C# 17542

REGULAR ARBITRATION PANEL

In the Matter of Arbitration **between** **UNITED STATES POSTAL SERVICE** **and** **NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO**	**GRIEVANT:** Class Action **POST OFFICE:** Yucaipa, CA **CASE NUMBER:** F94N-4F-C97033030

BEFORE: Charles M. Rehmus, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Michael A. Barrigan, Pacific Area Labor Relations

For the Union: Manuel L. Peralta, Jr., Regional Administrative Assistant

Place of Hearing: Yucaipa, CA

Date of Hearing: July 24, 1997

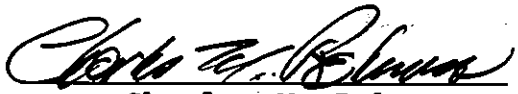
AWARD:

The grievance is sustained. As a remedy:

1. The former Officer-in--Charge, Yucaipa, CA, Charles London, shall cease and desist from violating Article 14 of the National Agreement and the Joint Statement on Violence and Behavior in the Workplace; and,

2. Charles London shall return to the Yucaipa Post Office and hold a stand-up apologizing for his remarks during the September 20, 1996, stand-up; or, as alternative to 2,

3. Charles London shall write a letter to Yucaipa Postal employees including the apology ordered in 2. above; such letter to be posted on the Yucaipa, CA, Post Office employee bulletin board for 120 days.



Charles M. Rehmus

Dated: November 3, 1997

BACKGROUND OF THE DISPUTE

In February, 1992, shortly after a massacre had taken place in the Royal Oak, MI, Post Office, the leaders of the U.S. Post Office and the employee organizations with representation rights therein signed a Joint Statement on Violence and Behavior in the Workplace (Jt.Ex.2, p.32). Four years later, in August, 1996, National Panel Arbitrator Carlton J. Snow awarded in Case Nos. Q90N-4F-C94024977/ 94024038 that the NALC, "shall have access to the negotiated grievance procedure set forth in the parties' collective bargaining agreement to resolve disputes arising under the Joint Statement." The dispute at hand was filed shortly after this award came down, alleging that the levels of stress created by the words and actions of the newly-arrived Officer-in-Charge (OIC) at the Yucaipa, CA, Post Office, Charles London, violated the Joint Statement, Article 14 and other articles of the National Agreement, and provisions of employment manuals.

This grievance against the acts and words of OIC London was taken up orally with a subordinate supervisor in Yucaipa on September 23 and was filed in writing at Step 2 under Article 14.2(c) of the National Agreement on September 25, 1996 (Jt.Ex.2,p.63). Responsibility for the Step 2 answer was referred by Yucaipa OIC London to Robert Garcia, a Labor Relations Specialist from the "San Bernardino Plant" (Jt.Ex.2,p.53). After a Step 2 meeting between Garcia and the Yucaipa NALC Steward, Vickie Jelley-Ponce, and after several agreed-upon delays that followed (Jt.Ex. 2,pp.54-56), Garcia returned the matter to Yucaipa without an answer. No reason

is given in my record for this return. The Step 2 answer was finally made by a 204(b) supervisor in Yucaipa who did not talk with Jelley-Ponce or Garcia before making it. It is not an unreasonable assumption that London wrote or at least was fully familiar with this Step 2 answer. It denied the Union's many allegations against London in full and in detail (Jt.Ex.2,pp.58-61). Thereafter, at Step 3 the grievance was denied on the procedural ground that the Union, "...failed to show the hostile and unsafe condition that existed for the grievance to be appealed directly to Step 2." (Jt.Ex.2,p.3).

The grievance was appealed to arbitration and was heard on July 24, 1997. The Union provided a written Opening Statement and Management responded orally. Witnesses for the Union and Management were affirmed, examined, and cross-examined. The parties' representatives agreed that Post-Hearing Briefs together with citations would be filed on or before September 15, 1997.

