REGULAR ARBITRATION

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

GRIEVANT: Melanie Newell
POST OFFICE: Chicago, Illinois
USPS CASE NO: J06N-4J-C 10061991
NALC CASE NO: DRT 03-166186

BEFORE: David A. Dilts, Arbitrator

APPEARANCES:
For the U.S. Postal Service: Kofi Owusu-Ansah
For the Union: Mack Julion
Place of Hearing: U.S. Post Office, 433 W. Harrison, Chicago, IL (December 2, 2010) and
J. J. Buchanan Station, 9308 S. Chicago, Chicago, IL (November 5, 2010)
Date of Hearing: December 2 and November 5, 2010
Date of Award: January 3, 2011

GREAT LAKES AREA REGULAR PANEL

AWARD SUMMARY

The record of evidence in this case shows an openly hostile work environment in the J. J.
Buchanan Station in Chicago, Illinois. The allegations of battery against Manager Hartman are the most
serious contentions, and are left without a preponderance of evidence in support of these charges. The
record shows that the Manager did raise her voice, provoke the Grievant by unprofessionally calling her a
liar, and did wave her hand in the Grievant’s face thereby improperly intimidating her in the incident of
December 22, 2009. These behaviors are unacceptable under the Joint Statement on Violence and
Behavior in the Workplace. Although the Grievant contributed to the severity of this situation by
becoming loud and using inappropriate language, the Grievant was provoked by managerial misconduct.
The proper remedy is the barring of Manager Hartman from administrative or managerial responsibilities
for City Letter Carriers until such time as she submits to and passes a fitness for duty physical focused on
her emotional stability and appropriate anger management training as discussed in this opinion. In any
event, Manager Hartman may not return to managing bargaining unit employees in the Chicago District
for one year, and after that time only with meeting the two above obligations and the concurrence of the
appropriate National Business Agent for the NALC.

David A. Dilts, Arbitrator
ISSUE

The Step B Team framed the issue in this matter as:

Did management violate provisions of the National Agreement, under Articles 3, 5, 19 and Joint Statement on Violence in the Workplace when it was alleged that the Station Manager at J. J. Buchanan with her continuous abusive behavior towards employees, on December 22, 2009, had threatened and retaliated against the Grievant, and if so, what is the appropriate remedy?

BACKGROUND

The parties have few facts upon which they agree. The parties agree that there was an incident on the workroom floor between the Grievant and Station Manager Hartman on December 22, 2009. They also agree that the Grievant was sent home on emergency placement and did not work on December 23, 2009. Virtually everything else relevant to this grievance is in dispute.

Procedurally, the record in this case contains multiple Form 8190s (Joint exhibit 2, pp. 3-8) reflecting the fact that there was initially no Informal Step A meeting and that the Dispute Resolution Team remanded the case to Informal Step A on at least one occasion. The Form 8190 with a May 14, 2010 date in items 21d and 22d has item 15 which frames this matter as: “Did Stephanie Hartman in violation of Article 3, 5, 19 and Joint Statement on Violence with her continuous abusive behavior towards craft employees as evidence by her threats to Melanie
Newell? If so, what shall the appropriate remedy be?” (Joint exhibit 2, p.3) is the relevant grievance form.

This grievance involves allegations that management violated the Joint Statement on Workplace Violence and Behavior in the Workplace. The Joint Statement is contained in the grievance file (Joint exhibit 2, p. 14) and states:

We all grieve for the Royal Oak victims, and we sympathize with their families, as we have grieved and sympathized all too often before in similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies, or research projects.

The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.

This is a time for candid appraisal of our flaws and not a time for scapegoating, fingerpointing, or procrastination. It is a time for reaffirming the basic right of all employees to a safe and humane working environment. It is also the time to take action to show that we mean what we say.

We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.

We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day’s work for a fair day’s pay, does not justify actions that are abusive or intolerant. “Making the numbers” is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.

We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of
our over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated.

Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace. We pledge out efforts to these objectives.

The Union alleges that the Station Manager yelled at and demeaned the Grievant. Worse yet, the Union alleges that the Station Manager battered the Grievant by poking her in the forehead with her finger. Naturally, the Station Manager denies all of these Union allegations. The Postal Service portrays the events as the Grievant coming back to the Station late, and then sitting at a computer for forty minutes on overtime without checking-out of her accountables and clocking out. The Postal Service also contends that it was the Grievant who threatened and cursed the Manager.

A significant amount of hearing time was spent concerning allegations that the Station Manager had a long history of abusive conduct towards employees in her charge. Numerous witnesses were called by both parties whose testimony focused on the alleged historical context of this grievance.

