S8N-3P-D-17652
R. Dröster
Charleston, SC

C# 01469

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In the Matter of Arbitration Between

UNITED STATES POSTAL SERVICE

- and -

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO, BRANCH 3902

* *

Before the Arbitrator

Raymond L. Britton

In the Matter of	)	
UNITED STATES POSTAL SERVICE	)	S8N-3P-D-17652
AND	)	Ralph F. Droster
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, BRANCH 3902	)	Charleston, South Carolina

APPEARANCES

For the Employer: - J. A. Meitzler, SC Director, E&LR

For the Union: - Judson K. Vaughn, LBA

ISSUE

Was the seven (7) day suspension issued to employee Ralph F. Droster on April 24, 1980, for just cause and in conformance with the terms of the Collective Bargaining Agreement between the parties?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution.

Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for November 14, 1980, and the Hearing was held on that date in the Main Post Office, 83 Broad Street, Charleston, South Carolina, commencing at 9:00 o'clock a.m.

After the Hearing, it was agreed that the parties would file Post-Hearing Briefs with the Arbitrator by placing such Briefs in the mails not later than two weeks from receipt of the affidavit of William B. Davis, Union President. Both the Post-Hearing Brief filed by the United States Postal Service (hereinafter sometimes referred to as "Employer"), and that filed by the National Association of Letter Carriers, AFL-CIO, Branch 3902 (hereinafter sometimes referred to as "Union"), was received by the Arbitrator on December 22, 1980.

SUMMARY STATEMENT OF THE CASE

On April 22, 1980, Mr. Ralph F. Droster, a Part-time Flexible City Carrier at the Summerville, South Carolina, Post Office (hereinafter sometimes referred to as "Grievant"), reported to work at 8:30 o'clock a.m. for duty in the Central Markup Unit. After reporting, the Grievant, at approximately 8:45 o'clock a.m., was informed by Mr. D. Sessoms, Superintendent of Postal Operations at the Unit, that he would carry city route No. 10. On completion of delivery, the Grievant returned to the Post Office at approximately 3:00 o'clock p.m. and around 3:15 o'clock p.m. was informed by Mr. Sessoms to clock off of his carrier card at

3:30 o'clock p.m. and assume clerical duties in the Central Markup Section. According to the Company, despite Mr. Sessoms having informed the Grievant that he was to continue clerical duties in the Central Markup Section until 5:00 o'clock p.m., the Grievant left the building at 4:00 o'clock p.m. without the permission of his supervisor and this was an act directly insubordinate to the Supervisor's instructions to work until 5:00 o'clock p.m.

On the following day, April 23, 1980, Mr. Droster and Supervisor Sessoms were called to the office of the Postmaster, Robert A. Limehouse, Jr., and after conducting an investigation, the latter informed Mr. Droster that he would make a determination as to the taking of further action.

On April 24, 1980, Postmaster Limehouse issued a Notice of Disciplinary Action to Mr. Ralph F. Droster which states in relevant part as follows:

> "You are hereby notified that you will be suspended for a period of seven (7) calendar days beginning Monday, April 28, 1980, at 8:30 AM. This suspension will run thru Sunday, May 4, 1980, inclusive. You are to return to duty on Monday, May 5, 1980 at 8:30 AM, your first normally scheduled tour thereafter.
>
> The reason for this suspension is:
>
> Charge 1. You are charged with insubordination - failure to follow direct orders from your supervisor. Specifically: on April 22, 1980 you were given a direct order at approximately 3:15 PM by Mr. D. A. Sessoms SPO, to work from 3:30 PM until 5:00 PM

in CMU Forwarding. Instead of working your assignment until 5:00 PM as directed, you clocked off at 4:00 PM, abandoned your position and left the workroom floor without official permission.

You have the right to file a grievance under the Grievance-Arbitration procedure set forth in Article XV, Section 2, of the National Agreement within fourteen (14) days of your receipt of this notice."

