

Kathy Baldwin
National Business Agent
N.A.L.C.
Dallas Region #10

PETER J. CLARKE
Arbitrator

ISSUE

Whether the Postal Service had just cause to place the Grievant off duty pursuant to Article 16.7 of the National Agreement when he made a comment to a Manager that he would bring a gun to a Postal facility? If not, what shall be the proper remedy?

STATEMENT OF THE CASE

The hearing opened as scheduled on February 2, 2018 at 9:00 a.m. at the Postal facility located at 4600 Aldine Bender Road in Houston, Texas. The parties offered a Joint Exhibit (JX-2) consisting of 54 pages, excluding the Dispute Resolution Team's (DRT) decision. Both parties were afforded time for opening statements, direct and cross-examination of witnesses, and closing arguments. The proceedings were taped to ensure the accuracy of the record. The record remained open until February 7, 2018 for the submission of arbitration awards. The Union submitted 7 arbitration awards and the Postal Service submitted 2 arbitration awards in support of their respective positions.

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 provides, "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...."

Article 16.7 states in relevant part,

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) ... 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...."

Article 19 incorporates into the National Agreement, “Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions as they apply to employees covered by the [National] Agreement.”

RELEVANT FACTS

On April 15, 2017, the Grievant, a 23-year employee of the Postal Service, had an altercation with his Supervisor, Bruce McCorkle, which led to both parties receiving disciplinary action. As part of Supervisor McCorkle’s discipline, he was temporarily reassigned to another Postal facility for 30 days. On May 19, 2017, the Grievant discovered that Supervisor McCorkle was returned to his station, which angered the Grievant. The Grievant began inquiring why Supervisor McCorkle was back at the station. On May 22, 2017, the Grievant was issued a 14-day suspension for the April 15, 2017 incident and he became very upset. He left work early on sick leave.

Later that day the Grievant called Customer Service Operation Manager (CSOM) Debra Brown and sent a text message for her to call him. When CSOM Brown called the Grievant in response to his text, the Grievant made threatening statements about Supervisor McCorkle. Specifically, the Grievant stated to CSOM Brown that, “Well, what do I have to do, bring a gun to work?” Upon hearing the Grievant mentioning bringing a gun to work, CSOM Brown hung up the phone and contacted the U.S. Postal Inspection Service (Postal Inspectors) to investigate the Grievant’s threat. On May 23, 2017, the Grievant was issued a notice of Emergency Procedure, which stated the following in part:

Date: May 23, 2017

**Memorandum To: Jamie Lopez
1143 Bobby Street
Pearland, Texas 77581**

EIN# 02377921

**Subject: Emergency Procedure Pursuant to the
National Agreement, Article 16.7 (or 16.5 of the NRLCA if applicable)**

This letter will confirm that at 8:30 am on May 23, 2017, you were placed in an off duty status (without pay) in accordance with Article 16, Section 7, (or 16.5 of the NRLCA if applicable) of the national Agreement for the following reason(s):

On May 22, 2017 approximately 3:46 pm Mr. (sic) Debra Brown, CSOM area 2 called you back from a missed phone call you had a conversation with Mrs. Brown involving threatening words. You stated "You must want something to happen, I am going to bring a gun to the Post Office and I am going to 'Kick Supervisor Bruce McCorkle's Ass". When asked to repeat what you had stated, you repeated the same threat and added "you must want something to happen". Therefore retaining you on duty may affect safety of self or others.

For the above reason(s) your retention on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or may result in your being injurious to yourself or others.

* * *

The Union filed a grievance on behalf of the Grievant contesting the Postal Service's placement of the Grievant off duty pursuant to Article 16.7. 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 the Dispute Resolution Team declared an Impasse. The grievance was then appealed to arbitration to be heard by this duly appointed arbitrator.

