

Art. 10 - Admin. Leave (Wind & Rain Storm)

Art. 19 - E&LR Manual

C#9025

20282 (C8C-48-C)

IN THE MATTER OF ARBITRATION BETWEEN

OPINION AND AWARD

American Postal Workers Union

-and-

U. S. Postal Service
Detroit, Michigan**LOCAL ARBITRATION**Case No. C8C-4B-C 20282
(Class Action Grievance)

The hearings in the above-matter were heard on September 9 and November 16, 1981 in Detroit, Michigan before Bernard Dobranski, designated as Arbitrator in accordance with the procedures set forth in the Collective Bargaining Agreement.

Appearances: Phillip A. Tabbita
For the Union

Rodney Stone
Michael Jordan
For the Employer

Full opportunity to present evidence and argument was afforded the parties. The parties chose not to file post-hearing briefs.

ISSUE

The issue that emerged from the discussion of the parties is whether the Postal Service violated the National Agreement when it refused to grant administrative leave to certain employees at the Detroit Air Mail Facility who were absent from work on January 16, 1980 because of a wind and rain storm.¹

¹ During the first hearing day, the Postal Service also argued that the grievance was untimely filed. At the request of the Union, a continuance was granted to enable the Union to provide witnesses who would testify as to the authenticity of certain documents which purported to grant an extension of the time period in question. At the beginning of the second hearing day, the Postal Service withdrew its timeliness objection.

BACKGROUND FACTS

On the morning of July 16, 1980, a severe wind and rain storm struck the southeast portion of Michigan, including Detroit and the surrounding suburban areas. As a result, power lines, trees and tree limbs were downed, and a number of homes and businesses damaged. Also as a result of the storm, approximately 12 employees who worked at the Detroit Air Mail Facility did not report to work. Their absences were apparently charged to annual leave. The employees, however, believed that they should have been granted Administrative Leave because of the weather conditions. The Postal Service denied their requests for Administrative Leave, and the instant class action grievance was filed.

The Union presented its case primarily through the testimony of employees McCarren, Jacobson, Pitman, Beard and Lavella.

McCarren, a clerk at the Air Mail Facility as well as the Union steward, testified that she filed the grievance after requesting the Form 3971's for those employees who could not make it that day due to the storm. (Union Exhibit 1) She was not able to make it to work on July 16 because the trees and power lines down on her street made it impossible to get through. Moreover, the side streets were all blocked. She also thought, though she was not certain, that the main road was blocked. Even if she had been able to get to the main road, no transportation would have been available. She did not attempt to find any alternate transportation. She also made no attempt to get to work because her house was on a corner and she knew that the roads were blocked in both directions and trucks were trying to clean the trees

and the power lines. Her scheduled time to report was 9:30 P.M. and the storm that occurred hit early in the morning. Some clean-up work was undertaken before her normal starting time but it was a matter of days before the "entire mess" was cleaned up. She did report to work the following day, after she found a path through other side streets.

Jacobson, the ramp clerk at the AMF, explained also why he did not report at 2:45 P.M., his normal reporting time, on July 16. At approximately 8:00 A.M., the severe storm hit and the power went out. When he looked out, all he could see was "utter destruction". He attempted to go out that morning to attend a funeral but could only get so far because the trees and power lines were down and traffic lights were out. Moreover he suffered some property damage to his awnings, windows and trees from the storm. In fact, part of a tree fell on his garage. He attempted several times to get to work but could not get through the side streets or to the main streets. No alternate transportation, such as public transportation, was available that day to the Air Mail Facility. Moreover, the phone lines were down and he could not get in touch with anyone. He explained that he lives in Westland, Michigan, approximately 3 miles from the AMF, and it normally takes him approximately 20 to 25 minutes to work.

He also did not report to work the following two days because he was concerned about protecting his home; the tree was still on the garage, the power lines still down, the home in total darkness, and he was reluctant to leave the home unprotected. He could not recall if he attempted to go to work on those two days.

