

C# 00359

ACC-17803

Cohen 1/12/81

Contract Case

IN ARBITRATION

UNITED STATES POSTAL SERVICE,) Case No. 5 SPR 613/AC-C-17803,
and) Arbitrator's File 80007-430;
) Date of Hearing: 3/21/80,
AMERICAN POSTAL WORKERS UNION,) 5/16/80, and 7/9/80,
CLASS ACTION.) Champaign, Illinois.

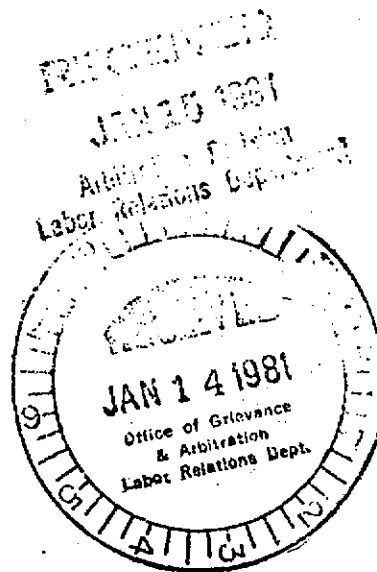
APPEARANCES

For the Postal Service:

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For the Union:

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O P I N I O N

Issue

Were the clerks in the Champaign/Urbana Post Office on Tours 2 and 3 on January 28, 1977, denied administrative leave in violation of the National Agreement and the Postal Service Manual promulgated thereunder?

Facts

At the hearing on this class-action grievance, the Union produced 23 witnesses employed at the Champaign/Urbana Post Office who testified as to snow conditions on Tours 2 and 3 on January 28, 1977. Tour 2 started at 6:30 A.M., and ended at 2:30 P.M.. Tour 3 started at 2:30 P.M. and ended at 10:30 P.M.. Tour 1 started at 10:00 P.M..

The witnesses testifying on behalf of the Union were clerks and carriers. Some of them stated that the snow conditions prevailing on January 28, 1977, were the worst that they had ever seen in either many years of living in the area, or in many years of working for the Postal Service, or both, and all of the witnesses testified to the following conditions: high winds and blowing snow, no snow-plows, and radio announcements advising the public to stay off the streets and to travel only for emergencies.

According to the carriers who testified, those who reported for work that day were advised that they should only do casing of mail in the Post Office, and this they did for approximately three hours. They were then excused for the rest of the Tour and given administrative leave. They were told that city delivery had been curtailed for the day and they would not be permitted to carry their routes. They were also told by their supervisors that truck delivery of mail was erratic and was not to be expected. Administrative leave was given to those carriers who did not appear for work, and also to those who appeared for work but did not go out on their delivery routes.

Some of the witnesses stated that they attempted to get to the Post Office on the interstate highway system or main arterial highways, but found that the entrance ramps to the highways were blocked either by civil defense workers or city police, and they were not permitted to drive on to the highways. Some stated that they told the police that they were Postal workers and had to get

to work, but they were still denied access to the roads.

Almost all of the witnesses said that they attempted to get their cars out of their driveways, and either were unable to do so, or found that, once they got to the street, their cars were blocked either by snow that was knee-deep or by snow that had drifted as much as 7 feet deep. All of them testified that the wind-chill index was somewhat below zero.

Many of the witnesses recounted the trouble that they had trying to call in to work to report that they could not get to work: that they had to make at least 4 or 5 telephone calls before they were able to reach anyone at the Post Office. Several of them said they were told by supervisors, whose names they did not know in most instances, that deliveries were curtailed and that many employees were reporting in as being unable to get to work.

Some of the witnesses told of their efforts to dig their cars out of snowdrifts in their driveways, and their inability to do so because the snow would blow back as fast as it was cleared. They also talked of the lack of visibility due to blowing and falling snow.

One witness stated that the snow had drifted so high around his house that he could not get the doors open, and had to get out through a window. He was then able to shovel a door clear. However, when he tried to start his car, it would not start because

snow had drifted into it.

According to documentary evidence submitted by the Union, 185 employees were scheduled to work on the two tours. Six of these employees were on sick leave, leaving 179 employees to work on the Tours. Of these 179 employees, 41 actually worked. Of the 138 employees who did not work, 58 were carriers, and were given administrative leave either for the whole day or part of the day. The other 80 employees who did not work were given annual leave. Of the 41 employees who worked, 35 were full-time clerks, 3 were part-time flexible clerks, and 3 were vehicle maintenance clerks.

