

Regular Arbitration Panel

IN THE MATTER OF THE ARBITRATION

BETWEEN	)	GRIEVANT: Janet Nance
	)	
UNITED STATES POSTAL SERVICE	)	POST OFFICE: Royal Palm, Florida
	)	
AND	)	CASE NO.: G15C-1G-D 19039557
	)	
AMERICAN POSTAL WORKERS UNION,	)	UNION NO.: RP180707
AFL-CIO	)	
	)	

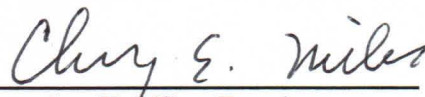
BEFORE: CHRISTOPHER E. MILES, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:	Tayloria McPhee-Johnson, Labor Relations Specialist
For the Union:	Jeffrey Riddell, APWU Arbitration Advocate
Place of Hearing:	Opa Locka, Florida
Date of Hearing:	January 8, 2021
Date of Award:	January 21, 2021
Relevant Contract Provisions:	Article 16, Section 1
Contract Year:	2015 - 2018
Type of Grievance:	Discipline

AWARD SUMMARY

The grievance challenging the Notice of Removal dated November 6, 2018 that was issued to Ms. Janet Nance for Unsatisfactory Attendance and AWOL, is sustained, in part. It is found that the Postal Service had just cause in accordance with Article 16, Section 1 of the Agreement to discipline Ms. Nance for numerous attendance related deficiencies in less than two months. However, due to the failure of the Postal Service to execute the Notice of Removal timely or in accordance with the expected process for such actions, the Notice of Removal is reduced to a long term suspension. As the corrective discipline, under these particular circumstances, Ms. Nance shall be afforded a final opportunity to demonstrate that she can report for duty as scheduled, be regular in attendance and make every effort to avoid unscheduled absences. Ms. Nance shall be reinstated to her position with her benefits intact, but without back pay.



Christopher E. Miles, Esquire
Labor Arbitrator

I. BACKGROUND

The Grievant in this case, Ms. Janet Nance, is employed as a Full-Time Mail Processing Clerk at the Royal Palm Processing and Distribution Center (P&DC) operated by the United States Postal Service (hereinafter referred to as the "Postal Service") in Opa Locka, Florida. By Notice of Removal, dated November 6, 2018, Ms. Nance was informed that she would be removed from her employment effective 30 days from receipt of the notice. The reason for the action was set forth as follows:

Charge: Unsatisfactory Attendance and AWOL:

Specification #1:

You are charged with Unsatisfactory Attendance and AWOL.

DATE	HOURS	TYPE OF LEAVE
06/24/2018	01.94	U/LWOP
06/27/2018	08.00	U/LWOP
06/28/2018	08.00	U/LWOP
06/29/2018	08.00	U/LWOP
06/30/2018	08.00	U/LWOP
07/01/2018	08.00	U/LWOP
07/05/2018	08.00	U/LWOP
07/06/2018	08.00	U/LWOP
07/08/2018	02.31	LATE
07/15/2018	00.59	LATE
07/21/2018	04.29	U/SL
07/22/2018	08.00	U/SL
07/26/2018	08.00	AWOL
07/29/2018	08.00	AWOL
08/01/2018	08.00	U/LWOP
08/02/2018	08.00	U/LWOP
08/03/2018	08.00	U/LWOP
08/04/2018	08.00	AWOL
08/05/2018	08.00	AWOL

In addition, you are aware that as a postal employee, you must make every effort to avoid unscheduled absences. Unscheduled absences, as defined by postal regulations, are any absences from work that are not requested and approved in advance. Your inability, unavailability, or incapacity for work is a legitimate reason for this action.

Employees are expected to be loyal to the United States government and uphold the policies and regulations of the Postal Service.

