

DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket # DC-0752-11-0880-I-1

Petition for Review

Summary Page

Case Title : DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket Number : DC-0752-11-0880-I-1

Pleading Title : Petition for Review

Filer's Name : David Noble, Jr.

Filer's Pleading Role : Appellant

Details about the supporting documentation

#	Title/ Description	Mode of Delivery
1	Transcript	Uploaded

Table of Contents

Pleading Interview	3
Uploaded Pleading Text Document	5
Transcript	35
Certificate of Service	164

DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket # DC-0752-11-0880-I-1

Petition for Review

Online Interview

1. The Finality Date for your decision is 1/18/2012. This date has passed; Do you know when you received a copy of the initial decision?

Yes

2. Please enter the Receipt Date

12/15/2011 12:00:00 AM

3. Your petition for review is untimely.

The Board will consider the merits of your petition only if you establish good cause for the untimely filing.

To establish good cause, you must show that you exercised due diligence or ordinary prudence under the particular circumstances of the case.

To determine whether you have shown good cause, the Board will consider the length of the delay, the reasonableness of your excuse and showing of due diligence, whether you are proceeding without a representative, and whether you have presented evidence of the existence of circumstances beyond your control that affected your ability to comply with the time limits, or of unavoidable casualty or misfortune which similarly shows a causal relationship to your inability to timely file the petition.

If you are claiming that your health has affected your ability to meet filing deadlines, you must show that you suffered from an illness or injury that affected your ability to file on time. If you are making such a claim, you must:

1. Identify the time period during which you suffered from the illness or injury
2. If available, submit medical or other evidence showing that you suffered from the illness or injury during the time since the initial decision was issued; and
3. Explain how the illness injury prevented you from filing your document on time or requesting an extension of time.

Describe the facts and circumstances related to the ultimately filing, and your arguments as to why the board should find good cause.

Requested EOT, it was granted.

4. Do you declare, under the penalty of perjury, that the facts asserted regarding the timeliness of the Petition For Review are true and correct?

Yes

5. Would you like to enter the text online or upload a file containing the pleading?

See attached pleading text document

6. Does your pleading assert facts that you know from your personal knowledge?

Yes

7. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

MERIT SYSTEMS PROTECTION BOARD

David W. Noble Jr.,
Appellant

v.

United States Postal Service,
Agency.

Docket No. DC-0752-11-0880-I-1
Date: February 21, 2012

Appellant's Petition for Review

I. Statement of Facts.

A. Background.

This case is about the removal on AWOL charges of appellant David W. Noble, Jr., who has been a city letter carrier employed by the agency for more than 36 years and who had an unblemished disciplinary record at the time of his removal. From 1979 through most of 1993 appellant took leave from his job with the agency to work on behalf of the National Association of Letter Carriers, AFL-CIO, the union that represents the agency's city letter carriers.¹ Appellant lost his job with the union in 1993 when he filed internal charges against the union's entire 28-member executive council for making payments to themselves which had not been approved by the membership, and which had not been reported to the membership.² In 1994 appellant filed a suit in federal court against the union's highest ranking officers for breaching

¹Tab 8, ¶ 2.

²*Id.*, ¶ 3.

their fiduciary duty as to the secret payments.³ The suit is still active, back now at the district court after having been remanded by the circuit court. The suit was brought for the common benefit of the union's membership. The most recent decision in the case is reported at *Noble v. Sombrotto*, 525 F.3d 1230 (D.C. Cir. 2008). Appellant's legal standing to continue to pursue the suit depends on his membership in the union, which, in turn, depends on his employment status with the agency.⁴ Thus, at stake in this appeal is not only a 36-year career, but perhaps also the final resolution on the merits of a lawsuit that has survived numerous other efforts to kill it for more than eighteen years.

B. Constructive suspension.

In 2009 and 2010 appellant's working conditions became so bad that he wrote letters to the agency describing his working conditions and telling the agency that his attendance was suffering as a result.⁵ Included among the bad conditions identified by appellant were: 1) blocking access to grievance procedure (federal labor law-violating misconduct for which the National Labor Relations Board twice issued complaint against the agency during this period), 2) a badly overburdened route, 3) numerous instances of baseless discipline. Appellant also orally informed his supervisor that his bad working conditions were making it difficult to be regular in attendance.⁶

From July 2010 through January 2011 appellant's working conditions continued to

³*Id.*, ¶ 5.

⁴*Id.*, ¶ 6.

⁵Tab 11, Exhs. F,G.

⁶Tab 41, ¶ 47.

worsen. In July a new manager (Sterling Colter) tried to set appellant up for discipline on false charges of being AWOL. In September, with the arrival of a new supervisor (William French), the agency constructively cut appellant's pay by refusing to pay him for holidays. The new supervisor ordered appellant to work overtime on his overburdened route every day, although appellant's physician had recommended that appellant not work overtime. Appellant was thus daily placed in the position of having to choose between following his supervisor's orders or his physician's recommendations.

Appellant did not work after January 13, 2011. When the agency wrote appellant on January 31st and directed him to return to work or provide medical documentation, appellant wrote back that he considered himself to have been constructively suspended since January 14, 2011 as a result of intolerable working conditions.⁷ The agency did not reply to the letter.

The agency scheduled appellant for a pre-disciplinary interview ("PDI") on February 23, 2011. Such interviews are standard under the collective bargaining agreement before disciplinary action is initiated. The subject of the interview was appellant's alleged absence without leave between January 14, 2011 and February 16, 2011.⁸ Appellant left the interview a few minutes after it began. There is a dispute as to what was said during the interview. Tony Jones, the agency representative who scheduled and conducted the interview, testified that he warned appellant that he would be considered AWOL if he left the meeting. Appellant recorded the interview and included a transcript of the recording in a sworn declaration.⁹ The transcript shows

⁷Tab 11, Exh E.

⁸AF, Tab 7, Subtab 4e.

⁹Tab 41, ¶ 56.

that Jones did not warn appellant that he would be considered AWOL. Appellant tried to include the actual recording of the interview as an exhibit at the hearing, but the judge would not accept it.¹⁰ The judge credited Jones' version without explanation, and without acknowledging the contradictory evidence.¹¹ No disciplinary action was taken against appellant for the absences that were the subject of the February 23, 2011 PDI.¹²

C. Removal.

By notice dated April 28, 2011 the agency proposed removal of the appellant for being AWOL from February 24, 2011 through April 28, 2011. The notice of proposed removal informed appellant of his right to respond to the notice in person or in writing, but did not tell appellant where to send a written response. When he received the proposed removal appellant sent a fax to the proposing and concurring officials (William French and Sterling Colter) and, *inter alia*, noted the omission of an address to which to send a written response.¹³ The officials did not reply. Appellant also telephoned the person designated as the deciding official (Paris Washington) and left messages asking for a return call.¹⁴ According to the appellant he did not receive a return call. According to the deciding official appellant did not contact him.¹⁵ The judge credited the deciding official's version.

¹⁰Tr. p.34, l.23 - p. 35 -l.18.

¹¹Tab 45, p.5.

¹²Tab 41, ¶ 91.

¹³Appellant's Exh. AAA.

¹⁴Tab 41, ¶ 62.

¹⁵Tr. 89, ll. 36-37.

By letter dated June 11, 2011, with accompanying Form 50, the agency notified appellant that he had been placed on long-term LWOP effective January 14, 2011. Under the agency's regulations LWOP is an approved leave status, and is distinct from AWOL, which is not an approved leave status.

In the zone in which appellant worked, a letter carrier named Leonard Poe had been AWOL for significant periods of time, refused to discuss why he had been absent, had the same supervisors for at least a portion of the time, and was given lesser discipline than removal, even though he had received prior discipline for attendance.

On July 5, 2011 Paris Washington issued a letter of decision upholding appellant's removal effective July 22, 2011. The letter of decision asserted that several *Douglas* factors had been considered, which assertion was later contradicted by Washington's hearing testimony. The instant appeal followed.

D. Pre-hearing processing.

1. Discovery and motions for postponements and suspension of case.

By notice dated August 18, 2011 the AJ set a hearing date of September 28, 2011.¹⁶ By motion dated September 19, 2011, appellant requested that the hearing be postponed, explaining that he had served discovery requests for which responses were not due until October 2nd, that he expected that he would have to file a motion to compel, that he planned to take a second round of discovery, and that he expected that he would have to file a another motion to compel as to the second round.¹⁷ In a conference call on September 26th the AJ postponed the hearing until

¹⁶AF, Tab3.

¹⁷AF, Tab 8.

October 19, 2011. The AJ's postponement ruling was memorialized in a summary of the pre-hearing conference.¹⁸ Appellant filed objections to the summary on October 6th, expressly including an objection to the October 19th hearing date.¹⁹ Appellant noted that in the interim the agency had refused all of appellant's first discovery requests. On October 11, 2011 appellant filed an unopposed motion to postpone the hearing scheduled for October 19th.²⁰

On October 14, 2011 appellant filed a motion to compel discovery.²¹ On October 17th, the AJ conducted a conference call with appellant and the agency's representative. During that call, as memorialized in an October 20, 2011 summary,²² the AJ re-set the hearing date for November 4, 2011, and granted in part appellant's motion to compel discovery, setting an October 31st at 5:00 p.m. deadline for the agency to respond.

On October 25, 2011 appellant filed a motion to postpone the hearing set for November 4, 2011.²³ Appellant noted that he had served discovery requests on the agency and that the agency's responses were not due until November 4th. Appellant also noted that the agency had informally told him that it would object to his attempt to take depositions of the agency's witnesses. Appellant stated that he believed that it would be necessary for him to file at least one

¹⁸AF, Tab13.

¹⁹AF, Tab 15.

²⁰AF. Tab 19.

²¹AF, Tab 22.

²²AF, Tab 23.

²³AF, Tab 26.

more motion to compel. On October 28, 2011 appellant filed objections²⁴ to the AJ's October 20, 2011 summary, expressly including an objection to the November 4, 2011 hearing date.

On November 1, 2011 the agency filed a joint motion to suspend case processing for thirty days so that the parties could complete discovery.²⁵ Also on November 1, appellant filed a motion to compel the agency to produce witnesses for depositions.²⁶ By notice sent to appellant by e-file on November 2²⁷ at 10:05 a.m. – less than 48 hours before the scheduled hearing – the AJ granted appellant's motion as to the depositions in part, but refused the parties' request to suspend case processing, thus leaving appellant less than two days to arrange for and conduct four depositions. The AJ also ordered the agency to respond to certain of appellant's discovery requests by noon on November 3rd.

On November 3, 2011 appellant filed an unopposed motion to postpone the hearing,²⁸ telling the AJ that he had been unable to take the depositions in the time allotted, and telling the AJ that the agency had not provided the discovery material that had been due on October 31st until late in the afternoon on November 1st, and that the appellant had not had enough time to finish reading it. The AJ denied the motion,²⁹ and the hearing proceeded on November 4th.

²⁴AF, Tab 28.

²⁵AF, Tab 30.

²⁶AF, Tab 31.

²⁷AF, Tab 32.

²⁸AF, Tab 36.

²⁹AF, Tab 37.

2. No closing arguments.

In an order dated October 20, 2011 the AJ ruled that no closing arguments would be allowed at the hearing.³⁰ On October 28, 2011 the appellant objected to that prohibition, if it meant that no written closing arguments would be allowed after the hearing.³¹ On November 1, 2011 the AJ responded to appellant's objection, stating that no written arguments would be permitted.³²

3. Motion to disqualify.

On September 26, 2011 the AJ held a conference call with the agency's representative and appellant. Appellant recorded the call, which lasted for about an hour. In his September 27, 2011 summary of the call,³³ the AJ wrote: "During the prehearing conference, the appellant continually questioned my authority to narrow the list of his 19 witnesses to only those I deemed appropriate. The appellant is mistaken in his belief that I lack the authority to do this." The AJ also wrote: "At times, I did interrupt [appellant] when he repeatedly claimed that I lacked the authority to deny any of his witnesses... ." Both statements are false. Appellant did not even once question the AJ's authority to do anything. While the AJ interrupted appellant on numerous occasions, none of the interruptions came while appellant was making a claim that the AJ lacked the authority to deny any of his witnesses.

On October 6th appellant filed objections to the AJ's September 27, 2011 summary, and

³⁰AF, Tab 23.

³¹AF, Tab 28.

³²AF, Tab 32.

³³AF, Tab 13.

specifically objected to the AJ's statements about appellant's conduct during the conference.³⁴ Also on October 6th appellant filed a motion to disqualify the judge.³⁵ The agency did not file an opposition to appellant's disqualification motion.

The AJ conducted a conference call with the agency's representative and appellant on October 17th. In that call he denied appellant's motion to disqualify, and memorialized that ruling in a summary dated October 20, 2011.³⁶ In his ruling the AJ wrote that his statements about appellant's conduct had been accurate. On October 21, 2011 the appellant filed a motion to certify the issue of the AJ's disqualification as an interlocutory appeal,³⁷ to which motion he appended a copy of the transcript of the September 26th conference call.³⁸ The AJ denied the motion to certify an interlocutory appeal on October 28, 2011, calling the appellant's recording of the September 26th conference "at best, discourteous."³⁹ Neither the AJ nor the agency disputed the accuracy of the transcript.

4. Constructive suspension, Part 2.

By letter dated February 8, 2011 appellant wrote to the agency, notifying it that he considered himself to have been constructively suspended since January 14, 2011 because of

³⁴AF, Tab 15.

³⁵AF, Tab 16

³⁶AF, Tab 23.

³⁷AF, Tab 25.

³⁸*Id.*, Exh. U.

³⁹AF, Tab 27.

intolerable working conditions.⁴⁰ The agency included at least a partial copy of the letter in its disciplinary file.⁴¹ In the September 26, 2011 pre-hearing conference there was a discussion of the issues to be litigated. Appellant stated that one of the affirmative defenses he was raising was that the absence from work for which he was removed should be considered to have been a constructive suspension because of intolerable working conditions, rather than an unauthorized absence.⁴² During the conference the AJ stated that he rejected appellant's claim that he was constructively suspended, but accepted appellant's claim of intolerable working conditions.⁴³ The AJ memorialized his rejection of the constructive suspension claim and his acceptance of an intolerable working conditions claim in his September 27, 2011 summary of the pre-hearing conference, giving somewhat different reasons than those stated during the conference.⁴⁴ On October 6, 2011 appellant filed objections to the September 27th summary, and specifically addressed the AJ's treatment of the constructive suspension issue.⁴⁵ On October 20th the AJ addressed appellant's objection by ruling that he would docket the constructive suspension as a separate case.⁴⁶ On October 28th appellant objected to the constructive suspension being docketed separately, saying that the suspension and the removal were cause and effect and that it

⁴⁰AF, Tab 11, Exh. E.

⁴¹AF, Tab 9, Subtab 4a.

⁴²AF, Tab 25, Exh. U.

⁴³*Id.*

⁴⁴AF, Tab 13.

⁴⁵Tab 15, Obj. 3.

⁴⁶Tab 23.

did not make sense to address them separately.⁴⁷ (The AJ subsequently docketed the constructive suspension as a separate case, and dismissed it as untimely.⁴⁸ The PFR for that case is due on March 20, 2012. Appellant will file a PFR on or before that date and will move to join or consolidate the constructive suspension and removal case.)

II. Argument.

A. The ID contains numerous errors of fact. Therefore, the Board should undertake a complete review of the record.

1. At page 19 of the ID it is stated: “The appellant’s supervisors all testified credibly that they advised him repeatedly that he must return to duty or be disciplined, and they even held off disciplining for a very long time” This statement is false. None of the agency’s four witnesses – three of whom might be considered to be appellant’s supervisors – testified that they advised appellant repeatedly that he must return to duty or be disciplined, or that they held off disciplining for any period of time.

2. At page 10 of the ID it is stated: “[A]ppellant stated that management harassed him by . . . making him attend predisciplinary meetings in August 2010 and November 2010 in which supervisors told him he could be subjected to discipline if his extended absences did not stop.” This statement is false: a. Appellant did not state that the predisciplinary meetings constituted harassment. b. There is no evidence that at the predisciplinary meetings supervisors told appellant that he could be subjected to discipline if his extended absences did not stop.

3. At the top of page 12 a reference is made to appellant and the agency being in

⁴⁷Tab 28.

⁴⁸MSPB Docket No. DC-0752-12-0054-I-1

litigation in a court case. However, there is no evidence in the record of appellant and the agency being involved in litigation in court. There is evidence of appellant being involved in litigation with certain union officials.

4. At page 9 of the ID it is stated: “The appellant testified that for many months, his supervisors began to pressure him to return to work and complete his route.” That statement is false. Appellant did not so testify.

5. At page 8 of the ID it is stated that appellant testified that various of his ailments “caused him great emotional distress.” That statement is false. Appellant actually testified: “I also have an abdominal aortic aneurysm that is not disabling *per se*, but is life threatening (as is its medical remedy). Given the aneurysm, I feel great emotional distress when I am forced to work overtime, a fact that I made known to all of my supervisors in 2009 and 2010, sometimes in writing, often in person.”⁴⁹

6. At page 18 of the ID it is stated: “At the hearing, three witnesses testified that the appellant never tried to contact them after the notice of proposed removal was issued. I found the agency's version on this point to be far more credible than the appellant's version, based on my close observation of the witnesses' demeanor at the hearing and the consistency of the agency's witnesses' testimonies on this matter. I found the agency's witnesses to be believable.”

However, the agency produced four witnesses. One of them, Washington, testified that appellant did not contact him. One of them, Colter, did not testify about post-removal contact at all. One of them, French, testified that appellant did not contact him about coming back to work, but

⁴⁹Tab 41, ¶ 1.

did not testify that appellant did not otherwise contact him.⁵⁰ One of them, Jones, left the station two weeks before the notice of proposed removal was issued, and, therefore was not available for contact.⁵¹ There is no consistency at all as to the testimonies. And even assuming, *arguedo*, that Washington's version about no contact with him should be credited, appellant's testimony that he faxed Colter and French about the omitted address and that they failed to reply remains un rebutted.

7. At page 14 of the ID it is stated: "The appellant, meanwhile, offered no evidence in support of his bare assertion that he provided medical evidence to justify his AWOLs." However, appellant made no assertion, bare or otherwise, that he provided medical evidence to justify the February 24 – April 28 absence for which he was removed. Instead, as he notified Jones in his letter dated February 8, 2011, appellant considered himself to be constructively suspended.⁵²

8. At page 14 of the ID it is stated: "it seems as if the appellant's main basis for claiming that he provided medical documentation is located in the file at AF, Tab 35, Appellant's Exhibit X." As stated above, however, does not contend that he provided medical documentation to justify the February 24 – April 28 absence for which he was removed. The doctor's notes to which the AJ refers were offered only to show that appellant's physician recommended that appellant not work overtime, and that at least Bill French was aware of that fact.

9. At page 13 of the ID it is stated: "...the agency set forth at least four predisciplinary

⁵⁰Tr., p. 65, ll. 8 - 11.

⁵¹Tr. p. 19, ll. 17 - 23.

⁵²Tab 11, Exh E.

sessions which were based, in part or in whole, on his deficient attendance, and in which he was warned that his continued irregular attendance could lead to discipline, up to and including removal.” That statement is false. One agency witness – Jones – discussed one predisciplinary interview. Jones alleged that he told appellant that he would be considered AWOL if he left the interview. Jones did not testify that he warned appellant about “continued irregular attendance.” Appellant disputes Jones’ testimony about the AWOL warning based on a recording appellant made of the interview. No other witness testified that s/he warned appellant about “continued irregular attendance.” Please note that the purpose of a predisciplinary interview is to give the employee against whom discipline is being considered an opportunity to “tell his side of the story.”⁵³ It is not used for warning employees.⁵⁴ And there is not a shred of evidence that appellant was ever warned about “continued irregular attendance” at any time or in any place.

10. At page 13 of the ID it is stated: “For the first time at the hearing, the appellant asked that I include a new issue in this appeal; namely that the agency denied him minimum due process of law.” That statement is false. Appellant did not ask that the AJ include as a new issue that the agency denied him minimum due process. Instead, the appellant asked that the AJ add “an affirmative defense, namely that the removal action was initiated by a higher-level supervisor rather than by [appellant’s] immediate supervisor.”⁵⁵ The agency had given appellant a discovery response the day before that indicated Antonio Jones had initiated the discipline. If that were the

⁵³Tab 36, Exh. JJJ, Request for Admission, No. 2.

⁵⁴AF, Tab 9, Subtab 4d, *Disciplinary Action Request*, Instructions for ¶ 4g.

⁵⁵Tr. p. 8, ll. 14 - 38.

case, it would violate the collective bargaining agreement.⁵⁶

11. At page 10 of the ID it is stated: “The appellant refused [French’s offer to consider adjusting his route] because he did not agree with the method French was employing... .” There is nothing in the record indicating that appellant can, or did, refuse to have his route adjusted. (There are many other errors of fact, but this document is getting too long, and time is getting too short.)

B. The AJ improperly excluded argument.

[Administrative judges] are required to use fair procedures that afford each party to an appeal an opportunity to respond to any other party's arguments and evidence. *See Eriksen v. Department of Energy*, 20 M.S.P.R. 135, 138 (1984).

Providing an opportunity to present argument is a fundamental part of the way courts and boards operate in our society. MSPB’s website cautions against including too much material with the initial appeal and states: “Both parties will have several opportunities to provide additional evidence and argument as the appeal proceeds toward a decision.” Here, appellant was given no opportunity to argue the merits of his or the agency’s cases. Instead, the AJ made up arguments for appellant and knocked them down. The result was that the AJ addressed arguments – sometimes at considerable length – appellant would not have made, while failing to address arguments appellant wished to make.

To underscore the absurdity of the AJ’s approach, please note that the Board will not consider an argument raised for the first time in a petition for review absent a showing that it is

⁵⁶Tab 11, Exh. L.

based on new and material evidence not previously available despite the party's due diligence.⁵⁷ If the Board follows precedent here, the AJ will have immunized himself from any review of his decision as to the merits, because he allowed no argument on the merits.

C. The AJ erred by failing to disqualify himself.

In making a claim of bias against an administrative judge a party must overcome the presumption of honesty and integrity that accompanies administrative adjudicators. *Oliver v. Department of Transportation*, 1 M.S.P.R. 382, 386 (1980). An administrative judge's conduct during the course of a Board proceeding warrants a new adjudication only if her or his comments or actions evidence "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Bieber v. Department of the Army*, 287 F.3d 1358, 1362-63 (Fed. Cir. 2002) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

Here appellant has shown that the AJ made false statements in an official summary about appellant's conduct during a conference call. That the AJ made false statements is sufficient to both overcome the presumption of honesty and integrity and evidences a deep-seated antagonism that would (and did) make fair judgment impossible. The AJ should have disqualified himself.

D. The AJ erred by finding that the agency had proven its charges.

In order for an agency to prove AWOL, the agency must show that the employee was absent, and that his absence was not authorized, or that his request for leave was properly denied. *Wesley v. U.S. Postal Service*, 94 M.S.P.R. 277, ¶ 14 (2003). While there is no dispute that appellant was absent from February 24th – April 28th the evidence shows that he had been placed in a long-term LWOP status – authorized leave – effective January 14, 2011 and continued in

⁵⁷*Banks v. Department of the Air Force*, 4 M.S.P.R. 268, 271 (1980).

that status at least until June 11, 2011.⁵⁸

The AJ argues at page 13 that “[t]he record also demonstrates that the appellant failed to provide medical documentation to support his absences, despite inquiries from Postal management,” and that it was therefore appropriate to place appellant in an AWOL status based on *Johnson v. General Services Administration*, 46 M.S.P.R. 630, *aff’d* 944 F.2d 913 (Fed. Cir. 1991). *Johnson*, however, is wholly inapposite – it involved an employee who contended that he was absent for medical reasons, but who failed to provide documentation. Here, appellant does not contend that he was absent for medical reasons. Instead, he contends that he was absent because he was constructively suspended due to intolerable working conditions.

The Board is required to review the agency's decision on an adverse action solely on the grounds invoked by the agency; the Board may not substitute what it considers to be a more adequate or proper basis. *Gottlieb v. Veterans Administration*, 39 M.S.P.R. 606, 609 (1989). Reading the proposed removal's specification as well as its label it is plain that the only charge against appellant is that he was AWOL from February 24th – April 28th. The AJ erred, therefore, by finding appellant failed to follow leave-requesting procedures (based on *Podrazik v. U.S. Postal Service*, 54 M.S.P.R. 380 (1992)) and that appellant used excessive LWOP (based on *Cook v. Department of the Army*, 18 M.S.P.R. 610 (1984)). Further, the evidence in this case does not support the elements of the rules announced in either *Podrazik* or *Cook*.

E. The appellant proved that he was treated disparately.

An appellant's allegation that the agency treated her disparately to another employee, without a claim of prohibited discrimination, is an allegation to be proven by the appellant and

⁵⁸AF, Tab 11, Exh. D and Exh. TT.

considered by the Board in determining the reasonableness of the penalty, but it is not an affirmative defense. *See Taylor v. Department of Veterans Affairs*, 112 M.S.P.R. 423, ¶ 11 (2009), *modified on other grounds, Lewis v. Department of Veterans Affairs*, 113 M.S.P.R. 657, ¶ 6 (2010). To establish disparate penalties, the appellant must show that the charges and the surrounding circumstances are substantially similar so that a reasonable person would conclude that the agency treated similarly-situated employees differently. *See Lewis*, 113 M.S.P.R. 657, ¶ 6; *see also Williams v. Social Security Administration*, 586 F.3d 1365, 1368-69 (Fed. Cir. 2009); *Archuleta v. Department of the Air Force*, 16 M.S.P.R. 404, 407 (1983). If the appellant does so, the agency must prove a legitimate reason for the difference in treatment by a preponderance of the evidence. *Lewis*, 113 M.S.P.R. 657, ¶ 6. To trigger the agency's burden, there must be a great deal of similarity, not only between the offenses committed by the appellant and a proposed comparator, but as to other factors, such as whether the employees were in the same work unit, had the same supervisor and/or deciding official, and whether the events occurred relatively close in time. *Id.*, ¶ 12.

Through Leon Tucker,⁵⁹ a former steward in appellant's work location, and through his own declaration testimony,⁶⁰ appellant showed that a letter carrier named Leonard Poe had been AWOL for significant periods of time, refused to discuss why he had been absent, had the same supervisors for at least a portion of the time, and was given lesser discipline than removal, even though he had received prior discipline for attendance. Furthermore, by placing Poe in Zone 16 with French and Colter, Tucker's testimony established that the events were relatively close in

⁵⁹Tr., p.112, l.36 - p. 113, l. 25; p. 115, l.34 - p. 116, l. 34.

⁶⁰Tab 22, *October 14, 2011 Declaration of David W. Noble, Jr.*, ¶ 17.

time, because Colter didn't arrive in Zone 16 until about August 2010,⁶¹ and French didn't arrive until September 2010.⁶² These similarities were sufficient to trigger the agency's burden to prove a legitimate reason for the difference in treatment. The agency, however, didn't address the evidence about Leonard Poe, and neither did the AJ.

F. The AJ wrongly used his power to schedule to interfere with appellant's attempts to take discovery.

MSPB regulations provide the parties with an opportunity to take discovery. Appellant attempted to avail himself of that opportunity. By using his power to schedule the AJ shaped appellant's discovery efforts so that: 1) Appellant didn't get any discovery material until three days before the hearing, then got so much that he had been unable to read it all by the afternoon before the hearing. 2) Appellant got a less than 48-hour window in which to conduct four depositions, with no advance notice that the window would be opening. 3) Appellant got a second pile of discovery material 21 hours before the hearing. Both parties told the AJ that he was not allowing enough time for discovery, but he rejected their final pleas for more time.

Appellant was harmed by the AJ's interference, particularly by being prevented from taking the depositions of the agency's witnesses. That he could take no depositions meant that every question appellant asked of the agency's witnesses during the hearing necessarily violated the first rule of cross-examination – that one should never ask a question to which one does not know the witness's answer. Furthermore, one of the primary purposes of discovery is to prevent surprise, and appellant was surprised by Jones' hearing testimony about allegedly having warned

⁶¹Tr. p. 38, l.7.

⁶²Tr. p. 75, ll. 33 - 35.

appellant that he would be considered AWOL if he left the February 23, 2011 PDI, and was also surprised by Washington's hearing testimony that he did not consider the *Douglas* factors, which testimony contradicted Washington's statement in the decision letter. If appellant had had the opportunity to take their depositions he could have prepared for Jones' and Washington's testimony. Instead, appellant was ambushed.

G. The AJ failed to give proper instructions as to two affirmative defenses.

When an appellant raises an affirmative defense, the AJ must inform the appellant of the burdens and elements of proof necessary to establish that defense. *Sarratt v. U.S. Postal Service*, 90 M.S.P.R. 405, ¶ 12 (2001) (citing *Thompson v. Department of the Army*, 80 M.S.P.R. 245, ¶ 6 (1998)); *Clarke v. Office of Personnel Management*, 73 M.S.P.R. 435, 441 (1997). Here, the record shows that the AJ never properly informed the appellant of what he needed to prove to establish his claims: 1) that he had been subjected to intolerable working conditions, and 2) that the agency had violated the collective bargaining agreement when a second level supervisor initiated appellant's removal.. Thus, the appellant did not receive "a fair and just adjudication" of these affirmative defenses. *Milner v. Department of Justice*, 77 M.S.P.R. 37, 46 (1997).

H. The AJ wrongly concluded that appellant had not proven his affirmative defenses.

An appellant's removal may not be sustained if s/he can show harmful error in the application of the agency's procedures in arriving at its decision to remove her or him. 5 U.S.C. § 7701(c)(2)(A); *Romero v. Department of Defense*, 527 F.3d 1324, 1328-29 (Fed. Cir. 2008);

Rothlisberger v. Department of the Army, 111 M.S.P.R. 662, ¶ 14 (2009). An appellant bears the burden of proof to show harmful error by the agency in effecting an adverse action. *Henton v. U.S. Postal Service*, 102 M.S.P.R. 572, ¶ 15 (2006); 5 C.F.R. §_1201.56(c)(3). An agency error is harmful only where the record shows that the procedural error was likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. *Stephen v. Department of the Air Force*, 47 M.S.P.R. 672, 681, 685 (1991).

1. Summary removal without progressive discipline.

The AJ analyzed this affirmative defense as though appellant contended that his summary removal violated Board case law concerning progressive discipline. That was error, because appellant does not so contend. Instead, appellant contends that his summary removal violated the *collective bargaining agreement's* requirement that progressive discipline be employed for most charges. Furthermore, appellant contends that the parties to the collective bargaining agreement agree that the charges against appellant are part of the “most charges” that require application of principles of progressive discipline.

The best evidence of what a collective bargaining agreement means is the way the parties to the agreement act under it. In discovery appellant asked the agency to identify employees discharged for AWOL in a one year period, where the employee had 1) over 30 years of service, and 2) an unblemished record at the time of the removal. The agency identified appellant as the only employee who matched those criteria. Appellant also asked the agency to identify employees who had been given lesser discipline than removal for AWOL over a one year period. The agency identified hundreds employees who had been given letters of warning, seven-day

suspensions, and fourteen-day suspensions.⁶³ Witness Alton Branson corroborated the practices shown by the agency's answers.⁶⁴ Taken together, these are proof that the collective bargaining agreement requires that progressive discipline be used to address AWOL charges. And the agency violated the collective bargaining agreement by discharging appellant without first attempting lesser discipline.

The harm to appellant of the agency's violation of the collective bargaining agreement is obvious: In the absence of the violation the agency would have given appellant a letter of warning rather than removing him.

2. No PDI.

The NALC/USPS collective bargaining agreement provides that the agency may only issue discipline to letter carriers for "just cause."⁶⁵ NALC and the agency agree that before discipline is initiated against a letter carrier, just cause requires that the letter carrier must be given an opportunity to "tell his side of the story" as to the subject of the possible discipline.⁶⁶ The agency almost always discharges its duty to give a letter carrier an opportunity to tell his side of the story by conducting a predisciplinary interview.⁶⁷ During the predisciplinary interview the agency informs the letter carrier of the subject of the possible disciplinary action and asks for the

⁶³Exh. YY, Interrogatories Nos. 1 and 2.

⁶⁴Tr. p. 107 - p. 110.

⁶⁵Tab 36, Exh. JJJ, Request for Admissions, No. 1.

⁶⁶*Id.*, No. 2.

⁶⁷*Id.* No. 3.

carrier's side of the story.⁶⁸ On February 23, 2011 agency representative Antonio Jones conducted a predisciplinary interview with appellant.⁶⁹ The subject of the February 23, 2011 interview was AWOL from January 14, 2011 to February 16, 2011.⁷⁰ No discipline was ever issued to appellant for the absences that were the subject of the February 23, 2011 interview.⁷¹ (Therefore, the AJ's ruling that appellant waived the right to an interview by allegedly storming out of it on February 23rd is of no consequence.) By letter dated April 28, 2011 the agency proposed to remove appellant for being AWOL from February 24, 2011 – April 28, 2011.⁷² Before issuing the April 28, 2011 Notice of Proposed Removal, the agency did not conduct a predisciplinary interview with appellant to give appellant an opportunity to tell his side of the story as to the absences from February 24, 2011 through April 28, 2011 that were the subject of the notice.⁷³ The agency had conducted three other predisciplinary interviews with appellant in the two years preceding his removal. The agency did not issue discipline as to the absences that were the subject of those interviews.⁷⁴

The agency violated the collective bargaining agreement by initiating discipline without first giving the appellant a predisciplinary interview. That the violation was harmful is shown by

⁶⁸*Id.*, No. 4.