This grievance was timely filed, at Formal Step A, was remanded by the Dispute Resolution Team, and then processed through the steps of the negotiated grievance procedure. The Dispute Resolution Team declared this grievance at impasse, and the National Business Agent timely appealed this matter to arbitration. The parties stipulated that this matter is properly before this Arbitrator pursuant to Article 15 of their 2007 National Agreement. Hearings were conducted on November 5, and December 2, 2010. The record of evidence was
closed upon conclusion of the second day of hearings.

UNION’S POSITION

As a result of the tragedy at Royal Oak, Michigan the Postal Service and its unions entered into a contractually enforceable agreement (see Snow award C-15697) that was meant to eradicate the kind of work environment that created this catastrophe. This was almost twenty years ago and the Postal Service in the Chicago District, and its manager Stephanie Hartman at the John J. Buchanan Post Office has blatantly, boldly and arrogantly disregarded this Joint Statement on Violence in the Workplace. Her behavior, abuse, threats and tactics of intimidation has become common knowledge across the Chicago District where she has managed or supervised. The testimony offered by the Union witnesses shows a consistent and definite pattern of abuse of authority, which culminated in the out of control, abusive assault that she unleashed on the Grievant, Melanie Newell. Fortunately, co-workers prevented what was an almost inevitable physical battery of a fellow letter carrier.

Union witnesses testified about the abrasive, explicit and profane language employees are subjected to on a daily basis at the hands of Stephanie Hartman. The testimony shows that Hartman engaged in threats assaults and physical confrontations that she exhibits on the workroom floor. She has created such a hostile work environment that there is a fear of retaliation that has prevented some employees from speaking up about her conduct. That coupled with the fact that the Chicago District has turned a blind eye and shown an irresponsible unwillingness to “police” their own.
Management has not denied the allegations about the assault on the Grievant. Their only defense is that the Manager, Stephanie Hartman, would be provided “communications training.” Not the “Zero Tolerance” that applies to all other employees.

Management is in clear violation of Article 3 which requires them to manage within the provisions of the National Agreement as well as take the necessary disciplinary action against employees, which is warranted in this case. Management has also violated Article 19 which applies to handbooks and manuals: Section 665.24 of the ELM states that there is to be “no tolerance of violence or threats of violence by anyone at any level of the Postal Service.” The M-39, Section 115.4 states that “it is the front-line manager who controls management’s attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other’s rights and responsibilities.” Of course management’s disregard for the Joint Statement on Violence is having an adverse affect on employee hours, wages and working conditions as stated in Article 5 and is a unilateral change in the contract via non-compliance.

The Union is confident that upon consideration of the testimony and documentary evidence in this record, that the Arbitrator will come to understand the magnitude of the abuse by this sadistic “out of control” manager, Stephanie Hartman. The Union trusts that the Arbitrator will use his vast and flexible remedial authority to fashion a remedy that would send a message to the Chicago District that “there will be no tolerance of violence or any threats by anyone at any level of the Postal Service” consistent with the objectives of the Joint Statement on Violence. It would also send a welcome message to the employees of J. J. Buchanan Station and to the Grievant, Melanie Newell that “Zero Tolerance” in the Postal Service means zero tolerance and applies to everyone.
The Union therefore respectfully requests that the Arbitrator sustain this grievance and apply an appropriate remedy in this case. The Union urges that the appropriate remedy is the removal of Stephanie Hartman and any other remedy necessary to restore the Grievant’s rights under the contract.

**POSTAL SERVICE’S POSITION**

The Grievant is a Part-Time Flexible Substitute (PTFS) employee, who has been employed by the Postal Service since April 28, 2007. At the time of the alleged incident, the Grievant was assigned to J. J. Buchanan Station. Currently, the Grievant has been reassigned to the Riverdale Post Office in Riverdale, Illinois.

On December 22, 2009, Stephanie Hartman, Manager of the J. J. Buchanan Station arrived at the Station at approximately 4:50 p.m. to pick up a stamp order. She was in the cage area giving stamps to Velma Davis. When the Manager arrived, there were a number of city letter carriers waiting to be cleared and loud music playing. The Manager instructed a supervisor to ensure all the carriers were cleared of the their accountable items, end their tours and exit the station. The Manager had observed the Grievant sitting at the supervisor’s computer for over 40 minutes. At approximately 5:50 p.m., the Grievant came to the cage to be cleared. The Manager then stated, “I know you are not just coming to be cleared.” The Grievant replied she had just returned from the street. When the Manager disputed the Grievant’s claim, and informed her she had observed her sitting at the supervisor’s computer for approximately forty minutes, the Grievant changed her story and stated a supervisor, Greg Carruthers, had given her
some assignment to fill out a PS Form 3996. The Manager then reminded the Grievant of her responsibility to immediately get cleared of all accountable items upon her return from the street, end her tour, and leave for the day. The Grievant became belligerent, shouting, “Ms. Hartman don’t start this shit with me.” The Manager then instructed the Grievant to end her tour and leave the building. The Grievant left the cage area and continued to talk out loud, using profane language towards the Manager. The Grievant refused to comply with the instructions of her Manager. Again, the Manager instructed the Grievant to end her tour and leave the building. When the Grievant continued to be insubordinate and disruptive, the Manager placed her on Emergency Placement, and instructed her to not report for duty until advised otherwise. The Grievant was then instructed to leave the building. At this point, another craft employee grabbed the Grievant’s hand and escorted her out of the building. As the Grievant was walking out of the building, she shouted to the Manager, “You are going to burn in hell.”

