EXPEDITED ARBITRATION PANEL

In the Matter of the Arbitration between The U.S. Postal Service and The National Association of Letter Carriers, AFL-CIO	Grievant: Craig Boatman Post Office: NE Station, Tulsa OK Case Number: G11N-4G-D 15037542 Union Number: 1358140684 DRT Number: 04-327713

Before: Donald J. Barrett, Arbitrator

Appearances:

For the U.S. Postal Service: Jeffrey M. Staggs, Labor Relations Specialist

For the National Association of Letter Carriers: Gordon J. McCune, Local Business Agent

Place of Hearing: Tulsa OK Postal Plant Facility

Date of Hearing: August 6, 2015

Award: This grievance is denied

Date of Award: August 8, 2015

AWARD SUMMARY

The Service demonstrated convincingly that just cause existed for the issuance of the letter of warning. Despite some minor issues that the Union exposed regarding the Service's imprecise utilization of PS Forms 3971 & 3972, the Service demonstrated that the grievant was aware of the rule to be regular in attendance, and failed to do so without reasonable cause shown. Further, there is evidence that other, relevant just cause provisions were employed appropriately.

STATEMENT OF PROCEEDINGS

This matter was brought to hearing on August 6, 2015 at the Tulsa OK plant facility pursuant to the provisions of the 2011-2016 National Agreement, also known as the Agreement or Contract between the US Postal Service, also known as the Service, or Management and the National Association of Letter Carriers, also known as the Union.

The parties were afforded the opportunity to present argument, evidence, and witnesses on behalf of their respective positions. At the request of the parties, each witness was duly sworn an oath prior to offering their testimony.

Each counsel at hearing was provided expert technical assistance by Mr. O.D. Curry, Manager, Labor Relations for the Service, and Mr. Daniel Versluis, Regional Administrative Assistant for the Union. Counsel for each party was fully prepared, articulate, ambitious, and represented their respective interests professionally, and with vigor.

The Service called two witnesses: Mr. Kevin Eidson, Acting Manager, North East Station, Tulsa and Mr. Johnny Lee, Formal Step A representative.

The Union called three witnesses: Mr. Ron Neel, Formal Step A representative, Mr. Adam Hetherington, Steward, and the grievant, Mr. Craig Boatman.

JOINT EXHIBITS

Joint 1 – The National Agreement, inclusive of the Joint Contract Administrative Manual (J-CAM)

Joint 2 – The Moving Papers, Pages 1-7, and Pages 1-50.

STIPULATED FACTS NOT IN DISPUTE

The parties did not agree to any.

ISSUE

Counsel at hearing agreed to utilize that which the Step B Team cited.

"Did Management violate Article 16 of the National Agreement when issuing a Letter of Warning without just cause for 'Failure to Maintain Regular Attendance?' If so, what is the appropriate remedy?"

BACKGROUND

The grievant was issued a Letter of Warning (LOW) dated November 12, 2014, charged with a "Failure to Maintain Regular Attendance." This official letter cited August 11th, September 20th and 22nd, and October 27-28th, 2014 as forty (40) hours of unscheduled sick leave taken by the grievant, all in conjunction with non-scheduled work days.

The grievant was provided an "investigative interview" by his supervisor on October 31, 2014, where he was asked questions related to the cited absences, and he provided answers to such. The grievant's Union steward was also present during this interview.

After this interview, the grievant was issued the LOW, and charged with violations of the Employee and Labor Relations Manual, Chapter 511.43, 665.13 & 665.41, as well as Handbook M-41, Chapter 112.22 & 112.24. (See J-2, Pages 9-10)

CONTRACT PROVISIONS CITED

Article 16 Discipline Procedure

Section 1. Principles

"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."

Section 3. Letter of Warning

"A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected."

POSITION OF THE PARTIES

US Postal Service

The Service maintains that just cause exists for the issuance of this letter of warning, and that every reasonable effort was made by management to avoid taking such action.

The Service maintains further that previous attempts to correct the grievant's attendance deficiencies were met with failure, thus necessitating the issuance of this official notice.

The Service argues that the grievant has failed to maintain satisfactory attendance, and has undertaken the cited absences in conjunction with non-scheduled days.

