

C#00411

IN ARBITRATION

UNITED STATES POSTAL SERVICE,) Case No. 5 COL 3168/AC-C-24768;
and) Arbitrator's File 79-113-417;
AMERICAN POSTAL WORKERS UNION,) Dates of Hearing:
CLASS ACTION.) 1/29/80, 2/11/80, and
5/30/80,
Cincinnati, Ohio.

A P P E A R A N C E S

10-7-80

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O P I N I O N

Issue

Did the Postal Service violate the National Agreement and the personnel manual issued thereunder when it refused to grant administrative leave to Maintenance Craft employees who were absent from work on January 26, 27 and 28, 1978, because of weather conditions?

Facts

Starting late on January 26, 1978, and extending into January 27 and 28, 1978, a snowstorm struck the Cincinnati area which, according to the grievance filed, was of such severity

as to justify the absence of a large number of employees. The grievance also claimed that the absence of those employees should entitle them to administrative leave. Union evidence indicated that administrative leave is not charged to an employee, as annual leave would be. Annual leave can be taken by an employee only in a limited amount.

According to the evidence, only the Maintenance Craft was grieving in connection with the snowstorm, the other crafts not having processed grievances instituted by them.

To prove its case, the Union produced 41 witnesses. The testimony of the witnesses will be summarized.

Several of the witnesses testified that they felt that this was the worst snowstorm in memory. Many of them stated that they heard announcements that the Governor had closed state highways to travel. Other testified that entrance ramps to some of the main highways into Cincinnati had been blocked by state or local police, and that they could not get onto the highways. Others stated that local transportation was unavailable, as buses were not running. Testimony also indicated that, for the three days, particularly the first two of the three, the snow was falling so heavily and was blowing so badly that, as fast as it was shoveled off walks and driveways, it would drift back. The drifts were as high as six feet, and were almost universally at least knee-high.

Many of the witnesses for the Union testified that no attempt was made by any public agency to clear streets of snow until January 28th.

The employees also testified to severe ice conditions. Some of them stated that they started to work in their cars, but, as a result of ice on the road under the snow, they lost control of their vehicles, many of which ended in ditches. In addition, the ice made some cars inoperable as a result of the car doors being frozen shut. Public announcements were made that the public was advised to stay off all highways unless the driver was using a four-wheel-drive vehicle.

The Union introduced evidence that the sheriff's office of the county in which Cincinnati is situated issued bulletins to the various police agencies in the area indicating that all roads in the area were extremely hazardous and generally impassable. Further, the police emergency and fire vehicles were being hampered or stopped by abandoned vehicles, and that there were no tow trucks readily available. The warning on these conditions remained in effect until the evening of January 28th, when the state-of-emergency warnings were terminated by the police.

Postal Service witnesses testified that they had heard over the radio that state highways over which several of them had to travel to work were closed, and motorists were ordered off of the highways, and further, that these roads were so snow-

covered that it was sometimes not possible to tell where the roads lay, and where the countryside was located.

Some of the witnesses testified that by the third day of the storm, streets had been salted and were wet, but had improved.

In addition to ordering the public off the roads and highways, public authorities warned that anyone on the public highways who did not have four-wheel-drive vehicles or chains on their tires were subject to a fine of \$100. A number of the employees testified to the ice conditions that caused automobiles to stall and get stuck, preventing travel. However, the manager of customer service for the Cincinnati area public transportation system submitted a letter in which he stated that public transportation service was available "on all existing routes with some delays for January 25th, 27th and 28th.

The Union introduced evidence that on January 26th, 55% of the Maintenance employees appeared for work. On January 27th, 35% of the Maintenance employees appeared for work, and on January 28th, 75% of the Maintenance employees appeared for work. The parties agreed that this grievance was limited to Maintenance employees. The Postal Service introduced evidence that two grievances covering employees in other bargaining units relating to this snowstorm and seeking administrative leave had been withdrawn by their union.

Several employees testified to their attempts to get to

work, and their inability to do so. These included those who were stuck in their own driveways, unable either to shovel themselves out or to drive out of their driveways, and those who were able to get out of their driveways but then became stuck in snow drifts on public streets or who were unable to go upgrade because of ice.

A number of employees reported that no attempt was made by public authorities to plow the streets or otherwise to make passages through the streets until January 28th. No attempt was made to salt the streets.

Schools were closed, and school busses did not run.

