

C# 6356

SOUTHERN REGION REGULAR ARBITRATION

United States Postal Service	Case No. S1N-3W-C 38570
AND	Grievant: D. Robertson
National Association of Letter Carriers	Location: MPO, Jacksonville Florida

Arbitrator: Elvis C. Stephens

Hearing Date: June 10, 1986

APPEARANCES

For the Union: Judson Vaughn, Regional Adm. Assistant

For the Service: E. W. Hall, Labor Relations Rep.

ISSUE

Did the Postal Service violate the National Agreement when it denied the grievant's claim for a stolen bicycle?

INTRODUCTION AND BACKGROUND

On June 10, 1986 there was an arbitration hearing on the above referenced case at the Main Post Office, Jacksonville, Florida. The arbitrator had been appointed to the case by the Southern Regional Headquarters in accordance with the procedures agreed upon by the parties. During the hearing the parties had opportunity to introduce evidence and present and cross examine witnesses. Post hearing briefs were filed and were received by the arbitrator by July 16, 1986.

The grievant is a Letter Carrier at the South Jacksonville Station, Jacksonville, Florida. On June 4, 1984 he rode his bicycle to work and parked it near the back of the employee parking lot around 6:00 a.m. When he left for the street around 9:00 his bicycle was still there. However, when he returned around 4:45 p.m. it was gone.

The bicycle was a ten speed Huffy, which the grievant valued at \$100 when he filed a claim on a Form 2146 on June 5, 1986. although the grievant had Home Owners Insurance, he did not file a claim with his insurance company. The Station Manager recommended payment of the claim, but it was denied at Step 3.

The parties agreed that the claim was properly before the arbitrator for a decision on the merits.

POSITION OF THE UNION

The union contends that the criteria set forth in Article 27 for reimbursement for losses were met. The use of the bicycle was reasonable and the loss was suffered in connection with his employment. The loss was not the result of wear and tear, it was not caused by the negligence of the employee, and it was over \$10.

There was no dispute over the grievant's claim that he rode the bicycle to work every day, and that he parked it inside the fence near the Post Office. The Station Manager recommended the payment, and the MSC Director requested the grievant supply proof of purchase and price.

Arbitrator Seitz ruled that the employer had to pay an employee for the loss of a gold chain with a specially designed medallion. (Case No. N8N-1A-C 18770) Arbitrator Caraway (Case No. S1N-3Q-C 8157) ruled that an employee should be reimbursed for the damage to a pair of glasses.

POSITION OF THE EMPLOYER

The employer contends that the union must bear the burden of proof in this case. However, the union presented no evidence to show that the employer's decision was arbitrary, capricious, or unreasonable. The employer provided a parking lot with a fence for the employees. However, the grievant admitted that he did not lock his bicycle. This action constituted negligence on his part, which is contrary to the requirements of Article 27 in order to be eligible for a reimbursement for a loss.

Article 27 requires that the employee's loss was suffered in connection with his employment while on duty. The grievant was not using the bicycle while on duty. In addition, the grievant could not offer any proof that he had purchased the bicycle. Without such proof, there would be no way for management determine the depreciated value of the bicycle if the claim was sustained.

There is one arbitration award in which Arbitrator Caraway (S1N-3W-C 504) ruled for the grievant in a stolen bicycle case. However, it should be noted that the grievant in that case had locked the bike, and had proof of its cost. These elements are absent in the instant case.

Arbitrators Dobranski (8-MIN-EC 24) and McConnell (E8C-2B-C 3026) held that the employer was not obligated to pay a claim for a stolen bicycle. The basis in McConnell's case was that the bicycle had to be considered the same as an automobile, and the parties have expressly agreed not to include automobiles under Article 27. In the Dobranski case the grievant had not locked the bicycle, while in the McConnell case it was locked, but the grievance was denied on other grounds.

DISCUSSION AND OPINION

Article 27 requires that the damage or loss "must not have been caused in whole or in part by the negligent or wrongful act of the employee." The Article also excludes motor vehicles from its coverage. Arbitrator McConnell believes that the parties exclusion of motor vehicles from the coverage of Article 27 must be applied to bicycles used in commuting to and from work. This arbitrator agrees with this as a general statement, but under special circumstances it is conceivable that the employee's bicycle might be considered personal property other than the replacement for a motor vehicle.

However, in the instant case, the arbitrator does not believe that the grievant met one of the specific requirements of the Article. The grievant admitted that he did not lock his bicycle. This arbitrator agrees with Arbitrator Dobranski that if an employee rides an expensive 10 speed bicycle to work and does not lock it, the employee is not exercising due care. The grievant also did not file a claim with his insurance company, which would have been reasonable, and would have perhaps reduced the amount of claim on the Postal Service, if such claim was accepted.

AWARD

The employer did not violate the National Agreement by denying the grievant's claim. Claim denied.

Date: July 24, 1986
Denton, Texas

Elvis C. Stephens
Elvis C. Stephens, Arbitrator