

REGULAR ARBITRATION PANEL

In The Matter of Arbitration)	Grievant: Devin Qualls
Between)	Post Office: Anaheim, CA
UNITED STATES POSTAL SERVICE,)	USPS Case No. F10T-4F-D 16222270
Employer,)	APWU Case No. 160426
-and-)	
AMERICAN POSTAL WORKERS UNION,)	
AFL-CIO,)	
Union.)	

BEFORE: Claude Dawson Ames, Arbitrator

APPEARANCES:

<u>For the Postal Service:</u>	James Anderson, Labor Relations Specialist
<u>For the Union:</u>	Bobby Donelson, Arbitration Advocate
Date of Hearing:	April 28, 2017
Date of Briefs:	May 12, 2017
Date of Award:	June 5, 2017
Contract Provisions:	Article 16
Contract Year:	2011-2015
Type of Grievance:	Discipline - Removal

AWARD SUMMARY

The Postal Service did not have just cause to issue Grievant Devin Qualls a Notice of Removal for Failure to Maintain Regular Attendance/AWOL on March 17, 2016. The appropriate remedy is a seven (7) day suspension. The Grievant is made whole, less compensation received during period of removal. The Union's grievance is denied in part and sustained in part.

/s/ Claude Dawson Ames
CLAUDE DAWSON AMES, Arbitrator

I.

BACKGROUND

The Grievant, Devin Qualls, is appealing a Notice of Removal (NOR) issued by Management at the Anaheim Post Office on March 17, 2016. Grievant held the job classification of PSE Laborer Custodian with one year and three months of service when issued a NOR. He is charged with: *Failure to Maintain Regular Attendance/Absent Without Leave (AWOL)*. A review of Grievant's attendance record as compiled by Management, indicates 53.87 hours of accumulated AWOL's on February 16-20, 26- 27, 2016; and March 8, 9, 10, 2016. The Grievant's past record of discipline is listed as a 14-day suspension dated January 29, 2016 for *AWOL/Failure to Maintain Regular Attendance/Follow Instructions and a Letter of Warning (LOW) for Failure to Follow Instructions/Unacceptable Conduct, also dated on January 29, 2016.*

Station Manager, Maria Perez, concurred in the NOR issued to PSE Qualls and testified that Grievant was counseled about his irregular attendance prior to being issue a LOW and a 14-day suspension. Grievant never grieved either disciplinary actions and continued to be irregular in attendance and unexcused absences. Angel Luna, Supervisor Customer Services, also reviewed and concurred with the NOR issued to Grievant. According to Supervisor Luna, there is no record of Grievant ever calling in to inform Management that he would be absent from work.

Charles Rodgers, Supervisor Customer Service, issued Grievant a 14-day suspension based on his irregular attendance and failure to be regular in his work schedule. Supervisor Rodgers counseled Grievant three to four times on being regular in attendance, informing him that further discipline would be considered, if he did not comply. The 14-day suspension and LOW refer to separate incidents of Grievant's irregular attendance, but just happened to have been issued on the same day of January 29, 2016. According to Mr. Rodgers, Grievant was notified by certified mail to report for an investigative interview, but failed to do so. On cross, Mr. Rodgers stated that, normally he would issue a 7day suspension as progressive discipline before a 14-day suspension. But he wanted to get Grievant's attention that his irregular attendance could lead to his termination before reducing the 14 day suspension. However, Grievant never reported as instructed and Mr. Rodgers

did not reduce the 14-day suspension to a 7-day suspension. prior to issuing the NOR.