Pitman, also a clerk at the AMF, testified that she, too, did not report for work on July 16 because of the storm. There was a great deal of damage to her property and the clean-up was time-consuming. Although she started to clean it up almost immediately after the storm (which hit at approximately 9:00 A.M.) was over, it took until dark to finish and she was completely exhausted. Thus, she was unable to work at her normal 7:30 P.M. starting time. She did call from a neighbor's phone to inform the Post Office that she was unable to report. Another reason for not reporting was that she wanted to stay and protect her home. Her children (apparently aged 16 and 20) were not capable of handling the situation.

Beard, the Clerk-Craft Director of the Detroit District Area Local of the APWU, testified that she was familiar with the July 16 storm and that to her knowledge other grievances had been filed. Specifically, day shift and afternoon shift employees at the General Mail Facility had filed grievances.

Lavella, another clerk at the AMF who was scheduled to report at 7:30 P.M. on July 16, did not report to work because he could not get out of his subdivision which was completely closed off as a result of the storm. He was also without phone service for the day and did not have power for approximately 8 days. Moreover, no alternate transportation was available to the AMF. It was not until the day after the storm that one lane was cleared through or out of the subdivision.

In addition to the above testimony, the Union also presented the following exhibits:

Union Exhibit 1 consists of the Form 3971's for the AMF employees who were unable to make it to work the day of the storm.

Union Exhibit 2 is a July 23, 1980 letter from the Governor of Michigan to the President of the United States, describing the series of thunder storms which struck Michigan and requesting a declaration of "emergency" in certain areas of Michigan, including Wayne County, the county in which the grievants' lived.

Union Exhibit 3 is a July 25, 1980 follow-up letter from the Governor to the President, providing additional damage and other information not available at the time of the first letter was sent.

Union Exhibit 4 is a September 10, 1980 letter from the Governor from the Federal Disaster Recovery Manager acknowledging, among other things, that the President had determined that the damages resulting from the severe storms and high winds for the period which included July 16 were a major disaster.

Union Exhibit 5 is a July 16 Detroit News Article describing the storm.

Union Exhibit 6 is a series of articles from the July 17, 1980 joint edition of the Detroit News & Free Press describing the storm.

Union Exhibit 7 is a July 23, 1980 News-Herald article describing the storm.

Union Exhibit 8 is a series of articles from the July 23, 1980 Taylor Tribune describing the storm.

The Postal Service presented its case primarily through the testimony of McKinney, the supervisor of the AMF. McKinney's testimony in essence was that most of the employees scheduled to work that day did report to work. He also described the contents of Employer Exhibit 1, which was a series of maps of various communities in the

area, and Employer Exhibits 2, 3 and 4 which respectively were the rosters for Tours II, III and I. He further stated that he reported to work that evening and that operations at the AMF were normal.

It is upon these facts that the case now comes before the Arbitrator.

POSITIONS OF THE PARTIES

Union Position

The Union argues that all the criteria for an Act of God under Section 519.211 of the Employees and Labor Relations Manual were met. First, the severe thunder storms accompanied by high winds were a community disaster. Second, the sampling of newspaper reports clearly demonstrate that the disaster situation was general in scope and impact. It was general in scope because it covered a ten county area in Michigan, including the area where the grievants lived. It was also general in impact as Union Exhibit 3, a letter in which the government outlined the damage that occurred, clearly demonstrates. Finally, it prevented groups of employees from reporting to work. Not only did the AMF employees identified in Union Exhibit 1 find the members unable to work but, as the Union steward pointed out, employees on two shifts from another facility also did.

Moreover, the evidence demonstrates that the employees could not have with reasonable diligence reported for duty. Large trees, telephone lines and power lines were down, flooding occurred, and buses or cabs were not running on the main thoroughfares; all of this prevented employees from getting to work. Even though employee Pitman made no

effort to get in, it was not reasonable under the circumstances to expect her to make such an effort.

In addition, though the employees involved in the grievance were not a majority of the employees of the workforce, the regulation does not require a majority to be unable to report to work; it only specifies groups of employees. Here groups of employees clearly were involved.

Finally, the Union submits a number of Arbitration Awards in support of its position.

For all the reasons above, the grievance should be sustained, and the grievants awarded Administrative Leave and reimbursed for any benefits lost.

