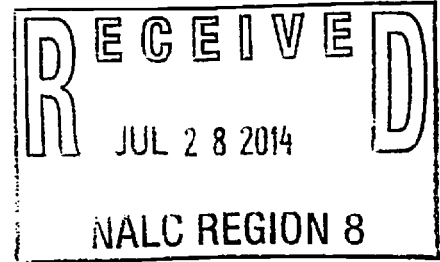


REGULAR ARBITRATION

In the Matter of the Arbitration)
)
 Between)
)
UNITED STATES POSTAL SERVICE)
)
 And)
)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS, AFL-CIO)

USPS Case #G11N-4G-D 14114250
 DRT #08-306654
 Branch Case #M1514

Grievant: Jacob Saenz



BEFORE: TOM MAIER, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Bertha A. Brumfield

For the Union: Corey L. Walton

Place of Hearing: Mandeville, LA

Date of Hearing: June 25, 2014

Date of Award: July 24, 2014

AWARD: Sustained

PANEL: Southern Area Region 8

RECEIVED

AUG - 5 2014

**VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS**

AWARD SUMMARY

The grievance is sustained. The assertion that the Grievant committed fraud by using and getting paid for USPS FMLA sick leave while working and being paid at his personal place of business on February 3, 2014 was not established or demonstrated.

A handwritten signature in cursive script, appearing to read "Tom Maier".

, July 24, 2014

INTRODUCTION

The instant case is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions set forth in the Collective Bargaining Agreement of the parties. Hearing was held in Mandeville, LA on June 25, 2014. Both advocates argued the case orally at the conclusion of the hearing. The Union raised a procedural question of arbitrability at the onset of the hearing. All witnesses were sworn or affirmed. The parties stipulated that the matter is properly before the Arbitrator.

THE QUESTION OF PROCEDURAL ARBITRABILITY

The Union contended that Management's case against the Grievant was fatally flawed by virtue of the fact that someone other than Mandeville, LA Postmaster Moschitta was the reviewing/concurring official on the Notice of Removal in violation of Article 16 Section 8 of the National Agreement. The Union insisted that this action in and of itself has poisoned the well of this discipline and asks that the Arbitrator sustain the grievance in its entirety without considering or addressing the merits of the case.

Article 16 Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

In post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

Postmaster Moschitta was in fact not the reviewing/concurring official in the Notice of Removal and the Mandeville, LA Post Office certainly has more than 20 employees. However, Postmaster Moschitta testified during the hearing that he appointed Postmaster Richard Palisi to review and concur on the removal action.

The Agreement and the JCAM are silent concerning *who* must be a designee or *how* that individual is appointed. Absent any evidence showing how Palisi's appointment harmed the Union's case or poisoned the well it cannot be determined to have caused a fatal flaw. The grievance is arbitrable.

ISSUE:

(As stated in the Step B Impasse)

- Did Management violate Article 16 of the National Agreement and Handbook M-39 Section 115.1 via Article 19 of the National Agreement when City Letter Carrier Jacob Saenz was issued a Notice of Removal dated February 27, 2014 for "Unacceptable Conduct"? If so, what is the appropriate remedy?
- Did Management violate Article 17.3 or 17.4 or 31.3 or Step 4 decisions M00454 and M00988 when it failed to allow Shop Steward Norbert Melan to individually interview Supervisor's Cary St Angelo and Andrea Cheramie after the request to interview them was approved by the Postmaster? If so, what is the appropriate remedy?
- Did management violate Article 17.3 or 17.4 or 31.3 or Step 4 decisions M-00225 and M-00864 when it failed to give Formal A rep Norbert Melan ample enough time to interview OIG agent Chris Nugent? If so, what is the appropriate remedy?

