

Regular Arbitration Panel

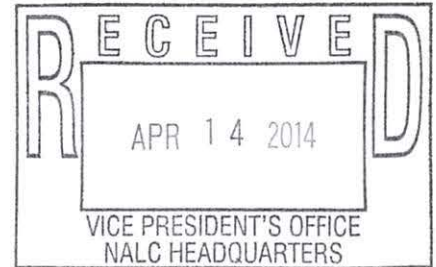
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 In the Matter of the Arbitration )  
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 between )  
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 United States Postal Service )  
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 and )  
 )  
 National Association of Letter Carriers, )  
 AFL-CIO )  
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Grievant: Reddick  
 Post Office: Jacksonville, FL  
 USPS Case No: G11N-4G-D 14065962  
 NALC Case No: JX537314D  
 DRT No: 09-297624

Before: Roberta J. Bahakel, J.D., Arbitrator


Appearances:

For the U.S. Postal Service: Ms. Christie King  
 For the Union: Mr. John Mitchell  
 Place of Hearing: Jacksonville, FL  
 Date of Hearing: March 6, 2014  
 Date of Award: April 1, 2014  
 Relevant Contract Provision: Article 16  
 Contract Year: 2011 - 2015  
 Type of Grievance: Discipline



**Award Summary:**

The Grievant was placed on Emergency Placement after exiting her vehicle without turning it off. Based on the testimony and evidence presented, the grievance is sustained.

  
 Roberta J. Bahakel

Judith R. Willoughby, NALC  
National Business Agent

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## BACKGROUND

The Grievant, Ms. Reddick, is a City Carrier Assistant (CCA) at the Westland station in Jacksonville, FL. On January 7, 2014 the Grievant was delivering mail in a new neighborhood on her assigned route. The Safety Specialist Team Leader, Mr. Campbell, was doing street observations on carriers on that day. He observed the Grievant make some deliveries and did not note any problems, but when the Grievant turned into a cul de sac in the new neighborhood a construction vehicle was blocking the right hand side of the cul de sac. Campbell observed the Grievant stop and exit her vehicle. Because he was close to the Grievant and had his window down he could tell that the Grievant left her LLV running while she exited the vehicle. He pulled up behind the Grievant and asked her why she was out of her vehicle while it was still running. The Grievant turned her LLV off and told Campbell that she could not see the house number on a mailbox so she had gotten out to check the house number. Campbell called his manager to inform her of what he observed and to get the phone number of the Westland Station. His manager told him to secure the vehicle and take the Grievant back to the station, have the Grievant put on emergency placement, and have the station manager call Labor Relations. Campbell took the Grievant back to Westland station and told the supervisor what he had observed. He and the Grievant were escorted to the station manager's office where he informed station manager McGee what he had observed. McGee questioned the Grievant about what Campbell stated that he had observed and the Grievant admitted that she had exited the vehicle without turning it off. McGee placed the Grievant on Emergency Placement and the next day, January 8, 2014, sent her a written letter regarding her Emergency Placement. This grievance followed.

## ISSUE

Did Management have just cause to place the Grievant on Emergency Placement in an off duty status (without pay) pursuant to Article 16.7 of the National Agreement on January 7, 2014? If not, what is the appropriate remedy?

CONTRACT PROVISIONS

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.

Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

DISCUSSION

I have reviewed the testimony and evidence presented at the hearing and considered the closing arguments of the parties. No issue was raised as to the arbitrability of this matter, therefore it is properly before me for decision.

Management contends that it had just cause to place the Grievant on Emergency Placement in that she was observed exiting her delivery vehicle while it was still running, which is a violation of the safety rules and regulations. When confronted, the Grievant admitted that she had exited her LLV while it was still running to check an address which she could not see.

Management contends that the Grievant is a short term employee and had only been employed by the Postal Service for approximately five months prior to the date of the incident. The Grievant had also recently completed extensive driver training and knew that she should not exit her vehicle while it was running. Management argues that runaway/rollaway incidents are a major concern to Management because of the high potential for harm and that these accidents are easily preventable if carriers turn off and secure their vehicles in accordance with the safety regulations. Based on this the Emergency Placement should be upheld and the grievance denied.