Postal Service Position

The Postal Service argues that the severe storm, which admittedly did hit the general area, did not prevent a large number of employees from coming to work. The 12 AMF employees who did not report were a small percentage of the 236 employees at that facility. The overwhelming majority of the employees who were scheduled to work that day did report to work.

Moreover, the evidence from the Union witnesses indicates that in each case the reasons for their failure to report to work were not general in impact and scope but personal. For example, one of the twelve employees identified in Union Exhibit 1 was at work and decided to go home after he was informed of storm damage to his home. Employee McCarren made no attempt to report to work or any effort for alternative transportation. Employee Pitman's circumstances were purely

personal and she, too, made no effort or reasonable attempt to get to work. Employee Jacobson also failed to make a reasonably diligent effort to get to work. In fact, he stayed home for three days. Thus, in each case the reasons for not reporting were personal in scope and impact.

Finally, there is no evidence that groups of employees were unable to report to work.

The Postal Service also submitted several Arbitration Awards in support of its position.

For all these reasons, the grievance should be denied.

DISCUSSION AND OPINION

For the reasons set forth more fully below, it is my conclusion that the grievance should be denied. The standard under Section 519.211 of the Employee and Labor Relations Manual for an "Act of God" for which Administrative Leave should be granted is a straight forward one. The "Act of God" must first involve a community disaster such as a fire, flood or storm. The disaster situation must be general rather than personal in scope and impact. It also must prevent groups of employees from working or reporting to work. Moreover, the absence from duty must, in fact, be due to the "Act of God" and, in this regard, the Postmaster determines whether the employees in question could, with reasonable diligence, have reported for duty.

In applying these criteria to the instant case, it is my determination that the grievants were not entitled to Administrative Leave. There is no doubt that the severe thunder and wind storm which hit the Detroit area on July 16 constituted a community disaster. More-

over, the storm was general in scope and impact -- it struck a ten county area including Wayne County, the county in which the grievants live. However, the disaster situation -- the conditions resulting from the storm which prevented the grievants from reporting to work -- was personal, not general, in scope and impact. Although the blocked roads and inaccessible streets -- the main conditions of which the grievants complained -- prevented them from getting to work, there is no evidence that this was a general effect of the storm and condition which resulted from it. In other words, there is no evidence that large numbers of the general working public were unable to report to work that day because of the damage caused by the storm. Nor is there evidence that public authorities urged people to stay off the streets, to stay home, or that travel was limited to emergency vehicles. If, however, the scope and impact was as general as suggested by the grievants, one would expect such indications.

More importantly, the storm and resulting damage did not prevent "groups of employees" from "working or reporting to work." The evidence persuasively established that the vast majority of employees at the the Air Mail Facility scheduled to work that day did report to work. As the Postal Service points out, only twelve out of 236 employees in that facility were unable to make it to work that day.² The fact that some employees did report to work does not necessarily imply

² It is not clear whether 236 was the total employee complement or the number of employees scheduled to work that day. The evidence suggests the former and not the latter. In either case, however, it is clear that the overwhelming majority of employees who were scheduled to work that day did, in fact, report despite the storm.

that those who did not report were not entitled to Administrative Leave. However, the scope and impact of the disaster must be sufficiently widespread that an appreciable number of employees are prevented from reporting to work. Twelve employees out of approximately two hundred is not an appreciable number and, consequently, does not constitute a group sufficient to fall within the criterion set forth in Section 519.211.

In these circumstances, it was not an abuse of discretion for the Postal Service to conclude that the storm did not create a disaster situation that was general in scope and impact and did not prevent groups of employees from working or reporting to work.

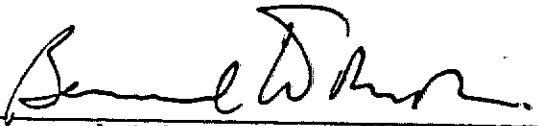
I have also carefully examined the Arbitration Awards submitted by the Union in support of its position, and find that they do not compel a different conclusion from the one reached here.

Finally, in light of the conclusion reached here, it is not necessary to address the issue of whether the grievants, with reasonable diligence, could have reported for duty.

AWARD

For all the reasons set forth above, the grievance is denied.

December 23, 1982
South Bend, Indiana


Bernard Dobranski
Arbitrator