PSE Qualls testified that he did receive certified mail from the Service, but he never opened it. According to Grievant, he was assigned custodial duties at Anaheim Hills, Placentia Station and Yorba Linda ,where he continued to work as scheduled. After receiving his NOR from Anaheim Hills, Grievant was not told to return to work but continued to report to Placentia Station Yorba Linda (Postal Forum) where his weekly work scheduled was posted. Anaheim Hills did not post Mr. Qualls's work schedule and only notified him orally of his weekly schedule. Grievant admits to falling asleep in his vehicle after reporting to work, but states that he was ill. Grievant maintains he is a good employee and only had problems at the Anaheim Hills Station because Management refused to post his weekly schedule. He received a Letter of Warning and the 14-day suspension, both on January 29, 2016. Grievant maintains that he was being harassed by Management at the Anaheim Hills station.

A hearing was held at the Anaheim Post office on April 28, 2017. James Anderson, Labor Relations Specialist, represented the Agency. Bobby Donelson, Arbitration Advocate, represented the Grievant, Devin Qualls and the APWU, with technical assistance from Clerk Craft Officer Bill Gonzalez. The parties stipulated that the matter was properly before the Arbitrator. The hearing was officially closed after timely receipt of post-hearing briefs on May 12, 2017.

II.

ISSUE PRESENTED

The parties' stipulated issue is as follows:

Did the Postal Service have just cause to issue PSE Devin Qualls a Notice of Removal dated March 17, 2016?

If not, what is the appropriate remedy?

III.

RELEVANT CONTRACT LANGUAGE

ELM

511.43 Employee Responsibilities

Employees are expected to maintain their assigned schedules and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.

665.41 Requirement for Regular Attendance

Employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the Postal Service.

IV.

POSITIONS OF THE PARTIES

A. Employer's Position:

The Service maintains that "just cause" existed for the issuance of the Notice of Removal. After having been warned through issuance of a Letter of Warning and a 14-day suspension that his attendance was unsatisfactory, Grievant continued to have an unsatisfactory attendance record and AWOL's. Each piece of discipline that Grievant has been issued informed him that he needed to correct his behavior. The action was taken to impress on him that he must correct his work deficiencies and demonstrate adherence to postal regulations. Grievant was informed that a failure to meet the stated or legitimate work expectations may result in further discipline, up to and including removal from the Postal Service. It is clear that there is a rule and that Grievant is well aware of the rule.

All three Managers (Maria Perez, Angel Luna, and Charles Rodgers) credibly testified that the Grievant had received progressive discipline and was given an investigative interview for the Grievant's Notice of Removal dated March 17, 2016. The Notice of Removal was issued by Supervisor Angel Luna. Charles Rodgers testified that he issued the Grievant a Letter of Warning for conduct/AWOL (Grievant was found sleeping in his car), and a 14-day suspension for failure to be regular in attendance. During cross-examination, Supervisor Rodgers testified that he would have reduced the 14-day suspension to a 7-day suspension had Mr. Qualls entered a grievance

against the discipline. Mr. Rodgers further testified that Grievant failed to notify Management numerous times that he was not reporting to work as scheduled.

B. Union's Position:

The Union argues that just cause did not prevail. The Service did not follow the steps of progressive discipline, and the discipline was punitive rather than corrective. The Notice of Removal charge dates of February 16, 20, 26, and 27 which should not have even been considered. The 14-day suspension dated January 29, 2016 stated that Grievant would be on suspension for the dates of February 12 through February 29, 2016. Grievant did not grieve the 14-day suspension and, based on Article 16, Section 4, he was supposed to have been serving a suspension on those dates.

Management stock piled discipline on January 29, 2016. Supervisor Charles Rodgers clearly testified he issued the discipline and thought that Grievant would file a grievance, after which Rodgers would reduce the suspension. The reduction never occurred because no grievance was filed. Grievant was assigned work at the Placentia Post Office after the NOR and 14-day suspension were issued on January 29, 2016. Supervisor Rodgers was not clear in regards to the reason why both disciplines were issued on the same day.

Management waited a month to discipline Grievant for sleeping in his car. They followed this with a same day 14-day suspension for irregular attendance. Grievant never served the suspension. Both actions send a message that Management lacked concerns about the issues for which Grievant was being disciplined. In addition, Management's action were punitive and not corrective in nature. Grievant was never given any time for "sober reflections."

