C-21890

REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration	GRIEVANT:	Alton R. Branson
Between	POST OFFICE:	Clinton, MD
UNITED STATES POSTAL SERVICE	USPS CASE NO:	K94N-4K-C 98111598
And	NALC CASE NO:	CLIN018
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	NALC GTS NO:	10817

BEFORE: Raymond L. Britton, *Arbitrator*

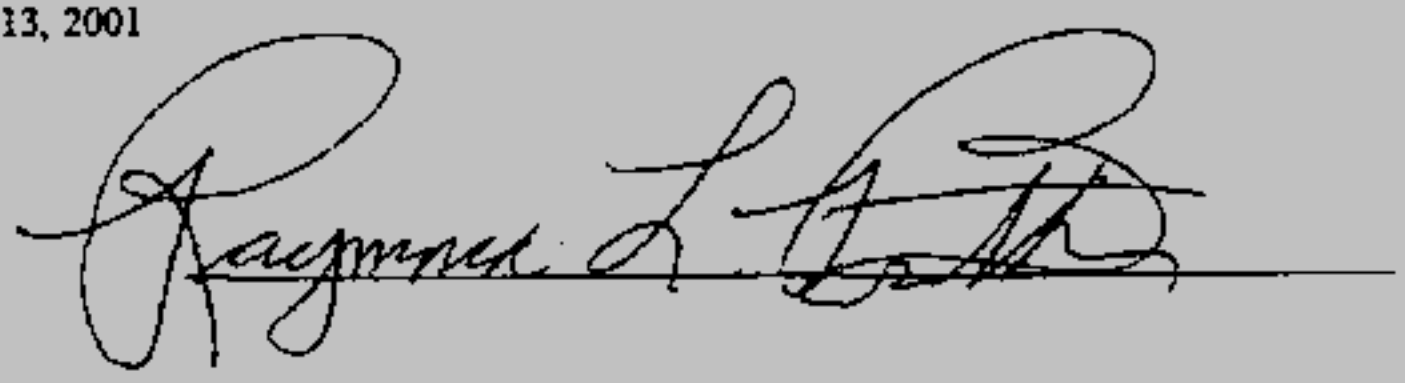
APPEARANCES:

For the U.S. Postal Service:	Joseph Blake and Kathryn Schultz
For the Union:	Joseph Henry
Place of Hearing:	U.S. Post Office
Date of Hearing:	August 18, 2000, February 15, 2001
Record Closed:	March 15, 2001

AWARD:

For the reasons given, the grievance is sustained and the Employer directed to implement the remedy requested by the Union that Postmaster Derrick Hatten be removed from the Postal Service.

Date of Award: April 13, 2001



ISSUE

Did Derek F. Hatten, Postmaster of Clinton, Maryland violate the Joint statement of Violence and Behavior in the Workplace, Postal Service Codes of Conduct, and the USPS Standards of Conduct on February 27, 1998. If so, what is the appropriate remedy?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution. Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

At the commencement of the hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter. After the hearing, it was agreed that the parties would submit Post-Hearing briefs to the Arbitrator by placing such briefs in the mails not later than March 12, 2001. The Post-Hearing brief filed by the United States Postal Service (hereinafter referred to as "Employer") was received by the Arbitrator on March 12, 2001. The Post-Hearing brief filed by the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") was received by the Arbitrator on March 15, 2001.

SUMMARY STATEMENT OF THE CASE

Alton R. Branson (hereinafter sometimes referred to as "Grievant") is a Full Time Letter Carrier at the Clinton, Maryland Post Office. On February 27, 1998, the Grievant contacted the Postal Inspection Service and reported an alleged assault on his person by Postmaster, Derrick F. Hatten.

Later on February 27, 1998, the Grievant sought medical attention and the treating physician at the Physicians Minor Injury and Illness Center diagnosed the Grievant with "mild bruising of right forearm, consistent with being 4 hours old" and prescribed "ice + rest" (Union Exhibit No. 4). On that date the Grievant filed a CA-1 – Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation for assault and injury to his right arm which lead to physical and emotional distress. The document was signed by supervisor Renee Whitson (Union Exhibit No. 14).