The Postal Service introduced evidence by way of newspaper articles that Cincinnati City Hall stayed open and which stated that those public employees who did not work would not be paid. The newspaper articles also indicated that the courts were open, but that the clerk of the court said "he could not with good conscience dock pay of people who could not get to work because of an Act of God". Most of the area hospitals were reported to have provided employees with methods of sleeping at the hospitals, and stated that hourly employees who did not appear for work would not be paid.

Some of the witnesses for the Union stated that they were dug out of snowdrifts by National Guard vehicles. Others testified that they were able to get to stores in their vicinity for food and the like only by walking because it was impossible

to drive.

Several of the employees testified to heavy blowing of snow and bitter cold - as much as 10° below zero - which made it very difficult to shovel the snow. The snow drifted back over cleared areas almost as fast as it was shoveled clear.

One employee testified that he did attempt to drive to work. On the way, he saw a semi-trailer in a ditch. He also wrecked his car while attempting to get to work, and was not able to get to the post office.

One witness testified that, on the night of January 26th, he left for work at 9:00 P.M. for a 12:00 midnight starting time. It took him three hours to get to work. (He normally left for work at 11:00 P.M..)

Other witnesses testified that on the first night, it took anywhere from one to three hours to get to work whereas, normally, it took from a half-hour to an hour.

A supervisor for the Postal Service stated that he was scheduled to work all three days: that is, January 26th, 27th and 28th. He was able to get to work and did work on all three days. He stated that driving conditions were bad, with snow and ice, and that caution had to be used. It was not possible to drive at a normal rate of speed. As a result, his trip, which usually took 20 minutes, took about an hour, but he was able to get to work.

He stated that the policy for leave which was instituted

for the three days was that persons reporting late were given administrative leave for the hours that they were late. A few employees left early, and got administrative leave for that. Those who were unable to report because of the weather were not given any discipline, but were given emergency annual leave. They were denied administrative leave.

The witness further stated that there were 35 employees under his immediate supervision. He thought that five or six of the 35 reported for work.

The Director of Mail Processing for the facility testified that he was scheduled for work all three days, and made it to work. He did state that driving conditions were bad, but that the roads were passable. He said that the vehicle he used to get to work was a standard automobile, with steel-belted radial tires, and that he used neither snow tires or chains. He further stated that mail trucks did arrive with mail, possibly not the first day of the storm, but on the second and third days. The trucks did not arrive with the frequency that they might during normal weather, but they were not stopped completely. There was therefore work for the employees who were there, even though it might have been somewhat less than usual. He confirmed that those employees arriving late to work were given administrative leave for the time that they were late.

The Employee and Labor Relations officer for the Bulk

Mail Center testified that the mail handlers and clerks filed grievances seeking administrative leave for the three days in question. None of the grievances other than the one for the Maintenance employees was appealed to arbitration. All other grievances were dropped at various points along the grievance procedure. He further testified that the weather conditions were bad all three days, but continually improved. He estimated that 30 per cent of the work force reported the first day, and in greater numbers the next day.

The Postal Service also introduced evidence that in the 1971-1973 and 1975 negotiations between the parties, the Unions had proposed contract language specifying conditions for granting administrative leave due to Acts of God. This contractual offer had been refused, and nothing appears in the National Agreement signed by the parties relative to administrative leave for Acts of God. The subject of administrative leave for Acts of God appears only in the handbook and manuals.

Discussion and Opinion

The famous motto of the Postal Service is, "Neither snow nor rain nor heat nor gloom of night stay these couriers from the swift completion of their appointed rounds". It is almost as well known as the motto of our country, "In God We Trust", or of the United States Marines, "Semper Paratus".

The Postal Service is therefore rightly concerned that

this motto is not contradicted, and it will not do anything that will encourage any employee not to appear for work or which will give any indication to the public that the Postal Service does not do its utmost to function even under the most adverse conditions.

However, the Postal Manual contains the following provisions which give employees the right not to appear for work under certain circumstances resulting from an Act of God:

"721.9 ADMINISTRATIVE ORDERS RELIEVING EMPLOYEES FROM DUTY.

.91 WHAT IS AN ADMINISTRATIVE ORDER.

Administrative order is an order issued by an authorized postal official relieving an employee, or employees, from active duty without charge to annual or sick leave and for which he incurs no loss of pay.

.92 RELIEVING EMPLOYEES FROM DUTY.

.921 ACTS OF GOD AND CIVIL DISORDERS.

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.