FACTS

On Monday February 03, 2014, at approximately 9:45am, Jacob Saenz (hereinafter referred to as Mr. Saenz or the Grievant) submitted a PS Form 3971 for FMLA sick leave. He was later paid sick leave for February 3, 2014. Supervisors Cheramie and St Angelo decided to conduct an investigation based on employee reports that when Mr. Saenz took FMLA sick leave he would work at his personal place of business. Mr. Saenz also left with the keys to the LLV. The supervisors arrived at the Grievant's place of business at approximately 12:30pm and observed the Grievant's personal vehicle parked in the parking lot. They took photographs of the vehicle shortly after 1pm. At approximately 2:30pm they entered the Grievant's place of business. They recorded the event on video. They observed Mr. Saenz behind the counter wearing a black T-shirt embroidered with the company business logo. They asked him if he had the keys to the LLV truck. Mr. Saenz replied he did not have the keys and told them to leave his place of business. They complied. Mr. Saenz called Supervisor Cheramie less than 10 minutes later to report that he did in fact have the LLV keys. He was told to bring them in to work with him the next day. On February 5, 2014 an investigative interview (II) was conducted with the Grievant and his shop steward where he was confronted with questions regarding his activities on February 3, 2014. He was asked to turn his keys in and leave the premises following the II. He

was later placed on Administrative leave. A Notice of Removal was issued to the Grievant on February 27, 2014 charging him with unacceptable conduct.

RELEVANT CONTRACT PROVISIONS

Article 3. Management Rights

Article 10. Leave

Article 15 Section 2B. Grievance Procedure

Article 16. Discipline Procedure

Article 17.3 Rights of Stewards

Article 19. Handbooks and Manuals

Handbook F-21 Time and Attendance. 331 Definition

ELM 513 Sick Leave. 513.312 Restriction

ELM 661.2 Application to Postal Employees

ELM 665 Postal Service Standards of Conduct. 665.13 Discharge of Duties

ELM 665.16 Behavior and Personal Habits

ELM 665.6 Disciplinary Action

662 Federal Standards of Ethical Conduct. 662.1 Publication

To ensure that every citizen can have complete confidence in the integrity of the federal government, each federal employee, including each postal employee, must respect and adhere to the principles of ethical conduct set forth in 5 CFR 2635, 5 CFR 7001, and 39 CFR 447.

5 CFR 7001. Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service

POSITION OF THE PARTIES

Management:

Management contends they had just cause to issue Jacob Saenz a Notice of Removal for unacceptable conduct.

Management contends the Grievant was inside his place of business working from approximately 12:30pm to 2:30pm on February 3, 2014. The Grievant violated the ELM Section 513 when he requested FMLA Sick Leave and reported to his place of business. The Grievant's action was fraudulent as he received pay via sick leave from the Employer and then again by his company when he reported to his place of business.

Management contends there is no medical evidence presented in the Grievant's FMLA doctor's diagnosis to support the Union's/Grievant's theory that he has to be in the care of a caregiver during his asthmatic episodes.

Management contends that the Grievant violated the Employer's policy on Violence in the Workplace.

Management contends the Grievant's actions violate rules and regulations as promulgated under the Employee and Labor Relations Manual (ELM), Part 513.312, Part 661.2.I, Part 665.13, Part 665.16, Part 666.6 and the F-21 Handbook, Time and Attendance, Part 330.

Management contends that the Grievant's actions violate 5 CFR 2635 and 5 CFR 7001.

Union:

The Union contends Management did not have just cause to issue Jacob Saenz a Notice of Removal for Unacceptable Conduct.

The Union contends the degree of discipline imposed was punitive rather than corrective.

The Union contends that the issues were not properly investigated.

The Union contends that the Grievant upheld the principals of ethical conduct as referred to in the Notice of Removal.

The Union contends the Grievant was following his doctor's instructions and did nothing to violate his FMLA approved restrictions.

The union contends the Grievant's activities on February 3rd did not violate any of the regulations as listed in the Notice of Removal.

The Union contends that the Grievant was never asked any questions during the II relating to the Employer's policy on Violence in the Workplace nor was there any evidence introduced to show a violation.

The Union contends Management violated the Union and Grievant's due process rights when they refused to be interviewed by the Union without a witness.

The Union contends the Grievant had a medical certification releasing him from postal work on February 3, 2014.

The Union contends management has no evidence showing Carrier Saenz working at the store on the afternoon of February 3, 2014.

The Union contends that the Grievant is the owner of the company. He is not an employee of the company. He does not receive pay from the company. He is not gainfully employed by the company.

