

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

---

UNITED STATES POSTAL SERVICE, <i>Harvey Post Office</i>	)	
	)	
and	)	Case Nos. 13-CA-097568
	)	13-CA-097606
	)	13-CA-098060
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, <i>Branch 11</i>	)	
	)	
	)	
	)	

---

**RESPONDENT’S EXCEPTIONS  
TO THE ADMINISTRATIVE LAW JUDGE’S DECISION**

---

Respondent, United States Postal Service (“Postal Service”), pursuant to Section 102.46 of the Board’s Rules and Regulations hereby submits its exceptions to the Administrative Law Judge’s (ALJ’s) Decision, issued on November 13, 2013. Respondent excepts to the ALJ’s conclusions that (1) Williams’ persistent insubordination on January 25 and 29, 2013, even after his arguably protected activities had ceased, enjoyed the Act’s protection, and (2) Williams’ insubordinate actions were not cause to remove him from Respondent’s facility on January 29, 2013, nor terminate his employment with Respondent effective February 13, 2013. This part of the ALJ’s decision appears primarily on pages 13, and 14 in the Analysis and Conclusions section. The portions of the record relied upon by Respondent are as follows: Transcript pages 19, 23, 31-39, 52-60, 89-90, 116, 122, 166-167, 184, 202-203, 221, 236-240, 259-311, 371-374, 382, 391-392, 404-407; General Counsel Exhibits 2-3; Respondent Exhibits 3-5 and 7-9; and Joint Exhibits 3-5. Respondent excepts on the grounds that Williams’ conduct amounted to “true

insubordination,” bereft of any mitigating factors to tie it to his protected activities, or otherwise excuse his un-condonable behavior.

**Issue 1: Williams’ insubordination on January 25 and January 29, 2013 was not so intertwined with his protected activity as to accord it the Act’s protection.**

January 25, 2013

On January 25, 2013, Williams came to the Harvey Post Office (“facility”) along with fellow Letter Carrier Willie Rayborn.<sup>1</sup> Both men were in an off-duty status on annual leave, neither had been properly certified by the Union as stewards for the facility, and, despite Williams’ testimony to the contrary (which the ALJ also discredited), neither had requested or obtained permission to come to the facility to meet on a grievance.<sup>2</sup> Williams and Rayborn entered the facility through the back door and approached Supervisor Brewer at her desk on the workroom floor.<sup>3</sup> At the time, Brewer was completing her morning reports.<sup>4</sup> The ALJ credits Williams’ and Rayborn’s versions of the events that followed: Williams asked Brewer if she would meet with him on an unspecified grievance or grant him an extension to file the grievance. “Brewer replied no, that she would do neither because he was on vacation and not on the clock.”<sup>5</sup> Brewer explained to Williams that he needed to first file a grievance in order to request an extension to meet, and told him that she could not meet with him that day.<sup>6</sup> Brewer then told Williams and Rayborn that they needed to leave the facility since they were on vacation and not on-the-clock.<sup>7</sup>

---

<sup>1</sup> TR 31.

<sup>2</sup> TR 239.

<sup>3</sup> TR 31-32.

<sup>4</sup> TR 259.

<sup>5</sup> ALJ Decision, p. 7.

<sup>6</sup> TR 34.

<sup>7</sup> TR 260.

This was the extent of Williams’ “protected activity” that day. However, Williams and Rayborn did not leave.<sup>8</sup> In fact, according to Rayborn, they began to argue with Brewer about their right to be on the premises, with Mr. Williams challenging, “if your kids come in here and wait for you like they normally do, can we call the police on them?”<sup>9</sup> Williams also testified that he changed the subject to ask about a phone call Brewer had allegedly made to the Union Hall, and laughed at her when she inferred that she did not know the person he was talking about.<sup>10</sup> Rayborn also testified that he laughed at Brewer’s instructions to leave the facility and only acquiesced after she gave the two a “direct order” and advised that she would call the police if they refused to leave.<sup>11</sup> It took such an extreme admonition for the two men to take Brewer seriously.