Management argues further that the grievant has been placed on notice of his obligation to maintain regular attendance, that the grievant acknowledged his awareness of his obligations, and his awareness of a rule to be regular in attendance. Management offers that this rule is a reasonable one and has been applied fairly, and consistently. Management states that only after an accumulation of absences by the grievant did the Service take such action, and only after giving the grievant the full opportunity to satisfactorily explain the reasons for his absences. The Service argues that there is no evidence during the absences cited in the LOW of an on the job injury suffered by the grievant, or Family Medical Leave Act (FMLA) protected leave, or of the grievant seeking these protections for the absences.

The Service maintains that they met the provisions of just cause, that the letter of warning, being the lowest form of discipline that can be issued is necessary to impress upon the grievant his need to be regular in attendance, and as such, requests that this grievance be denied in whole.

The National Association of Letter Carriers

The Union maintains that the Service lacks just cause to issue this letter, and has failed to conduct a proper investigation before issuing it.

The Union maintains further that the Service failed to inform the grievant of his obligation to be regular in attendance, failed to conduct attendance reviews with the grievant that would have provided guidance, and failed to ask the grievant for the reasons for his absences during the interview with him on October 31st.

The Union argues that the Service failed to address the grievant's absences timely, instead waiting until there was an accumulation of absences, thus placing the grievant in an untenable position to defend himself.

The Union argues further that the issued discipline is punitive, while the Agreement mandates that discipline must be corrective – that when the grievant called in to report his absence, he was not informed such absences were cause for his concern, or that the Service offered any objection to his absences, even as the supervisor received notice each day on his computer.

The Union offers that during the period giving rise to this discipline, the grievant, in fact was in attendance 44 out of the 51 scheduled work days, or 86 per cent of the time, was not placed on the restricted sick leave process, nor was documentation requested or required by the Service.

The Union offers further that the supervisor failed to properly maintain the PS Forms 3971's and 3972's, failed to have the grievant sign a subject 3971 until the following month, immediately before the investigative interview, all unfair to the grievant, and proof of the Service failure to properly conduct the investigation.

The Union requests that this grievance be sustained in full, the subject LOW be rescinded from all records.

OPINION

The Scottish philosopher David Hume (1711-76) once said, in relevant part, "No testimony is sufficient to establish a miracle..." That statement comes to mind as offerings made in response to the charges giving rise to the matter at hand is contemplated.

The grievant, with eleven years of postal service as a letter carrier appears at hearing to be a very sincere person who is also impassioned toward positions that may, at times be in conflict with his immediate management authority. That, in itself does not make him wrong. However, his response to those obligations to be regular in attendance, that most basic covenant between an employer and employee, and his offered awareness of those obligations through his testimony during the investigative interview, and at hearing does establish his culpability.

Counsel for both parties argued, with vigor that the "Doctrine of Just Cause" was the preeminent issue to be decided by the arbitrator. On that point alone they are in agreement. As offered by counsel at hearing by the Service, that burden was established – by counsel for the Union, it was not. I am in agreement with the Service.

As stated by the parties Agreement, and in the J-CAM, "...a basic principle shall be that discipline should be corrective in nature, rather than punitive." To normally avoid the appearance, if not reality of punishing an employee, one must demonstrate, using the commonly applied "reasonable person standard", that the discipline being issued is related to the charged infraction, proportionate to the infraction, is consistent with other like infractions, and most importantly, allows the employee a fair opportunity to correct the deficiency so as to avoid future deficiencies of a similar nature.

Further, as the Service competently demonstrated those "basic" considerations that must be employed to establish "Just Cause", there is no dispute between the parties that there is a "rule" to be regular in attendance, it is a "reasonable rule", and that the grievant was aware of the rule. The grievant offered as much in his testimony at hearing, inclusive of the fact he is a veteran letter carrier. (Also see grievant statement, J-2, Page 18)

Further, the record reflects the grievant has been made aware of this rule in the past. (See M-1 & 2)

The Union argues, with infectious spirit, that the "rule" has not been "consistently" applied, and offers the testimony of Mr. Neel, a sincere witness who offered into the record as part of his official duties numerous other Step B decisions. (See J-2, Pages 29-37) However, as counsel for the Service demonstrated, in one case, the grievant was improperly charged with the wrong number of sick leave hours, in another the grievant was charged with using FMLA protected leave, and in the third, the grievant's PS Forms 3971 were all signed nearly three months after the fact, leaving the seriousness of the issue of questionable value. Therefore, I do not find these examples to demonstrate an inconsistently applied rule between the grievant's discipline in the instant case, and those cited above.

The other application of the just cause principle argued by the Union in defense of the grievant is that there was not a ""thorough investigation" undertaken by the Service before issuing the subject discipline.

