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REGULAR ARBITRATION PANEL

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 In the Matter of the Arbitration (Grievant: Aisha Hughes)
)
 Between (Post Office: Aus-Northcross)
)
 UNITED STATES POSTAL SERVICE (UPS Case No: G16N-4G-D18232046)
)
 And (DRT No.: 10-431473)
)
 NATIONAL ASSOCIATION OF (NALC Case No: 18-328-AA)
 LETTER CARRIERS UNION,)
)
 _____ ()
 BEFORE: PETER J. CLARKE, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Ruth Giddings, Labor Relations Specialist
 Bertha Conway, Technical Assistant

For the Union: Richard Gould, Local Union Vice President

Place of Hearing: Austin, Texas

Date of Hearing: July 11, 2018

Date of Award: July 27, 2018

Relevant Contract Provisions: JCAM Articles 16.1&16.8, ELM 665.11, 665.15, 665.16, and M-41 Handbook Section 112.61.

Contract Year: 2016-2019

Type of Grievance: Removal

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Award Summary:

The grievance is sustained. The Postal Service failed to show just cause for removing the Grievant for her off-duty conduct, despite the egregious nature of her acts. Additionally, the Postal Service wrongfully charged the Grievant with a violation of the M-41 Handbook regarding "on-duty" conduct, which rendered the Notice of Removal defective.



 PETER J. CLARKE
 Arbitrator

ISSUE

Whether the Postal Service had just cause to issue a Notice of Removal to the Grievant for her conduct while she was off duty? If not, what shall be the appropriate remedy?

STATEMENT OF THE CASE

The hearing opened as scheduled on July 11, 2018 at 9:00 a.m. at the Postal facility located at 7700 Northcross Dr. in Austin Texas. The parties offered a Joint Exhibit (JX-1) containing 46 pages. The Union submitted six arbitration awards and the Postal Service submitted five arbitration awards, in support of their respective positions. Both parties were afforded time for opening, direct and cross-examination of witnesses. The record was officially closed on July 11, 2018. The proceedings were taped to ensure the accuracy of the record.

RELEVANT CONTRACT PROVISIONS

Based on the facts adduced at the hearing, the Arbitrator has determined that the relevant contract provisions are the following:

Article 16.1(Principles) of the National Agreement states,

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.

Article 16.8 (Review of Discipline) of the National Agreement 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 post offices of twenty (20) or less employees, or where there is no higher-level supervisor 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.

665.11 (Loyalty) of the Employee Labor Relations Manual (ELM) states, “Employees are expected to be loyal to the United States government and uphold the policies and regulations of the Postal Service.”

665.15 (Obedience to Orders) of the ELM provides, “Employees must obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor’s order, the individual must nevertheless carry out the order and may immediately file a protest in writing to the official in charge of the installation or may appeal through official channels.”

665.16 (Behavior and Personal Habits) of the ELM states,

Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal employees be honest, reliable, trustworthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notoriously disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee, in addition to any other penalty imposed pursuant to statute.

Section 112.61 (Courtesy to Public) of the M-41 Handbook provides, “Do not engage in controversies with customers or other members of the public when on duty.”

RELEVANT FACTS

The Grievant, a letter carrier with the Austin-Northcross station, is a four-year employee of the Postal Service. On January 31, 2018, the Grievant purchased food, including a baked potato, from Smokey Mo’s BBQ Restaurant (Smokey Mo’s) and inadvertently left her credit card on the counter. The following day, February 1, 2018, after working her shift at the Post Office, the Grievant returned to Smokey Mo’s to retrieve her credit card and make a complaint about the baked potato she purchased the night before. The Grievant was not on duty but was still wearing her Postal Service uniform. Shortly after arriving, she engaged in a verbal confrontation with Smokey Moe’s employees, Joe Schumaker (Schumaker) and Robert Holley (Holley).