There is no credible evidence that the Manager put her finger in the Grievant’s face, threatened the Grievant in any way, or in any way violated the Joint Statement on Violence. It was, rather the conduct of this Grievant, who verbally insulted, cursed and threatened the Manager, which actually amounted to a violation of the Joint Statement on Violence. It is not the first time this Grievant has exhibited such misconduct. She has displayed such misconduct toward other supervisors and has been disciplined for this behavior. Other craft employees witnessed the Grievant’s conduct and their testimony shows that it was the Grievant, not the Manager who displayed the disruptive conduct.

The Union did not file an Informal Step A grievance, so as to deny the Manager an opportunity to defend herself against these false charges. The Dispute Resolution Team had to
remand this grievance back to Informal Step A. The Union's effort was thwarted, but is tantamount to a violation of the Manager's due process rights to face her accusers and respond to the allegations.

In any event, this case arrives at arbitration not so much because of the events of December 22, 2009. This case is a simple personal vendetta by Mack Julion who is the President of the Greater Chicago Branch of the NALC. There is bad blood between Mr. Julion and Ms. Hartman because the Manager responded appropriately and did not allow Julion's entry into the station, unannounced, for the purposes of electioneering. The Union's advocate in this matter is Me. Julion who clearly was not dispassionate in presenting this case—embellishing the truth where he could.

Almost all of the Union's witnesses have had disciplinary actions brought against them by this Manager. It, unfortunately, is the minority of the Union membership with prior disciplinary action who are attempting to retaliate against this Manager.

The Grievant reported this incident to the District Manager, her allegations were duly investigated. Following the investigation, the District leadership has taken remedial action to resolve the situation and to prevent future reoccurrences. The Manager was given additional training in communication, and the Grievant was reassigned to another (different) station without loss of pay, benefits or seniority. The Union's requested remedy in this grievance is unreasonable, because the actions of the Manager on December 22, 2009, do not rise to the level of the type of situations contemplated or prohibited by the Joint Statement on Violence.

The Postal Service respectfully requests that the Arbitrator find that the Manager did not violate the provisions of the National Agreement under Article 3, 15 and 19, and did not as well
violate the parties' Joint Statement on Violence in the Workplace. Consequently, the Service urges that the Arbitrator deny this grievance in its entirety as being without merit.

ARBITRATOR'S OPINION

The burden of proof in this matter falls to the Union. The Union must prove its allegations in this matter with a preponderance of the credible evidence. That evidence must show that it is more likely than not that Manager Hartman engaged in the conduct of which she stands accused. The Union alleges that Manager Hartman's misconduct includes assaulting the Grievant, battering the Grievant, using intimidating tactics with the Grievant, retaliating against the Grievant, and raising her voice and cursing at the Grievant. This the Union alleges was the result of an incident which occurred on December 22, 2009 in the J. J. Buchanan Station in Chicago, Illinois. The Union further alleges that the December 22, 2009 altercation was just one more incident in a continuing pattern of conduct by Manager Hartman which contravenes both the letter and the spirit of the parties' Joint Statement on Violence and Behavior in the Workplace. The Union has set for itself an ambitious task in demonstrating culpability on December 22 and a continuous pattern of such misconduct prior to December 22.

The Postal Service simply denies that the Manager engaged in gross misconduct under the Joint Statement on Violence and Behavior in the Workplace. The Postal Service contends that the Manager was provoked by the Grievant's insubordination and profanity. Such provocation was considered when the Manager was sent for communication training, and the Grievant reassigned to the Riverdale Post Office so as to not come under the Manager's direction
again. The Postal Service alleges that it is the Branch President who has an agenda concerning this Manager arising out of a past dispute concerning his denial of entry into the J. J. Buchanan Station by this Manager.

The facts in this case are in substantial dispute. Witnesses were interviewed in the investigation of this grievance and many were called to testify in this matter. In all arbitration cases, and in particular, those matters with competing probative evidence, it is the quantum of proof that will cause one party or the other to prevail. Quantum of proof is the arbitral standard often used in matters where factual disputes are critical to arbitral decision-making. “‘Quantum of proof’ refers to the amount and quality of proof necessary for a party with the burden of proof to prevail.”1 It is for the Union to persuade this Arbitrator with reliable, credible evidence that


Continuing to describe the concept of quantum of proof Schoonhoven states on pp. 275-76: While burden of proof addresses which party has the burden of proving the ultimate issue in a case, quantum of proof concerns the standard that the arbitrator applies to determine whether that burden has been sustained. Burden of proof thus pertains to the parties’ adversarial duties, while quantum of proof pertain to the arbitrator’s evaluative processes. Articulating the quantum of proof is an attempt to characterize the “quantity of evidence which produces a reasonable assurance of the existence of the ultimate fact.