The Removal Notice

Because it was heavily referred to by both parties during the hearing the following is quoted from the Notice of Removal.

....Your conduct was unacceptable when you completed a PS Form 3971 requesting and using sick leave while working at your personal business.

I informed you the ELM, Part 661.2 addresses application to postal employment. (L) states prohibition against fraud and or false statements in a government matter. I asked do you consider what you were observed doing, requesting sick leave and then reporting for duty at your private business, fraud. You said you didn't get paid and no you are not employed. You also said you were there because your wife/caretaker was there. I informed you that ELM 513.312 states in pertinent part: An employee who is in a sick leave status may not engage in any gainful employment unless prior approval has been granted by appropriate authorities. I asked can you offer an explanation for this very serious violation. You said it is not your employment and that your caretaker was there. You also said that is what you guys are assuming so that is fine. You also said that you told the truth. Your explanation of your severe and egregious misconduct is unacceptable and doesn't excuse or mitigate your unacceptable conduct.

The Postal Service remains steadfast in its commitment to ensure a safe workplace environment for all of its employees. All employees are required to maintain an atmosphere of dignity and respect. Your actions violate this requirement.

The Postal Service has an obligation to provide a violence free and safe work place to all employees. To accomplish this, the Postal Service's policy prohibits employees from intimidating or threatening conduct. This policy, the Postal Service Joint Statement on Violence and Behavior in the Workplace was designed to foster a respectful work environment free of harassment, intimidation, and bullying and ensures all postal employees work in a safe, violence-free environment. Postal employees are prohibited from conduct which impedes the efficiency of the Service. Your actions were counter-productive and impede our efforts to maintain reliable and efficient service to our customers. Therefore, your removal is warranted.

By your actions, you have violated the following part(s) of the Employee and Labor Relations Manual:

Part 665.13 "Employees are expected to discharge their assigned duties conscientiously and effectively."

Part 665.16 "Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal employees be honest, reliable trustworthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notoriously disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee, in addition to any other penalty imposed pursuant to statute. Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment."

Part 666.6 "Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in 66."

You have also violated the following parts of Handbook F-21, Time and Attendance:

Part 330 "Sick leave ensures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment." (Jt. Exhibit 2, pp.61-63)

The Union has additionally requested that the standard of proof necessary to sustain the charges against the Grievant be set at proof beyond a reasonable doubt. The Union argues that fraud is a serious charge constituting criminal conduct and therefore the burden of proof should be set at the highest level.

The Arbitrator will deny the request. The beyond a reasonable doubt standard should be reserved for the most egregious circumstances involving alleged criminal conduct and issues of moral turpitude. But since sustaining the charges against the Grievant would lead to loss of employment and a tarnished reputation, especially because the Grievant is a business owner in the community, the Arbitrator will apply the clear and convincing standard of proof rather than a mere preponderance of evidence standard. In short, evidence and testimony must be of sufficient quality to clearly convince the fact finder of the assertion(s) being made.

Relevant Testimony

Supervisor Andrea Cheramie testified as the issuing official for the Notice of Removal. She performed the II and submitted the Request for Discipline. She took the photographs in the

parking lot and filmed activity in the Grievant's place of business. She testified to the activities previously described.

She testified they were delayed in the parking lot before entering the Grievant's place of business because she was on the phone seeking guidance on how to proceed, first with Postmaster Moschitta who referred her to the IG's office, who referred her to the OIG's office who referred her Labor Relations Manager Collier who advised her on what to do and informed her to proceed on her own. She testified that she did not see the Grievant enter or leave his place of business during their observation period. She testified that upon entering the Grievant's place of business she observed him sitting and wearing a black T-shirt with the company logo on it.

Under cross examination Supervisor Cheramie was referred to the typed Investigative Interview questions and handwritten responses as written by Ms. Cheramie, Questions #9 and #10.