While it is clear that Rayborn and Williams’ initial purpose in coming to the facility was to process a grievance, that activity never actually commenced because Brewer declined William’s request. Assuming, *arguendo*, that the request to meet or obtain an extension was protected, after Brewer told them she was unable to meet with them that day, pointed out that they were in a non-duty status, and instructed them to leave, they abandoned their concerted activity and remained at the facility, in defiance of Brewer’s instruction, solely to instigate an argument about other people entering the facility while off-duty and to chide her regarding a phone call she allegedly made. This activity is clearly unprotected, and is distinct from the initial grievance-related activity that prompted Williams’ visit.

---

<sup>8</sup> TR 35, 38-39, 116, 260-261.

<sup>9</sup> TR 116.

<sup>10</sup> TR 34, 38.

<sup>11</sup> TR 116, 122.

January 29, 2013

Williams returned to work on January 29, 2013.<sup>12</sup> Shortly after clocking in he went to Brewer's desk to discuss his assignment for the day.<sup>13</sup> Brewer informed him that he would be carrying Route 17 that day and Williams immediately became antagonistic, challenging, "you don't tell me what to do – I have the right to choose."<sup>14</sup> Williams then informed Brewer that he needed steward time, and she advised him that the request needed to be on a PS Form 3996.<sup>15</sup> Brewer told Williams where to find the form, and, when he could not locate one, left her desk to help him find one.<sup>16</sup> When Williams returned to Brewer's desk with the Form 3996, Brewer asked him how much time he was requesting and what the time was for.<sup>17</sup> Williams responded that he did not have to tell her what it was about, and then challenged Brewer to show him in the contract where he is required to tell her anything about why he needs steward time.<sup>18</sup> When Brewer asked if Williams was saying she doesn't know the contract, he stated, "as a matter of fact, I don't think you do," then proceeded to bring up his own FMLA condition as an example of Brewer's deficient knowledge.<sup>19</sup> Brewer explained that she needed to know how much time he was requesting and what the time was for, but Williams would not supply these details.<sup>20</sup>

Article 17 of the parties' Collective Bargaining Agreement affords certified stewards the right to time on the employer's clock to investigate and process grievances.<sup>21</sup> However, a

---

<sup>12</sup> TR 52.

<sup>13</sup> TR 53, 268.

<sup>14</sup> TR 268.

<sup>15</sup> TR 54-55, 268.

<sup>16</sup> TR 55, 269.

<sup>17</sup> TR 57-58, 277-278.

<sup>18</sup> TR 57-58, 278.

<sup>19</sup> TR 57-58, 278.

<sup>20</sup> TR 278.

<sup>21</sup> JT 4.

request must be made to the steward's immediate supervisor with sufficient information to enable the supervisor to determine when and whether the request can reasonably be granted.<sup>22</sup>

Because Williams refused to provide any details concerning his blanket request for steward time, Brewer ended the conversation and instructed him to return to his case.<sup>23</sup> However, Williams refused to follow her instruction; instead he remained at her desk arguing over Brewer's contractual knowledge.<sup>24</sup> Brewer then gave Williams a "direct order" to return to his case.<sup>25</sup> Williams refused to follow the order, challenging the terminology as only pertaining to non-bargaining unit employees.<sup>26</sup> Brewer gave Williams at least three direct orders to return to his case, asking at least once if Williams understood what she was telling him, and each of these instructions was outright defied.<sup>27</sup> Finally, when Williams physically positioned himself within arms' distance of Brewer, pointing his finger in her face, Brewer picked up the phone and called the police. Only after she had dialed 911 did Williams relent and return to his case.<sup>28</sup> Williams and his witnesses maintain that Williams was "nice" and "calm" throughout the conversation with Brewer and "he wasn't angry."<sup>29</sup>

Contrary to Williams' initial activity on January 25<sup>th</sup>, on the 29<sup>th</sup> Williams was simply asking Brewer to authorize his use of an unspecified amount of "union time."<sup>30</sup> He never did explain why he needed the time and the two never discussed the issues he was purportedly investigating or grieving.<sup>31</sup> The record indicates that Brewer assisted him in obtaining the proper form to make his request, and attempted to obtain sufficient information to determine whether or

---

<sup>22</sup> JT 4; TR 284-285.