This is where the steward could have helped by asking the grievant what his understanding of the rule was.

The Union argues that the Service failed to ask the grievant any relevant questions about his absences, or the reasons for such – only a few "obvious" questions that denied the grievant any means to respond knowingly.

While there is some difference between what the supervisor recalls asking the grievant during the investigative interview on October 31, 2014, and what the Union's steward recalls, there were very basic questions asked of the grievant that a reasonable person would understand were relatable to his absences. He was asked about the dates he was absent from duty on sick leave, about his absences constituting a pattern, about FMLA and EAP. Those are the questions both parties agree were asked of the grievant. The supervisor offers that he asked the grievant if he had "anything to add", to which the grievant replied "no." I find the supervisor's testimony to be credible, and while a more intense line of questioning is preferable, I am convinced that the investigation, as it was, did afford the grievant the opportunity to be aware of the issues, and to offer, if he so chose, a more thorough response. Surely, not having been a novice to this process the grievant should/would have been more aware of the need, even an obligation to offer a more detailed response.

Those elements of "Just Cause" that have been raised in support of the Letter of Warning, and those raised to argue those elements were deficient, based upon the evidence above have, I believe been addressed sufficiently.

Supervisor: "Are you aware of the rule?"
Grievant: "Yes."

The Service must demonstrate that they had cause for issuing the subject discipline, and I find that they did. I find that the grievant was aware of his obligation to be regular in attendance and failed to adhere to that obligation. A review of his PS Form 3972 demonstrates that each absence cited by the Service coincides with either annual leave or a non-scheduled day. (See J-2, Pages 21-22) While the grievant disagrees that a Sunday is a non-scheduled day of work, I think history shows that it most surely is. Using sick leave in this manner demonstrates an unacceptable pattern of behavior which leaves the grievant vulnerable to discipline.

The Union makes a valid point regarding the PS Form 3971 for August 11, 2014, and the fact that it was not provided to the grievant for his signature until October 25, 2014. (See J-2, Page 23) If, as was stated in the dissimilar Step B decision (J-2, Page 37) this grievant had been provided all of his PS Form 3971's long after the occurrence of his absences, this discipline too may have been resolved, or adjudicated in a similar fashion, however the supervisor's explanation, while reason for his closer attention in the future does not cause the grievant harm enough in this matter to overrule this discipline.

That most basic need of the employer to maintain a viable workforce that is regular in attendance, allowing the employer to address its daily needs to accomplish its mission is diminished when an employee fails to be regular in attendance, particularly when the absences are co-joined by non-scheduled days of work, or without good cause provided for such absences.

While the supervisor acknowledged notating two of the Form 3971's as "FMLA...Pending", there was no evidence provided that those absences were, in fact protected leave, and simply, as the supervisor stated, errors in notations. The grievant offered that he "stepped off a porch" and pulled a muscle previous to these dates, he acknowledged that he did not seek protected leave when calling in for sick leave these dates, and did not inform his supervisor, only informing his "CT" (carrier tech) believing the CT would inform the supervisor.

It's not enough to have a violation. You should show how the violation harmed the grievant.

Further, the grievant stated that he kept the medical documentation he acquired (See J-2, Page 20) "in his locker", and only provided it to the Union at the formal Step A process.

The grievant shares an obligation to provide the Service with answers, and information that may be relevant to his absences, and informing only his co-worker, and much later his Union representative denies the Service the opportunity to make a more valued, and timely judgement, and undermines the credibility of such claims.

It is an old, and established tenant of arbitration that for the arbitrator to substitute his/her judgment from that of Management in their issuance of discipline, there must be clear and convincing evidence that Management's actions were arbitrary or capricious. In the instant matter before me, I do not find that to be the case.

Don't put yourself in a position where the only way to win is to ask the arbitrator for mercy. You won't get it.

Based upon the record as a whole, inclusive of witness testimony at hearing I find that the Service has demonstrated convincingly that just cause existed for the issuance of the subject Letter of Warning. I do not find the discipline to be punitive, and remain hopeful that it serves to improve the attendance of Mr. Boatman. Clearly both the Service, and the grievant have much invested in each other, and their futures remain entwined – I remain hopeful that the issued discipline, and/or this decision do not serve to undermine that investment, and that both recognize the value of the other.

AWARD

This grievance is denied.

Respectfully Submitted,

Donald J. Barrett, Arbitrator

Date Aug. 8, 2015

Note: I thank each parties' counsel for your professionalism, civility, and the efforts put forth to insure the best interests of your clients.