⁶⁹*Id.*, No. 16.

⁷⁰*Id.*, No. 17.

⁷¹AF, Tab 41, ¶ 91.

⁷²AF, Tab 9, subtab 4b.

⁷³Tab 36, Exh. JJJ, Request for Admissions, No. 20.

⁷⁴AF, Tab 41, ¶ 91.

the history of appellant's PDIs: When the agency conducts PDIs with appellant, it does not issue discipline. That history establishes a likelihood that if the agency had conducted a PDI concerning the absence from February 24, 2011 to April 28, 2011 it would have been dissuaded from removing appellant.

3. No effort to correct a situation.

Section 115.1 of the USPS M-39 Handbook, *Management of Delivery Services*, provides that "[t]he delivery manager must make every effort to correct a situation before resorting to disciplinary measures."⁷⁵ The record shows that the agency did not: adjust appellant's route so that he could carry it in eight hours, stop ordering appellant to work overtime every day in contravention of his physician's recommendations, pay appellant for the 64 hours of leave approved on January 13, 2011, pay appellant for the holidays he was cheated out of after September 2010, pay appellant for the time he missed as a result of the bogus suspension on July 29, 2010, stop blocking appellant's access to the grievance procedure, or correct any of the other violations appellant noted in his letters to Toatley⁷⁶ and to Jones.⁷⁷ As appellant wrote to Jones, his absence was due to intolerable working conditions. If the agency had corrected the intolerable conditions he would have returned to work. Had the agency done so, it would not have had to escalate the situation to a disciplinary action. Therein lies both the error and the harm.

⁷⁵AF, Tab 11, Exh. B.

⁷⁶AF, Tab 11, Exhs. F, G.

⁷⁷AF, Tab 11, Exh. E.

I. Appellant proved that he was subjected to intolerable working conditions.

Appellant contended that the absence for which he was removed should be considered a constructive suspension caused by intolerable working conditions, rather than AWOL. The AJ dismissed most of appellant's contention in a footnote on page 20 of the ID.

The following facts, all of which are established by appellant's declaration at Tab 41 of the AF, together with the citations below to case law, show that the AJ's cursory dismissal is far outside the mainstream of legal thought concerning the issue of intolerable working conditions:

1. A constructive adverse action for intolerable working conditions may be found on the basis of evidence that an employer deliberately sought to place an employee in a position that jeopardized his or her health. *See, e.g., Spence v. Maryland Cas. Co.*, 995 F.2d 1147, 1156 (2d Cir. 1993); *Meyer v. Brown & Root Construction Co.*, 661 F.2d 369, 371-72 (5th Cir. 1981). Here, the agency has taken health jeopardizing actions against appellant on several occasions: First, by sabotaging his attempts to get paid for annual and sick leave, thereby preventing him from obtaining needed cardiac medications. Second, by holding his route far out of adjustment for more than six years and by ordering him to work overtime every day while knowing that his physician had recommended that he not work overtime. Third, by keeping him without health insurance for several months, while refusing to communicate with him about the insurance, and otherwise sabotaging and delaying his efforts to reacquire insurance.

2. A constructive adverse action for intolerable working conditions may be found in part on the basis of evidence that an employer suggested or encouraged an employee to resign. *Clowes v. Allegheny Valley Hospital*, 991 F.2d 1159, 1161 (3d Cir.), cert. denied, 510 U.S. 964 (1993). In his letter to appellant dated January 31, 2011 Antonio Jones included a resignation

form.

3. A constructive adverse action for intolerable working conditions may be found on the basis of evidence that an employer reduced an employee's rate of pay with a discriminatory intent *J.P. Stevens & Co. v. NLRB*, 461 F.2d 490, 494 (4th Cir. 1972). Here the agency reduced appellant's pay by about 4% by failing and refusing to pay him for five holidays after September 2010 although required by the collective bargaining agreement to make the payments, and although it made the payments to 200,000 other letter carriers.

4. A constructive adverse action for intolerable working conditions may be found on the basis of evidence that an employer attempted to set an employee up on a false charge. *Suders v. Easton*, 325 F.3d 432 (3d Cir. 2003). Here Sterling Colter and Brandon Toatley attempted to set appellant up on a false charge of AWOL by: First, telling appellant on July 29, 2010 that he was suspended, second, by telling him on August 4, 2010 that he had not been suspended, and, third, telling him when he returned to work that he had been AWOL since July 29, 2010.

5. A constructive adverse action for intolerable working conditions may be found, in part, on the basis of evidence that an employer socially ostracized an employee. *Sharp v. City of Houston*, 164 F.3d 923, 934 (5th Cir. 1999). Here the agency has engaged in a long-standing pattern of refusal to communicate with appellant. Notable examples of management silence include, but are not limited to: Antonio Jones' failure to answer appellant's February 8, 2011 letter, Steve Furgeson's failure to comply with the administrative judge's order to notify appellant when the agency believed it had restored him to the status quo ante after the 2009 suspension, Steve Furgeson's and Brian Fletcher's failures to answer appellant's April 2010 emails concerning his health benefits, Brandon Toatley's failure to answer appellant's May 2009

and February 2010 letters, and Bill French's and Sterling Colter's failure to respond to appellant's communications concerning the address to which he should send his response to the April 2011 notice of proposed removal.

6 A constructive adverse action for intolerable working conditions may be found on the basis of evidence that an employer made a threat of disciplinary action that the agency knows is not sustainable. *Schultz v. United States Navy*, 810 F. 2d 1133, 1136 (Fed. Cir. 1987). Here, on August 12, 2010 Sterling Colter publicly threatened to fire appellant if he brought back undelivered mail to the station. Appellant brought back undelivered mail that day, as he had on every day since May 2010, and as he continued to do every day for the remainder of 2010. No disciplinary action was ever taken against appellant for bringing back undelivered mail. That is because bringing back undelivered mail, without more, does not provide cause for disciplinary action.

7. Evidence of a lack of recourse within an employer's organization can contribute to a case for constructive adverse action for intolerable working conditions. *Howard v. Burns Brothers, Inc.*, 149 F.3d 835, 842 (8th Cir. 1998). Similarly, "[i]f an employee [absents herself] because she reasonably believes there is no chance for fair treatment, there has been a constructive [adverse action]." *Kimzey v. Wal-Mart Stores, Inc.*, 107 F.3d 568, 574 (8th Cir. 1997). Here the agency has blocked appellant's access to the collectively-bargained-for grievance procedure for more than four years, and for years before that refused to honor the settlements it entered into of grievances appellant had asked the union to pursue. For appellant, filing grievances has been an almost completely futile endeavor.

8. The effect of a number of adverse conditions in the workplace is cumulative. A

constructive [adverse action] occurs if a reasonable person subjected to the same conditions as the plaintiff would have felt compelled to step down. Because a reasonable person encounters life's circumstances cumulatively and not individually, it is error to treat the various conditions as separate and distinct rather than additive. *Chertkova v. Connecticut General Life Insurance Co.* 92 F.3d 81 (2nd Cir. 1996).

(Please note that the AJ wildly misstates the law concerning voluntariness.)

J. Neither the deciding official nor the AJ properly considered the *Douglas* factors.

In the decision letter Paris Washington contended that he considered some of the *Douglas* factors, but did not address them in any meaningful way. At the hearing Washington shifted his position and repeatedly testified that he based his decision on just two factors: 1) That appellant was charged with AWOL, and 2) That appellant had not contacted him about the removal. The latter is clearly improper. The opportunity to respond to disciplinary charges is a legal right – it is not a legal obligation. If the agency wanted to use failure to contact the deciding official as an aggravating factor it should have so notified appellant. The AJ's consideration of the *Douglas* factors was no more meaningful than the deciding official's. Particularly inexplicable was the failure of either the AJ or the deciding official to even mention appellant's working conditions. (As it turned out the deciding official had not even read appellant's February 8, 2011 constructive suspension letter to Jones,⁷⁸ although it was part of the disciplinary file. Neither the proposing official – French – nor the concurring official – Colter – had bothered to read the letter, either.⁷⁹) Even assuming, *arguendo*, that appellant's working conditions did not rise to the level of

⁷⁸T. 94, ll. 6 -10.

⁷⁹Tr. 69, ll.13-17 (French); Tr. 48, ll.32 -35 (Colter).

intolerability, holding appellant's route far out of adjustment, ordering appellant to work overtime every day in contravention of his physician's recommendations, stiffing appellant for the 64 hours of leave approved on January 13, 2011, cheating appellant out of holiday pay after September 2010, trying to set appellant up for false disciplinary charges in July 2010, and blocking appellant's access to the grievance procedure for four years certainly qualify as "unusual job tensions" as that term is used in *Douglas*, and they should have been considered by somebody in mitigation.

III. Conclusion.

For the agency's failure to prove its charges, and for any of appellant's affirmative defenses, the Board should reverse the agency's removal of appellant and order that he be returned to the status quo ante. For any of the other errors, the Board should remand the case to the Regional Office for processing anew before a different administrative judge.

Respectfully submitted,

/s/David W. Noble, Jr.

David W. Noble, Jr.
dwnoble@gmail.com
240.477-7256

I certify that on February 21, 2012 I sent Petition for Review and Transcript of the 11/4/2011 hearing by fax to to Stephen W. Furgeson at 301.955-0701.

/s/David W. Noble, Jr.

David W. Noble, Jr.

Transcript of November 4, 2011 Hearing

1 Judge Turbitt: Good morning, today's date is November 4, 2011. The Merit Systems Protection
2 Board has before it the appeal of David W Noble, Jr. versus the U.S. Postal Service MSPB
3 docket number DC-0752-11-0880-I-1 from the action of the U.S. Postal Service which removed
4 Mr. Noble from his level 5 city carrier position effective July 22, 2011. A person making such an
5 appeal is entitled to a hearing before a board official. My name is Daniel Turbitt. I've been
6 delegated the authority to act as the administrative judge in these proceedings. The appellant is
7 appearing pro se or on his own behalf today, and the agency is represented by Mr. Steve
8 Ferguson. A person making such an appeal is entitled to a hearing before a board official, and we
9 will proceed today with the hearing. The purpose of this hearing is to provide both parties with
10 an opportunity to ask questions, to cross-examine witnesses, and to make representation in
11 support of their respective views. During two pre-hearing conferences on this matter I approved
12 witnesses, I identified the issues in this case, and the parties I don't believe came to any
13 stipulations, is that correct?

14
15 Stephen W. Furgeson: That's correct your honor.

16
17 Judge Turbitt: Okay. The parties are informed that opening and closing statements will not be
18 necessary. Before we go to the first witness, are there any procedural matters?

19
20 Stephen W. Furgeson: Your honor, I just want to be clear. The original agency file was sent on 7
21 September, there were some mistakes in the table of contents. I re-sent that on the 23rd with the
22 right contents, I want to make sure it that you've got the revised.

23
24 Judge Turbitt: When did you send the revised one sir?

25
26 Stephen W. Furgeson: Along with the pre-hearing submission on 23 September.

27
28 Judge Turbitt: Okay I got your pre-hearing submissions on September 23.

29
30 Stephen W. Furgeson: Yeah it was attached to that as well.

31
32 Judge Turbitt: Okay well I have received that information. Is that what you mean?

33
34 Stephen W. Furgeson: Yes you received the new revised file. The revised agency file that was
35 originally sent on the 7th. If not I've got them here just want make sure we're playing from the
36 same sheet of music.

37
38 Judge Turbitt: Okay, what I received from you, sir, on the 7th was your response to the
39 acknowledgment order and to the appeal. And then on the 23rd I received your pre-hearing

1 submissions.
2
3 Stephen W. Furgeson: And a revised. The response was revised because it did not match. The
4 table of contents I notice did not match what I sent on the 7th with the exhibits.
5
6 Judge Turbitt: So looking at what we have on the...
7
8 Stephen W. Furgeson: There were three pre-hearing submission exhibits and then there were
9 several exhibits and tabs for a through 4H.
10
11 Judge Turbitt: Okay, have a couple of copies all of them going up to 4H.
12
13 Stephen W. Furgeson: And again that was revised and resubmitted to match up with the table of
14 contents on the 23rd.
15
16 Judge Turbitt: Okay.
17
18 Stephen W. Furgeson: And also I noticed that I submitted lately like yesterday or the day before I
19 withdrew exhibit 3 from the pre-hearing submission.
20
21 Judge Turbitt: Okay
22
23 Stephen W. Furgeson: I also, Tab 4H. I didn't have at the time I submitted it I didn't have the
24 signature page of that two-page letter. And I sent that to replace tab 4H. My apologies for
25 confusion but I just wanted to make sure that we're working from the same sheet of music here
26 so to speak.
27
28 Judge Turbitt: Okay I received that. Mr. Noble did you receive that?
29
30 David W. Noble, Jr.: I'm sorry did I receive what?
31
32 Judge Turbitt: The two things that Mr. Ferguson just mentioned. The first one in the pre-hearing
33 submissions response and then when he submitted, I think you submitted it yesterday. It was a
34 revision to tab 4H of the agency's exhibits.
35
36 David W. Noble, Jr.: Well, I got some material from Mr. Ferguson, haven't had a chance to look
37 at it yet.
38
39 Stephen W. Furgeson: I sent it to him. I sent him the copies of the 23rd. I also sent him yesterday,
40 he said he didn't receive the missing page so I re-sent it to them with the missing page.
41
42 Judge Turbitt: All right, is there anything else Mr. Ferguson?
43

1 Stephen W. Furgeson: Not from me right now, no
2
3 Judge Turbitt: Mr. Noble
4
5 David W. Noble, Jr.: I printed out a lot of material that was in the repository yesterday, and came
6 up with some miscellaneous materials that belong to other cases.
7
8 Judge Turbitt: and where, you got this and what repository sir?
9
10 David W. Noble, Jr.: the electronic repository that may be accessed online by litigants.
11
12 Judge Turbitt: I don't know. I'll have someone take a look at this.
13
14 David W. Noble, Jr.: Okay one of them was in the section labeled for a document I had
15 submitted. And properly labeled. And the document that I had submitted was not in the electronic
16 repository.
17
18 Judge Turbitt: Okay I know that my staff has said that you have been calling after each time you
19 have faxed something. Did you call them and go through each page as well with this?
20
21 David W. Noble, Jr.: No but this is something I submitted way back a month ago on October 7.
22 And at one time it was in the electronic repository -- it's been replaced by one of those
23 documents.
24
25 Judge Turbitt: Okay so this is what will say instead of this document we have these documents.
26
27 David W. Noble, Jr.: Or one of those documents at least.
28
29 Judge Turbitt: Mr. Ferguson why don't you. Does Mr. Ferguson have a copy?
30
31 Stephen W. Furgeson: I don't know what you've been talking about, sorry.
32
33 Judge Turbitt: All right.
34
35 Stephen W. Furgeson: I don't recall it. He probably sent it to me but I just don't recall it now. I
36 don't know if I have it at the moment.
37
38 Judge Turbitt: Okay we're back on the record. I've just provided a copy of what Mr. Noble
39 provided to me. Let the record reflect it is what is at Tab 18 of the file. And this is Mr. Noble's
40 response to me. I have a correct copy in my file. I accessed it, my staff accessed it through the E-
41 filing system. I thought this did look familiar to me. This is your response to the harmful error
42 allegation on providing me with specific rules and regulations and procedures.
43

1 David W. Noble, Jr.: Yes.
2
3 Judge Turbitt: I have a copy already. Just let the record reflect it is on Tab 18. And I don't have
4 the other thing that you submitted, but I have my staff taking a look at it now to make sure that
5 your stuff is correctly in there.
6
7 David W. Noble, Jr.: Okay, thank you. Is it the judge's intention to close the record at the end of
8 the hearing?
9
10 Judge Turbitt: Correct. Yes.
11
12 David W. Noble, Jr.: Okay. Well, I have a couple of brief motions I'd like to present before the
13 close of the record..
14
15 Judge Turbitt: Okay, one thing, you don't have to stand up you may remain seated.
16
17 David W. Noble, Jr.: I've gotten into the habit of standing up so...
18
19 Judge Turbitt: Okay, and I'm letting you know you don't have to.
20
21 David W. Noble, Jr.: I understand.
22
23 Judge Turbitt: Okay. So you have some motions. Go ahead.
24
25 David W. Noble, Jr.: Okay. First concerns the interrogatory responses that the agency provided
26 on Tuesday -- their exhibit YY in the package of exhibits that I sent yesterday. And I have three
27 problems with the interrogatory responses. The first is that the interrogatories were not answered
28 under oath. The second is that the response to interrogatory number two is incomplete. And the
29 third is that the Postal Service didn't answer the question I posed as interrogatory number one but
30 instead answered a somewhat related question. I move therefore that the judge order the Postal
31 Service to provide a revised response to interrogatories number one and two, to answer the
32 specific question that I posed under interrogatory number one, to give a complete answer to
33 interrogatory number two, and to answer both of those interrogatories as well as interrogatory
34 number nine under oath.
35
36 Judge Turbitt: Mr. Ferguson? I meant to do this but let me interrupt for one second. I notice that
37 there are two individuals in the hearing. These are public proceedings. I would just like you to
38 identify yourselves please.
39
40 Zachary Noble: Zach Noble
41
42 Judge Turbitt: Okay.
43

1 Michelle Ahearn: Michelle Ahearn.

2
3 Judge Turbitt: Okay, again these proceedings are public. You are welcome to attend them
4 however you're not allowed to discuss the testimony that you hear from the witnesses until after
5 this hearing is ended. You cannot discuss it even amongst yourselves. You have to keep it to
6 yourself, wait till the hearings over, and then you can talk about it. Okay? Is that clear? Thank
7 you. Mr. Ferguson would you please respond to the appellant.

8
9 Stephen W. Furgeson: I believe we responded. I'm not sure exactly what he saying is deficient.

10
11 Judge Turbitt: Okay. Were your responses under oath?

12
13 Stephen W. Furgeson: They were not under oath.

14
15 Judge Turbitt: Let's take a look at them. Okay what about number two. He says it's incomplete.
16 Why don't you state what the interrogatory is. Let's go one at a time. Interrogatory number one in
17 the record. What don't you state what it is, Mr. Noble?

18
19 David W. Noble, Jr.: Interrogatory number one asked the Postal Service to identify any and all
20 city letter carrier employees of the Washington DC post office who have been removed since
21 January 1 '06 that's as modified by the judge, based on a charge or charges of unsatiStephen W.
22 Furgesonactory attendance, excuse me that's not as modified by the judge.

23
24 Judge Turbitt: I believe I modified it to one year.

25
26 David W. Noble, Jr.: Right. Based on a charge or charges of unsatisfactory attendance and/or
27 AWOL and who had at the time of the removal was taken: a. 30 or more years of postal
28 employment and b. An unblemished disciplinary record. Rather than answering that
29 interrogatory, which would have apparently identified only me, the Postal Service identified four
30 letter carriers who had been removed for AWOL none of whom had 30 or more years of service
31 and none of whom had an unblemished disciplinary record at the time the discipline was taken.

32
33 Judge Turbitt: Okay. Mr. Ferguson are you willing to state on the record that the Postal Service
34 for the time period in question for the region in question has not removed another individual for
35 the same type of offenses that was charged against Mr. Noble for an individual who occupied the
36 same position who has more than 30 years of service?

37
38 Stephen W. Furgeson: That's the information I have. I'm willing to stipulate that was
39 information provided to me. I didn't search it personally. But again, I think one of our concerns is
40 the lack of time for me to follow up and verify this with people. That oath was just not possible.
41 I'm willing to stipulate that this is the information that was provided, as far as I know there are
42 no other employees that were similarly situated to Mr. Noble who had more than 30 years of
43 service and an unblemished record who were terminated.

1 Judge Turbitt: Okay are you willing to state that under oath to the best of your knowledge?
2
3 Stephen W. Furgeson: To the best of my knowledge.
4
5 Judge Turbitt: Okay your request for interrogatory one I believe has now been satisfied so let's
6 move onto number two. You said it was incomplete.
7
8 David W. Noble, Jr.: Interrogatory number two asked the Postal Service to identify employees
9 who had been charged with the same offense as AWOL as the appellant within the last year and
10 who had been given discipline less than removal, and the Postal Service has provided a list that
11 runs alphabetically a through F and the remainder of F after Faitog to Z is not included.
12
13 Stephen W. Furgeson: I did provide him yesterday with the rest of the list that we had, I sent to
14 them by e-mail. We use the discipline log – does the best we could do, we pulled the discipline
15 log and identified clerks and letter carriers and we provided that to him.
16
17 Judge Turbitt: Did you receive a copy of that yesterday Mr. Noble?
18
19 David W. Noble, Jr.: I received a copy of it. It was difficult to read because...
20
21 Judge Turbitt: Mr. Ferguson do you have an original?
22
23 Stephen W. Furgeson: I'm trying to remember I thought I brought a copy I don't see it right now.
24
25 Judge Turbitt: And Mr. Noble received a copy of the one that you have that you receive from the
26 agency? This is what he received from the agency?
27
28 David W. Noble, Jr.: Yes.
29
30 Stephen W. Furgeson: Can I see that your honor?
31
32 Judge Turbitt: This is clear as a bell. I'd understand.
33
34 David W. Noble, Jr.: It only runs through F.
35
36 Judge Turbitt: Okay, but the one that you're missing. What is the one that you said is unclear?
37
38 David W. Noble, Jr.: This is what's missing – from F to Z.
39
40 Judge Turbitt: Okay, and that's what I'm asking for, sir. Do you have a copy of that one?
41
42 David W. Noble, Jr.: Oh. I have a copy and I looked at it for some time yesterday. It didn't
43 appear to be the end of this list.

1 Judge Turbitt: Can I please see that? That's what we're looking for right now.

2
3 David W. Noble, Jr.: Okay. I'm sorry. I don't have that with me.

4
5 Stephen W. Furgeson: I thought I included it. At the moment your honor it escapes me, but I did
6 send a copy and I thought I brought a copy with me but I don't see it at the moment. What it
7 included, it was a discipline log we had for attendance, and it had the mail handlers clerks and
8 letter carriers and it showed the discipline.

9
10 Judge Turbitt: Okay. I'm directing you to resend that list to the appellant at the end of this
11 hearing today.

12
13 Stephen W. Furgeson: Okay, I did send it.

14
15 Judge Turbitt: Just resend it and I want you to send as clear a copy as you can.

16
17 Stephen W. Furgeson: I will if given the time. I'll just go ahead and mail it as well as e-mail it to
18 him.

19
20 Judge Turbitt: That'd be great. Okay, Mr. Noble that should take care of your second
21 interrogatory. And would you state under oath Mr. Ferguson that to the best of your knowledge
22 that list is complete?

23
24 Stephen W. Furgeson: To the best of my knowledge, your honor. Within the limited time frames
25 we were given, and yes I do have a copy. Here it is right here.

26
27 Judge Turbitt: Okay. Why don't you give that to Mr. Noble. Mr. Noble can you read that?

28
29 David W. Noble, Jr.: Yeah. This isn't the way it came through

30
31 Judge Turbitt: All right. Mr. Ferguson please give me a copy of that, I will make a copy of that
32 right now and give it to Mr. Noble. We will go off the record for one second. Okay we're back on
33 the record. Okay we have now answered interrogatory number two. Okay and then you said you
34 had a concern with number nine.

35
36 David W. Noble, Jr.: Only that it wasn't answered under oath your honor.

37
38 Stephen W. Furgeson: Okay we will, your honor, to the best my belief or knowledge this is an
39 accurate statement for number nine.

40
41 Judge Turbitt: Okay. All right. That takes care of that motion you said you had another motion
42 Mr. Noble?

43

1 David W. Noble, Jr.: Yeah. I have two more brief motions, your honor. However I'd like to get
2 this appended I guess to Exhibit YY so that we have a complete record.

3
4 Judge Turbitt: Okay do you have an objection Mr. Ferguson to appending this to what you just
5 copied?
6

7 Stephen W. Furgeson: Yeah. I haven't seen -- I don't know what he's talking about. The only
8 exhibits I have is what was approved prior to this I don't know of any other exhibits. But I have
9 no objection to appending to whatever he has.
10

11 Judge Turbitt: Okay your request is granted. This has now been appended to exhibit YY. Mr.
12 Noble?
13

14 David W. Noble, Jr.: Second motion is as I indicated yesterday, I would like to add an affirmative
15 defense, namely that the removal action was initiated by a higher-level supervisor rather than by
16 my immediate supervisor.
17

18 Judge Turbitt: Okay. I did receive something yesterday that said you wanted to add an additional
19 affirmative defense, you didn't really say what that was, are you now clarifying for the record
20 what that affirmative defense is?
21

22 David W. Noble, Jr.: Yes.
23

24 Judge Turbitt: Okay. You believe that Antonio Jones was in fact the actual deciding official is
25 that correct?
26

27 David W. Noble, Jr.: That's what I understand from the discovery material the Postal Service
28 provided to me yesterday.
29

30 Judge Turbitt: Okay. That is added as an additional affirmative defense. Any objection Mr.
31 Ferguson?
32

33 Stephen W. Furgeson: Yeah. I don't believe that's a proper affirmative defense. I don't think
34 there's any...
35

36 Judge Turbitt: Yeah. We'll find out if Mr. Jones acted inappropriately in any way, shape, or form
37 in terms of assessing what decision to impose in this case, and whether Mr. Jones interposed
38 himself in terms of the penalty, and whether there was a due process violation. Okay?
39

40 Stephen W. Furgeson: Okay.
41

42 Judge Turbitt: Go ahead.
43

1 David W. Noble, Jr.: The last motion is to order the Postal Service to cancel the removal action
2 as a sanction for what are obviously false responses to the interrogatories I submitted on October
3 14. The answers to which -- the Postal Service claims that none of four witnesses -- Jones,
4 Washington, French, and Colter can remember anything about the substance of what they said to
5 each other about the removal in calendar year 2011.

6
7 Judge Turbitt: Mr. Ferguson?

8
9 Stephen W. Furgeson: Your honor, we provided accurate responses. They did recall having
10 discussions, they did indicate that they recalled the procedural issues that was going forward but
11 beyond the substantive issues of discussing anything the case they have no more recollection than
12 what they had, and that's what we provided.

13
14 Judge Turbitt: Okay the appellant's request that the agency be sanctioned by reversing the
15 removal action is denied. So I granted the appellant's first motion this morning regarding all of
16 the interrogatories, I granted the appellant's second motion this morning regarding the additional
17 affirmative defense and I just denied the appellant's motion for sanctions. Is there anything else
18 before we go forward with the testimony of the witnesses?

19
20 David W. Noble, Jr.: Yes your honor.

21
22 Judge Turbitt: Okay. You said you had three motions. First you said you had a couple, and then
23 you had three.

24
25 David W. Noble, Jr.: I don't have any more motions.

26
27 Judge Turbitt: Okay.

28
29 David W. Noble, Jr.: I just have a question. In the order of the second pre-hearing conference,
30 you ordered the Postal Service to come up with a couple of stipulations, and I am most interested
31 in the one about payment for the five holidays.

32
33 Judge Turbitt: Okay. Mr. Ferguson I did directly ask you to...

34
35 Stephen W. Furgeson: I thought it was just for the one holiday, but we did indicate that our
36 records show that he was paid for, my record is it's the Veteran holiday.

37
38 David W. Noble, Jr.: I understood it to be for all five holidays, your honor.

39
40 Stephen W. Furgeson: I wrote it down as one.

41
42 Judge Turbitt: Okay. Let me see what I said. Okay where is this in the pre-hearing conference
43 summary, Mr. Noble? It is rather lengthy.

1 Stephen W. Furgeson: The second one is it?
2
3 Judge Turbitt: What pages is that? What page is that?
4
5 Stephen W. Furgeson: I'm trying to find it. I'm sure Mr. Noble is too.
6
7 Judge Turbitt: My summary for the second pre-hearing conference is about 20 pages long so...
8
9 Stephen W. Furgeson: I think it might be page 13. I may be wrong.
10
11 David W. Noble, Jr.: Yeah. It's the second half of page 13 and the top half of page 14.
12
13 Judge Turbitt: Okay. I instructed both parties to submit a joint stipulation on whether the agency
14 paid the appellant either holiday pay or any other type of pay, for the four specific holidays listed
15 in the interrogatory. So Mr. Noble, it wasn't just the agency, it was both parties, it was a joint
16 stipulation, what was your proposed stipulation as to the four holidays Mr. Noble?
17
18 David W. Noble, Jr.: That the Postal Service didn't pay me for any of the holidays, and that the
19 reason the Postal Service didn't pay me was that...
20
21 Judge Turbitt: No. We only have the stipulation not a reason behind. All we have is -- I need a
22 stipulation on whether the agency did or did not pay you holiday pay, and if not what type of pay
23 it was for those four specific holidays listed in the interrogatory.
24
25 David W. Noble, Jr.: My joint stipulation would be that the Postal Service didn't pay me for any
26 of the holidays.
27
28 Judge Turbitt: Okay and you received no pay?
29
30 David W. Noble, Jr.: Correct.
31
32 Judge Turbitt: You were unpaid for those four holidays?
33
34 David W. Noble, Jr.: Correct.
35
36 Judge Turbitt: Okay. Mr. Ferguson?
37
38 Stephen W. Furgeson: Yeah. I'm not prepared to stipulate to this. I can do it if given some time
39 but today I cannot stipulate to this. I think I maybe misread it or misunderstood, I think I only
40 looked at the Veterans' holiday I think that we claim he was paid but I'm not absolutely certain.
41 So I would have said more time to verify that.
42
43 Judge Turbitt: Okay you did find out for the Veterans' holiday?

1 Stephen W. Furgeson: Your Honor I can't remember. I think we said we paid him.

2
3 Judge Turbitt: But that wasn't one of the four holidays. The holidays were Columbus Day,
4 Thanksgiving, Christmas holiday in 2010, and New Year's holiday in 2011. There's no Veterans'
5 Day even mentioned for interrogatory number 12.

6
7 Stephen W. Furgeson: I'm not sure how I -- I did not talk to Mr. Noble about it, he did not call
8 me about stipulating and I did not follow through on verifying it.

9
10 Judge Turbitt: Okay both parties did not follow my instructions on that. As to my ruling on
11 interrogatory number 12 I requested both parties to file a joint stipulation, that obviously didn't
12 happen.

13
14 Stephen W. Furgeson: You're right your honor.

15
16 Judge Turbitt: So I will allow both parties an opportunity at some point during the break, and Mr.
17 Ferguson if you can get somebody from HR, I mean this should've been done already. If we can
18 get somebody to give us the information prior to the end of this hearing that would be good. The
19 next break I want you to call HR and I want to find out what the agency has for the records for
20 the four days: Columbus Day, Thanksgiving, Christmas holiday in 2010, and New Year's holiday
21 in 2011. My understanding Mr. Noble is that those are for four days, the Christmas holiday is just
22 for December 25 in other words it's not for other days in or around December 25 is that correct?

23
24 David W. Noble, Jr.: Yes.

25
26 Judge Turbitt: Okay. Is that understood? Are both parties now clear about what it is that I
27 instructed them to do?

28
29 Stephen W. Furgeson: Your honor it's clear. I can assure you -- I can't speak for Mr. Noble -- I
30 can assure you it was not intentional. It's easily something when given time we needed to do.
31 However in all the flurry of activity things get missed.

32
33 Judge Turbitt: Okay now missed snow was brought up again so we are going to try and remedy
34 that. Mr. Noble do have any evidence to support your belief that you did not receive pay for any
35 of those four days?

36
37 David W. Noble, Jr.: Only my sworn testimony.

38
39 Judge Turbitt: No. Do you have anything other than that?

40
41 David W. Noble, Jr.: No.

42
43 Judge Turbitt: Okay. Give a pay stub that would indicate that he received X amount of money for

1 that period of time you work. For example do you have a worksheet that shows how many hours
2 you worked that week and then a pay stub that would reflect how much money you received for
3 that same week?
4

5 David W. Noble, Jr.: Not that I have ready access to, your honor.
6

7 Judge Turbitt: Okay that is something that you can get. I'm sure you have access to your own pay
8 stubs and you have access to your own timesheets so while Mr. Ferguson will be calling HR to
9 get that information I expect you to be getting that information as well so that both parties can
10 file the joint stipulation as directed back on August 20, 2011. Okay is there any other objection or
11 comment Mr. Noble?
12

13 David W. Noble, Jr.: Just to clarify your honor, while I have appeared before the MSPB before I
14 am certainly not an expert in MSPB procedures and I want to make certain that I object when it is
15 appropriate to do so and that I not object when it's not necessary for me to do so. In order for me
16 to preserve my rights on appeal do I need to object to the judge's ruling on the sanction for false
17 responses to the interrogatories?
18

19 Judge Turbitt: You can do it on the record right now, go ahead.
20

21 David W. Noble, Jr.: I object to the judges ruling on that motion.
22

23 Judge Turbitt: And I've already done that for you in my order that I issued yesterday, and
24 everything else that you've been objecting to, on all of the motions and all of the objections I
25 have stated that you have a standing objection on anything that I've ruled against you so far. I
26 know that most of the things I've granted in terms of your motions for motions to compel and
27 I've granted most of your motions to postpone but in anything that I ruled not in your favor I've
28 written for the record your standing objection. You now have made an objection for the record as
29 to the ruling I just made denying, I granted three of your motions this morning I believe and I
30 denied I'm sorry I granted two of your motions this morning and then I denied one. Your
31 objection is noted.
32

33 David W. Noble, Jr.: Thank you.
34

35 Judge Turbitt: Is there anything else?
36

37 David W. Noble, Jr.: No, your honor.
38

39 Judge Turbitt: Mr. Ferguson?
40

41 Stephen W. Furgeson: You're just granting as far as the holiday whether he was paid or not that's
42 just as a response to discovery you're not admitting that necessarily into evidence at this point is
43 that correct?