On May 7, 1980, William B. Davis, Union Branch President, filed a grievance on behalf of Mr. Ralph F. Droster complaining of a violation of, but not limited to, Articles XVI and XIX and stating in relevant part as follows:

"April 24, 1980 at Summerville, Post Office Grievant received a seven day suspension for insubordination. Grievant stated to supervisor that he wanted to leave at 4:00 p.m. Grievant and supervisor entered into a discussion. A phone call to supervisor ended the discussion. Grievant returned to work. Grievant hit off the clock at 4:00. Supervisor never requested disciplinary action. Postmaster wrote and gave his seven day suspension letter to grievant."

The corrective action requested was that the Grievant be made whole and the suspension letter dated April 24, 1980 be removed from his personnel file.

Provisions of the National Agreement entered into as of the 21st day of July 1978, by and between the Employer and the Union and to remain in full force and effect to and including 12 midnight July 20, 1981 (hereinafter referred to as "Agreement") considered pertinent to this dispute by the parties are as follows:

"Article XV
Grievance-Arbitration Procedure

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Section 2. Grievance Procedure - Steps

Step 1: (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office. (b) In any such discussion the supervisor shall have authority to settle the grievance. The steward or other Union representative likewise shall have authority to settle or withdraw the grievance in whole or in part. No resolution reached as a result of such discussion shall be a precedent for any purpose.

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Step 2: (a) The standard grievance form appealing to Step 2 shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.

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(c) The installation head or designee will meet with the steward or a Union representative . . .

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(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article XXXI. The parties' representatives may mutually agree to jointly interview witnesses

where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above."

"Article XVI
Discipline Procedure

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

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Section 2. Suspensions of Less Than 30 Days. In the case of discipline involving suspensions of thirty (30) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended after two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

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Section 6. 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 associate 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."

"Article XIX
Handbooks and Manuals

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance."

POSITION OF THE PARTIES

The Position of the Employer:

It is the position of the Employer that the suspension of employee Droster was for just cause and corrective in nature. The Employer contends that a thorough investigation was made prior to taking the action and in view of the Grievant's willful disregard of the instructions, the action was warranted.

The Position of the Union:

The Union takes the position that in the handling of this case the Employer committed procedural errors in violation of both the letter and spirit of the National Agreement which resulted in the Grievant being denied due process. The Union further contends that the Employer has not satisfied the requirements of just cause in that it has not met its burden of proof as to the charge imposed.

OPINION

In the resolution of this matter, the Arbitrator is initially called upon to determine the standing of the Union claim that management failed to comply with the procedural requirements of the Agreement in the processing of this grievance. Specifically urged by the Union in this regard is that serious questions exist as to the supervisor's authority to settle the grievance at Step 1 and as to the failure of the Postmaster or his designee to deal with Step 2.

These procedural issues raised by the Union are claimed by the Employer to have no standing at arbitration and should, therefore, be rejected. Among the reasons given by the Employer in support of this position is that these issues were never raised nor was management given an opportunity to respond to them at Steps 1, 2 and 3 of the grievance procedure. Particularly noted by the Employer in this regard is that

Joint Exhibit No. 2 evidences that the alleged violations and responses cited in Steps 2 and 3 of the grievance forms and Employer's Step 2 Letter of Decision contain no reference to procedural issues.

As read by the Arbitrator, both Step 1 (a) and (b) of Section 2 of Article XV entitled Grievance-Arbitration Procedure, are couched in express mandatory language. Specifically, Step 1 (a) requires that any employee who feels aggrieved "must" discuss the grievance with his immediate supervisor within a designated time period. Step 1 (b) provides in relevant part that in any such discussion ". . . the supervisor shall have authority to settle the grievance."