V.

DECISION

When determining whether just cause exists to issue a Notice of Removal to Grievant PSE Devin Qualls, the Arbitrator is called upon to review on a *de novo* basis, Management's record of discipline issued to correct the employee's alleged irregular attendance. Pursuant to the parties' settled MOU regarding "Postal Support Employee (PSE) Discipline Item 3.B.3," PSE's who successfully completed either a 90 work day or 120 calendar day period within the preceding six months may be disciplined within the terms of their appointment for just cause ... and such discipline is subject to the grievance-arbitration procedure. The parties recognized that removal is not the only mechanism available to correct deficient behavior and even agreed that "the full range of progressive discipline is not always required for PSE's, however; an appropriate element of just cause is that discipline be corrective in nature, rather than punitive."

PSE Qualls had successfully completed his required probationary period and was employed as a custodian for one year and three months when issued an NOR by Management citing seven incidents of AWOL. Grievant's record of imposed discipline consists of a Letter of Warning and a 14 calendar day suspension for unsatisfactory attendance. Both disciplinary actions were issued simultaneously by Management on January 29, 2016. A review of four (4) of the seven (7) AWOL dates (February 16, 20, 26, and 27, 2016) cited as a basis for issuing the NOR occurred while Grievant was off duty serving his 14-day suspension from February 12 to February 29, 2016. The Union contends that Management's actions constitute a total disregard that discipline is supposed to be corrective and not punitive. Normally in most cases of attendance, discipline is progressive with a Letter of Warning, 7-day suspension, 14-day suspension, and removal, or in some cases, a last chance agreement, according to the Union.

After careful consideration and review of the evidence record, including witness testimony, post-hearing briefs, arguments, and the parties' supporting arbitral decisions, the Arbitrator finds in part for the Union. The Postal Service lacked just cause to issue a Notice of Removal to PSE Devin Qualls as charged. Under the parties' Agreement and generally accepted principles of progressive

discipline, "... discipline should be corrective in nature, rather than punitive." In other words, a series of progressive disciplinary steps normally should occur prior to imposing the ultimate industrial penalty of discharge. These steps include oral warnings, written warnings and suspensions. The recognized exception to progressive discipline being where retaining an employee would result in physical harm to self or other, or loss of funds or property. Under such circumstances, an employer is not required to implement progressive discipline and may immediately terminate the employee. However, that is not the case herein presented.

PSE Qualls, who has now been converted to career status, was denied progressive discipline and an opportunity to correct his irregular attendance before being issued the ultimate discipline of removal. The evidence record indicates that Supervisor Rodgers did have oral discussions with Grievant regarding his attendance, but his written work schedule was never posted by Management, unlike Placentia or Yorba Linda, where they did post his schedule and where Grievant was regular in attendance. Further, Anaheim Hills issued Grievant both a Letter of Warning and a 14-day suspension on the same day of January 29, 2016, with no reasonable interim time to correct his absences before being issued the NOR. Even here, the NOR wrongly cited four (4) AWOL days when Grievant was off duty serving his 14-day suspension or, at least, had been notified to serve his suspension from February 12, 2016 to February 29, 2016. The Arbitrator finds that Mr. Qualls was denied progressive discipline and Union's grievance is sustained in part and denied in part.

AWARD

The Postal Service did not have just cause to issue Grievant Devin Qualls a Notice of Removal for Failure to Maintain Regular Attendance/AWOL on March 17, 2016. The appropriate remedy is a seven (7) day suspension. The Grievant is made whole, less compensation received during the period of removal. The Union's grievance is denied in part and sustained in part.

Respectfully submitted,

Dated: June 5, 2017

/s/ Claude Dawson Ames
CLAUDE DAWSON AMES, Arbitrator