- **9. ELM 513.312 STATES IN PART: An employee who is in a Sick Leave status may not engage in any gainful employment unless prior approval has been granted by appropriate authorities. Can you offer an explanation for this very serious violation? Response: It is not my employment. My caretaker was there. That is what you guys are assuming so that is fine.**

10. ELM 662. Federal Standards of Ethical Conduct states: To ensure that every citizen can have complete confidence in the integrity of the Federal Government each Federal Employee including each postal employee must respect and adhere to the principles of ethical conduct set forth in 5 CFR 2635, 5 CFR 7001. Do you feel that the USPS should have confidence in your integrity after your actions on February 3, 2014?

Response: Oh yeah. I don't believe in the integrity of the post office or you people.

Joint Exhibit 2, pp.58-59

She was asked whether she had any evidence of the Grievant receiving payment from his company. She replied none. She was asked if the Grievant consistently worked at his place of business. She replied that she couldn't prove it.

She was asked which parts of the Code of Federal Regulations were violated by the Grievant. She replied all of it. She was given a copy of the cover page of 5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch and asked to identify which subpart(s) were violated by the Grievant. She responded,

- Subpart B – Gifts from Outside Sources
- Subpart C – Gifts between Employees
- Subpart D – Conflicting Financial Interests

She was given a copy of her Disciplinary Action Request (Joint Exhibit 2, pp.157-158) wherein she stated, **“...this employee has committed Fraud and is in violation of numerous ELM provisions including the Standards of Ethical Conduct.”** She was asked specifically what was the Grievant doing when he committed fraud? She responded that she assumed he was working. When asked how the Grievant was violating his FMLA claim she responded that she didn't know. When asked how the Grievant was violating his medical restrictions she responded that she didn't know.

The Grievant submitted a medical release form dated February 3, 2014 stating in relevant part, **Please excuse Jacob Saenz from work today, February 3rd, 2014 as he had an appointment with me here at Northshore Counseling and Wellness Center. I have advised Jacob to not return to work for the remainder of the day. If you have any questions, please feel free to call our office.**

(Joint Exhibit 2, p.125)

When Supervisor Cheramie was asked if she considered the document she responded that she didn't ask for the documentation.

When Supervisor Cheramie was asked how the Grievant violated the F-21 provision quoted in the Notice of Removal she responded that he didn't seem to be incapacitated when she observed him at his place of business.

When Supervisor Cheramie was asked why she refused to be interviewed by the Union she responded that she didn't refuse. She stated that she made herself available on two separate occasions but she insisted that Supervisor St Angelo be present as her witness during the interview.

Supervisor Carey St Angelo testified that he accompanied Supervisor Cheramie to the Grievant's place of business. He was the Informal A management representative.

Supervisor St Angelo testified that he observed the Grievant's car in the parking lot at the Grievant's place of business. Although he did not see the Grievant enter or exit the business he did observe customers going in and out. He testified that he observed the Grievant standing

behind the counter when they walked into the Grievant's store. He was not in postal uniform, he was wearing a T-shirt.

On cross examination Supervisor St Angelo testified that Supervisor Cheramie told him she heard other carriers talking about how the Grievant would go home on sick leave but report to his business instead.

When asked whether the Grievant consistently worked at his personal business or got paid by his personal business Supervisor St Angelo replied, no.

When Supervisor St Angelo was asked if he was absolutely sure the Grievant was standing when he and Supervisor Cheramie entered the Grievant's place of business he replied, yes.

Supervisor St Angelo was given a copy of his Formal A Statement wherein he writes,
"...The reason I investigated Mr. Sanez was due to him doing this several times leaving at around 10:00 and going home sick."

Joint Exhibit 2, p.226

But, when shown a copy of the Grievant's 2013 Form 3972, Absence Analysis he did not find any evidence to that effect.

Postmaster Benny Moschitta testified that he was the Formal A management representative and authored the Formal A Management Contentions. He wrote his contentions based on the supervisors input and what he found in the file. He did not participate in the investigation into the Grievant's activities.

Postmaster Moschitta was given a copy of his Formal A contentions during cross examination. He was directed to his Question #4 and asked to explain what he meant when he wrote see video as it is self-explanatory.

"Question #4 Is it accurate that you determined you were incapacitated and could not perform the functions of your job? Answer: "Due to my FMLA- YES" See video as it is self-explanatory."

Joint Exhibit 2, p.144

Postmaster Moschitta responded, "He didn't look incapacitated in the video."

