

EASTERN AREA REGULAR ARBITRATION PANEL

C-25590

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

) **Grievant: Class Action**

) **Post Office: Rock Hill, South Carolina**

) **USPS Case No. C01N-4C-C 04099751**

) **NALC Case No. RHEB04010C**

09-048121

Before:

Jonathan I. Klein,
Arbitrator

Appearances:

For the Postal Service:

Gordon S. Walls
Labor Relations Specialist

For the Union:

Francisco Pecunia-Vega
NALC Advocate

Place of Hearing:

Rock Hill, South Carolina

Date of Hearing:

September 21, 2004

Date of Award

November 20, 2004

Relevant Contract Provisions:

Articles 17, 19 and 31

Contract Year:

RECEIVED 2001 - 2006

Type of Grievance:

NOV 29 2004

Contract

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

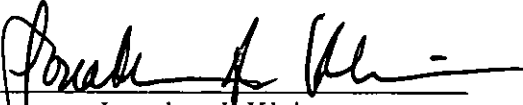
Judith Willoughby, NALC
National Business Agent

NOV 24 2004

Received
Region 9

AWARD SUMMARY

The Union met its burden to prove that the criteria of ELM §519.211 existed in Rock Hill, South Carolina on February 27, 2004. The Postal Service failed to produce documentation properly requested pursuant to Articles 17 and 31 of the National Agreement. Upon presentment of sworn affidavits as specified below, the class of grievants shall receive paid administrative leave in accordance with the terms of this Award.


Jonathan I. Klein

APPEARANCES

For the Postal Service:

Gordon S. Walls
Timothy Craig Neubert
James Bowan
Daniel E. Davison

Labor Relations Specialist
Supervisor, Customer Service
Supervisor, Customer Service
Postmaster, Rock Hill, S.C.

For the National Association of Letter Carriers:

Francisco Pecunia-Vega
Kenny Plemons
Franklin J. Rivers

Local Business Agent, Region 9
President, Branch 1003
Union Steward

ISSUE

The parties stipulated the issue before the arbitrator to be:

Should administrative leave have been granted to the employees at Rock Hill, South Carolina's Post Office, for a snowstorm that occurred on February 27, 2004?

STATEMENT OF CASE

Beginning on Thursday, February 26, 2004, a snowstorm hit Rock Hill, South Carolina. By the time the storm ended on Friday, February 27, it had set a record snowfall of eighteen inches within a twenty-four hour period for the Rock Hill area. (Joint Ex. 2 at 16-17; Testimony of Rivers; Testimony of Plemons). In various places, the snow reached a depth of twenty-two inches. (Joint Ex. 2 at 31; Testimony of Plemons).

The consequences of this historic snowfall were felt throughout the entire area of Rock Hill, including the post office. Of forty-six city letter carriers employed at the Rock Hill postal installation, only thirteen reported to work. Only seven out of thirty-two rural carriers reported to work.¹ No mail was delivered to customers in Rock Hill on February 27, 2004. The only delivery of mail to the Rock Hill post office occurred at 2:00 p.m. when a truck arrived from a processing center in Charlotte, North Carolina. Driving on public roadways and highways was considered hazardous, and motorists were asked by law enforcement to stay off the roads in an effort to clear them of snow and abandoned vehicles.

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1. The exact complement of letter carriers, both city and rural, scheduled for work on February 27, 2004, was questioned by the Postal Service at hearing. The work schedule for that day was never produced. However, both members of the Step B team concurred in the totals. The arbitrator accepts the numbers noted in the Step B decision as the basis for calculating the percentage of city letter carrier employees who reported to work, twenty-nine (29) percent; and those rural letter carriers who reported to work, twenty-two (22) percent.

The Union filed a grievance on March 10, 2004. The Form 8190 contains the following, undisputed facts:

Rock Hill got hit with the worst snowstorm in its history. Eighteen inches of snow fell in a 24 hour period on Thursday 2-26-04 thru Friday 2-27-04. No mail city or rural was attempted on February 27, 2004. All postal vehicles were snowed in on 2-27-04. Our parking lot was not cleared until 5 PM on 2-27-04. All LLVs remained snowed in until Sat 2-28-04. That morning the custodians had to dig each truck out before the carriers could leave.

