

The pressure cooker we're in, Part 2



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In April of this year, Regional Administrative Assistant (RAA) Jason Karnopp of NALC Region 7 presented a grievance dealing with the subject of the Joint Statement on Violence and Behavior in the Workplace (JSOV). The case file contained previous grievance settlements requiring “remedial training” by the offending manager. The outcome of the decision includes language beneficial to our ongoing battle about how our employees are treated. For that purpose, I make a few references to the decision below and ask you to take note of the evidence presented for the arbitrator to consider.

The Step A write-up includes a passage indicating “...There is no doubt that [offending manager] has in the past received training classes in one form or another on how to treat employees properly as it was documented in the [grievance] settlements.”

Our advocate and our Step A witness (JoAnn Gilbaugh) honed in on this training and directed the arbitrator’s attention to evidence in the file that shows how long the offending manager took to complete the online training in an effort to show the offending manager’s lack of sincerity to commit to changing her behavior. The arbitrator weighed that evidence as well as the facts presented at hearing, commenting that:

...There was evidence that [offending manager] was counseled on several occasions regarding her workplace demeanor and was given several opportunities for retraining including taking an online course regarding appropriate behavior in the workplace. While this example was one of multiple examples that showed that [offending manager] did not take these seriously, one course was to take approximately one hour to complete by answering various questions and scenarios online.

It took her 6 minutes to complete it...

Numerous prior grievance settlements involving the manager in question, addressed her prior misdeeds. The arbitrator took the past misdeeds and placed them into a category that he labeled as “habit evidence,” and then quoted Federal Rule of Evidence #406:

Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with

the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

The arbitrator applied that rule and combined it with the evidence before him:

The question of habit and character evidence has been the subject of many scholarly articles, law review articles and treatises but it appears that the general rule supported by the clear pronouncements of the Federal Rules is that habit evidence may not be used to show what happened on a particular day but that it may be admitted to show that it was more probable than not that it did, where there is direct and corroborative evidence to support that conclusion regarding a particular event.

The arbitrator gave NALC a favorable decision.

The Merit Systems Protection Board (MSPB) Report referenced in the first half of this column explains the MSPB decision to demote a postal managers follows (on page 28):

The Board has found that an “appellant’s management style worsened labor-management relations, seriously impeded the agency’s attempt to foster a more humane environment, and increased the potential for violence at the postal facility under the appellant’s supervision.” *Holliman v. U.S. Postal Service*, 75 M.S.P.R. 372, 374 (1997). The Board found that the misconduct was serious and detrimental to the agency’s legitimate interests, and that none of the lesser penalties proposed by the appellant would be appropriate under the circumstances. Notwithstanding the appellant’s lengthy service and good employment record, the Board found that a fourgrade demotion and geographical reassignment was a reasonable penalty. *Id.* at 375, 376.

Management has clearly suspended and terminated a number of letter carriers for violating the JSOV. It’s time that upper management do its part and terminate those repeat offenders of the JSOV in its ranks.

Its time for management to act.

As stewards investigating the past behavior of a supervisor/manager/postmaster, you need to gather all the facts as to what happened on the day(s) in question, request copies of all prior relevant complaints about this person, request all prior grievance settlements that are not in your possession and request all records relating to training.

For further information relating to this subject, go to the Members Only section of the NALC website and download the *2016 NALC Shop Steward’s Guide to Preserving the Rights of Letter Carriers to Be Treated with Dignity and Respect*. Further, please reach out to your branch officers—and if necessary, your national business agent—for assistance.

Keep an eye on each other.