Postmaster Moschitta was asked if he was aware of any evidence that the Grievant worked at or was paid by his company referring him to Questions #8 and #9 in his contentions.

“Question #8: The ELM 661.25 addresses Application to Postal Employment. (I.) states a prohibition against fraud and or false statements in a government matter. Do you consider what you were observed doing, requesting sick leave and then reporting for duty at your private business fraud? **Answer: I didn't get paid, no I'm not employed, I was there because my wife was there”.** This is another false statement in a postal investigation. Included in the grievance file is documentation concerning the owner and manager of Langley Vapes, LLC. Mr. Saenz is the Agent and Manager, registered agent, etc. Copies attached. (here Mr. Saenz is again fully aware of making false statements in a USPS investigation and he recants none of his statements.)”

“Question #9: ELM 513.312 states in part: An employee who is in a Sick Leave status may not engage in gainful employment unless prior approval has been granted by appropriate authorities. Can you offer an explanation for this very serious violation”, **Answer: Once again, it is not my employment, that's my caretaker”.** That is a false statement in a postal investigation.”

Joint Exhibit 2, pp.144-145

Postmaster Moschitta replied that there was no evidence that the Grievant was paid by his company and he was gainfully employed by virtue of owning the company.

Postmaster Moschitta was referred to Question #10 in his contentions.

“Question #10 ELM 662 Federal Standards of Ethical Conduct states: to ensure that every citizen can have complete confidence in the integrity of the Federal Government. Each - Federal Employee including each postal employee must respect and adhere to the principles of ethical conduct set forth in 5 CFR 2635 etc., Do you feel the USPS should have confidence in your integrity after the actions on February 3, 2014? **Answer: Oh yeah, I don't believe in the integrity of the Post Office or you people”.** I think this provides an accurate explanation for the behavior of this employee.”

Joint Exhibit 2, p.145

The Union produced a copy of 5 CFR 2635 (Union Exhibit 1) and 5 CFR 7001, Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service. (Union Exhibit 6) Postmaster Moschitta was asked to identify the restrictions on outside employment and business activities that the Grievant violated. There were none.

The Union continued to ask whether the Grievant violated any restriction as listed in 5 CFR 7001 and as well as 5 CFR 2635 and the response was no.

Norbert Melan testified that he was the NALC shop steward and Vice President of the Branch who represented the Grievant and authored the grievance.

He testified that he was hampered in his investigation by Supervisors Cheramie and St Angelo because they refused to be interviewed unless they could be interviewed together.

Jacob Saenz testified that on February 3, 2014 he was casing mail when he had an asthma attack. He filled out a 3971, called his wife and then called his doctor for an appointment. He has an approved FMLA condition relating to his asthma condition. He drove to his doctor appointment and was there for approximately 1 hour. His doctor advised him to stay away from work that day as it could lead to another anxiety attack which could trigger another asthma episode. He then drove to his personal place of business, a web development company, where his wife, who is also his caretaker, was working. He took her car because it was an automatic and went home. He returned to his company. He was sitting behind the counter when Supervisors Cheramie and St Angelo came in the store. He and his wife were online looking at asthma relief techniques. He testified that his wife managed the business and that he has never been paid by the company. He testified that he is not gainfully employed by the company.

On cross examination he testified that he is the owner of the company. He called in sick leave early on the morning of February 3rd because he was having an asthma attack. However, by his reporting time he was feeling better and he reported to work. He testified he was not wearing a company shirt. Rather, it was a T-shirt with the company name on it.

The Video

The video is approximately 44 seconds in length. Approximately 27 seconds show the parking lot as Supervisors Cheramie and St Angelo walk from their car to the store entrance. Once inside the door entrance there is an approximately 6 second exchange between Supervisor Cheramie and Jacob Saenz. The remaining video is of the supervisors leaving the store.

The video device is hand-held and the footage is shaky at best. There is no steady footage stream as Supervisor Cheramie is moving the entire time, even during the exchange with the

Grievant. The grievant appears sitting behind the counter on a stool looking at a computer screen and wearing a black T-shirt.

