

- in for eye glasses
 - lost shoveling snow $\frac{1}{2}$ - 35°
 of replacement

IN ARBITRATION

8DET EC-26

UNITED STATES POSTAL SERVICE,) Case 8 DET EC 26, AC-C-22851;

) Arbitrator's File 79-79-383; Maint

and)

) Date of Hearing:

AMERICAN POSTAL WORKERS UNION,) October 12, 1979,

NORMAN L. LADD, Grievant.) Detroit, Michigan.

C# 795

O P I N I O N

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Issue

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1. Is the grievance arbitrable?

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2. Did the Postal Service violate the ~~Employment~~ Agreement

by refusing to pay Grievant the sum of \$70.66 for loss of a pair
 of eyeglasses while on duty?

Facts

On January 26, 1978, Grievant was working at the Detroit airmail facility. There had been an extremely heavy snowfall prior to his coming to work, which continued through his work tour. He had been ordered by his acting foreman to join with the acting foreman and several other employees in clearing an area in the parking lot of fallen snow and stalled automobiles.

To clear the area, it was necessary for the men to shovel the snow away, and to push the stalled cars out of the way. Grievant had started this work when he discovered that the falling snow was caking on his glasses and obscuring his vision. He removed his glasses and placed them in a soft glass case having a clip on it, which he put in his shirt pocket with the clip clipped to the pocket. Also clipped to the eyeglass case was

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his Postal Service identification badge.

Grievant was in and out of the airmail facility during the beginning of his shift, getting warm, getting salt to spread in the cleared-off area, and the like. He remembered that at his lunch break, he had used his glasses to read a newspaper.

The work of clearing the snow and removing the automobiles continued throughout the afternoon. Grievant remembers shortly after the noon hour putting his glasses again in his shirt pocket. When Grievant finished work that evening, he sought his glasses, and could not find them. He advised his foreman of his loss, and his foreman and several other members of the work crew searched the parking lot for Grievant's glasses, fountain pen, and his identification badge. None of those items was ever found. Grievant eventually purchased a replacement for his glasses at a cost of \$70.66.

The date of the earliest claim that Grievant made for replacement for his lost eye glasses is unknown, but on February 17, 1978, Grievant received a copy of a letter to the Assistant Regional Counsel of the Central Region of the Postal Service from Mr. Loukotka, MSC Manager of the Detroit Post Office, advising that his request for payment on Form 2146 for lost property be denied. On February 23, 1978, Grievant received a letter from the Assistant Regional Counsel advising that his claim for damages for the lost glasses was being denied. This

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letter stated:

"As you know, an adverse decision may be appealed to Step IV of the Grievance-Arbitration procedure by the area or regional union representative within 15 days of receipt of this decision."

On March 8, 1978, Grievant filed an employee's claim for personal property in which he again sought reimbursement in the amount of \$70.66 for the lost eye glasses.

There is no clear evidence as to when this claim of March 8, 1978, was acted upon. However, on March 9, 1978, Mr. Forrest Kowman, the Director of Industrial Relations for the American Postal Workers Union, was sent a letter by the Regional Representative for the American Postal Workers Union, asking that the rejection of Mr. Ladd's claim be appealed.

On a form dated March 23, 1978, the American Postal Workers Union forwarded to the Senior Assistant Postmaster General, Employee & Labor Relations Group, an appeal of the denial of Grievant's claim, and a request for arbitration of the matter.

Discussion and Opinion

Grievant's claim for reimbursement for his lost eye glasses is made pursuant to ARTICLE XXVII, of the National Agreement, Employee Claims:

"Subject to a \$10 minimum, an employee may file a claim and be reimbursed for loss or damage to his personal property except for motor vehicles and the contents thereof taking into consideration depreciation where the loss or damage was suffered in connection with or incident to his employment while on duty or while on postal premises. The possession of the property must

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have been reasonable, or proper under the circumstances and the damage or loss must not have been caused in whole or in part by the negligent or wrongful act of the employee. Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions."

The first issue raised by the Postal Service in opposition to Grievant's claim is that, under the grievance procedures set forth in ARTICLE XV, his claim has not been timely filed. The Postal Service says that the last rejection of Grievant's claim occurred on February 23, 1978, and that he had 15 days to file his grievance thereafter to Step 4. The Postal Service points out that his appeal to Step 4 was dated March 23, 1978, and hence was outside the 15-day-time limit for the appeal.

