

C#01176

IN THE MATTER OF THE ARBITRATION BETWEEN:)
United States Postal Service) Opinion and Award
and) in
National Association of Letter Carriers) S1N-3A-C-4002
AFL-CIO) H. L. Y'Barbo
) Lufkin, Texas
)

The subject matter in arbitration was assigned to J. Fred Holly for hearing and decision. A hearing was held in Lufkin, Texas on June 8, 1982, at which time the parties were afforded full and equal opportunity to present evidence and argument.

APPEARANCES:

For the Employer:

Neal D. O'Brien, Regional Labor Relations Executive

For the Union:

Carl Barnett, Local Business Agent

ISSUE:

The stipulated issue follows:

Did the Postmaster of Lufkin, Texas breach the provisions of Section 519.2 of the Employee and Labor Relations Manual or Sections 381.22 or 381.32 of the Timekeepers Manual in granting the Grievant 8 hours of emergency annual leave, rather than "Act of God" administrative leave on January 14, 1982?

BACKGROUND:

Snow began falling in the Lufkin, Texas area around noon on January 13, 1982, and continued to fall until approximately 10:00 p.m.

that evening. The snow reached an accumulation of approximately 3 inches, with melting occurring around 10:30 - 11:00 a.m. on January 14, 1982.

The weather resulted in hazardous driving conditions, and law enforcement agencies used the radio to caution drivers. Local public schools and some other Lufkin entities were closed on January 14, 1982. The Post Office had scheduled 102 employees (27 carriers) to report on January 14, 1982, and all but 7 were able (2 carriers) to do so. The Grievant was one of the two carriers who did not report as scheduled.

The Grievant, who was scheduled to report at 6:25 a.m. on January 14, 1982, testified that he drove his 1979 Cadillac from his home at approximately 4:00 a.m. to drive the 39 miles to his station. After proceeding for some 300 yards his car skidded into a ditch as he was ascending a small incline. He returned to his home and heard the radio report that "roads were icy and hazardous and some were closed." He then called the Lufkin Post Office and informed the Clerk Supervisor that he was unable to report because of the road conditions, and he made no further attempts on that date to report.

The Grievant returned to work on January 15, 1982, and filed a Form 3971 requesting administrative leave because he was "unable to report to work due to act of God." The Postmaster denied this request along with those of the remaining 6 non-reportees and awarded each of them emergency annual leave.

GOVERNING LANGUAGE:

Section 519 of the Employee and Labor Relations Manual provides in pertinent part:

519 Administrative Leave

519.1 Definition. Administrative leave is absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.

519.2 Events and Procedures for Granting Administrative Leave

.21 Acts of God

.211 General. Acts of God involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting to work.

Section 381 of the Time and Attendance Manual provides in pertinent part:

.22 When employees are dismissed from duty before the normal completion of their scheduled tour or are prevented from reporting to work due to an "Act of God," the following rules apply:

a. Full-time and part-time regular employees receive administrative leave to complete or cover their scheduled tour of duty (not to exceed 8 hours).

b. Part-time flexible employees in installations of 200 or more man years who have worked less than 4 hours receive credit for time worked plus enough administrative leave to produce 4 hours of creditable time. Part-time flexibles in installations of less than 200 man years who have worked less than 2 hours receive credit for time worked plus enough administrative leave to produce 2 hours of creditable time. (No leave is granted to part-time flexibles not scheduled to work.)

....

.32 Postmasters and other appropriate officials determine whether absences from duty allegedly due to "Acts of God" were, in fact, due to such cause or whether the employee or employees in question could, with reasonable diligence, have reported for duty.

UNION CONTENTIONS:

The basic contention of the Union is that the Postmaster violated the pertinent Sections of the Employee and Labor Relations Manual and the Time and Attendance Manual by failing to grant the Grievant's request for administrative leave. This is true, says the Union, because the conditions confronting the Grievant met each of the three conditions of Section 519.2 of the E & LR Manual, as follows:

1. No one questions the fact that the snow storm was an "act of God," being the worst storm to hit the area in 50 years.
2. The situation was general rather than personal in scope and impact. The entire area was affected, schools and other institutions were closed on January 14, 1982, and public authorities issued travel warnings throughout the area.
3. Groups of employees were prevented from reporting to work as scheduled at the Post Office, approximately 7 percent being unable to report.