Because quantum of proof concerns the arbitrator’s deliberative processes, rather than the parties’ adversarial burdens, the determination and application of the quantum of proof is uniquely with the arbitrator’s purview. The parties can urge that one standard of proof is more appropriate than another, given the nature of the case. Inevitably, however, the arbitrator must decide just how much he must be persuaded before he can find that a party has sustained it burden of proof.

Perhaps because the quantum of proof is tied to the arbitrator’s deliberative processes, it is not susceptible to precise definition or rigid rule of application. Ultimately, defining the quantum of proof is an attempt to measure that which eludes precise measurement – how much evidence is necessary to convince the arbitrator that the party with the burden of proof has prevailed.
the Manager engaged in the conduct alleged. Once a finding of fact is accomplished from this record the parties’ Joint Statement on Violence and Behavior in the Workplace can be applied to those facts to determine if the grievance has merit. If the grievance is meritorious, the matter of remedy then becomes the focal point of analysis.

Facts

There were two days of hearings in this case. The Union called sixteen witnesses to the stand. Several of these witnesses were not credible. Albert Thompson testified at length concerning the Manager Hartman’s interactions with himself and others he had observed. He consistently portrayed Manager Hartman as an aggressive victimizer of employees. Towards the end of this testimony he became impassioned, and literally lost control on the stand. His testimony could not be credited. Ms. Martin, a supervisor, testified concerning Manager Hartman yelling and screaming at employees, and admitted that she had personal difficulties with Hartman. Ms. Ingrid Savage testified concerning a 1998 incident in which she claims that Ms. Hartman stated that she would “take you in the ally and beat your ass.” Twelve years is a mighty

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Quantum of evidence also encompasses the quality of that evidence. Parading witness serves no other purpose than to increase the costs of and diminish the utility of arbitration. This is not a political exercise, it is a forum for resolution of differences between the parties. To call witnesses ask questions without a proper foundation and a clear nexus to the issues at hand is a waste of time and money. Further, the witnesses called should proffer proofs, evidence rather their own conclusions and opinions – conclusions are for the Arbitrator to draw. Great risk ensues to the advocate’s case when witnesses implode on the witness stand, and at best simply clouds the true facts making it more time consuming and difficult for the arbitrator to write an informed opinion and reach a conclusion based on the facts and the parties’ contract. Of these sixteen witnesses, only four, perhaps as many as six had anything probative to offer in this case.
long time to have the sort of recall Ms. Savage attested to at hearing. Again, this testimony was inconsistent and could not be credited

Union witnesses Foster, Ceska and Brooks offered testimony which concerned the processing of the grievance and what they claim to have discovered during their investigation. Their testimony was credible, but they were not witnesses to the events of December 22, 2009 and could offer only general observations concerning Manager Hartman’s conduct prior to December of 2009. Without times, dates, places and other such specifics there is little probative value to the allegations against the Manager contained in these three persons’ testimony. Darren Brooks offered the conclusion that he was not surprised by the allegations against Manager Hartman, because he believed that was in keeping with her character and personality.

Ms. Phillips testified concerning events at another station involving Manager Hartman. She offered only generalizations about the Manager cursing and calling letter carriers foul names. She was also present at a “town hall” meeting organized for purposes of complaining about Manager Hartman.

Darcey Miller offered testimony concerning an incident for which no documented complaint was filed with either the Union or Equal Opportunity Commission. Mr. Miller claims to have been standing at a urinal in the men’s restroom relieving himself when Manager Hartman entered the restroom and began yelling and cursing at him to get back on the workroom floor and finish his job. He also testified that he no longer worked for the Postal Service and had been removed for insubordination. This testimony, if corroborated and from a credible witness, would have been the type of evidence necessary to show a pattern of acceptable conduct by this Manager.
Cynthia Johnson from the APWU Mr. Miles from the APWU were also called and they testified concerning the town hall meeting in which complaints were aired against Manager Hartman. Neither witness was present on December 22, 2009 and could only give hearsay accounts of Ms. Hartman’s conduct prior to December of 2009. The town hall meeting appears to have been conducted because several employees had difficulties with Manager Hartman. The parties’ National Agreement provides for the appropriate method for the resolution of concerns which were the subject of that town hall meeting. The town hall meeting and its surrounding circumstances is not proof of the violations alleged against this Manager. It suggests there are problems, but whether it is the Manager or the participants in the town hall meeting is not clear from this record. Concerted action which provides for appropriate procedure which is well documented is the wise course of action and does not smack of potential inappropriate activities.