At Formal Step A the Postal Service responded to the Union's claim the conditions of ELM §519.211 had been satisfied with the contention that the newspapers and State of South Carolina do not dictate what the Postal Service is required to do, and customers expect mail delivery as an essential function of government. "The plan was to effect delivery as soon as conditions allowed. No one knew what the conditions later on the day (Friday) would be like. If the conditions improved, some delivery would not have been able to be made due to the number of employees who failed to report to work." (Joint Ex. 2 at 18).

The Step B Union representative argued that management improperly charged those employees who were prevented from reporting to work due to an Act of God annual leave in lieu of administrative leave. Not only was the disaster community-wide and general in scope and impact, rather than personal, thereby preventing the above-enumerated employees from reporting to work, management refused and/or failed to furnish information properly requested pursuant to Article 17.3. The Step B Management representative asserted that the Union failed to demonstrate a community disaster that was general, rather than personal in scope. Because

several employees reported to work, the class of grievants could with reasonable diligence have reported to work. Further, there was a lack of statements from individual carriers to show that any of them made a bona fide effort to report to work – a factor which management deems critical in this case. The roads were passable and there was work to be done as evidenced by the fact a truck arrived at Rock Hill from Charlotte at 2:00 p.m. The problems were not shown to be general in nature, rather than personal. Finally, “[t]he failure of management at Formal Step A to provide the information requested by the Union, and the lack of response to the various contentions raised by the Union, does not adversely impact the Union’s ability to mount their case.” (Joint Ex. 2 at 4).

The arbitrator heard testimony and received written evidence from both parties at hearing. The parties agreed the case is properly before the arbitrator for resolution.

Contentions of the Parties

The Union argues that it more than adequately satisfied its burden to prove the three criteria necessary to establish an “Act of God,” ELM §519.211, existed in this case. The snow storm of February 27, 2004, was a community-wide disaster, both general in scope and impact, and it prevented a group of employees from reporting to work. Management failed to provide information requested by the Union and its response to the grievance, which grievance contained a full and detailed statement of facts, is devoid of any arguments that management’s actions were justified in denying administrative leave to the class of grievants. Accordingly, the grievants’

absence from work on February 27, 2004, should be charged to paid administrative leave, rather than annual or LWOP, and any improper charges to the employees accrued leave balances should be restored.

The Postal Service reasons that at no time during the grievance process did the Union question the Rock Hill postmaster's decision as an abuse of discretion, or make an attempt to determine whether an Act of God even took place. The Union has failed to show by a preponderance of the evidence that any of the employees who did not report to work were prevented from doing so, or that the effect of the snow storm on the class of grievants was anything other than personal in nature. No "due diligence" by the grievants to report to work was established by the Union.

The Postal Service also contends that part of the reason the grievants failed in their duty to report to work with all due diligence was as a result that there was no incentive for them to do so – they would be paid for their absence in any event. Moreover, there is an absence from the grievance file of evidence that any of the employees made a diligent effort to report to work.

With regard to the request for information, the Union was not prevented from developing its case just because the clock rings were not produced. The Union retained its right to request information, to interview employees and to have the stewards exercise their contractual rights. While admittedly the roads in Rock Hill were in bad condition with a great deal of snow, there is no evidence that the grievants were prevented from reporting to work. For these reasons, the Postal Service urges the grievance should be denied

Opinion and Analysis

A review of the evidence of record in this case convinces the arbitrator that the snow in Rock Hill, South Carolina on February 27, 2004, was of sufficient severity that it rose to the level of a community disaster. There was probative evidence by testimony and news reports of road closings, buildings that collapsed, directives to the public to stay off the roads and highways, and more than 180 storm related accidents across the region. Even the York County Sheriff's Department decided not to go out on routine patrols on February 27, although they answered calls from stranded motorists. The storm was more severe than weather forecasters predicted and dropped snow at a higher than anticipated rate, including in some places snow drifts up to three feet high. The local newspaper reported that critical care emergency response calls took two hours and more, and due to weather conditions the storm sat over the Rock Hill area.

