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USPS - APWU CONTRACTUAL GRIEVANCE PROCEEDINGS
CENTRAL REGION
ARBITRATION OPINION AND AWARD

In The Matter of Arbitration
Between:

THE UNITED STATES POSTAL SERVICE
Salina, Kansas

and-

THE AMERICAN POSTAL WORKERS UNION
AFL-CIO
Salina Kansas Local

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Case No. C1C-4H-C 16677

Decision Issued
March 11, 1985

APPEARANCES

FOR THE EMPLOYER

Peter Captain
Harold Young
John Trocher
Kenneth Lee
David Goosman
James Mallon

Director, E&LR, Topeka, KS.
Postmaster
Superintendent
Supervisor
Supervisor
Supervisor

FOR THE UNION

Bill Wells
Joyce Rich
Gene Stithem
Bob Scuitte
Bernie Mason
Ray Hernandez
Ken Kathrineberg

National Business Agent
Local President
Clerk Craft Vice President
Grievant
Grievant
Grievant
Grievant

ISSUE: ELM, Part 519 -- Administrative Leave

Jonathan Dworkin, Regional Arbitrator
16828 Chagrin Boulevard
Shaker Heights, Ohio 44120

THE ISSUE -- ADMINISTRATIVE LEAVE -- CONTRACTUAL STANDARDS

This dispute stems from a grievance demanding administrative leave on behalf of Clerks in the Salina, Kansas Post Office. The grievance encompasses six tours, beginning Tour 1 on Tuesday, February 1, 1983, to and including Tour 3 on Wednesday, February 2. During that forty-eight hour period, a significant number of Clerks failed to report for duty. The Union maintains that the absences were directly attributable to a blizzard which started on January 31 and increased in severity during the early morning hours of February 1. By evening of the next day, snow had accumulated to eighteen inches and high winds had caused drifting of up to twelve feet. Highways were shut down; schools and businesses closed as did county, state and federal offices. Mail deliveries were canceled. In the Union's judgment, this community-wide disaster prevented the Grievants from reporting to work. The situation, according to the Union, met all of the Employee & Labor Relations Manual (ELM) prerequisites for administrative leave, and it is argued that the Salina Postmaster's refusal to grant paid leave was arbitrary, unreasonable, and contractually unsupportable.

Administrative leave, which is continued in effect by Article 10, Section 1 of the Agreement, is defined in Part 519 of the ELM. According to Section 519.1, the benefit consists of an authorized absence "without charge to annual or sick leave and without loss of pay." An employee's entitlement to administrative leave vests under specific conditions which are character-

ized in the ELM as, "Acts of God." An Act of God, in the contractual sense, consists of carefully delineated circumstances, and administrative leave is not triggered unless all are in place. Section 519.211 of the ELM provides:

.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.

A community disaster which does not prevent attendance is not an Act of God under the ELM. The word "prevent" has specific contractual meaning. Administrative leave is not applicable to any absence which could have been avoided by an individual's exercise of "reasonable diligence." This standard is expressed in Section 519.213 as follows:

.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.

Whenever the Union grieves denial of administrative leave, it faces a very substantial evidentiary burden. The initial decision of whether or not to grant the benefit is clearly within Management's discretion. Section 519.213 of the ELM (quoted above) vests authority to determine whether absences were due to an Act of God in "[p]ostmasters and other appropriate postal officials." Section 519.212 contains a more complete statement of the principle:

.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.

b. Regional Postmaster General. Approval for administrative leave beyond 1 day must be obtained from the Regional Postmaster General.

Obviously, the power to approve a benefit includes the power to disapprove it. Therefore, in order to prevail in a dispute such as this, the Union must establish more than the fact that a severe storm impeded the mobility of employees. It must prove not only that the factors necessary for administrative leave existed, but also that Management's evaluation of the situation and of employee diligence was arbitrary or, at least, plainly in error. A grievance of this kind will fail if the validity of the Employer's decision is debatable. Unless such decision was clearly wrong, an arbitrator should not speculatively substitute his/her judgment for Management's.

Both sides of this case were extraordinarily well documented and presented. The Salina Postmaster testified at length regarding the factors he considered before making his decision. His testimony was buttressed by news reports, weather data, maps, statistics, supervisory observations, and a volume of prior arbitral opinions. The Union's position was similarly supported. Its evidence confirmed that the storm was intense and disabled north-central Kansas. It bears repeating, however, that an award sustaining the grievance cannot be premised solely on proof that weather conditions were severe. To succeed, the Union's evidence must demonstrate that the Postmaster's judgment was unreasonable.

