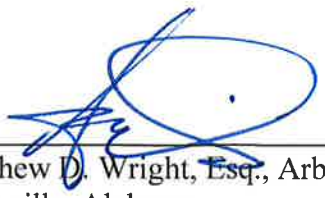
REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Cristina Burell
between	)	Post Office: San Antonio, Texas
UNITED STATES POSTAL SERVICE	)	USPS case No.: 1F 21C-1F-D 24027719
and	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	APWU Case No: MSCB102920

Before:	Matthew D. Wright, Esq., Arbitrator
Appearances:	
For the U.S. Postal Service:	Jonathan L. Kleine, Labor Relations Manager
For the Union:	Diann Scurlark, National Business Agent
Place of Hearing:	U.S. Postal Facility 10410 Perrin Beitel, San Antonio, TX 78284
Date of Hearings:	March 10, 2026
Record Closed:	April 4, 2026
Date of Award:	April 27, 2026
Relevant Contract Provision:	Article 3, 15, 16, 19
Contract Year:	2021-2024
Type of Grievance:	Discipline

Award Summary:

The grievance is sustained.



Matthew D. Wright, Esq., Arbitrator
Trussville, Alabama

ISSUE

Did Management have Just Cause to issue a Notice of Removal to the Grievant on October 25, 2023?

BACKGROUND

On October 25, 2023, a Notice of Removal ("NOR") was issued to the Grievant for Unacceptable Attendance. The dates and the employee's absence were not in dispute.

The NOR cited:

Dates	Hours	Leave Type
09/07/2023 – 9/13/2023	40.00	uSWOP
09/14/2023 – 09/16/2023	24.00	uLWOP
09/22/2023	0.10	uLWOP
09/26/2023 – 10/04/2023	56.00	uSWOP
10/05/2023	08.00	uAWOL
10/06/2023	08.00	uSWOP

In addition and prior to Removal from the Service, the Grievant has been issued the following past discipline cited in the file that the RFD and NOR was considered by Management herein:

Past Discipline considered:

1. LOW dated June 28, 2023
2. 7-day Suspension dated August 3, 2023
3. 14-day Suspension dated August 20, 2023

Notations withing the file express that Management settled the 7-day suspension and 14-day suspension for one year from the date of issue.

A PDI was held on October 6, 2023 but the Grievant failed to appear for said hearing.

PARTY POSITIONS

POSTAL SERVICE MANAGEMENT:

In response to the Step 2 appeal of the above-captioned grievance received on November 21, 2023, and the subsequent meeting held on November 28, 2023. Time limits were mutually extended.

UNION'S CONTENTIONS: The union contended the following:

1. Violation of Articles 15, 16, 19, 37

2. The grievant called in due to incapacitation

3. The grievant provided documentation to support the dates

4. Be made whole in all time and benefits and NOR expunged

MANAGEMENT CONTENTIONS: Management contended the Notice of Removal was warranted because of the grievant's continued absences. The grievant was issued progressive discipline regarding her attendance. After consideration of all the facts in the matter, management determined a Notice of Removal was necessary to promote the efficiency of the Service. Therefore, the grievant was issued a Notice of Removal dated October 25, 2023, and received on October 27, 2023, as follows:

CHARGE 1: UNACCEPTALBE ATTENDANCE - CONTINUED FAILURE TO MEET THE ATTENDANCE REQUIREMENTS OF YOUR POSITION

Employees are expected to maintain their assigned schedule and avoid unscheduled absences including Absent Without Leave; however, the grievant failed to adhere to these regulations. Employee and Labor Relations Manual (ELM) states in relevant part;

Employee and Labor Relations Manual:

511.41 Definition. Unscheduled absences are any absences from work that are not requested and approved in advance.

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

513.365, Failure to Furnish Required Documentation If acceptable substantiation of incapacitation is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

665.13 Discharge of Duties. Employees are expected to discharge their duties conscientiously and effectively.

665.41 Requirement of 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.

665.42 Absence Without Permission: Employees who fail to report for duty on scheduled days,

including Saturdays, Sundays, and holidays, are considered absent without leave except in cases where actual emergencies prevent them from obtaining permission in advance. In emergencies, the supervisor or proper official must be notified of the inability to report as soon as possible. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or who fails to provide satisfactory evidence that an actual emergency existed will be placed in a nonpay status for the period of such absence. The absence may be the basis for disciplinary action.