The Union contends that there was no just cause for the Emergency Placement in that there was no emergency at the time Mr. Campbell confronted the Grievant. The Union argues that under Arbitrator Mittenthal's decision in Case # H4N-3U-C 58637, that the placement of the Grievant on emergency placement must be considered as discipline, therefore Management must show just cause for its actions. It is the Union's position that there was no emergency at the time of the incident and that the Grievant had no prior discipline, therefore Management should have instead issued the Grievant progressive discipline for her conduct. The Union also contends that Management violated the Grievant's due process rights when it failed to provide documentation requested by the Union in a timely manner and that documentation was in fact not given to the Union until the Formal A meeting, which was too late for the Union to investigate the incident. Based on the foregoing the Union contends that the Emergency Placement should be set aside.

In regard to the Union's contentions as to Management's alleged due process violations, the evidence presented showed that Campbell saw the Grievant leave her vehicle while it was still running and immediately confronted her about her actions. He took the Grievant back to the station where he told both the supervisor and station manager McGee what he had observed. McGee spoke with the Grievant to ask if that was what had occurred and, when the Grievant admitted to leaving her vehicle while it was running, immediately placed the Grievant on Emergency Placement. There were no documents reviewed or relied upon by McGee in placing the Grievant on Emergency Placement. Because McGee did not rely on any documentation, there were no documents to provide to the Union in regard to the Emergency Placement. The Union had a copy of the Emergency Placement letter which set out Mr.

Campbell's name as the individual who saw the Grievant leave her vehicle. The Union did not ask to interview Campbell, but did ask to interview other individuals at the station and that request was granted. The testimony and evidence showed that the documents provided by Management at the Formal A meeting were in relation to the Grievant's later discipline over this matter and were not in regard to the Emergency Placement. After consideration, the Union's contentions in regard to the alleged due process violations cannot be upheld.

In regard to the merits of this matter, the testimony and evidence presented showed that the Grievant admitted that she left her vehicle while it was running and she testified that she was properly trained and knew that her actions were improper. There can be no doubt that the Grievant violated a safety regulation by her actions. The question that arises is whether the situation that existed at the time of the violation was an emergency situation that required that the Grievant be immediately placed off the clock in an off duty status under Article 16.7.

Management argued that rollaway/runaway incidents are a major concern and have the potential for great liability. While there is no doubt that this is true, each incident must be considered independently on its facts. Article 16.7 enables Management to act without notice in emergency situations, but Arbitrator Mittenthal has made it clear that Management still must show just cause for its actions. Not every safety violation will support an Emergency Placement. The language of Article 16.1 sets out that a basic principle shall be that discipline should be corrective in nature, rather than punitive, and provides for discipline for failure to observe safety rules and regulations.

In regard to this incident, while the Grievant's actions were clearly improper, the evidence presented by Management did not establish that the circumstances surrounding the Grievant's actions on the day in question were so egregious that emergency action was required. The evidence showed that the Grievant stepped from her vehicle to verify a blocked address and that prior to that action Mr. Campbell had seen no problems with the Grievant's deliveries while he was observing her. There was no evidence presented to show that the Grievant left her vehicle in an area where it was likely to roll away. There was also no evidence that the area where the incident occurred was busy with other vehicles or that there were other people in the area that could have been injured in the event a rollaway occurred. Based on the testimony and

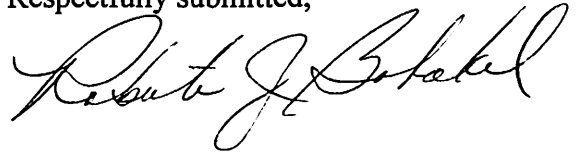
evidence presented, it is my determination that no emergency situation existed that required Management's use of the emergency provisions of Article 16.7, therefore the grievance is due to be sustained.

DECISION

The grievance is sustained. The Emergency Placement issued to the Grievant shall be expunged and the Grievant made whole for the hours of work she missed during the period of her Emergency Placement at straight time pay. I will retain jurisdiction over this matter as to the calculation of the remedy only for a period of 60 days.

Done this 1st day of April, 2014.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Roberta J. Bahakel".

Roberta J. Bahakel,  
Arbitrator