1 Judge Turbitt: I'm not admitting what? I'm not sure. I'm sorry
2
3 Stephen W. Furgeson: You've instructed us to find out whether he was paid or not paid for
4 Columbus Day, Thanksgiving Day, Christmas Day of 2010 and New Year's holiday which was
5 in your instruction that we were to come up with a joint stipulation. I'm understanding that those
6 things are not admitted necessarily as relevant evidence at this point.
7
8 Judge Turbitt: I don't know, honestly. I don't know if there are relevant or not. I thought quite
9 frankly I thought it would be something that could be easily rectified. We could find out very
10 quickly from records, it wasn't that long ago it was less than a year ago, I thought we could go to
11 HR pick up the phone and say would you please take a look at Mr. Noble's records and see if he
12 did work on these for days, and if he did work on these for days is there evidence about what he
13 was paid. It didn't seem like it was going be that difficult
14
15 Stephen W. Furgeson: It should not be your honor. We'll try and work on it.
16
17 Judge Turbitt: Okay.
18
19 David W. Noble, Jr.: Just to clarify your honor, the issue is not whether I worked on the holiday
20 and got paid for it, the issue is whether I didn't work on the holiday, which I didn't, and didn't
21 get holiday leave pay for which I was eligible.
22
23 Judge Turbitt: Okay. So you believe that you are entitled to receive pay for four days that you did
24 not work?
25
26 David W. Noble, Jr.: Correct.
27
28 Judge Turbitt: Okay and you are stipulating that you did not work on any of those four days?
29
30 David W. Noble, Jr.: Correct.
31
32 Judge Turbitt: So we don't need to look at whether he was working on those days or not. We
33 have the stipulation that he did not work on those days. And you believe that this was covered by
34 the collective bargaining agreement, is that correct Mr. Noble?
35
36 David W. Noble, Jr.: Yes, your honor.
37
38 Judge Turbitt: Okay, well, can you provide a provision of the collective bargaining agreement
39 that specifically states that?
40
41 David W. Noble, Jr.: I believe that's in Exhibit A page 4
42
43 Judge Turbitt: Okay and what does it state?

1 David W. Noble, Jr.: It states in Article 11, Section 2 to be eligible for holiday pay an employee
2 must be in pay status the last hour of the employee's scheduled workday prior to or the first hour
3 of the employee's scheduled work day after the holiday. And I was in a pay status either the last
4 hour of the previous day or the first hour of the next scheduled day for each of those for holidays
5

6 Judge Turbitt: Mr. Ferguson?
7

8 Stephen W. Furgeson: Well that's the contractual language. It is what it is. This goes to whether
9 or not he filed grievances on it and maybe we did violate, I don't know, I have no idea, but I'm
10 not sure it has any relevance here nevertheless we can certainly find out if he is paid or not
11 whether we've violated the contract or not is something that's a factual issue that may or may not
12 have already been appealed through the grievance process and an arbitration status so I can't
13 really comment any further.
14

15 Judge Turbitt: Have you grieved this? I know that you have filed a number of grievances, Mr.
16 Noble. I know that they've gone through the court system some of them. Did you file a grievance
17 and I know that you filed appeals to the board on your holiday pay. Was that the specific
18 holidays as well the ones that were dismissed for lack of jurisdiction? There was a case dismissed
19 for lack of jurisdiction.
20

21 David W. Noble, Jr.: The case that was dismissed for lack of jurisdiction...
22

23 Judge Turbitt: There were several. There is more than one.
24

25 David W. Noble, Jr.: ...involved the first three of the five holidays, so Columbus Day, Veterans'
26 Day, Thanksgiving Day. It didn't include Christmas and New Year's Day.
27

28 Judge Turbitt: Are you asking me to interpret the collective bargaining agreement to find out
29 whether you were or were not properly paid for these days? Let me back up did you file a
30 grievance on that sir?
31

32 David W. Noble, Jr.: I tried to file grievances.
33

34 Judge Turbitt: That would be the proper avenue of address.
35

36 David W. Noble, Jr.: Your honor it's slightly more complicated than that. In exhibit J...
37

38 Judge Turbitt: You know what? I'm not going down this side road. I have a removal action
39 before me, I'm not going to get into the holiday pay, I've asked you both to stipulate to it, I'm
40 going to receive the stipulation whatever it is passed to this matter. I don't need to spend a lot of
41 time on this, it's for holidays. What I have before me are witnesses ready to testify about the
42 removal action in this case, I'm not going to hear any more information. You made an objection
43 as to this matter. You accuse the agency of not filing a stipulation in violation of my order. That

1 was a misstatement about what I said. What I said was that both parties had to come up with the
2 joint stipulation, so both parties are in violation of my order, both parties need to fix that I'm not
3 spending any more time on it. You're both in violation of my order to come up with a joint
4 stipulation on this issue. I'm not spending time at the hearing discussing why you violated my
5 order. Come up with the stipulation as I ordered you to do on October 20. Please sit down and
6 let's move to the testimony of the hearing. Are you Mr. Jones?

7
8 Antonio Jones: Yes sir I am.

9
10 Judge Turbitt: Ah yes, good morning Mr. Jones. Before we proceed with your testimony I need to
11 ask you whether you have an objection to taking an oath?

12
13 Antonio Jones: No I don't.

14
15 Judge Turbitt: Okay please stand and raise your right hand and repeat after me. I state your name
16 sir.

17
18 Antonio Jones: I Antonio Jones.

19
20 Judge Turbitt: Do solemnly swear.

21
22 Antonio Jones: Do solemnly swear.

23
24 Judge Turbitt: To tell the truth.

25
26 Antonio Jones: To tell the truth.

27
28 Judge Turbitt: The whole truth.

29
30 Antonio Jones: The whole truth.

31
32 Judge Turbitt: And nothing but the truth.

33
34 Antonio Jones: And nothing but the truth.

35
36 Judge Turbitt: So help me God.

37
38 Antonio Jones: So help me God.

39
40 Judge Turbitt: Thank you, sir, please be seated. Mr. Ferguson your witness.

41
42 Stephen W. Furgeson: Mr. Jones what's your current position with the Postal Service?

1 Antonio Jones: Supervisor of distribution operations.
2
3 Stephen W. Furgeson: Okay and was there a time when you were in acting position at Friendship
4 Station?
5
6 Antonio Jones: Yes there is.
7
8 Stephen W. Furgeson: And when was that?
9
10 Antonio Jones: January 22 through April 15, 2011.
11
12 Stephen W. Furgeson: And what was your position there?
13
14 Antonio Jones: Acting station manager.
15
16 Stephen W. Furgeson: Okay, and you know the complainant?
17
18 Antonio Jones: Yes I do.
19
20 Stephen W. Furgeson: Okay and was he an employee there at that office?
21
22 Antonio Jones: Yes.
23
24 Stephen W. Furgeson: Now on or about January of 2011 was the appellant at work during that
25 period?
26
27 Antonio Jones: No he wasn't.
28
29 Stephen W. Furgeson: And did you attempt to have him return to work?
30
31 Antonio Jones: Yes.
32
33 Stephen W. Furgeson: And how did you attempt to do that?
34
35 Antonio Jones: I sent him a return to duty letter.
36
37 Stephen W. Furgeson: I'm going to show you what's in Tab 4H, your honor, and that was the one
38 that was replaced recently. I'll show you this letter here. Mr. Jones can you tell me if you've seen
39 this letter before?
40
41 Antonio Jones: Yes I have.
42
43 Stephen W. Furgeson: And what is this letter?

1 Antonio Jones: This is the return to duty letter that I sent.
2
3 Stephen W. Furgeson: Okay and did the appellant respond?
4
5 Antonio Jones: Yes he did.
6
7 Stephen W. Furgeson: Okay and then ask you to, if you would, to look at this is the agency file,
8 and I ask you to look at tab 4G. You see it's on the side there. Okay do you see that?
9
10 Antonio Jones: Yes I do.
11
12 Stephen W. Furgeson: Now what is this? Can you identify that for the record?
13
14 Antonio Jones: This is what Mr. Noble sent me in the mail as his response to my return to duty
15 letter.
16
17 Stephen W. Furgeson: And was this letter acceptable?
18
19 Antonio Jones: Accepted part of it. I accepted the 3971 that he sent a copy of that was approved
20 by Mr. French which in turn I did a pay adjustment for Mr. Noble.
21
22 Stephen W. Furgeson: And I'm going to ask you to look at the agency's pre-hearing submission
23 Exhibit 2 can you identify that for the record?
24
25 Antonio Jones: Yes this is the pay adjustment that I did for Mr. Noble to have his pay reflect the
26 3971 that he sent me that was signed approved as well as the New Year's holiday.
27
28 Stephen W. Furgeson: Now did there come a time when you brought the appellant in when you
29 were considering to take discipline?
30
31 Antonio Jones: Yes.
32
33 Stephen W. Furgeson: Okay and then ask you to look at in front of you Tab 4F.
34
35 Antonio Jones: Okay.
36
37 Stephen W. Furgeson: And do you have that document?
38
39 Antonio Jones: Yes I do.
40
41 Stephen W. Furgeson: And what is that document?
42
43 Antonio Jones: This is the notice of PDI, which is a pre-disciplinary interview, that I sent to Mr.

1 Noble.
2
3 Stephen W. Furgeson: And did he respond to that?
4
5 Antonio Jones: Yes. He came in.
6
7 Stephen W. Furgeson: Okay. Did you conduct a PDI?
8
9 Antonio Jones: Yes I did.
10
11 Judge Turbitt: Okay one second please. Did you say that was tab 4F?
12
13 Antonio Jones: Yes sir.
14
15 Judge Turbitt: My tab 4F. Okay one of my copies, you sent two copies one of my tab 4F's is a
16 repeat of the February 8 letter of this, correct? But I do have, is the letter dated February 16?
17
18 Antonio Jones: Yes sir.
19
20 Judge Turbitt: Okay please continue.
21
22 Stephen W. Furgeson: And I'll ask you to turn your attention to Tab 4E. Do you see that
23 document?
24
25 Antonio Jones: Yes.
26
27 Stephen W. Furgeson: What is that document?
28
29 Antonio Jones: This is a PDI form that I used.
30
31 Stephen W. Furgeson: And did you complete that pre-disciplinary investigation?
32
33 Antonio Jones: No. I didn't complete it.
34
35 Stephen W. Furgeson: What happened?
36
37 Antonio Jones: Mr. Noble left.
38
39 Stephen W. Furgeson: And on fact on top of page 2 do you see that handwriting there?
40
41 Antonio Jones: Yes.
42
43 Stephen W. Furgeson: And is that your handwriting?

1 Antonio Jones: Yes it is.
2
3 Stephen W. Furgeson: And can you tell us when he left did he say anything?
4
5 Antonio Jones: Mr. Noble stated that I'll come back to work when you pay me.
6
7 Stephen W. Furgeson: Okay and what was your response?
8
9 Antonio Jones: I asked him was he leaving. He said yes I am. I told him that he will be marked
10 as AWOL until he returned to work or provided us some documentation stating that he should be
11 out.
12
13 Stephen W. Furgeson: Now did the appellant ever return to work after this meeting?
14
15 Antonio Jones: No he hadn't.
16
17 Stephen W. Furgeson: And you were working there until April 15?
18
19 Antonio Jones: Until April 15, 2011.
20
21 Stephen W. Furgeson: Did he attempt to call you or contact you in any way?
22
23 Antonio Jones: No sir.
24
25 Stephen W. Furgeson: What was his pay and leave status after your PDI meeting?
26
27 Antonio Jones: He was AWOL.
28
29 Stephen W. Furgeson: And did you have occasion to mark him as AWOL or put it into the time
30 and attendance system?
31
32 Antonio Jones: Yes.
33
34 Stephen W. Furgeson: I'll ask you to look at Tab 4C. Do you recognize this document?
35
36 Antonio Jones: Yes I do.
37
38 Stephen W. Furgeson: And who does it pertain to?
39
40 Antonio Jones: Mr. Noble.
41
42 Stephen W. Furgeson: And do you know what year it pertains to?
43

1 Antonio Jones: 2011.
2
3 Stephen W. Furgeson: And is there any indication there of what dates are involved?
4
5 Antonio Jones: Yes. February 19 through 24 February.
6
7 Stephen W. Furgeson: And it continues on is that correct?
8
9 Antonio Jones: Yes it does.
10
11 Stephen W. Furgeson: And is there any indication there of what his leave or pay status was at
12 that time?
13
14 Antonio Jones: He was paid on the 23rd during the PDI, before and after he was AWOL.
15
16 Stephen W. Furgeson: Okay and how is that indicated there?
17
18 Antonio Jones: It's a code 24, which is the code for AWOL.
19
20 Stephen W. Furgeson: And specifically under the process clock rings, where is that identified?
21
22 Antonio Jones: It's the second set of numbers on the base. It's the numbers on the base where it
23 says 02400
24
25 Stephen W. Furgeson: And is that a code for something?
26
27 Antonio Jones: Is this the code for AWOL.
28
29 Stephen W. Furgeson: Did you at any time input AWOL for him?
30
31 Antonio Jones: Yes I did.
32
33 Stephen W. Furgeson: And why did you do that?
34
35 Antonio Jones: I put AWOL in because I was the one that scheduled the PDI.
36
37 Stephen W. Furgeson: And is there any way to identify when and if you put any AWOL in for
38 him?
39
40 Antonio Jones: Yes.
41
42 Stephen W. Furgeson: And how do you do that?
43

1 Antonio Jones: My EIN number is placed to the right of any inputs that we put into the system.
2
3
4 Stephen W. Furgeson: And where would that be, for the record, where would that be in this
5 document?
6
7 Antonio Jones: It's Wednesday, February 23.
8
9 Stephen W. Furgeson: Well as far as columns are concerned -- well let me ask you this -- let me
10 back up. Is there a way to identify that you input it?
11
12 Antonio Jones: Yes.
13
14 Stephen W. Furgeson: And the EIN number?
15
16 Antonio Jones: Yes.
17
18 Stephen W. Furgeson: Okay what's your EIN number?
19
20 Antonio Jones: 01031619
21
22 Stephen W. Furgeson: Okay and looking at this document where would that be?
23
24 Antonio Jones: It's on Wednesday, February 23. It's the third column from the right.
25
26 Stephen W. Furgeson: Third column from the right?
27
28 Antonio Jones: Yes.
29
30 Stephen W. Furgeson: And that's your number there?
31
32 Antonio Jones: Yes it is.
33
34 Stephen W. Furgeson: Let me ask you, if EIN is in there is it's safe to say you were the inputting
35 of that document that leave or AWOL?
36
37 Antonio Jones: Yes it is.
38
39 Stephen W. Furgeson: Do you know if you're in AWOL status, what your pay stubs show?
40
41 Antonio Jones: It shows leave without pay. There isn't really a column that says AWOL.
42
43 Stephen W. Furgeson: And so if he was on AWOL it would not show him AWOL on his pay

1 stubs?
2
3 Antonio Jones: No it wouldn't.
4
5 Stephen W. Furgeson: And the TACS system what is this? Is this an official system or is it used
6 for pay and leave purposes?
7
8 Antonio Jones: Yes it is.
9
10 Stephen W. Furgeson: This is how people get paid?
11
12 Antonio Jones: Yes it is.
13
14 Stephen W. Furgeson: This is how they deduct their leave?
15
16 Antonio Jones: Yes sir.
17
18 Stephen W. Furgeson: Now I ask you to look at agency pre-hearing submission number one -- do
19 you recognize that document?
20
21 Antonio Jones: Yes.
22
23 Stephen W. Furgeson: And what is that document?
24
25 Antonio Jones: This is the note that Mr. Noble sent in with the packet stating why he was out to
26 reflect what was on his signed 3971.
27
28 Stephen W. Furgeson: And what does this document indicate as far as his ability to work after
29 that date?
30
31 Antonio Jones: Well he should've been able to come back to work on 13 January according to
32 this documentation.
33
34 Stephen W. Furgeson: Have you received any other documentation since then?
35
36 Antonio Jones: No sir.
37
38 Stephen W. Furgeson: From Mr. Noble?
39
40 Antonio Jones: No sir.
41
42 Stephen W. Furgeson: All right that's all I have. I'll pass the witness.
43

1 David W. Noble, Jr.: First, does he still have the Tab 4G?
2
3 Antonio Jones: Yes.
4
5 David W. Noble, Jr.: In front of him? Are there three pages in that exhibit?
6
7 Antonio Jones: In 4G?
8
9 Stephen W. Furgeson: Your Honor I just noticed there wasn't. Here I do have one it got
10 miscopied. Here's tab 4G the full three pages.
11
12 David W. Noble, Jr.: Okay, because both of the copies that I've accessed online have been
13 missing pages. The first one was missing the second page. The second time he filed it was
14 missing pages 2 and 3. I have an exhibit with all three pages in it.
15
16 Stephen W. Furgeson: Okay, you are certainly welcome to use that. I have given him one that
17 includes all three pages.
18
19 Judge Turbitt: I only have two pages in mine.
20
21 David W. Noble, Jr.: Okay, well I'd like the record...
22
23 Judge Turbitt: One of my copies only has one page in it, Tab 4G, and then one of my copies only
24 has two pages.
25
26 Stephen W. Furgeson: Okay well I have all three pages here now your honor.
27
28 Judge Turbitt: Okay let's amend Tab 4G. Mr. Noble do you have all three pages for Tab 4G?
29
30 David W. Noble, Jr.: Yes your honor. It's my Exhibit E.
31
32 Judge Turbitt: Okay take a look at appellant's Exhibit E, Mr. Ferguson, and verify that is in fact
33 what should be agency's Tab 4G please.
34
35 Stephen W. Furgeson: Yes. Yes. Well there is a difference in the signature but as far as the, the
36 statements in it are the same but it is signed differently in his as opposed to mine. But it looks
37 like the wording is exactly the same.
38
39 Judge Turbitt: Mr. Ferguson please give me a copy of your Tab 4G. We will amend it with Tab
40 4G. You can compare it if you want Mr. Noble with your Tab 4E. Apparently I don't know what
41 the difference is because I don't have it before me. We will go off the record for one second
42 while I make a copy of this. Mr. Noble I will give you a copy of amended tab 4G. Okay we can
43 go back on the record. Mr. Ferguson this is a copy of your original. Mr. Noble I made a copy for

1 both you and me. This is an amended copy to Tab 4G.
2
3 Stephen W. Furgeson: Thank you. Your honor.
4
5 Judge Turbitt: Are we back on the record? Okay amended tab 4G. Okay go ahead Mr. Noble your
6 witness.
7
8 David W. Noble, Jr.: In amended tab 4G, you have all three pages in front of you now?
9
10 Antonio Jones: No, he still has sorry...
11
12 David W. Noble, Jr.: Did you have all three pages in front of you when I sent you the letter?
13
14 Antonio Jones: Yes I had all the pages when you sent to me.
15
16 David W. Noble, Jr.: All right. How long have you been a postal employee?
17
18 Antonio Jones: 17 years.
19
20 David W. Noble, Jr.: And you and I have known each other for that whole time haven't we?
21
22 Antonio Jones: Yes.
23
24 David W. Noble, Jr.: You started out as a letter carrier in Zone 16?
25
26 Antonio Jones: That's correct.
27
28 David W. Noble, Jr.: And I used to come watch you play football?
29
30 Antonio Jones: Yes.
31
32 David W. Noble, Jr.: Toward the bottom of the second paragraph...
33
34 Antonio Jones: Page one?
35
36 David W. Noble, Jr.: ...of page one, yes. I wrote to you that "since January 13 I've been
37 constructively suspended from employment because the zone 16 management team and others
38 have made my working conditions completely intolerable." What did you understand by my use
39 of the phrase constructively suspended?
40
41 Antonio Jones: That you have been put out for one reason or another and you felt like it wasn't
42 warranted. That's what I understood.
43

1 David W. Noble, Jr.: What did you understand when I said that my working conditions were
2 completely intolerable?
3
4 Antonio Jones: I didn't understand what you meant by that because you hadn't been there.
5
6 Stephen W. Furgeson: Your honor just going to I guess raise an objection and ask for
7 clarification. This is not a constructive suspension matter. That is going to be a separate issue.
8 I'm not sure I guess I'm trying to understand the relevance of why we're going into this.
9
10 Judge Turbitt: Objection overruled. I'm still waiting to find that out. I don't know yet. Go ahead.
11 You may continue Mr. Noble.
12
13 David W. Noble, Jr.: Did you understand the various things that I listed in lettered paragraphs A
14 through E to reflect what I thought were some of the things management had done to make my
15 working conditions intolerable?
16
17 Antonio Jones: I understood..
18
19 David W. Noble, Jr.: Did you understand that?
20
21 Antonio Jones: I understood "A." That's why I did the adjustment. As far as B through E those
22 were things that happened prior to me being there and I didn't go into them.
23
24 David W. Noble, Jr.: Okay, well one of them was that my route -- 1611 -- was out of adjustment.
25 Do you agree with my contention that Route 1611 is out of adjustment?
26
27 Antonio Jones: No. I don't agree with that.
28
29 David W. Noble, Jr.: What do you understand that a route should be adjusted to?
30
31 Antonio Jones: It should be adjusted to eight hours.
32
33 David W. Noble, Jr.: And that's at the pace of the regular carrier on the route, is that correct?
34
35 Antonio Jones: That's correct.
36
37 David W. Noble, Jr.: Do you know a carrier named Terence Seawright?
38
39 Antonio Jones: Yes I do.
40
41 David W. Noble, Jr.: And Seawright is a carrier who works on my route -- 1611 -- on my off
42 days isn't that right?
43

1 Antonio Jones: Yes. He's your T-6.
2
3 David W. Noble, Jr.: And Seawright can't complete route 1611 in eight hours, can he?
4
5 Antonio Jones: He has.
6
7 David W. Noble, Jr.: On what occasions?
8
9 Antonio Jones: The day that I walked his route, with Mr. Branson along with me. To answer your
10 question one time.
11
12 David W. Noble, Jr.: I'm sorry?
13
14 Antonio Jones: One time.
15
16 David W. Noble, Jr.: One time?
17
18 Antonio Jones: Yes.
19
20 Judge Turbitt: Would you please spell the first and last name of that individual who you
21 identified..
22
23 Antonio Jones: Terence T-E-R-E-N-C-E last name Seawright S-E-A-W-R-I-G-H-T.
24
25 Judge Turbitt: Thank you.
26
27 David W. Noble, Jr.: Do I understand correctly from the responses the Postal Service sent me
28 yesterday that you were the official who made the decision that I should be removed?
29
30 Antonio Jones: No I'm not.
31
32 David W. Noble, Jr.: Do you know who that official is?
33
34 Antonio Jones: No I don't.
35
36 David W. Noble, Jr.: How did it happen that you conducted a pre-disciplinary discussion with me
37 on February 23?
38
39 Antonio Jones: I conducted the PDI because the only other titled supervisors, Mr. Colter and Mr.
40 French, were busy doing other things, so I conducted the PDI myself.
41
42 David W. Noble, Jr.: Did it just pop into your mind why not do a PDI with Noble? Did
43 somebody else talk with you about doing a PDI with Noble?

1 Antonio Jones: It didn't pop into my mind, they were busy and the PDI was already scheduled so
2 I did it.
3
4 David W. Noble, Jr.: Do you know how it happened that the PDI was scheduled?
5
6 Antonio Jones: I scheduled.
7
8 David W. Noble, Jr.: Why did you schedule it?
9
10 Antonio Jones: Because I was actually doing the attendance for the whole zone. When I first got
11 there I pulled up everybody's attendance record. I was addressing the attendance because it was a
12 problem that needed to be fixed.
13
14 David W. Noble, Jr.: After you conducted the PDI did you communicate to anyone the fact that
15 you had conducted the PDI?
16
17 Antonio Jones: Yes.
18
19 David W. Noble, Jr.: And who was that person?
20
21 Antonio Jones: Mr. Colter. I turned the PDI over to Mr. Colter.
22
23 David W. Noble, Jr.: And did you hear back from Mr. Coulter about what happened after you
24 turned the PDI over to him?
25
26 Antonio Jones: He put the rest of the package together and submitted it to go downtown and
27 requested a proposed removal form.
28
29 David W. Noble, Jr.: What was the rest of the package?
30
31 Antonio Jones: I forget what they call it -- it's a DORIS package, it has all the documentation
32 with the PDI and TACS records, things like that. It has what you proposed on the package and
33 then it goes down to labor to get the verbiage put together.
34
35 David W. Noble, Jr.: On the TACS records, those aren't something that I have access to are they?
36
37 Antonio Jones: You can get them by submitting the document request form but you can't go on
38 the system yourself and print them out, no.
39
40 David W. Noble, Jr.: And by I can get them, you mean the union representative can get them?
41
42 Antonio Jones: Yes.
43

1 David W. Noble, Jr.: And I'm not a union representative now am I?
2
3 Antonio Jones: No. Not to my knowledge.
4
5 David W. Noble, Jr.: So the fact that you put something into the TACS system wouldn't in any
6 way notify me that you considered me to be AWOL isn't that correct?
7
8 Antonio Jones: Not into the system, no.
9
10 David W. Noble, Jr.: I understood that to be a yes answer to my question that it would not be
11 notification to me is that correct?
12
13 Antonio Jones: It would not be, putting it into the system.
14
15 David W. Noble, Jr.: Thank you. Do you remember about how long the pre-disciplinary
16 interview took on February 23?
17
18 Antonio Jones: Approximately 10 minutes.
19
20 David W. Noble, Jr.: And do you remember what the first thing that was said was?
21
22 Antonio Jones: No. I don't remember the first thing that was said.
23
24 David W. Noble, Jr.: Do you remember anything about what was said other than what you have
25 already testified to?
26
27 Antonio Jones: You asked me something along the lines of when were they going to do a route
28 inspection on your route since they implemented the FSS. I told you I didn't know. You asked
29 me did I know that your route was 13 – 14 hours -- something like that and I told you to my
30 knowledge it wasn't. And I asked you a few questions that were on the PDI and then you were
31 standing up and I asked you were you leaving and you said yes I am I'll be back when you pay
32 me and I said well I'm giving you a copy of the 2240 showing you that I paid you for the time
33 that you showed me on it 3971 which is a leave slip. I gave you that copy you grabbed it and
34 folded it up and you said well I'll be back when you pay me. And I said well if you're leaving
35 you'll be AWOL until you come back to work and provide me with documentation. And I asked
36 Mr. Randy Williams who's your shop steward that was representing you at the time that he
37 understand what I said and he said yes and you walked out of my office.
38
39 David W. Noble, Jr.: Do you know what a JCAM is?
40
41 Antonio Jones: Yes I do.
42
43 David W. Noble, Jr.: Can you describe it please?

1 Antonio Jones: It's a joint contract between management and the union.
2
3 David W. Noble, Jr.: Is it a book?
4
5 Antonio Jones: It's a book yes.
6
7 David W. Noble, Jr.: And about what size is it?
8
9 Antonio Jones: It's about this thick. It's about probably four or five inches thick
10
11 David W. Noble, Jr.: And what does it contain?
12
13 Antonio Jones: Bylaws.
14
15 David W. Noble, Jr.: Does it explain to the union and to postal management how they're
16 supposed to jointly interpret the collective bargaining agreement?
17
18 Antonio Jones: Yes.
19
20 David W. Noble, Jr.: And is it supposed to be used when parties are discussing contract issues?
21
22 Antonio Jones: Yes.
23
24 David W. Noble, Jr.: Is it supposed to be used during grievance meetings?
25
26 Antonio Jones: I'm not sure to be honest with you. I'm not sure if it should be used during
27 grievance meetings.
28
29 David W. Noble, Jr.: The Postal Service and the union have provided a copy of the JCAM to
30 every station, haven't they?
31
32 Antonio Jones: That's correct.
33
34 David W. Noble, Jr.: You stated that you don't know who made the decision to remove me, is
35 that correct?
36
37 Antonio Jones: That's correct. Your removal came after I left.
38
39 Judge Turbitt: You left the employment of the U.S. Postal Service?
40
41 Antonio Jones: No I left Friendship Station.
42
43 Judge Turbitt: Okay.

