

C# 00402

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Regional Contract

IN ARBITRATION

UNITED STATES POSTAL SERVICE, ) Case No. C8C-4J-C 3754/7596;  
                                  ) Arbitrator's File 80-21-444;  
and                            ) Dates of Hearing:  
                                  ) April 18, 1980, and  
AMERICAN POSTAL WORKERS UNION,) May 29, 1980,  
CLASS ACTION.                  ) Milwaukee, Wisconsin.

APPEARANCES:

For the Postal Service:

BEVERLY J. JONES,  
Labor Relations Specialist  
United States Postal Service  
850 Twin Rivers Drive  
Columbus, OH 43216

For the Union:

LAWRENCE J. GERVAIS,  
National Vice President, Clerk Craft  
American Postal Workers Union  
LaSalle Building, Suite 100  
15 South Ninth Street  
Minneapolis, MN 55402.



O P I N I O N

Issue

Did the Postal Service violate the National Agreement when it refused to grant administrative leave to employees on Tour 3 on January 13, 1979, and to employees on Tours 1 and 2 on January 14, 1979?

Facts

According to the testimony of the Union, a severe snow-storm struck the Milwaukee area late in the day on January 12, 1979, Friday, continued through Saturday, January 13<sup>th</sup>, and ended

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some time on Sunday, January 14th. Allowing for those employees who were absent for reasons other than snow, such as car trouble or sick leave, 87 employees did not report for work on account of snow problems on Tour 3 on January 13, 1979. On Tour 1, which began Saturday night, January 13th, 49 employees did not report for work due to snow problems. On Tour 2, on January 14th, 61 employees did not report for work due to snow problems.

According to Postal Service testimony, the number of employees not reporting was less than the number given by the Union.

The Union introduced a number of call-in sheets listing those employees who had called in to report that they would not be in to work. A large number indicated that the reasons given for their failure to appear were such items as "snow emergency", "car stuck", "snowed in", "bad roads", "snow storm", and similar reasons.

The Union introduced articles taken from newspapers for the days in question, which reported that steady winds of 25 to 40 miles per hour caused drifts of snow and blowing snow that was so bad that snow plowing was forced to stop. The articles reported that no attempt would be made to plow roads until Sunday, January 14th. Shopping centers and major department stores were closed, and various industries were cancelling shifts.

The newspaper articles also reported that numerous accidents had occurred, and that automobiles were unable to negotiate even relatively slight grades. The local airport, Mitchell Field, had been closed for 24 hours ending 6:30 P.M., on Sunday, Janu-

ary 14th as a result of the storm. The newspapers reported that it had been the longest closing of the airport due to weather since the January of 1947.

Accompanying the articles were photographs of various scenes attendant to the snowfall. These pictures showed stalled cars abandoned on city streets on Saturday and early Sunday, January 13th and 14th. It also showed cars being lifted bodily by forklifts to clear streets.

The Union introduced in evidence the emergency and alert log for the Milwaukee Street Department for January 12, 13 and 14. This log indicated that the Street Department would attempt to keep only main streets open, and would not plow secondary streets. It also stated that the Street Department anticipated little or nothing would be moving in the city by 9:00 P.M. on Saturday, January 13th. The Street Department listed the average snow depth in the city at 8:15 P.M. on Saturday, January 13th, as 10-3/4 inches.

The Union introduced United States Weather Bureau records for the days in question. The maximum and minimum temperatures were, respectively, on January 12th 19° and 8°; on January 13th, 27° and 19°; and on January 14th, 19° and 11°. The average wind speeds on the three days were 6.4 miles per hour, 19.1 miles per hour, and 16.8 miles per hour.

The Union presented as evidence excerpted extracts of

radio broadcasts for January 13th and 14th. These broadcasts stated that roads were dangerous and the public should not drive. The evidence also reported that snow emergencies had been declared in Milwaukee and virtually every one of its suburbs. The president of a local taxicab company was reported as advising that his cabs would not be on the streets until sometime Sunday. Several of the news broadcasts reported bad visibility from blowing and drifting snow which made travel extremely hazardous. The bulletins reported that snow plows were having trouble keeping up with the drifts. The state patrol reported that if a motorist was stranded on the interstate road system, help might not be available, and that the patrol itself could not get on or off the highway system.

The radio reports further stated that the "unanimous word from police is that you not drive unless it is an emergency".

The January 14th reports stated that seven deaths had occurred in the blizzard area because of the storm, and people were advised against driving. The news broadcasts again reported that in the event someone got stuck while driving their automobiles, the chances were that no tow truck could come to them.

