

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	§ Grievant:	Charles Jeter
	§	
Between	§	
	§ Post Office:	San Antonio, Texas
UNITED STATES POSTAL SERVICE	§	
	§	
and	§ USPS Case No:	1I 21V-11-D 22155784
	§	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	§	
	§ APWU Case No.:	FH31022

BEFORE: Glynis F. Gilder, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Mr. Jonathan L. Kleine
For the Union:	Mr. Alvin Curtis
Place of Hearing:	San Antonio, Texas
Date of Hearing:	November 9, 2022
Date of Award:	January 7, 2023
Relevant Contractual Provision:	Article 16
Contract Year:	2022
Type of Grievance:	Discipline – Notice of Proposed Removal (Unacceptable Performance)

AWARD SUMMARY

This grievance involves the Service's issuance of a Notice of Proposed Removal to the Grievant for unacceptable performance. The Service contends the removal is for just cause as the Grievant has refused to accept responsibility for his actions. The Union contends *inter alia*, the removal is not for just cause as the discipline is not corrective in nature and is not progressive. The grievance is denied in part and sustained in part.


Glynis F. Gilder, Arbitrator

INTRODUCTION

On November 9, 2022, the American Postal Workers Union, AFL-CIO (hereinafter “the Union”) and the United States Postal Service (hereinafter “the Service,” “Management,” “the Agency,” or “the Employer”) came before this duly appointed arbitrator in San Antonio, Texas, and presented the following issues for resolution:

**“Whether the Service had just cause to issue to the Grievant a Notice
of Proposed Removal for unacceptable performance?**

If not, what shall the remedy be?”

Both parties appeared and participated fully -- presenting evidence and argument, examining and cross-examining sworn/affirmed witnesses. The Management advocate elected to present a closing statement while the Union advocated elected to submit a post-hearing brief. The brief was received on the agreed-upon date of December 1, 2022 and the record was then closed.

BACKGROUND INFORMATION

Grievant Charles Jeter has been employed with the Service since October 30, 2002, most recently as a motor vehicle operator at the San Antonio (Texas) Processing and Distribution Center. Prior to his postal employment, the Grievant served 5 years in the United States Army. The Grievant’s job responsibilities require him to daily drive an 11-ton postal vehicle on an assigned route. The Grievant has a clean disciplinary and driving record.

On January 21, 2022, the Grievant arose at 12:45 am, dressed and reported to work at the San Antonio P&DC at approximately 1:50 am. The Grievant contends he completed the required documents regarding the truck’s mileage, the trip and its route and also completed the required pre-trip inspection of the vehicle. With everything appearing satisfactory and in good working order, the Grievant began his workday and drove to the first stop on his route— Valley High station.

He dropped off mail and was heading back to the P&DC; weather conditions were clear and there was no traffic at that time of morning. The Grievant was “cruising along,” rounding a curve when the truck veered to the left. The Grievant stated he steered right and the truck veered to the right, went up an embankment hit a guardrail, struck a transformer, travelled across a parking lot and then crashed into a building housing a medical facility.¹ The Grievant said he repeatedly struck his head on the top of the vehicle’s cab during the accident.

Once he had extricated himself from the vehicle’s cab, the Grievant called Marco A. Cole, supervisor of transportation at the P&DC and notified Cole of the accident. The Grievant allegedly told Cole the vehicle “malfunctioned” and he (the Grievant) “must have dozed off and struck a building.”² The facility was empty at the time of impact and no other vehicles were involved. After the police, an ambulance, a local television news crew, the fire department, and a Hazmat team showed up at the scene, the Grievant was taken to a local emergency room by ambulance. He sustained the only injury (a broken hand) and was treated and released.

The Grievant made a brief statement to local law enforcement investigating the loss., telling the investigating officer “I must have dozed off a bit.”³ The resulting police report indicates the Grievant fell asleep at the wheel.

By letter dated March 7, 2022, the Service issued the Grievant a Notice of Proposed Removal for the charged violation of unacceptable performance, specifically failing to perform his duties in a safe manner. It is this action by the Service that has resulted in this present grievance.

¹ This description of the Grievant’s actions and the accident is taken from the Grievant’s testimony at the hearing.

² Testimony of Marco A. Cole, supervisor of transportation, San Antonio P&DC.

³ In the investigative interview, the Grievant denied making that statement.

RELEVANT CONTRACTUAL PROVISIONS

“Collective Bargaining Agreement between American Postal Workers Union, AFL-CIO and U.S. Postal Service

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.

...”

“Employee and Labor Relations Manual

665 Postal Service Standards of Conduct

665.13 Discharge of Duties

Employees are expected to discharge their assigned duties conscientiously and effectively.

...”

THE SERVICE’S POSITION

The Service contends its act in discharging the Grievant is for just cause as the Grievant’s actions resulted in an extremely serious accident and caused extensive damage to a building as well as the postal vehicle and because the Grievant’s account of the cause of the accident changed over time.

THE UNION’S POSITION

The Union contends the Service’s act of discharging the Grievant is without just cause because the disciplinary measure is punitive in nature and not corrective; the Grievant was not afforded progressive discipline; the discipline is too severe and will result in a financial hardship for the Grievant; and there are no aggravating elements in the Grievant’s disciplinary history.

ANALYSIS AND DISCUSSION

As this is a grievance based on a disciplinary matter, the Service has the initial burden of proof to present a *prima facie* case the action taken by the Service in severing its relationship with the Grievant was justified. That is the Service is responsible for presenting evidence, argument, and testimony that—unless rebutted—are sufficient to support the reason the action was taken in the first place and that the Employee was afforded all the benefits of substantive and procedural due process.