Perhaps the most convincing witnesses called by the Union were John McCall and Kimberly Woods. John McCall is a city letter carrier who was in the break room, some fifty feet or so from the cage area when the incident occurred on December 22, 2009. He claims to have heard every word that was said. His testimony was consistent with the written statement he provided during the Union’s investigation. His statement says (Joint exhibit 2, pp. 30-32):

12/29/09

To whom it may concern,

On Tuesday Dec. 22, 2009 around 5:45 p.m. I was sitting in the swing room eating my lunch waiting for 6:30 so I could go to church for a meeting. I heard some loud shouting outside on the floor. I stood outside of the swing room, I saw Ms. Stephanie Hartman and Ms. Melanie Newell going at it. Ms. Hartman was cursing and pointing her finger in Ms. Newell [sic] face, telling her to get her ass out of the builden [sic]. Ms. Newell was telling her you don’t have to curse at me and get your finger out of my face. I watch this take place between case 72 and
74. They kept on arguing and it was really started to hear up. Ms. Hartman kept on putting her finger in Ms. Newell [sic] face, daring her to move it from her face. Ms. Hartman was trying to provoke her into a fight. Two carrier [sic] came and got between Ms. Hartman and Ms. Newell. The carrier was Ms. Kim Wood and Mr. Fortuneberry. Ms. Newell walked to the other side of the floor to get her personal belonging. While Ms. Hartman was still shouting get out of the builden [sic]. I left the building after that and just waited outside in my truck until I had to go to church.

S/ John O. McCall Jr., #65

Naturally, Mr. McCall drew conclusions concerning Ms. Hartman attempting to provoke a fight. However, such a conclusion does go to the state of mind that the conduct of the parties caused in the observer. There is no record of Mr. McCall having cause for bias against the Manager, nor did anything about his testimony not ring true. The Postal Service attempted to get McCall to admit that he could not have seen or heard anything from the break room, but this did not sway his testimony. Mr. McCall claims to have moved to the door and stepped out into the aisle where he could observe and hear what transpired. In examining the workroom floor, the position of the break room relative to the cage area, the Arbitrator is persuaded that Mr. McCall could have seen and heard what he reported. Therefore, this Arbitrator is persuaded that this witness' testimony is credible and reliable.

Ms. Kimberly Woods was identified by Mr. McCall as being one of the two employees who were in the same area with the Grievant and Ms. Hartman at 5:45 p.m. on December 22, 2009. A foundation for Ms. Woods testimony was laid, she was within a few feet of the Manager and the Grievant when this incident started and came to take the Grievant by the arm and move her away from Manager Hartman. The testimony given at hearing was essentially the same as the information provided in Ms. Woods’ written statement in the case file, Joint exhibit 2, pp. 28-29,
the statement is undated, but a date stamp from the Union’s branch office indicates it was received on January 11, 2010 (twenty days after the incident):

I am writing on behalf of Ms. Melanie Newell about the incident that happened between her and Ms. Stephanie Hartman on Tuesday, December 22, 2009.

We had punched out and Melanie was writing down the blocks that we had done from Rte 16 on a 3996 that Mr. Carruthers had asked her to write down. So when she (Melanie) finished writing down the blocks she then went to the cage to get cleared. I then heard some shouting coming from the cage and it was Ms. Hartman and Melanie Newell. I walked over there where I heard Melanie tell Ms. Hartman to “Don’t hollar at her!” Ms. Hartman told Melanie to “Get out the Station!” Melanie told her she was but when Melanie wasn’t going in the direction of the exit door, she followed Melanie to the Rte Melanie was on, Rte 57, and was continuing to scream at her “I told you to get out.” Melanie responded that she had to get her purse from off the Rte and Ms. Hartman screamed “Get your ass out of here!” Melanie told her “don’t curse at me! I didn’t curse at you so don’t curse at me.” By then Ms. Hartman was in her face and pointed her finger in her face. Melanie told her to get her hand out of her face and she moved it out of the way. That’s when I got between the two and Ms. Hartman told her that she was on emergency leave and to get out and don’t come back. Melanie said fine and she asked for Melanie’s time card that was in her hand. I then got the card from Melanie and Mr. Carruthers was there by that time and I gave it to him.

Ms. Woods further testified that when got between the two people, the Grievant and the Manager, that Manager Hartman had gotten so close to the Grievant that she could have kissed her. Of course, Manager Hartman disputes Ms. Woods version of the events, but Ms. Woods testimony is consistent, in the main, with the testimony offered by the Grievant. Further, this testimony is not inconsistent with Mr. McCall’s observations.