DISCUSSION AND OPINION¹

Postal Service's Position

The Postal Service argued that on May 22, 2017, the Grievant had a telephone conversation with CSOM Brown, during which he made a threat to bring a gun to work, which is the primary basis for the Emergency Procedure. The Grievant initiated the contact with CSOM Brown because Supervisor McCorkle, with whom the Grievant had prior conflict, was returned to his station following a temporary reassignment. The Grievant felt Supervisor McCorkle

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

should no longer be assigned to his unit and sought to voice his opinion about the matter. During the conversation with CSOM Brown, the Grievant expressed that because of his (Supervisor McCorkle's) return, he was going to, "bring his gun up there," (Albert Thomas Station) and when he (Supervisor McCorkle) got off work he was going to, "kick his ass."

The conversation the Grievant had with CSOM Brown was the basis for enacting Article 16.7. CSOM Brown reported the allegation that the possibility existed that the Grievant could be injurious to self or others. In particular, the Zero Tolerance Policy defines workplace violence and sets expectations for adherence to which all employees must comply. Any threats of any kind, veiled or implied, altercations, intimidation, bullying, horseplay and/or assaults upon a postal employee in the performance of their duties is a serious offense.

In the instant case the alleged misconduct was the threat to bring a gun to work and to kick the Supervisor's ass, which clearly led to the logical conclusion that the Grievant's retention in a duty status could have harmful consequences. The Postal Service is committed to the safety and security of its workforce. A breach of that security was committed by the Grievant with a threat to do bodily violence to Supervisor McCorkle and the mere mention of bringing a gun into the workplace. Therefore, the Postal Service had cause in invoking Article 16.7 and placing the Grievant in an off-duty status. For these reasons, the Postal Service requests that this grievance be denied in its entirety.

NALC's Position

The Union contended that the Postal Service lacked just cause when the Grievant was placed on Emergency Suspension. In addition, the Postal Service presented new arguments and contractual cites that were never made by Postal management at the lower grievance steps. There was also no proof in the file that the Grievant was ever made aware of Postal Service Policy Poster 158. The Postal Service representative at step B also introduced HR 31, which is the Post Service's Zero Tolerance Policy, but that was never brought up at the lower steps by Postal management. ELM 665.24, which deals with conduct of being violent and/or threatening behavior, was also not brought up at the lower grievance levels prior to Step B. Therefore, they cannot and should not be considered at Arbitration.

Article 15 of the National Agreement clearly states that grievance files are to be fully developed by the Formal Step A. The Postal Service's Formal Step A representative did not feel it necessary to cite Poster 158, any provision of the ELM or the Zero Tolerance Policy at the Formal Step A meeting. There was also no evidence that an investigative interview was ever conducted with the Grievant. The Grievant never had his day in court.

Regarding the merits, the Grievant was involved in a verbal altercation with Supervisor McCorkle on April 15, 2017, and during this altercation Supervisor McCorkle made terroristic threats to the Grievant. The only thing that happened to Supervisor McCorkle was he was moved to a different unit for a period of 30 days. Apparently CSOM Brown felt that the Zero Tolerance Policy or Elm 665 didn't apply to one of her own being management employees. Yet, when the Grievant made an "off hand" comment in the form of a question, the result was to hold his feet to the fire and place him off duty. There was not a clearer example of disparate treatment than that. One thing that is troubling with this suspension is that management never actually informed the Grievant that he was being placed on an Emergency Suspension. The Postal Inspectors were the ones who came to the Grievant's house and told him not to report to work. The Postal Inspectors aren't management. If you track the certified number on the bottom of the Emergency Suspension Notice you'll find out that this piece of mail wasn't delivered until June 21.

In addition, the Grievant's words were misrepresented by Postal management throughout the entire handling of this case. The Union argued that the record was devoid of any statement from CSOM Brown regarding the incident on May 22, 2017. The Union objected to any testimony from CSOM Brown regarding her conversation with the Grievant on May 22nd as a new argument. Finally, the Grievant was kept off duty for weeks when he posed no threat to anyone. He should have been returned to duty much sooner. For all these reasons and more, Union request that this grievance be sustained of its entirety and the Grievant made whole.