The just cause principles were utilized to determine the need for discipline as indicated below:

Is there a rule? Yes. Employees are expected to be regular in attendance and make every effort to avoid unscheduled absences in accordance with the ELM. Attendance is the basic tenet of employment.

Is the rule a reasonable Rule? Yes. All employees must be regular in attendance. The rule is reasonable and a very basic employment requirement. It is reasonably related to business efficiency, safe operation of our business and the performance expected of the employee. The grievant was absent from work and other employees are required to perform the duties the grievant would normally perform.

Is the rule consistently and equitably enforced? Yes. All employees are required to be regular in attendance and make every effort to avoid unscheduled absences. Anyone who does not adhere to the attendance policies are addressed accordingly. The union has not provided anything to the contrary.

Was a Thorough Investigation Completed? Yes. The grievant's attendance record has not been disputed by the union or the grievant. The grievant along with a representative were given an opportunity to share her side of the story; however, the grievant chose not attend or request a different to appear for the investigation. No documentation was provided during the entire period in question, even though management relentlessly attempted to acquire response. The grievant submitted documentation to the union after the issuance of the removal. The union presented the documentation at Step 2 regarding some of the absences. Further, the grievant's absences were not IOD/FMLA (Injured on Duty/Family Medical Leave Act) protected. The union acknowledged that fact. Even though the reasons for these absences may have been legitimate, employees are still responsible for reporting to work each day. As it pertains to legitimate absences, National Arbitrator Gamser national award AC-N-14034 states in relevant part;

The undersigned has carefully considered the well-reasoned arbitration awards submitted by both sides in support of their respective contentions regarding this latter issue. After due

deliberation, and for the reasons set forth below/ the undersigned is of the opinion that irregular attendance and unreliable attendance, regardless of the legitimacy of the reasons for the absences, may provide management with just cause for taking disciplinary action. As Arbitrator Cushman held in Case No. AC"S-9, 936-D, decided on June 6, 1977; "This Arbitrator agrees with Arbitrator Warns and many other arbitrators than an employer has a right to expect acceptable levels of attendance from its employees and that when such attendance is not had, discharge is appropriate despite the fact that the absence may be for valid and legitimate medical reasons." Vera D. Bugg, AB-S-6, 102-D., "This Arbitrator is sympathetic to employees whose absenteeism is due to illness, and, therefore, to no fault of their own. Where, however, absenteeism due to illness results over a period of time in unacceptable levels of work attendance, an employer, under generally accepted principles recognized by many arbitrators, has a right to remove such an employee from employment." (USPS,(Vera D.Bugg) AB-S-6-102-D).

The union has not provided anything to the contrary.

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? Yes. The severity of the discipline was reasonably related to the infraction itself and in line with what is usually administered for similar or same type infractions. The grievant had been issued a Letter of Warning, 7- and 14-Day Suspension regarding her attendance within this year. The next progressive and only level of discipline remain was removal which was agreed upon by the national parties. The grievant was given the opportunity to correct her attendance but chose not to.

Was the disciplinary action taken in a timely manner? Yes. The disciplinary action was taken as promptly as possible. The union has not provided anything to the contrary.

To the remedy, the union requested NOR dated October 25, 2023, for Unacceptable Attendance - Continued Failure to Meet the Attendance Requirements of Your Position be expunged and for the grievant to be returned to work and made whole for all lost wages and benefits.

For management to adhere to this remedy we would have to ignore the basic tenets of employment which is reporting to work on the days scheduled and on time. Also, the grievant had previous discipline, a letter of warning, 7- and 14-day suspension of which management settled the 7 and 14 day in the grievance process to remain in the greivant's file one year instead of two. Management has the right, responsibility, and obligation to enforce its rules and regulations. Clearly

the grievant has acted as charged and the discipline level issued is appropriate in this case at it was progressive. The Postal Service require dependable employees to meet the expected demands of our customers. Also, the contract does not provide any other level of discipline but removal. Again, the grievant ignored the absence inquiry letter and the notice to report for an investigative interview.

