Employee Claim

8 CLE EC 52
Alcied J. Breaux, Jr.
Cleveland, OH

C5562

4074

IN THE MATTER OF ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE (CLEVELAND, OHIO)

- and -

THE NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 40

CASE NO. 8 CLE EC 52 (Breaux)

BEFORE MARSHALL J. SEIDMAN, ARBITRATOR

OPINION AND AWARD

On July 9, 1979 at or about 7:00 A.M. full-time letter carrier Alcied J. Breaux, Jr., while on duty in the Cleveland Post Office, "went to check the amount of gas in the P.O.D. car. In so doing I slipped on some grease on the ramp and almost fell causing my glasses to fall and break." On November 18, 1979 Breaux filed on General Services Administration Standard Form 95 a claim against the Post Office for property damage in the total sum of $97.00 arising out of the said incident.

The claim was filed under Article XXVII, Employee Claims, of the National Agreement. The article in relevant part states as follows: "... an employee may file a claim within fourteen (14) days of the date of loss or damage and be reimbursed for loss or damage to his/her personal property ... taking into consideration

depreciation where the loss of damage was suffered in connection with or incident to the employees employment while on duty or while on postal premises."

The facts with respect to both the date of the accident and the date of the filing of the claim by the employee were established by the Union in its direct case by documentary evidence as well as by testimony and were not disputed by the Service. They are controlling here. The Service made a motion to dismiss the grievance on the grounds of untimeliness in its filing. Ruling was reserved at the hearing.

At the conclusion of the hearing the Service requested permission to file a brief which was granted. The Union indicated that under such circumstances it would also file a brief. The brief of the Service was timely received. No brief was received from the Union nor was any request for an extension of the time within which to file. Accordingly the matter is ready for decision.

In the brief of the Service it was stated: "This grievance is not arbitrable under the terms of the National Agreement due to the waiver of rights by the grievant and the Union in the perfecting of the claim. The parties at the National level negotiated the provision of Article XXVII. The test and authority contained therein governing conditions for judging an employee claim is set forth by the parties at the National level. It is within the bounds and specific terms of the National Agreement that a claim

must be tested to determine whether the grievance is properly before the Arbitrator, and if so whether the employee has satisfied the requirements set forth for perfecting such a claim in accordance with the terms of the National agreement.

On its face, the grievance presently before the arbitrator does not comply with the timeliness requirements set forth by the National Agreement in Article XXVII of the National Agreement. ... Article XXVII requires that the employee submit within 14 days of the date of loss or damage, a claim. In response to the arbitrator's repeated inquiry of the grievant regarding the filing of the claim by the grievant, the grievant steadfastly maintained that the document, which is part of joint exhibit number 2, reflects the date on which he submitted the claim (November 18, 1979) in response to the alleged date of accident of July 9, 1979. This clearly is well beyond the 14 days allowed by the provisions of Article XXVII."

The only defense offered both by the Union and the grievant at the time of the hearing was that the grievant immediately told his supervisor of both the fact of his fall and the breaking of his glasses on the date that it occurred. However, under no stretch of the imagination can the verbal relating of the fact of the accident and the loss of the employee to his supervisor be regarded as, in and of itself, the filing of a written claim within 14 days of the date of loss or damage as required contracturally. While

it is true that the language of the National Agreement in Article XXVII does not expressly refer to a written claim but merely a claim, the uniform past practice under the article has been for the claim to be in writing and in fact the employee here did file a claim in writing later. As a matter of not only administrative, convenience, but indeed of administrative necessity, it was not unreasonable of the Service to require a written claim rather than to accept an oral claim in its administration of this article of the agreement.

The language of Article XXVII further suggests that the claim must be in writing because it requires that "claims should be documented, if possible, and submitted with recommendations by the Union steward to the employer at the local level." This certainly implies that the employees claim and the steward's recommendation both be in writing. For the above reasons the Union's attempt to prove compliance with the timely requirements of Article XXVII by the oral statement of the employee to his immediate supervisor immediately following the accident as satisfying the 14 day notice requirements of Article XXVII must be rejected.

At stated by Arbitrator Goldstein in another case arising in the Cleveland, Ohio Post Office concerning a similar claim for reimbursement-for broken eyeglasses made by Carrier Higgins in Case No. 8 CLE EC 39: "The contract calls for a claim to be filed within fourteen (14) days of the loss or damage and obviously a

claim filed 31 days later did not comply ... Both the Union and the employee's representative are capable of reading the contract and being aware of the pertinent time limits. ... There is reciprocal responsibility by Union and management for adherence to the important time limitations placed in the contract, absent more compelling reasons than those presented here, I believe. The absence of any action beyond the mere promise to get the usual form for the claimant by the first level supervisor just does not constitute a waiver of a clearly spelled out fourteen (14) day time limit. I find therefore that no waiver occurred."

Similarly in this case I find that the employee did not comply with the time limitation and requirement of Article XXVII simply by informing his immediate supervisor following the happening of the accident of the loss he sustained in an oral conversation. The first and only attempted compliance with Article XXVII by the filing of a written claim occurred on November 18, 1979, more than four months after the occurrence of the loss on July 9, 1979, which was clearly untimely.

For the above reasons the motion of the Service to dismiss the claim as untimely brought must be sustained. The grievance is accordingly dismissed.

Marshall J. Seidman,
Arbitrator

Dated at Indianapolis, IN. this 17th day of May, 1981.