

**EXPEDITED ARBITRATION**

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In the Matter of Arbitration Under )  
the Labor Agreement Between: ) GRIEVANT: Gross, H.  
) )  
UNITED STATES POSTAL SERVICE ) POST OFFICE: Rockville, MD  
The Service ) )  
) USPS NO: K01N-4K-D-005061829  
-And- ) )  
) NALC DAT NO: 13-042557  
NATIONAL ASSOCIATION OF LETTER )  
CARRIERS, AFL-CIO ) ND 2884  
The Union )

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BEFORE: NICHOLAS DUDA JR., ARBITRATOR

**APPEARANCES:**

For the USPS: Karen Kormelink  
USPS Advocate

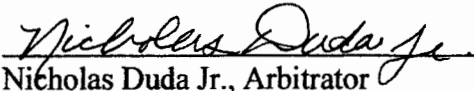
For the NALC: Alton R. Branson  
LBA Region 13

Place of Hearing: Rockville, MD  
Date of Hearing: July 1, 2005  
Date of Award: July 6, 2005  
Relevant Contract Provisions: Section 16.1 of the Basic Labor Agreement

**AWARD**

For reasons explained herein, we find the Service has not shown that Grievant violated his responsibilities. On the contrary, the evidence indicates that he did fulfill his responsibilities under the District Manager's Standard Operating Procedure. He considered whether and when he had experienced an on-the-job injury and reported to Supervision immediately after concluding he had experienced such an injury. His consideration and conclusions were necessarily subjective, but were not shown to be incorrect or unreasonable under the circumstances. Initially Supervision recommended denial of Grievant's OWCP claim arguing that Grievant had not suffered a traumatic injury. Only after MRI examination were the doctors able to make a certain determination that Grievant had been injured on January 11, 2005 as he had reported; the same MRI evidence persuaded OWCP to change its original denial determination and honor the on-the-job injury claim.

We find the Service did not have just cause to issue the letter of warning. Therefore the Service is directed to rescind the subject Letter of Warning and make an appropriate change in Grievant's personnel file.

  
Nicholas Duda Jr., Arbitrator  
July 9, 2005

## **BACKGROUND**

After Supervision issued a Letter of Warning to Grievant for "Unsatisfactory Work Performance", the Union filed the subject grievance in protest.

The Letter of Warning claims "all employees are have [sic] been instructed...to report an accident immediately in order to provide medical attention if necessary. You failed these instructions..."

## **STIPULATED ISSUE**

Was the Letter of Warning issued with just cause? If not, what remedy is appropriate?

## **FINDINGS OF FACT**

At Arbitration the Service relied on three documents as basis for the claimed "instructions". The most recent document before January 11, 2005 is a Standard Operating Procedure approved by the District Manager. That statement included the following:

Employees are responsible to verbally...report every accident and injury...on the DATE OF ACTUAL OCCURRENCE...immediately following the injury or accident.

The other two documents, also posted in Grievant's work area on January 11, 2005 stated essentially the same responsibility as the Standard Operating Procedure mentioned above.

At about 6:30 p.m. on January 11, 2005 Grievant returned to his station (Rockville Carrier Annex) after completing his collection route for the day. He went to his supervisor and I.O.C. and told them that "I may have injured my left shoulder" when he lifted a bucket of mail earlier that afternoon; he still felt some pain in his left shoulder. The supervisors asked Grievant if he was reporting an On-The-Job Injury. He replied, "No, it might just be temporary and not an injury." Supervision asked if Grievant wanted a medical evaluation. Grievant again said "No" and added that he would give his shoulder a "hot soak" that evening and see if the pain went away. Supervision took no further action and Grievant went home.

Grievant was scheduled to work the next morning (January 12, 2005). After punching in for work, he met with the supervisor and O.I.C. and then said the pain had not subsided so he was reporting an On-The-Job Injury. Supervision had Grievant make out a form CA-1. On the CA-1, Grievant filled in data about "description of injury" as follows:

**9. Place where injury occurred.**

Grievant wrote "11300 Rockville Pike, Rockville, MD".