(1) Early Dismissal. When postmasters dismiss employees from duty before the normal completion of their tour of duty due to an 'Act of God', they are to excuse the employees in the following manner:

(a) Annual rate regulars and hourly rate regulars may be excused without loss of pay. Each day of paid leave for annual rate regulars shall not exceed eight (8) hours daily and, for hourly rate regulars, the number of hours they

are normally scheduled to work.

(b) Substitutes, both career and temporary, are entitled to pay only up to the time of dismissal except where less than two hours of work has been recorded since reporting for duty. In such instances, substitutes in a duty status who are dismissed early will be credited with a minimum of two hours of administrative leave.

(2) Prevented from reporting.

- (a) Annual rate and hourly rate regular employees who are scheduled to report and are prevented from reporting by an 'Act of God' and such employees who report and are prevented from working by such an act may be excused without charge to annual leave or loss of pay, for the time involved.
- (b) Substitute employees, both career and temporary, scheduled to report who are prevented from reporting or working after reporting, shall be excused and granted two hours pay.

(3) Authority to approve. Postmasters have authority to approve administrative leave for up to one (1) day. Where administrative leave is warranted beyond one day for an Act of God, approval must be obtained from the Regional Director. Regional Directors may authorize administrative leave beyond one day but not to exceed a total of three days. However, before administrative leave in excess of one day is approved, the Regional Director shall obtain complete details as to weather and road conditions, transportation, etc., to assist in making the decision to grant administrative leave for the second or third day.

(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."

These sections are recognition that, regardless of how

humans strive to carry out their normal daily affairs, nature can render such daily conduct virtually impossible.

In determining whether administrative leave should be given, I believe that certain criteria should be observed. While there may be other items of significance, certainly the following are among the most important:

(1) If an "Act of God" is involved, such "Act of God" must:

(a) Be beyond human control. This would usually be some occurrence due to nature. Such things as riot, insurrection, civil disturbance, or protest marches are not "Acts of God". Storms, floods or uncontrolled fires of unknown origin are considered Acts of God. Fires due to arson may be considered in this category, depending on severity.

(b) Involve the community. It must be community-wide, rather than local or confined to a limited area. Taking the post office in question as a focal point, the Act of God must radiate with equal severity in all directions and cover a significantly large area. A few blocks or even a few miles of disruption radiating from the post office is not sufficient.

(c) Be a community disaster. The Act of God must be exceptionally or unusually severe. Heavy rains or snows that cause more inconvenience are not sufficient to justify administrative leave. The Act of God must be so severe as to force a

halt to community activity.

(d) Affect groups of employees. The Act of God must be so widespread that significant numbers of employees are prevented from working. Whether a group of employees is large enough to justify the statement that it is a "significant" number and that the community is affected will depend on the size of the installation. The fact that some employees were able to report to work will not result in a finding that those who did not report will not be entitled to administration leave, but that fact is a consideration.

(e) Prevent groups of employees from working. This may occur because of power failure, depriving an installation of light or heat, or by preventing the arrival of mail for processing and/or delivery due to cancellation of truck, train or air deliveries, or inability of carriers to make home delivery.

(f) Prevent employees from reporting to work. Administrative leave is also available to those who cannot report to work, not merely to those who report in and are dismissed early, as some have contended.

Evidence must show with detail the conditions which prevented employees from reporting to work. Since snow in winter is generally the problem, the amount of snow involved and the length of time in which it fell is significant. The amount of snow previously on the ground is also a factor.

Wind strength can be a factor. It will contribute to drifting and cold. Drifting itself must also be considered, as must the degree of cold, which can make snow removal more difficult. Danger to health is greater during severe cold, so risk is greater for those walking to work or left in stalled cars. Severe cold makes ice-melting chemicals much less effective, and at certain temperatures they become useless.

(2) By use of reasonable diligence, could the employee have made it 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?

The distance an employee lives from work and the proximity of main thoroughfares should be considered. While all employees cannot live in the same block as the post office, since most main installations are generally in industrial areas or located near highways and airports, nonetheless, an employee's residence must be chosen with some recognition of convenience to get to work.

If no effort was made by the employee to get to work, justification must be made for this. It must be shown that

alternate means to get to work were unavailable, or the effort would have been futile.

(3) There must be significant evidence that the employee is entitled to administrative leave.

Have public authorities closed roads and highways, cancelled public gatherings, and closed schools? Have public authorities declared disaster areas and, accordingly, sought federal aid? Have public authorities requested that the public remain off the streets and at home? Have public authorities limited travel to emergency vehicles only?