On Saturday February 28, 1998, the Grievant filed charges of Assault and Harassment against Postmaster Hatten in the District Court of Maryland for Prince George's County. In the month of April 1998, Postmaster Hatten was reassigned to the Mechanicsville, Maryland Post Office. The Grievant was moved by then Manager Post Office Operations (MPOO) Mary Ann Booker after being contacted by NALC representative Robert E. Harnest about the incident. A letter from NALC National Business Agent "Dick" Gentry reflects that an agreement was entered into between then NBA Tony Martinez and Jim Cochrane, then Capital District Manager, that Postmaster Hatten would not be returned to the Clinton, Maryland Post Office until all proceedings resulting from interaction between Alton Branson and Postmaster Hatten, including a court proceeding, a mediation process, and a grievance/arbitration case, had been completed (Union Exhibit No. 15).

On March 4, 1998, the Grievant was treated for stress at Family and Child Centers by Craig Washington, LCSWC (Union Exhibit No. 5). On March 10, 1998, the Grievant was again treated for stress by Craig Washington at the Family and Child Centers. On April 28, 1998, the Grievant was given a psychiatric evaluation at Family and Child Centers by Mohammed Javaid, M.D. (Union Exhibit No. 13).

In a letter from the US Department of Labor dated April 30, 1998, the Grievant's claim for compensation based on the February 27, 1998 illness/injury was accepted.

Postmaster Hatten was returned to Clinton Post Office after writing a letter to acting MPOO Lawrence Hoeck. The letter apprised Hoeck that Hatten had been acquitted of the charges and that he wanted to return to his job as Postmaster of Clinton. When Hatten returned to Clinton in May 2000, the Grievant filed an OWCP claim for stress and has not worked at the post office since that time.

An investigation was conducted on February 27, 1998, and an Investigative Memorandum prepared by Postal Inspector Stephen J. Elia dated May 5, 1998, was presented to the Manager of Post Office Operations, Mary Anne Booker.

A grievance was filed and the grievance form reflects that a Step 1 meeting was held on. May 14, 1998, and that a Step 1 decision was rendered by Supervisor Wayne Pinckney on May 20, 1998. Pursuant to Article 15 of the National Agreement, the grievance was appealed to Step 2 of the grievance procedure alleging a violation of, but not limited to, Articles 2, 3, 5, 14 and 15, and stating in relevant part as follows (Joint Exhibit No. 2):

* * *

FACTS. WHAT HAPPENED: - The facts of this case are best presented in the Postal Inspector Stephen J. Elia's Investigative Memorandum (hereafter "the IM") dated May 5, 1998. The issue in this grievance is whether Postmaster Derek F. Hatten violated the terms of the 1994-1998 Collective Bargaining Agreement (hereafter "the CBA") when on February 27, 1998, Postmaster Hatten was alleged to have assaulted the grievant, shop steward and local NALC President Alton Branson. If so, what shall the remedy be?

UNION CONTENTIONS: *- REASONS FOR GRIEVANCE-- The Union is distressed by the fact that the Step I was perfunctory and in violation of Article 15, section 3.A. The Step I representative lacked any authority to settle this grievance. Although the Union states that the Step I decision was rendered on 5/20/98, the Step I representative for the Postal Service did not give any decision. When called on the phone after the 5 days had expired, Wayne Pinckney claimed to have authority but stated that he had to deny the grievance for lack of information. Given the fact that the Union Step I representative gave Pinckney the Snow Arbitration and the IM the Union insisted that Pinckney make a decision. This Union representative waited for some subsequent decision but never received it. Thus, the grievant and the Union were deprived of having its grievance settled at the lowest possible step and had to make this appeal not having any benefit of management's rebuttals, contentions, or positions.*

The Union contends that the behavior and conduct of Postmaster Hatten on the date in question, 2/27/98, was in absolute contradiction to the CBA, ELM provisions regarding Postal Service Codes of Conduct, USPS Standards of Conduct, and a violation of the parties written agreement entitled, the ***JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE.***

Other violations include, but are not limited to: Articles 2; 3; 5; 14; 15; and 19, of the CBA. In general, no management official is within its rights to assault or otherwise engage in obnoxious or offensive behavior against any postal employee, or create an atmosphere of disrespect toward any postal employee, as was perpetrated against the grievant on 2/27/98 by Postmaster Hatten.