The confrontation began when the Grievant attempted to return the baked potato. Schumaker, the manager, informed the Grievant although the baked potato looked to have been

eaten, he would replace it for her. The Grievant became upset and started to yell, used profane language, and slapped her hand against the counter. The Grievant demanded that Schumaker immediately return her credit card so she could leave. Holley, an employee who was behind the counter, took out his cell phone and started to record the Grievant. When the Grievant noticed that she was being recorded, she became angrier; she began arguing with Holley and continued to use profane and degrading language, including derogatory references about Holley's weight. The Grievant attempted to take the phone from Holley by reaching over the counter, which prompted him to call the police. The Grievant, who was not deterred by the threat of the police, continued to argue with Holley, eventually pushing stacks of Styrofoam containers from the counter. The Grievant continued this behavior until Schumaker located her card and returned it to her. When the Grievant left the restaurant, she forcefully pushed the door open, causing \$189.44 in damages.

Schumaker contacted the Post Master in Round Rock, Texas to report the incident. Postal Service Manager Carlnell Hardy (Hardy) was dispatched to Smokey Mo's to investigate. Hardy reviewed the video footage and interviewed Schumaker and Holley. Schumaker explained that the Grievant is a regular customer and had no issues in the past. Hardy offered his apologies on behalf of the Postal Service and relayed the information to Manager Rae July (July). Later, Hardy returned to Smokey Mo's to do a follow up investigation and was provided an invoice for \$189.44 for the damage the Grievant caused to the door.

July conducted Investigative Interviews (II) on February 14, 2018 and March 14, 2018. During the IIs, the Grievant denied knowing the Postal Service Code of Conduct policies referenced in the ELM and M-41 Carrier Handbook, or ever having notice of the policies. The Grievant also denied attending the Carrier Academy and reviewing the Code of Conduct during orientation. The Grievant failed to cooperate in the interview by giggling, making rude comments, and continuously using her cellular phone. Following the two IIs, the Grievant was issued a Notice of Removal (NOR) on March 27, 2018 for Unacceptable Conduct. The NOR stated, in relevant part, the following:

March 27, 2018

NOTICE OF REMOVAL

Express Mail # EL797067656US

USPS Tracking 9114901230801093018118
& Regular Mail

Hughes, Aisha EIN: 04299726
609 Yucca Dr.
Round Rock TX 78681

You are hereby notified that you will be removed from the Postal Service effective April 30, 2018. The reason for this action is:

Charge 1 - Unacceptable Conduct

You are a full-time City Carrier assigned to the Aus-Northcross Station in Austin, Texas. You entered on duty with the Postal Service on February 1, 2015.

On or about February 1, 2018 you were involved in a verbal confrontation with several members of the staff at the Smokey Mo's Restaurant. In the video provided by the Smokey Mo's manager, it shows you, while in postal uniform, being loud, verbally cursing at the staff saying, "I don't give a fuck" and calling them names such "fat ass", "fucking European" and being destructive. The video shows you continued this behavior knowing the employee was filming you with his phone. You continued to yell obscenities as he called the police. In the video you say, "I'll be here mother fuckers, I don't care about the police either," You go on to say, "and you're recording me like a stupid piece of shit." The video shows customers of the Smokey Mo's restaurant close enough to watched and/or hear you as you slammed on the counter, used vulgar language and called the staff of Smokey Mo's names.

In investigative interviews on February 14 and March 14, 2018 with NALC steward present, you failed to provide mitigating circumstances for your actions. Your responses are noted but remain unacceptable.

* * *

From Handbook M-41, City Delivery Carriers Duties and Responsibilities:

112 General Responsibilities

112.6 Courtesy to Public

112.61 Do not engage in controversies with customers or other members of *the* public when on duty.

* * *

I have considered the facts in the matter. Unacceptable Conduct as described above is a serious offense. Misconduct of this nature, committed on duty and in public, is an unacceptable violation of the ethical standards to which Postal employees are expected to adhere and that you have agreed to abide by. Although,

the record confirms you were off the clock when the incident occurred, you were still in your postal uniform. The public has no way of knowing this. The public associates this uniform as a representative of the Postal Service. A task you failed miserably. For these reasons I find that your removal is necessary to promote the efficiency of the Service.

* * *

The Union filed a grievance contesting the removal. At the Informal Step A the grievance was unresolved and was appealed to the Formal Step A level. The grievance was denied at the Formal Step A level and was appealed to Step B where it was declared an Impasse. The grievance was then appealed to arbitration to be heard by this duly appointed arbitrator.