1 Antonio Jones: On 15 April.
2
3 David W. Noble, Jr.: Are you familiar with the phrase “progressive discipline”?
4
5 Antonio Jones: Yes I am.
6
7 David W. Noble, Jr.: Do you know what the JCAM says about progressive discipline?
8
9 Antonio Jones: Not verbatim no.
10
11 David W. Noble, Jr.: Did you discuss with anyone other than Sterling Colter the fact that you had
12 a pre-disciplinary discussion with me?
13
14 Antonio Jones: I think Mr. French was in the room as well. Yes, I told Mr. Washington that I
15 conducted a PDI, he was my area manager at the time.
16
17 David W. Noble, Jr.: What is an area manager?
18
19 Antonio Jones: An area manager is a grade above the station manager. He has several stations
20 under his command.
21
22 David W. Noble, Jr.: Do you know how many stations Paris Washington has under his
23 command?
24
25 Antonio Jones: No, not at this time no I don’t. I don’t know how many he had then either.
26
27 David W. Noble, Jr.: Do you know why pre-disciplinary discussions are conducted?
28
29 Antonio Jones: Yes I do.
30
31 David W. Noble, Jr.: And why is that?
32
33 Antonio Jones: It’s used for investigation to find out what the nature of the issues, to find out if
34 the supervisors going to pursue you would disciplinary action or not.
35
36 David W. Noble, Jr.: Did either Sterling Colter or Bill French tell you that beginning in August
37 2010 I started making digital recordings of all of my conversations in Zone 16?
38
39 Antonio Jones: No they didn’t.
40
41 David W. Noble, Jr.: You testified twice that you told me – that as I was leaving the room – that I
42 would be AWOL?
43

1 Antonio Jones: Yes.
2
3 David W. Noble, Jr.: If I told you that I made a recording of the pre-disciplinary interview would
4 that make you want to reconsider that testimony?
5
6 Antonio Jones: No.
7
8 David W. Noble, Jr.: Do you remember me telling you during the pre-disciplinary conference
9 that I haven't been regular in attendance for the last nine years?
10
11 Antonio Jones: Yes. I do remember.
12
13 David W. Noble, Jr.: Do you remember me telling you that in 2003 I didn't work a single day?
14
15 Antonio Jones: Yes. I do remember that.
16
17 David W. Noble, Jr.: Do remember that in 2009 I told you I worked seven days?
18
19 Antonio Jones: Vaguely, yes, I do remember.
20
21 David W. Noble, Jr.: Do you remember me telling you that I think that there's a rule about being
22 regular in attendance to the same extent that there is a rule that letter carrier are supposed to be
23 adjusted to eight hours?
24
25 Antonio Jones: I remember that.
26
27 David W. Noble, Jr.: And do you remember me saying and there is a rule about regular
28 attendance to the same extent that letter carriers who aren't on the overtime desired list are
29 supposed to be the last people who are forced to work overtime?
30
31 Antonio Jones: I remember that.
32
33 David W. Noble, Jr.: And do you remember me saying and there is a rule about attendance to the
34 same extent that when letter carriers apply for annual and sick leave they're supposed to get paid
35 for them?
36
37 Antonio Jones: I don't remember that.
38
39 David W. Noble, Jr.: Do you understand that you are under oath?
40
41 Antonio Jones: Yes. I do.
42
43 David W. Noble, Jr.: In early February 2011 did a union steward named Randy Williams

1 approach you to discuss my annual and sick leave?
2
3 Antonio Jones: No.
4
5 David W. Noble, Jr.: Do you remember a letter you signed on March 3 directing me to...
6
7 Judge Turbitt: 2011?
8
9 David W. Noble, Jr.: Yes, 2011. Directing me to provide medical certification and telling me that
10 I was AWOL.
11
12 Antonio Jones: No I didn't send you anything on March 3.
13
14 David W. Noble, Jr.: Okay do you remember signing such a letter?
15
16 Antonio Jones: No I didn't sign that letter from March 3. Can I explain that letter?
17
18 David W. Noble, Jr.: Yes.
19
20 Antonio Jones: The program that's on the computer when you open it up it automatically goes to
21 the date that you opened up the program which printed out. That's why that date said March 3.
22 That had been sent to you prior.
23
24 Stephen W. Furgeson: Your honor if I may interject here I have withdrawn that. It was not an
25 exhibit. It was an error. It was included in the file I thought it had been sent and I found out later
26 that it had not been sent because it was in the file of material so we will stipulate that it was not
27 sent.
28
29 David W. Noble, Jr.: I've included it, your honor, as Exhibit VV.
30
31 Judge Turbitt: Okay, does that satisfy Stephen W. Furgeson you that the agency is willing to
32 stipulate that it was not sent on March 3, 2011?
33
34 David W. Noble, Jr.: Well, I certainly agree that it was not sent.
35
36 Antonio Jones: If you look at the letter that's dated March 3 it should reflect the letter that was
37 sent in January. The confirmation number should be the same.
38
39 David W. Noble, Jr.: As to the letter that I sent you in early February telling you that I was
40 constructively suspended, other than the annual leave issue you didn't address any of the issues I
41 raised that letter did you?
42
43 Antonio Jones: No I didn't -- just the one saying that you weren't paid for the approved 64 hours

1 of combined sick and annual leave is the only issue that I addressed.
2
3 David W. Noble, Jr.: Okay. I have no further questions.
4
5 Judge Turbitt: Redirect.
6
7 Stephen W. Furgeson: Just a couple, your honor. Mr. Noble asked you if you'd have a different
8 response if you knew your conversation between him and you were recorded. On the day of the
9 PDI, were you aware that he was recording?
10
11 Antonio Jones: No I wasn't.
12
13 Stephen W. Furgeson: The conversation -- did he tell you is recording it?
14
15 Antonio Jones: No he didn't.
16
17 Stephen W. Furgeson: Did you know that he customarily recorded conversations?
18
19 Antonio Jones: No I didn't.
20
21 Stephen W. Furgeson: And when you told him he was AWOL did he make a response back to
22 that?
23
24 Antonio Jones: No he didn't.
25
26 Stephen W. Furgeson: Now how long was that PDI?
27
28 Antonio Jones: Approximately 10 minutes.
29
30 Stephen W. Furgeson: And it was not completed?
31
32 Antonio Jones: No it wasn't.
33
34 Stephen W. Furgeson: That's all I have, your honor.
35
36 Judge Turbitt: Mr. Noble?
37
38 David W. Noble, Jr.: Before we do the next witness I'd like to address the judge if I could.
39
40 Judge Turbitt: Does it pertain to this witness or no?
41
42 David W. Noble, Jr.: It does, yes, your honor.
43

1 Judge Turbitt: Do you want this witness in the room while you're discussing this or no?
2
3 David W. Noble, Jr.: It doesn't matter.
4
5 Judge Turbitt: What are you doing procedurally? I need clarification. I'm sorry, are you filing a
6 motion? Are you objecting?
7
8 David W. Noble, Jr.: I'm going to make a brief motion.
9
10 Judge Turbitt: Okay what's the motion? Actually Mr. Jones can you just step out for one second
11 and then if we need you we'll call you right back. Don't talk about your testimony while you go
12 out. Just go enough away that you can't hear what you're saying and then we'll come get back
13 and get you okay?
14
15 David W. Noble, Jr.: My motion is your honor...
16
17 Judge Turbitt: One second sir the door is not, the door is still open.
18
19 David W. Noble, Jr.: I'm sorry.
20
21 Judge Turbitt: Okay please continue.
22
23 David W. Noble, Jr.: My motion is your honor that the record be kept open long enough so that I
24 can submit as an exhibit a recording of the PDI with Tony Jones. It will show that Mr. Jones did
25 not tell me that I would be AWOL if I left or after leaving.
26
27 Judge Turbitt: Okay and you sought his permission before you tape-recorded?
28
29 David W. Noble, Jr.: I did not your honor. And I'm not required under DC statutes to do so.
30
31 Judge Turbitt: But I'm just asking did you ask him? Did you seek permission or did you tell him?
32
33 David W. Noble, Jr.: No I did not.
34
35 Judge Turbitt: Your request to submit this tape recording is denied. You have been approved as a
36 witness, I will let you testify under oath as to that, that's fine by me. But no you're not allowed to
37 submit...
38
39 David W. Noble, Jr.: So during my testimony will I be permitted to submit as an exhibit the
40 transcript of the PDI?
41
42 Judge Turbitt: You have it with you?
43

1 David W. Noble, Jr.: Yes.
2
3 Stephen W. Furgeson: I would object you know he had time to do that. Mr. Jones said he wasn't
4 aware of it. He testified truthfully. We don't know if he recorded the whole transcript if it was
5 an audio we don't know if it was properly recorded or not or if he just recorded part of it. We
6 have no way of knowing.
7
8 Judge Turbitt: So this is a notarized version, someone has notarized that this is a true and
9 accurate transcript.
10
11 David W. Noble, Jr.: No but I will swear under oath that is a true and accurate transcript.
12
13 Judge Turbitt: So you object?
14
15 Stephen W. Furgeson: I object, yes.
16
17 Judge Turbitt: Objection sustained. It is not going to be submitted. You may testify about it. You
18 may testify as to your knowledge about what was said. Is there any other questions of Mr. Jones?
19
20 David W. Noble, Jr.: No.
21
22 Judge Turbitt: Okay, from you Mr. Ferguson?
23
24 Stephen W. Furgeson: No sir.
25
26 Judge Turbitt: Okay, would you kindly let Mr. Jones, bring Mr. Jones back in for one second and
27 we will have Mr. Colter. Yes, you can just stay there. We are still on the record? Mr. Jones I
28 want to thank you for your testimony today. I'm going to ask that you not discuss your testimony
29 with anyone until after the close of this hearing is that understood?
30
31 Antonio Jones: Yes sir.
32
33 Judge Turbitt: You are excused from these proceedings. Thank you very much sir.
34
35 Antonio Jones: Thank you.
36
37 Judge Turbitt: Okay, have a good day. Okay, Mr. Coulter please.
38
39 Stephen W. Furgeson: Your honor before you (unintelligible), regarding the stipulation we talked
40 about this morning.
41
42 Judge Turbitt: Yes sir.
43

1 Stephen W. Furgeson: Let me be sure.
2
3 Judge Turbitt: Okay.
4
5 Stephen W. Furgeson: Your honor this is what the agency is willing to stipulate to as far as these
6 holidays if you want to hear.
7
8 Judge Turbitt: Sure go ahead.
9
10 Stephen W. Furgeson: He was not paid for Columbus Day 2010. He was not paid for
11 Thanksgiving 2010, was not paid for Christmas 2010, he was marked originally as AWOL for
12 New Year's holiday but according to Mr. Jones part of the readjustment was to pay him for the
13 New Year's holiday. That's our information he was paid for the New Year's holiday. So we are
14 willing to stipulate certainly that the first ones there Columbus Day and Thanksgiving and
15 Christmas of 2010 he was not paid.
16
17 Judge Turbitt: Okay Mr. Noble are you willing to stipulate to the first three holidays, that you
18 were not paid for those three holidays?
19
20 David W. Noble, Jr.: Yes.
21
22 Judge Turbitt: Okay that was also in response to the interrogatory, you had asked about that. Now
23 as to the New Year's eve.
24
25 Stephen W. Furgeson: New Year's Day
26
27 Judge Turbitt: I'm sorry New Year's Day the agency is saying that you were originally lodged as
28 AWOL for that day but later paid. Do you dispute that?
29
30 David W. Noble, Jr.: Yes.
31
32 Judge Turbitt: Okay we got a stipulation as to the first three holidays and I doubt that were going
33 to be able to get a stipulation since you both disagree on New Year's Day. So we have a
34 stipulation for the first three and so again your motion for that is granted Mr. Noble now that I
35 have joint stipulation from both sides. Okay can we please have Mr. Colter. And did we ask Mr.
36 Jones to send up Mr. French?
37
38 Stephen W. Furgeson: Yes. Mr. French is out there
39
40 Judge Turbitt: Okay. Good morning Mr. Colter.
41
42 Sterling Colter: Good morning sir. How are you?
43

1 Judge Turbitt: Okay. My name is Judge Turbitt. Before we proceed with your testimony I need
2 to ask you whether you have an objection to taking an oath?
3
4 Sterling Colter: No.
5
6 Judge Turbitt: Okay please raise your right hand and repeat after me. I state your name sir.
7
8 Sterling Colter: I Sterling Colter.
9
10 Judge Turbitt: Do solemnly swear.
11
12 Sterling Colter: Do solemnly swear.
13
14 Judge Turbitt: To tell the truth.
15
16 Sterling Colter: To tell the truth.
17
18 Judge Turbitt: The whole truth.
19
20 Sterling Colter: The whole truth.
21
22 Judge Turbitt: And nothing but the truth.
23
24 Sterling Colter: And nothing but the truth.
25
26 Judge Turbitt: So help me God.
27
28 Sterling Colter: So help me God.
29
30 Judge Turbitt: Thank you sir. Please be seated.
31
32 Sterling Colter: Thank you.
33
34 Judge Turbitt: Mr. Ferguson, your witness.
35
36 Stephen W. Furgeson: Mr. Colter what position do you occupy at the Postal Service at the
37 present time?
38
39 Sterling Colter: I am a supervisor in an acting manager role.
40
41 Stephen W. Furgeson: Okay and where are you an acting manager?
42
43 Sterling Colter: Friendship post office.

1 Stephen W. Furgeson: Okay and how long have you been in that position?
2
3 Sterling Colter: Approximately a year -- a little less than that.
4
5 Stephen W. Furgeson: And when did you start there if you can recall?
6
7 Sterling Colter: Around August of last year.
8
9 Stephen W. Furgeson: And prior to that what has your position been?
10
11 Sterling Colter: Supervisor of customer service in a different office.
12
13 Stephen W. Furgeson: And what office is that?
14
15 Sterling Colter: That was the main office in Washington DC.
16
17 Stephen W. Furgeson: That's still your title I guess?
18
19 Sterling Colter: Yes I am.
20
21 Stephen W. Furgeson: And how long have you been a customer service supervisor?
22
23 Sterling Colter: Approximately three years.
24
25 Stephen W. Furgeson: And that's with letter carriers, doing letter carriers is that correct?
26
27 Sterling Colter: Yes that is.
28
29 Stephen W. Furgeson: Do you know Mr. Noble -- the appellant?
30
31 Sterling Colter: I do.
32
33 Stephen W. Furgeson: Do you recall that on February 24 of this year through April 28, do you
34 know if the appellant came to work any of those days?
35
36 Sterling Colter: He was not that I can recall.
37
38 Stephen W. Furgeson: And you know of any reason for his absence for those days?
39
40 Sterling Colter: I am not aware of any reason.
41
42 Stephen W. Furgeson: And as a result of his absence were you aware of his leave status during
43 that period?

1 Sterling Colter: AWOL. Yes sir. Absent without official leave.
2
3 Stephen W. Furgeson: Now when a person is AWOL does that show up on the paystub as
4 AWOL?
5
6 Sterling Colter: No sir it shows up as LWOP -- leave without pay. If you're in an AWOL status it
7 shows as a LWOP basically meaning you're not paid. It doesn't distinguish what leave you're on.
8 It's just showing that you have leave without pay.
9
10 Stephen W. Furgeson: I'm going to, maybe you have a copy there already, if you will look at Tab
11 4C under the agency's file here would you look at that document please. Can you recognize that
12 document?
13
14 Sterling Colter: Yes sir.
15
16 Stephen W. Furgeson: Okay and what is that document?
17
18 Sterling Colter: That is an employee all report.
19
20 Stephen W. Furgeson: What is it used for?
21
22 Sterling Colter: This report basically displays the employee name, their EIN number -- that's the
23 number that's associated with them -- we don't use Social Security numbers, as well as their
24 clock rings. It's a reflection of their work day and or week.
25
26 Stephen W. Furgeson: Is there leave usage and compensation based on this document?
27
28 Sterling Colter: Yes sir, it's reflective of what leave status a person is in for.
29
30 Stephen W. Furgeson: In what year does this cover, this particular?
31
32 Sterling Colter: In the top left-hand corner directly under report you see the abbreviation for year
33 YRPPWK that stands for year pay period and work so the year of this is 2011.
34
35 Stephen W. Furgeson: And it pertains to Mr. Noble, is that correct?
36
37 Sterling Colter: Yes it does, David Noble Jr.
38
39 Stephen W. Furgeson: And looking at this document to see there where it says process clock
40 rings?
41
42 Sterling Colter: Yes sir.
43

1 Stephen W. Furgeson: Okay and right under that could you starting from left to right could you
2 explain what those various columns mean?
3
4 Sterling Colter: Okay you basically have the day of the week it identifies which day in question...
5
6 Stephen W. Furgeson: That would be Saturday at the very top?
7
8 Sterling Colter: Right that would be Saturday at the top. And then you will see base which
9 basically shows the operation 024 stands for AWOL and it shows you see the eight hours? That
10 stands for a period of eight hours. This was what he was input into the system as 024 is AWOL.
11 As you cross the page 722 is the operation within the office. It means the carriers are working in
12 the office, 016011 identifies the carrier route, 8 AM is the time of the ring, 03690470 identifies a
13 member of management EIN did something to this clock ring. Any time a manager or supervisor
14 inputs something it's identified by the EIN and beside that you see the date.
15
16 Stephen W. Furgeson: Okay and over on the left side there on the third column over 2/1902/19
17 do you see that?
18
19 Sterling Colter: Yes sir.
20
21 Stephen W. Furgeson: What does that mean?
22
23 Sterling Colter: That's the date -- February 19.
24
25 Stephen W. Furgeson: Of 2011?
26
27 Sterling Colter: 2011, yes sir.
28
29 Stephen W. Furgeson: And if you go through this, does this go through till what period of time?
30 This document this several pages here?
31
32 Sterling Colter: It goes all the way through April 29 of 2011.
33
34 Stephen W. Furgeson: And do you have an EIN number?
35
36 Sterling Colter: Yes I do.
37
38 Stephen W. Furgeson: And what is that?
39
40 Judge Turbitt: You know what? I'm sorry. Did you say the 29th or the 26th?
41
42 Sterling Colter: 29th.
43

1 Judge Turbitt: Okay, do me a favor, upper right-hand side sir, you see where it says page?
2
3 Sterling Colter: Yes sir.
4
5 Judge Turbitt: What is your page on?
6
7 Sterling Colter: Page 9.
8
9 Judge Turbitt: Do you have a page 10?
10
11 Sterling Colter: I do. I'm sorry. Page 10 is where it ends. I'm sorry.
12
13 Judge Turbitt: Okay, looking at the bottom of that date, for Friday? Oh I see. It's below the base.
14 That's the 29 that you are about.
15
16 Sterling Colter: Yes sir, 4/29.
17
18 Judge Turbitt: All right, thank you.
19
20 Stephen W. Furgeson: And you indicated that the code there 24 is AWOL is that right?
21
22 Sterling Colter: Yes sir.
23
24 Stephen W. Furgeson: So any time you see a 24 there that means it's AWOL?
25
26 Sterling Colter: Yes sir.
27
28 Stephen W. Furgeson: I'm sorry did you give me your EIN number?
29
30 Sterling Colter: Number 03696945.
31
32 Stephen W. Furgeson: Okay and did you enter any AWOL for Mr. Noble?
33
34 Sterling Colter: Yes sir.
35
36 Stephen W. Furgeson: When was the first time?
37
38 Sterling Colter: The first was 2/28 -- February 28, 2011.
39
40 Stephen W. Furgeson: And any time that that numbers is there that you entered AWOL for Mr.
41 Noble?
42
43 Sterling Colter: Yes sir.

1 Stephen W. Furgeson: And it's because he did not show up for work?
2
3 Sterling Colter: Correct.
4
5 Stephen W. Furgeson: And he didn't notify you?
6
7 Sterling Colter: Without notification or submitting a 3971 which is a leave slip he would have
8 been put in the system as AWOL.
9
10 Stephen W. Furgeson: Not going to ask you to look at, if you would there, that exhibit in front of
11 you, Tab 4B which is just proceeding what you've just gone through. Okay and what is this
12 document?
13
14 Sterling Colter: This is a notice of a removal issued to Mr. Noble for being AWOL
15
16 Stephen W. Furgeson: Have you seen this document before today?
17
18 Sterling Colter: Yes sir I have.
19
20 Stephen W. Furgeson: And have you previously read this document.
21
22 Sterling Colter: Yes sir I have.
23
24 Stephen W. Furgeson: Do you see, is that your name on the document as the concurring official?
25
26 Sterling Colter: It is.
27
28 Stephen W. Furgeson: And explain what that means.
29
30 Sterling Colter: At the point that discipline or corrective action is issued it has to be concurred by
31 a higher official and that official was me. Mr. French was the supervisor. I was the acting
32 manager so I had to concur the action by saying I agree with it and signed off on it.
33
34 Stephen W. Furgeson: Is there any prior discipline mentioned in that notice?
35
36 Sterling Colter: No sir.
37
38 Stephen W. Furgeson: And did you consider this appropriate to remove Mr. Noble without prior
39 discipline being cited?
40
41 Sterling Colter: Yes sir.
42
43 Stephen W. Furgeson: And why is that?

1 Sterling Colter: AWOL is considered to be an egregious offense.
2
3 Judge Turbitt: One second, I'm sorry, would the parties stipulate that Mr. Noble had no prior
4 disciplinary record?
5
6 Stephen W. Furgeson: He had no cited, there was no discipline cited.
7
8 Judge Turbitt: No cited prior discipline record. Mr. Noble are you willing to stipulate to that?
9
10 David W. Noble, Jr.: Yeah, I'll stipulate there was no prior discipline cited.
11
12 Stephen W. Furgeson: Did you finish your answer?
13
14 Sterling Colter: Basically I was saying that AWOL is considered an egregious offense. The Postal
15 Service cannot operate if the employees don't show up for work and don't give us any
16 notification if they're not coming to work so it's considered a removable offense.
17
18 Stephen W. Furgeson: Do you know if the appellant was given a pre-disciplinary investigation
19 prior to this removal?
20
21 Sterling Colter: Yes.
22
23 Stephen W. Furgeson: And do you know when that happened?
24
25 Sterling Colter: I'm not sure exactly what the day was because I did not conduct the PDI but it
26 should be stipulated in the notice. But I'm not sure off the top of my head what date the PDI was.
27
28 Stephen W. Furgeson: Were you aware that he had not completed the PDI, Mr. Noble?
29
30 Sterling Colter: Say again I'm sorry.
31
32 Stephen W. Furgeson: Were you aware that he had not completed the pre-disciplinary
33 investigation?
34
35 Sterling Colter: No sir.
36
37 Stephen W. Furgeson: He had not completed it or you were not aware of it?
38
39 Sterling Colter: I wasn't aware that he had not completed it.
40
41 Stephen W. Furgeson: But you were aware that he was AWOL?
42
43 Sterling Colter: Correct.

1 Stephen W. Furgeson: Now do you recall discussing this removal with other managers or
2 supervisors?
3
4 Sterling Colter: Just Mr. Washington.
5
6 Stephen W. Furgeson: And what did you discuss with him?
7
8 Sterling Colter:: Well Mr. Washington was my manager and basically he basically stated to me
9 that we needed to act on Mr. Noble's attendance because he wasn't at work and didn't appear to
10 be coming back to work and we hadn't been notified of anything so we need to move forward
11 with the action.
12
13 Stephen W. Furgeson: Did you try to influence Mr. Washington's decision on the removal of Mr.
14 Noble?
15
16 Sterling Colter: No sir.
17
18 Stephen W. Furgeson: So other than what you testified to this that was the sum and substance of
19 your conversation with Mr. Washington?
20
21 Sterling Colter: Correct.
22
23 Stephen W. Furgeson: That's all I have your honor.
24
25 Judge Turbitt: Mr. Noble and you said Mr. Washington is your supervisor correct?
26
27 Sterling Colter: Correct.
28
29 Judge Turbitt: Okay.
30
31 David W. Noble, Jr.: You testified about what was put into the system regarding me being
32 AWOL correct?
33
34 Sterling Colter: I'm sorry could you repeat the question. The testified to what was, I was actually
35 testifying to what was what I was reading from everything all report.
36
37 David W. Noble, Jr.: Do I understand your testimony to be that you entered AWOL designations
38 into the TACS system for certain dates when I was absent from work?
39
40 Sterling Colter: Yes sir.
41
42 David W. Noble, Jr.: And did you communicate to me that you considered me to be AWOL on
43 those dates?

1 Sterling Colter: No sir.
2
3 David W. Noble, Jr.: When did the discussion with Mr. Washington that you testified about
4 occur?
5
6 Sterling Colter: I don't recall.
7
8 David W. Noble, Jr.: Do you understand that, is it your understanding that it was Mr. Washington
9 who made the decision to remove me?
10
11 Sterling Colter: No sir. Well it's basically my understanding that you were not in attendance.
12 You were not coming to work. We had not been notified as to why you weren't coming to work,
13 anything. My role as an acting manager is to oversee the day-to-day operations, again it caused
14 conflicts with the schedule every day when we have an employee that is just not reporting to
15 work and we don't know why as for operating as acting station manager we have to address
16 attendance issues and there was a clear attendance issue.
17
18 David W. Noble, Jr.: Okay, I'm trying to find out who it was who made the decision that I should
19 be removed..
20
21 Sterling Colter: I think ultimately you made the decision by not coming to work and not
22 notifying your employer as to why you weren't coming to work for when you would return or
23 anything for that matter.
24
25 David W. Noble, Jr.: So you don't know who in management made the decision to remove me?
26
27 Sterling Colter: Who in management made? Again I think that's more of a decision that was
28 made on your part by not showing up to work.
29
30 David W. Noble, Jr.: Okay, I'm going to ask you to answer this question yes or no. Do you know
31 what management official made the decision to remove me?
32
33 Sterling Colter: Do I know which management official made the decision to remove you? It was
34 a collective thing. It's not a yes or no answer because it is not a one person decision. Ultimately
35 we are all responsible for ensuring that the operation flows on a day-to-day basis, so as a
36 supervisor, if the supervisors realize that you're not working we are not showing up to work and
37 you know PDI's its come up with the attendance record is pulled and we follow the process
38 which we have in place for corrective action.
39
40 David W. Noble, Jr.: Okay who do you understand was involved in the collective that made the
41 decision to remove me?
42
43 Sterling Colter: Who as far as?

1 David W. Noble, Jr.: Who was involved in the – you described it as a collective – who was
2 involved in that collective?

3
4 Sterling Colter: Mr. Jones I think conducted the PDI with you if I'm not mistaken. Mr. Jones
5 conduct the PDI am not exactly sure who, I'm not sure, I'm not exactly sure what it is, I really
6 kind of don't understand the question who was involved in it. Who did the PDI is that what you
7 are asking?

8
9 David W. Noble, Jr.: No I'm asking you who made the decision that I should be removed?

10
11 Sterling Colter: Again I thought I answered I said in my opinion you made that decision.

12
13 David W. Noble, Jr.: Okay but if it wasn't me who made the decision, if instead it was some
14 manager, who was that manager?

15
16 Sterling Colter: If it wasn't you, but all this contends on, your employment is based on coming to
17 work if you don't come to work no one's making that decision but you. I can't say that any
18 member of management made the decision I can't say if you didn't do it because you were the
19 one that didn't come to work had to come to work then there would've been no notice of removal
20 for attendance but because you didn't come to work but because you didn't come to work so in
21 my opinion that points directly to you.

22
23 David W. Noble, Jr.: In the summer and fall of 2010 I on some occasions told you that I was
24 recording our conversations, didn't I?

25
26 Sterling Colter: No sir.

27
28 David W. Noble, Jr.: Would you say that if I had a recording of me telling you that I was
29 recording our conversations?

30
31 Sterling Colter: To my knowledge I'm not aware of you recording any of our conversations. I'm
32 not aware of any conversations you and I had ever been recorded because there is a policy in the
33 workplace that nothing can be recorded. You can't bring any recording devices into the postal
34 onto the workroom floor record anything so I am not aware of you recording anything any
35 conversations that we had or anything for that matter because again we have clear policy stating
36 that you cannot record anything in the postal facility.

37
38 Judge Turbitt: Where is that sir? What policy is that?

39
40 Sterling Colter: We have a policy. I don't know exactly what policy number it is, but we have a
41 policy where you can't have any recording devices and/or recording within the postal service and
42 I can check to see exactly what it is but within the facility we have that you cant bring any
43 cameras or anything for that matter into to record anything.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Judge Turbitt: Okay I will find out what law, rule, regulation, or policy that is.

Stephen W. Furgeson: Okay we have one I will stipulate to that. We do have one. I'll have to find out what it is.

Judge Turbitt: Mr. Noble will you stipulate to that?

David W. Noble, Jr.: I will not your honor.

Judge Turbitt: Okay.

David W. Noble, Jr.: I have an arbitration decision saying that is lawful to make recordings of one's own conversations with other people in the Postal Service and the Postal Service may not take disciplinary action against an employee for doing so.

Stephen W. Furgeson: We've had several disciplines against people who have taken, successfully, and some of them have come before this board.

Judge Turbitt: Okay, well, that is, I don't have a removal based on illicit recordings of conversations. I have a removal based on AWOL. I want to find out if the Postal Service does have a policy that prevents recording devices from being on the premises and/or that prevents conversations from being recorded. It doesn't make a difference in terms of the charge here but one of the questions I have before me from the appellant Mr. Noble is whether he can introduce conversations that were taken at the U.S. Postal Service premise. I just want to see if there is a concern about from, in terms of an exhibit, and whether it can be a valid exhibit. There would be other reasons why. I've already denied it. But I want to see it that is also a concern. So Mr. Ferguson I direct you to find that law, rule, or regulation, or policy that prohibits employees from using recording devices on agency premises.

Stephen W. Furgeson: I assume I have some time to do that.

Judge Turbitt: We'll see if we can do it, you're not going to do that right now.

Stephen W. Furgeson: Do it today?

Judge Turbitt: We'll see if we can. Okay please continue

David W. Noble, Jr.: Do you recall having a conversation with me on the workroom floor about a year ago in which you told me that there was a postal rule prohibiting recordings being made on the workroom floor?

Sterling Colter: No. I don't recall that. No I don't.

1 David W. Noble, Jr.: Would you change your testimony if I told you that I have a recording of
2 me asking you to tell me what the rule was that prohibited recording on the workroom floor?
3

4 Sterling Colter: My testimony would not change. My testimony would stay the same. Again I do
5 not recall a conversation where I was telling you about a recording. I do recall the conversation
6 where you had something in your hand and you said I'm going to record and I said no you can't
7 record any conversations that we have nothing that I say can be recorded in order to record me
8 you would need my permission to do so and you don't have my permission record me with
9 anything.
10

11 David W. Noble, Jr.: How did the concurrence to which you testified occur?
12

13 Sterling Colter: Once the notice of removal has been prepared and the supervisor basically signs
14 off on it he presents it to me to concur, to read over it and concur it if I'm in agreement with it.
15

16 David W. Noble, Jr.: Okay and is that what happened here?
17

18 Sterling Colter: I don't recall specifically how it happened but I concurred. I was the concurring
19 official.
20

21 David W. Noble, Jr.: You don't remember whether Mr. French brought you the letter for your
22 concurrence?
23

24 Sterling Colter: I don't recall sir.
25

26 David W. Noble, Jr.: Did you conduct any independent investigation of the removal before
27 concurring?
28

29 Sterling Colter: I did. I basically checked the system to see if were in a AWOL status and the
30 system was effective that you were.
31

32 David W. Noble, Jr.: Have you ever seen a letter I wrote to Tony Jones in February 2011 in
33 which I told Mr. Jones that I considered myself to be constructively suspended?
34

35 Sterling Colter: No sir. I have no knowledge of it.
36

37 David W. Noble, Jr.: Do you remember an incident that occurred on July 29, 2010?
38

39 Judge Turbitt: Yes or no, sir.
40

41 Sterling Colter: What incident?
42

43 Judge Turbitt: You can say yes or no based on the question. He can give you some more

1 information later.
2
3 Sterling Colter: No.
4
5 David W. Noble, Jr.: Do you remember the first time you and I met?
6
7 Sterling Colter: No.
8
9 David W. Noble, Jr.: Do you remember ever telling me to leave the premises in Friendship
10 Station or to clock out?
11
12 Sterling Colter: No sir.
13
14 David W. Noble, Jr.: If I told you that a federal judge found that you ordered me off the premises
15 of Friendship Station on July 29, 2010 would that change your testimony?
16
17 Sterling Colter: No because I didn't order you off the premises.
18
19 David W. Noble, Jr.: Do you remember a pre-disciplinary interview with me conducted by
20 Brandon Toatley on August 12, 2010?
21
22 Sterling Colter: No sir.
23
24 David W. Noble, Jr.: Do you ever remember being called into a pre-disciplinary interview with
25 me to answer a question about whether you had ordered me off the floor on July 29?
26
27 Sterling Colter: I'm sorry can you repeat the question? Do I recall being called into a PDI?
28
29 David W. Noble, Jr.: Being called into a PDI to answer question about whether you had ordered
30 me off the floor on July 29, 2010?
31
32 Sterling Colter: Not that I can recall, sir.
33
34 David W. Noble, Jr.: Do you remember coming out to my route on August 12 with Chester
35 Maddox?
36
37 Sterling Colter: I don't recall that specific incident. But however it's a part of our job to do street
38 supervision daily so we go out and do street supervision on all the carriers on carriers every day. I
39 don't recall a specific incident coming out to your route.
40
41 David W. Noble, Jr.: You testified that you consider AWOL to be an egregious defense.
42
43 Stephen W. Furgeson: Objection.

1 David W. Noble, Jr.: Or I mean an egregious offense, correct?
2
3 Judge Turbitt: One second before you answer, sorry.
4
5 Stephen W. Furgeson: I withdraw the objection.
6
7 Judge Turbitt: You withdraw the objection?
8
9 Stephen W. Furgeson: He said defense. He changed the offense. I withdraw the objection.
10
11 Judge Turbitt: Okay, do you?
12
13 Sterling Colter: Yes sir.
14
15 David W. Noble, Jr.: Is that stated somewhere in the collective bargaining agreement?
16
17 Sterling Colter: Not to my knowledge. I'm not really sure. I said that I feel like it's egregious
18 because attendance is a core requirement of your job and the fact that you are not coming to work
19 and you're not notifying anyone as to why. That's why I said it's an egregious offense.
20
21 David W. Noble, Jr.: Have you heard anything about 20 or so carriers in Zone 16 four or five
22 years ago being caught clocking each other in and out when they weren't at work?
23
24 Sterling Colter: I'm not aware. I wasn't at Friendship five years ago.
25
26 David W. Noble, Jr.: So you don't know whether many of the people that you're presently
27 managing were accused of theft of time, of timecard fraud?
28
29 Sterling Colter: No sir. Again I don't have a history report on the employees. I haven't been with
30 Friendship for five years. So prior to me coming to Friendship I had never heard of Friendship or
31 the people there so I'm not sure what transpired before I got there.
32
33 David W. Noble, Jr.: Would you consider timecard fraud to be a more egregious offense or less
34 egregious offense than AWOL?
35
36 Sterling Colter: I would think they're both equally as egregious, both of them. I mean all of it's
37 about the same in my opinion, it's wrongdoing on the employee's part.
38
39 David W. Noble, Jr.: How about, how would being AWOL compare with cheating an employee
40 out of holiday pay by a supervisor?
41
42 Stephen W. Furgeson: Objection.
43

1 Judge Turbitt: On what basis?
2
3 Stephen W. Furgeson: I don't think there's a basis because he's not talking about, he's talking
4 about apples and oranges, he's talking about discipline and he's talking about holiday pay under
5 the contract and it's not a disciplinary situation. If he was talking about a disciplinary situation I
6 think it would be comparable, but I think this is too far afield and irrelevant to be a proper
7 appropriate question.
8
9 Judge Turbitt: Objection sustained.
10
11 David W. Noble, Jr.: Are you familiar with a carrier named Terence Seawright?
12
13 Sterling Colter: I do have a carrier named Terence Seawright.
14
15 David W. Noble, Jr.: And does he work on my bid assignment one day per week?
16
17 Sterling Colter: It is in his setup, your route is in his set up. He's a T6 and the route is in his set
18 up.
19
20 David W. Noble, Jr.: And can Terence Seawright carry my route in eight hours?
21
22 Sterling Colter: I'm not sure.
23
24 David W. Noble, Jr.: Do you know how long it took him yesterday?
25
26 Sterling Colter: No sir.
27
28 David W. Noble, Jr.: Carriers in Friendship Station start work at eight o'clock in the morning,
29 correct?
30
31 Sterling Colter: Correct.
32
33 David W. Noble, Jr.: Do you know how many carriers in Friendship Station were out after nine
34 o'clock last night?
35
36 Sterling Colter: I do not.
37
38 David W. Noble, Jr.: During the whole time that you've been at Friendship Station I've brought
39 back undelivered mail to the station every day haven't I?
40
41 Sterling Colter: You brought back mail to the station every day since I've been at Friendship?
42 No, you haven't been at Friendship every day since I've been in Friendship.
43

1 David W. Noble, Jr.: Every day that I've worked since you've been at Friendship I've brought
2 back undelivered mail haven't I?