DECISION: Management denies the grievance because management abided by and followed the National Agreement when it issued the Notice of Removal. The Notice of Removal met all the elements of the just cause principle to include progressive.

The grievance does not involve an interpretive issue under the Collective Bargaining Agreement or supplement thereto. The parties agree that there are no outstanding and unresolved information requests associated with this grievance. Copy of complete file sent to the union along with step 2 denial.

If you appeal this grievance to Grievance-Arbitration according to Article 15 you are required to furnish the Labor Relations Step 2 representative a copy of the appeal.

POSTAL WORKERS UNION:

At Step 2, The Union argues:

The Grievant called in multiple times to support here staying off of work due to being incapacitated. The employee has provided documentation to support the dates listed in the NOR to show she could not return back to work.

DISCUSSION AND OPINION OF THE ARBITRATOR

Both parties agreed that this matter is properly before the Arbitrator. An audio recording of portions of the hearing was made by the Arbitrator for review and was deleted upon the issuance of this opinion. A Joint Exhibit (the "JT-2") containing 54 pages was admitted by stipulation of the parties not including the Union's exhibits. The CBA was the Joint 1 exhibit along with all other handbooks and manuals. The parties agreed to submit all post-hearing citations and briefs by April 4, 2026. All documentation, briefs, and papers submitted to the Arbitrator for a decision herein will be discarded and destroyed if said document copies are not retrieved from the Arbitrator's possession within 30 days of the issuance of this decision; both parties were in possession of the Joint 2 Exhibit at the hearing.

The Arbitrator was not in possession of any original documents and only retained copies submitted to him by the parties herein.

Merits

"Just Cause" 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 and requires a case by case examination of the facts and circumstances. It contains no rigid rules that apply in the same way in each case of discipline or discharge. In fact, different regions may have slightly different expectations of employees and may have different applications of specific rules. Arbitrators frequently divide the question of just cause into six sub-questions (or "prongs") and often apply the following criteria to determine whether the action was for just cause. These criteria are the basic considerations that the supervisor must use before initiating disciplinary action.

Discipline, as a general rule, should be progressive, becoming more severe after each instance, as the prohibited conduct continues if the employee refuses to change their behavior, so encouraging the employee not to commit the offense again but also providing them ample opportunity to change. Progressive discipline allows the employee a slot of time to correct their course but if said correction is not ever made, no matter how legitimate the reason for not showing up for work, eventually, Management has the right to discipline and even remove the employee because legitimacy[1] *does not necessarily* excuse the conduct of the employee.

Only in the most extreme of circumstances should progressive discipline be bypassed altogether but that is not the case here. Management must keep in mind that removal guarantees that the employee will not commit the infraction again but it also removes any further opportunity to correct his/her actions. In all disciplinary hearings, Management bears the responsibility of proving their case; if they fail to meet the entire appropriate burden, their case for discipline may fail altogether or could be

1 USPS and APWU, National Case No. AC-N-14034 (Arbitrator Howard G. Gamser, February 14, 1978). Pg. 9 "...After due deliberation, and for the reasons set forth below, the undersigned is of the opinion that irregular attendance and unreliable attendance, regardless of the legitimacy of the reasons for the absences, may provide management with just cause for taking disciplinary action. ..."
USPS and NALC, National Case No. NC-NAT-16, 285 (Arbitrator Sylvester Garret, November 19, 1979) Pg. 25"...there is no basis in this record for an award which would bar the Service from seeking to apply discipline to combat serious, repetitive-absenteeism by individual employees, even though absences on sick leave or approved leave without pay may be involved. ..."

reduced. Management's burden includes a responsibility to show, through clear and convincing evidence, among other things, that the Grievant did, in fact, commit the infraction as alleged. Discipline's ultimately intended purpose is to change the behavior of the employee, for the better, so that they realize their mistake and make a correction to it—before utilizing removal is deemed necessary by Management. It is there there to afford the employee as many opportunities as the CBA requires and that Management might give.

