

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF
LETTER CARRIERS

RE: SLN-3F-C 4861
Grievant - Olivia Ann LaFayette
Hermitage, TN

APPEARANCES

FOR THE UNION

Ben Johnson, National Business Agent

FOR THE POSTAL SERVICE

Primo Marquez, Labor Relations
Representative

ARBITRATOR

John F. Caraway, selected by mutual
agreement of the parties

On February 16, 1982 the grievant Ms. LaFayette, a Letter Carrier had parked her mail truck in front of an apartment complex. All of the doors and windows of the jeep were locked except for the rear door which would not lock. She had filed a repair tag pertaining to this deficiency in the door lock on February 10, 1982 but it had not been repaired as of February 16, 1982. She proceeded to deliver mail in the apartment complex. After delivering mail in this area she proceeded to the bank in order to deposit funds to cover a check which she had written. In examining her billfold she discovered that \$125.00 cash which she had in the billfold as well as a gold necklace was missing. She proceeded to the Postal Service facility and reported this loss to Postmaster Wade Smith. In addition to that property she was also missing credit cards and her driver's license. After reporting this loss to the Postmaster, she returned to the apartment complex and found in the mail room her missing credit

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cards as well as her driver's license.

Ms. LaFayette then filed a Form 2146 claiming the loss of \$125.00 cash and one gold necklace valued at \$154.00 and four twenty cent stamps valued at \$.80. The claim was rejected by the Postmaster on the basis that there was no connection between the objects which were stolen and her work duties.

Ms. LaFayette testified that on February 10, 1982 she could not open the rear door of her jeep. She called her supervisor Mr. Robertson and explained the problem to him. She stated that the lock was hanging outside of its opening. Mr. Robertson was able to manipulate the lock in order to lock the door. At that time she filed the repair tag to have the lock repaired. She was not instructed to use any other vehicle and proceeded to carry her routes using this particular jeep.

Postmaster Smith testified that when the theft was reported to him on February 16 he asked Mr. Robertson why the lock had not been repaired. Mr. Robertson stated that he did not know of the repair tag until February 19 when he found it with some other papers on his desk.

ISSUE

Did the Postal Service violate the National Agreement by denying Ms. LaFayette's claim for objects which were stolen on February 16, 1982? If so, what is the appropriate remedy?

ARGUMENT

The Union maintains that Ms. LaFayette's claim

should be paid pursuant to the provisions of Article XVII.

The purse which Ms. LaFayette had inside her jeep was property which she normally and customarily would carry with her on her job assignments. It contained credit cards, her driver's license, cash and other items of essential personal property. While Ms. LaFayette did leave her purse inside her jeep when she made her mail deliveries, she had no alternative other than to do this.

Regarding the Postal Service's defense of negligence on the part of Ms. LaFayette, the cause of the theft was the failure of the Postal Service to place the vehicle in a non-theft status. If the lock had been repaired so that entry could not be made to the jeep, this theft would not have occurred. The primary negligence rests upon the Postal Service. That Ms. LaFayette left her purse in her mail vehicle was an ordinary and customary thing for female letter carriers to do. It was impossible for her to carry her purse with her. It would be unreasonable to expect a female letter carrier to lock her purse in her locker at the mail facility. There are essential items which a female letter carrier must bring with her in her purse.

The Postal Service argues that the theft in question and the resulting loss was caused in part by the negligence of Ms. LaFayette. If any contributory negligence is proved on the part of the employee the employee is barred from a claim recovery. Ms. LaFayette admitted that she left her purse in plain view at the rear of her jeep near the rear door. She did this even though

she knew that the lock was not working as early as February 10, 1982.

The Postal Service further argues that there was no justification for Ms. LaFayette to bring with her on her work assignment a gold necklace and that much cash. The usual limitation recognized by the Postal Service is \$30.00. Further, Ms. LaFayette had a personal locker at the mail facility in which she could have placed such valuables.

DECISION

The essential question raised in this arbitration is whether the claim of Ms. LaFayette for personal property stolen from her jeep on February 16, 1982 should be barred by reason of the contributory negligence of Ms. LaFayette. In answering this question the primary inquiry must be as to which party, the Postal Service or Ms. LaFayette, was primarily responsible for the conditions which existed to permit the theft to have occurred. There is no question but that the theft occurred because of the failure of the lock on the rear door of the mail vehicle. If the lock had been functioning on that particular door, the third party would not have been able to enter the vehicle to steal the contents of Ms. LaFayette's billfold.

The evidence shows Ms. LaFayette did everything possible to alert the Postal Service of the unsecure condition which existed in the Postal vehicle. She called the malfunctioning of the lock to the attention of her immediate supervisor, Mr. Robertson. She filed a repair tag dated February 10, 1982. Despite this notice

to Mr. Robertson nothing was done to repair the lock on this mail vehicle. While Mr. Robertson told the Postmaster that he did not find the repair ticket until February 19, 1982, the fact remains that Mr. Robertson as early as February 10, 1982 was alerted by Ms. LaFayette to the malfunctioning of the lock of the rear door of the mail vehicle. It was gross negligence on the part of Mr. Robertson not to effect an immediate repair to that vehicle by placing that vehicle out of service, if necessary, to effect the repair. This vehicle contained mail of the patrons of the Postal Service. It was the obligation of supervision to not release that vehicle for the delivery of mail in an unsecure position. This was exactly what Mr. Robertson permitted to occur by not placing that vehicle out of service. No only did Ms. LaFayette use that vehicle for the delivery of mail on February 10, 1982 but she continued to do it on subsequent mail delivery days up to and including February 16, 1982 when the theft occurred.

The Postal Service asserts the defense of contributory negligence. The evidence demonstrates that the primary cause of the theft was the failure of the Postal Service to repair the lock on the rear door of the postal vehicle. With regard to Ms. LaFayette leaving her purse inside the vehicle, she had no other place to leave it. It would be completely unreasonable to expect a female employee to have her purse locked up in her locker of the mail facility. There are items in that purse which the female employee normally and customarily uses. That


she may have jewelry objects in that purse is certainly not unusual. Regarding the \$125.00 in cash Ms. LaFayette explained that February 16 was the first work day being a Tuesday. Monday, February 15 was a holiday on which day banks were closed. February 16 was the first day which she could make a cash deposit to her account. That was the purpose of her having the cash in her wallet. Clearly, Ms. LaFayette had a reasonable basis to have the necklace in her possession as well as the cash.

Regarding the argument of the Postal Service that Ms. LaFayette knew that the lock on the rear door of the jeep did not function properly and hence should not have had her personal property in that vehicle, the reason why the lock did not work was the negligence of the Postal Service in failing to repair the lock. Not only was Ms. LaFayette's personal property in jeopardy, property which she had a reasonable basis to carry with her in the vehicle, but the mail of the patrons of the Postal Service was likewise jeopardized by the negligence of the supervisor to be certain that the lock on the rear door of the mail vehicle was repaired. It would be unfair and unjust to penalize Ms. LaFayette in denying her this claim when the cause of the theft was the negligence of the Postal Service in failing to effect a repair to the vehicle in question.

AWARD

The Union grievance is sustained. The Postal Service violated the National Agreement by denying the claim of

Ms. LaFayette for property stolen from her mail vehicle on February 16, 1982. The Postal Service shall pay the amounts claimed which is \$125.00 cash, the value of the necklace of \$154.00 and \$.80 in stamps.


IMPARTIAL ARBITRATOR

New Orleans, Louisiana

December 14, 1983