3
4 Sterling Colter: I can't give a definitive to that. Again as a station manager a lot of time I'm not
5 even in the stations and I'm in meetings and on telecoms. That would be more of a supervisory
6 role as to who brings mail back and exactly what happens on the street or if they have a dog bite.
7 As acting manager I really don't, I wouldn't be there in the evening when mail would be coming
8 back, that's not something that would be reported to me so not that I can recall not to say that it
9 didn't transpire.

10
11 David W. Noble, Jr.: Under the M-39 a route is supposed to be adjusted to eight hours, correct?

12
13 Sterling Colter: Under the M-39, what manual is that?

14
15 David W. Noble, Jr.: Under *Management of Delivery Services*, M-39?

16
17 Sterling Colter: No sir. I'm not familiar where it says that a route is supposed to be adjusted to
18 eight hours.

19
20 David W. Noble, Jr.: Well, is it your understanding that a route is supposed to be adjusted to
21 eight hours?

22
23 Sterling Colter: No sir.

24
25 David W. Noble, Jr.: How long do you think a route is supposed to be adjusted to?

26
27 Sterling Colter: Well that depends. I mean it that depends on if you're in an FSS environment or
28 that depends on if the to business route all residential route there are a lot of determinant factors,
29 a lot of things that would, a lot of things that would impact what a route should be so a route
30 could be adjusted to a number of things depending on the circumstances.

31
32 David W. Noble, Jr.: Has it been your experience that I can complete my assignment within eight
33 hours?

34
35 Sterling Colter: Again I don't recall you being at work very much since I've been there so as far
36 your capabilities of completing your assignment or not being able to put your assignment, I'm not
37 sure. I don't know if you've, like I said I don't recall you being at work a lot and saying that you
38 could or could not complete your assignment in a certain time frame.

39
40 David W. Noble, Jr.: Okay, that's all I have.

41
42 Judge Turbitt: Redirect.

1 Stephen W. Furgeson: Just a couple. Looking at Exhibit 4B that you signed as a concurring
2 official, who was the official that initiated that do you know? Which is the notice of proposed
3 removal. Who had signed that at the bottom?
4
5 Sterling Colter: Mr. French.
6
7 Stephen W. Furgeson: And what relationship does he have with Mr. Noble?
8
9 Sterling Colter: He's his direct supervisor.
10
11 Stephen W. Furgeson: And that is what you concurred in?
12
13 Sterling Colter: Correct.
14
15 Stephen W. Furgeson: And does Mr. French have the authority to issue that kind of removal
16 notice?
17
18 Sterling Colter: Yes, he does.
19
20 Stephen W. Furgeson: This is a proposed removal notice, correct?
21
22 Sterling Colter: Yes.
23
24 Stephen W. Furgeson: And do you know who made the decision to uphold that removal?
25
26 Sterling Colter: To uphold it?
27
28 Stephen W. Furgeson: Yeah, who issued the decision letter?
29
30 Sterling Colter: Mr. Washington
31
32 Stephen W. Furgeson: Just for the record we have referenced the word or the initials PDI. Does
33 that have a common reference in postal parlance in postal language?
34
35 Sterling Colter: Yes. Pre-disciplinary interview.
36
37 Stephen W. Furgeson: And are there certain offenses that can be, in the Postal Service, where
38 you can be removed without going through progressive discipline?
39
40 Sterling Colter: Yes.
41
42 Stephen W. Furgeson: Can you name a few? You have already indicated AWOL.
43

1 Sterling Colter: AWOL, theft, destruction of mail, things of that nature.
2
3 Stephen W. Furgeson: And is there anything that prohibits that, in the collective bargaining
4 agreement that prohibits that?
5
6 Sterling Colter: No sir.
7
8 Stephen W. Furgeson: Anything in the regulations that prohibit issuing discipline without going
9 through progression for certain offenses?
10
11 Sterling Colter: No I mean, like I said depending on what the offense is
12
13 Stephen W. Furgeson: All right, that's all I have your honor.
14
15 Judge Turbitt: Mr. Noble?
16
17 David W. Noble, Jr.: Have you ever known any carrier in friendship station to be AWOL?
18
19 Sterling Colter: Yes.
20
21 David W. Noble, Jr.: And was that carrier removed?
22
23 Sterling Colter: The thing about the removal, oh I'm sorry the AWOL's. AWOL like I said in my
24 opinion egregious however some carriers have been known to let's say for instance call in and
25 say hey I'm not coming to work because I'm not feeling well at the point of that call that catered
26 me notified that you need to bring in acceptable documentation to substantiate your absence
27 when you return. When they return to work the following day, the carrier may not bring any
28 documentation in so then they would be put in to the system for an AWOL. There are other
29 instances where a carrier will just not call, not show up for work for months I mean weeks even
30 months at a time. So different circumstances, AWOL removals. I have been involved in removals
31 for AWOL before, I'm trying to think about Friendship specifically. There have been carriers put
32 up for removal based on AWOL.
33
34 Judge Turbitt: At Friendship Heights?
35
36 Sterling Colter: At Friendship, yes sir. Carriers, clerks, mail handlers.
37
38 Judge Turbitt: There has or has not?
39
40 Sterling Colter: Has.
41
42 Judge Turbitt: Do you know who they are, names?
43

1 Sterling Colter: Let me think, names of people who been placed on removal for AWOL. You'll
2 have to give me a moment with the names. Friendship consists of three deliveries of codes 20016
3 which Mr. Noble is employed by 20007, 20008. I've worked in the entire building all three
4 zones so if I can get a minute. Caleb Shorter, he's been put up for removal for AWOL.

5
6 Judge Turbitt: First name?

7
8 Sterling Colter: Caleb Shorter.

9
10 Judge Turbitt: Spell the first name please.

11
12 Sterling Colter: I think it's C-A-L-E-B. He's been placed up for removal for AWOL. He is a
13 custodian.

14
15 Judge Turbitt: And was he in fact removed?

16
17 Sterling Colter: I think his removal was reduced to a second chance or a last chance. Last chance
18 agreement I think.

19
20 Judge Turbitt: Okay, anybody else?

21
22 Sterling Colter: I can't recall any other names at this time.

23
24 Judge Turbitt: Do you mean that there are other names and you can't recall who they are, or you
25 can't recall that anybody else was ever charged with AWOL and disciplined?

26
27 Sterling Colter: There has definitely been discipline. Like I said I get mixed up because I've been
28 in the whole zone I'm thinking of employee's names that worked a different, because it is all
29 considered Friendship Heights, but it's different delivery zip codes. Like I said 20007, 20008,
30 20016. I'm trying to distinguish all the employees in 2016 but that is the only one I can recall at
31 this time.

32
33 Judge Turbitt: Okay, I'm sorry to interrupt you Mr. Noble, please continue.

34
35 David W. Noble, Jr.: Do you know what Mr. Is it Mr. Shorter? Do you know what his seniority
36 was?

37
38 Sterling Colter: I do not.

39
40 David W. Noble, Jr.: Do you know whether he had an unblemished disciplinary record?

41
42 Sterling Colter: I'm not sure what his record was. Or what his record consisted of
43

1 David W. Noble, Jr.: Nothing further.
2
3 Judge Turbitt: Any other further, any questions?
4
5 Stephen W. Furgeson: Just a couple. Who made the decision to reduce Mr. Shorter to last chance
6 agreement?
7
8 Sterling Colter: I'm not sure.
9
10 Stephen W. Furgeson: Was it somebody in Labor Relations or above you?
11
12 Sterling Colter: It was somebody above me.
13
14 Stephen W. Furgeson: You didn't make that decision?
15
16 Sterling Colter: No, above my level.
17
18 Stephen W. Furgeson: And other than 20016, zip code 20016, you manage other zip codes?
19
20 Sterling Colter: Well, I have worked in 20007 and 20008 as well. But I'm currently managing 16.
21
22 Stephen W. Furgeson: All right, that's all I have your honor.
23
24 Judge Turbitt: Mr. Noble.
25
26 David W. Noble, Jr.: Nothing further.
27
28 Judge Turbitt: Okay. I want to thank you for your testimony today Mr. Colter and I'm going to
29 ask you not to discuss your testimony until after the close of this hearing. That means don't talk
30 about it. If you're not sure when the hearing ends just call Mr. Ferguson and he will let you
31 know, it may be today, I believe it will be today.
32
33 Sterling Colter: Okay.
34
35 Judge Turbitt: Okay, but don't, if anybody talks you today just say I can't talk about it.
36
37 Sterling Colter: Okay.
38
39 Judge Turbitt: But you can when the hearing is ended, all right?
40
41 Sterling Colter: Yes sir.
42
43 Judge Turbitt: You are excused from these proceedings. Thank you sir.

1 Sterling Colter: Thank you.
2
3 Judge Turbitt: And have a good weekend.
4
5 Stephen W. Furgeson: Next witness your honor I assume.
6
7 Judge Turbitt: It is 12 o'clock do we want to break for a half hour for lunch or do we want to
8 keep going?
9
10 Stephen W. Furgeson: It's up to Mr. Noble, I can go.
11
12 David W. Noble, Jr.: I'd prefer to break now, your honor.
13
14 Judge Turbitt: Okay it is 12 o'clock now. We will reconvene at 1230 and please have Mr.
15 French.
16
17 Stephen W. Furgeson: Mr. Washington will be up here.
18
19 Judge Turbitt: Okay. Sounds good. All right we are off the record thank you. Okay we are back
20 on the record. We took a lunch break we are back. Mr. Noble.
21
22 David W. Noble, Jr.: Mr. Ferguson e-mailed me yesterday and said that they were admitting
23 number 22 on my list. I wanted that on the record of the admissions I had asked the Postal
24 Service to make.
25
26 Judge Turbitt: Okay.
27
28 Stephen W. Furgeson: I will confirm that we do admit to admission 22 that was provided to us on
29 October 14, 2011.
30
31 Judge Turbitt: Okay, this is the request for admissions.
32
33 Stephen W. Furgeson: Yes. I have one matter, in response to something you requested.
34
35 Judge Turbitt: Okay.
36
37 Stephen W. Furgeson: You ask where the, where it's found as far as you not to record it, not to
38 record another person's conversation.
39
40 Judge Turbitt: Yes. The law, rule, or regulation. Yes sir.
41
42 Stephen W. Furgeson: Yes. It's *Employee & Labor Relations Manual* 667.2 and the following
43 provisions under that. I think specifically 67.21.

1 Judge Turbitt: Do you have a copy of that?
2
3 Stephen W. Furgeson: I can read it from an e-mail.
4
5 Judge Turbitt: Is there anybody that could fax you a copy of it?
6
7 Stephen W. Furgeson: Sure.
8
9 Judge Turbitt: To my office tell (unintelligible) to my fax number.
10
11 Stephen W. Furgeson: Okay.
12
13 Judge Turbitt: At area code 703.
14
15 Stephen W. Furgeson: Okay. I could even, well, 703.
16
17 Judge Turbitt: 756. Six no 756-7112. And then what I'll do is I'll provide Mr. Noble a copy of it
18 and I will have copy of it as well.
19
20 Stephen W. Furgeson: You want me to do that now?
21
22 Judge Turbitt: Have them do it, and then I will once I get it, yes would you please ask them to do
23 it, and then I will ask you if you want to enter it into the record as a hearing exhibit since it came
24 in through the testimony of a witness.
25
26 Stephen W. Furgeson: Can I step outside and do that?
27
28 Judge Turbitt: Yes. Why don't we go off the, can someone do that for you? I mean can you just
29 ask someone to call?
30
31 Stephen W. Furgeson: No. I mean I don't know.
32
33 Judge Turbitt: Would this gentleman be able to do it, would Mr. French be able to call after he...
34
35 William French: *The Employee & Labor Relations Manual?*
36
37 Stephen W. Furgeson: Yeah.
38
39 William French: I actually have a copy of the relations on my thumb drive.
40
41 Stephen W. Furgeson: He's got one I think.
42
43 Judge Turbitt: Can we print it out? If you have a thumb drive we could probably, I could

1 probably attach it to a computer here and we could probably print it out.
2
3 Stephen W. Furgeson: Okay so we're going to do that.
4
5 Judge Turbitt: Yes. May I, I won't know how to.
6
7 William French: How to get to it on the thumb drive.
8
9 Stephen W. Furgeson: Well if you want him to help after he testifies, help somebody do that?
10
11 Judge Turbitt: It might be cleaner if you just send it by fax.
12
13 Stephen W. Furgeson: Okay
14
15 Judge Turbitt: Thank you though for your assistance. Okay go ahead make the arrangements
16
17 Stephen W. Furgeson: Okay I'll do it as quickly as possible. If I can't I'll come back to the room.
18
19 Judge Turbitt: Please send him the fax (unintelligible) my attention and your attention. We will
20 go off the record for two minutes while you do that. Okay we are back on the record. Are you
21 Mr. French?
22
23 William French: Yes.
24
25 Judge Turbitt: Hi, Mr. French. Do me a favor, would you please come up here?
26
27 William French: Yeah.
28
29 Judge Turbitt: My name is Daniel Turbitt. I'm the administrative judge in these proceedings.
30 Before we proceed with your testimony I need to ask you whether you have an objection to
31 taking an oath?
32
33 William French: I don't.
34
35 Judge Turbitt: Please raise your right hand and repeat after me: I state your name sir.
36
37 William French: I William French.
38
39 Judge Turbitt: Do solemnly swear.
40
41 William French: Do solemnly swear.
42
43 Judge Turbitt: To tell the truth.

1 William French: To tell the truth.
2
3 Judge Turbitt: The whole truth.
4
5 William French: The whole truth.
6
7 Judge Turbitt: And nothing but the truth.
8
9 William French: And nothing but the truth.
10
11 Judge Turbitt: So help me God.
12
13 William French: So help me God.
14
15 Judge Turbitt: Thank you sir. Please be seated. Mr. Ferguson, your witness.
16
17 Stephen W. Furgeson: Mr. French, what's your title?
18
19 William French: Supervisor of customer services.
20
21 Stephen W. Furgeson: And where is that at?
22
23 William French: At Friendship post office.
24
25 Stephen W. Furgeson: And what are your, just very briefly, what are your responsibilities, of
26 your position?
27
28 William French: Daily supervision of the delivery unit as well window service ensuring mail gets
29 delivered and customers are assisted at the window.
30
31 Stephen W. Furgeson: And do you know the appellant, Mr. Noble?
32
33 William French: Yes.
34
35 Stephen W. Furgeson: And are you his supervisor?
36
37 William French: Yes.
38
39 Stephen W. Furgeson: I would like you to, there are some documents in front of you, there's a
40 Tab 4A. Do you see that? I mean 4B. Excuse me 4B.
41
42 William French: 4B yes.
43

1 Stephen W. Furgeson: Are you familiar with this document?
2
3 William French: Yes.
4
5 Stephen W. Furgeson: And what is this document?
6
7 William French: That is the notice of proposed removal those was mailed to Mr. Noble.
8
9 Stephen W. Furgeson: And did you initiate that?
10
11 William French: I initiated the mailing yes.
12
13 Stephen W. Furgeson: And did you sign it?
14
15 William French: Yes.
16
17 Stephen W. Furgeson: And this is the notice of his proposed removal?
18
19 William French: Correct.
20
21 Stephen W. Furgeson: And did you take that action?
22
23 William French: Yes.
24
25 Stephen W. Furgeson: Okay, and why did you take that action?
26
27 William French: Mr. Noble was absent without leave for an extended period of time from work
28 which is a terminable offense that's why.
29
30 Stephen W. Furgeson: Have you ever issued a removal for AWOL before other than for Mr.
31 Noble?
32
33 William French: Yes.
34
35 Stephen W. Furgeson: And did you ever do it for employees that had, who have not had prior
36 discipline? A removal for AWOL?
37
38 William French: I've done a removal for AWOL for employees whom I have not issued prior
39 discipline to. I am not sure if they had received prior discipline before my involvement, if that
40 make sense.
41
42 Stephen W. Furgeson: Okay, was there any discipline listed on the removal, do you know?
43

1 William French: On the example that we are talking about?
2
3 Stephen W. Furgeson: Yes.
4
5 William French: No there wasn't.
6
7 Stephen W. Furgeson: Okay and do you know the name of that employee?
8
9 William French: Yes.
10
11 Stephen W. Furgeson: What's his name?
12
13 William French: His name is Caleb Shorter.
14
15 Stephen W. Furgeson: And you believe that what you issued then and now was in accordance
16 with the labor agreement, the collective bargaining agreement?
17
18 William French: Yes.
19
20 Stephen W. Furgeson: Have you ever had one reversed by the grievance (unintelligible)?
21
22 William French: A removal?
23
24 Stephen W. Furgeson: Yes.
25
26 William French: No.
27
28 Judge Turbitt: One second please. Would you please spell Mr. Shorter's first name?
29
30 William French: C-A-L-E-B.
31
32 Judge Turbitt: Thank you.
33
34 Stephen W. Furgeson: Prior to issuing this notice of removal were you aware that a PDI was
35 conducted, which is a pre-disciplinary interview, with Mr. Noble?
36
37 William French: Yes.
38
39 Stephen W. Furgeson: And do you know who did that?
40
41 William French: Mr. Antonio Jones
42
43 Stephen W. Furgeson: And how did you become aware of that?

1 William French: That the pre-disciplinary interview was conducted? I was actually in the office
2 right next door when it was conducted.
3
4 Stephen W. Furgeson: Do you know if it was completed or not?
5
6 William French: No. It was not completed.
7
8 Stephen W. Furgeson: Now, did you have your, prior to issuing this notice of removal did you
9 have it reviewed by anyone?
10
11 William French: Yes the disciplinary, the process is I request a disciplinary action, it's called a
12 disciplinary action request, that requests disciplinary action from our labor department, Labor
13 Relations Department.
14
15 Stephen W. Furgeson: And why are you required to do that?
16
17 William French: That's just the process for any step of this plan whether it's a letter warning, a
18 suspension a proposed removal. That's the process.
19
20 Stephen W. Furgeson: And do they ever comment or feedback, give you feedback?
21
22 William French: They often comment and feedback yeah for various reasons.
23
24 Stephen W. Furgeson: Like if it violates the collective bargaining agreement, or anything like
25 that?
26
27 William French: Yeah, exactly there have been instances where I request discipline and they tell
28 me that it was not an incident that requires discipline, or that needs discipline or what have you.
29
30 Stephen W. Furgeson: Now did you ask, request disciplinary approval for this removal for Mr.
31 Noble?
32
33 William French: Yes.
34
35 Stephen W. Furgeson: And I ask you to look at in front of you Tab 4D, do you see that there?
36
37 Judge Turbitt: D as in dog?
38
39 Stephen W. Furgeson: D as in dog, yes, correct. Are you familiar with that document?
40
41 William French: Yes.
42
43 Stephen W. Furgeson: And what is that document?

1 William French: That is the disciplinary action request that I filled out for the proposed removal.
2
3 Stephen W. Furgeson: And did they, how did they respond back?
4
5 William French: They responded with an affirmation to pursue the disciplinary action.
6
7 Stephen W. Furgeson: Did they draft it or did you draft the removal?
8
9 William French: I did not draft it no.
10
11 Stephen W. Furgeson: Okay who drafted it? Do you know?
12
13 William French: I don't know. I'm assuming it was somebody at the Labor Relations
14 Department.
15
16 Stephen W. Furgeson: And you read it and signed it as being accurate?
17
18 William French: Correct, yeah, I'll proofread it.
19
20 Stephen W. Furgeson: Do you know if the appellant at that the time you signed it had any
21 medical certificates showing his ability to work or not work, at the time you signed it are you
22 aware of any medical certificates he had?
23
24 William French: At the time that I signed it?
25
26 Stephen W. Furgeson: Yes.
27
28 William French: The only medical certificate I'm aware of was one that Mr. Noble had brought
29 in to work stating that he could come to paraphrase I want to say able to resume normal duties or
30 something in that nature or regular work schedule something like that.
31
32 Stephen W. Furgeson: I'll ask you to look, there's a pre-hearing submission which is as exhibits
33 1,2 and 3. Do you see that document in front of you?
34
35 William French: One of the other documents here?
36
37 Stephen W. Furgeson: Let me make sure you've got the right one here. Oh it's over here I think,
38 or maybe I took it back. Nope I took it back. I'll ask you to look at, oh here it is, exhibit number
39 1.
40
41 Judge Turbitt: What are you having the witness look at?
42
43 Stephen W. Furgeson: Exhibit number 1 of the pre-hearing submission.

1 William French: Yes sir.
2
3 Stephen W. Furgeson: Have you seen this before?
4
5 William French: This is what I was just referring to, the disability certificate (unintelligible) that
6 Mr. Noble turned in.
7
8 Stephen W. Furgeson: Did Mr. Noble ever, any time after 23 February, contact you about coming
9 back to work?
10
11 William French: No.
12
13 Stephen W. Furgeson: I'll pass the witness your honor.
14
15 Judge Turbitt: Mr. Noble.
16
17 David W. Noble, Jr.: Who do you understand made the decision that I should be removed?
18
19 William French: I'm the one that requested the disciplinary action. I'm the ultimate one that
20 made the decision. Now I can say there were conversations with again the Labor Relations
21 Department but I'm the one who made the decision.
22
23 David W. Noble, Jr.: There were conversations between you and the labor relations department?
24
25 William French: First of all I need to get concurrence from my immediate supervisor, so there is
26 a conversation between myself and him. Conversations probably isn't accurate its
27 correspondence between as far as the disciplinary action request and what have you.
28
29 David W. Noble, Jr.: How did it happen that Sterling Colter signed the notice of proposed
30 removal? Did you take him a copy of the letter?
31
32 William French: The concurrence, the concurrent part you mean?
33
34 David W. Noble, Jr.: Yes.
35
36 William French: Yeah, I did. Yes.
37
38 David W. Noble, Jr.: And did you hand it to him?
39
40 William French: Yes.
41
42 David W. Noble, Jr.: And did he sign it?
43

1 William French: He did sign it, I believe, yes.
2
3 David W. Noble, Jr.: And gave it back to you?
4
5 William French: Yes.
6
7 David W. Noble, Jr.: I told you didn't I during the fall of 2010 that I was recording your
8 conversations with me and Sterling Colter's conversations with me?
9
10 William French: No as I recall it there was an instance where there was a conversation between
11 you and I. I believe Mr. Coulter was there as far as I can recall but upon conclusion of that
12 conversation you had mentioned something about the conversation being recorded, at which
13 point I told you that of course recordings aren't allowed. You can't record whether videos,
14 pictures, what have you in the post office.
15
16 David W. Noble, Jr.: Do you recall me asking you to tell me by what regulation recording in the
17 post office was prohibited?
18
19 William French: Now that you mention it I do, again at the conclusion of that conversation you
20 did ask that, yes.
21
22 David W. Noble, Jr.: And you never got back to me and told me what regulation that was, did
23 you?
24
25 William French: By the end of that conversation, no I did not. I pursued it to try to find out
26 exactly where that regulation was. I knew that the regulation was in place but there, as you know
27 are numerous regulations at the Postal Service. By the time I had found the regulation it was not,
28 it may not have even been that same day I don't think. And I don't think I, I'm not sure if I had
29 seen you since then.
30
31 David W. Noble, Jr.: Now, you said that you knew that Tony Jones had had a PDI with me
32 correct?
33
34 William French: Yes. Yes.
35
36 David W. Noble, Jr.: And you were aware of that because you were in the office next door, is
37 that right?
38
39 William French: Well I knew there was one scheduled. He had mentioned at some point that
40 there was one scheduled it so happened, I think I was conducting a pre-disciplinary interview
41 with a different employee, with the clerk, in the office next door. I was having a meeting with
42 another employee and their shop steward at the time I do recall.
43

1 David W. Noble, Jr.: How, if at all, did you learn of the substance of the PDI between me and
2 Tony Jones?

3
4 William French: By substance you mean?

5
6 David W. Noble, Jr.: What transpired during the interview.

7
8 William French: The only thing I, what stands out to me is, was the conclusion of the interview.
9 You had left the office and were speaking, your voice was raised, telling Mr. Jones that again I'm
10 paraphrasing but you'd come back to work when you get paid or something of that nature and I
11 heard that in the other office and that's all I know of the interview itself aside from the actual
12 pre-disciplinary interview notes.

13
14 David W. Noble, Jr.: On January 13, 2011 I had submitted a request to you for leave hadn't I?

15
16 William French: You had.

17
18 David W. Noble, Jr.: And you approved that request for leave didn't you?

19
20 William French: I did.

21
22 David W. Noble, Jr.: And if you had properly processed that leave request I would've been paid
23 for that leave on January 21, wouldn't I?

24
25 William French: I'm not sure. That sounds like the right pay period, pay date, yes. There was one
26 hiccup in that I believe the leave request was for, it was over a week maybe ten days something
27 like that. By the time I received the leave request and the documentation which I believe is the
28 documentation we had mentioned earlier, that pay week had closed so you had been in the system
29 in an unpaid status and it was a matter of performing a pay adjustment in order to have that leave
30 paid to you.

31
32 David W. Noble, Jr.: So do I understand that it's your assertion that something happened beyond
33 your control that caused the payment of the leave request to be delayed for more than two
34 months?

35
36 William French: As far as being more than two months I really can't answer that. If I had
37 received the leave request and the documentation while that pay week was open there wouldn't
38 have been an issue. Again the leave request was approved, I approved it myself but it was after
39 that pay week had been closed so that is what required to pay adjustment to be done. It probably
40 should, you probably earlier than two months, two months later.

41
42 David W. Noble, Jr.: The record to this point shows that I contend that for 35 years the Postal
43 Service flawlessly paid me for holidays for which I was eligible for holiday leave pay, and that

1 after you became my supervisor I was no longer paid holiday pay for holidays for which I was
2 eligible. Can you explain why that happened?

3
4 Stephen W. Furgeson: Objection, he says the record shows he had been flawlessly paid for 35
5 years I don't know of anything in the record that has indicated that.
6

7 Judge Turbitt: Okay let me just, a few pointers. What you just did Mr. Noble was testify through
8 a question. Any question that you ask is not testimony, it is not evidence. I know that you ended
9 it with a question but all of the stuff that appeared before that was just testimony on your behalf.
10 You will be allowed to testify later on that and other issues, any other issues that you want to
11 discuss. Any argument that you make in this case is not proven evidence it's just argument. The
12 agency has its arguments, you have your arguments, any evidence is documents, facts, things like
13 that, that has been, or stipulations that's been proven. But just your argument does not make it a
14 fact so you can ask this gentleman about whether he did or did not pay you for holiday leave and
15 why but please, this is the, you've done, you've almost done this a couple of other times but you
16 didn't, you did it now. I'm just asking you as a way to streamline the process, I will give you an
17 opportunity to testify please be careful in your questionings to make sure that it is, you're going
18 to elicit the facts in testimony from the witness not from you okay? So you can ask about the
19 question but just because you said it in the record doesn't make a fact it's just argument. Do you
20 want the question, can you rephrase the, objection sustained. Can you rephrase the question?
21

22 David W. Noble, Jr.: I'm trying. It's true isn't it that when an employee, let me strike that. It's
23 true isn't it that an employee is eligible for holiday leave pay if the employee is in the pay status
24 on the last hour before a holiday or the first hour after a holiday?
25

26 William French: Yes.
27

28 David W. Noble, Jr.: And it's also true isn't it, that when an employee has established eligibility
29 for holiday pay that the supervisor need take no action in order for the employee to be paid for
30 the holiday leave pay?
31

32 William French: Correct. The time and attendance collection system automatically pays the
33 holiday pay to the employee.
34

35 David W. Noble, Jr.: So if I was not paid for five days for which, for five holidays for which I
36 was eligible to be paid, that would mean that somebody altered postal time records?
37

38 William French: Not that I know. You had asked the last time I saw you, you had asked a
39 question about the pay and you had mentioned the same thing that the policy that the last hour
40 before a holiday or the first hour after a holiday the employee would need to be in a pay status
41 and I agreed of course and you mentioned that you did not get paid for a few of those, I want to
42 say Columbus Day and Veterans Day I think in November is what we're discussing and you
43 mentioned that you did not get paid and I told you it didn't make sense since you were in pay

1 status for it was either the day before or day after for each holiday and that I would try to find out
2 why that was because it didn't make sense. I'd never seen that happen before. Again since then I
3 haven't, we haven't spoken we haven't, I haven't seen you so I haven't come up with an answer.
4 Honestly, I had forgotten about it.
5

6 David W. Noble, Jr.: Do you recall a union steward named Leon Tucker approaching you in early
7 December 2010 to discuss initiating a grievance concerning holidays for which I had not been
8 paid?
9

10 William French: I don't, I don't recall. Mr. Tucker approached me numerous times for different
11 grievances but I don't recall that one in particular.
12

13 David W. Noble, Jr.: Are you aware of the letter I wrote to Tony Jones in February 2010, 2011
14 excuse me, telling Tony Jones that I considered myself to be constructively suspended from my
15 letter carrier work?
16

17 William French: No, I'm not aware.
18

19 David W. Noble, Jr.: It's your understanding, isn't it, that letter carrier routes should be adjusted
20 to as nearly eight hours work per day as possible?
21

22 William French: Yes.
23

24 David W. Noble, Jr.: And it's your understanding, isn't it, that that is computed on the pace of
25 the regular carrier on the route?
26

27 William French: As far as the street portion yes.
28

29 David W. Noble, Jr.: On September 6, 2011 you spent time on the street observing the work of
30 Terrance Seawright and another carrier on my route didn't you?
31

32 Stephen W. Furgeson: Objection. I don't see the relevance of something that occurred after he
33 was removed, with another carrier I just don't see the relevance, your honor.
34

35 Judge Turbitt: I agree, but I'll let it in. Answer the question sir
36

37 William French: I have performed street observations on Mr. Seawright. He has been on your
38 route but I don't recall that particular day, that instance in particular no.
39

40 David W. Noble, Jr.: Can Mr. Seawright complete my route in eight hours without assistance?
41

42 William French: I don't know.
43

1 David W. Noble, Jr.: Okay, I'm showing you exhibit QQ, appellant's exhibit QQ.
2
3 Stephen W. Furgeson: I don't have a copy of that. I don't know what he's referring to. I haven't
4 seen it. It's not part of the exhibits that were approved for the hearing. I'm not sure what it's
5 offered for.
6
7 Judge Turbitt: Okay, did you submit this into the record sir?
8
9 David W. Noble, Jr.: I did your honor.
10
11 Judge Turbitt: Okay, when did you submit this?
12
13 David W. Noble, Jr.: Yesterday.
14
15 Judge Turbitt: Okay, did you get a copy of what he submitted yesterday?
16
17 Stephen W. Furgeson: It may have come. I was out of the office. If it came I didn't receive it.
18
19 Judge Turbitt: Okay in the interest of saving time since you don't have a copy of it since it was
20 submitted yesterday. You can look at my copy of it.
21
22 Stephen W. Furgeson: I'm going to just object for the record to because I believe this is...
23
24 Judge Turbitt: Well before you, why don't you look at the, so you know what it is that we're
25 talking about and when you're finished looking at it give it back to me please and then do you
26 know what it is.
27
28 Stephen W. Furgeson: Yeah I don't know what it is but I see what it is. It's something to do with,
29 I've never seen one before, it's a work hour, workload report for a carrier at Friendship and I'm
30 assuming it pertains to Mr. Noble. I don't understand everything here.
31
32 Judge Turbitt: Are you saying you don't have a copy of any of the things that the appellant
33 submitted yesterday?
34
35 Stephen W. Furgeson: He may have submitted them. I don't know did you submit them by fax?
36 Yeah I was out of the, I was not in the office I was working but not in the office so I don't, I
37 haven't seen a copy again it is not part of the approved exhibits. I mean there's a ton of stuff that
38 appears to be here. I would object not only the fact that I didn't receive it in a timely fashion but
39 that I don't think it's even, although you're giving a lot of latitude here, I don't think it's relevant
40 and I'm going to interpose an objection for the record.
41
42 Judge Turbitt: Well, okay, a little house cleaning, all of the exhibits that you submitted, there are
43 quite a few that you submitted yesterday, are you asking that they all be entered into the record?

