C-31174

Regular Arbitration Panel

In the Matter of the Arbitration	)	
	)	
between	)	Grievant: Von Doom
	)	
United States Postal Service	)	Post Office: Niceville, FL
	)	
and	)	USPS Case No: G11N-4G-D 13329784
	)	
National Association of Letter Carriers, AFL-CIO	)	NALC Case No: NIC8013
	)	
	)	DRT No: 09-284875

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

Appearances:

For the U.S. Postal Service:	Mr. Glenn Reeves
For the Union:	Mr. Steven Wright
Place of Hearing:	Niceville, FL
Date of Hearing:	January 9, 2014
Date of Award:	January 24, 2014
Relevant Contract Provision:	Article 16
Contract Year:	2011 - 2016
Type of Grievance:	Discipline

Award Summary:

The Grievant, a CCA, was issued a Notice of Removal for Unsafe Driving after he had an at fault motor vehicle accident. Based on the testimony and evidence presented, the Removal is converted to a 30 day suspension and the Grievant shall be returned to work as set out herein.

Roberta J. Bahakel

BACKGROUND

The Grievant, Mr. Von Doom, is a City Carrier Assistant (CCA) in the Niceville, FL post office. On August 17, 2013, the Grievant was involved in an at fault auto accident with a privately owned vehicle (POV) while delivering mail. The testimony showed that there were heavy storms in Niceville on the day of the incident and also showed that the Grievant had made his delivery at the Tom Thumb convenience store and exited that delivery onto a side street that intersected with the John Sims Parkway prior to the accident occurring. The John Sims Parkway is a four lane road with an additional designated parking lane on each side of the road and a grass median with openings in the center. The Grievant testified that he stopped at the stop sign and prepared to turn right to go to his next delivery, Dominic's Pizza. The evidence showed that the Grievant did not have a delivery for Dominic's Pizza on that day, but he testified that he would have stopped at that delivery point to pick up any outgoing mail before turning left across the Parkway and continuing his route on the opposite side of the road. The Grievant testified that when he accelerated onto the Parkway that he hydroplaned and went across the parking lane and the first travel lane and struck a POV which was traveling in the second travel lane.

The accident was investigated by Supervisor Davis who testified that when he arrived on the scene he was told by the Niceville police that the driver of the POV stated that the Grievant was turning left out of the side street and ran into him. Davis testified that the Grievant would not normally be turning left at that point on his route and stated that he checked the mailbox at Dominic's Pizza and that there was mail in the box, so he could not determine if the Grievant had made a delivery at that location that day. As a part of his investigation Davis inspected the damage to both the POV and the Grievant's postal vehicle. The damage to the POV was on the right rear side and the damage to the postal vehicle was on the right front of the vehicle.

Based on the location of the damage on the vehicles and the police officer informing Davis that the driver of the POV stated that the Grievant was turning left, along with Davis's determination that if the Grievant had been pulling out from a full stop he would not have hydroplaned across a parking lane and one and a half travel lanes, Davis determined that the

Grievant had most likely been making a left hand turn. He testified that he requested a removal based on his investigation and his findings that the Grievant's explanation was unreasonable based on the damage to the vehicles and the statement of the other driver. In addition he determined that the accident was preventable and that the Grievant was at fault. A Notice of Removal was issued to the Grievant on August 30, 2013. This grievance followed.

ISSUE

Did Management have just cause to issue a Notice of Removal (NOR) to the Grievant dated 8/30/2013 charging Unsafe Driving? 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.

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 issue the Grievant a Notice of Removal in that he had just finished his driver safety course some four and one half months before the accident occurred, the accident was preventable, and the Grievant admitted that it was

his fault the accident occurred. In addition, an investigation of the scene did not support the Grievant's version of how the accident happened.

The Union contends that the Grievant immediately reported the accident as required and he admitted that the accident was his fault. The Union contends that this was the Grievant's first accident and that the discipline was punitive and not corrective and was too harsh for the facts of the incident. The Union also contends that another carrier had a similar accident and was only given a seven day suspension.

The evidence was not clear as to exactly how the accident occurred, and the Grievant's description of how the accident happened conflicted with the statement of the other driver. Regardless, it was clear that the Grievant was at fault, and he has admitted that he caused the accident. The main issue to be decided here is whether there was just cause for the discipline issued to the Grievant and whether it was corrective in nature.