The Union further disputes the inaction of higher management in accordance with its own ***ZERO TOLERANCE POLICY.*** *The author of this Step 2, Bob Harnest, contacted Area Manager, Mary Ann Booker shortly after being assigned to this case by National Business Agent, A.P. Martinez, Jr. During the telephone conversation, Mr. Harnest inquired as to why Postmaster Hatten had*

not been placed in the 16.7 suspension pending the results of the IM. This inquiry was made because Mr. Harnest believed Ms. Booker's inaction was inconsistent with the ***ZERO TOLERANCE POLICY.*** Harnest *asked Ms. Booker to recall the events where she had imposed the* ***ZERO TOLERANCE POLICY*** *on a Bladensburg letter carrier, much to the chagrin of the Union. At that time, Ms. Booker, the Bladensburg MD Postmaster, had explained that she had to call in the Postal Inspection Service because of the* ***JOINT STATEMENT*** *and the Postal Service stance on zero tolerance, and, the letter carrier involved in the altercation would have to be placed on immediate 16.7 suspension due to standard operating procedures. The letter carrier was subsequently issued notice of removal.*

Harnest further explained that if the tables had been turned, and the grievant was alleged to have assaulted Postmaster Hatten, this is what would have happened. Alton Branson, the grievant, would have been placed on immediate 16.7 suspension pending the results of the IM. Then, by virtue of Postmaster's statement alone, even if the grievant's account proclaimed him innocent and there existed no eye witnesses to either contradict or corroborate the Postmaster's account, the grievant would have been labeled a liar and summarily fired. Harnest also asserted that Ms. Booker's inaction sends the message that the aforementioned policies are not applicable to any management official, but only to all craft employees in the Capital District. Harnest further stated that President Vincent Sombrotto has continually shown members of Congress the gross disparity of enforcement of management's own policies when it is proven that management engaged in misconduct that would certainly get a letter carrier fired. Harnest only wished Ms. Booker to equitably enforce its own policies.

The response was appalling. Ms. Booker stated that Postmaster Hatten had been set-up, just like Branson did to the former Postmaster, Mr. Radley. Harnest asked Ms. Booker if she had already determined that her Postmaster was guiltless before the results of the IM? She responded by reiterating that the grievant had set-up thePostmaster. Harnest stated that her predetermination of innocence of her pet Postmaster was totally irresponsible to the safety and health of all the workers at Clinton and her theory of grievant trickery was without any merit or substance. Harnest last inquired as to whether Ms. Booker would place the Postmaster on suspension pending her review of the IM, or at the very least, whether she would reassign the Postmaster, for the safety sake of Clinton employees? She responded in the negative. The conversation then ended without resolve.

The purpose of mentioning this conversation is that Ms. Booker is the Postmaster's boss. She had the authority to act. When the aforementioned Bladensburg letter carrier was suspended, it was Ms. Booker who ordered that action. Then, because she was Postmaster at the time, she reviewed and concurred in the Bladensburg letter carrier's removal. Booker contended that it was unsafe for the rest of the employees in Bladensburg to allow the violent letter carrier to come back into the workplace. Therefore, Ms. Booker's grossly disparate enforcement based on no facts, placed the employees in Clinton in ongoing danger. The effect is that Ms. Booker condones the Postmaster's behaviors. In any event, by her inaction, Ms. Booker has placed all Clinton employees in jeopardy of their safety and health.

Turning to the events of 2/27/98, the Union contends that the Postmaster made an inherent threat earlier that morning when he stated that he pumped iron so that in case somebody bothers him they can get a beat down (IM, no. 4, 2nd page). Had the grievant made such a statement, he would have been placed on 16.7 suspension based on management's ***ZERO TOLERANCE POLICY.*** *The Union believes the Postmaster had convinced himself that he was an untouchable and would not be held accountable for any aggressive behavior against the grievant. The Postmaster then carried this arrogant posture and animosity toward the grievant to the street to dog the*

grievant. Then he behaved in a fashion that would get any letter carrier fired. The Postmaster physically assaulted the grievant.