Analysis

This grievance involves behavior that has become more prevalent in the last two decades—workplace violence. Countless stories of workplace violence are reported every day. People, who have a vendetta, seem often to carry out their anger on the person who they believe caused their dilemma. The Postal Service is not immune to such harsh realities. Even though reports of violence at Postal facilities have slowed in recent years, that is in large part due to the aggressive stance taken by the Postal Service to eradicate, if not dissuade, such behavior. The Postal Service's Zero Tolerance policy on violence in the workplace has been instrumental in decreasing the incidents of violence within the walls of its facilities. In this case, the Grievant had an altercation with a supervisor who was temporarily reassigned to defuse the situation. The Grievant became angry when the supervisor was returned to his station a month later. The Grievant voiced his opinion about his displeasure of the supervisor's return to his manager and during their conversation, mentioned bringing a gun to work. The Postal Service contends that the Grievant's comments clearly warranted his placement off duty pursuant to Article 16.7, while the Union argues that the Grievant made the comment as a joke. After a careful review of the evidence, the grievance is denied in part and sustained in part for the reasons discussed below.

New Arguments

The record contained the Dispute Resolution Team's (DRT) decision which contained references to the Postal Service's Zero Tolerance policy (HR-31), ELM 665.24, and Poster 158 (Possession of Firearms and Other Dangerous Weapons on Postal Service Property is Prohibited by Law), as provisions violated by the Grievant. The Union objected to the inclusion of those provisions as new argument because none of those provisions were cited by the Postal Service at the lower grievance levels until Step B. The Postal Service did not put forth any evidence that any of those provisions were cited at the Informal A or the Formal A. In fact, the Grievance Form 8190 (Joint Step A Grievance Form) made no reference to any of those provisions; rather, the Form 8190 cited only Articles 3, 16, 19 and M-39 Handbook, Section 115. See JX-2 at 1. Article 15.2 (d) requires the parties at the Formal Step A meeting to make, "A full and detailed statement of facts and contractual provisions relied upon." See JX-1 at 68-69. In this case, the Postal Service's attempt to add to the record after it had an opportunity to develop the record

thoroughly by Formal Step A violated Article 15.2 (d) of the National Agreement. Therefore, the Arbitrator disregarded any reference or argument that included those provisions.

CSOM Brown's Testimony

The basis for the Grievant's placement off duty was the threat he made to Customer Service Operations Manager (CSOM) Debra Brown on the telephone on May 22, 2017. While the Postal Service presented CSOM Brown to testify to what the Grievant told her, the Union objected to her testimony because the Postal Service failed to include a written statement from her in the record. The Arbitrator allowed CSOM Brown's testimony at the hearing but reserved a decision on what weight, if any, to assign to her testimony. After careful consideration, the Arbitrator disregarded CSOM's testimony other than what was corroborated by the Grievant or the record. The Arbitrator made this determination after weighing the Union's ability to procure CSOM Brown's testimony independent from the Postal Service versus the Postal Service having the burden of proof. While the Union had an opportunity to interview CSOM Brown and include her responses in the record, the Union had no duty to produce any evidence if it so chose to do so because the Union did not carry the burden of proof. Thus, to allow all of CSOM's Browns' testimony would have been to penalize the Union for a burden it did not have to carry.

The May 22, 2017 Incident

CSOM Brown testified that in her position as a manager she is in charge of numerous stations and branches in Houston, Texas. She explained that she became involved in this grievance when she received a phone call from the Grievant. The Grievant stated that he previously had an altercation with his Supervisor, Bruce McCorkle, and he was very upset that Supervisor McCorkle was returned to his station after being reassigned following the altercation.

She further explained that apparently Supervisor McCorkle and the Grievant previously exchanged words one evening in April 2017, when he came back from delivering mail and the Grievant called her to express that he didn't want Supervisor McCorkle back at the station. CSOM Brown was asked to identify a document that was the report generated by the U.S. Postal Inspection Service (Postal Inspectors) about the April 2017 incident between Supervisor McCorkle and the Grievant. *See* JX-2 at 44. The document indicated that the previous altercation between Supervisor McCorkle and the Grievant occurred on April 15, 2017. *See Id.* CSOM

Brown was asked why the report was filed by the Inspection Service, and she replied that the Supervisor (McCorkle) felt threatened. *Id.* She added that it was Supervisor McCorkle who initiated the investigation by the Postal Inspectors. CSOM Brown read the content of the report and she was asked by the Postal Service advocate what was the threat the Grievant allegedly made to Supervisor McCorkle. She responded that the Grievant said, he was going to “Kick his (McCorkle’s) ass.”