Mr. Carruthers was a supervisor of customer service assigned to the J. J. Buchanan Station on December 22, 2009. The testimony of the Grievant, Ms. Woods and Management
witness Davis all place Mr. Carruthers in the area of the incident and claim he was one of the two employees to get between the two women. Mr. Carruthers, a member of management, was not called to testify.\(^{3}\) This record of evidence contains two eye-witness accounts from persons present to testify that corroborate the claims of this Grievant with respect to the incident of December 22, 2009. Mr. Carruthers’s testimony might have put the events of December 22, 2009 in some doubt but he did not testify (available or otherwise). The Arbitrator is persuaded that adverse inference must be drawn from the absence of what the record shows would have been a critical witness.

The testimony of Ms. Hartman and the Grievant are at substantial variance with one another. The claims of the Union were that Ms. Hartman not only put her finger in the Grievant’s face, but made contact with her. This the Manager denies, but the Grievant claims happened. The Grievant did admit to using the words “hell” towards the Manager in her direct testimony and on cross examination. Further, the Grievant admits to having raised her voice and that the conversation became heated.

The Manager, maintained that she did not use profanity throughout her testimony, however, she does admit to having become loud, because she had become “frustrated” with the situation. Perhaps most telling, the Grievant claimed that the Manager called her a “liar” with respect to the time she is alleged to have spent at the supervisor’s computer (Carruthers who was

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\(^{3}\) Elkouri and Elkouri *How Arbitration Works*, sixth edition Washington, D.C., Bureau of National Affairs, Inc., 2003 pp. 379-80 states: The failure of a party to call as a witness a person who is available to it and who should be in a position to contribute informed testimony may permit the arbitrator to infer that had the witness been called, the testimony adduced would have been adverse to the position of that party. Where a employer failed to have the single accusing employee appear, however, the arbitrator expressed concern because of the accuser’s absence and found insufficient evidence to support the employee’s discharge.
not present to testify). To call an employee a liar on the workroom floor in full view of other employees is a serious lack of respect and is destructive to any person’s dignity and creates a wholly hostile work environment. In the Manager’s direct testimony she testified that the Grievant became upset because “she had been caught in a lie.” This is a harsh statement for a witness to make concerning another person. Worse, still, the Grievant claims to have been filling out a PS Form 3996 at the behest of Supervisor Carruthers (who did not testify) and whose claim was corroborated by the other carrier (Woods) who had pivoted on the same route as the Grievant. For the Manager to have used an intemperate word “lie” in her direct testimony makes quite believable that same level of intemperance may well have occurred on the workroom floor.

There is no evidence that the Manager made any effort to deduce from Supervisor Carruthers whether the Grievant had been given an assignment by him after 5:00 p.m. on December 22, 2009 and if so what that assignment was. The Manager appears to have simply assumed that the Grievant was stealing time by sitting idly by the supervisor’s computer, and no evidence suggests that she made any effort to find out what the facts were before making comment to the Grievant.

Only one witness claims to have seen the Grievant’s head move back as though she had been poked in the forehead. No witness was called who testified, credibly that the Manager made physical contact with the Grievant. This Arbitrator only has the claim by the Grievant that the Manager battered her. Ms. Woods could not conclusively corroborate the Grievant’s claim, but did testify that the Manager got uncomfortably close to the Grievant’s face.

Management called a total of six witnesses. One of these witnesses testified that the Grievant had, in their experience, been confrontational and loud on the workroom floor (Cole).
One of these witness, Rufus Moore, testified about the processing of the grievance. A third witness testified concerning an incident involving the Branch President coming to J. J. Buchanan Station unannounced. In that incident the current Branch President was campaigning for his current office and was denied admission to the Station by Manager Hartman. The fourth witness was Lakesha Brown who added nothing substantive to record of evidence. In addition to the Manager, Valerie M. Davis was called to testify. Ms. Davis was the clerk in the cage when the incident on December 22, 2009 began. Ms. Davis’ testimony was that the Manager did not use profanity or become intimidating. She did testify that she heard the Grievant say “I’m not for this shit today.” Davis further testified that she knew Mr. Carruthers came to the area and got between the two women, and that there were other employees in the area, even though she did not leave the cage. Without having left the cage Ms. Davis could not have witnessed the events that comprised the incident of December 22, 2009.

Upon cross examination Ms. Davis testified that she had a good relationship with Ms. Hartman and that they were friends – that she had Hartman’s cell phone number. The Postal Service attempted to rehabilitate this witness by attempting to get her to correct her testimony to the cell phone number being a business phone. In any event, it is clear that Davis admits to not being objective in this matter.

Manager Hartman’s testimony responded to many of the conclusions offered by Union witnesses concerning her prior conduct. Manager Hartman denied any prior misconduct. The Manager claimed that she initiated a confrontation of the Grievant’s misconduct and not her personally. Hartman admits to having become frustrated, allegedly because the Grievant was insubordinate, loud and unprofessional. Yet this testimony confirms she did nothing to
determine whether the Grievant had been assigned duties requiring to be at the supervisor's computer. This is a serious breach in responsibilities, and is readily admitted by the Manager.