Discipline is to tool for the employee to realize their mistake and have an opportunity to correct it, hopefully making a correction to it. It is not a tool for Management to use to punish employees. Once progressive discipline is exhausted though, so too are exhausted are the employee's opportunities and contractual 'chances' to remedy and correct their behavior before more serious action, such as removal, is implemented. Removal, on the other hand, is a permeant correction of the prohibited behavior. This generally occurs when Management has exhausted progressive discipline, and the employee has not shown attempts at correcting their behavior or corrected circumstances that are fully in the employee's control, and Management deems the employee beyond any hope of further correction that their only reasonable choice is termination of the employee-employer relationship. That is an important and often overlooked portion within disciplinary cases: firstly, is the absenteeism within the employee's control? Such as not securing reliable transportation or being habitually late due to poor time management. It is not something like a sickness or injury, that is relatively understood to be out of the employee's control and not able to be planned. Rare and unexpected events should be just that, rare. For example, if an employee is habitually late for their duty assignment and the employee cites traffic as the cause, the employee is likely poorly planning their travel time and should leave earlier to allow time loss for the known traffic delay, that is within their control. On the other hand, if an employee has not been late in 5 years and cites traffic that was due to a major traffic slowdown or road closure, that appears to be unexpected. Logically, the former example is something that this plan-able and correctable while the later is likely not. On the other hand, if an employee's absence is due to a major illness or injury, there is no way (and likely no one) who is willing to pre-plan that event. The illness is unpredictable and un-plan-able.

The six prongs of just cause are:

1. Is There a Rule?
2. Is the Rule a Reasonable Rule?
3. Is the Rule Consistently and Equitably Enforced?
4. Was a Thorough Investigation Completed?

5. 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?

6. Was the Disciplinary Action Taken in a Timely Manner?

Absenteeism

It is a basic part of the employee-management contract between themselves, that the employee appear for duty when scheduled by Management. An Arbitrator's only role is to evaluate, as best as possible, with the information presented and available, as to whether or not a contractual violation of the CBA has occurred, and, if so, to render, as best as possible, a remedy to the same. It is well-settled in arbitration between the USPS and the APWU that the requirement that employees be regular in attendance is reasonable and that irregular attendance and unreliable attendance, regardless of the legitimacy of the reasons for the absences, may provide management with just cause for taking disciplinary action; indeed, employees may even be subjected to discipline up to and including removal when absenteeism, even when due to illness, results in unacceptable levels of work[2]. Management's right to have employees timely report for duty is a basic understanding of an employee's duty to the Service[3]. The Postal Service can not fulfill its business goals and operational responsibilities when employees fail to report on a regular basis[4]. An Arbitrator can not sit in judgment of the decision of Management to discipline an employee for excessive absenteeism so long as Management has adhered to the Contract and Arbitral authority nor can the Arbitrator simply grant an employee more time than any other employee to correct their behavior; these discretionary decisions lie with Management personnel. In the end, the employee has agreed to be present at work when scheduled and Management has agreed to pay the employee for the work they perform. The employee can not expect Management to continue to employee persons who can not perform the very work they were hired to do, that is

2 See USPS and APWU, Case No. B15T-1B-D 19120376 (Arbitrator George Mungai, August 9, 2009) at Pg. 12. "It is well-settled in arbitration between the USPS and the APWU that "[t]he requirement that employees be regular in attendance is a reasonable rule." See Case No. B0IN-4B-D 07348675 (Cenci, Arb. Jun. 29, 2008) at 6. It is also well-settled that "irregular attendance and unreliable attendance, regardless of the legitimacy of the reasons for the absences, may provide management with just cause for taking disciplinary action." Case No. AC-N-14034 (Gamser, Arb. Feb. 9, 1978). Indeed, employees may be subjected to discipline up to and including removal when absenteeism, even when due to illness, results in unacceptable levels of work. Case No. B06N-4B-D 10020964 (Barrett, Arb. Mar. 22, 2010) at 9."

