



**PART V**  
**OPENING**  
**STATEMENTS**



## OPENING STATEMENTS

- Opening statements normally follow completion of preliminary matters.
- Moving party normally goes first. **Do not defer.**
- Should be typewritten.
- Forces you to perfect your theory of the case and to analyze and test your argument and evidence.
- Assume arbitrator knows nothing. Your opening statement is the first major step in their education.
- Opening statement is not evidentiary.
- Openings are argument but can reference or introduce evidence:
  - Reference joint exhibits.
  - Move into evidence precedent setting documents such as national arbitration awards, Step 4's and national pre-arb's or national settlements.

### Components of a Good Opening Statement

- Introduction.
- Overview of the dispute.
- Background summary of the facts.
- Applicable contract language.
- Statement of your arguments.
  - Anticipate the argument of the other side.
  - Address the evidence and how you will introduce it (witnesses, exhibits).
  - Specific remedy.
  - Chronology of Events (attachment).

## A Good Opening Statement:

- ✓ Is prepared in advance.
- ✓ Tells the Arbitrator the theory of your case.
- ✓ Does not exaggerate or talk to unfounded arguments and/or evidence.
- ✓ Enables the arbitrator to comprehend the significance of the evidence.
- ✓ Let's the Arbitrator see the place, know the job, and understand the players.
- ✓ Establishes the advocate's credibility with the arbitrator.
- ✓ Provides the advocate with the opportunity to observe the arbitrator's reaction to the presentation of the case.
- ✓ Allows the arbitrator the opportunity to concentrate on the key elements of the case.
- ✓ Addresses anticipated witness testimony.
- ✓ Whenever possible opening should be in writing, hopefully typed, with copies for the arbitrator and opposing party.
- ✓ Includes a chronology (should be a separate part of your opening). It should show a time line of relevant events in a neutral fashion.

## Tips

- ✓ Deliver the opening so that it is easily understood.
- ✓ Paint a complete picture.
- ✓ Make a forceful, confident presentation.
- ✓ Speak slowly, remember the arbitrator is taking notes.
- ✓ Use visual aids when appropriate, e.g., easel pads, graphs, etc.
- ✓ Explain unique words or abbreviations.
- ✓ If you are unsure the arbitrator understands a point, ask him/her.
- ✓ Pause between points.
- ✓ Remember the benefits of the two P's (preparation and presentation).



**ISSUE**

**Was the January 12, 1998 Notice of Removal issued to Jim Jobe for just cause? If not, what shall be the remedy?**



# OPENING STATEMENT

## AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: H94C-4H-D 99124817

*Union*  
Jobe

*PHILADELPHIA, PA*  
Hendersonville, TN

Advocate: Ed Baker  
Hendersonville, TN Local

### ISSUE OVERVIEW

Mr. Arbitrator, the American Postal Workers Union (Union) believes the U.S. Postal Service (Service) violated the Agreement when they discharged a long term employee for misappropriation of postal funds without proof of same. Employee violated a work rule, but was not dishonest and did not steal.

### Background

We will offer testimony to show that Jim Jobe found out another employees key would open his cash drawer. In addition, there had been numerous unexplained shortages in the recent past. During the four-month audit period preceding January 2, 1998, Mr. Jobe had several large overages occur at the end of the day. When that occurred, rather than submit the overage on his Form 1412 Daily Summary, he simply put the amount over into his cash drawer against the possibility of a shortage on his next count. When the time for his count came, he took the money he had been putting in his drawer and placed it into his pocket to see whether he was short or not without the overage money. When the count showed him to be short approximately \$1800.00, he told the supervisor about the \$1300.00 he had placed aside from the overages. A subsequent count showed the grievant not to be short \$1800.00 as alleged in the Notice of Proposed Removal and the Step Two denial. He was only short \$73.54 on an accountability of over \$14,000.00. There is a fifty dollar tolerance on that amount, so he was only \$23.54 out of tolerance!!! The charge is therefore false.

