

EXPEDITED ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION
BETWEEN:

UNITED STATES POSTAL SERVICE,

-and-

Grievant: Kari Gray
Post Office: Flint, Michigan 48502
USPS Case No. JO0C-1J-D04044752
APWU No. DLL406

AMERICAN POSTAL WORKERS UNION

BEFORE:

Karen Bush Schneider

APPEARANCES:

FOR THE U.S. POSTAL SERVICE:

Eric J. Osterbeck

FOR THE UNION:

Mickey Elmore

PLACE OF HEARING:

United States Postal Facility
250 East Boulevard
Flint, MI 48502

DATE OF HEARING:

May 12, 2004

DATE OF AWARD:

May 14, 2004

RELEVANT CONTRACT PROVISION:

National Agreement between U. S.
Postal Service and the American Postal
Workers Union, AFL-CIO, Articles 15,
16, 17, and 19, and
Handbook EL-511.43, 666.81, 666.82,
And 666.83

CONTRACT YEAR:

2000-2005

TYPE OF GRIEVANCE:

Discipline AWARD

SUMMARY

The grievance is denied.



Karen Bush Schneider, Arbitrator

ISSUES PRESENTED

Did the Postal Service have just cause to issue Grievant a Notice of Suspension of 14 Days or Less, dated November 26, 2003?

The Postal Service responds, "Yes."

The Union/Grievant respond, "No."

If the Postal Service did not have just cause to issue Grievant a Notice of Suspension of 14 Days or Less, what should be the remedy?

The Postal Service requests that the Arbitrator deny the grievance.

The Union/Grievant request that the Arbitrator order the 14 day suspension issued to Grievant for irregular attendance be expunged from her record and that she be made whole for any and all lost wages and benefits.

THE EMPLOYER'S CASE

Grievant, Kari Gray, has been employed as a part-time flexible mail processor at the Flint P&DC since on or about August 26, 2000. On or about November 26, 2003, Grievant was issued a Notice of Suspension of 14 Days or Less for irregular attendance. Specifically, Grievant had four occasions of sick leave or LWOP on October 16, 24, and November 14 and 17, 2003, totaling 22.0 hours, one occasion of AWOL on November 17, 2003, totaling 2 hours, and four occasions of tardiness on October 15, 23, and November 20 and 24, 2003. The Postal Service maintains that it had just cause to issue Grievant the aforescribed discipline.

The Postal Service points out that Grievant is a relatively new employee. Despite her brief tenure with the Postal Service, she has an employment record replete with discipline for irregular attendance. On or about December 9, 2002, Grievant received a Letter of Warning (Joint Exhibit "7") for irregular attendance. The Letter of Warning cited 11 occasions of sick leave or LWOP, or annual leave in lieu of sick leave,

totaling approximately 72 hours, two occasions of emergency annual leave or LWOP in lieu of annual leave, totaling 11 hours, and 17 occasions of tardiness. On or about January 6, 2003, the Postal Service and Grievant entered into an agreement which provided that the Letter of Warning would be removed from Grievant's file in 15 months if there was no further discipline issued or pending. (Id.)

On or about March 5, 2003, Grievant was issued a Notice of Suspension of 14 Days or Less (7 days) for irregular attendance. (Id.) Between December 11, 2002, and March 5, 2003, Grievant had eight occasions of sick leave or LWOP or annual leave in lieu of sick leave, totaling 31.59 hours, four occasions of AWOL, totaling 16.41 hours, and two occasions of tardiness. (Id.) Subsequently, Grievant and the Postal Service entered into an agreement that Grievant's suspension would be reduced from a 7 day suspension to a 4 day suspension so as to "offset any hardship that could result from a lack of pay, and so that this Agreement will remain corrective and not punitive." (Id.) The agreement further called for the discipline to remain in Grievant's employment record for 12 months following the date of issuance, assuming that no further discipline was issued or pending. (Id.)

Grievant's attendance continued to be irregular. On or about September 10, 2003, Grievant was issued a Notice of Suspension of 14 Days or Less for irregular attendance occurring during the period March 22, 2003 to September 10, 2003. The discipline cited six occasions of sick leave or LWOP or annual leave in lieu of sick leave, totaling 42 hours, one occasion of emergency annual leave or LWOP, totaling 6 hours, and seven occasions of tardiness. (Id.) Shortly thereafter, Grievant was issued a Notice of Suspension of 14 Days or Less (14 days) for irregular attendance occurring

between September 12, 2003, and October 9, 2003. The discipline cited five occasions of sick leave or LWOP, totaling 25.25 hours, two occasions AWOL, totaling 4.75 hours, and three occasions of tardiness. (Id.) All of the aforementioned discipline remains on Grievant's file.