DISCUSSION AND OPINION¹

The Postal Service's Position

The Postal Service argues that it works hard to gain, and keep, the public trust. When the public has a poor experience with a Postal Service employee, it decreases the level of trust and reinforces the stigma of "Going Postal," an image that the Postal Service has tried to change.² Letter Carriers are the face of the Postal Service and it is imperative that they conduct themselves in a manner that speaks favorably to the organization, which is not an unreasonable policy. Postal management, and the public, have placed an immense amount of trust in the Letter Carrier. In the instant case, the Grievant has shown that she is undeserving of this trust.

The Postal Service argues that the Union has failed to establish that the Notice of Removal (NOR) was issued without just cause. To justify a discharge for misconduct away from the workplace, the organization must show that a nexus exists between the off-duty behavior and the reputation of the organization.³ Based on the video evidence taken by Robert Holley, a

¹ Even though no reference may be specifically made, the Arbitrator considered all the parties' contentions and reviewed the evidence and arbitration awards submitted.

² See Karl Vick, *Violence at Work Tied to Loss of Esteem*, ST. PETERSBURG TIMES, (DEC. 17, 1993) (This article is the first to mention the phrase "Going Postal," to describe an extreme outburst due to excessive stress. The phrase is directly related to the staggering number of post office shootings since 1983. The Postal Service does not approve of the term and has made attempts to stop people from using the saying.); See also *The Year in Review 1993*, LA TIMES, (Dec. 31, 1993) ("...deadly mass shootings around the nation, which have lent a new term to the language, referring to shooting up the office as 'going postal.'").

³ See JX-1 at 18 (quoting W.E. Caldwell Co., 28 LA 435, 436-37 (1957)(Arbitrator Louis C. Kesselman)).

Smokey Mo's employee, it is clear that the Grievant behaved in an unacceptable manner while in uniform, which is damaging to the image of the Postal Service.⁴ The Grievant, although not on the clock, was in her uniform, which even small children can recognize as a Postal Service uniform. The public makes no distinction between an employee who is on or off duty; it only sees a representative of the Postal Service. Her explosive behavior, while in uniform, will give the customers a lasting impression of an employee "Going Postal." Employees who display improper conduct while in uniform are subject to discipline up to, and including, removal.

The Postal Service further argues that the Grievant's right to due process was not violated during the grievance process. In addition, the Union fails to identify any procedural errors with the NOR. The Union argues that: the NOR was untimely, the Grievant was unaware of the rules regarding her conduct, and that the request for discipline, review, and concurrence were not completed by the correct personnel. This is incorrect. The Union fails to acknowledge that the Grievant was absent for fourteen days between the first and second Investigative Interviews (II), which extended the disciplinary process. The Union also argues that the Grievant's immediate supervisor should have requested disciplinary action. This is incorrect; discipline may be imposed by a manager other than the carrier's immediate supervisor.⁵ In the instant case, the immediate supervisor was relatively new and did not feel comfortable conducting an investigation that could lead to removal. Finally, the Union argues that the Grievant was unaware of the rules regarding conduct, but the Grievant was notified of the rules of conduct when she completed her orientation.⁶

The Postal Service contends that the Union has failed to provide any evidence that a violation of the National Agreement occurred. The Postal Service conducted a thorough and complete investigation and found just cause to issue the NOR to the Grievant. For these reasons, the Postal Service requests that the grievance be denied in its entirety.

The Union's Position

The Union contends that in cases of discipline, the burden of proof rests upon the Postal Service to show that it had just cause for the discipline imposed. In cases of discipline for grievous off-duty conduct, the Postal Service must also show that a nexus exists between the

⁴See Appendix to JX-1 (DVD copy of cellular phone footage recorded on Feb. 1, 2018 at Smokey Mo's restaurant)

⁵See NRLCA & USPS Combined Analysis of Changes National Agreements at 93. (2010).

⁶See PS-1.

Grievant's off-duty behavior and the Postal Service.⁷ This nexus must show that the Grievant's behavior caused an adverse effect to the Postal Service or an inability of the Grievant to continue delivering the mail due to the harm caused.⁸ The Postal Service has failed to meet either requirement.