The IM should act to convince any reviewing official that the grievant's account of what happened is the truth. The conclusion would be that the grievant was assaulted by the Postmaster. Suppose it was the grievant that was alleged to have assaulted the Postmaster? Certainly, based on the IM the evidence would be sufficient cause or grounds for the Branson's removal. Regrettably, that is not the case here. The Postmaster has not lost one minute of pay. He was reassigned to some post office and apparently remains absolutely unscathed. This fact is simply outrageous.

*In many arbitration cases of 16.7 suspension and removal against letter carriers, the Postal Service has brought Postal Inspection IM's into evidence, such as performed in this case. Management utilizes these IM fact findings in order to establish just cause. Management also utilizes its own Zero Tolerance Policy and the **JOINT STATEMENT** in these arbitration cases against letter carriers being removed. Likewise, the Union believes it has a right to seek consistent and equitable enforcement against violent behavior, so much so, that the Union presented that in a national level case presided in by Arbitrator Snow.*

*In the Snow case regarding the **JOINT STATEMENT**, Arbitrator Snow concluded that the Union had a right to enforce the parties' **JOINT STATEMENT** VIA Article 15 of the CBA. Arbitrator Snow further awarded that the Union had aright to ask for the, in this case, Postmaster's removal. Snow further stated that the Union could fashion a remedy that would order the Postmaster that he may never again be allowed to supervise postal employees.*

*In conclusion, the Postmaster's unrestrained and condoned behavior is tantamount of a violation to the **JOINT STATEMENT**. The Postmaster's gross misconduct against the grievant on 2/27/98, and prior to, created an unsafe and unhealthy and hostile workplace environment in violation of the aforementioned articles and ELM provisions of the CBA. The Postmaster's misconduct caused the grievant physical and psychological harm to which no postal employee is required to endure. The Postmaster engaged in perjury when he proffered false testimony to Postal Inspector Elio.*

The Union believes the remedies set forth below are reasonable and compensatory rather than punitive.

***CORRECTIVE ACTION REQUESTED** - The Union requests the following:*

That higher-management remove the Postmaster from the Postal Service, or, remove him from any management position that encompasses any supervision of postal employees, and this removal remain in effect until such time as Derek Hatten leaves postal employ, regardless of the reason;

- *that management cease and desist from disparate and unequal enforcement of the **JOINT STATEMENT**;*

- *that management offer legal representation to the grievant in a third party law suit against Derek Hatten for injuries sustained when Mr. Hatten exceeded his authority and exceeded his scope of employment by his assault on the grievant on 2/27/98;*

- *that the grievant be issued a written letter of apology from the Capital District Manager admonishing Postmaster Hatten's gross misconduct and that this apology letter become part of the grievant's and the Postmaster Hatten's OPF, and further, that a copy of the apology letter be placed on all NALC bulletin boards within the jurisdiction of the Capital District;*

and last, the Union be compensated for all costs associated with this grievance, should it reach arbitration.

* * *

Cathy J. Toomer, Officer-In-Charge, sent an undated decision letter to Robert Harnest, which states in relevant part as follows:

The union contends that management continually violate the Joint Statement on Violence and Behavior in the Work Place. There is no evidence that this grievant has experienced any violations of the Joint Statement by Management and Union in the workplace.

On the date of incident (February 27, 1998), the union references the IM as proof of violation by Postmaster Hatten conduct in this case. The Investigative Memorandum gives sworn statement from all parties involved including Postmaster Hatten by inspector Stephen J. Ella. It does not accuse Postmaster Hatten of violating the Joint Statement of Violence and Behavior in the Workplace.

The collective actions requested by the Union is consider unreasonable. It was the contention of management to try to resolve at the lowest step possible. The corrective actions requested by the union was non-negotiable.

Therefore this grievance is denied.

* * *

Robert E. Harnest, Local Business Agent, sent an undated letter of corrections/additions to Cathy J. Toomer, OIC, Step 2 designee.