## Applicable Contract Language

### Article 16, Section 1

*“ . . . discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. . . ”*

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

### Argument

The Postal Service has taken the extraordinary step of issuing summary discharge to an employee with 16 years creditable service. They have neither cited nor considered any aggravating elements of past record. They have fired this employee for a single act of alleged misconduct.

They have charged Mr. Jobe, a window clerk, with a violation of the Code of Ethical Conduct, specifically Part 661.53 of the ELM which prohibits “ . . . **criminal, dishonest, notoriously disgraceful or immoral conduct. . .**”.

When the Employer forsakes the contractually mandated requirement of corrective and progressive discipline, they carry a heavy burden. They have asked you to end the career of an employee with 16 years service based upon a single act of misconduct. They have, in reality, accused this employee of stealing. They will not be able to carry the required burden, beyond a reasonable doubt, to support such an accusation.

Was Jim Jobe correct in holding out the overage money until the completion of the count? Of course not, he simply violated a work rule; however, there is not one shred of evidence he intended to steal or to keep the money. In fact he told the supervisor about the \$1300.00 dollars he had put in his pocket. The supervisor had absolutely no knowledge of it. That is not the act of a thief. A thief would have kept the money, offering no explanation of the shortage, then filed a grievance on the Letter of Demand and probably would have won that grievance because another employee's key would open his drawer. Jim Jobe did a stupid thing, not a dishonest thing.

Management's theory in this case will simply not hold to reason. There is absolutely no proof of any theft or attempted theft. Absent that, there is no justification to forsake the contractually mandated requirement of corrective and progressive discipline.

### **Remedy**

We are confident that after you have considered all the evidence and testimony, you will sustain the grievance and make the Grievant whole.

Thank you.

## CHRONOLOGY

- 12/3/82 - Jim Jobe is hired by the USPS.
- 1/02/98 - Audit occurs which triggers discharge.
- 1/04/98 - Pre-disciplinary interview takes place.
- 1/12/98 - Notice of Removal issued.
- 1/15/98 - Step 1 filed and denied.
- 1/20/98 - Step 2 filed.
- 1/22/98 - Step 2 denied.
- 1/30/98 - Appealed to arbitration.





**ISSUE**

**Did the USPS violate the Agreement when they unilaterally changed the non-scheduled days on duty assignments #32 and #38 from consecutive to non-consecutive off days? If so, what shall be the remedy?**



# OPENING STATEMENT

## AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: H98C-4H-C 96092200  
H98C-4H-C 96082205

Class Action  
Class Action

Key West, FL  
Key West, FL

Advocate: Kathryn dePoo  
Key West Area Local

~~Issue~~ *DOEADIEO*

Madame Arbitrator, the American Postal Workers Union (Union) believes the U.S. Postal Service (Service) violated the Collective Bargaining Agreement when they unilaterally changed the non-scheduled days on two duty assignments from consecutive to non-consecutive in the Key West Post Office without showing that it was not "practicable" for them to continue to have consecutive days off.

### Background

The Union in these cases filed the grievances at bar when the referenced duty assignments in question were changed from consecutive to non-consecutive days off. Duty assignment #32, which is addressed in H98C-4H-C 96092200, had consecutive days off for the previous 12 years. Duty assignment #38, addressed in H98C-4H-C 96082205, had consecutive days off since it was created in 1994.

### Applicable Contract Language

Article 8, Section 2: ". . . *The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, . . . As far as practicable the five days shall be consecutive days within the service week.*"

Article 8, Section 4.B: ". . . *Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside their regularly scheduled work week...*"

## Argument

It is the position of the Union the Agreement was clearly violated when these changes were made. The USPS has not shown it was not practicable to continue these duty assignments with consecutive days off.

In one of these cases the USPS argued at Step 2 they took the action to reduce overtime, and in the other they argued at Step 2 they did it to “ease the pressure of our entire operation”. At Step 3 in both cases the USPS only argued “The collective bargaining agreement provides the employer with this discretion. The use of this discretion cannot be construed as a contractual violation.” These are the only arguments the Employer has put forth in the grievance steps and Article 15 clearly would prevent the presentation of a new or different argument in this arbitration.

