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**REGULAR ARBITRATION PANEL**

In the Matter of Arbitration	)
	) Grievant: Lindy "Vic" Carambas
between	)
	) Post Office: San Diego, CA
UNITED STATES POSTAL SERVICE	)
	) USPS No. F06N-4F-D 11018717
and	)
	) NALC DRT No. 01-183613
NATIONAL ASSOCIATION	)
OF LETTER CARRIERS,	) Local Grievance 10D-1034
AFL-CIO	)

Before: M. Zane Lumbley, Arbitrator

Appearances: For USPS: Michael Miller  
For NALC: Bryant Almario

Place of Hearing: San Diego, CA

Date of Hearing: March 3, 2011

**AWARD:**

- I. It is the Award of the Arbitrator that management violated Article 16 of the National Agreement when they put the Grievant on Emergency Placement on October 8, 2010.
- II. It is therefore Ordered that the oral October 8, 2010, Emergency Placement and the written October 12, 2010, Emergency Placement in Off-Duty Status Without Pay be rescinded and the Grievant be made whole for all loss of wages and other benefits incurred by virtue of the Emergency Placement.
- III. The Arbitrator hereby reserves jurisdiction for the limited purpose of assisting the parties as may be necessary in the implementation of the remedy ordered above.

Date of Award: June 20, 2011

PANEL: Pacific Regular

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## OPINION

### **PROCEDURAL MATTERS**

This matter was convened pursuant to the parties' 2006-2011 collective bargaining agreement (Joint Exhibit No. 1, hereinafter "National Agreement") at San Diego, California, on March 3, 2011. Both parties were represented, presented documentary evidence and called one or more witnesses who testified under oath administered by the Arbitrator. The parties submitted posthearing briefs that were received in the Arbitrator's Texas office on April 11, 2011.

### **ISSUE**

The parties agreed on the following modified Step B statement of the issue to be resolved:

1. Did Management violate Articles 3, 5 16, 19 and/or 31 of the National Agreement when they put the Grievant on Emergency Placement on October 8, 2010?
2. If so, what is the appropriate remedy?

### **RELEVANT PROVISIONS OF THE NATIONAL AGREEMENT**

The relevant provisions of the National Agreement are:

#### **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 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 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.

### **FACTS**

The Grievant was employed by the Service as a letter carrier in Coronado Station when he was implicated on October 7 and 8, 2010, during an Office of Inspector General (hereinafter "OIG") investigation of another Coronado Station carrier in response to allegations the latter was removing discount coupons for personal use from Navy Exchange (hereinafter "NEX") mail.<sup>1</sup> OIG Special Agent Yavorosky testified she observed the Grievant hand NEX mail to the other carrier on October 7 and was told by the other carrier on October 8 that the Grievant not only gave him the NEX mail but knew he intended to use the coupons in it for personal gain. After her October 8 interview of the other carrier, Yavorosky informed Coronado Station Supervisor of

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<sup>1</sup> All dates hereinafter are 2010 unless otherwise specified.

Customer Service Waczek on the same date that the Grievant had been identified by the carrier being investigated as someone who had provided some of the NEX mail to him.

In response to Yavorosky's oral report, Waczek left a voice mail message for the Grievant to call her. When the Grievant did so, Waczek informed him he was being placed on Emergency Placement "pending investigation," not to report back to work and wait to hear further from her. On October 12, Waczek followed that advice with a letter entitled "Emergency Placement in Off-Duty Status Without Pay" that informed the Grievant, in relevant part:

In accordance with Article 16.7 of the National Agreement, effective Friday, October 8, 2010, you have been placed in an off-duty status without pay. The reasons for this action are:

**RETAINING YOU ON DUTY MAY RESULT IN LOSS OF MAIL OR FUNDS**

Your placement in an off-duty status will commence immediately and will continue until you are advised otherwise.

On October 9, Branch President Guzman informed the Grievant that he had been told the Emergency Placement was related to "the Navy Coverage waste he had from Thursday."<sup>2</sup> Thereafter, on October 15, Yavorosky interviewed the Grievant in the Union's presence.<sup>3</sup>

The Union grieved on October 22 and the parties processed the grievance through the mandated steps of the grievance procedure. When impasse was reached

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<sup>2</sup> Joint Exhibit No. 2, at page 28, the Union's Facts and Contentions at Formal Step A. Neither Guzman nor the Grievant testified.

<sup>3</sup> In view of my decision in this case and because the interview occurred after the Grievant's Emergency Placement, the substance of that interview is not relevant here.

at Step B on November 30, the dispute came on for hearing before the undersigned as noted above.