The Grievant was charged with violating several provisions of the Employee and Labor Relations Manual (ELM) and the following elements of record were considered in taking the action:

Date	Type of Action	Reason
11/22/2016	14 day Suspension reduced to 7 Day	Unsatisfactory Attendance
02/28/2017	14 Day Suspension	Unsatisfactory Attendance

Ms. Nance was further advised that she had the right to file a grievance pursuant to the parties' collective bargaining agreement.¹

A grievance was filed on behalf of Ms. Nance by the Broward County Area Local 1201 of the American Postal Workers Union (hereinafter referred to as the "Union"). The grievance was processed in accordance with the provisions of Article 15 in the Agreement and after the parties were unable to resolve the matter, it was appealed to arbitration. The undersigned was appointed to hear and decide the issue and a hearing was held on January 8, 2021 in Opa Locka, Florida. At that time, the parties were afforded full opportunity to present testimony and evidence, to cross-examine the witnesses, who were sworn, and to make arguments for their positions. At the conclusion of the hearing, the record in this case was closed.

II. RELEVANT PROVISIONS OF THE AGREEMENT

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.

III. CONTENTIONS OF THE PARTIES

A. Postal Service

The Postal Service contends that it had just cause to issue a Notice of Removal, dated November 6, 2018, for Unsatisfactory Attendance and AWOL to the Grievant, Ms. Janet Nance. It points out that Ms. Nance is a five year employee with the Postal Service and she has

¹ Collective Bargaining Agreement Between United States Postal Service and American Postal Workers Union, AFL-CIO, effective May 21, 2015- September 20, 2018 (hereinafter referred to as the "Agreement").

received two prior 14 Day Suspensions for Unsatisfactory Attendance. In this case, the Grievant accumulated 19 incidents of unscheduled absences that were not protected by the Family Medical Leave Act (FMLA) due to the fact that she had not worked the required number of hours for FMLA protection.

The Postal Service asserts that the Grievant failed to report as scheduled and despite having been given warnings and opportunities to correct her attendance deficiencies, she failed to do so. It submits that the Postal Service has a right to expect acceptable levels of attendance from all employees.

The Postal Service maintains that it has rules and regulations governing attendance and these rules are equitably applied. It argues that no contractual rights were violated in this case and prior attempts to correct Ms. Nance's attendance have not been successful.

The Union has claimed due process errors with regard to the Notice of Removal issued to the Grievant. It points out that the date identified next to Supervisor Jasmine Johnson's signature is October 22, 2018, while the Notice of Removal is dated November 6. Supervisor Johnson could not remember why the October date was used but it is evident that it was a "typographical error".

The position of the Postal Service is that Ms. Nance clearly did not report as scheduled and she was not cited for any of the dates that she was late reporting for work and permitted to complete her tour beyond her scheduled end time. For all of the above reasons, the Postal Service believes that it had just cause to issue the Notice of Removal in question and it requests that the grievance filed on behalf of Ms. Nance be denied in its entirety.

B. Union

The Union contends that the Postal Service did not have just cause and did not provide due process to the Grievant Ms. Janet Nance when it issued a Notice of Removal to her for Unsatisfactory Attendance and AWOL. It points out that the Notice of Removal was not given to Ms. Nance until November 20, 2018. The last incident listed on the Notice of Removal is August 5, 2018. Thus, the date from the last incident cited until receipt of the Notice of Removal by the Grievant is 107 days. The Union asserts that the action is therefore untimely and purely punitive. Moreover, it was 44 days after the last date cited before Ms. Nance had an Investigative Interview on September 18, 2018.

The Union also emphasizes, as reflected in the grievance file, that numerous 3971s were presented to Ms. Nance all at one time on September 11, for her to sign. In addition, the 3971s and clock rings were not made available during the Grievant's Investigative Interview on

September 18. The Supervisor chose to let the 3971s pile up rather than presenting them to Ms. Nance upon her return to work and this was done in order for the Supervisor to make a case against her. The Union argues that this is punitive and not corrective.

The Union also notes that Supervisor Johnson signed the Notice of Removal on October 22, 2018. The Notice is dated November 6, which is 15 days after it was signed by Ms. Johnson. The Union further submits that the rules concerning her tardiness have not been consistently applied by the Postal Service. On some dates, she was permitted to work beyond her scheduled end tour time and not charged, while on other dates she was not permitted to do so and was charged with unscheduled absences.

The Union asserts that the Postal Service has an obligation to timely issue discipline rather than to prosecute stale charges. The removal action taken by the Postal Service in this case was not taken within a reasonable amount of time. Therefore, for the reasons stated above, the Union requests that the grievance filed on behalf of Ms. Nance be sustained, that she be returned to her position, and that she be made whole in all respects.