In contrast to several of the arbitration awards referenced by the Postal Service, an overwhelming majority of the work force did not report to work on February 27 at the Rock Hill post office. There was absolutely no mail delivery in Rock Hill, and the testimony established that there were no walking routes. Due to the lack of firm, accurate numbers, the best estimate is that less than thirty percent of the total letter carriers assigned to the Rock Hill post office and the two associated stations actually reported to work. Even the management witnesses who testified that they arrived at work on time or within an hour of their start time agreed that the storm was one of the worst ever seen in the Rock Hill area. It was stipulated that only one truck from Charlotte arrived with mail at 2:00 p.m. There was also evidence that of those employees who

risked driving to work some arrived hours late to find very few employees and no work to perform. (Joint Ex. 2 at 11). All of the LLVs remained snowed in until the next day, February 28. There is no probative evidence to suggest that the scope of this disaster in York County, and Rock Hill in particular, was anything other than general, rather than personal in scope.

The real issue is the postmaster's determination, subject to arbitral review, that the class of grievants could, with reasonable diligence, have reported for duty on February 27. This determination requires both the specific identification of the members of the class of grievants, which employees were scheduled to work, and evidence as to whether those employees who were scheduled to work called in or were otherwise absent from work for all or part of the day in question. With this information, the Union would have been able to secure the necessary statements and/or testimony to demonstrate the reasonable diligence of the grievants, *i.e.*, whether the grievants could, with the degree of diligence to be expected of an employee exercising ordinary prudence under the circumstances of the storm, have reported to duty. The most accurate and probative evidence identifying and quantifying those non-reporting letter carriers are the actual clock rings, work schedules and call-off sheets or other documentation.

The arbitrator is convinced that the Union requested such documentation from management, both in writing and verbally. (Joint Ex. 2 at 6; Testimony of Rivers). The records requested are reasonable both in their scope and relevancy to the core issue in this dispute. There was considerable effort at hearing by the advocate for the Postal Service to suggest that such an information request was never made, and if that approach proved unconvincing, he argued

strenuously to minimize the impact of management's non-production by positing alternative actions the Union might have taken to secure the same information.

However, the arbitrator is not alone in finding the evidence sufficiently persuasive this information request was made. So, too, did the Postal Service's Step B representative. In the Step B decision, the Step B management representative wrote, "*The failure of management at Formal Step A to provide the information requested by the Union, and the lack of response to the various contentions raised by the Union, does not adversely impact the Union's ability to mount their case.*" (Joint Ex. 2 at 4)(Italics supplied).

Article 31, Section 3 states, in pertinent part:

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to file or to continue the processing of a grievance under this Agreement.

The consequence for failure to comply with a proper Article 31 information request differs upon the circumstances of each case. It is obvious that the grievance and arbitration process can operate successfully only by compliance with contractual procedures such as information requests that help filter out claims which are without merit and serve to assist the parties in the proper development of their positions. It is an insufficient defense to non-production to later argue at the arbitration hearing that there may have been alternative methods for the opposing party to obtain information. There is no contractual justification, excuse or

other qualification authorizing non-compliance with a reasonable information request on the basis that the Union might be able to ferret out such information by other means or sources.

The Postal Service argued that the decision of Arbitrator Joel Trosch in Case No. C00M-1C-C 03072158 is persuasive on this issue. However, that dispute is readily distinguishable. In the *Trosch Award*, the Mail Handlers Union had presented a number of information requests related to the grievance, including requests for copies of Form 3971s. Management only partially complied, but the information was eventually provided in response to the union's filing of an unfair labor practice charge with the NLRB.² The arbitrator noted that while the failure to produce the 3971s did constitute a violation of Article 31, §3, the union had an opportunity to review them two months prior to the hearing and to introduce them into the record. He also concluded that the evidence did not go to the core issue upon which the union failed to meet its burden of proof – evidentiary support that a community disaster had occurred. The arbitrator, on these facts, simply ordered the Postal Service to comply with Article 31 §3.³

