents of this sort are more likely to occur. It is argued that management did not give sufficient weight to Grievant's good work record and long years of service, and requests that Grievant be reinstated with full back pay.

DISCUSSION AND CONCLUSIONS

While Grievant is unquestionably guilty of misconduct, her actions, in light of significant mitigating factors, do not warrant the imposition of the harsh penalties of emergency suspension and removal. The Arbitrator cautions Grievant, however, not to mistake reinstatement as approval of her misconduct in this case.

In general, an employee can be disciplined up to and including discharge for engaging in aggressive and abusive

interaction with a supervisor, in particular, striking a supervisor. However, each case must be examined in the light of its specific facts and circumstances. There are two important mitigating factors in the present case: Grievant's past work record, (2) management's contributory actions.

Grievant has a 14-year exemplary work record. She has never been the subject of disciplinary action. Her supervisors speak of her as a good worker, one they would be "glad to take back." It is quite obvious that this factor was not given sufficient weight by Postal management in making the decision to remove.

The evidence also indicates that management bears some of the responsibility for the incident involved in this case. Local management has contributed to an unhealthy and oppressive working environment in failing to follow up on the complaints of Grievant and others regarding street supervision, and in condoning Mosley's Sherlock Holmes behavior.

The practice of having supervisors from every post office watching and supervising carriers on the street and reporting any infractions to the carriers' own supervisors is an innocuous enough policy. However, this street supervisor went well beyond the parameters of that policy. Mosely had been cautioned not to approach or harass the carriers. Despite the warning, he continued to engage in what can only be termed as harassing tactics.

Grievant's frustration with her supervisor's failure to act and her anger at being "tailed" into the gas station on February 8, 1984 is understandable. Nevertheless, she should have gone through the formal grievance procedure rather than attempt to take matters into her own hands. This fact does not in any way excuse the Postal Service's negligence for failing to attempt to remedy the situation prior to the filing of a formal grievance. It is unrealistic for the Postmaster to assume that he may not investigate or look into an employee's behavior unless a formal grievance has been filed. A decision that the street supervisor's behavior fell within the realm of his duties is one thing; a total failure to investigate the allegations is another.

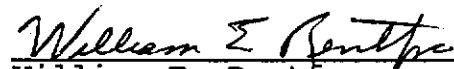
The Postal Service is legitimately concerned with the setting of bad precedent. However, reduction of the penalty in this case is not likely to be misinterpreted by other employees. The incident did not take place in the presence of other employees. Moreover, Grievant has shown genuine concern and remorse over her loss of control. Her contacting a doctor the day of the incident reinforces her desire not to allow an outburst of this type to occur again, and is to be considered in mitigation of the penalty.

It is the Arbitrator's opinion that whether or not the Grievant's nails were long enough to inflict the alleged "wound" (a detail disputed in the testimony), or whether she deliberately poked the supervisor does not change the

focus of the inquiry; was discharge a reasonable penalty in light of all the attendant circumstances? It should be noted that the color photographs of Mosley taken 30 minutes after the incident do not picture more than two red marks on his cheek--nothing approaching a bleeding abrasion. While typically an offense of this type can justify discharge, the Grievant's long years of service, her exemplary work record, and the Postal Service's contributory responsibility all serve to justify a reduction in penalty to a 30-day disciplinary suspension.

AWARD

For all of the reasons expressed above, the Grievant, Sue Casey, was not emergently suspended and removed for just cause. She is reinstated without loss of seniority or other benefits and with back pay, less a thirty-day disciplinary suspension and any earnings or unemployment compensation received in the interim.


William E. Rentfro
Arbitrator

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September 14, 1984

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23635

Re: Case No. WLN-5B-D-~~23635~~ - Removal
Case No. WLN-5B-D-23636 - Emergency Suspension
S. Casey - Saugus, CA

LETTER AWARD

The Arbitrator has carefully reviewed all the evidence and the arguments of counsel in this matter. Since it is impossible to complete a full opinion before leaving the office on an extended trip, this Letter Award is submitted at this time to avoid further delay and monetary liability. A full Opinion in support of the Award will be submitted shortly after the Arbitrator returns in mid-October.

It is the conclusion of the Arbitrator that the behavior of the Grievant in this matter was a serious offense, not to be condoned and calling for significant discipline. However, a full consideration of all the circumstances, including the "magnitude" of the "assault," a measure of provocation, and the long and excellent work record of the Grievant, compels the conclusion that the penalty of removal is excessive and not supported by just cause. The Grievant, Sue Casey, is ordered reinstated without loss of seniority or other benefits and with back pay, less a thirty-day disciplinary suspension and any earnings or unemployment compensation received since removal.

Yours very truly,

William E. Rentfro
William E. Rentfro
Arbitrator



cc: R. J. Lowe - Postal Service
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SEP 18 1984