



CLASS ACTION or PERSON (Last Name First)	WORK LOCATION CITY, STATE, ZIP CODE (FROM LINE 10)	LOCAL GRIEVANCE NO.	NATIONAL GRIEVANCE NO.
Graham, Shaneka	Nashville,37217	100723RA1	EGS5-23-001485
DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)	CRAFT	DATE OF STEP 2	USPS GRIEVANCE NO.
Notice of Removal	37 - Clerk	10/18/2023	

CORRECTIONS AND ADDITIONS

The Union facts and contentions regarding the emergency placement of Clerk Shaneka Graham, which the union constitutes a violation of Article(s) 15, 16, 19, 37 of the Collective Bargaining Agreement (CBA), as well as the Employee and Labor Relations Manual (ELM), Publication 553 and 108, and the Zero Tolerance Policy.

Management claims the Union did not specify the violation Articles 15, 19, 37, Publication 553, 108, or the Zero Tolerance and ELM. The Postal Service offered case (HOC-NA-C38), decided by National Arbitrator Linda S. Byars, as support for its claim that the Union's reliance on Articles 15, 19, 37, Publication 553, 108, or the Zero Tolerance and ELM was improper. But in the Byars's case, both the Union and the Postal Service accused the other party of introducing new evidence at arbitration.

Arbitrator Byars held: In the instant case, the Postal Service can credibly claim surprise when, for the first time at arbitration, the APWU identified Article 12 as the limiting provision. The APWU cannot claim surprise at the Postal Service's objection at arbitration to framing the issue in terms of Article 12. Absent evidence that the Parties even discussed the Grievance within the context of Article 12, it would be a violation of the spirit and intent of Article 15 for the decision in this case to turn on an interpretation of Article 12 (Management Exhibit #2).

This case is at Step 2 but Arbitrator Byars's case there was no evidence prior to the arbitration. In the instant case it clears from Step 1 that the Union's argument relied on Just Cause. The Service cannot credibly claim surprise at the Union's use of violation Articles 15, 19, 37, Publication 553, 108, or the Zero Tolerance and ELM at Step 2.

Contentions

**ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE**
Section 15.1 Definition
A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

Article 15.2(g).
If the Union representative finds that the facts or arguments presented in management's Step 2 decision are incomplete or incorrect, they have the right to submit a written statement to the management Step 2 representative within ten (10) days of receiving the Step 2 decision. This statement should include any necessary corrections and additions to the Step 2 decision. It is important to note that submitting corrections or additions within this timeframe will not extend the deadlines for appealing to Step 3. Additionally, the steward is entitled to allocated time to prepare the Union's statement of corrections and additions to the Step 2 decision.

**ARTICLE 14
SAFETY AND HEALTH**
Section 14.1 Responsibilities
It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. The Employer agrees to give appropriate consideration to human factors in the design and development of automated systems.

**ARTICLE 16
DISCIPLINE PROCEDURE**
Article 16.1 Statement of Principle
JUST CAUSE PRINCIPLE
The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline. "Just cause" is defined in the National Agreement in Article 16.1, as follows: "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." "Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six (6) sub questions and often apply the following criteria to determine whether the action was for just cause.

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These criteria are the basic considerations that the supervisor must use before initiating disciplinary action ...

Is There a Rule?
Management was also aware of the rules. But accepted the behavior of all employees involved. And Logged into her Telecom. During the Telecom looked up and saw everyone was gone. After her Telecom went outside ensure they were no further arguing. Never addressing carrier Weaver and Givens at the bottom of the dock about the rules, arguing on the workroom floor or any alleged threats that were made before, during and after her Telecom.
Is the Rule a Reasonable Rule?
There are rules but management did not apply any of them to the Incident on the September 1st. They allowed it to escalate. When Mrs. Graham informed Management they never address anything. Management Responds" Ok well I'm addressing it now; get your ting and I'm going to escort you out of the building".

Is the Rule Consistently and Equitably Enforced?
No other employee was addressed for the behavior exhibited on September 1st. Management never addressed Carrier Weaver nor Carrier Ramon about arguing on the workroom floor. But Weaver and Ramon interjected themselves into the conversation Graham was having with manger Karen Talley. This interaction happened at Karen's Desk.