From the period October 10, 2003, to November 26, 2003, Grievant's attendance was also deemed irregular by the Postal Service. She had four occasions of sick leave or LWOP or annual leave in lieu of sick leave, totaling 22 hours, two hours of AWOL, and four occasions of tardiness. Grievant's Supervisor, Julia Warner, discussed Grievant's irregular attendance with her. Grievant attributed her attendance problems, in large part, to difficulties she was experiencing in being the caretaker of her niece, as well as due to health problems. Previously, Grievant's supervisor had provided Grievant with a pack of information from Life Care, as well as referred her to the EAP. Grievant's supervisor stressed that she could have issued a removal to Grievant for the most recent period of irregular attendance, however, she wanted the discipline to be corrective in nature and thus issued her another 14 day suspension.

There is no dispute as to the dates of irregular attendance. Nor is there any dispute that the Postal Service conducted a pre-disciplinary meeting and investigation.

While the Postal Service was sympathetic to the personal problems which gave rise to Grievant's irregular attendance, it maintains that employees must be regular in attendance in order for the Postal Service to carry out its work efficiently.

THE UNION'S/GRIEVANT'S CASE

The Union and Grievant assert that the Notice of Suspension of 14 Days or Less was without just cause in that it was "punitive rather than corrective and [was] not in accordance with the procedures of Article 16." (Joint Exhibit "2.") While the Grievant does not dispute that her attendance has been irregular, she maintains that the issuance of the 14 day suspension was punitive, given the circumstances which gave rise to her absences. Grievant has struggled with personal health issues involving anemia and insomnia. These conditions caused her to suffer persistent fatigue. Additionally, Grievant's responsibilities as a single mom as the caretaker of a troubled niece, and the caretaker of her elderly and disabled mother, frequently interfered with her ability to meet her work schedule. Upon the issuance of this latest 14 day suspension, Grievant made the difficult decision to place her niece in foster care and thus, eliminated that stressor from her life. She testified that her attendance since the issuance of the 14 day suspension on or about November 26, 2003, has been satisfactory.

If the instant discipline remains on Grievant's record, it will impair her ability to seek a transfer to another tour. Given Grievant's health conditions and continued personal responsibilities, Grievant believes that a change of tour is necessary to ensure continued regular attendance and, ultimately, her success at the Postal Service.

Grievant and the Union request that the discipline be expunged from her record and that she be made whole for any lost wages and benefits.

AWARD

For the reasons which follow, the Arbitrator concludes that the Postal Service has met the burden of establishing just cause for the issuance to Grievant of the Notice of Suspension of 14 Days or Less, dated November 26, 2003.

1. DID THE POSTAL SERVICE GIVE TO GRIEVANT FOREWARNING OR FOREKNOWLEDGE OF THE POSSIBLE OR PROBABLE DISCIPLINARY CONSEQUENCES OF HER CONDUCT?

Grievant was clearly on notice that her conduct could lead to disciplinary action. Sections 511.43, 666.81, 666.82, and 666.83 of the Employee and Labor Relations Manual clearly set forth the employer's expectations that employees be regular in attendance, maintain their assigned schedule, and make every effort to avoid unscheduled absences.

Additionally, not only did Grievant have discussions with her supervisor over a 12 month period regarding attendance irregularities, but she also received four disciplines for irregular attendance which clearly placed her on notice that her attendance had been unsatisfactory.

2. WAS THE POSTAL SERVICE'S RULE OR MANAGERIAL ORDER REASONABLY RELATED TO (A) THE ORDERLY, EFFICIENT, AND SAFE OPERATION OF THE POSTAL SERVICE'S BUSINESS, AND (B) THE PERFORMANCE THAT THE POSTAL SERVICE MIGHT PROPERLY EXPECT OF THE EMPLOYEE?

It cannot be gainsaid that the Postal Service has the right to expect and require that employees be regular in their attendance at work and that they maintain their assigned schedule. Efficient delivery of mail and parcels is an integral part of the communication system within this country and cannot be accomplished without the

faithful service of Postal Service employees. Unscheduled absences have the obvious resulting effect of slowing mail processing and delivery service, increasing overtime, and lowering the morale of other Postal Service employees.

3. DID THE POSTAL SERVICE, BEFORE ADMINISTERING DISCIPLINE TO GRIEVANT, MAKE AN EFFORT TO DISCOVER WHETHER GRIEVANT DID IN FACT VIOLATE OR DISOBEY A RULE OR ORDER OF MANAGEMENT?

