

UNITED STATES POSTAL NATIONAL AGREEMENT
Northeast Region Regular Arbitration Panel
Case # NC-H-16, 495-D

01043

IN THE MATTER OF THE ARBITRATION

-between-

U. S. POSTAL SERVICE

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS

RE: DOUGLAS STAPLES (DISCHARGE)

OPINION &
AWARD

APPEARANCES

For the U. S. Postal Service:

William P. Ferry, Labor Relations Executive;
Lasxlo F. DeNagyivan, Acting Supervisor; John
J. Triano, Vehicle Operations Analyst; William
Malcolm, Acting Tour Superintendent; David
Hamilton, Safety Manager.

For the National Association of Letter Carriers, AFL-CIO:

Robert M. Bloomer, Representative, NALC; Douglas
M. Staples, Grievant.

Before: Edward Levin, Arbitrator

ISSUE: Was the discharge of Douglas Staples for just
cause? If not, what shall be the remedy?

Background

On August 3, 1978, Mr. Douglas Staples received a
notice of proposed removal for the following charges:

CHARGE #1 - INSUBORDINATION

Specifically on August 2, 1978 Acting Supervisor Mr. L. F. DeNagyivan ordered you to relocate an empty trailer. You responded in a raised voice, "I will not move the box." When Mr. DeNagyivan repeated the order and asked if you were refusing to follow orders you started to shout using obscene language. You shouted, "Fuck You, You fucking, supervisors don't know what you're doing." A further attempt to get you to comply with this order resulted in your continuing to shout and cause a disturbance causing other employees in the area to stop working. Mr. DeNagyivan sought assistance from Acting Tour Superintendent, William Malcolm. When Mr. Malcolm arrived on the scene you were again ordered to relocate the trailer. After further argument you finally complied with the order.

CHARGE #2 - FAILURE TO PERFORM YOUR DUTIES IN A SAFE MANNER

Specifically you have been involved in four (4) motor vehicle accidents which were judged to have been preventable by you.

On January 31, 1975 you had an accident while backing that resulted in a settlement of \$131.71 being paid by the U. S. Postal Service.

On January 12, 1977 while backing up at the Harstdale post office you damaged a leased vehicle. Repairs were made by the contractor.

On October 17, 1977 you had an accident as a result of your failure to check clearance. This resulted in a claim paid by the U.S. Postal Service in the amount of \$268.00.

On August 2, 1978 while backing a trailer in the parking area you ran into another trailer causing that trailer to strike a third trailer damaging all three trailers.

Also you have been involved in ten (10) industrial accidents since your appointment in the Postal Service on November 29, 1969.

The Postal Service stated that the following elements of Mr. Staples' past record were considered in determining the

the disciplinary action to be imposed:

Letter of Warning on 02/24/78 for Insubordination and Mis-sorting Mail.

Letter of Warning on 01/22/77 for Disobeying a Direct order.

Suspended from 01/06/75 through 01/24/75 for AWOL.

Suspended from 08/05/74 through 08/09/74 for Failure to Maintain Schedule.

Letter of Warning on 02/28/74 for AWOL.

Postal Service Position

In support of Charge #1, the Postal Service presented testimony by Mr. L. F. DeNagyivan, who was serving as Acting Supervisor on August 2, 1978. Mr. DeNagyivan stated the following: On August 2nd at 7:50 A.M. Mr. Staples reported to him that the backup mirror on the hustler was broken and the frame damaged. He said he filled out a safety report form and vehicle repair tag. Mr. DeNagyivan stated that he conducted a preliminary safety inspection of the vehicle and found the mirror not to be broken, but the frame had been slightly damaged. He sat inside the cab of the vehicle and found no safety hazards resulting from the damaged frame. Mr. DeNagyivan claimed that he physically touched and examined the mirror and that it was not necessary to make any adjustments.

Mr. DeNagyivan testified that he gave Mr. Staples several orders to move trailers, and to deliver a five ton truck to

White Plains, which he completed. At 10:45 A.M. when Mr. Staples returned from White Plains, he directed him to move another trailer into the yard. Mr. Staples told him he would not move the trailer. When asked if he was refusing an order, Mr. Staples threw the ignition keys on the ground, and uttered obscenities at the supervisor. The commotion was sufficiently loud to be heard by mailhandlers in the vicinity who momentarily stopped work in order to see what was happening. Mr. DeNagyivan called William Malcolm, the Acting Tour Superintendent, for assistance. After examining the mirror on the hustler and finding it in satisfactory operating condition, Mr. Malcolm directed Mr. Staples to move the hustler.

This time Mr. Staples left the floor, and fifteen minutes later returned, reporting that he had had an accident with the hustler. Upon examination it was found that an empty forty foot trailer had collided with other parked trailers, and one of the struck trailers had a fifteen foot scrape mark along its side. At that time, Mr. Triano, the Vehicle Operations Analyst, was called to assess the nature and cause of the damage.

Mr. Triano testified that at 8:30 A.M. he had examined the mirror on the hustler in question and found it in satisfactory operation. Later that same day, he also investigated the accident involving the three trailers. He found fresh scratch marks on the corner of of one of the vehicles, and found scratches in two places on another trailer. He also detected scrapings on the ground, caused by the landing gear of one of the trailers, three to five feet in length.

Mr. Malcolm initiated the disciplinary action because of

the seriousness of the incident which he considered a deliberate act on the part of Mr. Staples, and which could have seriously injured or killed any unsuspecting individual who might have been between the trailers.

Mr. Malcolm testified that he reviewed Mr. Staples' safety record and accident reports before deciding on the disciplinary action to be taken. He considered Mr. Staples' safety record as one of the worst at the facility.