<sup>23</sup> TR 58, 278.

<sup>24</sup> TR 58, 278-279.

<sup>25</sup> TR 278.

<sup>26</sup> TR 60, 278-279.

<sup>27</sup> TR 278-279, 391-392, 404-407; R 9.

<sup>28</sup> TR 278-279, 391-392, 404-407; R 9.

<sup>29</sup> TR 125.

<sup>30</sup> TR 54.

<sup>31</sup> Id.

not she could grant his request. Williams rebuffed Brewer's inquiries and bated her into an argument about her own contractual knowledge, then became antagonistic and insubordinate when she refused to play his game. To be clear, Williams was not filing a grievance, and the parties were in no way engaged in grievance processing.

Thus the ALJ incorrectly concludes that Williams' insubordination was intertwined with his "pursuit of trying to discuss grievances with Brewer."<sup>32</sup> In fact, Williams was not trying to discuss grievances at all. Nor was the situation akin to those in the cases referenced by the ALJ, where the steward "temporarily failed" to return to work "after a heated exchange," or "momentarily refused" to follow an instruction. Here, Williams took pains to establish that he was calm and collected during the encounters with Brewer, thus he would not have needed the "cooling-off" period afforded to stewards following impassioned exchanges. Nor was Williams' insubordination momentary or temporary. As Mr. Stancy credibly testified, Williams remained unmoved after three, four, or five "direct orders," and only returned to work after the police were called. In both the January 25<sup>th</sup> and January 29<sup>th</sup> incidents, there is clear distinction between Williams' protected activity and his "true insubordination." While the Act's protections are broad, insubordination such as Williams' simply cannot be condoned. *United States Postal Service*, 350 NLRB 441 (2007) citing *Guardian Ambulance Service*, 228 NLRB 1127, 1131(1977).

**Issue 2: Respondent's reaction to Williams' insubordination was reasonable under the circumstances and consistent with established policy.**

January 25, 2013

The circumstances, as described by all parties present during the exchange on January 25, 2013, clearly substantiate the need for Brewer to elucidate the severity of the situation by

---

<sup>32</sup> ALJ Decision, p. 13.

warning these dismissive employees that the authorities would be called. As both men testified, when Brewer instructed them to leave, they laughed in her face. Brewer unequivocally told Williams that she would not meet with him on a grievance that day, and would not grant an extension. At that point, Williams should have left of his own volition. Instead, he and his friend stayed solely to demean and challenge the little woman who was trying to tell them what to do.

While the General Counsel portrays Williams as an inexperienced and easily discouraged steward, his own testimony betrays this ruse. Williams testified that he was in contact with the Union Hall, exchanging phone calls and taking advice from the high-ranking likes of Stafford Price and Local President Mack Julian.<sup>33</sup> Furthermore, Williams held himself out to be more knowledgeable than Brewer on contractual matters, telling her point blank only four days later that he didn't think she knew the contract at all. Someone so knowledgeable would certainly have known what to do when a manager refuses to meet on a grievance and refuses an extension; if not, he had only to dial the number of Mr. Price or Mr. Julian.

The bottom line is, once Brewer answered "no" and told Rayborn and Williams to leave, their "union business" was concluded and there was nothing further to talk about. Brewer, on the other hand, was on the clock and had a station to run. Thus, when Rayborn and Williams refused to leave, what alternative did Brewer have? Williams and Rayborn were not on the clock and, after Brewer informed them that she could not meet on a grievance, had no business remaining in the facility. At that time their presence became unauthorized. Postal policy dictates that unauthorized persons are to be instructed to leave and, if they refuse, are to be removed from the facility by the police. Thus, Brewer was simply following procedure when faced with unauthorized persons who refused to leave the facility.

---

<sup>33</sup> TR 30, 34.

