

On September 9, 2004, a committee was appointed by Kirk McLaughlin, Vice-president of Branch 111, to investigate charges dated August 17, 2004, filed by Steve McNees against Mike Miller, President, Branch 111. That committee consisted of Jim Graham, Ron Frasier and Phyllis Polster, chairperson. On September 27, 2004, Franklin Glenn replaced Jim Graham.

According to Article 10, section 3. of the National Association of Letter Carriers Constitution, the duty of the committee is to, "find the true facts and report to the Branch." Article 10 also states, "The committee, after completing its fact-finding duty will present to the Branch a written report of the facts elicited, and immediately thereafter disband and be eligible to vote."

Here is the charge boiled down to its fine points.

Mike received a request from Dan Corral, Sandy Postmaster, for a statement regarding an incident that occurred on 03/11/04 between Steve and Mike at the Sandy station. Mike wrote a letter that he gave to Dan Corral. The letter, dated 03-15-04, was entitled, "Subject: Statement of Events," and had the heading, "To: Office of Workers Compensation Programs." The bulk of the letter was a review of Mike's interpretation of events that day. Mike's letter also included the language, "Steve McNee's anger and stress levels were, in my opinion, self-inflicted and at the most due to an administrative action between he and myself and not the Postal Service and do not amount to a Traumatic Injury." The letter was signed, "Michael M. Miller, Utah State Compensation Specialist, Branch President, Branch 111, NALC."

Steve's 08/17/04 letter of charges charge President Miller with, "negligence, gross negligence, misconduct, and gross misconduct."

The definitions of these terms are as follows:

Negligence:

"Failure to exercise the care toward others which a reasonable or prudent person would do in the circumstances." [from: dictionary.law.com]

Gross Negligence:

"Carelessness which is in reckless disregard for the safety or lives of others, and is so great it appears to be a conscious violation of other people's rights to safety. It is more than simple inadvertence, but it is just shy of being intentionally evil."
[from: dictionary.law.com]

Misconduct:

"Intentional wrong doing; *specifically*: deliberate violation of a law or standard."

[from: Merriam-Webster's Collegiate Dictionary]

Gross Misconduct:

“For an employee to commit an act of gross misconduct, they must commit an act which fundamentally breaches the trust and confidence that the employer had in that person.” A typical example would be theft. [from: employmentrelationsadvice.com]

REVIEW OF EVENTS

Prior to March 11, 2004, there was a myriad of differences between Steve and Mike regarding such things as Sandy's break policy, safety grievances, and Steve's release by Mike as Formal A Representative for the Sandy installation. There was a general deterioration of the friendship and working relationship between Steve and Mike, especially from late February, 2004 on.

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- Sandy station's new break policy was announced during a standup.
- Route inspections were just starting and the office was full of managers.
- Mike Miller was there in official capacity as Branch 111 President to be available to resolve any differences that might arise out of the normal course of route inspections.
- Steve said he overheard other carriers in the office express their displeasure with the new break policy that had just been announced.
- Steve was also apparently upset with the new break policy, the route inspections and with Mike's general presence, as evidenced by Steve's comments that Steve told the committee he probably said such as, "Thanks a lot Mike," and "Thanks for nothing Mike."
- As time passed, Steve requested multiple times for management to have Mike removed from the floor.
- Steve continued to be upset at Mike's presence and was also upset by the fact that management would not remove Mike from the workroom floor.
- Steve headed out the door to take a "timeout" to cool off.
- On his way out, Postmaster Dan Corral stopped Steve, telling him to return to his case and that Steve needed to follow his instructions.
- Steve explained, loudly enough for witnesses to hear, that station policy

allowed him to take a "timeout".