Based on the foregoing the Union concludes that the Arbitrator has no choice but to sustain the grievance.

EMPLOYER CONTENTIONS:

The basic contention of the Employer is that the Grievant's posture is not in accord with the provisions of Section 519.211 of the E & LR

Manual. While granting that the snow storm can be viewed as an "act of God," the Employer insists that all three conditions enumerated in Section 519.211 must be met before an employee is qualified for administrative leave because of an "act of God." The Employer then contends that the conditions were not general rather than personal, and that it did not prevent groups of employees from reporting for work. In regard to the former assertion the Employer contends the Grievant's plight was personal, rather than of general origin, since two other employees from his area of residence were able to report as scheduled; other employees who reported covered greater distances than 39 miles; all delivery routes in Lufkin and surrounding offices were covered without accident; and the Grievant made no attempt to report after the thaw on January 14, 1982. In regard to the latter assertion the Employer contends that the failure of 2 Carriers and 5 Clerks to report can hardly be viewed as an affected group.

The Employer also contends that the Union is endeavoring to gain through arbitration that which it has been unable to achieve in negotiations. In both national and local negotiations since 1971 the Union has repeatedly sought to "liberalize" administrative leave provisions by attempting to remove the "group requirement" and to transfer the decision from Post-masters to local civil or law enforcement agencies. The Employer cautions the Arbitrator that he does not have the authority to grant the Union that which it has been unable to achieve in negotiations.

Finally, the Employer contends that Postal Service arbitration authority on "act of God administrative leave" grievances affirms the

Employer position. Therefore, says the Employer, the Arbitrator must deny this grievance.

DISCUSSION AND FINDINGS:

The two Manuals involved herein clearly provide that it is the Postmaster who must decide whether absences from duty allegedly due to "Acts of God" were in fact due to such cause. In reaching such a decision he/she must consider each of the three criteria set forth in Section 519.211 of the E & LR Manual. That is, to qualify there must be an act of God, the disaster situation must be general rather than personal, and it must have prevented groups of employees from working or reporting for work. Only after each of these criteria are answered in the affirmative does the question arise as to whether the employee could, with reasonable diligence, have reported for duty (see Arbitrator Myers in S8C-3W-C-3516).

In weighing the evidence in the instant case it becomes apparent that while the snow storm created an unusual and aggravating condition on January 14, 1982, it had little impact on Postal Service operations in Lufkin. Those operations continued on a full schedule without curtailment of deliveries. Under these circumstances it is impossible to conclude that there was a disaster situation which was general in nature.

Further, the storm did not create a condition which prevented groups of employees from working or reporting for work. Other employees in the Grievant's area of residence were not unable to report, only one other Carrier may have been affected similarly, and too few non-reportees to

constitute a group were involved. Moreover, nothing is known about the other non-reportees. While I am convinced that an act of God prevented the Grievant from reporting at his scheduled time of 6:25 a.m., it is recognized that this alone does not meet the second and third criteria of the test set forth at Section 519-211.

As a consequence of the foregoing, it is concluded that the Postmaster did not abuse his discretion. He was neither arbitrary, capricious nor discriminatory in his decision that the Grievant did not qualify for administrative leave because his situation arose from personal circumstances rather than a disaster of a general nature, and he was not a member of what can be logically assumed to be a group. Therefore, the grievance must be denied and dismissed.

AWARD:

The Arbitrator hereby Awards as follows:

The Lufkin, Texas Postmaster did not breach the provisions of Section 519.2 of the Employee and Labor Relations Manual or Sections 381.22 or 381.32 of the Timekeepers Manual in granting the Grievant 8 hours of emergency annual leave on January 14, 1982. Therefore, the subject grievance is denied and dismissed.

Knoxville, Tennessee
June 21, 1982


J. Fred Holly, Arbitrator