What efforts were made for snow removal and the clearing of streets? What streets were cleared, either of snow or storm damage or the like?

If administrative leave had been given either prior to or after the day or days in question, how had conditions altered from the time administrative leave had been granted so as to make the day or days in question either the same or dissimilar?

Was administrative leave given to excuse those who arrived late to work or left early? Since administrative leave can only be given for circumstances set forth in the Manual, the giving of such leave is a recognition that such circumstances existed to some degree. Administrative leave is not given as a reward or denied as a punishment, but is given in recognition of the existence of extreme conditions. Those same conditions

exist for those who arrive to work late as well as for those who do not arrive at all.

In examining the evidence produced by the parties concerning this subject, I conclude that the Union has satisfied the criteria for the granting of administrative leave on January 26th and on January 27th, but not on January 28th. The storm that struck the Cincinnati area during the period in question was of unparalleled severity in the general area of the post office. It prevented large numbers of employees from appearing for work the first two days. On the third day, conditions had apparently improved, and large numbers of employees were able to work on the third day.

The Union showed that there was excessive cold, extremely heavy snow, and high winds which caused drifting and made shoveling of snow useless the first two days of the storm.

Coupled with the snow and contributing greatly to impassable conditions was a heavy coating of ice which lay under the snow and greatly hampered driving and walking.

Public authorities had issued bulletins declaring a disaster for the area and ordering travelers off various roads and highways.

The Postal Service pointed out in its evidence that this grievance was limited to the Maintenance Craft only, and that grievances filed for two other crafts had either been withdrawn,

dropped or settled. The Postal Service contended that this should be taken as an indication that the grievance here was without merit. I do not believe that, because other grievances of a similar nature had not been pursued, this Union should be in any way bound by conduct in which it did not participate, and with which it obviously did not agree. Had this Union participated in those negotiations, the position taken by the Postal Service might deserve consideration. But that is not the case.

It might just as well be argued that the Union here, in pursuing this grievance, had superior leadership, greater tenacity, foresight, or, if you will, intestinal fortitude, than the other unions, and should therefore not be denied consideration for its own efforts as a result of the actions of others over which it has no control.

The Postal Service has also, on occasion, advanced the argument that since the unions at national negotiations have sought an inclusion of administrative leave in the National Agreement and failed, they should not be given by arbitration what they could not get by negotiation. That position, of course, is generally accepted arbitral procedure. However, it is not appropriate in this situation.

What the Union sought by National Agreement was a clarification of administrative leave, which already exists in the Handbook and Manuals, and is, by virtue of ARTICLE XIX, incorporated in the National Agreement. The Unions were not seeking

new agreements, but rather, a clarification of what already binds the parties. They are therefore not attempting to get by arbitration what they lack by negotiation, because what they seek is already binding between the parties.

Another argument advanced by the Postal Service from time to time is that a grievance of this nature should be filed individually by each employee denied administrative leave, and pursued individually by each such employee. In effect, what the Postal Service is arguing is that class-action type of grievances are not possible under the 1975-1978 National Agreement.

This argument is not supportable in view of ARTICLE XV, Section 2, Step 1, which states:

"The Union may also initiate a grievance at Step 1 in accordance with the above, and may initiate a class grievance at Step 1 when the grievance concerns the complaint of more than one employee in the office."

It should be noted that administrative leave was given to employees arriving late or leaving early. This is a recognition that conditions justifying administrative leave existed, otherwise there was no reason to give it even in a limited fashion.

In short, the Union showed that groups of employees were prevented from reporting to work by a general situation clearly not personal to the individuals. Many individuals located at varying distances and directions testified to similar snow conditions in their areas. Further, the severity of the storm was

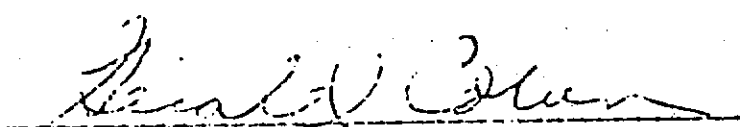
such as to justify that it be called a community disaster.

The evidence produced by the Union showed clearly that all the criteria existed to justify administrative leave for January 26 and 27. By January 28, storm conditions had moderated so that it could not be said that such conditions were then general in nature.

The grievance is sustained for absent employees on January 26 and January 27, 1978, and denied as to January 28, 1978.

The costs are assessed equally.

Dated this 7th day of October, 1980.


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