

REGULAR ARBITRATION PANEL

SOUTHERN REGION

C# 10942

IN THE MATTER OF THE ARBITRATION)
)
between)
)
UNITED STATES POSTAL SERVICE)
)
and)
)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO)
BRANCH 283)

GRIEVANT: Gloria Aguilar Wood
POST OFFICE: Ashford West
Station, Houston, TX
CASE NOS.:
Postal Service
S7N-3V-C 35904
Union
GTS #11649

BEFORE: F. Jay Taylor, ARBITRATOR, Southern Region

APPEARANCES:

For the U. S.
Postal Service: Ralph D. Harrison
Labor Relations Representative

For the NALC: Prissy Grace
Union Representative

PLACE OF HEARING: U. S. Post Office
Houston, Texas

DATE OF HEARING: June 6, 1991

AWARD:

The grievance is sustained. The Grievant, Letter Carrier Gloria Aguilar Wood, was not issued a Letter of Demand in the amount of \$25,000 for just and proper cause within the provisions of the National Agreement. All references to same shall be expunged from the Employee's Personnel File.

F. Jay Taylor, Arbitrator

DATE OF AWARD: July 15, 1991

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SOUTHERN REGION

The grievance was heard in Houston, Texas, on June 6, 1991, before F. Jay Taylor, Contract Arbitrator, Southern Region.

Both parties were professionally represented by competent and experienced Advocates. They stipulated that the procedural steps of the grievance procedures as outlined and prescribed in the National Agreement have been complied with and that the subject grievance is properly before the Arbitrator for hearing and adjudication.

The Advocates were afforded an opportunity to offer all relevant evidence, both oral and documentary, and to examine and to cross-examine the witnesses, all of whom testified under oath. At the conclusion of the Hearing, Mr. Harrison on behalf of the Service and Ms. Grace on behalf of the Union, stated that (a) they had no further proofs to offer in support of their respective contentions; that (b) subject to the objections entered into the Record, they were satisfied with the state of the Record; and that (c) the Postal Service and the NALC had each received a full, fair and impartial Hearing.

The Grievant completed the Record to her satisfaction in a closing statement. She also testified that she had been fully and fairly represented by her Union, the National Association of Letter Carriers, in the proceedings.

The Advocates elected to submit post-Hearing Briefs which were timely filed and received by the Arbitrator on June 17, 1991. The proceedings were tape-recorded by the Arbitrator for use in preparing the FINDINGS and AWARD in the case.

THE ISSUE:

As stipulated by the parties:

Was the Grievant, Gloria Aguilar Wood, issued a Letter of Demand in the amount of \$25,000 for just and proper cause within the provisions of the National Agreement? If not, what is the appropriate remedy?

PERTINENT PROVISIONS OF THE NATIONAL AGREEMENT:
(Joint Exhibit No. 1)

ARTICLE 28
EMPLOYER CLAIMS

Section 2. Loss or Damage of the Mails

An employee is responsible for the protection of the mails entrusted to the employee. Such employee shall not be financially liable for any loss, rifling, damage, wrong delivery of, or depredation on, the mails or failure to collect or remit C.O.D. funds unless the employee failed to exercise reasonable care.

STATEMENT OF THE CASE:

This dispute arises out of a Letter of Demand in the amount of \$25,000 issued to the Grievant on October 5, 1990: "You are hereby informed that you are indebted to the U. S. Postal Service in the amount of \$25,000, as a result of a shortage disclosed...after investigation by Postal Inspection Services on September 13, 1990. In view of the above, demand is made that the shortage be replaced from personal funds..."

On April 20, 1990, at the Ashford West Station, the Carrier signed into her possession a registered item #R623250177 for delivery to the addressee who resided in an apartment complex on the Employee's regular Route #7715. The Record (PS Form 3849) reveals that the Grievant delivered the registered item on the

same date and she returned the receipt to the Accountable Clerk at the Ashford West Station. The Union contends that a review of Form #3856, the Carrier Checkout Sheet, discloses that Ms. Wood was properly cleared of all her accountable items on April 20, 1990.

On May 22, 1990, the sender filed a claim with the Postal Service declaring that the registered item was never delivered. The claim was in the amount of \$25,000, the alleged appraised value of a diamond cross as well as a number of loose uncut diamonds. The Claim Form indicates that the claim was paid by the Service on October 9, 1990.

Shortly after the patron filed the claim the matter was referred to the Postal Inspection Service for investigation. On September 13 the Postal Inspector in charge of the case submitted the following Investigation Memorandum to Management.

