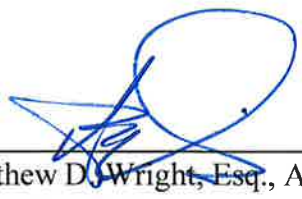
REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Jacob Rios
between	)	Post Office: San Antonio, Texas
UNITED STATES POSTAL SERVICE	)	USPS case No.: 1F 21C-1F-D 24162605
and	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	APWU Case No: MSJR020920

Before:	Matthew D. Wright, Esq., Arbitrator
Appearances:	
For the U.S. Postal Service:	Magnolia Boyce, Labor Relations Manager
For the Union:	Charles Tillman, National Business Agent
Place of Hearing:	U.S. Postal Facility 1 Post Office Drive, San Antonio, TX 78284
Date of Hearings:	May 12, 2026
Record Closed:	May 22, 2026
Date of Award:	June 18, 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 February 9, 2024?

BACKGROUND

On February 9, 2024, 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
10/21/2023	8.00	uSL
10/27/2023	8.00	uSL
11/03/2023	4.01	uSL
11/04/2023	8.00	uSWOP
11/15/2023	8.00	uSLDC
11/23/2023	8.00	uLWOP
12/26/2023	8.00	uLWOP
12/27/2023	8.00	uLWOP
01/16/2024	8.00	uAL

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. 7-day Suspension dated January 7, 2023 for Improper Conduct.
2. 14-day Suspension dated March 8, 2023 for Unacceptable Attendance.

A PDI was held on January 19, 2024.

PARTY POSITIONS

POSTAL SERVICE MANAGEMENT:

This is in response to the Step 2 appeal of the above-captioned grievance received on March 5, 2024, and the subsequent meeting held to discuss this matter. The time limits were mutually extended.

UNION'S CONTENTIONS: On February 9, 2024, FTR Jacob Rios was issued a Notice of Removal. His recent issues with his attendance stems from his vehicle being stolen multiple times and placing a hardship for himself and his girlfriend who share one vehicle. The union will provide documents to show the proof of his stolen vehicle. The stress and anxiety of sharing one vehicle placed an issue between both and now they have worked out a workable solution so both can attend work on a regular basis. The NOR issued on 2/9/24 was punitive rather than corrective and there is no just cause.

REMEDY REQUESTED: The union is asking for FTR clerk Jacob Rios be made whole and provided another opportunity to prove his substance to the USPS. The NOR be rescinded and the grievance be sustained and the Grievant be made whole.

MANAGEMENT CONTENTIONS: Management contends we are well within our rights in accordance with the National Agreement to issue a Notice of Removal to the Grievant. The Grievant in this case was a Full Time Mail Processing clerk, career employee, with tenure dating back to April 11, 2021, approximately 2 years and 10 months at the time the Notice of Removal was issued. The Grievant was fully aware of his obligation to report to work and abide by these rules. The Grievant had numerous absences in the past few months. His actions imposed a burden on his coworkers. Management made every attempt to provide the Grievant every opportunity to correct his attendance. The Notice of Removal was warranted because of the continued unscheduled absences.

Management met the just cause principles and have outlined them individually below. The union has not provided anything to the contrary. The allegation that the discipline was punitive rather than corrective and there is no just cause is without merit as the union provided no specifics during the Step 2 meeting. The discipline was surely corrective rather than punitive as it was progressive as outlined in the national agreement. The union requested we provide the Grievant another opportunity to prove his substance which would add another layer to the contract. There is no requirement contractually to provide the Grievant more than progressive discipline.

The Postal Service may still discipline an employee for attendance if there is just cause according to Article 16 of the Agreement. Management must have a reliable work force in order to carry out the mission of the Postal Service. Customers expect, demand, and rely on the Postal Service that their services are dependable. When an employee does not report to duty and subsequently abandon their position, it clearly diminishes their necessity. 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 February 9, 2024, as follows:

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

Employees are expected to maintain their assigned schedule and avoid unscheduled absences; however, she 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 documentation for absences when required.
>
> 512.365 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 assigned 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.

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. The basic responsibility of all employees is to come to work each day and on time. The Grievant attendance record speaks for itself. The Grievant was made aware of the attendance requirements on several occasions to include his first day at work. Further, he was issued several levels of discipline which has provided his responsibilities and the expectation moving forward.

Is the rule a reasonable Rule? Yes. The requirement for employees to be regular in attendance 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 he 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. The Postal Service requires every employee to report for duty. This was not the case for the Grievant. The Grievant has ignored his obligation to his Employer. The union has not provided any evidence to the contrary.

Was a Thorough Investigation Completed? Yes. The Grievant's attendance has not been disputed. The Grievant and his representative were given an opportunity to share his side of the story. After the issuance of progressive discipline, management was left with no choice but to issue a removal. During the interview the Grievant stated he was incapacitated some of those times due to his car being stolen 3 times. Even though the reasons given, after the discipline was issued, by the Grievant for these absences may have been legitimate (no documentation provided as required), employees are still responsible for reporting to work each day. The absence remained unscheduled. 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).

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 7- and 14-day

suspensions regarding his attendance. The Grievant has had repeated unavailability from work therefore, removal was appropriate.

Was the disciplinary action taken in a timely manner? Yes. The disciplinary action was taken as promptly as possible. The Grievant had absences ranging from March to May 2022. The discipline was issued May 27, 2022.

Even if the Grievant had brought documentation during the time of his absences, the absences were no less unscheduled and unprotected leave. The only protected leave of which discipline may not be issued is Family Medical Leave Act (FMLA) or Injured on Duty (IOD) type absences. There were no absences for those dates as FMLA/IOD protected.