DISCUSSION AND FINDINGS

Having already ruled on the due process Postmaster designee defense taken by the Union, the remaining due process argument regarding Supervisor's Cheramie and St Angelo refusal to be interviewed unless they could be interviewed together bears some comment. While supervisors certainly enjoy the same right as craft employees to have a witness or representative present while being interviewed as the subject or having knowledge of the subject being investigated they have no right to insist on being interviewed together when they are witness to the same event being investigated. By contract the Union has a right to interview witnesses and in the case at bar the Union made a legitimate request to interview the two supervisors who not only witnessed the events leading to the removal of the Grievant, they participated in the events leading to the removal of the Grievant. It is perfectly within the bounds of reason to interview these individuals separately to question and compare their recollections of the events that they were involved in. As it turns out it is not necessary to issue a formal finding on this matter based on my findings in the merits of the case. However, I viewed this refusal as a ploy to avoid being interviewed by the Union.

As it relates to whether or not the Union had ample time to interview OIG Agent Nugent I reject the Union's argument. The OIG played an insignificant role in the case at bar and did not issue an Investigative Report or a report of any kind in this matter. There was no evidence of harm to the Union's defense shown.

It is a risky business and a slippery slope when non-professionals use provisions of law, especially provisions that could be used in criminal proceedings, in a forum outside of the courtroom. At the very least it raises the expectations of the fact finder in matters of evidence and proof and in addition, the level of sophistication of the proceedings. Modern day arbitration became more prevalent during and after World War II as a forum to resolve disputes in a *less formal environment* than a court of law because the courts were overburdened with lawsuits. This allowed knowledgeable non-professionals to engage in dispute resolution in a semi-formal forum with a binding outcome. In the case at bar Management not only relied postal regulations they relied heavily on legal statutes and they quoted from them in pursuing charges against the grievant.

Management built their case against the Grievant on charges that he used postal paid sick leave as a cover to work at his personal place of business. The evidence and testimony falls far short in supporting this theory.

The evidence is the video and the testimony and written statements from eyewitnesses Cheramie and St Angelo. The remaining major participants in Management's case, Palisi and Moschitta did not participate in the investigation but instead relied on their review of the file and the two supervisor's input.

The video shows the Grievant sitting on stool in front of a computer device, perhaps an iPad or similar device, screen. It does not show what is on the screen. There is a 6-second exchange between Supervisor Cheramie and the Grievant that has nothing to do with whether or not the Grievant was working at his place of business.

One supervisor says the Grievant was sitting and the other supervisor was absolutely sure he was standing.

The fact that the Grievant was observed wearing a T-shirt with the company logo on it when the supervisors entered the Grievant's place of business does not prove that the Grievant was working at his company.

Both supervisors made statements and testified that they did not observe the Grievant enter or leave his place of business during their 2-hour observation. This may or may not be a material fact but it is not evidence to support the claim that the Grievant was working.

The evidence of record shows the Grievant was under a doctor's care and acting on the doctor's instructions regardless of whether or not the Grievant looked incapacitated. The fact that Supervisor Cheramie testified that she did not even know what the Grievant's FMLA restrictions were supports a finding against the claim that he was working in violation of his FMLA claim.

There is no evidence or testimony of record that the Grievant violated the Employer's policy on Violence in the Workplace.

The charges against the Grievant cannot be sustained. The assertion that the Grievant committed fraud by using and getting paid for USPS FMLA sick leave while working and being

paid at his personal place of business on February 3, 2014 was not established or demonstrated. The assertion that the Grievant violated his FMLA claim was not established or demonstrated. The assertion that the Grievant worked at his company or was paid by his company was not established or demonstrated. The assertion that the Grievant violated the Employer's policy on Violence in the Workplace was not established or demonstrated. Just cause did not exist to issue the Notice of Removal for Unacceptable Conduct dated February 27, 2014 to Jacob Saenz.

AWARD

The grievance is sustained. The Notice of Removal dated February 7, 2014, issued to Jacob Saenz will be expunged from the record. The Employer is directed to immediately return the Grievant to work and compensate him for all lost wages, including overtime he would have worked, and all entitlements and benefits of employment he would have earned had it not been for the removal action.