The Union does not dispute or condone the Grievant's conduct as portrayed in the video footage taken at Smokey Mo's. The Union simply contends that the Postal Service has not established just cause because it failed to show that the severity of the discipline was reasonably related to the infraction. The Union contends that issuing the removal was punitive in nature, which is a violation of Article 16.1 of National Agreement.⁹ The Union argues that there was no reason for the Postal Service to issue the NOR when other methods of discipline may have been warranted.¹⁰ The Union further contends that the Postal Service has failed to show evidence that the Grievant's behavior has harmed the image of the Postal Service; there has been no publicity, no viral videos, and witnesses testified that the incident has not tainted their image of the Postal Service.

The Union contends that the NOR is fatally defective because it: was untimely issued; was the result of a faulty investigation; lacked the proper review and concurrence, and; cites a rule that the Grievant did not violate. The Postal Service issued the NOR fifty-four days after the incident occurred, which is untimely and a violation of the Grievant's right to due process. As the Arbitrator in this grievance has previously stated, "[d]ue process requires that any discipline must be issued in a timely manner so as to not give the employee the belief that her actions were excused."¹¹ The investigation was faulty because the Grievant's immediate supervisor did not request the discipline, and the review and concurrence failed to show that the Grievant was unaware of the provisions governing her conduct off-duty.¹² Finally, the NOR shows that the Grievant violated M-41 Handbook, Section 112.61 which states, "[d]o not engage in

⁷ Jim Reynolds, *An Analysis of Discipline for Off-Duty Conduct*, NAT'L PUB. EMPLOYER LABOR RELATIONS ASS'N http://www.npelra.org/files/public/CLRP/Reynolds,%20Jim_CLRP_Paper_2011.pdf (Sept. 2010).

⁸ *Id.* at 2.

⁹ See Article 16.1 of the National Agreement.

¹⁰ See JX-1 at 11.

¹¹ See USPS G11N-4GD-15238128 at 10 (Dec. 28, 2015)(Arbitrator Peter J. Clarke); *citing* S1N-3W-D-2205 at 9 (1982)(Arbitrator Edmund W. Schedler).

¹² See JX-1 at 23, 26, and 30.

controversies with customers or other members of the public when on duty.”¹³ It has been undisputed throughout the grievance process that the Grievant was off-duty at the time of the incident giving rise to the removal. While the Union recognizes Postal management may cite specific contract provisions which are allegedly violated to support just cause to issue discipline, the Postal Service must prove whatever violations are alleged in the NOR. In this case the Postal Service cites a rule that the Grievant has not violated.

The Union has established that the Postal Service has failed to meet its burden of proof. The Union has proven that the NOR is fatally defective, there was no proper review and concurrence, and the discipline was exceedingly harsh, inaccurate, and untimely issued. With the myriad of problems in the investigation and issuance of the NOR, the union insists that there was no just cause for the discipline and the Grievant’s right to due process was violated. For these reasons, the Union requests that the NOR be rescinded and expunged from all records, and that the Grievant be returned to work and made whole.

Analysis

The Postal Service has the authority to discipline its employees for misconduct directly related to employment. Typically, conduct away from the place of business is of no concern to the Postal Service; however, there is an exception when the conduct of an employee has a damaging effect on the reputation of the organization.¹⁴ Arbitrators have been reluctant to sustain discipline for off-duty misconduct without showing a nexus, or connection, to the job.¹⁵ Arbitrator Louis C. Kesselman explained that a discharge for misconduct away from the workplace must show that:

1. The behavior harms the Company’s reputation or product.
2. The behavior renders the employee unable to perform his or her duties or appear at work, in which case the discharge would be based upon inefficiency or excessive absenteeism.
3. The behavior leads to refusal, reluctance or inability of other employees to work with him or her.¹⁶

The Postal Service contends that the Grievant’s off-duty behavior was so egregious and detrimental to the reputation of the organization, that there was just cause for removal. The

¹³See Notice of Removal, JX-1 at 5.

¹⁴Reynolds, *An Analysis of Discipline for Off-Duty Conduct* at 2.

¹⁵See W.E. Caldwell Co., 28 LA 435, 436-37 (1957)(Arbitrator Louis C. Kesselman).

¹⁶*Id.*

Union contends that there is no just cause to remove the Grievant and that the NOR is fatally defective. After a comprehensive review of the evidence and arguments of the representatives, the grievance is sustained for the reasons stated below.