Proper compliance by management with these terms of the Agreement was, however, seemingly not achieved, for the record indicates that while the appropriate representatives met at Step 1, substantial doubt nevertheless exists as to the authority of the supervisor to settle the grievance. In this regard, the testimony demonstrates, as evidenced by the admission of the Postmaster under cross-examination, that he initiated the suspension, that the supervisor at Step 1 did not have the authority to settle the grievance without consulting him. This failure of management to comply with the prescribed language of Article XV, Section 2, Step 1 (a) and (b) of the Agreement, which clearly bestows upon Grievant's supervisor the authority to settle the grievance, cannot

properly be viewed as harmless error and non-prejudicial to the rights of the Grievant. To the contrary, in the considered judgment of the Arbitrator, this failure goes to the very heart of the grievance process in that the Grievant is thereby denied the contractual right to have his grievance considered independently and objectively at the outset of the grievance procedure by his supervisor who is generally most familiar with his work record. Any removal of the supervisor's authority to settle the grievance, it seems to the Arbitrator, is violative of the letter and spirit of the Agreement and renders the Step 1 procedure little more than a charade. Accordingly, the Arbitrator finds the assertion by the Employer that the Grievant was not denied due process to be without persuasive merit.

The Employer's further contention as to the absence of notice of such procedural issues and the lack of an opportunity to respond at Steps 1, 2 and 3 of the grievance procedure is found equally unmeritorious, for matters so basic and fundamental to procedural due process as those hereinabove described are not waived or lost by the absence of notice or lack of opportunity to rebut their validity. Nor, for similar reasons, does the Arbitrator find the position of the Employer to be advanced by reference to Article XV, Section 2, Step 2 (d) of the grievance procedure. While the Employer points out that this provision requires full development of

facts and contentions at Step 2, it seemingly overlooks that the emphasis thereof is on cooperation by the parties' representatives in the development of all necessary facts, i.e., disclosure, and does not necessarily encompass matters involving procedural due process as in the case at hand.

It is further urged by the Employer that there was no procedural defect in the issuance of the discipline as no provision of the Agreement bars the installation head (Postmaster) from issuing discipline. In this connection, the Employer notes that the language of Article XVI, Section 6 of the Agreement provides in relevant part that "In no case may a supervisor impose suspension or discharge upon an employee unless the proposed action by the supervisor has first been reviewed and concurred in by the installation head (Postmaster) or designee." The difficulty with this position of the Employer, as viewed by the Arbitrator, is that it fails to distinguish between the requirement of concurrence by the installation head or designee in the imposition of discipline by a supervisor upon an employee and recognition of the contractual authority of the supervisor under Article XV, Section 2 (b) of the Agreement to settle the grievance. In the instance at hand, it convincingly appears that the installation head initiated the discipline rather than concurring therein.

In light of the above findings, this opinion, in the considered

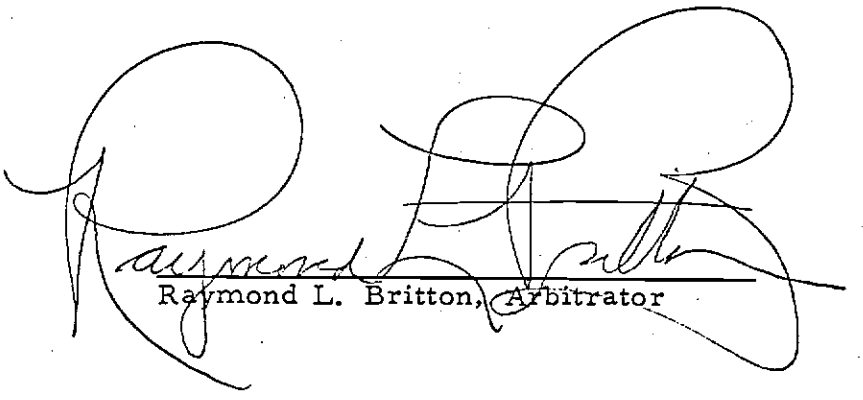
judgment of the Arbitrator, would not be further advanced by his additional consideration as to whether the Grievant was also denied due process in the application of Article XV, Step 2 of the Agreement. For similar reasons, he also concludes that such findings render unnecessary further consideration of the substantive merits of this case as to the charge of insubordination.

AWARD

For the reasons given, the grievance is sustained and it is directed that the Grievant, Ralph F. Droster, be made whole including pay and benefits lost as a result of the suspension.

DATE:

March 25, 1981



Raymond L. Britton, Arbitrator