- Postmaster Corral reversed his position and allowed Steve his "timeout."
- Steve returned to the floor and saw Mike near his case.
- Once again, Steve asked management to remove Mike.
- Mike approached Steve and stated, quoting both from Mike's letter and Steve's charges, "...I, as the President, would come into the Sandy Station any time I wanted and as often as I wanted whether he liked it or not and if he didn't want to look at me then he should turn around."
- Steve interpreted Mike's comment as a threat as stated on Steve's CA-1.
- Steve was visibly upset and went to Sandy's union room with Stan Hawker.
- Stan called Steve's wife.
- Steve received a CA-1 and a CA-16 from management.
- Steve and his wife left the Sandy Post Office to seek medical attention.
- On that same evening, Steve and many Sandy carriers attended the union meeting and were ruled out of order by Mike when they wished to protest Steve's removal as Formal A Rep., although Donna Jewell of the National Association of Parliamentarians later ruled that the meeting was conducted properly.

This is the end of events that occurred on 03/11/04.

- On 03-12-04, Steve, after being released to return to work by his doctor, emailed his Supervisor, Seth Johnson, and advised Seth that Mike shouldn't be around when he returned to work, and that if Mike was there, Steve would consider this to be an act of violence.
- Dan Corral, Sandy Postmaster, initiated a Violence in the Workplace investigation.
- Dan Corral requested statements from several people, including Mike, in order to gather information regarding Steve's pending OWCP claim and to gather information for the Violence in the Workplace investigation, which was investigated and settled with an agreement between union and management to follow the Violence in the Workplace Memorandum.

- The committee received statements regarding the incident on 03/11/04 from carriers and management who were at Sandy that day. The statements conflicted with one another as to who was the cause of any disturbance.

- On 03-15-04, Mike Miller wrote a statement which said, “Subject: Statement of Events,” and “To: Office of Workers Compensation Programs.” In the letter, he gave his account of the facts of the day as requested, along with one additional sentence: "Steve McNees' anger and stress levels were, in my opinion, self-inflicted and at the most due to an administrative action between he and myself and not the postal service, and do not amount to a traumatic injury.” Mike signed the letter with his usual signature as follows:

Michael M. Miller
Utah State Compensation Specialist
Branch President
Branch 111, NALC

The responsibility of the branch is to decide if Mike Miller’s 03/15/04 letter rises to the level of negligence, gross negligence, misconduct or gross misconduct.

In a nutshell, the committee has determined that these charges come down to three things in Mike’s 03-15-04 letter:

1. The salutation was to the, “Office of Workers Compensation Programs.”
2. The phrase stating Mike’s opinion that, ”Steve McNees' anger and stress levels were, in my opinion, self-inflicted and at the most due to an administrative action between he and myself and not the Postal Service, and do not amount to a Traumatic Injury.”
3. The fact that Mike signed the letter as the Branch President and as the Utah State Compensation Specialist.

- Why was the salutation made to OWCP? Mike said that he was asked by Dan Corral to provide a written statement regarding Steve’s CA-1 claim and another statement regarding the Violence in the Workplace grievance. Mike told the committee that he decided to write one statement covering both requests, although Dan told the committee that he did not ask Mike to address his statement to OWCP.

- Why did Mike state his opinion that Steve’s anger and stress levels were self-inflicted and did not amount to a traumatic injury into a letter entitled “Statement of Events”? Mike told the committee that he included this information because he did not feel that Steve’s claim was legitimate, and that he was just stating the truth about what he knew regarding the events on 03/11/04 at the Sandy Post Office. Mike also told the committee, “As a Compensation Specialist and a Representative of record with OWCP, I am required by law 20 CFR 10 sec.10.16 to be completely honest and forthcoming in my dealings with OWCP concerning any claim for compensation. If I

am not, as a representative, I will be held just as culpable as the claimant if it is to be found that I knowingly allowed a fraudulent claim to be processed. Everything I wrote in my statement was true and accurate as I witnessed it to be.” Mike said he did not investigate or interview Steve before writing the letter, nor did he see the CA-1 before stating his expert opinion.

•Did Mike’s signature line give expert status to his statement? Both Mike and Steve agree that Mike is an expert on OWCP matters.