FACTS AND CONTENTIONS

Snow started to fall on Monday, January 31. During that day and the next, accumulation was not remarkable for the area. An article in The Journal, Salina's newspaper, reported three inches on the ground by 6:30 a.m., February 1, and that winds were forming snowdrifts. After that, the storm turned into what The Journal termed "a winter nightmare." Fourteen more inches fell on February 1 and 2. The major problem was not the snow -- it was the wind. Drifting of up to twelve feet occurred with such speed that roads and highways could not be cleared. The Saline County Engineer described the problem as follows:

We haven't hit any side roads yet. It's a futile effort. If you're 500 feet behind the snow plow you're probably not going to get through.

If you can't see the blinking lights on the motor grader you're too far behind.

The (grader) operators say it's just as bad coming back through as it was the first time through. [The Journal, February 2, 1983; pp 1, 3]

The storm shut down schools, businesses, and governmental services. Police advisories instructed people to stay inside and off roads. The United States Soil Conservation office, the Social Security Administration, the Internal Revenue Service and a local congressional office all closed on February 1 and 2, and administrative leave was granted the affected employees. The same was true of the United States Geological Survey on February 1; the following day the four employees of that office were picked up at

their homes and transported to work in a government-owned, four-wheel-drive pickup truck.

The Salina Post Office made exceptional efforts to carry on business as usual. The local Postmaster's dedication was consistent with the philosophy he expressed in the hearing. He said, "We are a service operation. We are subject to the natural hazards of weather. We have to try to maintain customer service." The Postmaster's goals were frustrated -- not so much by absences as by the fact that those Letter Carriers who did report to work could not make deliveries. Carriers were sent out on February 1, but they were called back by noon. No deliveries were attempted on February 2. One reason was that mail dispatches did not arrive from the Bulk Mail Center. The mail trucks were unable to get into Salina. By evening of February 2, the Post Office ran out of work.

Bargaining Unit employees were absent and so were supervisors. The Superintendent of Postal Operations, who lives eight miles from Salina, managed to report in at 7:00 a.m. on February 1, but he worked alone because two other supervisors were absent. That evening, conditions had worsened to the point where he was unable to return home and was forced to spend the night in the post office. The Supervisor of Administration made it in both days, but he lives on a main highway which received concentrated snow-removal service. Even so, he needed special equipment to negotiate roads (a pickup truck with chains).

Absenteeism among the members of the workforce mirrored the increasing severity of the storm. Eleven of twelve employees scheduled for

Tour 1 on February 1 reported in, as did sixty-two of the seventy-five who were scheduled for Tour 2. These figures disclose attendance rates of 92% and 83% respectively. Attendance dropped dramatically for Tour 3 on February 1, when only 32% -- eight of twenty-five -- reported for duty. On the following tour, which began about midnight, February 2, five of sixteen scheduled employees came to work. Attendance then rose above 50% on Tour 2, when 41 of the scheduled seventy-seven employees reported in; but it dropped below that percentage on Tour 3, when seven of nineteen clocked in.

The Union presented most of its testimony through representative Grievants. Each of these witnesses told his or her own horror story of repeated efforts to come to work, hours of shoveling, and calls to taxicab companies which went unanswered. The Union's position, in short, is that the blizzard was unquestionably a disaster which affected the whole community. Groups of employees who exercised more than reasonable diligence were unquestionably prevented by the storm from reporting for work. The Union contends that the Postmaster's unqualified refusal to grant any of those employees administrative leave was devoid of reasonable foundation -- that it was "unreasonable."

The Postal Service admitted that the storm was bad but pointed out that "bad" is a relative term. A snowfall of one or two inches might cripple a community in the Deep South, but that same snowfall would be unworthy of comment in north-central Kansas. The area is accustomed to blizzards and this storm was by no means the worst in recent memory. The Salina Post Office carried out its responsibilities in the far more dramatic storms of

1971, 1979, and 1980. The Postmaster characterized this as "simply another good old fashioned Kansas snowfall."

The Postmaster conceded that fewer than 50% of the scheduled employees reported to work on several tours, but he noted a curious phenomenon. When the residences of employees were located on maps, an unexplainable pattern of sporadic, geographically inconsistent absenteeism emerged. The residences of absent employees were interspersed among those of others who met their schedules. In some instances, the separations between residences was no more than a few hundred feet. Employees who lived as far as twenty-seven miles from Salina came to work while one who lived five blocks from the Post Office did not. When the Postmaster observed these facts, he concluded that "lack of will" rather than weather caused the absences. He denied administrative leave primarily because, in his view, lack of reasonable diligence of employees who requested the benefit was apparent. He summarized his position by stating, "Those who were determined to get to work overcame the adverse conditions." The Postal Service concludes that the decision to deny administrative leave was informed, sober, reflective, and reasonable. It urges that the Postmaster's judgment be upheld and the grievance denied.