The quantum of proof is clear and convincing that Manager Hartman became frustrated with the Grievant and raised her voice, in fact, her communications with the Grievant are properly characterized as yelling or screaming. The allegation that Ms. Hartman started the incident with her having called the Grievant a liar is also more likely true than not. Ms. Woods' testimony that Manager Hartman put her hand in the Grievant's face is more likely true than not, albeit, there is no proof that Manager Hartman battered the Grievant as the Grievant claims. The record is not conclusive concerning whether the Manager used profanity aimed at the Grievant.

The attempts by both parties to characterize the two women as habitually loud, profane and intimidating are based on conclusions drawn by others. Little probative evidence was brought into this record that shows much conclusive concerning either woman's character. The town hall meeting, seems to be something upon which the Union is willing to rely concerning the Manager's character. The Union is reminded that it is proof, not one allegation after another that matters.\(^4\) In consideration of the totality of the credible evidence in this record, there is precious little that supports the Union's allegation that Manager Hartman has a record of inappropriate behavior. There is absolutely nothing in this record which supports the Union advocate's claim

\(^4\) One needs to be very careful in reliance on petitions, polls, public opinion or other such quasi-evidence. While there may be clear numbers on a petition, a town hall meeting for the exercise of free speech these activities first cousins to mobs, not probative evidence. Probative evidence is offered for the truth of something that is, a demonstrable sound foundation for the knowledge purported to be possessed, with dates, times, who, what, etc. and testable data – i.e., things over which cross examination is possible – not \textit{I saw him beat his wife for months, some years back!} The M-39 admonishes management to find the who, what, where, when etc. before acting, that same admonishment from part 115 directly applies here.
that Manager Hartman is “out of control” or “sadistic.”

The Joint Statement on Violence and Behavior in the Workplace

The facts in this case must be judged with respect to the parties’ mutual intent. The parties’ mutual intent is clear and unequivocally expressed in their Joint Statement on Violence and Behavior in the Workplace. There are degrees of culpability to be gleaned from the parties’ expression of intent concerning workplace behavior. The fourth full paragraph of the Joint Statement on Violence and Behavior in the Workplace states:

We openly acknowledge that in some place or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats or bullying by anyone.

Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.

Clearly the parties have expressed their mutual intent that there will be certain
behaviors which will be made extinct, to the best of Management’s and the Union’s ability. The second sentence of the fourth phrase of the Joint Statement on Violence and Behavior in the Workplace states *that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service.* That second phrase is separated from the third by a semi-colon, and the third phrase says: *and that there is no excuse for and will be no tolerance of harassment, intimidation, threats or bullying by anyone.* Because these are independent phrases separated by a semi-colon, and not part of an inclusive list, it could be interpreted that there is a difference between the infractions contained therein. Common sense is consistent with the conclusion that violence and threats of violence are more egregious than are other threats (against property, reputation etc.) or harassment or intimidation or bullying, each of which is serious and not to be taken lightly, but which may be corrected short of the most severe of possible sanctions. The final sentence in the quotation above is from the fifth paragraph of the Joint Statement on Violence and Behavior in the Workplace and makes clear that “Those whose unacceptable behavior continues will be removed from their positions.”

This Arbitrator is persuaded that Manager Hartman failed in her obligations under the Joint Statement on Violence and Behavior in the Workplace. For her to become loud on the workroom floor, to publically call an employee a liar, and for her become “frustrated” and exhibit that frustration on the workroom floor towards an employee are acts which are proscribed under the Joint Statement on Violence and Behavior in the Workplace. To engage in conduct where an employee is yelled-at by her Manager, where that employee is called a liar, and all done with the Manager putting her hand in the Grievant’s face is intimidation, in the plain meaning of the
Such conduct is egregious and proscribed by the parties’ Joint Statement on Violence and Behavior in the Workplace.

The Union also complains that Article 3, Article 5 and Article 19 (via the Handbooks and Manuals) are also violated by the Manager’s violation of the Joint Statement on Violence and Behavior in the Workplace. There are likely connections between the rights identified in the National Agreement and the Joint Statement on Violence and Behavior in the Workplace. However, such connections of rights does not require the Arbitrator to analyze or consider specific issues under these provisions of the National Agreement beyond that already offered. The grievance is sustained purely on the basis of the Joint Statement on Violence and Behavior in the Workplace.

The Arbitrator is persuaded that the grievance is of merit and should be sustained in its entirety.

Remedy

It must be remembered that this case is a contract interpretation matter. The Union seems to, at times, treat this matter as a disciplinary case focused on Manager Hartman. It is not a disciplinary matter, if it were it would be beyond the authority of this Arbitrator. The remedy available to correct this contractual violation is focused on the protection of the rights of the employees covered by the 2006 National Agreement.