The Union advances the argument that ARTICLE XXVII controls claims, and permits the Union or Grievant to bypass Step 3 and go to Step 4. It is in the provisions of Step 3 that the time for the appeals to those sections is set forth. Grievant feels that since he had a right to bypass Step 3 and go directly to arbitration in Step 4, and since there is no time limit set forth for this in the National Agreement, it must therefore be presumed that the time to go to arbitration in Step 3 is eliminated, and only a reasonable length of time to go to arbitration is therefore required. Grievant feels his claim was filed within a reasonable period.

I agree with the Union's reading of the National Agreement. I realize that this results in the anomalous situation of no

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specific time limit for appeal to arbitration under certain limited conditions. However, that appears to be exactly what is indicated. Since later contracts have changed this procedure, it must be presumed that the parties recognized this anomaly in the previous contract, and took steps to change it.

The Postal Service's next defense to Grievant's claim is based on ARTICLE XXVII, which provides that the claimant shall not recover if the loss was "caused in whole or in part by the negligent or wrongful act of the employee." The Postal Service contends that Grievant was negligent in his method of securing his property and the loss resulted thereby. Grievant and his Union answer that Grievant was aware of the need to safeguard his property, and he put his glasses in his glass case and affixed the case by its clip to a piece of clothing covered by Grievant's jacket.

The Postal Service cited a case on the issue of a claim for lost property which, coincidentally enough, also concerned eye glasses: Case No. N-C-1147, decided July 12, 1974, Francis Powers and NALC, claimants. In that case, the grievant's glasses disappeared from his person and were later found smashed. Nothing was stated in the opinion as to what the grievant did to safeguard his property, nor did it detail the circumstances under which the property was lost. In denying the grievance, the arbitrator stated:

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"His [grievant's] conduct came within the contemplation of what is considered simple negligence. That is usually described as the failure to do something which a reasonable man would do under the same circumstances. It is the opposite of care and prudence. Powers failed to take the necessary care to guard against the loss of his glasses." (Emphasis added.)

Based on that language, I would conclude that Grievant in the instant case is entitled to recover for the loss of his glasses. He took those steps to safeguard his property which are usually taken by a reasonable person; i.e., he took his glasses off, put them in a glass case, and put the case in his pocket with the clip over the pocket. This is what the ordinary person would do. Had he, for instance, laid the glasses on an automobile hood, from which they disappeared, he would be considered negligent. In order to hold Grievant negligent in this situation, it would be necessary to state that any loss of property would, by definition, arise as a result of negligence; that is, no one loses property unless he is negligent. The effect of that would be to make one absolutely at fault under all circumstances where the loss occurs from the person. This I do not believe to be the case.

The next question, then, is: How much is Grievant entitled to recover for his loss? The parties seem to have assumed that the proof of the loss is the cost of the replacement glasses. As a matter of fact, evidence of the cost of the replacement of the glasses was introduced without objection to show the loss.

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However, ARTICLE XXVII does not make the value of the replacement of the property the amount of the loss. It says the "employee may file a claim and be reimbursed for loss ... to his personal property ... taking into consideration depreciation ...". It is therefore quite clear that the amount of the loss to which Grievant is entitled is the depreciated value of the property lost, and not the new, or replacement, value.

An illustration of this would be the following: Let us suppose that Grievant had purchased a pair of work pants for use in his job at the cost of \$20.00. Let us further suppose that he had worn these work pants for five years, off and on, at which point a piece of equipment snagged the work pants and ruined them, through no fault of the employee, necessitating their replacement. The replacement cost of these work pants five years later would probably be about \$30.00, rather than the \$20.00 originally paid for them. But the value of those work pants five years later would not be \$30.00, but, on a depreciated basis, would probably be worth no more than \$5.00. \$5.00 would then be the value of the property to which a claimant would be entitled.

In the situation presented to us in this grievance, no evidence was introduced as to the depreciated value of the property, that is, the value of the glasses at the time Grievant lost them. Rather than conduct another hearing to seek evidence as to this

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value, I will presume that the glasses were worth half the amount of the cost of the new glasses, and award to Grievant the sum of \$35.00 for the new glasses.

The grievance is sustained, and Grievant is awarded the sum of THIRTY-FIVE DOLLARS (\$35.00). The costs are assessed equally.

Dated this 25th day of November, 1979.

Gerald Cohen

GERALD COHEN
Arbitrator
722 Chestnut Street
St. Louis, Missouri, 63101
(314) 231-2020.

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