The NALC's brief was timely filed. On September 16, 1997, I received a letter from Mr. Peralta stating he had agreed to a telephone request from Mr. Berrigan for the extension of time to file the latter's brief until October 13, 1997. On October 22, 1997, I left a voice-mail message for Mr. Barrigan that I had not received his brief and asking him to inform me of his intention. I also informed Mr. Peralta of this non-receipt. On October 23, 1997, I received a letter from Mr. Peralta, copied to Mr. Berrigan, stating Peralta too had received no further message from Mr. Berrigan and, in light of all the foregoing, asking that the record be

closed and a decision rendered. Hearing nothing further, on October 27, 1997, I placed the Union's Post-Hearing Brief in the mail to Mr. Barrigan and declared the record closed.

ISSUE

At the arbitration hearing each party presented quite different formulations of the issue. That of Management included its procedural objection to this grievance initially formulated at Step 3, as follows:

> Whether this grievance is procedurally defective and therefore not arbitrable?
> If not defective,
> Whether management violated Article 14 of the National Agreement?
> And if so, what is the remedy

The Union's proposed issue includes the several Manuals that are incorporated by Section 19 and other clauses of the National Agreement as well as the Joint Statement that it argues were violated here, as follows:

> Did the Employer violate the Joint Statement on Violence and Behavior in the Workplace and/or Section 115.4 of the M-39 and/or Section 666.2 of the Employee and Labor Relations Manual, and/or Article 1,3,5,14,15, 16,17, and /or 19 of the National Agreement through the actions of Officer In Charge (OIC) Charlie London?
> If so, what is the appropriate remedy?

Upon reflection, I have concluded that there are several issues here that are not fully reflected in either parties' proposals of the issues. First, Management contends there is a procedural objection to this grievance. Second, since the Union filed the grievance at Step 2, it must allege and prove a violation

of Article 14 as Step 2 grievance filings are provided for therein. All other alleged violations, though perhaps relevant to some degree, must therefore be secondary to the alleged Article 14 violation. Third, the basic underlying issue here is whether a violation of the Joint Statement is thereby a violation of Article 14. Fourth, and last, Management raised a substantive arbitrability issue with respect to the remedy requested by the Union. I therefore formulate the issues here as follows:

1. Was the grievance properly filed at Step 2?
2. May a violation of the Joint Statement constitute a violation of Article 14 of the National Agreement?
3. Was the Joint Agreement violated?
4. If the answers to 1-3, above, are affirmative, what, if any, shall be the remedy?

1. PROCEDURAL ARBITRABILITY

Preliminarily, I note that the procedures both parties followd here were obviously affected by the fact that the actions complained of were those of the OIC, or Acting Postmaster, of the small Yucaipa, CA, Post Office. Given this circumstance it is hardly surprising that the grievance procedures followed were a bit unusual.

According to the testimony and notes made at the time by both the Union's steward and the self-characterized "more or less permanent 204(b) supervisor," William Coring, Chief Steward Jelley-Ponce talked with Coring about employees' stress resulting from OIC London's initial stand-up talk with his new subordinates that same day. She voiced what employees viewed as threats London made

during his talk about what was going to happen to the "poor performers" among them. She says Coring said he would talk with London about it, for Yucaipa "was not a bad office at all." Coring says he did not get back to Jelley-Ponce about whatever talk he may have had with London as he did not view her concerns as a safety complaint. The Union did, however, view this as a stress-related safety complaint and, when the OIC repeated his remarks, or "threats" as the Union viewed them, even more strongly in his make-up stand-up talk three days later, it filed a 2nd Step grievance as provided for in Article 14.2(c) of the National Agreement. Article 14.2 deals with Union-Management Cooperation on Safety and Health issues and in pertinent part provides as follows (Jt.Ex.1,p.58):

> If an employee believes he/she is being required to work under unsafe conditons, such employee may:
>
> (a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;
>
> (b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor:
>
> (c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour:and/or
>
> (d) make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor.

