

UNITED STATES OF AMERICA
UNITED STATES POSTAL SERVICE
VOLUNTARY LABOR TRIBUNAL ARBITRATION
REGULAR PANEL

In the Matter of the
Arbitration Between:

C 3491

UNITED STATES POSTAL SERVICE

-and-

Case No. C1C-4B-C-4728
C1C-4B-C-4824

AMERICAN POSTAL WORKERS UNION

ARBITRATOR'S OPINION AND AWARD

APPEARANCES:

FOR UNITED STATES POSTAL SERVICE
Cynthia S. Kellogg, Labor
Relations Specialist
Phillip L. Williams, Supervisor
of Delivery and Collection
Kenneth L. Peck, Superintendent
of Postal Operations

FOR AMERICAN POSTAL WORKERS UNION
Frank Kowal, Jr., National
Vice President
Linda Garcia, Clerk
Cliff Richardson, Clerk
Dennis Roberts, Clerk
John Hastie, Clerk
John Pomarzynski, Clerk

Gaylord, Michigan is located near the 45th parallel in northern Michigan. It has a reputation of heavy snowfall and harsh winters. Early in the morning of Monday, January 4, 1982 a major snow storm hit the Gaylord area. Between about 4:00 a.m. and noon approximately eight inches of new snow fell. With approximately 16 inches already on the ground, and with winds clocked by the National Weather Service between 30 and 40 miles per hour, averaging 32 miles per hour, there was considerable blowing and drifting. Snow plows were working and were able to

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keep main roads^{1/} open, but many county and subdivision roads were not plowed until the next day.

The fourteen Tour 1 Postal Service employees scheduled to begin work at 12:30 a.m. on January 4 were all on the job on time. Most of the Tour 2 employees were scheduled to begin work at 7:00 that morning. All but two were on the job although several were up to to 38 minutes late.

However, by 10:30 a.m. January 4, 1982 Phillip Williams, Supervisor of Delivery and Collection, began to receive phone calls from Tour 3 employees whose shift was scheduled to begin at 4:00 that afternoon (January 4, 1982). He received three phone calls from the Tour 3 union steward, Robert Roberts, asking what the Service was going to do about Tour 3. By 2:30 p.m. he had heard from 15 of the 22 regular full time staff that they would not be able to get to work. None of the seven part time flexible staff came in.

By the evening of January 4 the worst of the storm was past. But seven of the 18 employees scheduled to begin work at 12:30 a.m. Tuesday morning, January 5 on Tour 1 did not come in. By 7:00 a.m. on January 5, 1982 most of the Tour 2 employees were at work on time. All but one of the Tour 3 employees were at work on time' that afternoon.

Linda Garcia, a Tour 1 employee, testified that she lived 2 1/2 miles from the Post Office, and that after having

^{1/} I-75, US-27, M-32 , McCoy Road, Dickerson Road.

walked from her subdivision to the connecting road she concluded that she would not be able to get through because none of these roads had been plowed.

Three Tour 3 employees also testified. John Hastie said that he attempted to drive, but that the drifts were at least three to four feet deep and the road was impassable. Dennis Roberts testified that he cleared his driveway, but that the mile he had to travel from his house on Kry's Road to M-32 had four foot drifts. John Pomarzynski also was able to clear his driveway, but the half mile from there to M-32 was drifted four feet deep and he could not get through.

All of these employees had lived in the Gaylord area for seven years or more. They were accustomed to the severe winters and deep snows in the area, but they gave the impression that this was a more difficult snow than usual.

Phillip Williams, Supervisor of Delivery and Collection, was 30 minutes late on January 4, arriving at 7:30 a.m. Shortly after he arrived he received phone calls from the Alpena, Topinabee and Atlanta Post Offices, all of which were also experiencing heavy snow. The Postmaster in Alpena said that no mail trucks had come in, and in Atlanta and Topinabee the Postmaster and Postmistress, respectively, could not get to work. In Gaylord there was mail to distribute. All of the business deliveries and 50% of the residence deliveries were made by around noon. Those residences which were not delivered had not cleared their walks.