On August 10, 1998, the grievance was appealed to Step 3 of the grievance procedure and the reasons given for the appeal are as follows (Joint Exhibit No. 2):

* * *

In addition to the facts, contentions, and reasons for this grievance stated in the Step 2 Appeal, on 2/27/98 the Postmaster verbally threatened the grievant and then physically assaulted him. To date, the Postmaster has been reassigned. This is inconsistent with Statement on violence and Behavior in the Workplace, as well as The Postal Service Policy on Zero Tolerance. Postal Inspector Ella, the author of the IM has refused to disclose notes taken in interviews, contrary to the National Labor Relations Act, and Article 17 and 31 of the National Agreement.

* * *

On September 2, 1998, Thomas J. Scola in a letter to Mr. Tony Martinez, National Business Agent, NALC, stated in relevant part as follows (Joint Exhibit No. 2):

Recently, the above referenced grievance was discussed at Step 3 of our contractual grievance procedure. The matters presented by the union concerning this grievance, as well as the applicable contractual provisions, have been reviewed and given careful consideration.

The grievance alleges that Management violated the National Agreement when Management failed to take proper action against a Postmaster in violation of the "Zero Tolerance Policy". It is

Management's position that there is no evidence that the action taken was not proper. The provisions of Article 16.7 are inapplicable as a Postmaster is not a member of the bargaining unit. Accordingly, the grievance is denied.

In the opinion of the Postal Service, this grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Therefore, this case may be appealed directly to regional arbitration in accordance with the previsions of Article 16 of th4p National Agreement.

* * *

On November 20, 1998, the grievance was appealed to arbitration.

Previsions of the National Agreement effective August 19, 1995, to remain in full force and effect to and including 12 midnight November 20, 1998, (hereinafter referred to as "National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 2
NON-DISCRIMINATION AND CIVIL RIGHTS

Section 1. Statement of Principle

The Employer and the Unions agree that there shall be no discrimination by the Employer or the Unions against employees because of race, color, creed, religion, national origin, sex, age, or marital status.

In addition, consistent with the other provisions of this Agreement, there shall be no unlawful discrimination against handicapped employees, as provided by the Rehabilitation Act.

* * *

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary actions against such employees;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

* * *

ARTICLE 5
PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 14
SAFETY AND HEALTH

Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility . . . . .

* * *

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

* * *

Section 3. Grievance Procedure—General

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end.

* * *

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. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

* * *

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.

Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

* * *

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

* * *

POSITION OF THE PARTIES

The Position of the Union

It is the position of the Union that on February 27, 1998, Postmaster Derek F. Hatten, violated the first and second Joint statements on Violence and Behavior in the Workplace, as well as the Joint statement of Expectations and other cited provisions of the National Agreement and Handbooks and Manuals. The Union further contends that management violated the Grievant's rights as to due process.

The Position of the Employer

The Employer takes the position that no contractual violation exists, as the Postal Service did not violate the Joint Statement on Violence and Behavior in the Workplace or any provision in the National Agreement. The Employer contends that there is no procedural violation or violation of the Grievant's right to due process as the Union failed to prove that the Employer's Step 1 designee or Step 2 designee lacked authority to settle the grievance.

OPINION

Substantively determinative of this matter is whether a preponderance of the evidence and testimony supports the Union's allegation that Postmaster Hatten violated the first and second Joint Statements on Violence and Behavior in the Workplace, as well as the Joint Statement of Expectations and other cited provisions of the National Agreement and Handbooks and Manuals when he interacted with the Grievant on Friday, February 27,1998, at 6200 Coventry Way in Clinton, Maryland.

The record reveals that on February 27, 1998, the Grievant was the Shop Steward at the Clinton, Maryland Post Office. On that date he requested overtime to complete his assignment. Postmaster Derek Hatten began street observation of the Grievant on his route at approximately 12:20 o'clock p.m. At approximately 2:00 o'clock p.m., the Grievant parked his postal vehicle in the parking lot at 6200 Coventry Way and was observed by the Postmaster entering a Chinese carryout restaurant for lunch. The Grievant left the restaurant with his lunch and returned to his vehicle where he commenced eating his lunch. As he was about to finish his lunch, he turned on his vehicle to get warm. There is a dispute in the testimony as to what occurred thereafter.