The Union's evidence included a notice sent by Postmaster James Oster dated January 15th complimenting the Postal Service employees for their dedication to duty, and in which he stated that the winter since the 1st of the year was one of the most severe in southeastern Wisconsin's history. The notice also

mentioned that the sub-zero temperatures accompanied by record-breaking accumulations of snow were making the job of moving the mail most difficult.

One of the witnesses testifying for the Union was a clerk craft director and a shop steward. She stated that she had checked the addresses of a large number of the employees not working on January 12, 13 and 14, and found that the maps of the area indicated that the employees not working were scattered throughout the Milwaukee area and the surrounding areas, and were not concentrated in any one area of the city. She did state that on January 13 and 14 she was able to get to work, and that she drove a distance of 15 miles to get there.

This same witness stated that she had not heard any announcements about nor was she aware of any curtailment of postal operations. She was familiar with a section of the Local Memorandum of Understanding which stated that, after consideration of federal, state and local government recommendations, the Postmaster or his designee should cause an announcement to be made as to whether employees off duty should be required to report for duty. She said that she was aware that some of the mail had been delayed and that some delivery or carrier routes were not covered during the storm.

The witness stated that, although she worked on the 13th and 14th, she was excused early on her Tour on the 13th. She left

at 5 minutes after 5, and did not get home until 7:30. Her car got stuck in snow drifts seven times, and she required help from others in the vicinity to get her car out of the drifts. She described the ride home that evening as "frightening".

A witness for the Postal Service testified that he has worked in the Milwaukee area for some 32 years. He stated that he had experienced worse snow storms than the one in question. On one or two occasions he has had to sleep in the branch or station where he was employed. He further stated that there was no curtailment of mail or delivery. He did state that he did not work on January 13th or 14th, but that he was aware that Postal employees were working on those two days.

The Postal Service introduced a map of the area showing the general home locations of employees reporting for work and not reporting for work on the three Tours on the days in question. The map indicated that employees reporting for work and not reporting for work were scattered throughout the general area, and were not grouped in any particular location.

The Postal Service also introduced figures which it had compiled which indicated the numbers of employees who reported for work or who did not report for work on the three Tours which are the subject of this grievance. According to those figures, on Tour 3 on January 13, 1979, 191 employees in all crafts were scheduled, and 40 did not work. Of the employees scheduled, 131

were clerks, of whom 27 did not work. On Tour 1 on January 14, 151 employees were scheduled, and 93 were absent. Of the employees scheduled, 114 were clerks, of whom 77 were absent. On Tour 2 on January 14, 172 employees were scheduled for work, and 67 were absent. Of the employees scheduled, 127 were clerks, of whom 47 were absent.

The Postal Service introduced highway van (truck) control records showing incoming and outgoing trips. According to these records, the scheduled routes were run, for the most part, but there were a number of routes which were scheduled but which were apparently not run on the days in question.

A Tour superintendent on Tour 2 testified that he worked on both January 13 and 14, and that he reported at his usual reporting time of 5:00 A.M.. He lived 13 miles away from the Post Office, and drove both days. He remembered the storm as severe, but no worse than others that he had experienced in his 29 years with the Postal Service.

The Postmaster for the Milwaukee Post Office testified that he was not scheduled to work on January 13 and 14. However, he was in contact with the Post Office, and was aware that a number of employees did not report to work. The Post Office was in operation, and deliveries were being made, windows were open, and there was no curtailment of service. He felt that, generally, this storm was not special or too much different than others he had experienced, and he did not think that conditions were so bad

that the health or safety of employees would be threatened if they came to work.

The Postmaster thought that the only Postal motor vehicle runs that might have been curtailed were to and from the airport because the airport was not open, and there would therefore be no reason for a Postal truck to go there.

He further stated that he did not think that administrative leave was an "after-the-fact" decision; that it might be advisable to grant administrative leave on the forecast of coming conditions, but not afterwards.

By way of rebuttal, the Union called to testify a broadcast meteorologist for a local T.V. station, who stated that, by 4:00 A.M. on Saturday morning, the snowfall had been classified as a blizzard. Travelers' advisories, i.e., warnings, commenced on the night of January 12, and continued through the 13th and 14th.

He testified that the wind averaged 19.1 miles an hour on the 13th and 14th, with gusts as high as 39 miles an hour. He explained that because of the bitter cold which had prevailed in the area for several days, there had been no melting of prior snowfalls, and this added to difficulties.

He added that snow maps and storm maps showed that the storm conditions on January 13 and 14 were general in nature, and covered a much larger area than just metropolitan Milwaukee, and, as a matter of fact, covered parts of Illinois and Michigan as well.

The meteorologist did state that, while he was not scheduled to work at the T.V. station on January 13 and 14, the station was operational and did broadcast on those two days.