Prior to disciplining Grievant, Supervisor Warner had a discussion with Grievant on or about October 23, 2003, as well as a pre-disciplinary meeting on or about November 21, 2003. Grievant was given an opportunity to provide her supervisor with an explanation regarding her attendance irregularities, as well as documentation which would support her explanation. There was no dispute as to any of the attendance irregularities. Grievant maintained that she had been sick and that

the AWOL resulted when she took Nyquil and a sleeping pill and over slept. (Joint Exhibit "4.") Although Grievant requested FMLA leave for at least two of the absences, she apparently did not provide sufficient documentation to qualify the absences under the FMLA.

Before issuing the discipline, Supervisor Warner reviewed Grievant's attendance records (Joint Exhibits "5" and "6") to verify Grievant's dates of absence, AWOL and tardiness. Lastly, Supervisor Warner completed a Disciplinary Action Request (Joint Exhibit "4") for review and approval by MDO, Bernie Nelson. MDO Nelson approved the discipline on or about November 26, 2003. (Id.)]

4. WAS THE POSTAL SERVICE'S INVESTIGATION
CONDUCTED FAIRLY AND OBJECTIVELY?

There was no evidence introduced which would suggest that Grievant's supervisor was biased in any way against her. On the contrary, it appears that Grievant's supervisor attempted to "work with" Grievant by reducing prior discipline, and "duplicating" progressive discipline in lieu of imposing a removal. It also appears that Supervisor Warner's investigation of the instant irregular attendance was thorough and fair.

5. AT THE INVESTIGATION, DID THE "JUDGE" OBTAINED
SUBSTANTIAL EVIDENCE OR PROOF THAT THE
EMPLOYEE WAS GUILTY AS CHARGED?

There is no dispute as to any of the absences, AWOL, or incidents of tardiness which gave rise to the November 26, 2003 14 day suspension. Nor is there any challenge to Grievant's prior discipline, such as through a pending grievance or arbitration. Grievant does not dispute the occurrence of the attendance irregularities; instead, she provides an explanation for them which she requests be viewed as excusing her irregular attendance.

6. DID THE POSTAL SERVICE APPLY ITS RULES,
ORDERS, AND PENALTIES EVENHANDEDLY, AND
WITHOUT DISCRIMINATION TO ALL EMPLOYEES?

There was no evidence presented to suggest that any of the provisions of the National Agreement or of the ELM had been applied discriminatorily or inconsistently. In fact, the Postal Service had applied the cited ELM provisions to similar attendance irregularities exhibited by Grievant shortly be issuing the Notice of Suspension of 14 Days or Less on November 26, 2003. Indeed, it strikes this Arbitrator

that the Postal Service had been exceedingly patient in working with Grievant to correct her attendance.

7. WAS THE DEGREE OF DISCIPLINE ADMINISTERED BY THE POSTAL SERVICE IN A PARTICULAR CASE REASONABLY RELATED TO (A) THE SERIOUSNESS OF THE EMPLOYEE'S PROVEN OFFENSE, AND (B) THE RECORD OF THE EMPLOYEE IN HER SERVICE WITH THE POSTAL SERVICE?

The Postal Service has the right to require its employees to be regular in their attendance. It is impossible to successfully carry out the Postal Service's important work without reliance on the faithful service of its employees. Grievant's irregular attendance constituted a breach of the responsibilities she owed as an employee of the Postal Service.

A review of Grievant's employment record with the Postal Service does not warrant setting aside this most recent 14 day suspension. She had four disciplines within a 12 months period, all for irregular attendance. Those disciplines included a Letter of Warning, a suspension for 4 days, a suspension for 7 days, and a suspension for 14 days. (Joint Exhibit "7.") This is not a case where the severity of the penalty is out of line with the seriousness of Grievant's "offense" or with her employment record with the Postal Service.

The Arbitrator is not unsympathetic to the personal issues which gave rise to Grievant's attendance problems. Certainly Grievant's health problems, coupled with the overwhelming responsibility Grievant had for the well-being of at least three family members, would crush the most resilient of individuals. Yet, it appears that the Postal Service was also sympathetic to Grievant's plight. Grievant's Supervisor, Julia Warner, testified that except for Grievant's attendance problems, her performance was excellent.


Supervisor Warner attempted to work with Grievant through a number of discussions, imposition of incremental discipline, referral to Life Care and the EAP, and a forbearance in this most recent attendance period, to impose the ultimate penalty of removal. Nonetheless, at some point, the value of the employee to the Postal Service diminishes to such a point that continued employment will no longer be an option.

This Arbitrator is heartened by the fact that Grievant appears to have resolved at least some of the personal issues which were causing attendance irregularities and has maintained a satisfactory attendance record since this most recent discipline. Hopefully, Grievant will be able to maintain a satisfactory level of attendance on an indefinite basis so that she may achieve her goal of transferring to a different tour. It would seem to be in both parties' best interest to make that happen.

AWARD

The grievance is denied.

Dated: May 14, 2004



Karen Bush Schneider, Arbitrator

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