Mr. David Hamilton, Safety Manager for the Mt. Vernon facility, also testified that Mr. Staples' accident record was one of the worst at the facility. In addition to the hustler accident involved in this arbitration, Mr. Staples had the following accidents: 6/17/74, hand injury; 5/2/75, splinter under nail; 5/16/75, fell off platform to ground; 1/31/75, pulled bumper away from parked vehicle; 1/6/76, backed into postal service vehicle while backing; 2/9/76, hit a passenger vehicle on right hand side; 12/18/76, injury to his back while loading #3 sacks; 8/18/77, pallet fell and injured his left leg while he was opening the door to a truck; 2/28/77, strained upper arm from pulling pallet with handjack; 10/17/77, hit ceiling of loading platform when backing into loading area.

On the basis of the events of August 2, 1978, and the discipline and safety record of Mr. Staples, the Postal Service asks that his removal be upheld.

Union's Position

Mr. Staples does not deny having had words with Mr. DeNagyivan on the date in question. However, this was related to a safety hazard that existed involving the backup

mirror on the hustler, and his efforts to have it corrected. However, the event cited in the charge for insubordination are insufficient to uphold such a charge, since Mr. Staples finally complied with the order after supervision's insistence.

Mr. Staples claims that the accident took place at 12:25 P.M. and not 10:45 A.M. as alleged by management. Mr. Staples states that he merely touched the corner of one trailer while backing, and claims that the accident resulted from his inability to see the rear of the trailer he was backing into the space. He testified that he did not feel the vehicles touch. Mr. Staples insists that he had no intention to do damage as implied by the Postal Service. He pointed out that terminal vehicles were defective, and that he reported safety deficiencies to management, and nothing was done to correct these situations.

With respect to the motor vehicle accidents he was charged with in the past, many of those were due to causes beyond his control. In addition, Mr. Staples claims that the Postal Service did not advise him concerning ways of avoiding similar actions in the future, thus not fulfilling their responsibilities.

The union objects to the use of disciplinary action instituted prior to January 22, 1975 as a basis for determining disciplinary action against Mr. Staples. The union argues that this is a violation of Article XVI Section 8 which prohibits the consideration

of disciplinary action, "if there has been no disciplinary action initiated against the employee for a period of two years." In this case the contractual limitation expired 1/22/75 and the last disciplinary action was initiated on 1/6/75.

Arbitrator's Opinion

The arbitrator must agree with the union that the conditions involved in Charge #1 does not constitute insubordination. There must be several essential elements present for a valid charge of insubordination. First, there must be a clear and unambiguous order that is understood by the employee. Second, the penalty for not complying must be clearly stated to the employee. Third, the employee must have refused to carry out the order. Failure to fully comply in all respects to an order, or carrying out the order after argument or discussion about the order, is a significant disciplinary violation, but not as serious as insubordination. In this case, the record shows that the grievant did carry out the order, albeit belatedly and badly.

With respect to the accident involving three truck trailers, the arbitrator is compelled to place greater weight on the testimony of the Postal Service as compared to that of the grievant. The grievant testified that he did not hear or feel the impact when the collision occurred. Nevertheless, in a letter written by the grievant on August 15, 1978, shortly after the accident, the grievant wrote, "I came back until I felt the back stop and I thought I had just touched the one trailer."

In an issue as grave as the one involved in this arbitration, the credibility of the witnesses, and particularly that of the grievant is of paramount importance. In this case, the credibility shifted away from the grievant by the discrepancies in his earlier written account of the accident and his later testimony, while the collective testimony of management formed a more believable account.

Even if the mirror was broken as claimed by the grievant, there were measures that he could have taken to avoid the damage that took place. He could have requested a guide to assist him in backing the trailer. If he had been refused, it would have placed a responsibility on the Postal Service for contributing to the accident. In the alternative, he should have made sufficient periodic visual checks from outside the cab of the truck to be sure that he would not be involved in a collision. This accident takes on greater seriousness in the context of the grievant's vehicular accident record and the potential of even greater risk to people as well as property.

The union argues that the suspension initiated before January 22, 1975 be disregarded in accordance with Article XVI Section 8 of the Contract which bars the consideration of prior records, "if there has been no disciplinary action initiated against the employee for a period of two years." In this instance, they argue that three of the dates used by the Postal

Service in determining the imposition of disciplinary action were instituted in excess of the two year ban and should therefore be excluded from any consideration with respect to the imposition of this discipline.

The Postal Service maintains that the time period for computing the two year ban should commence with the last day of suspension and not the date upon which the suspension began. This would place the last date of discipline after 1/22/77 and within Section 8 limits.

The purpose of Section 8 is to protect employees from having their past records dredged up after they have shown, over a two year period, that they can function on the job without incurring further disciplinary action. Obviously, if an employee is not on the job because he is suspended for disciplinary purposes, his ability to stay out of trouble does not begin until he returns to work. Therefore, the clock on the two year period begins after the suspension is served and runs up to the time the new disciplinary action is initiated. Accordingly, the past record considered by the Postal Service in determining the disciplinary action to be imposed on the grievant was proper.

The progression of discipline upon which the discharge was based does not properly conform to the principles of progressive discipline that would warrant a dismissal. Progressive discipline means that each succeeding disciplinary measure is

of a more severe degree so that an employee may know precisely where they stand in the progression. If supervision decides to issue a lesser degree of discipline than the last, the progression then begins again at that point. The previous disciplinary elements are letters of warning. Even though there are earlier suspensions, the later letters of warning must be followed by further suspension if discipline is to properly progress to dismissal.

Although the charges proven by the Postal Service are of a serious nature, they are not sufficient to bypass the principle of progressive discipline. The decision to dismiss Mr. Staples must therefore be reduced to a suspension without back pay.

E. LEVIN

6/4/79