Alternatively, the Union will show through witness testimony and documentary evidence it is indeed “practicable” for the duty assignments in question to have consecutive days off. In fact, their existence for years prior to the change with consecutive days off is clear prima facie evidence it is practicable. The USPS has offered no evidence or argument to the contrary in this grievance. Nothing has been shown to have changed drastically in this office at the time these duty assignments were changed to non-consecutive days off.

Black’s Law Dictionary defines practicable as follows:

*“Practicable is that which may be done, practiced, or accomplished: that which is performable, feasible, possible. . .”*

Again, our Agreement states that days off “**shall**” be consecutive to the extent “**practicable**”. That is compelling contract language indeed.

## Remedy

We are confident that after you have considered the evidence and testimony, you will sustain the grievances and make the affected employees whole with the payment of out-of-schedule premium for the amount of time their days off were improperly non-consecutive. If a violation is found, they have been working a schedule at odds with the agreement and that would require the payment of out-of-schedule premium.

Thank you.

## CHRONOLOGY

- 02/04/84 - Duty assignment # 32 is established with consecutive days off.
- 12/02/94 - Duty assignment # 38 is established with consecutive days off.
- 12/18/96 - The days off on duty assignments # 32 and #38 are changed to non-consecutive.
- 12/24/96 - Step 1s filed and denied.
- 12/29/96 - Step 2s appealed.
- 01/03/97 - Step 2s denied.
- 01/10/97 - Step 3s appealed.
- 03/22/97 - Step 3s denied.
- 03/30/97 - Appealed to arbitration



**ISSUE**

**Did the USPS violate the Agreement when they removed Peggy Morgan for her bid duty assignment by letter dated January 12, 1996? If so, what shall be the remedy?**



# OPENING STATEMENT

AMERICAN POSTAL WORKERS UNION, AFL-CIO

H94C-4H-C 96042905

P. Morgan

Tuscaloosa, AL

Advocate: Joan Johnson  
West Alabama Area Local  
Tuscaloosa, AL

~~ISSUE~~ OVERVIEW

Mr. Arbitrator, the American Postal Workers Union (Union) believes the U.S. Postal Service (Service) violated the Collective Bargaining Agreement when it removed the Grievant, Ms. Morgan from her contractually bid duty assignment. The Service issued discipline to correct alleged misconduct, then removed the Grievant from her bid job without giving her an opportunity to correct perceived deficiencies. This action violated the Agreement and requires a remedy for that violation.

## Background

The Grievant, Peggy Morgan, received a 7-Day Suspension on January 10, 1996. There were two charges.

Charge 1 was, "Failure to Follow Instructions/Working Unauthorized Overtime." The Grievant on 1/3/96 worked two hours overtime on her timekeeping duties, which had not been approved in advance by her supervisor. The Union does not challenge that fact.

Charge 2 was, "Unsatisfactory Work Performance." The Grievant was alleged to have made six errors in her timekeeping duties over the previous six weeks, which required pay adjustments to be made. We are not, here today, going to challenge that charge either.

That 7-Day Suspension listed three past elements of record, one of which (the 9/14/95 Letter of Warning) was subsequently removed in the grievance procedure.

This issue of this case; however, is not the discipline issued on January 10, 1996. This case concerns the January 12, 1996 letter, which removed the Grievant from her bid job, issued two days later with the exact charge given as the reason for the reassignment.

### **Applicable Contract Language**

Article 37, Section 3.A.1 as follows:

***“ Newly established and vacant Clerk Craft duty assignments shall be posted.”***

Article 37, Section 3.F.1.a as follows:

***“ . . . The senior qualified bidder meeting the qualification standards for the position shall be designated the successful bidder.”***

Article 37, Section 3.F.10 as follows:

***“ Normally, the successful bidder shall work the duty assignment as posted . . . ”***

Article 8, Section 4.B as follows:

***“ . . . Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week . . . ”***

Article 16, Section 1 as follows:

***“ . . . discipline should be corrective in nature, rather than punitive.”***

**Part 374 of the ELM as follows:**

***“ . . . If the employee’s performance is unsatisfactory, the supervisor discusses constructive measures which employees should follow to improve their performance to a satisfactory level . . . ”***

**Part 375.2 of the ELM as follows:**

*“ . . . If a supervisor determines that an employee's performance is unsatisfactory and reasonable efforts toward improving performance to a satisfactory level have not been successful, effort is made to reassign the employee to a job which the employee can be expected to perform satisfactorily . . .”*

### **Argument**

Our position in this case is very simple. A clerk has the right to work their duty assignment. In this case management issued discipline to correct perceived misconduct in accordance with Article 16, but never gave the employee an opportunity to correct the misconduct before removing her from her bid job. This is clearly wrong.

This action violates not only our Agreement, but also the basic concept of fairness in the workplace. The employer issued a 7-Day Suspension, which carries with it a substantial monetary penalty, in order to correct a problem, but never gave the employee an opportunity to improve her performance to a satisfactory level as required by Part 374 of the ELM.

Perhaps they could have removed the Grievant from her bid job within the confines of the Agreement if they had only given the employee some time after the discipline, to see whether the suspension had served its purpose. That was not done. They waited only two days before taking this action after the discipline was issued. No mistakes have been alleged or documented in that two-day period; therefore, this removal from bid cannot stand.

### **Remedy**

As a remedy we are requesting the Employee be given back her duty assignment and be given an opportunity to prove she can do the work. She is also due out-of-schedule premium for all hours worked outside her bid hours since the grievance was filed in accordance with Article 8 of the Agreement. This is not a punitive damage, it would only place the Grievant in the hours she had a contractual right to be in and is in complete agreement with our Contract.

We are confident that after you have heard all the evidence, you will sustain the grievance.

Thank you.



## CHRONOLOGY

- 10/16/84 - Grievant hired.
- 06/12/94 - Grievant is named successful bidder on duty assignment in question.
- 09/14/95 - Grievant issued Letter of Warning which is subsequently removed in the grievance procedure.
- 01/03/96 - Alleged misconduct occurs which triggers 7-day suspension.
- 01/10/96 - Grievant is issued 7-day suspension.
- 01/12/96 - Grievant is issued letter which removes her from her bid job. This is the subject of this hearing.
- 01/16/96 - Step 1 filed.
- 01/17/96 - Step 1 denied.
- 01/25/96 - Step 2 filed.
- 02/04/96 - Step 2 denied.
- 02/10/96 - Step 3 appealed.
- 03/28/96 - Step 3 denied.
- 04/10/96 - Appealed to arbitration



## ISSUE

**Did the service comply with Article 2.1 of the CBA; EL-307, “Guidelines on Reasonable Accommodation” (an Article 19 Handbook); and the Rehabilitation Act of 1973, when they failed to reasonable accommodate Leslie Moore? If not, what shall the remedy be?**



August 4, 2000

Grievant: Leslie Moore  
D94C-4D-C 9810000  
(071 17B)  
Thornton, CO

Advocate: Belinda Starr  
APWU, AFL-CIO  
100 Centre Street  
Tribune, AZ

Arbitrator: Lawrence DeRabia

## **OPENING STATEMENT**

### **AMERICAN POSTAL WORKER UNION, AFL-CIO**

**ISSUE** *OVERVIEW*

Mr. Arbitrator, the American Postal Workers Union (Union) believes that the U. S. Postal Service (Service) violated the Collective Bargaining Agreement (CBA) when they failed to provide Ms. Moore with medically suitable employment. Specifically, the Service failed to meet their obligation to reasonably accommodate Ms. Moore's physical handicap as required by the Handbook EL 307, Guidelines on Reasonable Accommodation, and therefore did not abide by Article 2.1. in the CBA. By these actions the Service has not only violated the CBA, but has also unlawfully discriminated against Ms. Moore, a handicapped employee, as prohibited by the Rehabilitation Act of 1973.