Was a Thorough Investigation Completed?
Before administering the discipline, management should conduct an investigation to determine whether the employee committed the offense. The investigation should be thorough and objective. The Investigative Interview is the grievant day in court. The series of questions asked were constructed to illicit a pre-determined response or outcome. The Investigative Interview must be executed objectively. Objective, defined as an adjective means, not influenced by personal feelings or opinions. Talley's Investigative Interview Questions were loaded, accusatory, and opinionated. Management didn't even take the time to remove Attendance off the template for a discipline for Improper Conduct. Even Discipline that were adjudicated and expunge were referenced in the employee's interview. Management even expresses what made them feel uncomfortable in the actually Investigative Interview as a question. These questions are loaded and accusatory and similar to the old entrapment question, So, are you still beating your wife? An affirmative answer is confession, and a denial is construed as a confession of past behavior. The construction of these questions raises serious concerns about the objectivity of the investigation.

Was the Severity of the Discipline Reasonably Related to the Infraction Itself and in Line with that Usually Administered, as Well as to the Seriousness of the Employee's Past Record? The employee has no discipline on file. All past discipline had been adjudicated and resolved. Normally a charge for Improper Conduct in the past at the Glenview Station is progressive in nature. Employee has no discipline in her record at the time of the issuance of the Notice of Removal on 09/29/29.

Was the Disciplinary Action Taken in a Timely Manner?
Disciplinary actions should be taken as promptly as possible after the offense has been committed ...
May 1, 2023, Postal Service Policy on Workplace Harassment
All Managers and supervisors are responsible for preventing harassing conduct and inappropriate behavior that could lead to Prohibited harassment or Illegal harassment and must respond promptly when they learn of any such conduct. Any manager or supervisor who receives a complaint or learns of harassing conduct or inappropriate behavior that could lead to prohibited Harassment or illegal harassment must see that prompt and thorough action is taken. Harassing conduct must be corrected before it becomes severe or pervasive. Management must take action in accordance

with publication 552 Managers guide to understanding, Investigating, and preventing Harassment. Management must respond promptly or prevent it from becoming severe. Nor did management take action in accordance with Publication 552 Managers Guide to Understanding, Investigating, and Preventing Harassment.

Article 19

Provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they were part of the National Agreement. Publication 552 Manager's Guide to Understanding, Investigating, and Preventing Harassment, Publication 553 Employee's Guide to Understanding, Preventing, and Reporting Harassment and Publication 108 Threat Assessment Team Guide Publication 552

Examples of behavior that could result in a finding of hostile environment harassment include:

Using racially derogatory words, phrases, or nicknames.

Making offensive remarks about a person's looks, clothing, or body parts.

Determining whether the conduct at issue rises to the level of harassment is not easy. Behavior that is insensitive, juvenile, or boorish — even though it may be offensive to some people — may not constitute harassment as defined under the law. However, employees should not, and managers must not, tolerate inappropriate behavior in the workplace. The Postal Service does not condone inappropriate behavior. All employees

Publication 108 Threat Assessment Team Guide

Purpose. Under federal law (the Occupational Safety and Health Act of 1970), the Postal Service has an obligation to provide its employees with a safe and healthful place to work. Among the ways the Postal Service proactively meets its obligation is by implementing strategies and tools for reducing workplace violence. One such tool is Publication 108, Threat Assessment Team

Guide, which provides guidance to Postal Service management in responding to and assessing the seriousness of violent and potentially violent situations. Postal Service did not implement strategies and tools outlined in Publication 108.

Employee and Labor Relations Manual, (ELM)

665 Postal Service Standards of Conduct

665.16 Behavior and Personal Habits- Employees are expected to conduct themselves during and outside of working hours in a manner which 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 personnel 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. Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.