In its opening statement Management characterized the Union's filing at Step 2 as noncontractual because, while Steps (c) and (d)

above are stated in the alternative by the use of "and/or" following (c), the same is not true of (a) and (b). Hence (a) and (b) represent necessary steps or "pecking order" that must be utilized before (c) becomes available to the Union. Here, Management argues, no safety-related complaint was made to Management by any employee and hence the Union's use of (c) was improper.

I cannot accept this argument. First, steps (a) through (d) above are all noted as steps that "may" be used to bring an unsafe condition to Management's attention. Logically, either (a) or (b) may precede (c): Neither is set forth as the specific prerequisite to (c). Second, it is traditional in American labor-management relations that an employee may complain personally to Management or through his or her Union representative. Neither is a preferred method and this choice seems to be what (a) and (b) permit. Finally, the Union steward here complained to her 204(b) supervisor of what she believed were improper threats and harassment of employees by the new OIC. Coring may not have viewed this as safety-related complaint but his view is not controlling. The Union's use of 14.2 (c) to file a Step 2 grievance "within 14 dsays" after it received no answer from him is what the National Agreement permits. I find no procedural defect in this grievance.

2. JOINT STATEMENT - HEALTH AND SAFETY

I do not believe it necessary to reproduce the Joint Statement here. It is, or certainly should be, familiar to every Postal employee. It was entered into by Postal Labor and Management

leaders out of grief for the Royal Oak massacre victims and sympathy for their families, but notes this is not enough. It continues: "It is a time for reaffirming the basic right of all employees to a safe and humane working environment....We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace;....there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone."

The conjunction of safety concerns and undue levels of stress in Postal workplaces in these few sentences quoted from the Joint Statement is obvious. When a Union steward comes to a supervisor and complains that an OIC has threatened, bullied, and harassed Postal employees by words and actions, that is a complaint of a Safety and Health violation that can properly be raised as a Step 2 grievance under Article 14.2(c) of the National Agreement. The rejection of this argument in Management's Step 3 Answer to this grievance (Jt.Ex.2,p.3), is simply an example of "winks and nods, or skepticism" as the framers of the Joint Statement feared that some of the Service's 700,000 employees might take it. I do not accept Management's Step 3 answer, "The Union failed to show the hostile and unsafe condition that existed for the grievance to be appealed directly to Step 2." as a valid or appropriate response to this grievance.

3. WAS THE JOINT STATEMENT VIOLATED?

Officer-in-Charge London did not come to Yucaipa wholly

unknown. One Union witness stated he had worked under London as a 204(b) some 20 years earlier and had quit this temporary supervisor position because of the way London had intimidated and insulted him before other workers. Apparently it was also known, at least to Union representatives, that during 1996, while in Riverside, a harassment grievance had been brought against London for referring to some letter carriers in a stand-up as "slugs and rats." The Step 2 settlement of this earlier grievance found this choice of words "deplorable," not to be condoned, and noted that London, along with other supervisors, was currently being trained in a Violence in the Workplace seminar[1] (Jt.Ex.2,p.99).

London began have conflicts with employees a day or two after he became OIC at Yucaipa. He took a 3-inch pile of Vacation Hold mail with him outside onto the break room patio while smoking a cigarette. Upon being told or reminded that taking mail off the floor was against the rules he is said to have replied such rules applied to others but not to him. London's manner toward those who spoke with him about this incident was characterized as "arrogant, abusive" (Jt.Ex.2, pp.24-6).

London's words at his initial stand-up with employees are, for the most part, stipulated. He spoke of the need to listen to three voices--those of employees, customers, and the Postal Service. He

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[1]. Management objected to the introduction into this record of this earlier Step 2 settlement on the basis that under Article 15, Step 2.(e) a Step 2 grievance settlement "shall not be a precedent for any purpose." A precedent is a decision serving as an authoritative rule in future similar cases. The Step 2 settlement was accepted into the record here, not as a precedent for anything, but simply as part of the factual record.