1 David W. Noble, Jr.: Yes.
2
3 Judge Turbitt: Okay, you haven't received them so you have to now look at them. I need to, I
4 want to do this quickly, you know what? Do you object to any of the exhibits that he submitted
5 yesterday?
6
7 Stephen W. Furgeson: Yes, I object all of them.
8
9 Judge Turbitt: Okay.
10
11 Stephen W. Furgeson: Because I didn't see them. I haven't had a chance to go through them and
12 in the 11th hour it's unseemly and it's improper to have this done at the last minute.
13
14 Judge Turbitt: Okay, why didn't you submit these earlier with your pre-hearing submissions
15 which you were directly ordered to do Mr. Noble?
16
17 David W. Noble, Jr.: I hadn't finished putting my case together. I still haven't finished putting
18 my case together. Unlike Mr. Ferguson I don't have an office full of lawyers and secretaries and
19 paralegals. I am working by myself.
20
21 Judge Turbitt: I understand that's why I've given you more time so that you can meet these
22 deadlines. This hearing is over a month after the date that I originally scheduled it. I understand
23 that, that's why I've given you more time. Now you are entering exhibits, a lot of exhibits, the
24 day before the hearing, actually this came in at 9:42 yesterday
25
26 David W. Noble, Jr.: That was the deadline the judge had said was 12 o'clock yesterday.
27
28 Judge Turbitt: But you're now submitting, okay that was for anything that you were going to
29 provide to the other side, this is different. You are submitting these into the record now as
30 exhibits, you want these to be submitted into the record as exhibits is that correct?
31
32 David W. Noble, Jr.: Yes. I submitted them to Mr. Ferguson.
33
34 Stephen W. Furgeson: I understood that what was due by noon was my responses to his late
35 issued discovery on 14 October that's what I did.
36
37 David W. Noble, Jr.: That was what the judge said in his first order, the judge modified that.
38
39 Judge Turbitt: When did you get these documents sir?
40
41 David W. Noble, Jr.: I've been collecting them this week. During the course of discovery and...
42
43 Judge Turbitt: None of these documents you've had in your possession prior to this week is that

1 what you're stating?
2
3 David W. Noble, Jr.: None of them I had in my possession and had decided that I was going to
4 use as...
5
6 Judge Turbitt: That's not what I asked you. You just threw something else in there.
7
8 David W. Noble, Jr.: But your honor I have a huge amount of documents in my...
9
10 Judge Turbitt: Mr. Noble, okay.
11
12 David W. Noble, Jr.: In my house.
13
14 Judge Turbitt: Mr. Noble I'm going to ask you a question.
15
16 David W. Noble, Jr.: Yes sir.
17
18 Judge Turbitt: And please answer my question. My question was, this that you submitted
19 yesterday are any of these documents that you've had in your possession prior to yesterday?
20
21 David W. Noble, Jr.: Yes. All of them were in my house prior to yesterday.
22
23 Judge Turbitt: You've been complaining all along that the agency is giving you stuff at the last
24 minute that you can't take a look at, how is this any different? This is the largest file of
25 documents that has been submitted this far in this appeal, by far. I have four volumes in this case.
26 This is by far and you had it before today. You did not allow the opposing counsel an opportunity
27 to even, I'm sure you faxed it to him, but he didn't have an opportunity to look at all these
28 documents that's why now, now you're introducing them through a witness, this is not orthodox.
29 However your objection to all of these documents being into the record is denied. I am showing
30 you great latitude Mr. Noble you keep complaining about what the agency is doing to you. You
31 are doing the exact same thing. But the record reflect that the, I don't, I don't know how many
32 pages it is because they're all not numbered in order they're in separate files and documents. I
33 don't even know if they are in proper MSPB format because of the fact that they are not
34 numbered in sequential order to not paginated they are not indexed. Nonetheless I will accept
35 them into the record I will look at their due probative value, I will look at their weight, I to be
36 honest I haven't had a chance to look at the moment either and the fact that you had them in your
37 possession and you dump them on us the day before the hearing, is you're doing the exact same
38 thing your complaining of. Your objection to these documents is denied. I am entering them into
39 the record. Now you're asking a question about the appellant's exhibit QQ which was just
40 submitted yesterday into the record.
41
42 David W. Noble, Jr.: Can you identify exhibit QQ?
43

1 William French: Yes it is a work hour workload report
2
3 David W. Noble, Jr.: And can you summarize what data it shows?
4
5 William French: This particular report shows times in essence, the amount of time it takes a
6 particular carrier. Okay yeah one particular carrier on a particular assignment and it breaks it
7 down by time in the office, time on the street, the volume of mail that was available and this
8 particular one is from December 2009 through October 2010
9
10 David W. Noble, Jr.: And the individual carrier that, for whom that data is shown on that report
11 is me isn't it?
12
13 William French: Yes.
14
15 David W. Noble, Jr.: And for my bid assignment which is Route 1611 correct?
16
17 William French: Yes.
18
19 David W. Noble, Jr.: And can you read the total times shown on that report for the days that I
20 worked?
21
22 William French: You want me to read each one?
23
24 David W. Noble, Jr.: Please.
25
26 Judge Turbitt: Just tell me what column it is. The record will speak for itself. Just tell me which
27 column it is.
28
29 William French: It's under the total time section. There's a column titled actual or a CT total.
30
31 Judge Turbitt: Okay he doesn't have to read each and every time. I can read the time that it says
32 on the document.
33
34 David W. Noble, Jr.: Okay does it appear to you from looking at that report that I can complete
35 my assignment within eight hours?
36
37 William French: Based on this information here, based on this information here you averaged 10
38 hours or so.
39
40 David W. Noble, Jr.: Okay and that average includes some days that are, show, that I can deliver
41 the route in 0 min. and 0 seconds correct?
42
43 William French: What shows that you had 0 minutes and 0 seconds of street time, of time and

1 there was assistance to the assignment.
2
3 David W. Noble, Jr.: I have complained to you, haven't I, on numerous occasions that my route
4 is not properly adjusted.
5
6 William French: I only recall of one instance when we had a discussion about your route being,
7 you claim was out of adjustment. And during that discussion that we had I mentioned to you that
8 I would be happy to what we call walk the route, evaluate the street time of the route with you
9 but in order to do so I would need you to come to work. I would need you to be available to
10 carry the entire assignment which to my knowledge never happened.
11
12 David W. Noble, Jr.: It's true isn't it that the collective bargaining agreement establishes a
13 pecking order for assignment of overtime?
14
15 William French: Yes.
16
17 David W. Noble, Jr.: And it's true isn't it that the collective bargaining agreement provides that
18 the last category of employees who should be mandated to work overtime are full-time regulars
19 who are not on the overtime desired list?
20
21 William French: Correct.
22
23 David W. Noble, Jr.: And I am a full-time regular not on the overtime desired list correct?
24
25 William French: I believe so, yes.
26
27 David W. Noble, Jr.: Most of the carriers in Zone 16 are on the overtime desired list aren't they?
28
29 William French: More than likely – many if not most.
30
31 David W. Noble, Jr.: On several occasions, the Postal Service admitted in material I received
32 yesterday, you instructed me to work overtime in October and November correct?
33
34 William French: Are you referring to the 3996?
35
36 David W. Noble, Jr.: Yes, you instructed me via 3996 to work overtime?
37
38 William French: Yes, as per the conversations we had about those 3996s we had, yes is the
39 answer.
40
41 David W. Noble, Jr.: You are aware aren't you that my physician has recommended that I not
42 work overtime?
43

1 William French: No, I'm not aware.
2
3 David W. Noble, Jr.: I'm showing you Exhibit X.
4
5 Judge Turbitt: Okay is this, this is, X was the first exhibit that you submitted yesterday right?
6
7 David W. Noble, Jr.: I believe that's correct.
8
9 Judge Turbitt: Okay this is unorthodox but I have to do it because Mr. Ferguson doesn't have a
10 copy of it since we got this big dump of these exhibits yesterday which are all issues that you
11 have identified from the very beginning in this appeal and the fact that we're getting documents
12 at this late hour on them. But Mr. Ferguson has to know what you're showing the witness.
13
14 David W. Noble, Jr.: There are several pages to it so.
15
16 Stephen W. Furgeson: Okay. I've already noted my objection on just the way that we got the
17 documents I object again on the fact, the other basis is that what relevance does this have to do
18 with his termination or removal for attendance and I want to enter that objection as well.
19
20 Judge Turbitt: Your objection is noted and it is denied.
21
22 David W. Noble, Jr.: Is it your position that you've never seen any of these documents?
23
24 William French: Yes. Not that I recall. Now I want to mention the first...
25
26 Judge Turbitt: Okay let me just make sure I got the answer right, because there was a negative.
27 Have you ever seen these documents before?
28
29 William French: There's only one document I could possibly have seen. I don't recall seeing it.
30
31 Judge Turbitt: Which one?
32
33 William French: The very last one. I didn't begin working in that delivery unit until middle to
34 late September of 2010 so the ones dated prior to that I would not have seen. I believe the last
35 one is dated in October from what I just saw.
36
37 Stephen W. Furgeson: October of what year was it 2010?
38
39 William French: 10 yes.
40
41 Judge Turbitt: Okay so you could not have seen the one in October 2010.
42
43 William French: No, I'm saying I don't recall seeing it. I certainly may have. The ones prior to

1 that there is no way I would have seen them.
2
3 Judge Turbitt: So pages one through four you were not there?
4
5 William French: Correct.
6
7 Judge Turbitt: And page 5 you were there but you don't recall seeing this document?
8
9 William French: Correct.
10
11 Judge Turbitt: Mr. Noble please continue.
12
13 David W. Noble, Jr.: Shortly after you issued the notice of removal to me, strike that. Do you
14 know a letter carrier in Zone 16 named, or called "G"?
15
16 William French: Yes.
17
18 David W. Noble, Jr.: And shortly after you issued the notice of removal to me did you tell G that
19 you had just caught a big fish?
20
21 William French: No.
22
23 David W. Noble, Jr.: Do you know that I had emergency heart surgery in 2008?
24
25 William French: No.
26
27 David W. Noble, Jr.: How many PDI's do you do in a typical week?
28
29 William French: It varies I'm sure there have been weeks I've done none and there are weeks
30 where I do three, four, five a day. It varies.
31
32 David W. Noble, Jr.: Three, four, five a day?
33
34 William French: Sure.
35
36 David W. Noble, Jr.: There are currently 35 routes in Zone 16 is that correct?
37
38 William French: Thirty-five and then one auxiliary route – 36 routes.
39
40 David W. Noble, Jr.: Do you know who the manager in zone 16 is now?
41
42 William French: The current acting manager? That's actually a tough question. I believe the
43 manager is Mr. Yves Frédérique.

1 Judge Turbitt: Can you spell the first and last name please?
2
3 William French: First name Y-V-E-S last name as well as I can remember F-R-E-D-E-R-I-Q-U-
4 E.
5
6 Judge Turbitt: Thank you.
7
8 David W. Noble, Jr.: You testified that you sent a request to the Labor Relations for a notice of
9 removal is that correct?
10
11 William French: Correct.
12
13 David W. Noble, Jr.: And that was something you sent to them on March 3, is that correct?
14
15 William French: Yes.
16
17 David W. Noble, Jr.: Do you have that in front of you?
18
19 William French: I do yes, March 3.
20
21 David W. Noble, Jr.: Have you ever sent such a request to Labor Relations before?
22
23 William French: By such a request what do you mean?
24
25 David W. Noble, Jr.: The request for a disciplinary notice.
26
27 William French: Yes.
28
29 David W. Noble, Jr.: How long does it usually take for Labor Relations to get back to you on
30 that?
31
32 William French: It varies. I've had them back as early as two days later maybe a day later at
33 times other times a few weeks.
34
35 David W. Noble, Jr.: Do you know what happened, well, did you receive the notice of proposed
36 removal on April 28, 2011?
37
38 Judge Turbitt: Just for the record you mean the draft notice of proposed removal is that what
39 you're discussing? Not the final?
40
41 David W. Noble, Jr.: I'm talking about the notice of proposed removal dated April 28, 2011
42
43 Stephen W. Furgeson: I would just interject an objection for clarity. I don't know get it back from

1 whom or where, are you talking about Labor Relations?
2
3 David W. Noble, Jr.: Yes.
4
5 Judge Turbitt: My recollection did you testify that you had made some changes or alterations to
6 the draft?
7
8 William French: Yes.
9
10 Judge Turbitt: Okay that's why I need to know are we talking about the draft that came from ELR
11 or are we talking about the final document.
12
13 David W. Noble, Jr.: I completely missed that. You sent a request to an ELR and they sent
14 something back?
15
16 William French: ELR?
17
18 Judge Turbitt: Employee Labor Relations, sorry.
19
20 William French: Okay, yeah, disciplinary action requests get sent to the Labor Relations.
21
22 David W. Noble, Jr.: Okay and they sent something back that you edited?
23
24 William French: I proofread and edit every action, every disciplinary action I issue.
25
26 David W. Noble, Jr.: Okay and you edited the – so that I understand – did you get the notice back
27 from Labor Relations in electronic form?
28
29 William French: Yes.
30
31 David W. Noble, Jr.: Okay and you edited, made editing changes to it?
32
33 William French: Honestly, I don't recall. I do on many different, I do it often, but on this
34 particular one I don't recall.
35
36 David W. Noble, Jr.: Okay and did you get it back from Labor Relations on April 28, 2011?
37
38 William French: That's what I was just trying to recall. I don't know. I'm not sure when it came
39 back. I see that's when I mailed it. But I may have had it for a few days till I had a chance to
40 review it. I am not sure.
41
42 David W. Noble, Jr.: It says in the notice of proposed removal, do you have that there?
43

1 William French: I do, yes.
2
3 David W. Noble, Jr.: On the second page, a little over halfway down it includes the statement
4 “full due process consideration has been extended to you in this matter.” Do you see that?
5
6 William French: Yes.
7
8 David W. Noble, Jr.: Is that something that you put in?
9
10 William French: I don’t believe so, but I don’t know.
11
12 David W. Noble, Jr.: What do you think that statement means?
13
14 William French: It seems fairly clear to me that due process consideration has been extended in
15 this matter.
16
17 David W. Noble, Jr.: What do understand a due process consideration to be?
18
19 William French: Well I suppose generally we’re talking as far as the due process is concerned
20 we’re talking pre-disciplinary interviews or I guess usually it’s a pre-disciplinary interview that’s
21 conducted prior to any investigation the employee having the opportunity to discuss the matter or
22 what have you.
23
24 David W. Noble, Jr.: Okay and you didn’t conduct a pre-disciplinary interview with me did you?
25
26 William French: No.
27
28 David W. Noble, Jr.: And so far as you’re aware there was no pre-disciplinary interview
29 conducted with me concerning the dates listed in the charge in the April 28, 2011 letter, isn’t that
30 right?
31
32 William French: I’m not aware of a pre-disciplinary interview for those dates correct.
33
34 David W. Noble, Jr.: On the dates that you instructed me to work overtime in October and
35 November 2011 I didn’t work overtime, isn’t that correct?
36
37 William French: I think you meant 2010 right?
38
39 David W. Noble, Jr.: I’m sorry, 2010, yes.
40
41 William French: I don’t recall you working overtime no.
42
43 David W. Noble, Jr.: Do you recall speaking with Paris Washington about my removal?

1 Judge Turbitt: Can you be more specific about the time frame?
2
3 David W. Noble, Jr.: I'm sorry in 2011 do recall talking with Paris Washington about my
4 removal?
5
6 William French: I don't recall any particular discussion. I know that we had conversations about
7 it
8
9 David W. Noble, Jr.: Do you remember anything about the conversations?
10
11 William French: Well generally it was a matter of Mr. Washington asking if it had been mailed,
12 if it had been delivered, if we had received confirmation of delivery, if grievances had been filed,
13 or general questions about the process I guess.
14
15 Judge Turbitt: And just for the record when you say had it been mailed is he talking about the
16 notice of proposed removal?
17
18 William French: The actual notice of proposed removal yes.
19
20 David W. Noble, Jr.: I sent you a copy, didn't I, of a letter that I had written to Brandon Toatley
21 expressing unhappiness with my treatment in Zone 16?
22
23 William French: I don't recall receiving any, you say you mailed me, sent me a letter that you
24 sent to Mr. Toatley?
25
26 David W. Noble, Jr.: Correct.
27
28 William French: Okay. No, I don't recall.
29
30 David W. Noble, Jr.: You testified that being AWOL is a terminable offense correct?
31
32 William French: Yes.
33
34 David W. Noble, Jr.: And does that mean that it's your opinion that it's a terminable offense?
35
36 William French: No. I believe it's in the *Employee & Labor Relations Manual* – I'm not quite
37 sure which manual it's in -- but absent without leave, it states absent without leave charges can
38 be, can result in disciplinary action up to and including removal from the Postal Service I think is
39 exactly what it says. I read that as absent without leave being a terminable offense.
40
41 David W. Noble, Jr.: Are you working the late shift now?
42
43 William French: Yes.

1 David W. Noble, Jr.: Did you work the late shift last night?
2
3 William French: Yes.
4
5 David W. Noble, Jr.: How many people got in after nine o'clock last night?
6
7 William French: I don't know the exact number. It was a handful, a handful of carriers returned
8 to the office after nine o'clock.
9
10 David W. Noble, Jr.: I'm showing you exhibit AAA
11
12 Judge Turbitt: One second please, before you show it to the witness we have to let Mr. Ferguson
13 see it. He hasn't seen it yet.
14
15 David W. Noble, Jr.: Well, here.
16
17 Judge Turbitt: You can show it to him. Okay.
18
19 Stephen W. Furgeson: Again standing objections and this could very well have been, should've
20 been provided at the get go because this is something that's directly relevant and I didn't see a
21 copy of that.
22
23 Judge Turbitt: Okay, so this is another document that Mr. Noble you've had all along and you
24 decided to submit it on the day, on the eve of the hearing is that correct?
25
26 David W. Noble, Jr.: No, your honor, I didn't have it all along.
27
28 Judge Turbitt: Okay, when did you get this?
29
30 David W. Noble, Jr.: I am overwhelmed with paper. I am in the middle of a lawsuit that I have
31 been pursuing for 18 years.
32
33 Judge Turbitt: Okay Mr. Noble, that doesn't have anything to do with this. You've talked about
34 that at length for hours in pre-hearing conferences with me. That's not what I'm talking about
35 right now. Were talking about an objection for that particular piece of paper and I asked you a
36 question. When did you have that piece of, that document?
37
38 David W. Noble, Jr.: This document has been on my computer for approximately the last seven
39 months. I found it sometime this week.
40
41 Judge Turbitt: Mr. Ferguson did you ask for this document during discovery?
42
43 Stephen W. Furgeson: No, we did not. But again it's something that when we provide documents

1 that pertain to the notice of charges it seemed like that was something that would've been
2 extremely proper to give us that and let us know that he had something in like this. I have not
3 seen it before, I don't know if anybody else has seen it, it's not signed, I don't know if it was e-
4 mailed to somebody or what. You know again my objections are noted and did not ask for it in
5 discovery.

6
7 Judge Turbitt: Is this AAA or AA?

8
9 David W. Noble, Jr.: AAA.

10
11 Judge Turbitt: Let the record reflect this is a document dated April 30, 2011 from the appellant to
12 Mr. French and Mr. Coulter with him stating that he received a notice of proposed removal the
13 day before so this was dated April 30. My goodness. All right, I note the agency's objection. This
14 should not go in under all rights. This should not go in. However, yet again I'm showing you
15 great latitude Mr. Noble despite your not following my instructions. I will allow this document
16 in. You may show it to this witness.

17
18 David W. Noble, Jr.: Do you recall receiving this document from me?

19
20 William French: I don't recall seeing that document.

21
22 David W. Noble, Jr.: Okay. I don't have anything further.

23
24 Judge Turbitt: Redirect.

25
26 Stephen W. Furgeson: Yes. You heard the questions from Mr. Noble about your being recorded,
27 the conversation that he had with you and is it your testimony that you were not advised that you
28 were being recorded until after your conversation with Mr. Noble?

29
30 William French: Correct. It was afterwards.

31
32 Stephen W. Furgeson: Okay. Were you aware that you were being recorded?

33
34 William French: At the time of the recording? No.

35
36 Stephen W. Furgeson: And did you give your consent after that, it was okay?

37
38 William French: No.

39
40 Stephen W. Furgeson: Do you know if Mr. Noble, he talked about some holiday pay with you in
41 his examination of you, do you know if he filed any grievances on that?

42
43 William French: I don't know. I remember discussing it with him but I can't say it was in the

1 format of a grievance.
2
3 Stephen W. Furgeson: And Mr. Noble asked you about a route examination, and you or route
4 evaluation or inspection whatever the term is, what's the right term?
5
6 William French: Well, all those terms are actual terms. They mean different things. The
7 evaluation of the street portion of the assignment is I think what we were discussing.
8
9 Stephen W. Furgeson: And did you offer to do that, is that what your testimony was?
10
11 William French: Yeah. I offered to do it but again I would need him to be able to carry the entire
12 assignment.
13
14 Stephen W. Furgeson: After you offered to do that did he follow up?
15
16 William French: No.
17
18 Stephen W. Furgeson: Are there any other ways to do route inspections besides just evaluating
19 the daily walk around?
20
21 William French: Well, an actual route inspection is a process that takes a week. Mail is counted
22 physically counted and then the delivery street time is evaluated like I said for six I think it's six
23 days I think it's five days and then you know compiled so.
24
25 Stephen W. Furgeson: Did he request this route inspection process?
26
27 William French: No. Not to me.
28
29 Stephen W. Furgeson: Does that have to go through the union to do that is that correct or do you
30 know?
31
32 William French: I'm not sure. I don't know.
33
34 Stephen W. Furgeson: Now you indicated when he showed you Exhibit X with all these doctors'
35 statements remember you testified you had, couldn't have seen four of them and the last you may
36 have seen but you don't recall. When you instructed him to do overtime did he offer to show you
37 those exhibits, or did he show you those documents?
38
39 William French: No.
40
41 Stephen W. Furgeson: Did he mention them? Do you recall?
42
43 William French: Not that I recall.

1 Stephen W. Furgeson: Now when you issue somebody a request to come in for a pre-disciplinary
2 investigation or interview if they don't come in are you prohibited from taking disciplinary
3 action?
4

5 William French: Prohibited? No.
6

7 Stephen W. Furgeson: And would that be the same if you, if they came in and they left during the
8 middle of it, would that be the same? Would you be prohibited if they left during the middle of
9 the interview?
10

11 William French: No.
12

13 Stephen W. Furgeson: He also mentioned that he didn't work, he was instructed to work
14 overtime in 2010 do you recall that question?
15

16 William French: Yes.
17

18 Stephen W. Furgeson: And he asked if he in fact did work overtime and you don't recall if he did
19 or not is that correct?
20

21 William French: I don't recall him ever working overtime.
22

23 Stephen W. Furgeson: Was he disciplined or penalized in any way for not working overtime?
24

25 William French: No.
26

27 Stephen W. Furgeson: Now you indicated you had had some testimony, brief testimony about a
28 conversation with Mr. Washington about the removal. Did you in any way try to influence that
29 decision that Mr. Washington would make about Mr. Noble's removal?
30

31 William French: No.
32

33 Stephen W. Furgeson: That's all I have, your honor.
34

35 Judge Turbitt: Recross, Mr. Noble.
36

37 David W. Noble, Jr.: Mr. Ferguson asked you if you would be prohibited from taking disciplinary
38 action without a pre-disciplinary interview if the employee didn't come to work, is that correct?
39

40 William French: I'm not quite sure as to the way you phrased it but I know what question you're
41 referring to.
42

43 Stephen W. Furgeson: I object because I didn't phrase it that way, no.

1 Judge Turbitt: Objection sustained. That's not how he said it.
2
3 David W. Noble, Jr.: Okay, well I'm trying to understand if an employee isn't coming to work
4 may, in your view, management impose discipline upon the employee without conducting a pre-
5 disciplinary interview?
6
7 William French: In my opinion as you say the employee should be given the opportunity to tell
8 their side. That's the purpose of the pre-disciplinary interview.
9
10 David W. Noble, Jr.: Have you ever known of a situation in which an employee was disciplined
11 without conducting a pre-disciplinary, without management conducting a pre-disciplinary
12 interview?
13
14 William French: Yes.
15
16 David W. Noble, Jr.: When was that?
17
18 William French: I don't have exact dates, but I can think of two or three instances where I myself
19 have issued disciplinary action to an employee who refused, they were at work in most instances
20 that I recall, and they refused to appear for the pre-disciplinary interview at that point
21
22 David W. Noble, Jr.: So in those cases the employee had an opportunity for a pre-disciplinary
23 interview?
24
25 William French: Yes.
26
27 David W. Noble, Jr.: Are you aware of any other circumstances under which discipline has been
28 issued to an employee without a pre-disciplinary interview being conducted?
29
30 William French: No. No.
31
32 David W. Noble, Jr.: You conducted a pre-disciplinary interview with me in November 2010
33 didn't you?
34
35 William French: Yes, I believe that's the right date.
36
37 David W. Noble, Jr.: And after that pre-disciplinary interview you didn't issue discipline to me,
38 isn't that correct?
39
40 William French: I don't believe I did, no.
41
42 David W. Noble, Jr.: And the subject of that disciplinary interview was attendance and/or AWOL
43 wasn't it?

1 William French: It certainly may have been. It would make sense if it was. I don't recall though if
2 it actually was.
3
4 David W. Noble, Jr.: That's all.
5
6 Judge Turbitt: Okay, Mr. French I want to thank you for your testimony today. I'm going to ask
7 that you not discuss your testimony with anyone until at close of this hearing and if you have
8 concerns about when that might be you can call Mr. Ferguson and ask him. It might be this, it
9 might be this evening. You are excused from these proceedings. Thank you very much, sir.
10
11 Stephen W. Furgeson: Your honor Mr. Washington is in the wings, he's my last witness. How do
12 you want to proceed with Mr. Noble's witnesses?
13
14 Judge Turbitt: What is your order of witnesses, Mr. Noble? We have Tucker, Minor, and you.
15
16 David W. Noble, Jr.: Branson is also here.
17
18 Stephen W. Furgeson: And Toatley and the other what's his name?
19
20 William French: Mr. Sidhu.
21
22 Stephen W. Furgeson: Sidhu.
23
24 David W. Noble, Jr.: I'll go last. Sidhu, Branson, Tucker, Minor.
25
26 Judge Turbitt: Say the order again please, sir.
27
28 David W. Noble, Jr.: Sidhu, Branson, Tucker, Minor, Toatley, me.
29
30 Judge Turbitt: Okay.
31
32 Stephen W. Furgeson: Okay, go down and ask I guess if it's all right ask Mr. Sidhu to come up
33 and sit in the wings and did you want to see if the faxes arrived or you want to?
34
35 Judge Turbitt: Yeah, let's do that.
36
37 Court reporter: Off the record?
38
39 Judge Turbitt: Off the record, yes. Mr. Noble I have a copy for you. Mr. Ferguson I have a copy
40 for you, and I'm retaining a copy.
41
42 David W. Noble, Jr.: Your honor since the agency has had an opportunity to supplement the
43 record on this point I'd like the opportunity as well.

1 Judge Turbitt: Okay let's go, we're not on the record, are we on the record?

2
3 Court reporter: Yes.

4
5 Judge Turbitt: We are? Okay. I didn't know we were on the record. No the only reason I'm, well
6 before you do that, Mr. Ferguson one of the witnesses testified to this ELM provision, the
7 *Employee & Labor Relations Manual* provision are you, what do you want to do with this
8 document?

9
10 Stephen W. Furgeson: Well since he referred to it I think it's worthwhile to show his credibility
11 and whatever, and to support what he was saying that this is not, it was improper for him to
12 record the evidence so I would move it for its admission on that basis also you know short of his
13 testimony it just gives further evidence that this was improper. His testimony is there but I would
14 offer this corroboration since I have the opportunity to do that.

15
16 Judge Turbitt: So are you entering this as agency hearing Exhibit 1.

17
18 Stephen W. Furgeson: No. It's, well, at the hearing? Agency hearing Exhibit 1? Yeah. I guess.

19
20 Judge Turbitt: Okay. Mr. Noble do you object to this being entered into the record?

21
22 David W. Noble, Jr.: Yes, your honor. On its face it's inapplicable to the issue we've been
23 discussing. I didn't intercept the oral or wire communications of any other person.

24
25 Judge Turbitt: Okay, your objection is noted for the record. I will admit this document as agency
26 hearing Exhibit 1. It is admitted over the appellant's objection. The appellant's request to
27 supplement the record on this is denied. I've allowed him to voice his objection. Your voiced
28 verbal objection will be noted for the record. Okay let's move on to the next witness. Okay, are
29 you Mr. Washington?

30
31 Paris Washington: Yes sir.

32
33 Judge Turbitt: Mr. Washington would you please come here up to the witness stand? My name is
34 Daniel Turbitt. I'm an administrative judge in these proceedings. Before we proceed with your
35 testimony I need to ask you whether you have an objection to taking an oath.

36
37 Paris Washington: No.

38
39 Judge Turbitt: Okay. Please raise your right hand and repeat after me: I state your name sir.

40
41 Paris Washington: I Paris Washington.

42
43 Judge Turbitt: Do solemnly swear.

1 Paris Washington: Do solemnly swear.
2
3 Judge Turbitt: To tell the truth.
4
5 Paris Washington: To tell the truth.
6
7 Judge Turbitt: The whole truth.
8
9 Paris Washington: The whole truth.
10
11 Judge Turbitt: And nothing but the truth.
12
13 Paris Washington: And nothing but the truth.
14
15 Judge Turbitt: So help me God.
16
17 Paris Washington: So help me God.
18
19 Judge Turbitt: Thank you, sir. Please be seated. Mr. Ferguson your witness.
20
21 Stephen W. Furgeson: Mr. Washington could you give us your current position title?
22
23 Judge Turbitt: Are you okay?
24
25 Paris Washington: I'm the manager of customer service operations in the Washington DC post
26 office.
27
28 Stephen W. Furgeson: How long have you had that position?
29
30 Paris Washington: I've had my present position since 2006.
31
32 Stephen W. Furgeson: And what are your, just very briefly, what are your responsibilities in that
33 position?
34
35 Paris Washington: I oversee stations and branches, five stations within the Washington DC post
36 office. I supervise the managers.
37
38 Stephen W. Furgeson: And would Mr. Colter at Friendship Station, would you be over him?
39
40 Paris Washington: Yeah, at the time, yes, he was acting manager.
41
42 Stephen W. Furgeson: And do you happen to know the appellant, Mr. Noble?
43

1 Paris Washington: No.
2
3 Stephen W. Furgeson: Have you ever met him?
4
5 Paris Washington: No.
6
7 Stephen W. Furgeson: Were you involved in any way with his removal?
8
9 Paris Washington: Yes.
10
11 Stephen W. Furgeson: And what was your involvement?
12
13 Paris Washington: I made the, wrote the decision letter.
14
15 Stephen W. Furgeson: Okay. I'll ask you to look in front of you there you have a Tab 4B. Do
16 you see that designated there?
17
18 Paris Washington: Yes.
19
20 Stephen W. Furgeson: I'll ask you to just look at that document and can you tell me if you've
21 seen this document before?
22
23 Paris Washington: Yes.
24
25 Stephen W. Furgeson: Okay and what is this document?
26
27 Paris Washington: This is a notice of proposed removal for David W. Noble, Jr.
28
29 Stephen W. Furgeson: And upon receiving this document what did you do?
30
31 Paris Washington: Well once the supervisor, manager or supervisor issued the letter of removal,
32 proposed removal, and they mailed it they sent me a copy.
33
34 Stephen W. Furgeson: And did the appellant have an opportunity to meet with you?
35
36 Paris Washington: Based on the information in the letter of removal, proposed removal, he was
37 to notify me or call me and I never received a response from Mr. Noble.
38
39 Stephen W. Furgeson: And did you subsequently make a decision?
40
41 Paris Washington: Yeah. After a period of time there was no contact and after speaking with the
42 manager of the station I had to draft a letter of decision.
43

1 Stephen W. Furgeson: And would you look at Tab 4A there?
2
3 Paris Washington: Okay.
4
5 Stephen W. Furgeson: And do you recognize that document?
6
7 Paris Washington: Yes sir.
8
9 Stephen W. Furgeson: And what is that document?
10
11 Paris Washington: It's the letter of decision that I wrote and put in the mail to Mr. Noble.
12
13 Stephen W. Furgeson: And what was your decision?
14
15 Paris Washington: To uphold the removal and remove Mr. Noble from the Postal Service based
16 on his failure to contact me with any information to give me a reason not to go forward with the
17 removal. I was never contacted, never provided any information to me through written, or
18 otherwise to indicate why he was failure to be in attendance and not be at work. No
19 documentation was submitted indicating why not at work and that's why I made the decision I
20 made.
21
22 Stephen W. Furgeson: Now this charge against him was for absence without leave – AWOL – is
23 that correct?
24
25 Paris Washington: Yes sir.
26
27 Stephen W. Furgeson: And do you consider this a serious charge?
28
29 Paris Washington: Yes.
30
31 Stephen W. Furgeson: And why do you consider it serious?
32
33 Paris Washington: Because every employee is responsible to be at work time and attendance and
34 Mr. Noble had not been to work for months and to me that to me said that he did not, was not
35 interested in coming to work and he made a statement that the manager, the acting manager
36 recently was Mr. Jones, that when he came to his PDI that he was leaving and he wasn't coming
37 back so he never provided any documentation so to me when you take an oath somebody hires
38 you for a job you should come to work and if you can't come to work there should be something
39 to indicate why you can't come to work.
40
41 Stephen W. Furgeson: And is there any basis for his absence, what does this do with, well let me
42 ask you this, have you ever ran a station, been in charge of a station?
43

1 Paris Washington: Yes. I've been a postmaster and a manager.
2
3 Stephen W. Furgeson: And do you know what if any problems this might cause operationally for
4 a person not showing up for work?
5
6 Paris Washington: Yes. Well, Mr. Noble is a carrier and has a route, an assignment, and when
7 he's not there to cover that assignment someone else has to be utilized to cover that assignment,
8 so that you could use overtime. You take from one place to have his route covered by someone
9 else. It could be covered by an additional person you borrowed or you hire from somewhere else
10 or you'll use overtime.
11
12 Stephen W. Furgeson: And does this AWOL cause you any issues with trust and confidence in
13 his abilities to do his job with the Postal Service?
14
15 Paris Washington: Again you know you take a job you got to take a job and you should be at
16 work and if you don't come to work and you intentionally do not come to work and provide
17 nothing, no documentation to indicate your inability to come to work, yes.
18
19 Stephen W. Furgeson: Is this a serious charge just for letter carriers or for any other position in
20 the Postal Service?
21
22 Paris Washington: All employees.
23
24 Stephen W. Furgeson: And you believe the appellant understood the importance of being in
25 regular attendance?
26
27 Paris Washington: I do.
28
29 Stephen W. Furgeson: And why's that?
30
31 Paris Washington: Every employee when you are hired and seeing he has been in the Postal
32 Service for a number of years he would know the importance of coming to work.
33
34 Stephen W. Furgeson: Now in reviewing it, did you consider the fact that the appellant, there was
35 no cited discipline on his record and that he had several years of service in your consideration of
36 the decision to remove him?
37
38 Paris Washington: Yes. But because Mr. Noble never contacted, never provided any
39 documentation and because he had been AWOL for such a long period of time I decided to
40 uphold the removal.
41
42 Stephen W. Furgeson: Now other than the charge and the facts that were cited in the notice of
43 proposed removal, did you consider any other factors? Were elements that were not otherwise

1 referenced in the notice of proposed removal before making your decision to remove him?

