

C1#03274

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IN THE MATTER OF THE ARBITRATION

Between
UNITED STATES POSTAL SERVICE
And

NATIONAL ASSOCIATION OF LETTER CARRIERS

* EXPEDITED ARBITRATION

* Re: N5-WT-21111
* Peter Duran
* Austin, TX
* RA-2851-A-75
* NCS 13242

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APPEARANCES:

L. Glenn Sides, Supervisor, Employment and Services, for the EMPLOYER;

Don Varenhorst, Regional Administrative Assistant, for the UNION;

DECISION AND AWARD

BACKGROUND:

The facts are not disputed. On January 30, 1978, at approximately 11:15 a.m. the grievant, a letter carrier assigned to the Main Post Office, was driving a five ton truck Eastbound on 24th Street at its intersection with Guadalupe Avenue in Austin, Texas. After being stopped by a red light, when the light changed to green, the grievant began a slow right turn in order to proceed South on Guadalupe. While he was in this turn a privately owned vehicle traveling South on Guadalupe, failed to stop for the red light against it and proceeded through the intersection striking the left front fender and bumper of the Postal Service truck. Independent witnesses at the scene confirmed the fact that the privately owned vehicle indeed ran the stop light.

The grievant gave a written statement which outlined his version of the details of the accident. Other witnesses did likewise. Based upon the written statements the Safe Driver Award Committee of the Main Post Office was unable to agree on a decision concerning whether or not the accident was preventable. The vote was tied. Two men decided that the accident was preventable whereas two others decided to the contrary.

Nothing further was done on the matter until February 13, 1978, when the Postmaster forwarded six copies of the following items to the Safe Driver Award Unit of the National Safety Council (NSC), Chicago, Illinois, for review. The enclosures to the NSC were:

PS 1768
PS 1769
Driver's Statement
Witnesses' Statements (4)

SF Form 91
PS 1700
Police Report

Under date of March 6, 1978, the Accident Review Committee of the NSC, in its File No. CV-47-78, rendered an opinion in which it was stated that the accident was preventable.

The grievant immediately challenged the decision to his supervisor who on March 21, 1978, denied the grievance. On April 14 the grievance was filed in a Step 3 appeal. It stated:

"Cause for Grievance:

"Mr. Peter Duran is being charged with a preventable accident when the Union feels it should be ruled an unpreventable accident. The signed statements by the witnesses should make it clear that Mr. Duran did everything possible to avoid the accident.

Reasons for Appeal to Step 3:

"Management's denial at Step 2A. Mr. Edmund Kunz, Manager, Delivery & Collection, stated that the National Safety Council decisions are final. I believe that Mr. Kunz did what he could at this level, but I believe that something could have been done about this accident ruling by our own Safe Driver Award Committee especially at the Management level. Please note, that the driver of the car that hit the Postal Truck did receive a ticket for the Austin City Policeman.

Corrective Action:

That the National Safety Council overrule their 'Report of Opinion of Accident Review Committee' and clear Mr. Duran's record of all papers relating to this accident, and that Mr. Duran will qualify for the safe driving award."

In due course the matter was processed to Step 4 and was set for hearing before the undersigned.

At the outset of the hearing on March 23, 1981, the Employer challenged the arbitrability of the grievance. The basis for the challenge was a claim that the determination made by the National Safety Council was outside the scope of the Collective Bargaining Agreement in that the Council was independent of the Postal Service. Moreover, it said neither the Employer nor the Union had the right or authority to question a determination made by the NSC.

POSITION OF THE PARTIES:

Union -

The Union claimed that because the grievant was not given an opportunity to present his side of the story to his supervisor he had been denied due process. It said that the facts of the accident were such that it was obvious that he could not have reasonably prevented the collision. It requested that the grievance be sustained.

Postal Service -

The Employer claimed that because the National Safety Council was independent of the Postal Service neither it nor the grievant was in a position to challenge a decision made by it. In which case, it claimed that the matter was not arbitrable. It requested that the grievance be dismissed. In the alternative it further claimed that the facts of the accident were such that had the grievant delayed his entry into the intersection until he was clear to proceed through it, he could have prevented the accident. It requested that the grievance be denied on its merits.

ISSUE:

- (1) "Is the grievance arbitrable?
- (2) "If the grievance is found to be arbitrable, may a review be had of the determination that the grievant's accident of January 30, 1978, was preventable?"

OPINION:

The instant dispute began being processed in early March, 1978. Consequently, its determination is to be made in accordance with the parties collective bargaining agreement effective July 21, 1975, to July 20, 1978.

In order for the interested reader to make ready reference to the articles of the agreement which the undersigned believes to be more or less dispositive of the issue the pertinent articles will be attached as an addendum hereto. The articles are: Article III, Article XV, and Article XIX.

The threshold question for determination here is whether or not the grievance is arbitrable as the Union claims, or nonarbitrable as the Employer claims. In the opinion of the undersigned the matter is arbitrable. He believes that to resolve it it is necessary that several portions of the provisions of the 1975 Agreement be interpreted. He believes that Article III (c) and (d), Article XV, Section 1, and Article XIX are specifically appropos, therefore, it follows that being called upon to interpret them he should serve as the arbitrator for the purpose of resolving the dispute.

