

C# 10883

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration
 between
 UNITED STATES POSTAL SERVICE
 and
 NATIONAL ASSOCIATION OF LETTER CARRIERS
 AFL-CIO

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 * Grievant: Robert Wallis
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 * Post Office: Barrington, RI
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 * Case No.: N7N-1F-D-31654
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 * GTS No. 7004
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 * NALC Case No.: 1490 BAR
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BEFORE

APPEARANCES

For US Postal Service

C.M. RIZZO - Labor Relations
 Representative, Field

For Union

PAUL MULCAHY - Regional Administrative
 Assistant, NALC

Place of Hearing: Barrington, RI

Date of Hearing: April 16, 1991

Award: The grievance is sustained.

Date of Award: June 1, 1991

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BACKGROUND OF THE CASE

Robert Wallis, the Grievant, is employed as a Letter Carrier in Barrington, Rhode Island. He has been employed by the Postal Service since 1981 and has worked as a Letter Carrier since 1983. The Grievant has had some difficulty as an employee in the past, but did not run into serious problems until 1986. He has been disciplined a number of times. The Grievant perceived the discipline to be harassment and filed many grievances, E.E.O. complaints, and the like.

The Union interceded on the Grievant's behalf on numerous occasions throughout his Postal career. On April 13, 1990, a settlement agreement involving actions initiated by the Postal Service as well as by the Grievant, was signed by the parties. That settlement agreement reads as follows:

The Grievant; Branch 57 N.A.L.C. and management agree to the following settlements:

1. The two fourteen day suspensions (Gr#'s 11-90 and 121-89) are not affected by this settlement. They shall be left in the Grievance/Arbitration procedure.
2. The grievant shall be taken off Restricted Sick Leave list, with the understanding that he needs to improve his attendance.

3. Mr. Wallis shall pursue his claims with the United States Department of Labor's Office of Workers Compensation Programs, to establish whether he sustained an on-the-job injury, and/or an occupational disease claim based on stress. Pursuit of his claims shall extend to the full appeal procedures provided by the United States Department of Labor. The only compensation due the grievant from December 26, 1989 until he returns to work, shall be that which is authorized by OWCP.
4. The Postal Service agrees to provide work within the guidelines outlined in Dr. M. Bermon's report dated April 11, 1990. The grievant will promptly provide updated medical evidence if the guidelines are changed by his physician.
5. The grievant agrees that he can perform his full duties as a letter carrier. He will be returned to work within five (5) working days of this agreement.
6. There is no back pay intended or implied in this settlement.

This settlement shall be considered full settlement of all grievances (EXCEPT as specified in number one above); E.E.O. complaints; and M.S.P.B. appeals which have been filed by the grievant as of the date this settlement is signed.

The agreement was signed by the Union President, the Postmaster, and the Grievant. As a result of this agreement, the Grievant reported to work on April 16th with no restrictions on his ability to perform his duties.

On May 10, 1990, the Grievant was observed by a Supervisor taking a break at his brother's fish market. The Supervisor confronted the Grievant. After some discussion about what was and what was not an authorized break location, the Grievant went back to his route. The next day, he was presented with a paper to read and asked to sign it. The paper in effect stated that the Grievant was in violation of regulations because he was off his route. The Grievant apparently admitted to the fact but thought he was being singled out and harassed.

The Supervisor asked the Grievant to sign a statement indicating that he was in the wrong and that if he were disciplined, it would not cause a stressful situation. The Grievant refused to sign. The Supervisor then told the Grievant that the action taken was not disciplinary and that they would decide at a later date what action, if any, would be taken. When the Grievant returned home, he found a call on his answering machine that indicated that he was to be placed on emergency suspension. On May 11, 1990, the Grievant was notified as follows:

You are hereby notified that you will be placed in an off duty (without pay) status effective May 12, 1990 at 6:30AM and continue in this status until you are advised otherwise.

The reasons for this are:

Charge I - Recent events (May 10, 1990) have shown that we cannot accommodate your medical restrictions in this facility. You will be kept in a non-pay off duty status pending submission of medical information.

You have the right to file a grievance under the Grievance/Arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

A grievance was filed that was denied at each step of the procedure and has resulted in this arbitration. During the course of the grievance procedure, the Grievant was returned to work, but maintained the right to pursue the instant grievance to address the issue of lost pay during the period from May 12, 1990, to June 16, 1990. The issue placed before the Arbitrator reads as follows:

ISSUE

Was it proper for the Postal Service to place the Grievant in an off duty status in accordance with Article 16.7 of the National Agreement? If not, what shall the remedy be?