3 Case H06M-1H-D 10283677 (April 19, 2011) Montgomery, Alabama. Arbitration decisions hold that an employer has a right to expect its employees to come to work on a regular basis...[even if the reason for the absence is out of the control of the Grievant or is for a medical condition which is supported by medical documentation]...this factor does not change Management's right to discipline employees, for whatever reason, who cannot be relied upon to report to work and perform the functions of their job.

4 Case G06C-1G-D 11222706, Ann S. Kenis, (November 13, 2011) see page 9 and 10.

within and applying appropriate contractual and arbitral limitations.

It is clear, the Postal Service can not be expected to employ persons who are unable to attend work on a continuing, regular basis and perform the required duties. The failure of employees to come to work only multiplies work for others and creates situations that Management must account for. That said, there is no way for Management's actions to be "corrective in nature" if the employee was absent because of a sickness or injury—but this lack of possibility of 'correctiveness' does not necessarily prohibit discipline from being administered. At the same time, the Service very obviously expects employees to call in sick from time to time, they have preprinted forms and have set aside employee sick days for said incidents. People and their family members get sick, it is a simple fact. Again, sickness and injury certainly are mitigating factors and in considering the same, progressive discipline is not always required to be entirely *inflexible*.

In this case, the Union's arguments at Step 2 were very limited and quite brief. The Union's Advocate at the hearing did her best to expand upon these brief arguments but the Step 2 appeal simply was not developed enough to the Advocate to expand on the Union's arguments very much. In the hearing, the Union alleged that the Grievant used her sick leave and was being punished for that fact. Further the Union argued that sick leave is in place for the benefit of the Parties and that an employee should not be punished for simply using the sick leave they've accumulated. I do not disagree with the Union's position regarding the use of sick leave—when the use of that leave is for a legitimate sickness or infirmity. The Union also argued in their opening statements that the injury that prevented the Grievant from attending work was an on the job injury and Management was attempting to hold the Grievant to the same standards a healthy, uninjured employee. Despite the limitations of the Union's Step 2, Management still carries the burden of fully developing their case and carrying their burden proving just cause. Management's Advocate was also limited by the facts within case.

Within the file and also based on the Grievant's testimony at the hearing, the Union Advocate touched upon the Pre-disciplinary interview (or lack thereof). It appears from the evidence in the file and presented at the grievance-arbitration hearing that Management scheduled a single pre-disciplinary interview but the Grievant was not in attendance of the same nor was it rescheduled before the discipline was issued, nor are there any references in the file regarding rescheduling attempts. I have previously stated that if Management completely 'skips' a pre-disciplinary interview (where the Grievant is specifically informed of the charges that are going to be alleged against him or here, and is not given a chance to respond to and refute those charges), that error is a fatal flaw in Management's

proposed discipline[5]. Rarely will disciplinary actions and/or grievance processing be completely free from *any* procedural errors. The primary question becomes (and that is addressed at the grievance-arbitration hearing) is whether the disciplinary process was sufficiently fair to the employee and this requires a case-by-case evaluation. Thus, the basic requirements of due process in Labor-Management relations regarding disciplinary matters, is that Management conduct a fair, thorough, and objective investigation, allowing the employee reasonable notice as to the allegations, and an opportunity to be heard[6].

The Pre-Disciplinary interview is a multi-element due process right of the employee to allow the employee to be made ware of the possible charge(s) in the possible disciplinary action, made aware (in reasonable detail) the degree and nature of the potential disciplinary action, shown/made available the alleged evidence that the discipline is based upon and, finally allow the employee their 'day-in-court' privilege, allowing the employee to give their side of the story and to refute any allegations and evidence. If Management fulfills these aforementioned points, before implementing the discipline, the employee has been given an relatively proper PDI so long as the other elements of discipline and the CBA are adhered to.