According to the testimony of the Grievant, Postmaster Hatten approached his vehicle and in a loud voice told him "to turn the god damn jeep off". He testified that after the parties opened and closed the door of the postal vehicle several times, and his reminding the Postmaster that he was on his lunch break and to leave him alone, the Postmaster reached into the vehicle and grabbed him by his right forearm with both hands. After telling the Postmaster that he had no right to touch him, the Grievant turned the engine off and exited his vehicle and proceeded to a pay phone where he called the local police and the Postal Inspector's Office and spoke with Postal Inspector Stephen Elia. On the way to place the phone call, the Grievant talked to one Albert Barber about whether the latter saw what happened.

Postmaster Hatten testified that he heard the LLV start while he was parked nearby in his jeep. As the Grievant did not go anywhere after five minutes, he became concerned as to the possibility of an accident occurring while the Grievant was eating in his vehicle with the engine running. He testified that he got out of his vehicle and walked to the vehicle of the Grievant and told him to turn the vehicle off. After the Grievant twice told him that it was his lunch and slammed the door in his face, he wanted to secure the vehicle so he opened the door a third time. When he opened the LLV door the final time, the Grievant blocked the door from sliding completely open with his right arm. He testified that he held the door open with his left hand and attempted to reach in with his right arm to turn off the ignition. He testified that he just wanted to eliminate any safety issue and was trying to prevent a roll-away/ run-away accident from occurring. He denies having used any profanity and states that at no time did he grab the Grievant or have any intent to grab or assault the Grievant.

Clearly, there is a variance in the testimony of the Grievant and Postmaster Hatten as to whether the latter grabbed the forearm of the Grievant in the manner demonstrated by the Grievant at the hearing. The Union argues that when the testimony of record is reviewed, the Grievant's version as to whether Postmaster Hatten grabbed the Grievant is the more credible. In support of this argument, the Union points out that after returning to the station on February 27, 1998, the Grievant filed a CA-1 Notice of Traumatic Injury (Union Exhibit No. 14), which was signed on that date by his supervisor, Renee Whitson. Further, the Union notes that the Grievant was treated at Physicians Minor Injury and Illness Center for a "bruising of the right forearm, contusion right forearm". The Union additionally points out that the Grievant on March 4, 1998 and again on March 10, 1998 (Union Exhibit No. 5) was treated for "stress" by Craig Washington, LCSWC, at Family and Child Center. Further, the Union notes that the Grievant was given a "psychiatric evaluation" by Mohammed Javaid, M.D., at the Family and child Center, which was related to the ongoing stress.

The Employer does not dispute that the Grievant had a bruise on his right forearm or that he was being treated for stress. It maintains, however, that the fact that the Grievant had a bruise does not prove how the Grievant got the bruise.

In this case, it is the burden of the Union to establish its allegation that the Postmaster grabbed the right forearm of the Grievant with both hands and in such a manner as to cause a bruising of the right forearm of the Grievant. Here, in the judgment of the Arbitrator, the evidence does not justify such a finding. Even if the Postmaster had grabbed the Grievant, as described by the Union, it is at least questionable as to whether the pressure would have been sufficient to penetrate his jacket and his shirt so as to cause a bruise. Moreover, when Postmaster Hatten demonstrated his account of the incident, it appeared that when the door slid toward the driver, and the Grievant raised his arm to stop the door from sliding further, the latch was in a position to strike the forearm of the Grievant where the bruise was located. As viewed by the Union, the demonstration showed that the injury to the Grievant's arm could not have been caused by an accidental bump on the door handle. This is evidenced, according to the Union, by the location of the inside door handle, the height of the seat in the LLV, the size of the Grievant, the manner in which the door had to be closed, and the placement of the bruise on the inside forearm of the Grievant. The Arbitrator finds the evidence in this regard at best to be in equilibrium and therefore cannot properly accept the assertion of the Union that it is far more conceivable that any bruising sustained by the Grievant was caused by Postmaster Hatten grabbing the Grievant by his forearm.