### **Background**

Ms. Moore has been employed since October, 1993 at the Thornton, CO Post Office as a part time flexible (PTF) clerk. She suffered an on the job injury (lumbrosacral sprain) on February 11, 1997. Subsequent to Ms. Moore's lumbrosacral strain her physician diagnosed fibromyalgia syndrome that was directly associated with her lumbar sprain of February 11, 1997. The Department of Labor did not agree that the fibromyalgia syndrome was related to her accepted compensable injury and determined that she had recovered from her lumbar sprain as of October 2, 1997. Postmaster Marshall of Thornton, CO notified Ms. Moore by letter of November 14, 1997 that she was scheduled to return to work effective November 22, 1997. Ms. Moore wrote to PM Marshall on November 20, 1997 informing him that due to her fibromyalgia syndrome she was requesting reasonable accommodation pursuant to the Rehabilitation Act. Ms. Moore attended reasonable accommodation interviews on December 23, 1997 and February 25, 1998. However, she was never offered any work by the Service.

## Applicable Contract Language

Article 2.1. of the CBA states that *"...there shall be no unlawful discrimination against handicapped employees, as prohibited by the Rehabilitation Act."* To this end the Service prepared Handbook EL 307 to assist postal managers in achieving good affirmative action plans for individuals with disabilities. Chapter 150 of this handbook states that *"Individuals returning to work with permanent physical limitations resulting from non-work-related injury or illness should be afforded reasonable accommodation under these guidelines"*(p.5). Chapter 210 states that *"as a matter of course the Service"...restructure(s) jobs to maximize the talents and skills of our employees"*(p.7). Chapter 223 establishes that *". . . reasonable accommodation must be approached on a highly individual, case-by-case basis"*(p.7). Chapter 230 states that *"Resourcefulness and ingenuity in many cases result in modifying the manner in which a job is performed, thus enabling the person with a disability to perform the essential functions. In other situations the nonessential functions may be eliminated"*(p.9). Chapter 240 goes on to say that *"There are numerous ways to alter the place where work is performed, the equipment with which it is performed, and the job procedures used to perform it in order to accommodate the limitations of a person with a disability"*(p. 9).

## Argument

The Union will provide evidence to establish that the Service did not make a good faith effort to reasonably accommodate Ms. Moore. We will establish that Ms. Moore could perform the essential functions of her job and indeed identified for the Service specific work that she could perform. It is important to recall that Ms. Moore was a PTF employee (averaging forty hours of work per week) prior to her work place injury. Since she was a PTF, the Service had a great deal of flexibility for providing reasonable accommodation.

## Remedy

We argue that the Service had sufficient information following the reasonable accommodation interview of December 23, 1997 to provide Ms. Moore with work. Therefore, we are requesting that Ms. Moore be made whole for a period beginning December 27, 1997 (the first pay period beginning after December 23, 1997) to the present, including not only pay (based on forty hours a week) but all appropriate benefits, and that the Service be directed to provide Ms. Moore with medically suitable employment.

Thank you.

## Addendum to the APWU Opening Statement

Moore, D94C-4D-C 9810000 (071 17B)

### Chronology of Events

- 10/02/93 - Ms. Moore employed by USPS.
- 02/11/97 - Injured at work (lumbrosacral sprain).
- 10/02/97 - DOL determines Moore has recovered from her injury.
- 11/14/97 - PM Marshall writes to Moore scheduling her to work effective November 22, 1997.
- 11/26/97 - Ms. Moore writes to PM Marshall requesting reasonable accommodation for fibromyalgia.
- 12/09/97 - PM Marshall writes to Ms. Moore stating he is requesting a reasonable accommodation interview.
- 12/16/97 - Step One meeting and decision.
- 12/17/97 - Appeal to Step Two.
- 12/23/97 - First reasonable accommodation interview (USPS: Marshall, Witten, Fields; APWU: Moore, Meese).
- 02/25/98 - Second reasonable accommodation interview.
- 08/08/98 - Appeal to Step Three (several time extensions; no Step Two meeting held, no Step Two decision).
- 11/24/98 - Step Three decision.
- 12/10/98 - Appeal to Arbitration.
- 03/16/98 - Arbitrability hearing.
- 06/04/99 - Award: grievance is arbitrable.
- 04/20/00 - Arbitration rescheduled.