To the remedy, the union requested the discipline be expunged from all records and files and provide the grievant another opportunity. For management to adhere to this remedy we would have to ignore the basic standards of employment which is reporting to work. Also, the Grievant had previous progressive discipline which meets the contractual requirements. 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. The Postal Service require dependable employees to meet the expected demands of our customers. Management nor the union have the authority to add to the contract what the national parties have already agreed upon.

In conclusion, the service maintains the Grievant has consistently demonstrated an unwillingness, and/or inability to maintain regular attendance and adhere to rules and regulations of the organization. The Grievant has been made aware of his obligation to be regular in attendance and yet he continues to fall in his obligation. Management acknowledges a removal is the most serious of all discipline that an employee can receive. A removal suggests the employee is beyond correction and that his continued employment would be a detriment to the Postal Service. The evidence in the Instant case established that the Grievant violated the specific rules and procedures regarding his attendance. The rules are reasonable and necessary to maintain the efficiency of the Service.

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.

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. All documents were provided during the Step 2

meeting.

POSTAL WORKERS UNION:

At Step 2, The Union argues: On February 9, 2024, FTR Jacob Rios was Issued a Notice of Removal His recent issues with his attendance stems from his vehicle being stolen multiple times and placing a hardship for himself and his girlfriend who share one vehicle. The union will provide documents to show the proof of his stolen vehicle. The stress and anxiety of sharing one vehicle placed an Issue between both and now they have worked out a workable solution so both can attend work on a regular basis.

The NOR Issued on 2/9/24 was punitive rather than corrective and there is No Just Cause.

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 96 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 May 22, 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.

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, 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. If an employee's

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. ..."

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-planable".

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

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.

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 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 factors affecting the employee's absenteeism are alleged to be beyond the employee's control. The Union also argues that the remove of the employee is punitive rather than corrective. Management cites their basis for removal of the employee are his absenteeism and correctly cites the employee's days he is out of work. There is no or minimal occurrence of "no call, no show" nor AWOL by the employee. In this case, most notably, Management did not reference and there was no 'live' Letter of Warning. Additionally, the 7-day suspension was not attendance related but was for or involving the employee failing to return to his assigned until on January 3, 2023, December 2, 2022, and December 1, 2022, for 2, 4.02, and 1.99 hours respectively.

The primary question to be answered 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

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

heard[5]. It is my opinion, in this case, that Management failed to fully utilize progressive discipline and if the employee is removed without progressive discipline, [the] "...issue [becomes] whether the Grievant's behavior was so egregious a violation, beyond corrective action, warranting bypassing any level of progressive discipline to sustain the discharge" ... as was said by Arbitrator Sherrie Rose Talmadge in case B10C-4B-D 13347697. The requirement that discipline be corrective rather than punitive is an essential element of the just cause principle. For most offenses Management must issue discipline in a progressive/advancing manner, issuing less discipline then increasingly the severity of discipline for subsequent infractions to give the employee sufficient warning and opportunity to correct their behavior. Removal certainly guarantees that the employee will not commit the offense again but but also removes any further opportunity of the employee to correct their behavior. 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 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.

The circumstances that caused the Grievant's absence were apparently beyond his control and seem to be understandable but this does not mean that the absences are simply "ok" or to be overlooked. It can be reasonably argued that the Grievant certainly can rest his reasons for failing to appear for work on the *day of* or even the day after the theft but it is not sufficient, in my opinion, to continue to use this lack of transportation as an ongoing and continuing excuse to fail to appear for scheduled work days. Transportation responsibilities to and from employment locations remain the burden of the employee to arrange and secure adequate assurances for said transportation to be in place on their scheduled days, by whatever means they chose. The days of the theft according to page 86 of the JT-2 (a portion of an Affidavit of Theft for December 3, 2023) cites that the days the Grievant's vehicle was stolen were October 21, 2022, March 12, 2023, and December 3, 2023. The Grievant was

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

not cited for December 3, 2023 in the NOR.

Progressive discipline is a 'backstop' Management may rely upon to show proof that their efforts of discipline were not punitive in nature. While I find no direct evidence offered by the Union to support that this discipline was "punitive" in nature, Management failed to fully utilize progressive discipline and therefore failed to sufficiently satisfy all the elements of just cause. After a review of the facts, case cites, and evidence submitted in this case, it appears to me that Management's decision to discipline the Grievant did improperly rely only upon a single 14-day suspension regarding unacceptable attendance. For this reason, Management failed to sufficiently satisfy prong #5 of just cause. If Management had considered only the 14-day suspension, instead of two events, and had also considered that there was no Letter of Warning for the Grievant's attendance violations, their logic may have differed in whether to issue an outright removal of the employee or just an additional or a different suspension to give the employee another opportunity to correct their absenteeism. It appears to this Arbitrator that the employee qualified for progressive discipline and that the behavior was not so egregious a violation, that is was beyond corrective action, warranting bypassing any level of progressive discipline to sustain the removal of the Grievant. Based on the facts and evidence with this case, it is my opinion that the Removal is due to be set aside and reduced.

AWARD

The grievance is sustained. The Letter of Removal is reduced to a 7-day suspension, bearing the same date of issuance. The employee is reinstated with full back pay, subject to appropriate offsets, with back pay (at straight time) and benefits awarded beginning on March 15, 2024 until reinstated. No overtime is awarded. Jurisdiction is retained for 180 days for implementation of the award. All other forms of relief are denied.

END OF AWARD