Here, the requested documentation was relevant and material to the Union's case, and compliance with the request did not impose any undue administrative burden upon the Postal Service. The arbitrator finds that the official records maintained by the Postal Service, which

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2. Article 31, §3 expressly states that nothing in the article shall waive any rights the Union might have to obtain information under the National Labor Relations Act, as amended.
 3. The *Trosch Award* is also distinguishable on its facts. In that case, there was evidence that window operations remained open, mail was processed, letter carriers delivered mail extensively and the grievance sought four days of administrative leave without distinction between the days.

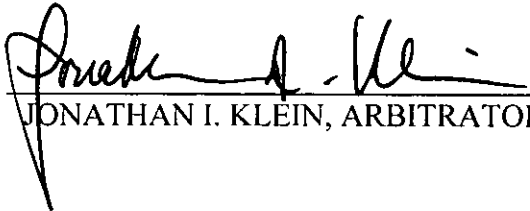
records were the focus of the information request, relate directly to the identification of the affected employees, their work schedules and absences. It is not incumbent upon the Union to conjure up such information which is commonly produced and has not been shown to be anything other than readily accessible. Through the information request and the documents to be produced by the Postal Service in response, the Union can then proceed to accurately define the class of affected employees and obtain the statements and/or affidavits necessary to establish the relevant facts, including whether reasonable diligence was employed by the group of employees in an effort to report for duty.

For each of the foregoing reasons, the grievance is sustained as more fully set forth in the Award.

AWARD

The grievance is sustained as follows. The Postal Service shall provide the Union, within two weeks of this Award, the clock rings for all letter carriers employed at the Rock Hill postal installation on February 27, 2004, including the two associated stations, a copy of the work schedule and list of letter carriers scheduled to work on February 27, 2004. A list of all letter carriers who called in and were unable to report to work on February 27, 2004, shall also be produced, including a copy of the ODL. Within two weeks after the date of production, each letter carrier identified by the Union as belonging to the class of grievants, shall submit a sworn affidavit attesting to their being scheduled to work on February 27, their absence from work that date due to the winter storm, the fact that each affiant was not otherwise on annual leave, sick leave or LWOP status on February 27, 2004, and attest to their exercise of reasonable diligence in attempting to report to work. Upon the presentment of said affidavits to the Rock Hill postmaster, all such full-time regular and part-time regular letter carriers in the identified class shall receive up to eight hours of paid

administrative leave to cover their scheduled tour, and any PTF letter carriers shall be paid administrative leave for their scheduled work hours as determined by ELM §519.14 c, but in no case to exceed eight hours of pay. Any of the affiants whose annual or other form of paid leave balance was charged for their absence on February 27, 2004, shall have the leave balance restored for the amount so charged, and all annual leave and LWOP shall be changed to administrative leave.



JONATHAN I. KLEIN, ARBITRATOR

Date of Issuance: November 20, 2004.

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ALSO ADMITTED IN
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November 20, 2004

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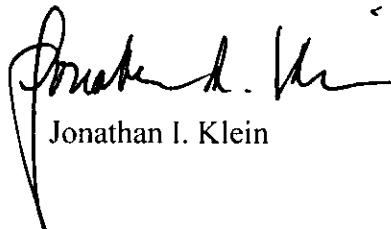
Re: Eastern Regular Arbitration Panel, USPS Case No. C01N-4C-C 0499751; NALC
Case No. RHEB04010C; Grievant: Class Action - Rock Hill, South Carolina

Dear Ms. Bodner and Ms. Willoughby:

Enclosed please find a copy of the Award, together with an invoice relative to the
referenced matter.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,



Jonathan I. Klein

cc. Manager, Collective Bargaining (w/awd. & disk)
Gordon S. Walls, USPS (w/awd.)
Francisco Pecunia-Vega, NALC (w/awd.)

Judith Willoughby, NALC
National Business Agent

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