2
3 Paris Washington: No, because he did not provide me any opportunity to discuss his reasoning
4 for not being at work so therefore I went with what I had.

5
6 Stephen W. Furgeson: Did anyone else try to contact you to influence your decision to remove
7 him?

8
9 Paris Washington: No.

10
11 Stephen W. Furgeson: Have you issued or decided removal cases for other employees that have
12 been, and that have had AWOL charges against them?

13
14 Paris Washington: Many.

15
16 Stephen W. Furgeson: And how do these employees compare with the removal of Mr. Noble?

17
18 Paris Washington: I've had several similar to Mr. Noble's case who have never contacted me and
19 those individuals were removed from the Postal Service and unfortunately some of them never
20 even contacted the Postal Service. Others who were put up for removal contacted me themselves
21 or through their representatives and we met and had the discussion based on the information
22 provided to me some I agreed to, what we call last chance agreements. Some may have been
23 reduced for lesser actions, administrative actions, so I've had similar, I've had many situations
24 like this with other employees.

25
26 Stephen W. Furgeson: And even if they come to meet with you have there been times when you
27 go ahead and sustain the removal?

28
29 Paris Washington: Yes.

30
31 Stephen W. Furgeson: Now other than at this, at your decision making process did you consider
32 any viable alternative other than removal for Mr. Noble under the circumstances?

33
34 Paris Washington: No. He never gave me the opportunity to consider it.

35
36 Stephen W. Furgeson: All right, I'll pass the witness.

37
38 Judge Turbitt: Mr. Noble.

39
40 David W. Noble, Jr.: How long have you been at a job that has Zone 16 included within your
41 responsibilities?

42
43 Paris Washington: Since January of this year.

1 David W. Noble, Jr.: January of 2011?
2
3 Paris Washington: Correct.
4
5 David W. Noble, Jr.: And immediately before that you were doing what?
6
7 Paris Washington: Manager of customer service for other stations and branches within
8 Washington DC.
9
10 David W. Noble, Jr.: Okay, so this is the same job you have now but with different zones?
11
12 Paris Washington: Yes.
13
14 David W. Noble, Jr.: Okay, I understand that it was your testimony that you understood that I
15 said as I was leaving the PDI that I was leaving and not coming back?
16
17 Paris Washington: Yeah, for some reason you stated that, it's written in the documentation, that
18 you were not coming back 'till you were paid or something to that effect.
19
20 David W. Noble, Jr.: Do you know what I hadn't been paid at that point, if anything?
21
22 Paris Washington: Not other than, no. It was some question about some leave.
23
24 David W. Noble, Jr.: Well, did you ask anybody about that?
25
26 Paris Washington: Yes, because the manager, acting manager said he was going to process an
27 adjustment for whatever leave that was in question.
28
29 David W. Noble, Jr.: Let's assume that I, let's assume a employee submits a leave request, and
30 for some reason it doesn't get processed during that pay period. Is there any reason that
31 management couldn't contact the employee and say we missed this pay period why don't you fill
32 out a new 3971 and we will get you paid next week?
33
34 Paris Washington: If that manager or supervisor was knowledgeable of that, yes.
35
36 David W. Noble, Jr.: That be a lot faster procedure, wouldn't it, than putting in a pay adjustment?
37
38 Paris Washington: Correct.
39
40 David W. Noble, Jr.: Mr. Ferguson asked you about a question of trust and confidence, do you
41 recall that question?
42
43 Paris Washington: Yes.

1 David W. Noble, Jr.: Has any other member of management or supervision expressed an opinion
2 about their trust and confidence in me?

3
4 Paris Washington: No. Not to my knowledge.

5
6 David W. Noble, Jr.: Are you aware of a letter that I wrote to Tony Jones in February 2011 in
7 which I told him that I considered myself to be constructively suspended from my job as a letter
8 carrier?

9
10 Paris Washington: No.

11
12 David W. Noble, Jr.: And did I understand correctly that you testified that you made the decision
13 to remove quote based on my failure to contact you?

14
15 Paris Washington: And provide any documentation to substantiate your reason for not being at
16 work.

17
18 David W. Noble, Jr.: Is it your position that management need not investigate before issuing
19 discipline to an employee?

20
21 Paris Washington: When you say investigate, investigate what?

22
23 David W. Noble, Jr.: The circumstances surrounding the discipline.

24
25 Paris Washington: Well the PDI gave you the opportunity to provide that information.

26
27 David W. Noble, Jr.: And if there were no PDI, would I have been given the benefit of any other
28 investigation?

29
30 Paris Washington: I don't know of any other opportunity we give to employees other than
31 through a PDI unless the employee personally contacts his or her manager or his or her
32 representative through the union and the discussion is held that way but a PDI is the way that we
33 obtain information from any employee for any infraction.

34
35 David W. Noble, Jr.: And is it your position that if the employee for whom disciplinary action
36 has been proposed doesn't contact the deciding official that the deciding official has no
37 responsibility to conduct an investigation of the circumstances surrounding the discipline?

38
39 Paris Washington: No. I've never done that for anyone else.

40
41 David W. Noble, Jr.: I'm sorry what?

42
43 Paris Washington: I said no, and I've never done that for anyone else.

1 Judge Turbitt: And just to be clear when you say no you mean no you've never conducted an
2 investigation yourself for an employee who didn't contact you is that what you mean by no?

3
4 Paris Washington: Correct and I've not done that with anyone else.

5
6 David W. Noble, Jr.: Did you write the decision letter yourself?

7
8 Paris Washington: Yes sir.

9
10 David W. Noble, Jr.: I'm sorry, have you been an employee of the DC post office throughout
11 your career?

12
13 Paris Washington: No.

14
15 David W. Noble, Jr.: When did you become an employee of the DC post office?

16
17 Paris Washington: Right after anthrax in 2000, when was that? I came there I think it was 2004.

18
19 David W. Noble, Jr.: Did you hear anything about 20 or so letter carriers in Friendship Station
20 being charged with timecard fraud?

21
22 Paris Washington: Yeah. I heard something about that.

23
24 David W. Noble, Jr.: And do you know what ultimately happened to those employees?

25
26 Paris Washington: No, I know that there was some discussion about the investigation with the
27 Inspection Service but I cannot tell you who they were and what happened with those
28 individuals.

29
30 David W. Noble, Jr.: Would you consider timecard fraud to be a more serious infraction or a less
31 serious infraction than AWOL?

32
33 Paris Washington: Both of them have their levels of severity and depending on the outcome of
34 the investigation with the Inspection Service they would determine whether or not those
35 individuals for timecard fraud was actually guilty of timecard fraud and I can't tell you what that
36 investigation produced.

37
38 David W. Noble, Jr.: In the decision letter you mentioned something called a *Douglas* factor
39 correct?

40
41 Paris Washington: Correct, then they are listed.

42
43 David W. Noble, Jr.: Do you have the document there before you?

1 Paris Washington: I couldn't tell you. I haven't looked through this documentation.
2
3 David W. Noble, Jr.: Okay, Steve can...
4
5 Judge Turbitt: Tab 4A. Do you mean, do you want him to look at the decision letter or do you
6 want...
7
8 David W. Noble, Jr.: Yes.
9
10 Judge Turbitt: Tab 4A, sir.
11
12 Paris Washington: Okay I haven't seen the, yeah I have a copy of the decision letter.
13
14 David W. Noble, Jr.: You do have a copy of it there or you don't have a copy?
15
16 Paris Washington: I do.
17
18 David W. Noble, Jr.: Okay, great. What is a *Douglas* factor?
19
20 Paris Washington: Well you have to take these into consideration when you are deciding on
21 discipline, and for individuals carriers, clerks, mail handlers whatever employee in the Postal
22 Service and once you look at all of these then you make your determination.
23
24 David W. Noble, Jr.: Okay and do you know where the term *Douglas* factor gets its name?
25
26 Paris Washington: No I don't.
27
28 David W. Noble, Jr.: Have you ever seen a list of Douglas factors?
29
30 Paris Washington: Yes.
31
32 David W. Noble, Jr.: Where have you seen such a list?
33
34 Paris Washington: Other disciplinary actions that I received from the labor relations department
35 and they were sent out by the labor relations department to management various times throughout
36 my postal career. I've seen them.
37
38 David W. Noble, Jr.: Okay, and about how many *Douglas* factors are there?
39
40 Paris Washington: I can't remember. Eleven. I can't remember exactly how many.
41
42 David W. Noble, Jr.: Did you consider all of the *Douglas* factors?
43

1 Paris Washington: I would have to see them in front of me to know whether or not I did or not. I
2 can't tell you that because I don't have them in front of me. Mainly what I considered was the
3 fact that you did not come to work, you were not at work, and you did not contact me. There was
4 the reason for my decision – a person that doesn't come to work for months with no
5 documentation to indicate why you're not at work. That's all I needed.
6

7 David W. Noble, Jr.: In the, in the second paragraph you say "in reaching this decision I have
8 considered the elements of the charges cited in the notice dated April 28, 2011." Do you see that
9 sentence?
10

11 Paris Washington: Yes.
12

13 David W. Noble, Jr.: What do you understand the elements of the charges cited in the April 28
14 notice to be?
15

16 Paris Washington: That you were failure to be regular in attendance, you had been AWOL for a
17 specific period of time, and you had not provided any documentation to make us aware of any
18 factors that would justify not moving forward with the removal.
19

20 David W. Noble, Jr.: And you say that on the second page on the paragraph number four -- you
21 say that you considered my discipline history. Do you see where it says that? What did you
22 understand my discipline history to be?
23

24 Paris Washington: At that particular point I didn't know what your discipline history was. My
25 decision is based on the fact that you did not come to work, had not been at work, and made no
26 provisions to come back to work.
27

28 David W. Noble, Jr.: Okay, so it was your understanding that I had an unblemished disciplinary
29 record is that correct?
30

31 Paris Washington: No, I can't say that because I didn't know what your record was previous to
32 that.
33

34 David W. Noble, Jr.: Also in paragraph number four it says that you considered my 33 years with
35 the Postal Service. Do you see where it says that? And that you thought that 33 years was
36 insufficient to mitigate the penalty is that correct?
37

38 Paris Washington: No. My opinion personally is that 33 years in the Postal Service would do
39 everything necessary to make everyone aware as to why that individual cannot be at work
40 because it would value that 33 years and not contacting me not providing any information to me
41 as to why you were not at work and why you could not come to work I didn't consider that you
42 thought that 33 years was important enough to do everything necessary to contact me or anyone
43 else to maybe not be at this particular point or junction right now.

1 David W. Noble, Jr.: Okay, so do I understand that you thought that 33 years was not long
2 enough to mitigate the penalty of removal?
3

4 Paris Washington: No. Again like I said because of your failure to respond I did not think you
5 considered your 33 years of importance and value enough, valuable enough to contact me or
6 provide any additional, or any documentation to indicate why you were not at work that's all I
7 could go on.
8

9 David W. Noble, Jr.: Okay, I'm going to ask that you answer this yes or no. Is it correct that you
10 thought that 33 years was not long enough to mitigate the penalty of removal?
11

12 Paris Washington: Again I felt 33 years is important in my eyes, but for an individual who has
13 been AWOL and out of work as long as you had been and made no provisions or any provisions
14 at all to contact me or anyone else on your behalf you did not consider those 33 years valuable or
15 important so therefore I made my decision.
16

17 David W. Noble, Jr.: Is there any amount of time in the Postal Service that you would've
18 considered long enough to mitigate the penalty of removal?
19

20 Paris Washington: It's based on the circumstances. Each person is different and to me I consider
21 the individual makes that decision if it's important because they would do everything necessary
22 to try to avoid being removed from the Postal Service. That is not my call. That's the individual's
23 call who has been AWOL and whom the removal has been issued.
24

25 David W. Noble, Jr.: In paragraph 3 on the second page you list clarity of the rules violations in
26 bold as being one of the things you considered correct?
27

28 Paris Washington: Yes. All those statements are bold because that's the way they are written. So
29 yes.
30

31 David W. Noble, Jr.: Okay and is it your understanding that clarity of the rules violations is one
32 of the *Douglas* factors?
33

34 Paris Washington: I'm not sure at this time I couldn't, I wouldn't say that I'm not sure.
35

36 David W. Noble, Jr.: Do you know whether I've ever been warned that I could be disciplined for
37 being AWOL?
38

39 Paris Washington: I would think that when you came in for your PDI or any other time in the
40 Postal Service if you ever were AWOL before that you would have been warned for that. I
41 would think that would be something that you would know as a person who's been with the
42 Postal Service for 33 years that if you don't come to work you will be AWOL and could be
43 removed from the Postal Service. Every employee in the Postal Service is made aware of that

1 throughout their, when they're hired throughout the time they're in the Postal Service for any
2 other reason that's something that every employee knows that I have ever supervised or been
3 under my charge.

4
5 David W. Noble, Jr.: Are you familiar with the term "progressive discipline"?

6
7 Paris Washington: Yes.

8
9 David W. Noble, Jr.: What do you understand that term to mean?

10
11 Paris Washington: That means the person that's disciplined in a progressive manner as they the
12 individual or their representative meets with the person who issued the discipline and depending
13 on the gravity of the discipline, sorry of the infraction, that manager or supervisor could have
14 issued a lesser penalty other than removal or seven day or 14 day or letter warning

15
16 David W. Noble, Jr.: In discovery in this case I asked the Postal Service to provide a list of
17 employees who had been given lesser discipline than removal for being AWOL. Have you seen
18 that list?

19
20 Paris Washington: Yes.

21
22 David W. Noble, Jr.: You have?

23
24 Stephen W. Furgeson: I'm just going to object. It was not just for AWOL but was for
25 unsatisfactory attendance and that's the way it was requested.

26
27 Judge Turbitt: Objection sustained.

28
29 David W. Noble, Jr.: The list the Postal Service provided in response to interrogatory number
30 two showed the Postal Service had within a year's period issued a couple of hundred letters of
31 warning, seven-day suspensions and fourteen-day suspensions for the same offense with which I
32 was charged correct?

33
34 Stephen W. Furgeson: Objection.

35
36 Judge Turbitt: One second before you answer. What's the objection sir?

37
38 Stephen W. Furgeson: I don't think it's, it's not that specific as the same offense that I was
39 charged meaning Mr. Noble I don't think it boils down just AWOL.

40
41 Judge Turbitt: Objection sustained. You can rephrase the question. Do you want to rephrase the
42 question, Mr. Noble?
43

1 David W. Noble, Jr.: I'm trying your honor. I was charged with failure to be regular in
2 attendance/AWOL correct?
3
4 Judge Turbitt: Do you recall sir?
5
6 Paris Washington: Oh, yes, I'm sorry.
7
8 David W. Noble, Jr.: Your answer was yes? Okay and the list the Postal Service provided me in
9 response to interrogatory number two was a list of employees who had been charged with the
10 same offense with which I had been charged correct?
11
12 Paris Washington: Correct.
13
14 David W. Noble, Jr.: And there were a couple of hundred employees on that list who had been
15 given letters of warning, seven-day suspensions, and fourteen-day suspensions, correct?
16
17 Paris Washington: Correct.
18
19 David W. Noble, Jr.: And they were given those lesser disciplines as part of a progressive
20 discipline regime correct?
21
22 Paris Washington: I would think so. I can't be absolutely sure.
23
24 David W. Noble, Jr.: Letter of warning, seven-day suspension, and fourteen-day suspension are
25 the disciplinary actions short of removal the Postal Service typically issues, isn't that true?
26
27 Paris Washington: That's based on negotiation with the union rep when they meet to discuss that
28 particular grievance then they make a decision whether or not to reduce it or sustain it.
29
30 David W. Noble, Jr.: Okay, but those three actions, letter of warning, seven-day suspension. and
31 fourteen-day suspension...
32
33 Judge Turbitt: Will the agency stipulate that those disciplines are less than a removal action?
34
35 Stephen W. Furgeson: We will stipulate they are less than a removal action but we will not
36 stipulate that they are the exact same...
37
38 Judge Turbitt: No, just those particular, those four disciplinary actions are less than a removal.
39
40 Stephen W. Furgeson: Right.
41
42 Judge Turbitt: Okay, you may continue. The agency stipulated to the basis of that question.
43

1 David W. Noble, Jr.: Okay, and the seven-day suspension and fourteen-day suspension,
2 suspensions, the Postal Service issues are paper suspensions correct?
3
4 Paris Washington: Sometimes, sometimes the union, when they negotiate it with the union they
5 may settle on a time served. They may actually serve time.
6
7 David W. Noble, Jr.: Okay but where the Postal Service initially issues discipline it issues it, it
8 issues seven-day suspensions and fourteen-day suspensions as papers suspensions, correct?
9
10 Paris Washington: Correct.
11
12 David W. Noble, Jr.: And fourteen-day suspension is ordinarily the largest discipline the Postal
13 Service imposes short of removal, isn't that correct?
14
15 Paris Washington: Correct.
16
17 David W. Noble, Jr.: Are there a lot of unfair labor practice charges filed in your area?
18
19 Stephen W. Furgeson: Objection it seems so far afield. I have no idea where this is going.
20
21 Judge Turbitt: Objection sustained.
22
23 David W. Noble, Jr.: Is it unusual in your area for a single work location to have a four NLRB
24 postings for one person in a two-year period?
25
26 Stephen W. Furgeson: Objection. I am not sure the relevance of this either. It just, you know,
27 unfair labor practice charges can be for anything.
28
29 Judge Turbitt: Okay would the agency stipulate that Mr. Noble has filed unfair labor practices,
30 that he's filed grievances, I mean basically the premise of this Mr. Noble is that you've been the
31 subject of intolerable working conditions and you are laying the foundation for that premise one
32 of them is that you have had to file grievances and unfair labor practices based on the agency's
33 not treating you fairly. Will be agency stipulate that Mr. Noble has indeed filed unfair labor
34 practices and grievances?
35
36 Stephen W. Furgeson: I know he has filed unfair labor practices, grievances.
37
38 Judge Turbitt: I'm sorry that the union has filed them on this behalf.
39
40 Stephen W. Furgeson: And it's over a period of several years. I know he has done that but I
41 don't know if he's done anything recently as far as grievances...
42
43 Judge Turbitt: Okay, there are court records to that effect as well. I mean there is...

1 Stephen W. Furgeson:: Yeah. There's unfair labor practices. He's filed them. Yes.
2
3 Judge Turbitt: Okay so we have a stipulation as to that, but now you're going into the frequency.
4
5 David W. Noble, Jr.: Well, I'm trying to establish unusual job tensions your honor.
6
7 Judge Turbitt: All right. I will allow the question, go ahead. Why don't you restate the question
8 for the witness? Objection overruled.
9
10 David W. Noble, Jr.: Is it unusual in your experience to have four NLRB postings in one work
11 location for one employee in a two-year period?
12
13 Paris Washington: I'm not familiar a situation like that.
14
15 David W. Noble, Jr.: So then is it your answer that it would be unusual?
16
17 Paris Washington: I guess I'm not absolutely sure because I don't know if it's been done in any
18 other areas. I'm not sure.
19
20 David W. Noble, Jr.: How was it determined that you would be the deciding official?
21
22 Paris Washington: Because I was the manager of the manager in that particular facility,
23 Friendship.
24
25 David W. Noble, Jr.: So within the Washington, DC post office whoever is the third level
26 manager is the deciding official in cases that are appealed to MSPB, or appealable to MSPB, is
27 that correct?
28
29 Paris Washington: I am the manager responsible for the manager in that office and I'm the step
30 two designee. That's what I was going to tell you. I'm the step two designee and all appeals come
31 to me for discipline in my area.
32
33 David W. Noble, Jr.: As the step two designee have you seen any grievances from me?
34
35 Paris Washington: No.
36
37 David W. Noble, Jr.: How long did, did you consider whether to uphold the removal?
38
39 Paris Washington: I would think I can't remember exactly how long it took. I didn't respond to
40 your non-response immediately. It took a while and I went to labor asked if they heard, have they
41 heard anything regarding, anything from you as far as documentation and they said no and that's
42 when I proceeded to write the letter of decision. It wasn't immediate. I could've written it sooner
43 than I did but I didn't.

1 David W. Noble, Jr.: Okay, and can you describe the interior dialogue in your mind as you were
2 considering whether I should be removed?
3

4 Paris Washington: No, the only thing I considered, again I've had similar cases where people
5 have been AWOL and not come to work and didn't respond. In my mind your non-response -- to
6 me was that you didn't value your job and I proceeded with my letter of decision
7

8 David W. Noble, Jr.: So with, with those factors, that I didn't respond, and that I had been
9 AWOL -- that's what you weighed when you were considering whether to remove me, is that
10 correct?
11

12 Paris Washington: Yes. I had no other information.
13

14 Judge Turbitt: Do you have any further questions of this witness Mr. Noble?
15

16 David W. Noble, Jr.: I'm trying to nail it down here. Okay, that's it for me.
17

18 Stephen W. Furgeson: No further questions.
19

20 Judge Turbitt: I want to thank you for your testimony today Mr. Washington. I'm going to ask
21 that you not discuss your testimony with anyone until the close of this hearing. We don't know
22 when that will be but if you have questions about that talk to Mr. Ferguson and find out. It may
23 be this evening. You have a good weekend you are excused from these proceedings thank you sir.
24

25 Paris Washington: Thank you.
26

27 Stephen W. Furgeson: Who's your next witness?
28

29 David W. Noble, Jr.: Singh.
30

31 Stephen W. Furgeson: Who's after that?
32

33 David W. Noble, Jr.: Branson.
34

35 Stephen W. Furgeson: Could you tell Mr. Branson to come on up.
36

37 Paris Washington: Yes.
38

39 Stephen W. Furgeson: Thank you. Your honor that's the agency's witnesses.
40

41 Judge Turbitt: Okay. The appellant's first witness.
42

43 David W. Noble, Jr.: I'm sorry.

1 Judge Turbitt: Your first witness sir.
2
3 David W. Noble, Jr.: Nirlep Sidhu.
4
5 Judge Turbitt: Okay, good afternoon sir. My name is Judge Turbitt. Thank you for coming
6 today. before we proceed with your testimony sir I need to ask you whether you have an
7 objection to taking an oath?
8
9 Nirlep Sidhu: No I don't have no objection.
10
11 Judge Turbitt: Okay could I ask you to kindly stand. Please raise your right hand and repeat after
12 me. I state your name sir.
13
14 Nirlep Sidhu: Put mine here?
15
16 Judge Turbitt: Yes sir.
17
18 Nirlep Sidhu: I Nirlep Sidhu.
19
20 Judge Turbitt: Do solemnly swear.
21
22 Nirlep Sidhu: Do solemnly swear.
23
24 Judge Turbitt: To tell the truth.
25
26 Nirlep Sidhu: To tell the truth.
27
28 Judge Turbitt: The whole truth.
29
30 Nirlep Sidhu: The whole truth.
31
32 Judge Turbitt: And nothing but the truth.
33
34 Nirlep Sidhu: And nothing but the truth.
35
36 Judge Turbitt: So help me God.
37
38 Nirlep Sidhu: So help me God.
39
40 Judge Turbitt: Thank you sir. Please be seated. Okay Mr. Noble your witness.
41
42 David W. Noble, Jr.: Mr. Sidhu, you are a letter carrier correct?
43

1 Nirlep Sidhu: Yes.
2
3 David W. Noble, Jr.: And you work in Zone 16 in Washington, DC, is that correct?
4
5 Nirlep Sidhu: Yes.
6
7 David W. Noble, Jr.: I called you about 8:45 last night didn't I?
8
9 Nirlep Sidhu: Yes.
10
11 David W. Noble, Jr.: And what were you doing at 8:45 last night?
12
13 Nirlep Sidhu: When you called me I just parked my truck. I was going to go and you know
14 unload my truck. So I just called you and you wait 10 minutes you know and I will call you back.
15
16 David W. Noble, Jr.: So you were working as a letter carrier at 8:45 last night?
17
18 Nirlep Sidhu: Yes.
19
20 David W. Noble, Jr.: And you started work at eight o'clock yesterday morning, is that correct?
21
22 Nirlep Sidhu: Yes.
23
24 David W. Noble, Jr.: And when you came back from working at about 8:45 last night were there
25 other carriers who had still not returned to the station?
26
27 Nirlep Sidhu: Yes. There were a lot of carriers outside.
28
29 David W. Noble, Jr.: On July 29, 2010 did you see Sterling Colter, see and hear Sterling Colter
30 saying anything to me?
31
32 Nirlep Sidhu: The time, when I hit the clock it might be five or several minutes in the morning
33 when you said the time I don't know what you said I hit the clock in the morning and 5 minutes
34 or 7 minutes like that Noble, Mr. Noble and Sterling Colter were standing over there and you
35 don't. Sterling Colter was saying "Noble get out from here" so I look back I said what's going on
36 so I walked over there where they both were. He started going to his case, where the letter carrier
37 case is to get his stuff so he said Noble where are you going? So he said let me get my stuff I
38 think it was his hat or something like that. He said the door is this way get out from here so he
39 went to his case and took his hat and he started walking with him pointing his finger like that, get
40 out from here so I walked behind him you know went outside the door, I asked him if he's
41 feeling better you know if he can drive home so he said you know he he got a car he can drive
42 home so I went back, went back to work.
43

1 David W. Noble, Jr.: And did you testify about this incident between Sterling Colter and me at an
2 NLRB hearing on July 21 this year?
3
4 Nirlep Sidhu: Yeah. I did testify.
5
6 David W. Noble, Jr.: I have no further questions.
7
8 Stephen W. Furgeson: Mr. Sidhu is it? You indicated you heard Mr. Colter say get out from here
9 to Mr. Noble?
10
11 Nirlep Sidhu: Yeah, he said several times not once.
12
13 Stephen W. Furgeson: And did you hear the conversation prior to that?
14
15 Nirlep Sidhu: No I was on my case you know like, took my attention, when he said, you know he
16 got loud and he said get out from here that's the only time you know I took my attention. I
17 turned around I said what's going on I walked you know towards them and then he tried to go to
18 his case so he told Noble you know door is this way.
19
20 Stephen W. Furgeson: And did you talk to Mr. Noble about what had transpired prior to him
21 being instructed to leave?
22
23 Nirlep Sidhu: No, I didn't ask him. The only thing I ask him is you know are you feeling better?
24 Can you drive home. So sometimes he drives home sometimes he takes Metro you know so I see
25 if he can drive home so he said I got a car today I can drive home.
26
27 Stephen W. Furgeson: That's all I have.
28
29 Judge Turbitt: Anything else sir?
30
31 David W. Noble, Jr.: No further questions.
32
33 Judge Turbitt: Okay Mr. Sidhu I want to thank you for your testimony today.
34
35 Nirlep Sidhu: You're welcome sir.
36
37 Judge Turbitt: I'm going to ask that you not discuss your testimony with anyone until the close of
38 this hearing.
39
40 Nirlep Sidhu: Okay.
41
42 Judge Turbitt: If you're not sure when that is talk to Mr. Noble and ask him. It may be tonight but
43 we're not sure.

1 Nirlep Sidhu: Okay.
2
3 Judge Turbitt: But you are excused from these proceedings thank you very much.
4
5 David W. Noble, Jr.: May Mr. Sidhu remain in the hearing room?
6
7 Judge Turbitt: Is there an objection?
8
9 Stephen W. Furgeson: I don't have an objection as long as he's not going to be called back. I
10 think somebody, to keep the thing rolling we have to have somebody else go down and bring in
11 your next witness.
12
13 Judge Turbitt: Can he, all right, do you know who the next witness is?
14
15 Zachary Noble: Yeah. Oh, I need to get the person after Branson. Who is that?
16
17 Judge Turbitt: Let me tell you what you said before. You said, I believe you said after Branson,
18 and then after Branson I believe you said it was Tucker.
19
20 Zachary Noble: Tucker. You want me to get Tucker, and tell him to wait out there? Okay.
21
22 Judge Turbitt: Good afternoon are you Mr. Branson?
23
24 Alton Branson: Yes.
25
26 Judge Turbitt: Hi Mr. Branson. My name is Judge Turbitt. I want to thank you for coming this
27 evening. Before we hear your testimony I need to ask you whether you have an objection to
28 taking an oath?
29
30 Alton Branson: No I don't.
31
32 Judge Turbitt: Would you kindly stand please and raise your right hand and repeat after me: I
33 state your name sir.
34
35 Alton Branson: I Alton Ronald Branson.
36
37 Judge Turbitt: Do solemnly swear.
38
39 Alton Branson: Do solemnly swear.
40
41 Judge Turbitt: To tell the truth.
42
43 Alton Branson: To tell the truth.

1 Judge Turbitt: The whole truth.
2
3 Alton Branson: The whole truth.
4
5 Judge Turbitt: And nothing but the truth.
6
7 Alton Branson: And nothing but the truth.
8
9 Judge Turbitt: So help me God.
10
11 Alton Branson: So help me God.
12
13 Judge Turbitt: Thank you sir. Please be seated. Mr. Noble your witness.
14
15 David W. Noble, Jr.: You are a letter carrier employee of the United States Postal Service,
16 correct?
17
18 Alton Branson: Yes sir.
19
20 David W. Noble, Jr.: And you're presently on leave from work as a letter carrier, correct?
21
22 Alton Branson: Yes.
23
24 David W. Noble, Jr.: And the reason for that leave is?
25
26 Alton Branson: I'm now branch president of Capital Branch 142 the National Association of
27 Letter Carriers.
28
29 David W. Noble, Jr.: And Branch 142 is the local affiliate of the National Association of Letter
30 Carriers, correct?
31
32 Alton Branson: That's correct.
33
34 David W. Noble, Jr.: And for how long have you been an employee of the Postal Service?
35
36 Alton Branson: 36 years.
37
38 David W. Noble, Jr.: And for how long have you been a union representative?
39
40 Alton Branson: Probably 33 of the 36 years.
41
42 David W. Noble, Jr.: And immediately before, excuse me, for how long have you been the
43 branch president?

1 Alton Branson: It will be three years in January of 2012.
2
3 David W. Noble, Jr.: And immediately before becoming branch president what position did you
4 hold with the union?
5
6 Alton Branson: I was a Step B representative for the dispute resolution process, which is an
7 alternative process to the grievance procedure.
8
9 David W. Noble, Jr.: And Step B is the third step of the grievance procedure, is that correct?
10
11 Alton Branson: Right, of the dispute resolution process.
12
13 David W. Noble, Jr.: Right, and that's the last step of the grievance procedure before arbitration,
14 correct?
15
16 Alton Branson: That's correct.
17
18 David W. Noble, Jr.: And being a Step B representative was a full-time position wasn't it?
19
20 Alton Branson: Yes.
21
22 David W. Noble, Jr.: So while you held that position you were discussing grievances every day,
23 correct?
24
25 Alton Branson: Yes. I had management counterpart where we represented three districts: the
26 Baltimore district, Capital Metro District, and Northern Virginia district, and we were tasked
27 with resolving grievances at that level in all three districts.
28
29 David W. Noble, Jr.: And in your 36 years of experience has it been your experience that postal
30 management uses progressive discipline to address issues of AWOL?
31
32 Alton Branson: Yes, under Article 16, under the just cause provisions, normally it's an official
33 discussion, letter of warning, seven-day, fourteen-day. There is a progression.
34
35 David W. Noble, Jr.: And are you aware of any case in which the Postal Service has removed a
36 letter carrier with 30 or more years of service and an unblemished disciplinary record without
37 first resorting to progressive discipline.
38
39 Alton Branson: If I understand your, can I repeat his question to make sure I understand?
40
41 Judge Turbitt: You can, well, you can, you can repeat it so that you understand it and if that's not
42 he said then Mr. Noble will rephrase. Go ahead what is your understanding of what he just said?
43

1 Alton Branson: My understanding is where management has issued somebody a removal without
2 going through the progressive steps.
3
4 David W. Noble, Jr.: And the employee has 30 or more years of service and an unblemished
5 disciplinary record.
6
7 Alton Branson: Right. None that I know of.
8
9 David W. Noble, Jr.: That's it for this witness.
10
11 Judge Turbitt: Mr. Ferguson.
12
13 Stephen W. Furgeson: Are you saying Mr. Branson that you've never seen a removal of an
14 employee without progressive discipline for any offense in the Postal Service?
15
16 Alton Branson: No. I think the question was for AWOL.
17
18 Stephen W. Furgeson: Well, I'm just asking you.
19
20 Alton Branson: There have been where an offense may be egregious like throwing, discarding
21 mail, throwing away mail, stealing situations regarding injury comp fraud, those situations yes
22
23 Stephen W. Furgeson: Has there been a situation that a person maybe was AWOL for several
24 months and removed without going through the progressive steps of discipline?
25
26 Alton Branson: None that I'm aware of.
27
28 Stephen W. Furgeson: That's all I have your honor.
29
30 Judge Turbitt: Okay Mr. Branson I want to thank you for your testimony today. I'm going to ask
31 that you not discuss your testimony with anyone until after the close of this hearing. If you're not
32 sure when that is then give Mr. Noble a call and he'll let you know. It may be this evening but
33 we're not sure. Okay, you are excused from these proceedings, thank you very much.
34
35 Alton Branson: Okay so you want me to stay until we're finished today?
36
37 Judge Turbitt: No, you can go.
38
39 Alton Branson: Okay, all right.
40
41 Judge Turbitt: Thank you sir.
42
43 Alton Branson: Thank you.