Union computations indicated that 77% of the employees on the two Tours received some form of leave, exclusive of sick leave. Breaking down the absences by types of employees, 4 of 7 maintenance employees did not work, 4 of 7 part-time flexible clerks did not work, and 68 of 103 full-time clerks did not work. On a percentage basis, more than 1/2 of the maintenance and part-time flexible clerks were absent, and about 67% of the full-time clerks did not work.

The Champaign County Emergency Services and Disaster Agency declared that a disaster and emergency situation existed. The Agency received calls offering food, clothing and shelter to stranded persons. Additionally, churches called with offers to shelter stranded travelers. During the emergency period, 11 calls were received to report persons missing. Ten of the persons were found. The 11th

was later found dead. A number of callers requested aid because either heat, electricity, or water had failed, or the persons had run out of food and were unable to get any.

The Union introduced in evidence a copy of a resolution passed by the City Council of Champaigne which read, in part:

"Whereas, on Friday, January 28, 1977, the City of Champaigne suffered the effects of a severe snowstorm which paralyzed the transportation of the City ...".

The resolution went on to commend the efforts of the mayor of the City of Champaign "in this emergency situation".

The Union introduced weather data supplied by the State Water Survey Division for January 28th. According to the data, at 1:00 A.M. the temperature was 24°, and continued to drop until, by 8:00 A.M., the temperature was -13°. By 9:00 A.M., it was risen to -10°, and for the rest of the day hovered between -4° and -6°, with the temperature for the most part being approximately -5°. For that same period of time, the wind-chill index was between -35° and -54°, with occasional wind-chill readings of as much as -67° and -70°.

The Postal Service introduced a map of the Champaigne/ Urbana area on which the locations of the living areas of the various employees were marked with red, green, orange and blue dots. Red dots were for clerks not reporting, blue dots were for carriers not reporting, green dots were for clerks who reported,

and orange dots were for carriers who reported. The dots on the map indicated that there were no specific areas in which employees who lived either reported or did not report to work. The dots representing those employees reporting and those not reporting to work were scattered for a 360° radius in the area around Champaigne.

On cross-examination, the preparer of the Postal Service map stated that he counted a carrier as reporting for duty even though the carrier might have been given administrative leave and sent home after 2 or 3 hours of work. He further stated that he did not indicate on this map which employees worked Tour 2 or which worked Tour 3.

The Postmaster testified that he had granted administrative leave to the carriers because he did not think that they should be on the street delivering mail. He reached this conclusion because of weather conditions consisting principally of high winds, blowing snow, and very low temperatures. No announcements were made that postal operations were curtailed, and no one publicly advised any clerks not to report for duty. If any such announcement was made, it was not made with the authorization of the Postal Service.

The Postmaster stated that he has given administrative leave for weather conditions similar to this where the individual could justify such leave on an individual basis and show that the individual employee could not get to work.

He had considered giving administrative leave to employees other than the carriers, but decided against it for the reason that

these employees did not come to him and justify administrative leave on an individual basis. He felt that administrative leave should be determined on an individual basis, and that he was solely responsible for the decision.

He had discussed the question of administrative leave with a representative of the Clerk Craft, and had told him he would not consider giving over-all administrative leave because some employees could get to work. He said that no individual employee had come forward with a request for administrative leave.

The Postmaster testified that some carriers who had not reported had proved that they had heard a radio announcement informing them that they were not to report for work. This announcement was erroneous and had not been authorized by the Postal Service, but nonetheless, the Postmaster felt that the carriers had relied on the broadcast and should not be penalized for it.

The Postmaster had been able to get to work and to get home during the same Tours for which the employees were requesting administrative leave, and he thought that the area was passable.

Discussion and Opinion

This class-action grievance was filed under Section 721.921 of the Personnel Handbook, which states:

- "a. Acts of God. Acts of God involve community disasters such as fire, flood, or storms. The situation must be general rather than personal

in scope and must prevent groups of employees from working or reporting to work.

" ...

"(4) Justification. Postmasters and other appropriate postal officials are responsible for determining whether absences from duty allegedly due to 'Acts of God' were as a matter of fact due to such cause or whether the employee or employees in question might with reasonable diligence have reported for duty."

The Postal Service advances several objections to this grievance:

The first is that the decision of whether to grant administrative leave is solely that of the Postmaster.