**ISSUE**

**Did the Postal Service violate handbook language found in Section 11, of EL505, Injury Compensation, as implemented through Article 19 of the agreement, when they developed the August 7, 1997 permanent rehabilitation assignment and then assigned Jimmy Steward to it? If so, what shall be the remedy?**



March 15, 2000

Grievant: Gary Grant  
D94T- 1 D-C 98000000  
(2210T)  
Holly, TN

Advocate: Jimmy Steward  
APWU, AFL-CIO  
1234 Main Street  
Indiana, PA

Arbitrator: Bill B. King

## **Opening Statement**

**American Postal Workers Union, AFL-CIO**

### **ISSUE *OVERVIEW***

Mr. Arbitrator, the Union believes that the Postal Service violated the Collective Bargaining Agreement (CBA) in the manner in which they developed and assigned Gary Grant the permanent rehabilitation assignment of July 23, 1997 (as amended on August 7, 1997). As a remedy, we ask that Mr. Grant's permanent rehabilitation (rehab) assignment be made retroactively that of Area Maintenance Technician (AMT), the job that he held prior to this contested reassignment.

### **Background**

Mr. Grant has been a Postal Service employee since April, 1982 and became an AMT in October, 1985. In February, 1994 he injured his shoulder at work and subsequently returned to his AMT job on limited duty in June, 1996. In January, 1997 Mr. Grant reached maximum medical improvement. On July 15, 1997 there was a meeting at the local level between the Union and the Postal Service where a permanent rehab assignment was discussed. He was then assigned the contested permanent rehab job of Maintenance Support Clerk (MSC) on July 23, 1997, with an effective date of August 16, 1997.

## Applicable Contract Language

The Union argues that the controlling language is found primarily in Handbook EL-SOS, Injury Compensation (Dec, 1995). Specifically, p.225, section 11.7 of the EL-SOS states that if an employee *“is capable of performing his or her core duties with only minor modification, assignment to the current position may be feasible.”* In addition, it also states that the Postal Service should *“ensure that: any adverse or disruptive influence on the employee is minimized.”*

## Argument

The Union will provide testimony to establish that in issuing the July 23, 1997 job offer the Service did not make a good faith effort to comply with the letter and spirit of the above cited language of the EL-SOS. We will provide additional testimony to establish that Mr. Grant can indeed perform the core duties of an AMT. As a matter of fact he was working as an AMT, and had been working as an AMT, when he was reassigned to the MSC rehab position.

## Remedy

We request that Mr. Grant be reassigned to his AMT position retroactive to the effective date of the reassignment to the AMC position, August 16, 1997, and that he be made whole regarding any loss of benefits or seniority rights secondary to the contested reassignment.



## **Addendum to the APWU Opening Statement**

G. Grant, D94T-1D-C 98000000 (221OT)

### **Chronology of Events**

- 04/82 - Employed by USPS.
- 10/85 - Became Area Maintenance Technician (AMT) (Pay Grade 8).
- 02/24/94 - Injured at Work (Shoulder).
- 04/02/96 - Stopped Work.
- 06/04/96 - Returned to work (Limited Duty).
- 01/17/97 - Reached Maximum Medical Improvement (MMI).
- 04/21/97 - OWCP 5 (Physical Restrictions).
- 07/15/97 - Meeting on Rehab Job Offer.
- 07/23/97 - Rehab Job Offer, Maintenance Support Clerk (Saved Grade 8).
- 07/31/97 - Grant Accepted Rehab Job (Under Protest).
- 08/11/97 - Step One Grievance Meeting.
- 08/16/97 - Effective Date of Job Offer.
- 09/03/97 - Step One Answer.
- 09/08/97 - Appeal to Step Two.
- 09/16/97 - Step Two Meeting.
- 09/25/97 - Step Two Decision.
- 09/30/97 - Appeal to Step Three.
- 02/06/98 - Step 3 Decision.
- 02/18/98 - Appealed to Arbitration.