Under the terms of the 2006-2011 National Agreement between the parties, TE's (Transitional Employees), now termed CCA's under the current National Agreement, were entitled to grieve discipline, but progressive discipline did not apply and if the TE was found to be guilty of the charge against him then an arbitrator could not modify a discharge.

On January 10, 2013 Arbitrator Das, as chair of the Board of Arbitration, issued the Interest Arbitration Award in regard to the current National Agreement (2011-2016) between the parties. That award changed the language of certain provisions of the 2011 National Agreement which dealt with transitional employees (TE) and altered that language to apply to the newly instituted job classification termed the City Carrier Assistant (CCA). One of the changes made was to the language of the Memorandum of Understanding -- Re: Transitional Employees - Additional Provisions. The language of that Memorandum of Understanding originally stated in regard to TEs as follows:

ARTICLE 16

...

Transitional employees may otherwise be removed for just cause and any such removal will be subject to the grievance-arbitration procedure, provided the employee has completed ninety (90) work days, or has been employed for 120 calendar days, whichever comes first. Further, in any

such grievance, the concept of progressive discipline will not apply. The issue will be whether the employee is guilty of the charge against him or her. Where the employee is found guilty, the arbitrator shall not have the authority to modify the discharge.

In the Das Award this language was changed to read as follows:

E. Article 16 - Discipline Procedure

...

CCA's may be disciplined or removed within the term of their appointment for just cause and any such discipline or removal will be subject to the grievance arbitration procedure, provided that within the immediately preceding six months the employee has completed ninety (90) work days, or has been employed for 120 calendar days (whichever comes first) of their initial appointment. A CCA who has previously satisfied the 90/120 day requirement either as a CCA or transitional employee (with an appointment made after September 29, 2007), will have access to the grievance procedure without regard to his/her length of service as a CCA. Further, while in any such grievance the concept of progressive discipline will not apply, discipline should be corrective in nature.

The language on page 12 of Arbitrator Das' opinion sets out that "The terms are effective on the date of the issuance of this Award." The date of the Award was January 10, 2013 and the date of the Grievant's Notice of Removal was August 30, 2013. Therefore the new language set out above in regard to CCA's would apply in this case.

It appears from the testimony that Management at the Niceville station was under the impression that the contract language in regard to discipline issued to CCA's was the same as it had been for TE's, i.e., that while just cause was required, progressive discipline did not apply and that the only issue to be decided in a removal was the guilt of the employee. As of January of 2013 that language changed and the language in effect at the time of the Grievant's Notice of Removal was that there must be just cause for discipline of a CCA and that while progressive discipline does not apply, the discipline must be corrective in nature.

The testimony showed that the Grievant had no prior accidents and no discipline on his record. The evidence showed that the Grievant followed the proper procedures and immediately notified Management of the accident as required. The Grievant admitted that the

accident was his fault from the beginning. While supervisor Davis determined, based on the damage to the vehicles, that the Grievant was likely making a left turn, he also indicated that the Grievant would not normally be turning left at that location and that there was mail in the box of Dominic's pizza. The Grievant testified that while he did not have a delivery for Dominic's that day that he would have stopped at that delivery point to pick up any outgoing mail before turning left and crossing the parkway to continue his route. While the physics of the Grievant's description of the accident make it seem unlikely that the accident occurred in the manner he described, the determination of whether the Grievant was turning right or left does not alter the fact that the Grievant was involved in a preventable accident and that he admitted that he was at fault. While there was clearly just cause for discipline, the evidence presented does not establish that the Grievant's actions could not be corrected by using lesser discipline than a removal.

There was no evidence presented by the Union to support its arguments regarding the allegedly dissimilar discipline issued to another employee for a similar incident, so no ruling can be made in regard to the Union's contentions in that regard. Based on the foregoing it is my determination that the Removal is due to be converted to a 30 day suspension.

DECISION

The Notice of Removal issued to the Grievant is converted to a 30 day suspension and the Grievant is due to be returned to work for the remainder of his term as a CCA, if any. He is to receive back pay at the rate of the applicable work hour guarantee per day for the period he was off work over the period of the suspension, with no loss of any seniority or other benefits. I will retain jurisdiction over this matter as to the calculation of the remedy only for a period of 120 days.

Done this 24th day of January, 2014.

Respectfully submitted,

Roberta J. Bahakel,
Arbitrator