Here, that burden has, for the most part, been sustained in that there is undeniable proof and no argument the Grievant lost control of a postal vehicle and the vehicle crashed into a commercial building, fortunately unoccupied at the time. The Grievant's assertion the vehicle malfunctioned is not supported by the results of an inspection performed after the vehicle was returned to the P&DC. That inspection indicated the braking and steering assemblies of the vehicle were in good operative order.

There is likewise no argument there are numerous rules, policies and regulations in place that require postal employees to engage in best practices regarding safety in operating motor vehicles. While a number of those rules and regulations cited by the Service are aspirational rather than explicit, it is an unwritten rule of the workplace an employee will do his best to avoid being involved in accidents while about his employer's business. The Service has also shown the rules and regulations cited in the Grievant's removal are reasonably related to the Employer's business and are equitably enforced. Finally, the Employer has shown a thorough investigation was conducted into the incident. Taking all those facts and into consideration, the Service has shown it had a legitimate basis for ending the Grievant's employment.

The inquiry into whether just cause supports a disciplinary action by the Employer does not begin and end with a simple recitation of the facts, of the Grievant's bad act and a finding the bad act violates a rule or regulation of the Employer's. Inherent in the concept of just cause are the notions of mitigation and proportionality. That is, whether any elements exist that reflect so favorably for the employee they might operate to lessen the severity of the discipline. Also, whether the discipline administered by the Employer is in proportion to the Employee's misconduct. Finally, another matter for consideration is the Employee's ability to be rehabilitated such that the chances of future like misconduct are reduced to a nullity.

As previously stated, the Grievant was involved in an accident in which he struck a transformer and a commercial vehicle. There were no injuries to anyone but the Grievant and the damaged transformer did not result in a fire and cause further property damage and danger to the public. Also, the Grievant properly dealt with the accident by remaining at the scene, cooperating with law enforcement and promptly notifying supervisory personnel of the loss.

In addition, and perhaps most significantly, mitigating factors exist which must be considered as they might serve to lessen Management's penalty. The Grievant has a clean disciplinary record, and there is no apparent dissatisfaction on the part of Management with his job performance. Further, after eighteen years on the job, the Grievant has a spotless driving record. This accident was evidently the first one in which he had been involved.

Finally, the Grievant's ability to be rehabilitated must also be taken into consideration. The only commentary made on the Grievant's prospects of rehabilitation were made in the Notice of Proposed Removal. The issuing official, Margaret Gonzalez, supervisor (A) of transportation operations stated, "Not only am I gravely concerned by your unsafe performance; I am deeply concerned by the reliability of your responses. Therefore, I do not believe you have the potential

for rehabilitation in this organization.”⁴ It appears Gonzalez based her opinion on the Grievant changing his story regarding having fallen asleep. However, the Grievant wasn’t charged with dishonesty or lying to supervisory personnel. And the rehabilitation referenced goes to the Grievant’s ability to reform his conduct performing his *duties* to the standard required by his Employer.

The arbitral cites submitted by Management in support of its action were reviewed. The employees in those cases were guilty of the following conduct: (i) deliberately aiming a moving vehicle at a group of employees sitting on the loading dock and unsuccessfully attempting to stop short; the vehicle skidded into the dock, striking an employee and breaking his leg;⁵ (ii) allowing 2 minor children from her route to ride in the open back of the postal vehicle and allowing them to jump down from the moving vehicle and in a separate incident, being observed intentionally driving the wrong way on a one-way street.⁶ The conduct of those employees was far more egregious than the Grievant’s as there was deliberate and premeditated intent behind the commission of the actions in the cases cited. Those cited instances justly supported removal while here, the Grievant’s conduct was the result of a single lapse in control and simply does not rise to that same level.

It was stated at the outset of this discussion the Agency sustained its initial burden in showing the Grievant was responsible for the commission of the actions that formed the basis of his removal. Nevertheless, there are more factors to consider in an analysis of the propriety of a disciplinary action than just the facts. Here, after viewing all the elements and factors of this case

⁴ Joint Exhibit 2, Notice of Proposed Removal, pg. 43.

⁵ Grievance No. E00C-4E-D 03171861, arbitrator Glynis F. Gilder (March 31, 2004).

⁶ Grievance No. J06N-4J-D 11267723, arbitrator Linda DiLeone Klein (December 12, 2011).

and the totality of the circumstances, it seems the better course to temper the Service's action with a measure of clemency.

AWARD


Based on the foregoing facts, information, and analysis, it is this arbitrator's decision while the Service did have just cause to issue the Grievant a Notice of Proposed Removal for unacceptable performance, specifically failing to perform his duties in a safe manner, a modification of the disciplinary measure is called for.

The Service is directed to reduce the Notice of Proposed Removal to a 14-day suspension (time served).

The Service is directed to reinstate the Grievant and make the Employee whole in all respects including seniority and benefits and back pay less the 14-day suspension.

The Service and the Union are jointly directed to ensure ensure the Grievant attends and successfully completes an available and applicable remedial driving/motor vehicle safety training course within forty-five (45) days of being reinstated to work.

This arbitrator retains jurisdiction in this matter for the limited purposes of correcting any error, clarifying any ambiguity, or to provide such other relief to which the parties may be justly entitled.


Glynnis F. Gillet
Arbitrator