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BEFORE THE SOUTHEAST REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration
between
THE UNITED STATES POSTAL SERVICE,
and

Grievant: Class Action
Post Office: Jackson, Mississippi
Case No: H01N-4H-C 05172853
DRT No. 08-042844
Local # B2170006205C

**THE NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO.**

Before: Martin A. Soll, Arbitrator
For the Postal Service: Ricky Jones
For NALC: Cris Verville
Place/Date of Hearing: Jackson, MS/January 24, 2008
Date of Award: April 15, 2008
Relevant Contract Provisions/Manuals: Articles 10 & 19; ELM 519.21
Contract Year/Type of Grievance: 2001-2006/Contract

AWARD SUMMARY

The Postal Service violated ELM 519.21 by not crediting or paying each Class Member Administrative Leave for those afternoon work hours on August 29, 2005, which Hurricane Katrina prevented the Class Member from working. The instant grievance, accordingly, is sustained.

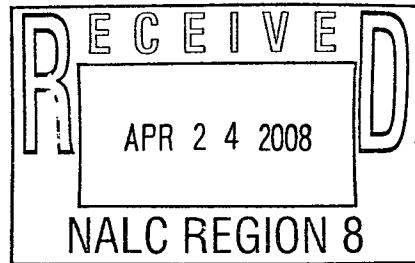


Martin A. Soll, Arbitrator

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NALC HEADQUARTERS



JURISDICTION

The instant contract grievance was timely initiated by NALC as a class action on behalf of approximately 103 Jackson, Mississippi letter carriers (i.e., the “Class” or “Class Members”). It charges local Management with violating ELM Subchapter 519.21 by way of Articles 10 & 19 of the National Agreement for denying Administrative Leave pay to those Class Members who on Monday, August 29, 2005, were prevented from working by Hurricane Katrina. ELM Subchapter 519.1 defines Administrative Leave as “(a)bsence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.”

The record shows that at or about 2:00 p.m. on August 29, as Katrina passed through Jackson, Management announced that all Jackson letter carriers, at their individual discretion, were authorized to depart work early and utilize paid annual leave or leave without pay/LWOP for their absence. NALC claims and grieves (whereas, Management disputes) that each Class Member is contractually due Administrative Leave pay in lieu of annual leave or LWOP since the “sole” circumstance which caused the carriers to depart work early, i.e., Hurricane Katrina, is an “Act of God.” ELM Subchapter 519.21 defines Acts of God as “(c)ommunity 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.”

Remaining unresolved, the grievance was submitted to binding arbitration before the undersigned neutral arbitrator. A non transcribed evidentiary hearing was held in Jackson, Mississippi on January 24, 2008, wherein, the parties were accorded the full opportunity to call, examine and cross-examine witnesses and submit all evidence pertinent and material to the case. Extensive and detailed written closing arguments, including numerous regular panel arbitration decisions were received by the undersigned on or about March 8, 2008.

AGREED ISSUE

Did Management violate Articles 10 and 19 of the National Agreement and ELM Subchapter 519.21 when it failed to grant Administrative Leave pay to letter carriers in the Jackson, Mississippi installation on August 29, 2005? If so, what is the proper remedy?

APPLICABLE PROVISIONS OF THE LABOR RELATIONS MANUAL ("ELM") &
COLLECTIVE BARGAINING AGREEMENT ("CBA")

ELM 519 ADMINISTRATIVE LEAVE (in relevant part).

- 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.
- 519.21 **Acts of God**
- 519.211 **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.
- 519.212 **Authorizing Administrative Leave for Acts of God**
The following provisions concern administrative leave for acts of God:
 - a. Postmasters and other installation heads have authority to approve administrative leave for up to 1 day.
 - b. District managers and Postal Career Executive Service (PCES) plant managers may authorize administrative leave beyond 1 day, but not to exceed a total of 3 days, for their installation and those reporting to it.
 - c. District managers and senior or lead plant managers may approve administrative leave for periods up to and in excess of 3 days for their installation and those reporting to it.
- 519.213 **Determining the Cause of Absence**
Postmasters and other appropriate postal 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.
- 519.214 **Early Dismissal Due to Acts of God**
When employees are dismissed from duty before the normal completion of their duty due to an act of God, the following applies:
 - a. Full-time employees are entitled to credit for hours worked plus enough administrative leave to complete their tour of duty. This combination of work and leave is not to exceed 8 hours in any one day.
 - b. Part-time regular employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled hours of duty. This combination of work and leave is not to exceed 8 hours in any one day.
 - c. Part-time flexible employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled tour. The

combination of straight time worked and administrative leave may not exceed 8 hours in a service day. If there is a question as to the scheduled work hours, the part-time flexible employee is entitled to the greater of the following:

- (1) The number of hours the part-time flexible worked on the same service day in the previous service week.
- (2) The number of hours the part-time flexible was scheduled to work.
- (3) The guaranteed hours as provided in the applicable national agreement.