The rural carriers experienced more difficulties, since even where roads were plowed the shoulders were not and carriers could not get to the mail boxes. All the carriers were sent home early. Testimony of Phillip Williams was that this was because they had delivered all the mail wherever they could reach the mail boxes.

Both Phillip Williams and Kenneth L. Peck, Superintendent of Postal Operations, testified that they were able to drive around the Gaylord area without too much difficulty on January 4. Williams' normal 15 minute drive to work took 45 minutes. After work he was able to return home, a distance of seven miles, in 12 minutes. He submitted a written statement of his activities that day, saying that after work:

I left the Post Office at 1600 hours I arrived home at 1612 a distance of 7 miles. U.S. 27 and Charles Brink Road were both plowed and clear. At 1700 my wife and I drove to McCoy Road and then 5 miles east to look at a home we were thinking about renting, we then went across Oley Lake Road to M-32 and on into Gaylord. We went to K-Mart to get some hardware parts and then to Vanderbilt to help my brother with some frozen pipes. We returned home at about 2200 with no difficulty. Although it was indeed a severe storm, I believe the worst of it was over by mid afternoon on the 4th and I believe there was a conspiracy on the part of tour three to have a total no show. One last fact I would like to bring up is that on my trip down McCoy Road at 1700 hours I drove right past Joe Makarewicz's house one of the alleged snowed in employees.

Mr. Williams also referred to Mr. Makarewicz, a Tour 3 employee, in his testimony, pointing out that Mr. Makarewicz's driveway and connecting road were clear at least by 5:00 p.m., one hour after Mr. Makarewicz was scheduled to begin work.

Kenneth Peck, Superintendent of Postal Operations, was not scheduled to work that day, but in the afternoon he had to drive into the hardware store to get a replacement part for his snow blower. He testified that his pickup has four wheel drive but that he drove into town and back in two wheel drive with no difficulty.

The employees who did not come in to work on January 4 and 5, 1982 were granted annual leave or took leave without pay.

The American Postal Workers Union has filed two class action grievances, one for January 4 (Case No. ClC-4B-C 4824) and one for January 5 (Case No. ClC-4B-C 4728). The grievances state that the snowstorm constituted an Act of God justifying the granting of administrative leave, which is not chargeable to annual leave.

Article 19 of the Collective Bargaining Agreement incorporates by reference handbooks, manuals and regulations directly related to wages, hours or conditions of employment of Postal Service employees. The pertinent section of the Postal Service Employee and Labor Relations Manual (ELM) provides:

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 Act of God

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

* * *

.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.

* * *

.215 Employees Prevented From Reporting. Employees scheduled to report who are prevented from reporting or who after reporting are prevented from working by an "Act of God" may be excused as follows:

a. Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty not to exceed 8 hours.

b. Part-time flexible employees receive administrative leave for 2 or 4 hours, as provided in 519.214c.

In choosing the term Act of God to define a situation in which administrative leave may be granted, the parties have chosen a term of art which sets a standard that is not met by referring to weather conditions that are merely difficult. In construing the meaning of "Act of God" in Case No. C8C-4M-C 27999 (1981) at pages 13-14, Arbitrator Alan Walt said:

The phrase act of God has been defined and interpreted by many courts over the years. In general, it is a natural occurrence of extraordinary and unprecedented impact whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight. North-western Mutual Insurance Co. v Peterson, 572 p.2d 1023; 280 Or. 773 (1977). In reference to weather conditions, the term "Act of God" has been limited to only those events in nature which could not have been prevented by the exercise of reasonable care and foresight. Olan Mills Inc. of Tenn. v Cannon Aircraft Executive, 160 SE 2d 735; 273 N.C. 519 (1968).

