

REGULAR ARBITRATION PANEL

C# 00448

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

Grievant: Class Action

Post Office: New London, CT

Case No: N1C-1J-C 6158

Before Herbert L. Marx, Jr. , Arbitrator

Appearances:

For US Postal Service

William P. Ferry, Officer-in-Charge

For Union:

Robert F. Caracciolo, National Vice-President

Date of Hearing: July 25, 1983

Place of Hearing: New London, CT

Award: The Postal Service improperly denied administrative leave to nine clerks for April 7, 1982. The remedy is that their records shall show that they were on administrative leave for April 7, 1982, and they shall be re-credited for annual leave charged to them for that date.

Date of Award: August 26, 1983

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O P I N I O N

This matter was heard by the Arbitrator on July 25, 1983 in a hearing room at the United States Postal Service facility, New London, Conn. The parties were given full opportunity to present evidence and argument and to examine and cross-examine witnesses. The witnesses were sworn.

The Postal Service and the American Postal Workers Union agreed that the issue to be resolved by the Arbitrator is as follows:

Did the Postal Service improperly deny administrative leave to nine Clerks for April 7, 1982? If so, what shall be the remedy?

The applicable provision of the National Agreement is as follows:

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, 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. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions. . . .

Applicable provisions of the Employee & Labor Relations Manual are as follows:

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.

.212 Authorizing Administrative Leave for Acts of God

a. Postmasters and Installations Heads. Postmasters and other installation heads have authority to approve administrative leave for up to 1 day. . . .

The nine employees concerned in this grievance were scheduled to work Tour 1 on April 7, 1982 (11:30 p.m. April 6 to 8 a.m., April 7). The grievance argues that nine employees were unable to report for work on the specified tour because of the heavy snowstorm and adverse weather conditions prevailing at the time. The employees all requested administrative leave for this tour. These requests were denied by the Postal Service, and the employees were charged with annual leave instead.

The class action grievance seeks to restore the one day's annual leave credit to each of the employees and to have the day

charged as administrative leave under the provisions of Section 519 of the Employee & Labor Relations Manual.

Testimony from one grievant and from a Shop Steward, as well as copies of newspaper articles submitted with the grievance, provided an undisputed description of the weather conditions on April 6-7. Snow began falling during the day of April 6 and continued until April 7 leaving, according to one newspaper account, "more than one foot of snow" in Connecticut's "first springtime blizzard . . . since the National Weather Service began keeping records in 1905". One grievant testified that he attempted to come to work by shoveling his driveway. The driveway was drifted over within an hour. His local road was not plowed. He called his supervisor and offered to walk to the main road if he could be picked up by a Postal Service vehicle. His offer was not accepted. He claimed that he could observe from his home that there was no traffic at all on the roads.

There was some dispute in the testimony concerning the number of employees who did or did not report to work. Using the Postal Service's own figures, however, on Tour 1, there were 11 out of 16 employees who did not report, including the nine Clerks who grieved. (On the preceding Tour 3, two out of 14 employees did not report, and on the preceding Tour 2, 4 out of 63 employees did not report. Employees on Tours 2 and 3 are not concerned in this grievance.)

The Postal Service makes no defense as to any failure of the grievants to call in and report off prior to their shift. Rather, the Postal Service claims that administrative leave was not warranted because, considering the three tours together, most employees were able to report for work and did so. In addition, according to the Postal Service, the Governor did not declare a "state of emergency" during the snowfall.

The Arbitrator does not agree with the Postal Service's reasoning. Section 519 refers to "groups of employees" who are prevented from working. It seems obvious that weather conditions worsened as the day progressed, reaching the worst point prior to and/or during Tour 1 beginning at 11:30 p.m. on April 6. Of the five employees who did report on Tour 1, there was testimony that two drove together behind a snowplow, and one other lived only a mile from the Postal Station. Eleven out of 16 employees on Tour 1 meets the definition of a "group of employees". There is no reason to encompass employees over a 24-hour period, under rapidly changing weather conditions, as the only proper "group". Nor does Section 519 require that a state of emergency be declared to meet the definition of Section 519.211.

The Postal Service argues that the cases of eight of the nine grievants who did not appear at the arbitration hearing should be dismissed, since their individual circumstances were

not related to the Arbitrator. It would not be reasonable to dismiss the claims of these grievants. All were listed as grievants, and there was ample opportunity during the grievance procedure for various individual circumstances to be explored. There is no basis to believe that the grievants deliberately avoided reporting for work. The circumstances described by the one grievant at the hearing certainly were little different from those of the other grievants.

The reasoning in another case decided by Arbitrator Neil N. Bernstein (Cases Nos. ClC-4B-C 5044 and 5128, Detroit Metro Area Local) is relevant here. In sustaining a similar grievance, Arbitrator Bernstein stated:

The criteria for granting of administrative leave for "Acts of God" are precisely spelled out in Section 519.21, which is binding upon the Service. There is no requirement that operations must be curtailed, stations closed or work unavailable. Nor does it matter that a significant number of employees actually did report for work; the manual requires only that "groups of employees" must be prevented. There were a total of 96 employees who could not make their tours on January 31-February 1 and 232 employees who missed on February 3-4; these numbers clearly qualify as "groups". In denying administrative leave because of no curtailment of operations, local management clearly was applying a test different from the one contained in the Manual.

The Arbitrator therefore makes the following

A W A R D

The Postal Service improperly denied administrative

leave to nine clerks for April 7, 1982. The remedy is that their records shall show that they were on administrative leave for April 7, 1982, and they shall be re-credited for annual leave charged to them for that date.



HERBERT L. MARX, JR., Arbitrator

DATED: August 26, 1983

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 26th day of August, 1983, before me personally came and appeared Herbert L. Marx, Jr., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



ELEANOR C. PULEO
NOTARY PUBLIC, State of New York
No. 31-4730237
Qualified in New York County
Commission Expires March 30, 1984