IV. DISCUSSION AND FINDINGS

The Grievant in this case, Ms. Janet Nance, is employed as a Full Time Mail Processing Clerk at the Royal Palm P&DC. By Notice of Removal, dated November 6, 2018, Ms. Nance was terminated from her position for Unsatisfactory Attendance and AWOL. The issue to be determined in this case is whether the Postal Service had just cause for the action in accordance with Article 16, Section 1 of the Agreement.

The record reveals that the Notice of Removal cites 19 dates of unscheduled absence including four incidents of AWOL. The absences all occurred in a period of less than two months. The Union has argued that the removal action was untimely and punitive. It points out that the Notice of Removal was received by Ms. Nance 107 days after the last day cited as an unscheduled absence. In addition, it notes that Ms. Nance did not even receive an Investigative Interview for 44 days after the last absence cited.

Complicating the matter, according to the Union, is the fact that Supervisor Jasmine Johnson presented numerous 3971s to Ms. Nance for her signature on Monday, September 11 and then she did not provide the 3971s or clock rings at the Investigative Interview for the Grievant to review on September 18. Finally, the Union emphasizes that Supervisor Johnson signed the Notice of Removal on October 22, 2018, while the Notice clearly sets forth the date it was prepared as November 6, 2018.

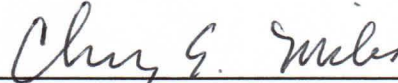
Clearly, a review of the Grievant's absences reveals that she has not been regular in attendance and has not made every effort to avoid unscheduled absences as required by the provisions of the Employee and Labor Relations Manual (ELM). She simply did not report for work as obligated. Moreover, the dates and times of the absences cited were not contested by the Grievant during the hearing. It was also acknowledged that she did not have protection for any FMLA related absences due to her failure to work the required number of hours for FMLA protection.

Be that as it may, it is also evident that the entire disciplinary process conducted by the Postal Service, including the Investigative Interview, the request for discipline and the Notice of Removal are rife with errors. Furthermore, there was an unreasonable delay in taking the action in this case. When questioned, Supervisor Johnson would not state that she was too busy to take action for the attendance deficiencies in a more timely manner, but she did point out that she had numerous employees for whom she was responsible. In addition, no credible explanation was provided with regard to the date of October 22, 2018, she wrote on the Notice of Removal. It is noted that the concurring official did not catch the error, as it was signed on November 6, 2018, the same date as the Notice of Removal by the concurring official. The Request for Discipline was submitted on September 26, 2018 and it was more than a month later that the Notice of Removal was provided to the Supervisor.

In my view, after review of the record, both the Postal Management and the Grievant have been deleterious in their actions. The Grievant has incurred numerous unscheduled absences and AWOLs in less than a two month period for which just cause was established to discipline her for Unsatisfactory Attendance and AWOL. Yet, the Postal Service has not executed the Notice of Removal timely or in accordance with the expected process for such actions. Thus, the grievance is sustained in part. It is found that the Postal Service had just cause in accordance with Article 16, Section 1 to discipline Ms. Nance for the numerous attendance related deficiencies, but due to the particular circumstances surrounding this case, the Notice of Removal is reduced to a long term suspension as the corrective discipline. Ms. Nance shall be afforded a final opportunity to demonstrate that she can report for duty as scheduled, be regular in attendance and make every effort to avoid unscheduled absences. Ms. Nance shall be reinstated to her position with her benefits intact, but without back pay.

AWARD

The grievance challenging the Notice of Removal dated November 6, 2018 that was issued to Ms. Janet Nance for Unsatisfactory Attendance and AWOL, is sustained, in part. It is found that the Postal Service had just cause in accordance with Article 16, Section 1 of the Agreement to discipline Ms. Nance for numerous attendance related deficiencies in less than two months. However, due to the failure of the Postal Service to execute the Notice of Removal timely or in accordance with the expected process for such actions, the Notice of Removal is reduced to a long term suspension. As the corrective discipline, under these particular circumstances, Ms. Nance shall be afforded a final opportunity to demonstrate that she can report for duty as scheduled, be regular in attendance and make every effort to avoid unscheduled absences. Ms. Nance shall be reinstated to her position with her benefits intact, but without back pay.



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January 21, 2021