Article 10

Section 2. Leave Regulations

The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours and working conditions of employees covered by this Agreement, shall remain in effect for the life of the Agreement.

Article 19

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly related to wage, hours, or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable.

BACKGROUND AND SUMMARY OF THE PARTIES' POSITIONS AND ARGUMENT

The instant case revolves around the severe and continuing weather conditions resulting from the then downgraded Hurricane Katrina as it passed through Jackson, Mississippi the afternoon of Monday, August 29, 2005. History reflects that Hurricane Katrina was one of the most destructive, powerful and largest hurricanes to ever impact the United States mainland.

Regarding the events on August 29 in Jackson, they show, in relevant part, that on the morning of August 29, no letter carriers were prevented from delivering their mail. However, starting at approximately 2:00 p.m., all of Jackson was "struck" by continuing tropical or hurricane level wind gusts and heavy rain which resulted in falling tree limbs and power outages throughout the city.

Many letter carriers testified at the arbitration or submitted written statements describing Jackson's afternoon weather conditions on August 29. As an example:

1. LeFleur Station letter carrier, Mr. John Branson, in relevant part and in summary,

reported the following:

On Monday August 29, 2005, Postal managers ordered the letter carriers at LeFleur Station to go to the street and deliver the mail, even though hurricane Katrina was about to hit our town, Jackson, MS ... I delivered about half of my route with trees falling and transformers blowing out...I determined it was unsafe and came back to the station. I cased all the mail that I did not deliver ... I was doing this when power failed and lights went out, at 2:20 p.m.

2. Westland Station's shop steward, Mr. Sam McDonald, reported that many carriers were put in harm's way on August 29, and had to face downed/live power lines, wet conditions, fallen and falling trees and strong winds.
3. Delta Station shop steward, Mr. Kenneth Jackson similarly reported that while delivering mail on his route a large tree limb fell barely missing him and while driving across a bridge, strong winds lifted his LLV causing it to move from lane to lane. And,
4. The parties further stipulated that if each of the remaining Class Members were called to testify, all would uniformly state and confirm that starting at approximately 2:00 p.m., Jackson's overall weather conditions were rain, windy, with tree limbs falling and some power outages.

As a direct result of Katrina's weather conditions, at or about 2:00 p.m., Jackson's local Management announced that all letter carriers were given their individual choice of completing their tour/shift at their regular pay, or they may go home early and be paid annual leave or given LWOP. Approximately 103 carriers went home, while others returned to their stations until their tours ended with no loss of pay.

The parties, among other things, are at issue over Management's contentions and insistence that at no time on August 29, were any letter carriers "approved" for Administrative Leave pay, or "dismissed" from duty. Management also contends (whereas, NALC disputes) that notices similar to the following were posted at all or most of Jackson's stations advising letter carriers of their "choices."

NOTICE

Carriers are NOT being mandated by Management to return to the office. Management is concerned for everyone's safety, and if you feel that it is safe for you to deliver your route you may keep working. If you feel that it is unsafe you may request and will be granted annual leave or leave without pay at your discretion when your safe duties have been completed. We have

an obligation to get the mail delivered, but we also have an obligation to keep ourselves out of danger.

By this grievance and on the record submitted, NALC seeks (whereas, Management vehemently opposes) an award ordering the Postal Service to forthwith convert each Class Member's use of annual leave pay or LWOP during the afternoon of August 29, 2005, to paid Administrative Leave.

THE PARTIES' OPPOSING POSITIONS & ARGUMENT

NALC's Position

In support of awarding Administrative Leave pay to each Class member, NALC notes and argues, in relevant part, as follows.

1. Management had all intention for the carriers to complete their assignments for that day at all costs to the employee. If not the Postal Service would have granted a few hours of Administrative Leave to the 103 plus employees within the Jackson, MS installation in accordance with the provisions of the ELM Section 519.211.
2. The storm affected a group of employees, 106 employees out of 186 employees according to the Everything Reports. Hurricane Katrina was general and not personal in nature. Hurricane Katrina was in fact an Act of God that falls within the provisions of the ELM Section 519.211.
3. Shop Steward Sam McDonald testified that carriers were facing downed live power lines, wet conditions, downed trees, falling trees, and strong winds. Mr. McDonald also testified that a supervisor came out to his route to tell him he needed to return to the office.
4. Letter Carrier John Branson testified carriers were sent out from LeFleur Station, even though Hurricane Katrina was about to hit our town. Also, Mr. Branson wrote in his statement that Jeff Moran (1105) said out loud that he heard on the radio that garbage workers were not going to be allowed to work. Manager Bill Farrior's response was that "Garbage workers only make \$ 7.00 per hour." Mr. Branson also states Bill Farrior gave each carrier a slip of paper with his cell phone number and Supervisor Paul Schoeneck's cell phone number. His instruction was "Call one of us if you see anything" He did not explain what that meant. In the last paragraph of Mr. Branson's statement, he wrote:

I delivered about half of my route with trees falling and transformers blowing. I called [Supervisor] Paul Schoenack and asked him how much longer were we going to stay on the street. He stated that my job was to deliver all, (the mail) but that if I determined it was unsafe, I must decide to come back to the station. When I got back in, I was to "case all of the mail that I did not deliver" and to give a manager an "account of deliverys not made." I was doing this when power failed and the lights went out at 2:20 p.m.. [Manager] Bill Farrior was standing between my case and the supervisor's desk (only

about 15 feet from me). He told everyone to leave the building that he would write everyone out at 2:20 p.m. He said, "Go home and be safe."

The Postal Service's Position

Pointing to ELM 519.21's overall "Acts of God" language, the Postal Service insists, contends and requests the grievance be denied based upon the following and alternative grounds.

1. There is absolutely no evidence that any employee was "dismissed" from duty. The language [of ELM Subchapter 519.214] is clear. In order for an employee who does not complete his tour to be granted administrative leave to cover the time, two events must occur. There must be an Act of God and the employees must be dismissed.
2. The Act of God does not, by itself, establish an entitlement to Administrative Leave. [As recited and required in ELM 519.214], no [letter carrier] employees were "dismissed" in the instance case. The word "dismissed from duty," has meaning. A "dismissal," is not merely an authorization by Management to leave work. A "dismissal" to the contrary, is an affirmative decision on the part of Management to direct employees to leave the workplace. In this case, no employee was dismissed from duty, but rather was given a choice of completing the tour, taking annual leave, or taking LWOP. When employees are given the option of staying at work or leaving with the choice of annual leave or LWOP, these employees are plainly not dismissed from duty. If employees were dismissed as alleged by the Union, the question becomes why did some employees stay and work eight hours and some even worked overtime. The answer, because a liberal leave policy was put in place and employee were afforded the option of remaining at work, taking annual leave or leave without pay.
3. In the instant case, there is no doubt a storm occurred; however base[d] [on] the testimony and evidence of record, Management do[es] not believe it could be considered a "disaster" because the storm did not prevent groups of employees from reporting to work or from performing their work. And,
4. The Postmaster and Installation head have the sole authority to [approve or] grant administrative leave, and in this instance, their decision was that this situation did not warrant administrative leave, which was properly within their discretion.

DISCUSSION AND FINDING

While the overall facts in this case are not in dispute, whether the Class is contractually entitled to Administrative Leave pay, is hotly contested. The many prior arbitration awards submitted

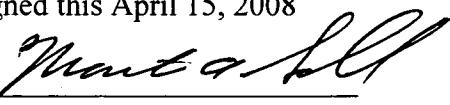
by the parties with their closing briefs, thus, are informative and persuasive. In reviewing the same, it appears the key fact of whether Administrative Leave pay was, or was not awarded by the arbitrator in each case largely depended upon whether the disaster/Act of God truly impacted the ability of the affected Postal Service employees to report for work or continue working, as opposed to (as the Postal Service argues here) whether local Management did, or did not "dismiss" employees from duty, or alternatively, whether local Management did, or did not "approve or authorize" Administrative Leave. In other words, if it was shown the Act of God was severe and widespread and "clearly" prevented groups of employees from working or reporting to work, then, generally speaking, Administrative Leave pay was awarded by the arbitrator.

In this matter, the preponderance of evidence shows that Hurricane Katrina constituted an Act of God, and that commencing at or about 2:00 p.m. on August 29, 2005, its severe weather conditions throughout the Jackson, Mississippi area prevented a large group of employees (here the letter carrier Class Members) from completing their "work" of delivering mail for the remainder of their August 29 tours. On these facts and circumstances, and in light of the above described and persuasive prior case law, the undersigned finds the Postal Service, as charged, violated ELM 519.21 by not crediting or paying each Class Member Administrative Leave for those afternoon work hours on August 29, 2005, which Katrina prevented the Class Member from working. The instant grievance, accordingly, shall be sustained.

AWARD & REMEDY

1. On the record submitted and the above, the instant grievance is sustained.
2. To remedy its violation, in accordance with the applicable terms, conditions and language of paragraphs (a) (b) or (c) of ELM Subchapter 519.214, the Postal Service shall pay or credit each Class Member Administrative Leave for all paid leave or LWOP credited to the Class Member for the afternoon hours of August 29, 2005. And,
3. Unless jointly agreed by the parties to the contrary, the undersigned shall retain jurisdiction to resolve any disputes regarding the above stated remedy. This Opinion and Award is otherwise final and binding.

Signed this April 15, 2008



Martin A. Soll, Arbitrator