OPINION

It would have been ideal if the Postmaster could have granted or withheld administrative leave on a case-by-case basis after thoroughly investigating the facts surrounding each application. If he had, the Postal Service would have been able to present stronger evidence supporting the conclusion that the absent employees did not exercise reasonable diligence. Of course, such an investigation would have left little time for Supervision to perform its prime responsibility of assuring that mail was processed and delivered, and the Arbitrator does not suggest that accumulating such perfect evidence is necessary or even appropriate. The Postmaster relied upon the next best kind of evidence -- a logical inference drawn from a demonstrated fact.

The factual basis for the inference was that some employees claimed to be unable to come to work while their neighbors reported for duty as scheduled. It may be argued that the individual differences could have been due to a variety of factors which had nothing to do with diligence. Some employees might have exercised extraordinary diligence, but that would have exceeded the contractual standard. Administrative leave is available when reasonable, not exceptional, diligence is insufficient to overcome a storm. Some employees might have owned vehicles which were better in snow than most. There is no rule stating that an employee must have a four-wheel-drive truck or a snowmobile to drive to work. These factors present inferences contrary to the Postmaster's; but the Postmaster's inference was clearly the stronger. It was sturdier, better rooted in logic, and far more

persuasive than any other. It was subject to being refuted with hard evidence but, standing alone, it made a prima facie case.

The only way in which the Union could dislodge the Postmaster's sound inference was by submitting proof that the absent employees did, in fact, exercise reasonable diligence. That is what the Union did. Through written and verbal statements, it presented the testimony of a significant cross section of Grievants. The witnesses established, beyond question, that they made reasonable and, in some instances, more than reasonable attempts to meet their schedules. They told stories of whole families trying for hours to shovel out drifted driveways and buried automobiles. One of the witnesses who came to work on February 1 but was absent on February 2 demonstrated a dedication consistent with the Postmaster's expressed philosophy of what the Postal Service has a right to expect of its employees. This twenty-eight-year employee, who is President of the Local Union, stated without contradiction that she has never once been late to work. She said that her attendance record has been "a matter of extreme vanity with me."

The Union's testimony destroyed the inference which was the foundation of the Postmaster's reason for denying administrative leave. It proved that, what first appeared to be a soundly based decision, was actually an erroneous decision. The Postmaster's opinion that the Grievant's were less than reasonably diligent turned out to be inaccurate and, for that reason, the grievance will be partially sustained.

The Arbitrator finds no support in the record for the Union's contention that an Act of God situation existed at the beginning of Tour 1 or

Tour 2 on February 1, 1983. According to newspaper reports and the testimony, the storm began in that time frame, but it had not yet reached proportions remotely justifying administrative leave. However, by the start of Tour 3, February 1, the blizzard had become full-blown community disaster. It was then that administrative leave should have been granted.

Not all of the absent employees were necessarily entitled to the benefit. Management called particular attention to a Tour 2 employee named Newell. Newell's home is five blocks from the Salina Post Office. Some employees were able to drive to work from twenty and thirty miles away. The irresistible inference is that Newell could have walked to work and exercised less than reasonable diligence in failing to do so. Like any other inference, this, too, could have been refuted; but meaningful evidence would have been necessary. Because of the proximity of his residence to the post office, Newell was not entitled to benefit from the testimony of the representative grievants, all of whom live much farther away. Newell did not testify, nor did anyone else explain his absence. Accordingly, the Postal Service's request to exclude him from the portion of the award sustaining the grievance will be granted.

In accordance with the specific, mutual request of the representatives of the Postal Service and the Union, this matter will be returned to the parties to fashion the individual remedies, and the Arbitrator will reserve jurisdiction on the remedial aspect of the dispute.

AWARD

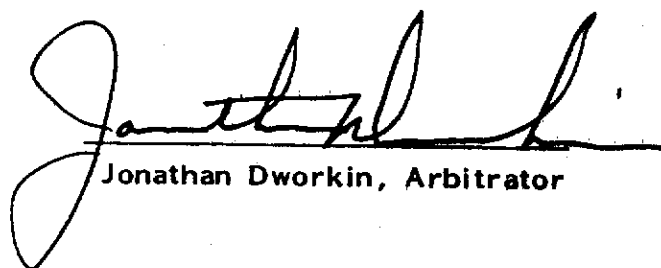
The grievance is sustained in part and denied in part. The Postal Service is not liable for administrative leave to employees who were absent from Tour 1 and Tour 2, February 1, 1983.

With exception of Grievant Newell, the grievance is sustained with the respect to the claim for administrative leave on behalf of the aggrieved employees who were absent from Tour 3, on February 1, 1983, and all tours on February 2, 1983. In accordance with the Postal Service's request, Grievant Newell shall not benefit from this award.

In compliance with the mutual instructions of the parties, this matter is returned for negotiated determination of individual remedies. As the parties requested, the Arbitrator reserves jurisdiction over the remedial aspects of this case and, should the parties fail to reach agreement, either may invoke this limited, retained jurisdiction by giving appropriate notice of its intention.

Decision Issued

March 11, 1985



Jonathan Dworkin, Arbitrator