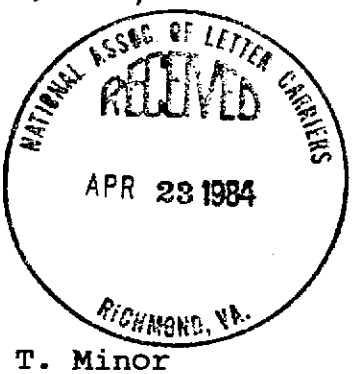
C#04282



REGULAR ARBITRATION PANEL

In the Matter of Arbitration

Between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Grievant: T. Minor

Post Office: Richmond, VA

Case No.: E1N-2U-D 7392

Before Nicholas H. Zumas , Arbitrator

Appearances:

For U. S. Postal Service: Eric Dowdy

For Union: Spencer Reeves

Date of Hearing: February 24, 1984

Place of Hearing: Main Post Office, Richmond, VA

Date Briefs Filed: N/A

By Service:

By Union:

Award: Grievance sustained. The issuance of the Notice of Indefinite Suspension was not for just cause. Grievant is to be reimbursed for all time lost, and the Notice of Indefinite Suspension shall be expunged from Grievent's record.

Date of Award: April 19, 1984

In the Matter of Arbitration Between UNITES STATES POSTAL WORKERS and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	OPINION AND AWARD Grievant: T. Minor No. E1N-2U-D 7392

Background

This is an arbitration proceeding pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and National Association of Letter Carriers, AFL-CIO (hereinafter "Union".) Hearing was held in Richmond, VA on February 23, 1984, at which time sworn testimony was taken, exhibits offered and made part of the record, and oral argument was heard.

Appearances

For the Service: Eric Dowdy

For the Union: Spencer Reeves

Issue

The parties have stipulated that the question to be decided is whether the discipline of indefinite suspension had been imposed for just cause; and if not, what should the remedy be.

Statement of Facts

Grievant, a full-time letter carrier at the Northside station was arrested on February 1, 1983 and charged with rape.

On February 3, 1983, the Service issued a Notice of Indefinite Suspension pursuant to the provisions of Article 16, Section 5 of the National Agreement allowing for such suspensions where there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed.

The facts and circumstances leading up to the issuance of the Indefinite Suspension are critical. In the early morning hours of February 1, 1983, Mr. Wayne Booth, Labor Relation representative at the main post office in Richmond received a call from Mr. William C. Murphy, manager of the Northside station where Grievant was employed. Booth was advised by Murphy that Grievant was being taken downtown by the Richmond police, and he did not know the reason. Booth then contacted the Postal Inspector's Office and asked them to inquire. Later, Inspector Ron Smith called Booth and advised him that there were sex offense charges against Grievant. The next morning, the article appeared in the local newspaper showing Grievant's arrest and identifying Grievant as a postal service employee. Booth then prepared the Notice of Indefinite Suspension after discussing it with the Postmaster. The reasons given by Booth were that the charges were serious, namely a felony which could result in jail sentence; and that Grievant, a city mail carrier, was in contact with the public every day. Booth stated that the decision to suspend was made by him and the Postmaster; station manager Murphy made no recommendation, and was not otherwise involved in the process.

Mr. William C. Murphy, manager of the Northside station, essentially corroborated the testimony of Booth. Murphy testified that Northstation was an installation of about 40 employees. Murphy testified that he did not initiate the

discipline; it was intiated by the Postmaster. Murphy made no recommendation, but he concurred in the discipline imposed. The reason for Murphy's not initiating the discipline was that he was not given the opportunity since the Notice of Indefinite Suspension was issued immediately after the newspaper article appeared on February 3, 1983.

Murphy handled the Step 1 procedure; Booth handled the Step 2.

Grievant had been indefinitely suspended for a period of 54 days. The charges against Grievant were not prosecuted because the complaining witness refused to testify at the trial. Consequently, the Commonwealth Attorney's office dropped the charges. Grievant was immediately returned to service, and was assigned to a different station. This grievance involves the removal of the suspension from Grievant's record, and reimbursement for all monies lost during the 54 day suspension period.

Findings and Conclusions

Central to the resolution of this dispute is consideration of the matter of whether Grievant was denied basic due process rights under the Agreement. After a review of the record, the Arbitrator is compelled to conclude that Grievant was in fact denied his basic due process rights that are explicit in the Agreement between the parties; and that this grievance must be sustained. Under the circumstances, there is no reason to consider the merits.

Article 16, Section 8 is entitled Review of Discipline. It provides:

> "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 supoervisor 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."

As stated by this Arbitrator in Case No. E1R-2F-D 8832:

"Implicit in the language of [Article 16(8)] is the requirement that a supervisor (or a postmaster in a small installation) make a recommendation or decision as to the imposition of discipline before referring the matter for concurrence to higher authority. All such decisions, of course, are subject to review either within or outside the installation depending on the size of the facility. It follows that the decision to impose discipline or the nature of the discipline may not be initiated, as in this particular case, outside the installation by higher authority."

In the instant dispute, Murphy, the Northside station manager, made no recommendation and no decision with respect to disciplining Grievant; he merely concurred in the suspension decision after it came down from the main post office at Richmond.

Additionally, the Step Procedures in Article 15 of the National Agreement are intended to provide an opportunity for the parties to resolve a dispute before proceeding to arbitration. A supervisor at the Step 1 and Step 2 levels has the authority to resolve and settle the dispute after meeting with a Grievant and his Union representative. In this case, Murphy was the Step 1 representative and Booth was the Step 2 representative. Murphy's decisional authority to settle the dispute at this stage was non-existent; it had been improperly usurped by Booth and the Postmaster at the Richmond facility. As such, the grievance procedure, had become "a sham".*/

*/ Case No. E1R-2F-D 8832.

It is clear from the foregoing that Grievant was denied basic due process rights which are essential to a just cause determination. Under the circumstances, there is no aternative but to sustain the grievance.

AWARD

Grievance sustained. The issuance of the Notice of Indefinite Suspension was not for just cause. Grievant is to be reimbursed for all time lost, and the Notice of Indefinite Suspension shall be expunged from Grievant's record.

Nicholas Zumas

Nicholas H. Zumas, Arbitrator

Date: April 19, 1984.