An Act of God is "an occurrence due to natural causes against which ordinary skill and foresight is not expected to provide..." It is an event in nature so extraordinary that the history of climatic variations in the locality affords no reasonable warning of their coming [underlining added]. Corrington v Kalicak, 319 SW 2d 888 (1959, Mo.App).

Furthermore, not every snowstorm or rainstorm can be classified as presenting an act of God merely because it is of unusual or more than average intensity. Southern Pac. Co. v Loden, 508 P.2d 347; 19 Ariz App 460 (1973).

Based upon this recitation of the legal definition of Act of God, Arbitrator Walt denied the grievance seeking administrative

leave where a state-wide blizzard lasting for two days prevented a number of Postal Service employees from coming to work, and forced another who became stranded on his way home to spend the night in his vehicle "in the middle of the road in a snowbank". Case No.. C8C-4M-C 27999 (Walt, 1981). Arbitrator Walt found at page 14 of his opinion that the blizzard was not an event in nature "so extraordinary that the history of climatic variations" in the Waterloo, Iowa area gave no indication that such conditions could occur. Accordingly, although he found no basis to dispute testimony that the blizzard prevented some bargaining unit members from reporting to work, he could not define the blizzard as an Act of God.

Likewise, in defining an Act of God, Arbitrator Gerald Cohen stated in Case No. C8C-4M-C 27160 (1981) at 8:

The first criterion is that a disaster must have occurred. This means that bad conditions, poor weather, difficult conditions, and the like, are insufficient to constitute a disaster. A disaster must be an extreme situation.

To illustrate the meaning of the definition, Arbitrator Cohen then referred to three arbitration decisions including one of his own, where administrative leave for acts of God were justified. There the weather conditions were: a three-day snowstorm, where the National Guard was called out to rescue people stranded in their cars while other stranded travelers were forced to sleep in schools (Case No. AC-C-24768); a

snowstorm described as the most severe in southeast Wisconsin's history from which a snow emergency was declared (Case No. C8C-4J-C 3754/7596); and another storm where emergencies were declared and only four-wheel drive vehicles were permitted on the streets (Case No. AC-C-25 023). As Arbitrator Cohen said at pages 11-12 in Case No. AC-C-24768 (1980) cited above: "The Act of God must be so severe as to force a halt to community activity."

After giving the above definition of Act of God, Arbitrator Cohen denied in part a grievance asking for administrative leave where a blizzard closed two interstate highways and caused numerous serious accidents. For the first two days of the storm, where no attempt was made by any public agency in the Cincinnati area to clear streets of snow, Arbitrator Cohen granted the grievance. But on the third day of the storm efforts to plow began to be made and for that day the grievance was denied. AC-C-24768 (Cohen, 1980) at page 18

Quite clearly, the snowstorm in Gaylord, which did not block main roads and during which many businesses were able to operate as usual, is far different from a three day snow storm necessitating National Guard action, or a storm cited as the most severe in the history of the part of the state, a declared snow emergency, or a snow situation in Cincinnati, Ohio, a city not known for Gaylord type snow conditions.

In the instant case newspaper articles were submitted in evidence stating that:

The snowfall was the biggest single accumulation to fall on Otsego County since the blizzard that struck the area in January, 1978...Six to seven foot snowdrifts were fairly common and at some points, even four-wheel drive vehicles and county snowplows were reported getting stuck...A spokesman for the State Police post in Gaylord said most people opted to stay at home and wait it out even though main roads were passable and some traffic was moving throughout the storm. Herald Times, Thursday, January 7, 1982, pages 1, 6.

Although newspaper headlines called it a "savage" storm that "paralyze[d] most of the area" the articles also reported "business as usual" in many area businesses, although a number of businesses closed early January 4.

Arbitrator Cohen in Case No. AC-C-24768 (1980) cited above (three day snow storm requiring National Guard action) at page 13 also defined the diligence expected of the employee attempting to get to work:

What effort was made by the employee to get to work? Proof of such effort will involve the various means available to the employee to get to work and the feasibility of those means. Such means can be personal automobile or various specialized automotive vehicles such as four-wheel-drive vehicles, snowmobiles, trucks, and the like. Were cabs and/or car pools available? Could the employee have walked to work?