CONTRACT LANGUAGE PERTINENT
TO THIS ARBITRATION

ARTICLE 16, SECTION 7
Emergency Procedures

Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

POSITIONS OF THE PARTIES

The Postal Service

The Postal Service contends that the Grievant submitted medical documentation from his Psychiatrist that indicated that his stress condition would be aggravated by the issuance of discipline. It argued that the Postal Service could not accommodate the Grievant's medical condi-

tion. It stated that no employer can allow people to work who cannot be disciplined or have their behavior corrected without having it cause them mental problems. The Grievant's health condition as described by the Grievant's Doctor places the Postal Service in a Catch-22 position. If the Grievant's behavior, when discovered to be in violation of the rules, is not properly corrected for fear of causing the Grievant to succumb to depression, the Postal Service is limited in its ability to direct the enterprise. Such a situation will have a negative impact on other employees as well.

The incident that triggered the instant arbitration was caused by the Grievant. He took a break at an unauthorized location and, when confronted by a Supervisor who saw him, he refused to admit that he was wrong. He continued to insist that he was being picked on by supervision and he would not state that if he were disciplined over the incident, he would not be affected mentally. The Postal Service had no recourse but to place the Grievant on emergency leave until he presented medical documentation that he could perform his full duties with no restrictions. When adequate documentation was received, the Grievant was put back to work. The grievance should be denied.

The Union

The Union contends that the Grievant was improperly placed on emergency leave and that he was being harassed by Local Management. The fact that he was off his route and that he would not sign a statement he did not agree with is not grounds for placing the Grievant on emergency leave for a month. Since October 14, 1986, the Postal Service has been making an overt effort to find the Grievant in violation of the rules so that it can discipline him. Local Postal authorities want the Grievant out of the Barrington Post Office. They have taken action against the Grievant in reprisal for his informing the Postal Inspector that the Postmaster ran a real estate business from his office in the Post Office. The Grievant has been harassed by Local Management to the point that he was forced to seek psychiatric help. The grievance should be upheld and the Grievant made whole for all lost time and benefits.

FINDINGS

The Grievant in this case is a troubled employee who has had numerous problems with Postal Management in the past few years. He has most likely caused a number of the

problems himself. The difficulty the Grievant has seems to be caused by his inability to be able to perform his duties within the strict confines of all Postal rules and regulations. Part of his inability to conform may stem from his apparent psychological problems, but part of his problem may be caused by overly diligent Local Management who appear to be engaged in a constant struggle with him.

The Grievant's record indicates that he has been given severe discipline and that most of the disciplinary actions were reduced or never imposed. I can not help but conclude, given the record before me, that the Grievant has been treated somewhat harshly in the past.

In reviewing the facts of the instant case, I am also compelled to conclude that the Grievant was treated unfairly and in violation of his rights as a Letter Carrier.

The incident on May 11th that triggered this arbitration is not at issue here. If the Grievant was, as the Supervisor involved states, taking breaks at unauthorized locations, he should be disciplined for it. He should not, however, be suspended from service or kept out of work for an extended period of time because he would not sign a paper stating that he was wrong and that the Postal Service could discipline him without it placing him in a stressful

situation. Article 16.7 authorizes the Postal Service to place an employe in off-duty status without pay for the following reasons:

1. Intoxication, use of drugs or alcohol.
2. Pilferage.
3. Failure to observe safety rules.
4. Retaining the employee on duty can result to damage to Postal property loss of mail or funds.
5. Where an employee may be injurious to self or others.

After a review of the reasons listed in Article 16.7 under which a Postal employee can be suspended, it is clear that none apply to the instant dispute. The Postal Service made a major case out of obtaining medical documentation from the Grievant's Doctor concerning his ability to accept discipline without it having a negative impact on the Grievant's health. That information was eventually received. The same inquiry could have been made and the same information received while the Grievant was working. Holding the Grievant out of service on an emergency leave status while the medical information was obtained was

arbitrary and capricious and not in accordance with Article 16.7 of the National Agreement.

AWARD

The grievance is sustained. The Grievant shall be made whole for all lost time and benefits suffered while he was on emergency suspension.


Rodney E. Dennis
Arbitrator

June 1, 1991