SUBJECT: HOUSTON, TX 77077: Mishandling of registered article #R623250177 by Letter Carrier Gloria Wood, SSN 460-92-9947, Ashford West Station

INVESTIGATIVE MEMORANDUM

1. Basis for this investigation is a PS Form 565, Registered Mail Application for Indemnity, filed for the non-receipt of Registered Article No. R623250177. Personal attention has been given this case on various dates from August 20, 1990 through September 12, 1990, at Houston, Texas.

2. On April 18, 1990, Marta M. Carvajal, 9999 Summer Breeze Drive #117, Sunrise, FL 33322, placed into the U. S. Mails for delivery Registered Article No. R623250177. This article was addressed to Blanca Navarro, 2305 Hayes Road #9605, Houston, TX 77077. The declared value of this register is \$25,000.

3. On April 20, 1990, Registered Article No. R623250177 was taken out on Route 7715 for delivery from the Ashford West Station by Letter Carrier Gloria Wood. A review of PS Form 3867, Carrier Checkout Sheet, for Route 7715, dated April 20, 1990, revealed that Carrier Wood delivered the above-mentioned register. Submitted as Exhibit No. 1 is a photocopy of PS Form 3867.

4. A review of the original delivery receipt, PS Form 3849, revealed that Registered Article No. R623250177 was delivered on April 20, 1990. Letter Carrier Gloria Wood's initials appear in the "Delivered By" block of this form. Submitted as Exhibit No. 2 is a photocopy of the above-mentioned PS Form 3849.

5. On September 10, 1990, Ms. Regina Todaro, resident manager of the Hayes Place Apartments, 2305 Hayes Road, was interviewed by Postal Inspector W. C. Wuenschel. Ms. Todaro was shown the original PS Form 3849, Exhibit No. 2, and was asked if she recognized the signature which appears in the "Received By" block of this form. She stated this signature was not hers nor was it the signature of any of her staff members. Ms. Todaro stated that if the carrier had left the article at the office for delivery, she would have a delivery receipt on file which would have been signed by Ms. Navarro. Ms. Todaro searched the room where parcels are kept for the residents. She could not locate the register in question. While interviewing Ms. Todaro, she provided a sample of her handwriting as well as that of Ms. Navarro. Neither signature appeared to have any similarities with the signature in question.

6. On September 11, 1990, the addressee, Ms. Blanca Navarro, was interviewed by Postal Inspector W. C. Wuenschel. Ms. Navarro was shown the original delivery receipt, Exhibit No. 2. She was asked if she recognized the questioned signature. She stated "No." She was asked if anyone else was residing with her at her residence during the month of April 1990. She stated "No." Ms. Navarro was asked if she had received Registered Article No. R623250177. She stated "No."

7. On September 11, 1990, Letter Carrier Gloria Wood was interviewed at Ashford West Station by Postal Inspector W. C. Wuenschel. Carrier Wood

was shown PS Form 3867, Exhibit No. 1, and was asked if her signature appeared by the date of April 20, 1990, indicating she delivered Register No. R623250177. She stated "Yes." When shown Exhibit No. 2, she acknowledged she delivered the register. She did not recall anything specific about this register, and was not sure if she delivered it to the manager's office or to the addressee's apartment. Carrier Wood was asked if she requested any identification from the person who signed for the register. She stated "No."

8. This investigation has failed to determine who actually received Register Article No. R623250177. The signature appearing in the "Received By" block of PS Form 3849, Exhibit No. 2, does not appear to be that of the addressee or the resident manager.

9. Submitted as Exhibit 3 is a photocopy of Chapter 3, Section 335.11a of the City Delivery Carrier's Handbook, M-41, which states that the carrier require the person to show identification if not known.

Based on these findings the Service promptly issued the contested Letter of Demand charging that the Carrier mishandled a registered article.

On October 9, 1990, the Union filed a grievance wherein it was contended that

Charge is not for just cause, punitive and procedural defective. The charge is (6) months old thus making it untimely. Carrier was cleared on form 3867. Charge is punitive in that carrier is being punish for doing her job, one that she has been performing for over (10) ten years and without this type of incident. Carriers at Ashford West Sta. have not been getting the I.D. number written on the 3849, and they were not given any special instructions on getting the I.D. Number. One would not think that it would be necessary to obtain I.D. from someone at a residence when the resident unlocks and answers/open the door to said residence.

It has now been stated to carriers at Ashford West Sta. since this incident to obtain some type of I.D. but this is like closing the gate after the Cow has gotten out.

It is for these reasons that grievant feels that charge should be withdrawn. The question now comes to mind as to why did it take management (6) months to process these charges.

The Union requested that the Letter of Demand be rescinded and that the Employee's record be cleared.