Testimony of the witnesses at the arbitration hearing was that when they ascertained that it would not be possible to drive to work they called in to say that they could not come in. One

employee was on a route where public transportation was available but he had never used it and testified that he assumed nothing could get through. In response to a claim by the Postal Service that snowmobile travel should have been utilized, the Union noted the hazards of snowmobile travel where visibility is poor due to blowing snow causing riders to possibly be injured or killed by collision with barbed wire fences, posts or other vehicles unable to see the snowmobile. This may be true, but such a fact is not necessarily controlling on what is an Act of God.

The Postal Service submitted maps showing the residences of the employees, both those who did report to work and those who did not. Although these maps do show that the pattern of employees affected was widespread and not confined to a small area, they also show that there is no clear pattern of blocked roads affecting groups of employees. In many instances where two employees live in very close proximity, one came to work where another did not. One employee was able to report for Tour 2 at 7:00 a.m. on January 4, driving from as far away as Wolverine (approximately 15-20 miles away), where the newspaper articles reported that I-75 was almost drifted shut.

The Postal Service also maintains that the pattern of Tour 3 employees on January 4, 1982 calling in as much as five hours before their shift was due to start suggests a conspiracy. Though the Arbitrator declines to find a conspiracy, calling in

so early, in comparison with the tour stating time, highlights the problem with the case. Snow does drift. Roads do become snow blocked in the so-called North Country of Michigan. But because such conditions are common in the area, residents should recognize that roads which appear impassable could shortly thereafter become passable. An example is the case of Mr. Makarewicz, as reported by Supervisor Williams. Mr. Makarewicz had called in to say he was snowed in and could not come in to work. Yet one hour after his tour began his driveway and connecting road were clear.^{2/} Nothing prevented him from reporting late. These observations only underscore the high standard that the Postal Service has applied in the ELM Manual, adopted by the parties in their contract by reference through Article 19.

To repeat, many area businesses reported "business as usual" January 4. The mail was delivered to all those patrons who had cleared access to their mail boxes. Many area roads were passable. Two supervisory employees were able to run routine errands during their off duty hours during the day and evening of January 4, 1982. Even though the storm was wide spread and groups of employees were affected, the storm did not "force a halt to community activity."^{3/}

^{2/} See pp. 4-5 supra.

^{3/} See AC-C-24768 (Cohen, 1980), pp. 11-12, cited supra at pg. 9.

On all three Tours a number of employees were able to get to work. The Act of God requirement of the ELM does not mean that a disaster is defined by the number of persons not reporting, with the presumption that the more that did not report the more likely that it was an Act of God. What is determinative is whether the weather conditions were so unusual that the geographical area involved had a paralysis or near paralysis of activity for a period of time. This is the way that the term Act of God has been interpreted by the decisions cited above. It may be that some employees were inconvenienced. It may be that some employees had difficulty getting to work. But there was enough activity in the area, an area known for heavy snowfall, to suggest that the conditions on January 4 and January 5, 1982 were not an Act of God as contemplated in the ELM.


If the National Guard had been called out, if the storm had been declared one of the worst in the history of this part of the state, if the city had been cut off, or if this were an area where storms of this caliber were not known, then the high standard of an Act of God might have been satisfied. But where many area businesses are operating as usual, where main roads are cleared, where routine errands are run without difficulty, and where a decision not to come to work is made several hours before reporting time without considering changing

conditions, that the Act of God standard which the parties have incorporated into their Agreement by reference (Article 19) is not met.

It is for all these reasons that the Arbitrator must find that the Postal Service did not violate the Agreement when it refused to grant administrative leave on either January 4 or January 5, 1982. The award that follows will reflect this analysis.

AWARD

The grievances are denied.


GEORGE T. ROUMELL, JR.
Arbitrator

Dated: July 13, 1983