**10. Date injury occurred.**

Grievant wrote "1/11/05".

**Time:**

Grievant wrote "3:34 p.m.".

**13. Cause of injury (Describe what happened and why).**

Grievant wrote "pain and vibration in left shoulder area. Lifting and carrying mail containers. Left shoulder area".

**POSTAL SERVICE POSITION**

Because Grievant acknowledged receiving the injury at 3:34 p.m. on January 11, 2005, the instructions from the District Manager required him immediately after that time to report the accident to his supervisor. Grievant failed to do so, thereby violating instructions to employees and providing Just Cause to issue the Letter of Warning.

**ARBITRATOR'S DECISION ON THE ISSUE PRESENTED**

The Letter of Warning was not issued for Just Cause.

## **ARBITRATOR'S EVALUATION AND REASONING**

The district manager's statement of employee responsibility effectively imposed two responsibilities on an employee in an accident or injury situation. First, the employee must determine whether and if so, when an accident or injury had occurred. Second, if the employee determines an accident or injury had occurred, the employee must immediately thereafter give Supervision the subject notice.

Making the determination of whether an accident had occurred is obvious in many incidents based on an objective evaluation of observed facts. For example, if an employee cannot walk or lift his arm or feels great pain, or there are other objective signs, the employee should determine based on such factors that he has experienced an injury and immediately report. In the absence of such persuasive signs, the decision may be more difficult particularly where some pain to the employee is the only indication. There are situations, where based on essentially the same facts, two employees might differ as to whether they had experienced an injury because of the different knowledge and experience possessed by the two employees and their tolerance to pain so that initially two employees might reach a different interpretation. Whereas one employee might consider a symptom temporary, subject to early dissipation, another employee might conclude he or she had experienced an injury.

The duty of the employee is to make an honest, bonafide, reasonable determination which, although necessarily subjective, appears consistent with available objective criteria as well. Here Grievant exercised his judgment on January 11, 2005 to fulfill a requirement of the District Manager's SOP. Based on his experience with injuries, which even the Service points out was extensive, the pain he felt might be due to the January weather, other temporary conditions, or a slight temporary strain of a muscle. Even with that belief, when Grievant

returned to his station he shared his status with two supervisors so they could review his evaluation and conclusion. He knew that if they differed they could require a medical evaluation. With the information about the shoulder pain, Supervision could have required a medical evaluation; instead they simply asked if Grievant wanted such an evaluation. When Grievant declined the offer, Supervision "went along" with Grievant's analysis and conclusion to await further review the next day.

The next day, Grievant reported the injury symptoms had not gone away and he said he thought he had an On The Job Injury and requested to make out the appropriate form.

Under these circumstances we find the Service has not shown a violation by Grievant of the District Manager's Standard Operating Procedures and therefore the Service has not shown Just Cause for the Letter of Warning.

Under these circumstances we find it unnecessary to evaluate the Union's claim of Untimely of Issuance of the Letter of Warning.

#### **AWARD**

For reasons explained herein, we find the Service has not shown that Grievant violated his responsibilities. On the contrary, the evidence indicates that he did fulfill his responsibilities under the District Manager's Standard Operating Procedure. He considered whether and when he had experienced an on-the-job injury and reported to Supervision immediately after concluding he had experienced such an injury. His consideration and conclusions were necessarily subjective, but were not shown to be incorrect or unreasonable under the circumstances. Initially Supervision recommended denial of Grievant's OWCP claim arguing that Grievant had not suffered a traumatic injury. Only after MRI examination were the doctors able to make a certain determination that Grievant had been injured on January 11, 2005 as he had reported; the same MRI evidence persuaded OWCP to change its original denial determination and honor the on-the-job injury claim.

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