1 Judge Turbitt: And then Mr. Minor is, we have Louis Minor after Mr. Tucker. Yes sir, are you
2 Leon Tucker?
3
4 Leon Tucker: Yes I am.
5
6 Judge Turbitt: Hi Mr. Tucker. My name is Judge Turbitt thank you for coming today. Why don't
7 you stand over here please. Before we proceed with your testimony I need to ask you whether
8 you have an objection to taking an oath?
9
10 Leon Tucker: No.
11
12 Judge Turbitt: Okay. Please raise your right hand and then repeat after me: I state your name
13 please.
14
15 Leon Tucker: I Leon Tucker.
16
17 Judge Turbitt: Do solemnly swear.
18
19 Leon Tucker: Do solemnly swear.
20
21 Judge Turbitt: To tell the truth.
22
23 Leon Tucker: To tell the truth.
24
25 Judge Turbitt: The whole truth.
26
27 Leon Tucker: The whole truth.
28
29 Judge Turbitt: And nothing but the truth.
30
31 Leon Tucker: And nothing but the truth.
32
33 Judge Turbitt: So help me God.
34
35 Leon Tucker: So help me God.
36
37 Judge Turbitt: Thank you sir. Please be seated. I noticed something is in your ear, sir.
38
39 Leon Tucker: Ah yes, that's my Bluetooth. It's not on.
40
41 Judge Turbitt: Okay what is it?
42
43 Leon Tucker: I just turned it off

1 Judge Turbitt: All right. Sounds good. I didn't know if you needed it to hear?
2
3 Leon Tucker: Oh no.
4
5 Judge Turbitt: Okay, please go ahead..
6
7 David W. Noble, Jr.: Mr. Tucker you are a letter carrier employee of the United States Postal
8 Service, correct?
9
10 Leon Tucker: Yes.
11
12 David W. Noble, Jr.: And how long have you been so employed?
13
14 Leon Tucker: Thirty-seven years. It will be 38 years on the 16th.
15
16 David W. Noble, Jr.: And you work in Zone 16 Washington DC is that correct?
17
18 Leon Tucker: Yes.
19
20 David W. Noble, Jr.: And you have on occasion served as a union steward in Zone 16 correct?
21
22 Leon Tucker: Yes.
23
24 David W. Noble, Jr.: And are you presently a union steward?
25
26 Leon Tucker: No.
27
28 David W. Noble, Jr.: When did you most recently serve as a union steward?
29
30 Leon Tucker: The last three years.
31
32 David W. Noble, Jr.: And how long before that had you served as a union steward?
33
34 Leon Tucker: From '96 to '99, actually 2000.
35
36 David W. Noble, Jr.: Do remember a letter carrier who worked in Zone 16 named Leonard Poe?
37
38 Leon Tucker: Leonard Poe?
39
40 David W. Noble, Jr.: Yes.
41
42 Leon Tucker: Yes. Yes I do.
43

1 David W. Noble, Jr.: And do you remember an occasion when Poe went AWOL for a couple
2 months from the Postal Service?
3

4 Leon Tucker: Yes I do.
5

6 David W. Noble, Jr.: And do you remember that when he returned he would not explain why he
7 had been absent?
8

9 Leon Tucker: That's true too, yes.
10

11 David W. Noble, Jr.: And do you recall that Poe at that time had a significant record of
12 discipline?
13

14 Stephen W. Furgeson: I'm going to, he's somewhat leading. I think there's a better way to ask
15 these questions I object.
16

17 Judge Turbitt: I mean you can lead up to a point, but you are leading the witness. Have the
18 witness elicit the testimony.
19

20 David W. Noble, Jr.: Do you know whether Poe had at the point he went AWOL for a couple of
21 months, do you know whether he had previous discipline for attendance related matters?
22

23 Leon Tucker: Yes I do. Some of his discipline was issued at Friendship where others was issued
24 out of I can't remember which I think it was Zone 9 or 10 he was in. But yes he had had
25 previous discipline.
26

27 David W. Noble, Jr.: Do you know an employee named Amado Ingram?
28

29 Leon Tucker: Yes. Yes I do.
30

31 David W. Noble, Jr.: And did you represent Ingram when the Postal Service attempted to remove
32 him for failure to be regular in attendance/AWOL?
33

34 Leon Tucker: Yes I did.
35

36 David W. Noble, Jr.: And did Ingram have at the time of the removal any prior discipline for
37 attendance related matters?
38

39 Leon Tucker: To the best of my knowledge if my memory serves me well I think he had a letter
40 of warning.
41

42 David W. Noble, Jr.: Do you know what the disposition of the removal grievance was?
43

1 Leon Tucker: No I don't. I have no idea. The only thing that was mentioned to me was that, that
2 because he left the post office and moved out of the area I don't even think they went through
3 with the grievance.
4
5 Judge Turbitt: I'm sorry, when you say he left the post office do you mean he left that station or
6 he...
7
8 Leon Tucker: No, he left he left the service.
9
10 Judge Turbitt: He left the service, okay.
11
12 Leon Tucker: Yes, totally.
13
14 David W. Noble, Jr.: Did you work yesterday?
15
16 Leon Tucker: No, yesterday was my off day.
17
18 David W. Noble, Jr.: Did you work the day before yesterday?
19
20 Leon Tucker: Yes.
21
22 David W. Noble, Jr.: And how long did your route take you that day?
23
24 Leon Tucker: If you can just give me a second.
25
26 Judge Turbitt: How about a ballpark?
27
28 Leon Tucker: Approximately 11 hours 15 minutes.
29
30 David W. Noble, Jr.: This is Exhibit J.
31
32 Judge Turbitt: Okay.
33
34 David W. Noble, Jr.: So everybody should have this. I'm showing you Appellant's Exhibit J.
35 Can you identify that package of documents?
36
37 Leon Tucker: Yes, this is the grievance that I filed on your behalf because the post office was not
38 paying you for holidays.
39
40 David W. Noble, Jr.: Okay and did you attempt to initiate a grievance at the first step of the
41 grievance procedure?
42
43 Leon Tucker: Yes I did.

1 David W. Noble, Jr.: And with whom did you do that?
2
3 Leon Tucker: If my memory serves me well I believe I tried to sit down with Mr. William
4 French.
5
6 David W. Noble, Jr.: Can you tell by looking at the papers whether it was Mr. French you tried to
7 meet with?
8
9 Leon Tucker: Yes. It was Mr. French. Yes.
10
11 David W. Noble, Jr.: Were you successful in meeting with Mr. French?
12
13 Leon Tucker: No. I was not.
14
15 David W. Noble, Jr.: What happened?
16
17 Leon Tucker: They refused to meet with me, or as I like to say they tried to make the grievances
18 untimely by avoiding meeting with me.
19
20 David W. Noble, Jr.: Does that package of materials indicate that you made an information
21 request to management about those grievances?
22
23 Leon Tucker: Yes, it's a request here for information and is signed by William French on
24 11/26/10.
25
26 David W. Noble, Jr.: And did Mr. French provide you with the materials which you requested?
27
28 Leon Tucker: No, he did not.
29
30 David W. Noble, Jr.: that's all I have
31
32 Judge Turbitt: Mr. Ferguson.
33
34 Stephen W. Furgeson: Mr. Poe was out how long on LWOP, or AWOL?
35
36 Leon Tucker: I can't remember the exact length of time but just to give you a ballpark figure
37 somewhere between a month or two.
38
39 Stephen W. Furgeson: Okay and what happened to him, was he disciplined?
40
41 Leon Tucker: He was brought in, he was taken into the office, they talked to him, he had no
42 explanation, he went back to his route and the, a few days later they called him back in and gave
43 him a letter.

1 Stephen W. Furgeson: Letter of?
2
3 Leon Tucker: Letter of warning, seven-day suspension, fourteen-day suspension.
4
5 Stephen W. Furgeson: And who did this? I'm sorry, who issued that?
6
7 Leon Tucker: The supervisor, I think Brandon Toatley did at one time and Mr. Sterling Colter
8 and William French did it another time
9
10 Stephen W. Furgeson: For AWOL?
11
12 Leon Tucker: For AWOL, Yes.
13
14 Stephen W. Furgeson: Okay, and how much AWOL for each time?
15
16 Leon Tucker: It's hard to remember off the top of my head – he had anywhere from seven days to
17 28 days each time they called him in.
18
19 Stephen W. Furgeson: Okay and he provided no documentation?
20
21 Leon Tucker: No documentation, no explanation, nothing.
22
23 Stephen W. Furgeson: Did you represent him?
24
25 Leon Tucker: Yes.
26
27 Stephen W. Furgeson: And do you know why they allowed him to come back to work?
28
29 Leon Tucker: No, I don't I have no idea.
30
31 Stephen W. Furgeson: They just said it was okay?
32
33 Leon Tucker: No, they didn't say anything. They just filled out the paperwork and gave him a
34 letter in a couple of days.
35
36 Stephen W. Furgeson: And was Mr. Ingram, how much AWOL did he have?
37
38 Leon Tucker: Mr. Ingram had about three days of AWOL it had been, it was three days. I think it
39 happened about three times.
40
41 Stephen W. Furgeson: And who issued him discipline?
42
43 Leon Tucker: Mr. Colter and Mr. French.

1 Stephen W. Furgeson: Were these, the discipline that was issued to Mr. Poe was that, was it
2 resolved through the grievance procedure or was it just accepted?
3
4 Leon Tucker: No. I don't know. I don't have the resolutions so I can't tell you exactly what
5 happened with the case.
6
7 Stephen W. Furgeson: Do you have the discipline? With you?
8
9 Leon Tucker: No, I don't have any other records.
10
11 Stephen W. Furgeson: And why wouldn't you bring them if you have them, if you had met with
12 him?
13
14 Leon Tucker: Because I'm no longer the steward.
15
16 Stephen W. Furgeson: Now what about, mail volume is, does the mail volume pick up in
17 November and December?
18
19 Leon Tucker: Yes it does.
20
21 Stephen W. Furgeson: Now when Mr., you claim Mr. French didn't provide, didn't meet with
22 you.
23
24 Leon Tucker: No he did not.
25
26 Stephen W. Furgeson: And you can, you can move it on to the next step of the discipline, isn't
27 that correct?
28
29 Leon Tucker: Yes.
30
31 Stephen W. Furgeson: And so Mr., the grievance will still be heard by somebody at another level
32 right?
33
34 Leon Tucker: Yes it goes to the Formal A representative.
35
36 Stephen W. Furgeson: And if somebody can't meet with you in a timely fashion that's what you
37 do as a union steward?
38
39 Leon Tucker: Yes, I move it up to the next level.
40
41 Stephen W. Furgeson: And Mr. French did not provide some requested information?
42
43 Leon Tucker: That's correct.

1 Stephen W. Furgeson: And what happened to that? Did you file a grievance on that?
2
3 Leon Tucker: All of that goes up with the grievance.
4
5 Stephen W. Furgeson: And do you know what's happened to that grievance?
6
7 Leon Tucker: No, I don't.
8
9 David W. Noble, Jr.: I'm sorry I missed the last question.
10
11 Leon Tucker: He said, did I know what happened with that grievance.
12
13 David W. Noble, Jr.: To which grievance?
14
15 Leon Tucker: The one with Mr. Ingram.
16
17 Stephen W. Furgeson: No not talking about that grievance. Talking about the grievance that had
18 to do with, with the one where you claim Mr. French did not meet with you in a timely fashion
19 and that had to do with Mr. Nobles holiday pay, is that correct?
20
21 Leon Tucker: Yes.
22
23 Stephen W. Furgeson: And that as far as you know, you don't know what's happened to that
24 grievance, is that correct?
25
26 Leon Tucker: No, I don't. That was the one thing, I spoke with the current steward about, there
27 were a lot of resolutions that I did not receive. And I was asking him if he receive them, and he
28 said he had a stack of them, he'd have to go through them.
29
30 Stephen W. Furgeson: Now did you file grievances on Mr. Poe and Mr. Ingram both?
31
32 Leon Tucker: Yes.
33
34 Stephen W. Furgeson: And did those ever get resolved or are you not sure?
35
36 Leon Tucker: I can't remember off the top of my head.
37
38 Stephen W. Furgeson: And you don't, you haven't retained copies of the discipline against them?
39
40 Leon Tucker: No. No once I'm no longer a steward I shred everything that I have and dispose of
41 it.
42
43 Stephen W. Furgeson: And you weren't asked to try to get that information to bring it here

1 today?
2
3 Leon Tucker: No.
4
5 Stephen W. Furgeson: Could you have gotten it through your union?
6
7 Leon Tucker: Yes, because I'm sure they have copies of all the files.
8
9 Stephen W. Furgeson: And who would you have gotten that from?
10
11 Leon Tucker: I would either ask the secretary or I would've asked Mr. Branson.
12
13 Stephen W. Furgeson: Mr. Branson was here, he testified earlier today right?
14
15 Leon Tucker: Yes he did.
16
17 Stephen W. Furgeson: I have no further questions.
18
19 Judge Turbitt: Mr. Noble?
20
21 David W. Noble, Jr.: I have no further questions.
22
23 Judge Turbitt: Okay sir, thank you very much for your testimony today. I'm going to ask that you
24 not discuss your testimony with anyone until after the close of this hearing. You are excused
25 from these proceedings, thank you very much sir.
26
27 Leon Tucker: Thank you very much.
28
29 Judge Turbitt: Enjoy your weekend. Okay Mr. Tucker, would you mind getting Mr. Minor
30 please?
31
32 Leon Tucker: Sure.
33
34 Judge Turbitt: Thank you.
35
36 Leon Tucker: Have a nice weekend.
37
38 Judge Turbitt: Hi are you Mr. Minor?
39
40 Louis Minor: Yes.
41
42 Judge Turbitt: Hi Mr. Minor. Is Mr. Toatley upstairs or is he downstairs?
43

1 Louis Minor: He's just outside of the door here.
2
3 Judge Turbitt: Very good, okay thank you. My name is Judge Turbitt, first off I want to thank you
4 for your patience. I know you've waited for a while. Before we begin with your testimony sir, I
5 need to ask you whether you have an objection to taking an oath?
6
7 Louis Minor: No.
8
9 Judge Turbitt: Okay, remain standing. Please raise your right hand and repeat after me sir. I
10 please state your name.
11
12 Louis Minor: I Lewis minor.
13
14 Judge Turbitt: Do solemnly swear.
15
16 Louis Minor: Do solemnly swear.
17
18 Judge Turbitt: To tell the truth.
19
20 Louis Minor: To tell the truth.
21
22 Judge Turbitt: The whole truth.
23
24 Louis Minor: The whole truth.
25
26 Judge Turbitt: And nothing but the truth.
27
28 Louis Minor: And nothing but the truth.
29
30 Judge Turbitt: So help me God.
31
32 Louis Minor: So help me God.
33
34 Judge Turbitt: Thank you Sir, please be seated. Mr. Noble, your witness.
35
36 David W. Noble, Jr.: Mr. Minor, you're a letter carrier employee of the United States Postal
37 Service, correct?
38
39 Louis Minor: Yes, yes I am.
40
41 David W. Noble, Jr.: And you are also a representative of the union, is that correct?
42
43 Louis Minor: I'm sorry, I didn't...

1 David W. Noble, Jr.: You are also a representative of the union, is that correct?
2
3 Louis Minor: Yes I am.
4
5 David W. Noble, Jr.: What position do you hold with the union?
6
7 Louis Minor: Shop steward, Formal A and arbitration advocate.
8
9 David W. Noble, Jr.: And do you also discuss grievances at the second step of the grievance
10 procedure?
11
12 Louis Minor: Yes.
13
14 David W. Noble, Jr.: That is called the formal step a representative correct?
15
16 Louis Minor: Correct. Correct. Step two, yes.
17
18 David W. Noble, Jr.: You testified at a NLRB hearing on July 21, 2011, correct?
19
20 Louis Minor: I'm not sure of the date, but yes I was there. I don't remember the exact date.
21
22 David W. Noble, Jr.: Okay, but it was in July 2011, correct?
23
24 Louis Minor: Yes, yes.
25
26 David W. Noble, Jr.: And at issue in that proceeding was an unfair labor practice charge I had
27 filed against the union, correct?
28
29 Louis Minor: Correct.
30
31 David W. Noble, Jr.: And you gave testimony at that hearing, correct?
32
33 Louis Minor: Yes.
34
35 David W. Noble, Jr.: And the testimony that you gave at that hearing was about my attendance
36 record, correct?
37
38 Judge Turbitt: Why don't you tell us what you testified?
39
40 Louis Minor: I believe that I was asked a question about 3972's which would relate to the
41 attendance, yes.
42
43 Judge Turbitt: What else did you testify about?

1 Louis Minor: I believe that was the only thing, I don't remember any other question.
2
3 David W. Noble, Jr.: Okay, you testified about my attendance record for the last four years,
4 correct?
5
6 Louis Minor: Correct, it was four sets of 3972's. I think it was two documents apiece.
7
8 David W. Noble, Jr.: Okay and what did my attendance for the last four years look like?
9
10 Louis Minor: I mean, if I recall correctly somewhere in the neighborhood of 75 days worked in
11 four years. I mean give or take a couple, I don't have any of those documents with me so I really
12 can't be 100% certain.
13
14 David W. Noble, Jr.: Okay, I have no further questions.
15
16 Judge Turbitt: Mr. Ferguson?
17
18 Stephen W. Furgeson: I have no questions.
19
20 Judge Turbitt: Okay Mr. Minor, thank you very much for your patience. I'm going to ask you not
21 to discuss your testimony with anyone until after the close of this hearing, which may be this
22 evening we don't know. If you don't know contact Mr. Noble and ask him. Don't talk to anybody
23 before the close, find out, if anybody asks just say you can't. You are excused from these
24 proceedings and have a great weekend.
25
26 Louis Minor: Okay, thank you.
27
28 Judge Turbitt: And would you be kind enough to let Mr. Toatly know...
29
30 David W. Noble, Jr.: No, I'm going to pass on Mr. Toatly and go directly to myself.
31
32 Judge Turbitt: Is Mr. Toatly being excused?
33
34 David W. Noble, Jr.: Yes.
35
36 Judge Turbitt: Okay would you, you can't revisit that.
37
38 David W. Noble, Jr.: I understand.
39
40 Judge Turbitt: Okay, yes. Please tell Mr. Toatly, ask him to come in. Is Mr. Toatly, I thought he
41 was right outside.
42
43 Stephen W. Furgeson: I thought he was out there, let me just check there. Your Honor, he's not

1 seated out there now. I don't know, he may have gone downstairs to the restroom I have no idea.
2
3 Judge Turbitt: Okay, let's keep going. If you see him, please both either of you thank him for...
4
5 Stephen W. Furgeson: Well I won't see him if I'm in here so.
6
7 Judge Turbitt: I understand but when you see him or whatever please, I know that he waited all
8 day long. Please apologize that he had to wait, but thank him for his patients.
9
10 Stephen W. Furgeson: Maybe one of you could, if you see him come up tell him he is excused
11 and have him give me a call after.
12
13 Judge Turbitt: Either of you. Whoever, it doesn't matter. Okay, let's go with you Mr. Noble.
14
15 David W. Noble, Jr.: I have never represented myself before, Your Honor. How would you prefer
16 that I proceed?
17
18 Judge Turbitt: You have two choices. The two choices are, its very awkward, you're the
19 representative as well as the witness.
20
21 David W. Noble, Jr.: Yes.
22
23 Judge Turbitt: It's very awkward for you to ask yourself questions and then answer questions.
24 You could possibly do it that way, I've never seen anybody choose it that way. Basically,
25 probably the best way is for you to tell me your version of events. Just initially tell me what you
26 have to say on the stand, and then Mr. Ferguson gets an opportunity to cross-examine
27
28 David W. Noble, Jr.: Okay I would like to walk through some of the exhibits that I brought with
29 me.
30
31 Judge Turbitt: You mean that all of those exhibits that you gave us yesterday, you want to walk
32 through all of those hundreds of exhibits?
33
34 David W. Noble, Jr.: Not all of them.
35
36 Judge Turbitt: My goodness.
37
38 David W. Noble, Jr.: The total is about 60. I don't want to walk through them all but I would like
39 to walk through some of them.
40
41 Judge Turbitt: I wish you had done this, my golly I wish you had done this with the exhibits that
42 you had for a long time. and this case I got back in August, you could've walked through a
43 chronological series of events through these exhibits. To do this on the day of the hearing. I'll tell

1 you what, I will allow you to do it in writing. A chronology, you can tie it to the exhibits, you
2 said you haven't had the time. You can do a chronology. I am to receive it by close of business
3 this Monday. You can testify that the chronology that you're about to submit to me, and to the
4 agency, is true and accurate to the best of your ability. But to go through all of these exhibits in
5 the hearing, if we had a chronology before us already I think that would possibly expedite the
6 process. And I would certainly want to give you the opportunity to talk about all these things, but
7 to talk about 60 exhibits and to walk through us, that we just got yesterday is...

8
9 David W. Noble, Jr.: Then after I submit the written testimony Mr. Ferguson will have an
10 opportunity to cross-examine me live?

11
12 Judge Turbitt: No, but no. I'm not going to, no basically that's it for now. You get to testify about
13 your version of events, not using each and every exhibit, just tell me what happens sir. And if you
14 want to tie it later to an exhibit you go ahead, and the record will remain open Monday for that.
15 No more, no more affirmative defenses, no more documents, no more oh I just learned something
16 else happened to me, no more I need more evidence, no more anything. No more motions, no
17 more objections, the record is closed except for you to have a chronology of events using these
18 exhibits that you just gave to us. These 60 exhibits that you just gave to us, even though you
19 should've done it before sir. The chronology of events should have been done with your pre-
20 hearing submissions. We had two pre-hearing conferences in this case.

21
22 David W. Noble, Jr.: Well, Your Honor, may I make one point in my own defense?

23
24 Judge Turbitt: No, please continue. Honestly we have spent tons of time, I've given you plenty of
25 time to make many observations in your own defense. You have put them in writing, I have
26 responded to them. I doubt it's going to be anything new. You may now testify. Are you willing,
27 do you have an objection sir to taking an oath?

28
29 David W. Noble, Jr.: No.

30
31 Judge Turbitt: Okay, please come to the witness stand.

32
33 Stephen W. Furgeson: And just for clarification. I hate to ask, but I assume that when the records
34 closed I don't get a chance to respond to what he submitting the chronology, is that correct?

35
36 Judge Turbitt: I'm rewarding bad behavior, I don't like to do this. This could have been done, no
37 you know what, go ahead you're going to do it right now. The record will be closed after this.
38 You walk us through these 60 exhibits Mr. Noble and that's what we are going to do. The record
39 will close this evening, I'm not going to keep the record open for anymore. Then your going to
40 respond, then he's going to want to respond, no more. Mr. Noble please come here.

41
42 David W. Noble, Jr.: Well will I, may I bring exhibits with me?

1 Judge Turbitt: Would it be easier for you to sit at your table there to testify.
2
3 David W. Noble, Jr.: Yes.
4
5 Judge Turbitt: Okay stand over there please. I please state your name sir.
6
7 David W. Noble, Jr.: I David W Noble Junior.
8
9 Judge Turbitt: Do solemnly swear.
10
11 David W. Noble, Jr.: Do solemnly swear.
12
13 Judge Turbitt: To tell the truth.
14
15 David W. Noble, Jr.: To tell the truth.
16
17 Judge Turbitt: The whole truth.
18
19 David W. Noble, Jr.: The whole truth.
20
21 Judge Turbitt: And nothing but the truth.
22
23 David W. Noble, Jr.: And nothing but the truth.
24
25 Judge Turbitt: So help me God.
26
27 David W. Noble, Jr.: So help me God.
28
29 Judge Turbitt: Okay sir, wait one second for the agency representative to come back. I believe
30 Mr. Toatley just walked in. Was that Mr. Toatly?
31
32 Stephen W. Furgeson: Yeah I let him go.
33
34 Judge Turbitt: Okay, thank you. All right, tell me what your version of events is, Mr. Noble.
35
36 David W. Noble, Jr.: Okay I've been a letter carrier employee of the Postal Service since 1975.
37 For almost 15 years I took leave from the Postal Service to work on behalf of the national
38 Association of letter carriers, which is the union that represents Postal Service letter carriers. For
39 the first two of those 15 years I worked in the union's Minneapolis Minnesota regional office...
40
41 Judge Turbitt: Okay I don't need to know your entire career Mr. Noble, I don't. You can put the
42 chronology of your career in writing. I believe I already have all this in documentation. We don't
43 need to go back through your entire career. You have said many times, and so I respect the fact

1 that you've had a long tenure. But we don't need to go back to 1980s about union grievances that
2 were filed, or anything that you did back then.

3
4 David W. Noble, Jr.: Well I'm not going to talk about grievances, Your Honor. I would like to
5 talk briefly however about some experiences that I had in the 1980s which...

6
7 Judge Turbitt: Okay that's too far back sir. That's over 20, no that's 30 years ago. You don't get
8 to talk about something that happened 30 years ago. You get to talk about, I'll allow you to talk
9 about anything that's happened in the last five years.

10
11 David W. Noble, Jr.: May I make an offer of proof, Your Honor?

12
13 Judge Turbitt: Briefly.

14
15 David W. Noble, Jr.: If permitted to testify about my experiences in 80's, I would say that I
16 worked for almost a decade in a process, joint process with the Postal Service designed to make
17 the Postal Service more participative, less authoritarian. That I worked with, mostly with an
18 assistant postmaster general name Gene Agburg. That he and I spent a decade flying around the
19 country talking to management about how it would be actually a more productive Postal Service
20 if instead of acting like prison guards, supervisors acted like coaches or teachers. And that
21 experience has colored my entire career with the Postal Service.

22
23 Judge Turbitt: Okay you may continue. I'll even allow you to testify to what you just said. So we
24 now have testimony on that, go-ahead.

25
26 David W. Noble, Jr.: Well I guess that the next obvious starting point for that is when I had
27 emergency heart surgery which was in August 2008. I need to take a couple of minutes.

28
29 Judge Turbitt: Okay, we will take a comfort break. It is now 3:30 it's about 3:40 we will come
30 back at 3:50. We are back on the record.

31
32 David W. Noble, Jr.: I'm afraid Your Honor that I have not yet regained my composure and I
33 think that trying to proceed at this point would be very painful for everybody. I'd like to come
34 back on Monday.

35
36 Judge Turbitt: We are all here today sir. I've heard your witnesses today. I want you to regain
37 composure, that's why I gave you ten minutes. I can give you five more minutes, but we are all
38 here today and I would like to proceed to go forward. I have rescheduled this hearing several
39 times and I would like to go forward. Do you want that door shut? Do you want five more
40 minutes sir? I'm willing to give you five more minutes.

41
42 David W. Noble, Jr.: Five more minutes isn't going to help.

1 Judge Turbitt: When we went off the record you began discussing your emergency heart surgery
2 in August of 2008.

3
4 David W. Noble, Jr.: I'm...

5
6 Judge Turbitt: Mr. Noble you can keep the box on your table and I believe there's a basket
7 behind you if you want to use the basket. I know that this is emotional for you, is there something
8 that we can do to make it easier to go through your testimony today?
9

10 David W. Noble, Jr.: I don't think so.

11
12 Judge Turbitt: It is your choice whether you want to testify. You are not, I want you to be aware,
13 you are not forced to testify, you do not have to testify. You've been approved as a witness but
14 you do not under any circumstances have to testify, that's your choice.
15

16 David W. Noble, Jr.: No I have to testify. I'm certainly not going to be able to tie this all into
17 exhibits in a chronology.
18

19 Stephen W. Furgeson: Your Honor, not to let me just help the process you know if he wants to
20 put it together a chronology, written chronology I'll maybe rue the day I did this but I'll waive
21 any requirement that I respond to the chronology of events.
22

23 Judge Turbitt: Is there, could you get that to me by 12 noon on Monday, Mr. Noble? And then I
24 could let you respond by 5 PM Mr. Ferguson?
25

26 Stephen W. Furgeson: Yeah that would be fine.
27

28 Judge Turbitt: Mr. Noble, that way you would have the weekend. You'd have Saturday and
29 Sunday, and part of Monday. Some of this has been done as you well know I mean some of this
30 in terms of what is happened I know that there had been chronologies in other or at least maybe
31 not lengthy but there have been chronologies in other cases that you've done I've read them and
32 if you wanted to tie that using that with some of the exhibits you could do that. Okay here I will
33 give you Mr. Noble til close of business on Monday, Monday that is this Monday November
34 the...
35

36 Stephen W. Furgeson: Seventh, I believe.
37

38 Judge Turbitt: November 7, 5 PM Eastern I am to receive a written chronology of events. You
39 can tie the exhibits together with that, and you can swear under oath if you want you don't have
40 to, that the chronology of events is a true and accurate presentation of what happened. And I will
41 give you til Tuesday close of business 5 PM to receive the agency's response on that chronology.
42

43 Stephen W. Furgeson: Very well, that's acceptable.

1 Judge Turbitt: Mr. Noble, that will give you some more time to collect your thoughts and to sit
2 down and go through the paperwork. Does that help?

3
4 David W. Noble, Jr.: I think that it would be less painful than trying to do it now.

5
6 Judge Turbitt: Okay.

7
8 David W. Noble, Jr.: I'll do it in the form of a declaration.

9
10 Judge Turbitt: I'm happy to do this to accommodate this I'm just going to let you know I don't
11 want any crisis so here's what I'm letting you know upfront excuse me I have to receive it by
12 Monday 5 PM. I have tissues up here to do worry I'm good. I have to receive it Mr. Noble by 5
13 PM on Monday Eastern time. No extensions will be granted either side. If I don't get it by 5 PM
14 on Monday it's done if I don't get it, I don't receive it. If it's after that I'm not looking at it. If the
15 agency doesn't respond by 5 PM on Tuesday, November 8 I'm not granting any extensions you
16 don't get a second bite at the apple that's it.

17
18 Stephen W. Furgeson: It's understood

19
20 Judge Turbitt: Nothing other than this is entered into the record. No more, no more other than the
21 testimony with a chronology of events. That's it, that's all that is entered into the record and the
22 agency's objection to that or cross-examination what have you of that testimony that's it. Is that
23 understood?

24
25 Stephen W. Furgeson: Yes.

26
27 David W. Noble, Jr.: Yes.

28
29 Judge Turbitt: Okay are there any questions about what we just did?

30
31 Stephen W. Furgeson: No sir.

32
33 Judge Turbitt: Mr. Noble is there any questions?

34
35 David W. Noble, Jr.: I have no questions Your Honor.

36
37 Judge Turbitt: Now the next question is do you also want to say something on the record? You
38 can, you don't have to. Do you want to say anything else on the record?

39
40 David W. Noble, Jr.: No.

41
42 Judge Turbitt: Okay and as I stated earlier, I will let you go back in time up to five years. You
43 already have your statement on the record, which is also an offer of proof that you had done some

1 work for 30 years with the Postal Service and it colored your view of the agency. Then you can
2 go back in time five years. Having allowed for the testimony in this hearing, the presentation of
3 evidence from both sides, the hearing on this matter has now ended. As I stated I will allow the
4 record to remain open for the limited purpose that I advised both parties of regarding Mr. Nobles
5 direct testimony and regarding the agencies objections or cross-examination of that testimony,
6 written testimony. Gentlemen thank you very much.

7
8 Stephen W. Furgeson: Thank you.

9
10 Judge Turbitt: And have a good weekend.
11
12
13
14
15

Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Office of the Clerk of the Board	Petition for Review	e-Appeal / e-Mail
Stephen W. Furgeson Agency Representative	Petition for Review	e-Appeal / e-Mail