Because the decision here is to be nonprecedential in nature the undersigned will not unduly burden the record by going into great detail to explain why he reaches the conclusion that the matter is arbitrable. He will briefly state however, that by retaining the right

"to maintain the efficiency of the operations entrusted to it" and "to determine the means, methods and personnel by which such operations are to be conducted," the Employer has retained the right to place its safe driver award program under the auspices of the National Safety Council. It would seem to follow therefore that the safe driver award program as well as the rules pertaining to it as promulgated by the National Safety Council and adopted in their entirety by the Employer are within the contemplation of the parties because of being inclusive within the items which are mentioned in Article XIX of the Agreement. Moreover, it is noteworthy that by the filing of the grievance in March of 1978 a "dispute or difference" was created between the parties if indeed there was not a "disagreement or complaint". Moreover, the matter relates to a condition of employment, i.e., whether or not the grievant's right for consideration for a Safe Driver Award has been improperly thwarted. It may be said therefore that the provisions of Article XV are also to be employed for the purpose of resolving the matter under consideration now.

In the booklet of the National Safety Council entitled, "Safe Driver Award Rules", in Section 4.5 the following is found:

"4.5 ACCIDENT REVIEW

DUTIES OF SAFE DRIVER AWARD COMMITTEE. All accidents should be reviewed by the installation's Safe Driver Award Committee and recorded on USPS Form 1768 (Safe Driver Award Committee Decision) which shall be filed with USPS Form 4582. Decisions should be rendered in line with the explanations of preventable accidents as contained in Section 7 of these rules. Prior to any decisions being rendered, a discussion with the driver involved must be conducted by the overall supervisor of activity or service as required on USPS Form 1768. (Emphasis added.) When extenuating circumstances make it extremely difficult to reach a decision and an additional opinion is necessary, the accident report may be submitted to the Regional Occupational Safety and Health Program Manager for decision. If necessary, the Regional Occupational Safety and Health Program Manager may in turn submit it to the Accident Review Committee of the National Safety Council. This committee is made up of five well-known safety directors and their decision is final.

PROCEDURE FOR SUBMITTING REPORT TO THE REGIONAL OCCUPATIONAL SAFETY AND HEALTH PROGRAM MANAGER. When the local Safe Driver Award Committee is unable to decide whether or not an accident is preventable or when a driver appeals and requests a review of his/her case by higher authority, or a tie vote at the local level, an original and one copy of USPS S.F. 91, USPS Form 1769 and USPS Form 1700, a narrative report and the minutes of the local Safe Driver Award Committee hearing should be submitted to the Regional Occupational Safety and Health Program Manager. (Emphasis added.) For the purposes of review, the Regional Occupational Safety and Health Program Manager may designate certain Management Sectional Safety personnel (when they are not a member of the safe driver award committee) the responsibility to adjudicate appeals within their sectional center. Unresolved

items at the sectional center level will be forwarded to the Regional Occupational Safety and Health Program Manager for decision.

NATIONAL SAFETY COUNCIL ACCIDENT REVIEW COMMITTEE. If the Regional Occupational Safety and Health Program Manager decides to forward the report to the National Safety Council Accident Review Committee, such report should include SIX copies of the accident report and SIX copies of all other supporting documents such as diagrams, witness statements, etc. All six copies must be legible for review by individual members of the Review Committee."

* * *

At the hearing the parties were in complete agreement that the grievant never appeared in person to discuss the accident with either his supervisor or the members of the Safe Driver Award Committee. Rather, the items listed in "Background" above, i.e., those submitted to the NSC Safe Driver Award Unit, were presented to the members of the Safe Driver Award Committee. Based upon those documents each of the committee members made his independent decision concerning whether or not the accident was preventable. The two Employer committee members voted for classifying the accident as "Preventable", whereas the Bargaining Unit members of the committee voted to the contrary. Based upon this impasse the Postmaster forwarded the matter to the NSC's National Driver Award Committee for decision. The Postmaster's letter was brief and stated as follows:

"The Safe Driver Award Committee in this office was not unanimous in their decision as to the preventability of this accident. The enclosed is submitted for review by the National Safety Council Accident Review Committee."

In view of the fact that the grievant was not given an opportunity to discuss details of the accident with his supervisor, as is required by the Rules of the NSC, (see 4.5 above), the undersigned is of the opinion that it is not inappropriate for him to suggest to either the NSC, or to the higher authority contemplated in the second paragraph of Section 4.5 (also quoted above), that appropriate action be taken to get into the record whatever statements the grievant wishes to make in order to state his belief that the accident, as to him, was not preventable. This, of course, should come after the grievant has had an opportunity to explain the details of the accident to his overall supervisor at the time the accident occurred, if that person is available.

At the hearing the undersigned asked the parties if they knew whether or not an appeal was possible under the rules of the NSC. The parties advised him that they knew of none. It would appear that they were in error because the rules seem to provide otherwise. It seems to him that an appeal may be lodged by the grievant because he (the grievant) was not given an opportunity to discuss his version of the incident. The undersigned believes that an appeal or a request for

review by higher authority is provided for in the rules and that in view of the provisions of the second paragraph of Section 4.5, quoted above, the parties undoubtedly anticipated that appeals would be taken. He further believes that the facts of this case place it within that appeal process and that the matter should be reviewed by either, higher authority or the NSC, or both after an application is made and the grievant has been given an opportunity to orally explain his version of the accident and thereafter to state in writing the reason why he believes the accident was not preventable. He also believes that it is not too late to attempt to correct what may be an erroneous decision and that the Employer should take appropriate action to institute such a review and follow the applicable provisions of Section 4.5 of the rules beforehand.

On the basis of the entire record in this case the undersigned makes the following:

AWARD

The grievance of the Union is sustained to the extent of the opinion expressed above.

P. M. WILLIAMS, Arbitrator
1001 Fidelity Plaza
Oklahoma City, OK 73102
(405) 272-0646

Dated this 30th
day of March, 1981.