The Service denied the grievance at each step of the grievance procedures noting in the third step answer that

Based on the information presented and contained in the grievance file, the grievance is denied. The file indicates that the grievant failed to exercise reasonable care in the delivery of the item in question. Where the recipient is unknown, regulations reasonably require proper identification for delivery of registered mail. Some of the statements from carriers in the file verify that this [is] and has been a requirement. The later requirement of a drivers license number has no bearing on whether the grievant acted reasonably in this instance.

Thus, the issue was joined. Failing resolution of the dispute the Union appealed the matter to final and binding Arbitral review.

SUMMARY POSITION OF THE POSTAL SERVICE:

Management contended that although the Carrier is not personally suspected of any wrongdoing, it is abundantly clear that the Carrier is guilty of misdelivery of a registered article. The Inspection Service concluded that the addressee never received the parcel and that the \$25,000 claim was, indeed, legitimate and was subsequently paid. It is also obvious that

"The signature on Form 3849 was not legible and was suspicious to say the least. It would seem that any reasonable person would have looked at the signature and required identification. The carriers' M41 Handbook is clear that identification should have been required."

Nothing was presented in the Union's arguments that would relieve the Grievant of such negligence. Even though it was brought out at the Arbitration Hearing for the first time that the sender was the addressee's mother and the suggestion that connivance was involved, the Carrier still is not relieved of the responsibility of ensuring safe delivery of the registered parcel. Although the Union has attempted to cover-up the Grievant's carelessness and negligence, the evidence is absolutely clear, the Employee failed to exercise reasonable care in protecting mail entrusted to her.

The grievance, therefore, is completely without merit. It should be denied and dismissed in its entirety.

SUMMARY POSITION OF THE UNION:

Not so, the Union strongly argued. If the Service is to prevail in this matter then it must prove that the Grievant failed to exercise reasonable care in making the contested delivery of the registered parcel. This the Agency has failed to do. The Employee has testified that when questioned by Postal Inspectors five months after the delivery on April 20, 1990, she related that she had no actual memory of the date or the item in question which is certainly understandable. The Carrier has made deliveries to this address for some eight years and is well

known. She is confident that either the addressee or an adult member of the household signed for the parcel. In fact, the Grievant is so familiar with the address that it is unreasonable to assume that she would have delivered the parcel to another apartment.

Whereas, the Grievant does not know the name of the person signing for the parcel, if she had not been satisfied that this person was the proper party she would have required identification. Had the employee been questioned about the delivery when the patron filed the claim instead of five months later she most likely could have provided far more details. It is obvious, then, that Management must share much of the blame as five months is a long time for a person to remember ordinary, daily events. If there had been anything unusual about the delivery then the Carrier's memory would certainly be more vivid, but it was normal and routine.

The Postal Inspector has faulted the Carrier for admitting that she did not request identification of the recipient. "It is reasonable to assume that by her denial the grievant was stating that she had no memory of asking for identification. This assumption is reasonable since the grievant knew the addressee and other persons that received mail and lived with the addressee from time to time. The Postal Inspector's assertion that identification is required indicates he assumed the signor was unknown to the grievant. No proof for this allegation has ever been shown."

Furthermore, much has been made of the allegation that the signature on PS Form 3849 was illegible and thus the Letter of Demand was justified: "However, no mention of this allegation is made in the step two or step three grievance answers. In answer to this allegation, the union states that an illegible signature is not in and of itself proof of lack of reasonable care on the part of the carrier. It would seem that if a person is known (or produces identification and by reason of that becomes known) and if the carrier watches the person sign for the item, it is reasonable to assume that the person's signature is that person's normal signature. A method to use to determine whether or not a person's signature is that person's normal signature is not covered in training or postal regulations. It is interesting to note that the signature on the letter of demand is not legible. Following the Postal Service logic this should make the letter of demand null and void."

Finally, the Union believes that the testimony of the Grievant's supervisor who issued the Letter of Demand will not bear close scrutiny. He testified that he discussed the matter with the Employee which, incidentally, was after the Letter had been written, and the Carrier stated that delivery of the registered time was made to the apartment office which was not proper procedure. The Grievant vehemently denies making such a statement. And there is not one shred of evidence that such was the case. Indeed, the evidence established that delivery was made to the addressee's apartment.

It is obvious that the Service did not investigate fully this matter. The Inspectors failed to discover that the addressee's mother mailed the parcel in question. There was no investigation concerning frequency of claims or the patron's honesty. And although the addressee claimed that she lived alone, the Apartment Manager stated that a number of individuals resided with the addressee from time to time.

The grievance is fully meritorious. The remedy prayed for by the Union should be granted in its entirety.