## **DISCUSSION AND ANALYSIS**

### **Position of the Employer**

The Employer contends that management did not violate any provision of the National Agreement when it suspended the Grievant pursuant to Article 16.7 of the National Agreement. In its view, it had justification to take the action complained of in view of the potential loss of mail involved. It also asserts it acted immediately upon receiving the oral report of the OIG and provided the Grievant and Union with sufficient information to permit the Union to represent the Grievant. As regards the Union's assertion that the Employer failed to provide requested information during the processing of the grievance, the Service counters that it provided what it had. Thus the Agency contends the grievance should be dismissed.

### **Position of the Union**

The Union argues that the Employer failed to carry its burden of proving the Grievant deserved to be subjected to the Emergency Placement. In the first place, it contends the Employer's case contains two fatal flaws, one stemming from its denial of the Grievant's due process right to be informed of the accusations against him on either October 8 or 12 and the second resulting from its failure to provide the notes of the OIG interview of the other employee being investigated as requested by the Union more than

once during its processing of the grievance. The Union therefore seeks to have the Emergency Placement rescinded and the Grievant made whole for his resulting losses.<sup>4</sup>

### **Decision of the Arbitrator**

Having now had the opportunity to consider the entire record in this matter, including the parties' posthearing briefs and the citations contained therein, I have determined to agree with the Union that Management violated Article 16 of the National Agreement when it put the Grievant on Emergency Placement on October 8, 2010. While I have studied all the evidence submitted and considered each argument raised by the parties, the following discussion will address only those considerations I found either controlling or necessary to make my decision clear.

As noted, the Union has raised two issues in its defense of the Grievant in this case. However, I am convinced that one overriding consideration controls here. In addressing that consideration, I first note that there is no question that an Article 16.7 Emergency Placement is a form of discipline. *Cases No. H4H-3U-C 58637 and H4N-3A-C 59518 (Mittenthal, 1990)*. Thus the notions of just cause apply pursuant to the express terms of Article 16, Section 1 of the National Agreement. An essential element of just cause is due process. Due process required, *inter alia*, that the infraction of which the Grievant was accused be identified before he was placed on Emergency Placement so that he might be in a position to defend himself. *Cases No. F06N-4F-D 09411004/DRT No. 0977-NM-0005 and F06N-4F-D 09418005/DRT No. 9977-NM-0009 (Ames, 2010)*. Here that clearly did not occur.

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<sup>4</sup> Although the Union argued at hearing that the Employer also violated Article 16.7 by not taking action immediately, it did not pursue that argument on brief and thus I shall not decide it.

Thus not only did Waczek tell the Grievant on October 8 only that he was being placed on Emergency Placement “pending investigation,” a statement that told him absolutely nothing about his circumstances, she did little more in her October 12 letter that informed him only that retaining him on duty might result in loss of mail. That does not identify the conduct for which he was being faulted; it merely states the potential consequence of not invoking an Emergency Placement. That lack of information left the Grievant defenseless.

Nor did the limited information provided Branch President Guzman on October 9 cure the Service’s deficiency, given its lack of specificity. In particular, even if it had been timely shared, it failed to identify that what the Employer was concerned with was the alleged act of giving NEX mail to his fellow carrier who had in mind some nefarious goal. Indeed, to argue that the limited information given Guzman provided sufficient notice to the Grievant assumed he was guilty as charged since that is the only way he would know what the reference to “the Navy Coverage waste he had from Thursday” would mean. That approach cannot satisfy the requirements of due process. Because I agree with the Union that this constitutes a fatal flaw in the Employer’s handling of this matter, the Emergency Placement cannot stand. *Id.*<sup>5</sup>

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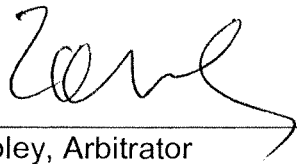
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<sup>5</sup> It is therefore unnecessary to address the refusal to provide information allegation in this case. Whether it is an issue requiring attention in any grievance contesting additional discipline flowing from the allegations against the Grievant is a matter to be decided by the neutral hearing that case.

**AWARD**

- I. It is the Award of the Arbitrator that Management violated Article 16 of the National Agreement when they put the Grievant on Emergency Placement on October 8, 2010.
  
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- III. The Arbitrator hereby reserves jurisdiction for the limited purpose of assisting the parties as may be necessary in the implementation of the remedy ordered above.



\_\_\_\_\_  
M. Zane Lumbley, Arbitrator

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June 20, 2011  
Date