REVIEW OF THE LAW AS RELATED TO THIS MATTER

The "Duty of Fair Representation,” known as DFR, is a federal law requiring labor unions to treat all workers they represent equally. Breach of the DFR is considered an unfair labor practice.

The Duty of Fair Representation requires a union to represent everyone in the bargaining unit equally, diligently, enthusiastically, and without hostility, discrimination or arbitrary conduct.

Although the underlying principles of DFR are fairly clear, there are also certain demands put on the aggrieved party before a DFR suit would be considered appropriate. Specifically, the party needs to exhaust appeals and internal union procedures prior to filing a DFR suit.

The committee was told by Steve on 09/21/04 that he had not filed an appeal to his OWCP claim and did not plan on doing so. However, his position regarding filing an appeal changed in late September and he has informed the committee that he is now planning on filing an appeal.

Following are excerpts from laws and other documentation related to this matter:

The Constitution for the Government of Subordinate and Federal Branches, Article 1 Sec. 2 states, “The objects of this Branch are to unite all employees who are eligible for membership under Article 2, Section 2, of the National Constitution into one harmonious body for their mutual benefit, and to assist the National Association of Letter Carriers in its efforts to improve the condition of its entire membership.”

The BY-LAWS of Branch 111 – Article 5, Section 1. states, “All officers of Branch 111 shall fulfill the requirements of the Constitution for Subordinate Branches...”

The Installation Ceremony of the 2004 NALC Constitution, page 106, states, “I will... observe and faithfully execute the laws of the National Association of Letter Carriers and the By-Laws of this Branch. I will perform, to the best of my ability the duties of the office to which I have been elected....”

Title 5 United States Code

Chapter 71

7116. Unfair labor practices

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization —

- (1)** to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
- (2)** to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

7120. Standards of conduct for labor organizations

7120 (a)(1)...securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

ADDITIONAL FACTS

Mike told the committee that to the best of his recollection, he has never written another letter suggesting that an OWCP claim is not legitimate. Mike also said that he believes he hasn't broken any rule since he told the truth in his letter.

The committee has established that the only information Mike had regarding Steve's OWCP claim dated 03/11/04, other than what he had actually witnessed, was what Dan Corral communicated to him plus reading emails written by Steve and his supervisor.

The only cite listed in the 04/19/04 OWCP NOTICE OF DECISION as being non-compensable was attributed to Steve but actually came from Mike's 03/15/04 letter. The only evidence listed for OWCP denying the claim came directly from Mike's letter.

The packet which was sent to OWCP from the Injury Compensation Office in Salt Lake also included statements unresponsive of Steve from Dan Corral, Postmaster of Sandy, Terry Allen Supervisor, Customer Service and Melodi Gochis, Injury Compensation Specialist, (Acting).

¹On 03/18/04 OWCP sent Steve a list of specific questions relating to his 03/11/04 CA-1. Based on the information the committee has been provided, many of the questions OWCP asked were not specifically answered or addressed by Steve. OWCP specifically stated that this additional information was crucial to making a determination.

Steve told the committee that if his 03/11/04 OWCP claim had been accepted, he would not have filed this charge against Mike.

The committee has taken exhaustive measures in an attempt to fairly discover and report the foregoing facts to the best of our ability.

The responsibility of the branch is to decide if these facts show that Mike Miller's 03/15/04 letter rises to the level of negligence, gross negligence, misconduct or gross misconduct.

¹ Subsequent to the oral presentation of this report, it was determined that the document we used to determine this information was incomplete. The document, answering *all* the questions listed contained much personal information and apparently had been sanitized at some point prior to our viewing of it. The completed document was indeed provided to this committee by Steve, although the initial viewing indicated that it was a document we already had examined.

Keep in mind that the documents this committee used in its investigation were obtained from a myriad of sources including several grievance files, the file from the committee report on the earlier charges as well as documents provided by Steve himself. This led to the collection of a large number of documents, many of which were duplicates of one another, with no reason to suspect that any one copy of a particular document was different from another.

The committee regrets this development, and apologizes to the branch for the misstatement.