Discussion and Opinion

During the course of the hearing, the parties spent a good deal of time by way of discussions and testimony trying to either prove or disprove that the Union had received certain evidence that it had requested. The Postal Service, of course, took the position that it had supplied the requested information as quickly and as completely as it could. It tried to explain that certain of the evidence requested by the Union by way of documents, statistical compilations and the like, were either unavailable or impossible to obtain.

The party with the burden of proof must meet that burden of proof, and cannot excuse its failure to do so on the ground that certain information which it sought it was not able to obtain from the other party. As an Arbitrator, my duty is to hear the evidence. If the evidence is not forthcoming, I must base my ruling on the evidence that is presented.

If one of the parties feels that evidence to which it is entitled has been withheld by the other side, it can take steps to obtain that evidence by way of subpoenas from the Arbitrator, filing grievances, or the like. But its failure to obtain the evidence does not relieve it from the burden of proving its case.

Therefore, time spent in showing a denial of evidence is basically wasted, because, even if true, proof of the denial of evidence is not a substitute for proof on the merits of the case.

The Postal Service advances the argument that the Union here is attempting to gain through arbitration what it was not able to obtain through negotiation. Its argument is based on the fact that, at several contract negotiations between the parties, the Union attempted to have placed in the National Agreement administrative leave provisions of comparatively generous terms. The Union did not succeed at any of the negotiating sessions on this point.

If that were the whole of the matter, the Postal Service would be correct in its argument. However, administrative leave, as requested here, does appear in the handbooks and manuals issued by the Postal Service. By way of ARTICLE XIX, handbooks and manuals are incorporated in the National Agreement by reference. Therefore, by virtue of this section of the National Agreement, the right to administrative leave exists for employees almost as if it were set out in the National Agreement itself. What the Union attempted to do by negotiation was merely to clarify a right which Union members already possessed. The Union therefore is not attempting to obtain something which it previously did not have.

In support of its denial of administrative leave, the

Postal Service laid great stress on the fact that Postal operations were not curtailed. However, the administrative leave sections of the handbook do not require as a condition to the granting thereof that the Post Office close its doors. It merely requires that groups of employees be prevented from working by an Act of God that was general in nature and not personal, and that the employees use due diligence in attempting to get to work.

It is my view that the Union has met this criteria. Groups of employees were prevented from working. There is a disagreement as to the size of the group of employees that did not work. The Union, of course, attempted to show that a large group did not report for work, while the Postal Service attempted to show that a small group of employees did not report for work. In any event, the evidence did indicate that there was a group of employees who did not report for work and that the group was of appreciable size. The group requirement was therefore met.

The next requirement is that the Act of God be general rather than personal in nature. The Postal Service's own evidence by way of maps showed that the employees not reporting came from all areas surrounding the Milwaukee Post Office. It could not be said that one area was more or less severely affected than another. In addition, the T.V. weather broadcaster indicated that the storm covered not only the Milwaukee area, but several other states as well. Nothing could show more clearly than that

evidence that the scope of the storm was general in nature, rather than personal.

The next requirement for the granting of administrative leave is that employees use reasonable diligence in their efforts to get to work. The difficulty with this criterion lies in the fact that some employees were able to get to work. The question therefore arises that, if some employees could make it to work, why not others? The answer, I believe, lies in the fact that reasonable diligence must be looked at as a general proposition rather than a specific proposition. Reasonable diligence must be determined on an overall basis of general conditions.

I believe that the description of this storm, with its heavy snow, high winds, low temperatures, drifts, and previous accumulations of snow, would indicate that, as a general proposition, an individual might find it impossible to get to work even using reasonable diligence. That feeling is buttressed by public announcements made by the news media. The news media continually advised the general public to stay off the streets, even reporting that highway patrol cars were being disabled and were unable to travel. This would indicate that anyone on the street under those conditions would be more foolhardy than reasonable.

In the course of the hearing, the Union representative phrased a question to one of the Postal Service witnesses which asked that, if this storm did not justify administrative leave,

how severe a storm would. He received no real answer to this.

I think that the question is a valid one. As the storm was described by individuals, newspaper articles, weather bureau data, and the like, a storm more severe than this could hardly be expected more than once in a lifetime. Therefore, if this storm did not justify administrative leave for those employees unable to appear for work, it is not likely that any storm would.

All of the criteria required by the Handbook to authorize administrative leave are present in connection with the snowstorm involved in this grievance. Refusal to grant administrative leave was clearly a violation of the regulations.

The grievance is sustained, and the costs are assessed equally.

Dated this 7th day of November, 1980.

  
GERALD COHEN  
Arbitrator  
722 Chestnut Street  
St. Louis, MO 63101  
(314) 231-2020.

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Arbitration Division  
Labor Relations Department