A. Just Cause for Removal

The Grievant's Actions on February 1, 2018

The events that occurred at Smokey Mo's on February 1, 2018, have been undisputed during the grievance process. The Grievant entered the restaurant to exchange a baked potato and to retrieve her credit card that was left the night before. The Grievant testified that she was offended when Joe Schumaker (Schumaker) suggested that she ate a portion of the potato and was angered when Robert Holley (Holley) began to record the scene. There is no question that the behavior of the Grievant is unacceptable, but the Postal Service has diminished Holley's actions. The Postal Service contends that Holley began to record the Grievant to document the occurrence while encouraging her to repeat her actions. This is a mischaracterization of the incident. The Arbitrator agrees that the Grievant's conduct is unacceptable, but Holley is not encouraging her actions for preservation; he is clearly taunting the Grievant which exacerbated the situation.

Was a nexus established?

The Postal Service contends that there was just cause to issue a NOR for the Grievant's off-duty misconduct because it was detrimental to its reputation. Conversely, the Union contends that the Postal Service has failed to show a nexus between the Grievant's misconduct and any damage to the Postal Service's reputation. To support its position, the Postal Service called Schumaker and Holley to give testimony regarding the incident that occurred on February 1, 2018. In their testimony, both Schumaker and Holley admit that the Grievant's actions did not completely taint their image of the Postal Service. Schumaker testifies that his image of the Postal Service was tainted "a little bit but not too much because [his] brother retired from the Post Office in Ft. Worth and [he] knows that one bad apple don't [sic] spoil the whole bunch."¹⁷ Carnell Hardy (Hardy) testified that the video has not been seen on social media, the news, or any other outlet; meaning the effect of the Grievant's conduct on the public was not realized. To

¹⁷Recording of Hearing at 1:17

further support its contentions, the Postal Service submitted several awards in support of its request to deny this grievance; however, each of the awards presented were distinguishable from the instant case and provide no support for its position.¹⁸

The Union contends that the Postal Service has failed to establish the nexus between the organization and the Grievant's off-duty conduct. The Arbitrator agrees with this contention. The Postal Service has only presented evidence to show that Grievant's actions had the *potential* to harm the reputation of the Postal Service; there was no evidence of *actual* harm. While there is no direct evidence of harm to the Postal Service, these are circumstances where an employee's off duty misconduct is so egregious that damage to the Postal Service is presumed. For example, if a national news organization publishes a story about a Postal Service employee who was arrested for armed robbery while in uniform, damage to the Postal Service is presumed. In this case, there is a Postal Service employee who failed to conduct herself within the standards of the Postal service, in a small restaurant with a limited number of patrons. There has been no publicity about the incident, and there are a limited number of people with knowledge of the incident; therefore, it can hardly be presumed that the Postal Service has been harmed.

The Postal Service has made assertions about potential damage, but it has not been able to support those assertions. In a similar grievance, Arbitrator Gary L. Axon previously held that "unsupported assertions are not sufficient to establish the required nexus between off-duty conduct and federal employment."¹⁹ Arbitrator Axon also states, "[t]he fact that the Grievant used vulgar language, while in uniform, and in an off-duty status, does not per se establish

¹⁸See generally W7C-5D-D-12016 (1989)(Arbitrator Carlton J. Snow)(Denying a grievance for a Postal Service employee that took mail from the Post Office to his residence; a criminal offense); S7R-3F-D-15572 (1989)(Arbitrator Ernest E. Marlatt)(Denying a grievance for a Postal Service employee who discarded mail while on-duty because he did not want to "look bad"); E94T-1E-D96078250 (1997)(Arbitrator Thomas F. Levak)(Denying a grievance for a Postal Service employee that disobeyed, on multiple occasions, direct instruction not to take his personal vehicle to the Postal Training Center in Norman, Oklahoma); G10T-1G-D-12161295 (2012)(Arbitrator Debra Simmons Neveu)(Denying a grievance for a Postal Service employee charged with identifying himself as a Postal Employee while making terroristic threats on a city water service company); G06N-4G-D-12212634 (2012)(Arbitrator Glenda M. August)(Denying a grievance for an employee observed taking pictures of a woman's "rear end" while on a lunch break; the employee was previously issued discipline for the same behavior).

¹⁹See E90N-4E-D-94036745 at 13 (1994)(Arbitrator Gary L. Axon)(*citing* Bonet v. United States Postal Service, 661 F.2d 1071 (1981)).