It is undisputed that there is a long running history of hostility between the Postmaster and the Grievant. On the day in question, Friday, February 27, 1998, there is little doubt that an angry or heated discussion occurred between the Postmaster and the Grievant at the LLV and that some form of physical contact ensued as the Postmaster endeavored to retrieve the keys of the vehicle. By way of explanation of his action, the Postmaster testified that he just reached into the vehicle to turn off the ignition key in an effort to eliminate a safety issue by preventing a roll-away/run-away accident from occurring. The Arbitrator finds this testimony of the Postmaster disingenuous. At the time, the Postmaster initiated his course of conduct; the Grievant was in his vehicle with the gearshift lever in the park position. The vehicle of the Grievant was parked on level ground with the back wheels firmly abutting a high curb. The testimony of the Postmaster that he was trying to prevent a roll-away/run-away accident from occurring, must therefore be viewed with a measured degree of incredulity and skepticism.

Attesting to the nature of the argument between the Postmaster and the Grievant at the LLV is the statement of eyewitness Albert Barber made to Postal Inspector Stephen J. Elia in an interview at approximately 3:25 o'clock p.m. on Friday, February 27, 1998. Postmaster Hatten acknowledges that Mr. Barber was the only witness to the "commotion" and that he heard the words and saw body movement but did not see that there was an assault. Mr. Barber stated that he was seated in a chair in front of 6202 Coventry Way. At approximately 2:15 o'clock p.m., he saw Derek Hatten approach Branson's vehicle and that Hatten and Branson were involved in an argument. Although he could not tell what the argument was about, Mr. Barber stated that he heard Branson tell Hatten that Hatten was not supposed to put his hands on him. Mr. Barber said he did not see either of the two men touch one another, but by the movement of their arms and upper bodies there might have been physical contact. After the confrontation, Mr. Barber said Branson asked him if he saw anything and that he said to Mr. Barber, "It's not what it looks like." In his written sworn written, Mr. Barber stated that "he heard voices sounding like an argument and as I turned to look, the carrier said something to the effect "you're not supposed to put your hands on me". He further stated that " . . . I saw some physical activity, the fast motions of arms & upper body, like something was going on . . . ."

While there is a conflict in the testimony of the Postmaster and the Grievant as to whether there was a touching, and Mr. Barber admittedly did not see either of the two men touch each other, the Arbitrator finds that a preponderant inference may reasonably be drawn from the circumstances surrounding the dispute that the Postmaster engaged in a course of conduct that involved an offensive touching of the Grievant

In the considered judgment of the Arbitrator, the Postmaster, contrary to the USPS Joint Statement on Expectations (Union Exhibit No. 11), failed to make every effort to resolve the dispute between he and the Grievant in a professional manner and did not seek to avoid the unnecessary escalation of the dispute. Further, the Postmaster failed to treat the Grievant with dignity and respect as required by the Joint Statement on Violence and Behavior in the Workplace (Union Exhibit No. 8). Finally, the conduct of the Postmaster failed to meet the tenets set forth in Section 115.4 of Handbook M-39 (Union Exhibit No. 7), in that he failed in his responsibility to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

In light of the above findings, it is deemed by the Arbitrator to be unnecessary to this decision that he address the claim of the Union that at approximately 11:00 o'clock a.m. on Friday, February 27, 1998, Postmaster Hatten made a veiled threat to the Grievant. Nor is it found by the Arbitrator to be necessary that he consider the questions raised by the Union as to due process. This, with regard as to whether 204B Wayne Pinckney lacked the authority to settle this grievance at Step 1 of the grievance procedure and Cathy Toomer, Officer in Charge, Clinton, Maryland, violated Article 15.3.A of the National Agreement, when in her Step 2 Letter of Denial, she neither agreed nor disagreed with the Union's contentions, but stated that the actions requested by the Union were unreasonable and contended that they were non-negotiable.

CONCLUSION

Based on the foregoing, it is the conclusion of the Arbitrator that a preponderance of the evidence establishes that Postmaster Hatten engaged in a course of conduct with Grievant Branson that was directly inconsistent with and in violation of the USPS-NALC Joint statement of Expectations (Union Exhibit No. 11), the Joint Statement on Violence and Behavior in the Workplace (Union Exhibit No. 8), and USPS Standards of Conduct, Section 666.2, Behavior and Personal Habits, and Handbook M-39, Sections 115.3 & 115.4.