

## STEP B DECISION

Step B Team:

Northern New Jersey District

Decision: **RESOLVED**

USPS Number:

Grievant:

Branch Grievance Number:

Branch: NJ Merged 38

Installation:

Delivery Unit:

State: New Jersey

Date Step A Initiated: 07-28-08

Step A Meeting Date: 08-14-08

Date Received at Step B: 08-18-08

Step B Decision Date: 08-27-08

Issue Code: 16.5000, 62.0100, 65.0750

**ISSUE:** (As framed at Step A)

Did management violate Articles 16 and 19 of the National Agreement and have just cause to issue a Notice of Removal dated 07-09-08 to the grievant for the charges of "Failure to Meet the Attendance Requirements of Your Position" and "Failure to Follow Instructions"? If not, what shall the remedy be?

**DECISION:**

The Dispute Resolution Team has **RESOLVED** this grievance. The Notice of Removal dated 07-09-08 was issued for just cause. The removal is upheld.

**EXPLANATION:**

Regarding Charge # 1; Management states that specifically, a review of the grievant's attendance record indicated that he has been absent from official duties on 6 occasions totaling 53.52 hours and occurring between 04-12-08 and 05-28-08. Of those absences, one occasion totaling 16 hours was AWOL.

A PDI was held on 06-26-08 and when questioned about his attendance, the grievant offered no acceptable explanation. Management states that the grievant's undependability in reporting and not being available for duty indicates that he is unable to meet the attendance requirements of the position.

Management states that the grievant is in violation of ELM 511.43, which states, "Employees are expected to maintain their assigned schedules and must make every effort to avoid unscheduled absences"; and ELM 665.41 which states, "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."

Regarding Charge # 2; Management stated that a prior Notice of Removal dated 04-01-08 was resolved in a Step B decision (A06N-4A-D 08163992, 05-20-08). That decision modified the Notice of Removal to a 21 day suspension of which 7 days were no time lost and 14 days were time lost. The effective dates of each part of the suspension were given to the grievant both in writing and verbally with his Shop Steward Pat Walsh present. May 24, 2008 through May 30, 2008 was determined to be the one week of no time off suspension with May 31, 2008 to June 13, 2008 as the time lost (without pay) suspension.

Management states that the grievant obviously understood these terms as he reported to work on both Saturday 05-24-08 and Monday 05-26-08. However, on Tuesday 05-27-08 and Wednesday 05-28-08, the grievant did not call in or show up for work. The grievant was charged AWOL for both days. The grievant did not report to work until he was contacted by telephone and told to report to work. Management states that the grievant is in violation of Handbook M-41 Section 112.21 which states, "Obey the instructions of your manager."

Management states that on 05-28-08, the grievant called a fellow letter carrier while he was on the workroom floor and asked him to fill out a form 3971 on his behalf. Carrier did fill out the form 3971 for the grievant along with his own and told Supervisor, "For what it's worth, I'm only doing what he wants." A few minutes later, the grievant called back and spoke to Supervisor stating that he was sick and needed a few days off. The supervisor told him that he was with a customer and should call back later. The grievant never called back.

Management states that the grievant has displayed blatant disregard for regulations and his continued use of unscheduled leave is completely unacceptable. Management stated that they have bent over backwards in affording the employee every opportunity to correct his situation to no avail.

The Union contends that the grievant only calls in sick when his illness prevents him from performing his duties. The Union contends that the grievant's illnesses are documented and his use of sick leave is consistent with the intended purpose of this negotiated benefit. The Union notes that all of the absences cited in the NOR were approved on form 3971. Likewise, the absences listed as AWOL for 05-27-08 and 05-28-08 were also in fact approved.

The Union contends that Management is engaged in issuing "rapid fire" discipline with regard to the grievant. The Union argues that the grievant's attendance has improved as noted on his form 3972. The Union argues that this disciplinary action is punitive rather than corrective.

The Union argues that there is no minimum sick leave balance established whereby the employee's sick leave record is automatically considered unsatisfactory. There is no ELM provision which states that the use of several sick days in a quarter demonstrates abuse.

The Union also disputed the reporting of sick leave as being unscheduled. The Union cited Arbitrator Zumas decision, (N7M-1T-C 24014, 12-22-89), as supporting that the grievant's absences should be considered "scheduled rather than "unscheduled".

The Union contends that management is in violation of Article 10 and ELM 510 to 513 as they are using a set number of days or number of occurrences of absence as sole criteria for implementing attendance related discipline.