FINDINGS:

It is the finding of the Arbitrator after a careful review and weighing the oral and the documentary evidence, the well-reasoned arguments advanced by Mr. Harrison on behalf of the Service and Ms. Grace on behalf of the Union, their well-ordered Briefs, all lead to the conclusion that the Agency has failed to prove that the Employee "failed to exercise reasonable care" in delivering the registered parcel in question. The grievance must be sustained. The rationale and reasoning supporting this decision are as follows:

A cardinal rule in Arbitral proceedings is that an Arbitrator must arrive at his decision from his head rather than his heart. In this case it would be easy for the Arbitrator to fall into the trap of ruling from his heart. The Carrier is a female working hard to support a one parent family. She has ten plus years of unblemished service with the Agency. There was no evidence to indicate that she was not a capable and competent Letter Carrier. She was not in this instance accused of

wrongdoing nor has her professional integrity been questioned. Her testimony was clear and concise. Her demeanor and candor as a witness marked her as being truthful and forthright. A ruling from the heart, therefore, would weigh heavily in the Grievant's favor.

Be that as it may, the National Agreement clearly and unambiguously states that "An employee is responsible for the protection of the mails entrusted to the employee." However, "Such employee shall not be financially liable for any loss rifling, damage, wrong delivery of...the mails...unless the employee failed to exercise reasonable care." And it is in this phrase "the exercise of reasonable care" that this case actually turns. I am persuaded that the Employee did, indeed, do so.

First, I would note that Management's hands are certainly not entirely clean in this matter. It is unconscionable for supervision to expect a Carrier to remember the details of a registered parcel delivery five months after the date of delivery. The patron's claim was filed approximately a month after the delivery day. This was a time frame within which the Employee may have had some specific recollection of the delivery. But no, it was four additional months before Postal Inspectors confronted the Employee and requested that she identify the person who signed for the parcel. Memories fade with time and unless there were highly unusual circumstances associated with the delivery it is unlikely that specifics of the delivery would be recalled with any degree of accuracy.

The Grievant did testify that she did deliver the parcel to an adult who answered the door in apartment #9506 in what she deemed to be normal and routine. And I have noted the apartment manager's statement that although the addressee claimed to live alone, "To the best of my knowledge Blanca Navarro has had different individuals staying with her while residing at 2305 Hayes Road, Apt. 9506."

It is also strange that the Grievant continued delivering mail to the addressee at Apartment #9506 for five months after the delivery of the registered parcel on April 20 and yet the addressee made no mention that \$25,000 in loose diamonds was missing. Logic would hold that the addressee, surely knowing her mother had sent an expensive parcel, would have addressed some inquiry to the Carrier during this five month period. But such was not the case.

These simply are not circumstances that would persuade an Impartial that the Grievant failed to exercise reasonable care in making the delivery.

This Arbitrator is not a detective nor does he possess the investigative skills of a Postal Inspector. Although Management felt it was of no importance, it escapes me how it was not until the Arbitration Hearing that testimony disclosed that the sender of diamonds valued at \$25,000 was actually the addressee's mother, a mother who resided with her daughter in apartment #9506 on occasion and received mail at that address. And why did the patron who must have been in communication with her daughter wait for over a month to file a claim? Were

background checks made on the patron and the addressee? I can only conclude that there are a number of suspicious circumstances which deserved further and more careful investigation prior to the Service assuming responsibility for a \$25,000 questionable claim.

Furthermore, the Supervisor issuing the Letter of Demand did not prove to be a very creditable witness. His lapses of memory cast serious doubts on his testimony. He could not recall that he heard the grievance at Step I. And it was for the first time at the Arbitration Hearing that the Supervisor stated that he was told by the Grievant that the registered parcel was left at the Apartment Manager's Office. This contention was denied by the Employee and her version is supported by other evidence. The Supervisor testified that he issued the Letter of Demand "because she could not recall the name of the person she made the delivery to." It's no small wonder that the Grievant had no such recollection five months later. Credibility lies at the heart of most issues and the testimony of the Supervisor did little, if anything, to strengthen the Agency's case.

I also note that Management at the Ashford West Station has instituted new procedures for delivering registered items after the case at bar. Carriers are now required to see positive identification such as a driver's license prior to delivering a registered item. Had such "20-20 hindsight" been a part of earlier procedures there would have been no need for this grievance or this Arbitration.

All in all there are too many unanswered questions to indict the Grievant and hold her responsible for a \$25,000 Letter of Demand. Thus, under these circumstances I cannot conclude that just and proper cause exists to enforce this indebtedness on the Carrier.

Therefore, after due consideration, and for the reasons stated above, the undersigned, duly designated Arbitrator makes the following

AWARD

The grievance is sustained. The Grievant, Gloria Aguilar Wood, was not issued a Letter of Demand in the amount of \$25,000 for just and proper cause within the provisions of the National Agreement. All references to same shall be expunged from the Employee's Personnel File.



F. Jay Taylor, Arbitrator

Dated at Ruston, LA
this 15th day of July, 1991