In this case, Management did not conduct a PDI prior to the removal based on the fact that they did not prove that a PDI had been conducted. Management did note their effort to conduct a PDI but it was a singular effort for October 6, 2023 and no followup was notated at the hearing. The notice of the PDI was delivered a mere 48 hours prior. A Return to Work notice was sent September 18, 2023. While I understand that the discipline process can not be held hostage in perpetuity waiting on a Grievant to respond to schedule a PDI date, I believe that just cause requires Management's reasonable investigation to include some forthright reasonable effort to re-schedule new dates with the Grievant but in this case Management simply proceeded with the removal of the Grievant after a single attempted PDI and nothing more, depriving her of at least a reasonable opportunity for a PDI. At the hearing the Union showed evidence in the JT-2 of the Grievant sending emails on September 18, 19, and 28 and October 17 to Lisa Costantino regarding doctor's excuses.

If Management has made some reasonable effort to reach the employee and the Union about scheduling the PDI and there is no bona fide response, it is reasonable for Management to move on

5 Arbitral authority grants a Pre-Disciplinary Interview to a Grievant. The failure to conduct this pre-disciplinary interview, by itself, is a fatal flaw in administering discipline and deprives the Grievant of due process to the point that a grievance may be sustained on this flaw alone. USPS Case G98T-1G-D 01247275, Arbitrator Hamah R. King, January 30, 2002.

6 APWU and USPS, Case C15C-1C-D 170007000 (Arbitrator Michael Milazzo, April 18, 2017-Memphis, TN) Pg. 7-8

with discipline and presume that the Grievant and Union have abandoned the grievance-arbitration process but this determination must be made on a case-by-case basis. In a discipline case, even if Management can prove the underlying offense occurred, if Management mishandles or skips steps of the due process requirements set out by the National Agreement and arbitral authority, the discipline may not be enforceable or might be overturned upon appeal. In this specific case, it appears that the Grievant was never given a pre-disciplinary interview (or at least a reasonable opportunity to attend a PDI) and was never informed of the charges that were going to be brought against her. See *G98T-1G-D 01247275, supra.* In this case Management even sent a 'report to work' letter due to the employee being absent, which tends to show that the employee is having some sort of issue making it to work but is still communicating. Since, in my opinion, in this case, Management did not make a reasonable effort to investigate why the employee of 18 years did not show up for her investigative interview and reschedule the PDI, Management failed to adequately investigate the basis for the Grievant's absenteeism, especially when it is compounded with the fact that Management was aware of the Grievant's previous injury and difficulties and her emails containing the doctor's excuses. Further, the Grievant did not simply "ghost" the disciplinary process, she'd been involved in previous grievances appealing them and even reaching a settlement to preserve her job. The Grievant testified that she was 'incapacitated' from September 8, 2023 thru October 19, 2023 and also called in on October 5, 2023 regarding rescheduling the PDI. This is not a case where the employee simply disappeared, refused to respond, and Management had little choice in what to do next.

It is my opinion, in this case, that Management failed to perform an adequate investigation, conflicting with prong number four of the just cause principals and therefore I do not find reasonable Management's march forward with the removal without further reasonable attempts to re-schedule a PDI with the Grievant and, in this case, that choice was fatal to the discipline. Management could have very easily responded to the Grievant's emails or sent new dates available to conduct the PDI instead of moving forward with discipline on a single attempt failed to schedule the PDI. This is not to say that Management must be strung along due to unreasonable requests nor that Management must continue on forever rescheduling a matter but some reasonable effort must be made to coordinate a meeting date for the PDI. Management would not have to reschedule a matter where an employee simply fails to respond at all but that is not the case here. The employee was responding but upon Management's sole attempt to have the PDI that failed, Management simply gave up and made no further effort to conduct the PDI and proceeded to remove the employee, thereby circumventing their obligation to conduct a

reasonable investigation. An Arbitrator can only speculate but if Management had fulfilled prong four and completed a thorough investigation with the Grievant in attendance at the PDI, one can only guess that the outcome of this case may have been different.

It appears to this Arbitrator that Management has failed to prove prong four of just cause and that there is sufficient grounds for me to find that the discipline should be set aside, after careful consideration of all arguments and facts within this case.

AWARD

The grievance is sustained. The removal is set aside and expunged. The Grievant will be reinstated with full back pay, subject to appropriate off-sets, and her seniority retained. Jurisdiction is retained for 180 days.

END OF AWARD