The Union contends that the grievant is making every effort to rectify his difficulties. The Union states that there is no just cause for the issuance of discipline and requests that the Notice of Removal dated July 9, 2008 be rescinded.

The Dispute Resolution Team has carefully reviewed the case file. The grievant has only two years on the job. The grievant's prior elements of discipline in an extremely short postal career of 2 years are as follows:

1. 02-22-07, Letter of Warning, Failure to be Regular in Attendance
2. 07-18-07, Letter of Warning, Failure to be Regular in Attendance
3. 08-29-07, 5 Day suspension, Failure to be Regular in Attendance
4. 10-11-07, 7 Day suspension, Failure to be Regular in Attendance
5. 02-12-08, 14 Day suspension, Failure to be Regular in Attendance
6. 04-01-08, 21 Day suspension, Failure to be Regular in Attendance, (14 days of the suspension are "lost time". this was modified from a Notice of Removal).

All of the prior elements of discipline are attendance related. There is no evidence that any of the absences are FMLA protected. There is no statement from the grievant in the case file further explaining any of the absences nor is there any documentation.

The DRT modified the last disciplinary action (a Notice of Removal dated 04-01-08), to a 21 day suspension of which fourteen days would be without pay. Strong language was used and that decision stated in part as follows:

*"The DRT considered that a twenty-one day suspension with fourteen days loss of pay a final opportunity for the grievant to show significant improvement in attendance. The issuance of the removal itself should have impressed upon the grievant the seriousness of his irregularities, his immediate need to improve, and that his position of employment is in jeopardy.*

*The local parties and grievant should understand that if the grievant has not improved during the adjudication of this matter, those irregularities could possibly result in removal from the service. If the grievant has begun to improve, the remedy and resolution of the instant case should be a constant reminder to the grievant to maintain improvement. The grievant is advised that he must improve his attendance and comply with postal rules and regulations."*

The DRT considered that even with an unadjudicated removal against the grievant being processed through the DRP, he sustained two more unscheduled absences. Upon receipt of the Step B decision and awareness of the perilous state of his employment, the grievant was unscheduled absent on four more occasions, all in the same month. The last occasion of absence was two consecutive days of AWOL, (no call-no show). The evidence is clear that the grievant knew that he was scheduled to work and did not call or show. (This was further evidenced by his

unsuccessful attempt to have another carrier submit a form 3971 on his behalf for his absences, on 05-28-08, one of the days that he was AWOL).

Management followed the principles of progressive discipline in the instant case. The grievant has unacceptable attendance. There is no evidence that the grievant (a relatively short term employee) intends to correct his poor attendance and no evidence that he is trying to correct any personal problems that he might have. The charges are proven and just cause was established for removing the grievant. The removal is upheld.

USPS Step B Representative

NALC Step B Representative

cc: , Postmaster  
, USPS Step A Representative  
, NALC Step A Representative  
, President, NALC NJ Merged Br. 38  
, National Business Agent, Region 15  
, Manager Human Resources, USPS  
, Labor Relations Specialist, USPS

File

**Documentation Included in File in accordance with the J-Cam Article 15.2(c):**

1. Form 8190, GATS # A06N-4A-D 08300293, 08-14-08
2. Union Item 17 and 19, 3 pages
3. Union Attachment # 1, Notice of Removal, , 07-09-08
4. Union Attachment # 2, Form 3972, ; Leave Year 2008, 2 pgs.
5. Union Attachment # 3, 8 Forms 3971
6. Union Attachment # 4, Settlement Agreement, A98N-4A-C 01194468, 02-06-02
7. Union Attachment # 5, C-10222, Arbitrator Zumas, N7M-1T-C 24014, 10-17-89, 6 pgs.
8. Union Attachment # 6, ELM 511.4 & 511.41
9. Union Attachment # 7, ELM 513.331 & 513.332
10. Union Attachment # 8, TACS, , Employee Everything Reports, 04-14-08 to 05-30-08, 13 pgs.
11. Management Item 18, 08-14-08, 2 pgs.
12. Notice of Removal, , 07-09-08
13. Statement, CCS
14. Statement, SCS , & 2 Forms 3971, Olander, 05-28 to 05-30
15. Letter, Re: Terms of 21 Day Suspension, 05-23-08
16. NNJD Step B Decision, A06N-4A-D 08163992, 05-20-08
17. Form 3972, ; Leave Year 2008, 2 pgs.
18. 8 Forms 3971
19. TACS, Olander, Employee Everything Reports, 04-14-08 to 05-30-08, 17 pgs.