Management cites 665.16 would note that 5 CFR 2635, cited in ELM 662.1, is over 100 pages in length and covers everything from receipt of gifts to conflicting financial interests to misuse of government property to participation in professional organizations. 5 CFR 7001 is a supplement to 5CFR 2635 addressing, restrictions on outside employment and business activities and, the statutory prohibition against interest in contracts to carry mail and acting as agent for contractors. Lastly, 39 CFR 44 7 - Rules of Conduct for Postal Employees - addresses everything from Prohibited Conduct to Post-employment activities to Political Activities to Holding of State or local office by Postal Service employees to Bribery, Undue Influence, or Coercion.

There was also no evidence that the grievant failed to obey the instructions of her supervisor. (ELM 665.15), The Postal Service could have very well drafted a Notice of Removal using far less overreach second element of the just cause test.

Arbitrator Lewinter, the employer may object that this is a "technicality", and in truth, it is. However, the proper citation and proof of charges is as much a part of the collective bargaining agreement as the right to remove. The arbitrator may not side-step it because he worries that the merits might have validity as to the issuing of discipline. I am as bound by the contract as the parties. My personal likes, dislikes or feelings cannot permit me to evade the responsibility to uphold the agreement.

There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.

The Union requests that the Notice of Removal issued the Grievant for Improper Conduct be rescinded and expunged from Grievant's records. Compensate Grievant for loss of wages, annual leave, sick leave and other entitlements under the law. Cease and desist discrimination towards employee. The grievance file contains supporting documentation and evidence submitted by the Union to support violations of Article 1.3,15,16,19,37. Incident report states that Bianca Weaver "had to put the items in her hands down in preparation of a potential fight". But was separated by another employee. This was confirmed by Karen Talley Statement "Ramon got between the two females and lead Bianca outside." No immediate action from Station Manager Karen Talley was taken. Mrs. Talley continued her Telecom and looked up and noticed every was gone. Mrs. Talley Interview states "I told the employees several times to stop". Management response to the dispute was to "calm down and take a break". Management reacted to the matter when Mrs. Graham stated that "management doesn't address anything" This is when Mrs. Talley decided to address the incident 20 to 30minutes later. Only when management was called out for not addressing the matter, Shaneka Graham is placed off the clock for Improper Conduct. Also, in the police report it was confirmed by (OP1) Station Manger Karen Talley confirmed Bianca Weaver story. And that no specific threats were made. But in an interview of Mrs. Talley conducted on 10/13/23 "I witnessed parts of the confrontation" and that "I heard Ms. Weaver state that Shaneka tried to fight her". Investigation reveals Management failed to do a thorough and objective interview. No Statement was every requested from Shaneka Graham. Mrs. Graham was given an opportunity to give her side when management attempted to give her Discipline during an Investigative Interview. But the Request for Appropriate Action has no Higher-Level Concurrence. Management has no proof of when the decision was made by the higher Level. Mrs. Talley stated that it was tied up in Labor or at the Postmaster Office. As of 9/29/23 when the Notice of Removal was issued, Shaneka Graham has no discipline. Management listed a Letter of Warning that was expunged and removed from all files. Management even mentioned in the Investigative Interview accusatory questions about violent and threatening behavior in the past. In conclusion, the arguments put forth by management are insufficient Just Cause to justify a Notice of Removal. Bianca Weaver was preparing for a potential fight, she was intervened by another employee, Ramon, who separated the parties involved. No discipline. Station Manager Karen Talley failed to take immediate action. The management failed to provide a valid reason for not placing all involved employees on Emergency Placement for similar behavior, highlighting a lack of consistency in disciplinary actions. The investigation conducted by management lacked objectivity and thoroughness. Shaneka Graham was not given an opportunity to present her statement prior to the investigative interview, and the questions posed were accusatory and predetermined. Such an approach does not align with the principles of a fair and objective investigation. The severity of the imposed discipline, escalating from no prior disciplinary action on file to a Notice of Removal, appears punitive rather than corrective. management's handling of the higher-level concurrence process was flawed, lacking transparency and accountability. The decision-making timeline remains unclear, and there is a lack of evidence regarding when the higher-level concurrence was obtained, raising questions about the procedural integrity of the case.