Grievant's conduct was prejudicial to the Postal Service."²⁰ Therefore, the Postal Service failed to establish a nexus between the Grievant's conduct and the Postal Service's business.

B. Due Process During The Grievance Process

Did the Postal Service Conduct a Thorough Investigation?

The Union contends that the Postal Service did not conduct a thorough investigation because the Investigative Interview (II) was not conducted by the Grievant's immediate supervisor. The Union also contends that there was no proper review and concurrence. The Union bases this contention on the belief that the immediate supervisor is the higher authority required to initiate the disciplinary process. This is inaccurate. The issuance of discipline is not limited to the employee's immediate supervisor.²¹ In the instant case, the Grievant's immediate supervisor, Cornelius Brown (Brown), testified that because he was relatively new on the job, he did not feel comfortable initiating an investigation that could lead to a potential removal. The manager, Rae July (July), rightfully completed the investigation and sought review and concurrence from another manager, Stan Stansel (Stansel).

The Union contends that Stansel did not thoroughly review the documents because of an inconsistency between the Grievant's statements and the Discipline Request form (DR). The Grievant claimed to have no knowledge of ELM 665.16 or that it required her to conduct herself, outside of working hours, in a manner that reflects favorably on the Postal Service; the DR indicated that the Grievant was aware of this provision.²² The Grievant's denial and subsequent giggling during the II did not persuade Postal managers that she was ignorant of the provision. Further, July testified that ELM 665.16 is included in the sections of the ELM reviewed during orientation and the Grievant testified that she attended orientation; therefore, the Grievant should have been aware of this provision. Despite the Union's contentions, it has not provided any evidence to discredit the investigative process.

Was the NOR defective?

²⁰*Id.* at 19.

²¹See NRLCA & USPS Combined Analysis of Changes National Agreements at 93. (2010)

²²See JX-1 at 23.

The Union contends that the NOR is defective because it incorrectly charges the Grievant for a violation of the M-41 Handbook. The Postal Service contends that the Grievant violated Section 112.61 of the M-41 Handbook because she was wearing her uniform and the employees and customers at Smokey Mo's did not know that she was off-duty.²³ Section 112.61 of the M-41 handbook states, “[d]o not engage in controversies with customers or other members of the public when *on duty*.”(Emphasis added).²⁴ It has been undisputed throughout the grievance process that the Grievant was off-duty at the time of the incident giving rise to the removal. Even though the M-41 handbook allows the Postal Service to discipline employees who violate any of its provisions, it does not allow the Postal Service to use artistic license to do so. The Postal Service has egregiously misconstrued Section 112.61 of the M-41 handbook to justify the removal of the Grievant who only *appears* to violate said provision. Appearance may be perception but it is not reality and cannot substantiate a disciplinary action. The discharge of the Grievant must stand or fall based on the reasons stated in the NOR.²⁵ As the Arbitrator has held before, the NOR is analogous to a criminal indictment and must accurately reflect the factual and contractual bases for the employee’s discipline.²⁶ The inclusion of Section 112.61 in the NOR when the Grievant’s conduct occurred off duty has rendered the NOR defective.

CONCLUSION

The Postal Service lacked just cause to remove the Grievant when no nexus was established between the Grievant’s conduct and the Postal Service’s image. Furthermore, the wrongful inclusion of Section 112.61 of the M-41 handbook rendered the NOR defective. The grievance must therefore be sustained. In sustaining this grievance, the Arbitrator does not wish to leave the impression that the Grievant’s behavior is acceptable. If the Grievant were to exhibit this type of behavior while on duty, this Arbitrator would take no issue in denying this grievance.

²³ See Step B Decision at 9.

²⁴ See USPS Handbook M-41.

²⁵ *Supra* note 18 at 12.

²⁶ See G15C-4G-D-17426245 at 8 (2015)(Arbitrator Peter J. Clarke)(Sustaining a grievance because the Postal Service incorrectly cited suspensions that were overturned on the Notice of Removal).

AWARD

Based on the foregoing, the grievance is sustained. The removal shall be reduced to a time served suspension and the Grievant shall be entitled to back pay only from the date of the grievance hearing until reinstatement. This suspension shall be entered into the Grievant's employment record for a period of twelve months, and may be used as the basis of future discipline.

July 27, 2018



PETER J. CLARKE
Arbitrator