The matter of remedy in this case is not a well settled issue. There is a binding National Level Award which instructs arbitrators to use their remedial authority to remedy violations of the parties’ Joint Statement on Violence and Behavior in the Workplace (Carlton Snow in a National Level Award, Q90N-4F-C 94024977 et seq C 15697). This Arbitrator is persuaded that this National Level Award empowers and requires that this Arbitrator provide an appropriate remedy drawn from the parties’ Joint Statement on Violence and Behavior in the Workplace and consistent with the National Agreement.

There were numerous other arbitration awards entered into this record for this Arbitrator’s enlightenment. Arbitrators dealing with these matters seem to have taken the tack, similar to Article 16 matters, that the corrective measure should fit the offense, although many also point out that there is nothing in the National Agreement which specifically provides arbitrators with the authority to impose discipline on supervisory employees (Bruce Fraser, B94N-4B-C 98103840, NALC Case No. 3709GL, 1999, as well as others). Even so, some arbitrators have found that removal from the supervisory position was appropriate (Arbitrator Britton, K94N-4K-C 98111598, C - 21913, 2001; (J01N-4J-C 031913363, DRT 06-042293, December 2004) when assault and battery occurred. Arbitrators have also applied less severe remedies and specific programs of remediation for lessor infractions (i.e., Arbitrator Dawson, F06N-4F-C 08237439, C-27954, 2008; loud and intimidating conduct towards craft employees; resulting in the supervisor being barred from managing letter carrier craft employees in the Pacific area; which is the case with the closest facts and circumstance to the one presently before
the Arbitrator.)

In close examination of Arbitrator Snow's National Level Award in Q90N-4F-C 94024977 / 94024038, C-15697 it is clear that the contentions in that case revolved around whether the Joint Statement on Violence and Behavior in the Workplace constituted a contract between the parties, and if so whether that bargain was enforceable through the parties' negotiated grievance procedure. In deciding that the Joint Statement on Violence and Behavior in the Workplace constituted a contractually enforceable agreement between the parties, Arbitrator Snow reasoned:

The bargain theory of consideration supports a conclusion that the mutual exchange of promises in this case constituted consideration. The mutual exchange of promises involved a commitment from each party "to make the workroom floor a safer, more harmonious, as well as more productive workplace." (Note deleted) Use of the negotiated grievance procedure was an incidental result of the promissory exchange between the parties. Moreover, there was unrebutted evidence between the parties and has used the Joint Statement in regional arbitrations against workers who exhibited behavior inconsistent with the Joint Statement. There, in fact, was consideration, in the bargained-for exchange between the parties. The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing supervisors from his or her administrative duties. (Citing United Steelworkers of America v. Enterprise Wheel and Car Corp. 363 U.S. 593 (1960)).

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6 Several other awards were introduced by the Union which strayed from close association with the facts and circumstances of this case, i.e., J01N-4J-C 06038550, C-26507, Dilts 2006) - sexual harassment.
The subtle distinction here is that there is a remedy available to the bargaining unit through the use of the grievance procedure, including “removing supervisors from his or her administrative duties.” The word “removing” perhaps introducing an element of confusion. This Arbitrator is not persuaded now, nor was he before hearing this case, that Arbitrators under the 2006 National Agreement had the authority to issue discipline for violation of the Joint Statement on Violence and Behavior in the Workplace – that is a specifically enumerated Article 3 right of management. What the Joint Statement on Violence and Behavior in the Workplace explicitly states is that employees violating this requirement will not be promoted or rewarded and that for repeated violations they will be removed from their positions. Removed from their positions permits an arbitrator to bar that supervisor from having proximity to bargaining unit employees to again violate the Joint Statement on Violence and Behavior in the Workplace. Removal, in a disciplinary sense, as used in Article 16 is not what is implied here. Removal from the bargaining unit employees’ work environment does not require the supervisor to be discharged.

All that is left for this Arbitrator to decide is whether Manager Hartman is to be removed from any administrative responsibility for City Letter Carrier employees in the Chicago District. In this case, the severity of the Manager’s proven misconduct warrants a remedy for the bargaining unit beyond that taken in good-faith, by the Chicago District as of the date of this arbitration decision.

Communication is not the only problem exhibited by this Manager in this case. Manager Hartman is herein barred from supervising City Letter Carriers in the Chicago District for a period of one calendar year from the receipt of this award. For her to return to eligibility to supervise City Letter Carriers after that one year prohibition in the Chicago District she must
successfully complete anger management training (reasonable and acceptable to the National Business Agent)\(^7\) and submit to a fitness for duty examination concerning her emotional stability. Upon completion of these requirements she may return to supervising City Letter Carriers with the concurrence of the National Business Agent for that District after one calendar year.

No other remedy is appropriate and due under these facts and circumstances.

\(^7\) The National Business Agent is not an involved Union official in this case. The Branch President has not demonstrated that he is sufficiently objective to fulfill this role under the National Agreement in this case