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- WILLIAM HABER 12/14/81 Won
Article XXVII - Employee Claim (Maint

34194 (C8T-4A-C)

IN THE MATTER OF THE ARBITRATION BETWEEN
UNITED STATES POSTAL SERVICE
SKOKIE, ILLINOIS
- and -
AMERICAN POSTAL WORKERS UNION, AFL-CIO

FROM THE OFFICE OF
JOHN P. RICHARDS
DIRECTOR
INDUSTRIAL RELATIONS
APWU AFL-CIO

Arbitrator: William Haber, Ann Arbor, Michigan

Case No.: C8T-4A-C 34194

Date of Grievance: July 28, 1981

Date of Hearing: November 23, 1981

Issue: Compensation for Damage to Personal Property - JAN 4 1982
Glasses

Opinion and Award: December 14, 1981

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1. Issue

This arbitration grows out of a grievance filed by George B. Baldauf, claiming payment for his glasses which were broken while he was taping insulation to a heating duct. The payment was denied and he filed a grievance claiming \$88.00 for damage to his eyeglasses. The matter was not resolved and finally went to arbitration before William Haber of Ann Arbor, Michigan, a member of the Regular Arbitration Panel.

2. Hearing and Appearances

A Hearing was held on November 23, 1981 in Evanston, Illinois. The grievant was represented by St. Clair Darby, National Regional Representative for the APWU, located in Chicago, who presented the case. Appearing with him and testifying was the grievant, George B. Baldauf.

The Postal Service was represented by Rodney A. Stone, Labor Relations Executive, who presented the case. Willard Richardson, Personnel Assistant, was also present.

The Arbitrator was provided with two Joint Exhibits.

J 1 is a copy of the National Agreement.

J 2 is the grievance package which contains the grievant's claim for personal property loss. The item involved are eye-glasses and the amount is \$88.00. The grievant writes that "while working on repairing insulation on cold air duct, hit corner of duct with eyeglasses, braking frames and lenses popped out unto floor breaking lense ... no salvage value." The grievant checked the item which indicated that the loss did not result from the negligence of another party. The Union Steward on the same form stated that the accident was unavoidable, it was in the line of duty, and recommended that the employee be paid for it.

The supervisor wrote on the form that the grievant, while in the process of doing some duct work in the boiler room, his eyeglasses came into contact with the curved portion of the duct, thus fracturing the upper right portion of the frame ... the lense was scratched, cut and marred, necessitating replacement including the frames.

An August 3, 1981 letter, signed by the General Manager of the Employee Relations Division, states that

"There was no evidence presented to indicate the damage was the result of either unsafe working conditions or equipment; there was, however, indications that the damage was the result of negligence and the National Agreement does not provide for such reimbursements resulting from negligence."

In addition the Employer provided several awards of other arbitrators. These included an award by Arbitrator Bernard Dobranski, dated December 15, 1980, denying a grievance filed by an employee whose bicycle was stolen. Another award by Arbitrator George E. Bowles, dated April 13, 1981, also denies a grievance of an employee who sought reimbursement for damage to a blouse which was soiled and snagged. She had not proved, said that Arbitrator, that the loss did not result in whole or part from negligence on her part.

Arbitrator Patrick Fisher in an award dated December 1, 1975, also denied a claim because of simple negligence which led to the loss of the grievant's glasses.

The fourth award is by Arbitrator Gerald Cohen, dated April 10, 1981, denying the grievant's claim because she was negligent.

And finally, Arbitrator Elliott Goldstein, in an award dated March 29, 1981, denied a claim for reimbursement of glasses since the grievant failed to take due care and therefore he was in part negligent.

One Union Exhibit was submitted for the Arbitrator. This included an abstract from the E & LR Manual touching on matters such as employee claims.

In addition to the Union Exhibit two arbitration awards were presented. One, by Arbitrator Gerald Cohen, dated April 13, 1981, upholding a grievance in assessing costs equally. The second award, also by Gerald Cohen, dated November 28, 1979 is sustaining a grievance, awarding one half of the cost of the lost classes.

3. Discussion: Opinion and Award

Article 27 of the Agreement is entitled Employee Claims and reads as follows:

"Subject to a \$10 minimum, an employee may file a claim within fourteen (14) days of the date of loss or damage and be reimbursed for loss or damage to his/her personal property except for motor vehicles and the contents thereof taking into consideration depreciation where the loss or damage was suffered in connection with or incident to the employee's employment while on duty or while on postal premises. The possession of the property must have been reasonable, or proper under the circumstances and the damage or loss must not have been caused in whole or in part by the negligent or wrongful act of the employee. Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions.

"Claims should be documented, if possible, and submitted with recommendations by the Union steward to the Employer at the local level. The Employer will submit the claim, with the Employer's and the steward's recommendation, within 15 days, to the regional office for determination. The claim will be adjudicated within thirty (30) days after receipt at the regional office. An adverse determination on the claim may be appealed."

According to the Union, the grievant, a custodian laborer, at the Skokie, Illinois Post Office, was directed to make some necessary repairs on the ducts in the boiler room. While working in a relatively confined area and after nearly completing his job, his head struck a small metal projection damaging his glasses. The damage was reported to the supervisor, the proper

forms were made out and while, according to the Union, the Postal Service was unable to establish any negligence on the part of the employee, it declined to compensate him.

The Employer claims that under Article 27, when the damage or loss was caused in whole or in part by the negligent or wrongful act of the employee, it is not compensable. In the case of this grievant, his "own movement" caused the glasses to be broken. "The heating duct was stationary" and it was the grievant's failure to exercise "due care" which resulted in the damage. It was due to his own act and not that of another. Negligence, states the Employer, citing another arbitration award, implies the absence of care. The Agreement states clearly that the loss must not have been caused in whole or in part by the wrongful act of the employee. The grievance should be denied.

The Arbitrator has read the provisions in the Agreement and the several paragraphs in the E & LR Manual and also reflected about the awards of other arbitrators, some of whom approved claims for loss or damage to personal property such as glasses, and others denied such claims for glasses, a female employee's blouse and the theft of a bicycle.

The Arbitrator has heard the statement from the Management advocate that the employee was negligent, that he did not exercise due care. However, no testimony or evidence to indicate in what way he was negligent was presented. The Arbitrator was told that the heating duct was stationary, it is as if to say that the heating duct did not reach out and strike the grievant. It is also said that the grievant's own action caused the glasses to

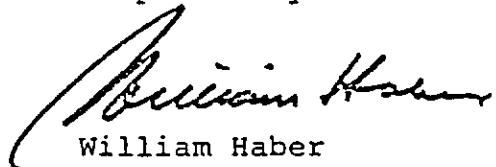
be broken. In what way his actions did so is not indicated. Obviously it was his own action, since he was the one working and not another employee.

After reading all of the cases submitted and reflecting on the circumstances which probably prevailed in the confined area where the grievant was working, the Arbitrator has reached the conclusion that no clear and solid evidence was presented to him which indicated that the grievant was negligent or did not exercise due care. It was an accident. An accident is simply an unexpected incident which results in damage to property or person. It is not normal, it is unexpected and we have set up ^{injury} a system of/compensation when the incident, that is to say the accident, results in disability.

Article 27 provides for claims when the incident results in loss of property. To be sure, the Employer is not required to pay for depreciation or wear and tear or for loss resulting from negligence and carelessness. None of these, which would exempt the Employer from this responsibility, have been established to the Arbitrator's satisfaction.

Consequently, it is the Arbitrator's Opinion and Award that the bill submitted by the grievant for the loss of his glasses should be paid by the Postal Service.

Respectfully submitted,



William Haber