CSOM Brown gave more context of the phone call she had with the Grievant. She explained that the Grievant asked her why Supervisor McCorkle was back working at the Albert Thomas Station. In her opinion, the Grievant’s demeanor was “erratic,” and he fussed and argued about Mr. McCorkle’s return to the station. CSOM Brown stated that she tried to explain to him why Supervisor McCorkle was returned to the Station and the Grievant responded that it wasn’t right for him to be back at the station. She explained to him that both of them were employees and she expected both of them to be respectful to one another. The Grievant disagreed with her and said he would go to the Union and he was going to file a Zero Tolerance on Supervisor McCorkle. She stated she tried to calm him down. She said she would come to the station to discuss the matter with him, but that did not satisfy him. The Grievant kept going on and on about the situation and that he didn’t want him in the building with Supervisor McCorkle. She added that the Grievant made the statement, “You must want me to bring a gun or something to work?” She stated she informed the Grievant that his comment was inappropriate.” She believed that the Grievant’s threat was serious and she believed he would act on his words and bring a gun to work.

CSOM Brown explained that following her phone conversation with the Grievant she called the Postal Inspectors to investigate. On cross examination, CSOM Brown admitted that the Postal Inspector’s report for the April 15, 2017 incident did not reflect any of the words that Supervisor McCorkle allegedly said to the Grievant.

The Grievant testified that has been employed by the Postal Service for 23 years. He explained that he was reaching out for help to a lot of people and CSOM Brown was his last resort because she is the area manager and she told him that they were going to keep on working together. He added that he always called CSOM Brown whenever he had a problem. She gave

him her phone number years ago. Anytime he had a problem, she told him to call her, which he sometimes did. He did not call her all the time when he had problems, but this time he was reaching out for help and all he said was, "what do I need to do bring a gun to work?" He stated that he said, "What do I need to do? Bring a gun to work?" in a joking manner. That was all he said to her, but he never intended to bring a gun to the Post Office. He added that he made the comment in a normal conversational tone. He didn't know CSOM Brown was going to take it the way she took it.

The Grievant was then asked about the April 15, 2017 incident with Supervisor McCorkle. The Grievant explained that he returned to the station and he had been authorized some overtime to clean the Nixies on his route 5822. He got back early from his route and went to Supervisor McCorkle to ask him what work should he start on first. Supervisor McCorkle responded that he did not have the Grievant scheduled for overtime. The Grievant replied that Jimmy, the a.m. supervisor, authorized his overtime and if he had a problem, he could call Jimmy to verify. Supervisor McCorkle agreed to allow him to work overtime, so he began working the nixies at his case. Supervisor McCorkle began telling the Grievant that he needed to put his tubs and his raw mail away when he returned from his route. He also began talking about a lot of different things because the Grievant's case was right next to Supervisor McCorkle's desk. In the past, Supervisor McCorkle and he would "kid" and "joke" around. They would also talk normally. On April 15, 2017, the conversation then took a more serious tone resulting in an exchange of words that led to the Postal Inspectors getting called to investigate.

The Grievant discussed what happened after the May 22, 2017 conversation with CSOM Brown. He stated that on the evening of his conversation with CSOM Brown he received a phone call from "some male" who asked him questions about his conversation with CSOM Brown. The Grievant spent the night at his father's house instead of going to his house. The next day his wife called him and said the Postal Inspectors were at her job and they wanted him to call them. She said they were at their house the night prior (May 22nd) and then they went to her job on May 23rd. She stated that they wanted him to provide a statement. His wife gave him their phone number and he called and set up a meeting time. They met in his kitchen and asked him what happened. The Grievant told them what happened orally and then they wanted it in writing.