also spoke of the need to reward good performance. Bad performers, London testified he said, "would be improved." The sole contradiction comes here, where four witnesses stated London said, "Bad performers will be fired" or "gotten rid of." This statement was developed further in his make-up stand-up three days later, where London apparently told those present he would fire bad performers; he was not afraid to have trouble with anyone because he would retire in two years. In this context I note the Joint Statement italicized this sentence, *"'Making the numbers' is not an excuse for the abuse of anyone."*

It is undenied that in the original stand-up London reacted with outspoken hostility to a deputy steward who was taking notes of his remarks. It is also agreed that London, when a suggestion was made he thought he had already responded to, repeatedly struck his forehead with the palm of his hand as if to say "duh" or "stupid." This action was considered so egregious by some present that the longtime carrier whose suggestion was treated in this manner was apologized to by both Union and Management representatives after the stand-up.

There is no need to continue employees' and the Union's litany of complaints against this archaic management style. The Joint Statement concludes, "But let there be no mistake that we mean what we say and will enforce our commitment to a workplace where dignity, respect and fairness are basic human rights, and where those who do not respect those rights are not tolerated." I conclude that London's remarks were abusive and hostile and

apparently were made without cause or reason. His remarks and actions did not demonstrate the mutual respect and dignity between supervisors and employees expected in modern personnel systems and commanded by the Joint Statement. They certainly did not reflect the values set forth in the Joint Statement. Because stress and threats are linked to invidious workplace behaviors in the Joint Statement, London's statements and actions also violate Article 14, the Health and Safety article, of the National Agreement as well.

THE REMEDY

The Union asks as a remedy for these violations of the Joint Statement, Sections of the National Agreement, Section 115.4 of the M-39, and Section 666.2 of the ELM that:

1. Charles London be ordered to cease and desist from further violations of the Joint Statement, Article 14 of the National Agreement, and the Manuals listed above.

2. Charles London be ordered to return to the Yucaipa Post Office for the express purpose of holding a stand-up talk to apologize for his conduct during the September 20, 1996, stand-up to state that he will honor all commitments in the Joint Statement.

At the arbitration hearing, Management, while not conceding that any violations had taken place at Yucaipa, argued that National Arbitrator Snow's conclusions regarding remedies for violations of the Joint Statement set forth in Case Nos. Q90N-4F-C94024977/94024038 were "gratuitous dicta." It argued, even assuming violations by Management had taken place, that an arbi-

trator had authority only to make such a finding and must leave the issue of appropriate discipline of supervisors up to Management. Management argued there was arbitral and NLRB authority for this position but did give any specific citations to support it. The Union, in its Post-Hearing Brief, cited and attached four awards from three Postal arbitrators affirming that positive remedies could be ordered in arbitration awards dealing with violations of the Joint Statement.

I have read the awards cited by the Union and am familiar, from citations at other Postal hearings, with the fact that Postal arbitrators do not agree on whether they can order affirmative remedies against supervisors. This conflict appears to arise because of a confusion between the National Agreement and the Joint Statement. Managers and supervisors are excluded from the coverage set forth in Article 1 of the National Agreement. I and other arbitrators have held that where a manager or supervisor has either unintentionally or delibrately violated a bargained agreement, it is not appropriate for an arbitrator to make a punitory award vis-a-vis the offending management official.

I think, however, that this same logic does not apply to violations of the Joint Statement. It was not a bargained agreement but an order given to all Postal employees by their managers and the employee organizations that represent them. I also think Arbitrator Snow's award regarding remedies for violations of the Joint Statement makes this very clear. This award was not dicta for the issue presented to Snow included that of the

appropriate remedies. Snow found it logical to presume that the parties intended to enforce the Joint Statement against both employees and managers. Since it did not provide any alternative mechanism, he found they must have intended to use the negotiated grievance procedure in the National Agreement for this purpose. He noted the language of the negotiated grievance procedure did not exclude but rather permitted its use for such alternative purpose. Finally, with regard to any who violated the Joint Statement, Snow concluded, "...arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her duties."

In the case at hand the Union asks as a remedy for the violation by a supervisor that a cease and desist order plus an apology to the employees involved be made. It shall be so ordered.



Charles M. Rehmus