January 29, 2013 and February 13, 2013

Prior to January, 2013, Williams had a documented history of progressive discipline for poor performance and misconduct, including a Notice of Removal issued by Brewer on December 13, 2012.<sup>34</sup> None of the discipline issued to Williams prior to January, 2013 is alleged to have been illegally motivated. In addition to Williams' documented disciplinary record, he also had a history of failing to follow his supervisor's instructions, specifically those of Supervisor Brewer.<sup>35</sup> In fact, prior to January, 2013, Williams' insubordination was so persistent that Brewer enlisted the aid of her Labor Relations advisors to ascertain how to ensure she was giving explicit instructions and advising Williams of the potential consequences for his continued failure to follow those instructions.<sup>36</sup>

Although the ALJ was unconvinced that Brewer felt as threatened by Williams as she "portrayed" at trial, it is undisputed that she was shaken – to the point of tears – by the incident. Furthermore, she obtained guidance from Respondent's Labor Relations department as to the appropriate next steps and was directed to Article 16.7 of the contract to issue an Emergency Placement Off-Duty.<sup>37</sup>

On January 31, 2013, Brewer conducted an investigative interview with Williams concerning the events of January 29, 2013, affording him the opportunity to explain his actions.<sup>38</sup> During the interview Williams was uncooperative and insulting.<sup>39</sup> His responses were flippant and sarcastic, and he offered no explanation whatsoever as to why he refused to follow the numerous instructions and order that Brewer gave to him on the 29<sup>th</sup>.<sup>40</sup> Having provided no

---

<sup>34</sup> R 3-5.

<sup>35</sup> TR 236-239.

<sup>36</sup> TR 239.

<sup>37</sup> TR 294; GC 2; JT 3.

<sup>38</sup> TR 89-90, 298-307.

<sup>39</sup> TR 89-90, 298-307; GC 3.

<sup>40</sup> TR 89-90, 298-307; GC 3.

mitigating factors to reduce the level of discipline for his insubordination, Brewer issued Williams a Notice of Removal effective 30 days from February 13, 2013.<sup>41</sup> While the basis for the discipline was the January 29, 2013 insubordination, the level of the discipline was influenced by Williams' existing disciplinary record, which already included a Notice of Removal. Thus, a Removal was the only appropriate level of discipline under the contractual policy of "progressive discipline."

Respondent is at a disadvantage to establish that the same disciplinary action would have resulted in the absence of arguably protected conduct because Brewer has never experienced similar misconduct from any other Carrier under her supervision, and hopefully she never will again. What Respondent has established, nonetheless, is that the placement of Williams off-duty on January 29, 2013, and his subsequent February 13, 2013 Removal were contractually correct and legitimately motivated. Even absent issuance of any prior discipline, a removal would have been the only appropriate response to his conduct.

///

///

///

///

///

///

///

///

///

///

---

<sup>41</sup> TR 309-311; GC 3; JT 3, 5.

///

## **Conclusion**

The ALJ erred in according protection to the entirety of Williams' activities insofar as his conduct amounted to true insubordination, distinct from grievance processing and collective bargaining duties. The ALJ further erred in concluding that Respondent's actions in response to Williams' insubordination lacked good cause or were in any way disproportionate to Williams' unprotected misconduct. As such, Respondent respectfully requests that related portions of the ALJ's decision be reversed, and the allegations of the underlying complaint be dismissed.

Dated this 11<sup>th</sup> day of December, 2013, in Long Beach, California.

Respectfully submitted,



---

Rebecca Horan  
Attorney for United States Postal Service  
Law Department – NLRB Unit  
1720 Market St., Room 2400  
St. Louis, MO 63155-9948  
(562) 628-1336  
(314) 345-5893 (Fax)  
[Rebecca.r.horan@usps.gov](mailto:Rebecca.r.horan@usps.gov)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing **Respondent's Exceptions** were sent this 11th day of December, 2013, as follows:

National Labor Relations Board  
1099 14<sup>th</sup> Street NW, Suite 300  
Washington, D.C. 20005

Via E-File

Regional Director, Region 13  
209 S. La Salle St., Ste. 900  
Chicago, IL 60604-1443

Via E-File

Kevin McCormick  
Counsel for the Acting General Counsel  
NLRB, Region 13  
209 S. La Salle St., Ste. 900  
Chicago, IL 60604-1443

Via E-Mail

Darion Williams  
18942 Sharon Ct.  
Lansing, IL 60438

Via 1<sup>st</sup> Class Mail



---

Rebecca Horan  
Attorney for United States Postal Service