A number of arbitration opinions have been rendered in which this argument has been rejected. While it is true that the Postmaster has the right to make the decision, his decision is not beyond question. If it was, then the Postmaster or another official would be able to violate the Handbook with impunity. It goes without saying that any violation of the Handbook is subject to the grievance procedure because the Handbook is a part of the National Agreement under ARTICLE XIX. Therefore, it cannot be said that the Postmaster can make the decision as to whether to grant administrative leave without that decision being subject to question.

The Postal Service also argues that the Union is attempting to get by arbitration what it could not get by negotiation. Such conduct, of course, would be a violation of a cardinal rule of arbitration. In support of this position, the Postal Service

introduced evidence concerning negotiations under the Local-Memorandum-of-Understanding provisions of the National Agreement to show that attempts by the Union to negotiate a clarification of the Act-of-God and administrative-leave provisions had been rejected by the Postal Service. The Postal Service contends that this grievance is merely a device to institute the provisions which the Union could not get by negotiation.

That argument overlooks the fact that the Act-of-God provisions and the administrative-leave provisions are already a part of the agreement between the parties. While it is true that the Union attempted by negotiation to get some clarification of Section 721.921 into the National Agreement and failed, nonetheless, the basic structure is already there. Therefore, this grievance is based on what is already a contractual matter between the parties. Such being the case, it cannot be said that the Union is attempting to get by arbitration what it could not get by negotiation.

Part of the problem here arises from the Postmaster's interpretation of Section 721.921. According to his testimony, he viewed that section as requiring an employee to report to work and to then seek administrative leave, or to not report for work and then to ask for administrative leave on an individual basis. However, Section 721.921 clearly states that the Act of God "must prevent groups of employees from working or reporting to work".

There is, therefore, no necessity for an employee to first report to work before being entitled to administrative leave.

The Postmaster's decision to deny administrative leave to the clerks is also, I believe, based on a misinterpretation of Postal regulations. He stated that he has given administrative leave for similar weather conditions where the individual could justify, on an individual basis, that he could not get to work. In other words, the Postmaster looked upon the Section as providing solely for a decision on an individual basis. That reasoning, however, does not give effect to that part of Section 721.921 which states that the situation "must prevent groups of employees from working or reporting to work". Such language clearly anticipates that the decision can be on a class basis.

We have now arrived at the heart of the matter: Has the Union proved that the storm in question here was general, rather than personal, in scope, and did it prevent groups of employees from working or reporting to work? Could the employees in question, with reasonable diligence, have reported for duty?

While the individual employees testifying for the Union in this grievance did not give as many specifics as might be desirable, nonetheless, because of the large number of witnesses who testified, the specifics lacking in the individual witness was made up in bits and pieces from the number of witnesses testifying over-all.

The witnesses who testified for the Union, plus those statements made by the Postmaster, indicates to me that this grievance

must be sustained.

In his testimony, the Postmaster stated that he has given administration leave for similar weather conditions where the individual could justify it on an individual basis. That indicates to me that the weather conditions involved in this grievance justified administrative leave, but the Postmaster refused it solely because he felt that it should be given according to individual requests and not in the form of a class request.

As has been stated, this is an erroneous interpretation of the National Agreement. Apparently, aside from that interpretation, the Postmaster felt that administrative leave was justified.

I believe that administrative leave was justified. The wind made the temperature bitterly cold. The snow was extremely heavy, being from knee-deep to 7-ft. drifts. The wind prevented the snow from being cleared. The state police and local authorities advised persons to stay home and actually prevented them from moving any great distance by blocking access to the main thoroughfares. Under these circumstances, it seems to me that the employees could not have come to work, in the main, even with reasonable diligence.

Further, the map introduced in evidence showed that the storm was general in nature, affecting the whole area, and was not confined to any one area.

It is also significant that the Postmaster curtailed


carrier delivery operations because of the difficulties that the carriers would encounter on the streets.

Of course, clerks would not be on the street once they made it to work. But while attempting to get to work, they would be faced with the same problems faced by the carriers. If the carriers could not function outdoors, then I believe neither could persons trying to get to work.

In short, I believe that the Union has satisfied the criteria set forth in Case No. AC-C-24768 (USPS 5 COL 3169), the Opinion on which was rendered September 17, 1980.

The grievance is sustained, and the costs are assessed equally.

Dated this 12th day of January, 1981.



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