He wrote down exactly what happened and they said, "Okay, well, we are done with this investigation. Don't return to work." He did not return to work. The Grievant was asked whether Postal Management ever informed him that he had been placed on Emergency Suspension. He responded that he received a letter in the mail around June.

The Grievant was asked whether there was anything he believed he could have done differently and he responded, "I guess I shouldn't have mentioned the word gun, but I was talking to Ms. Brown jokingly. I didn't know. No, nothing intended as far as threatening violence." On cross examination, the Grievant was asked about his testimony where he stated he made the gun comment jokingly, but also said he spoke to CSOM in a "normal" conversational manner. The Grievant cleared up the apparent conflicting testimony by responding he made the comment, "Jokingly in normal conversation?" He was asked whether he thought the Postal Service took his gun comment seriously, and he said, "Yes." However, the Grievant added that he thought the Postal Service should not have taken his comment seriously because of the manner in which he made the comment.

The Grievant's admission that he made a comment about bringing a gun to work was alarming to the Arbitrator. With the frequency of school shootings, random shootings at concerts and clubs, and, of course, past shootings at Postal facilities, the Grievant should have known that his comments, no matter how jokingly made, would strike a nerve in CSOM Brown. There simply was no room for CSOM Brown to take a chance that the Grievant was joking when he made the comment. To do so would have placed her and the Postal Service in a position of liability if the Grievant acted out his threat. Article 16.7 is used to maintain the status quo until a more thorough investigation can be conducted. Even though the Grievant left Postal premises on May 22, 2017, his threat of bringing a gun rendered him a person who could be injurious to himself or others the following day. Thus, the Postal Service had just cause to place the Grievant off duty pursuant to Article 16.7.

Despite the Arbitrator's finding that the Postal Service had just cause to place the Grievant off duty after the May 22, 2017 incident, he found that the Postal Service had no basis to keep the Grievant off duty pursuant to Article 16.7 before taking additional disciplinary action. The Postal Service provided no explanation why the Grievant remained off duty for

several weeks following the May 22, 2017 incident. *See* JX-2 at 34-41. The Postal Inspection Service completed its investigative report on May 24, 2017, although the Arbitrator was unclear of its findings because the full report was omitted from the record. Nevertheless, on that day, the Postal Service was aware of information to allow it to question the Grievant to determine if he remained a threat to himself or to others and to determine if further discipline was warranted. Instead, the Postal Service waited several more weeks until it acted further.

As this Arbitrator has previously stated, “Article 16.7 is not to be used as a replacement for other provisions of Article 16, such as Article 16.5 (suspensions of 14 days or more), but should be used only under circumstances where there lacks sufficient time to conduct a more thorough investigation.” *See* G15C-4G-D 17344716 at 7 (March 12, 2018) (citing H4N-3U-C 58637 and H4N-3A-C 59518 at 7-8 (Richard Mittenthal, 1990). Once the emergency ceases to exist, the Postal Service either must return the employee to work or hand out additional discipline under another provision of Article 16. In this case, the Postal Service failed to do either within a reasonable time.

CONCLUSION

The Postal Service had just cause to place the Grievant off duty after May 22, 2017 when the Grievant made a threat to bring a gun to work to his manager. However, there lacked evidence that an emergency remained to keep the Grievant off duty for more than the time it took to get the Postal Inspector’s report because there was no evidence he was still a threat to himself or others.

AWARD

Based on the foregoing, the grievance is denied in part and sustained in part. The emergency procedure is upheld; however, the Grievant should have been returned to duty or issued additional discipline once the Postal Inspector’s report was completed around May 24, 2017. The Grievant shall be reinstated only for the purpose of the Emergency Procedure as of May 24, 2017 and he shall receive all back pay from that date until further disciplinary action, if

any, was commenced against him. The Grievant shall also receive all benefits to which he was entitled during his time off duty, except overtime. The Arbitrator shall retain jurisdiction for 60 days in the event the parties require additional insight to implement this Award.

March 21, 2018

PETER J. CLARKE
Arbitrator