

C#08197

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration
Between:

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

) Case No. E7N-2H-C 5059
) NALC Case No. 008843
) L. Dickerson --
) Administrative Leave
) Florence, South Carolina
)
)
)

BEFORE: Bernard Cushman, Esq., Arbitrator

APPEARANCES:

For the Postal Service:

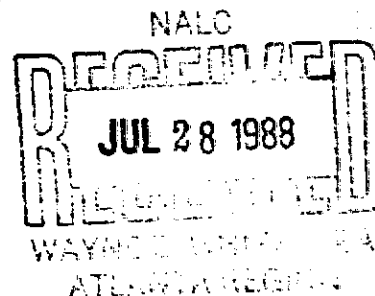
William B. Davis, Labor Relations Representative

For the Union:

Ted J. Sink, Local Business Agent

Place of Hearing: Florence, South Carolina

Date of Hearing: June 23, 1988



AWARD

The grievance is sustained. The Postal Service shall void the annual leave charged to the Grievant for January 8, 1988, and grant administrative leave.

Dated: July 25, 1988


Bernard Cushman, Arbitrator

In the Matter of Arbitration:

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

) Case No. E7N-2H-C 5059
) NALC Case No. 008843
) L. Dickerson --
) Administrative Leave
) Florence, South Carolina
)

OPINION AND AWARD

ARBITRATOR: Bernard Cushman, Esq.

APPEARANCES:

For the Postal Service:
William B. Davis, Labor Relations Representative

For the Union:
Ted J. Sink, Local Business Agent

This case arose under the 1987 National Agreement. A hearing was held at Florence, South Carolina, on June 23, 1988. Both parties were offered full opportunity to examine and cross examine witnesses. The entire record, including the oral summations at the conclusion of the hearing, has been carefully considered by the Arbitrator.

THE ISSUE

Did the Postal Service violate the National Agreement by denying administrative leave to the Grievant and charging the Grievant with annual leave? If so, what shall the remedy be ?

RELEVANT CONTRACTUAL PROVISIONS

Article 19, Handbooks and Manuals

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours of working conditions, as they apply to employees covered by this Agreement shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Article 30, Local Implementation

B. There shall be a 30-day period of local implementation to commence October 1, 1987, on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1987 National Agreement:

3. Guidelines for the curtailment or termination of postal operations to conform to orders of local authorities or as local conditions warrant because of emergency conditions.

MEMORANDUM OF UNDERSTANDING

Article XXX, Item 3.

The following constitute the guidelines to be used for the curtailment or termination of postal operations to conform to orders of local authorities or as local conditions warrant because of emergency conditions.

When the installation head or his designee has received definite notice via television, radio, etc., that a local authority, i.e., mayor, county sheriff, police chief, suggests curtailment of movement of people, there shall be no curtailment of postal operations except as authorized by Sectional Center Manager/Postmaster or designee. When a decision has been reached to curtail postal operations, to the greatest extent possible, management will notify and seek the cooperation of local radio and television stations to inform employees. Depending upon the severity of the emergency situation and what is allowed by local authorities, under the situation, Postal Service telephones will be open for employees to call for information. The Postmaster shall, in reaching this decision consider:

1. Prevalent practice of industry in Florence area, including our competition.
2. Operations of other public oriented services, i.e., telephone, utilities, police, firemen, milkmen, newspaper delivery, etc.
3. The expected duration of the condition causing the local order.
4. The effect of the prevalent practice of other local organizations upon the ability of postal people to get to work and do their job.
5. Employees will be given consideration as to their safety and health.

ELRM 519, ADMINISTRATIVE LEAVE

519.1 Definition

Administrative leave is absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.

519.2 Events and Procedures for Granting Administrative Leave

.21 Acts of God

.211 General Acts of God involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting to work.

CONTENTIONS OF THE PARTIES

The Union contends that the conditions created by a snow and ice storm on January 7, 1988, constituted an Act of God within the meaning of EL&R Manual Section 519.211, and that the Postal Service violated the contract by denying administrative leave to employees who were unable to report to work on January 8, 1988, and by illegally charging them with annual leave.

The Postal Service denies that the snow and ice storm constituted an Act of God within the meaning of EL&R Manual Section 519.211, for the reason that it was not general but rather personal in scope and impact. The Postal Service contends that since administrative leave was properly denied, the type of leave charged employees was at the employees' discretion; i.e., the employees could elect to take annual leave or leave without pay.

DISCUSSION, FINDINGS AND CONCLUSIONS

On Thursday, January 7, 1988, the city of Florence was hit by a snow and ice storm which began about noon and lasted into the evening dropping about eight inches of snow, according to a weather bureau report.

The Florence Morning News dated January 8, 1988, contained a report on the storm, which included, among other things, the following:

The only activity in the Pee Dee area as of midafternoon Thursday involved residents trying to resolve emergencies brought about by ice and snow.

A winter storm watch remained in effect for Thursday and Thursday night for the region.

Snow fell Thursday, heavy at times, mixed with ice and rain. Snow was expected to continue Thursday night, ending as freezing rain or sleet, with accumulations of 2 to 4 inches over the Florence area.

The snow is expected to taper off, or turn into rain, over much of the state by Friday. The extended forecast called for highs in the 30s and 40s Saturday and into the 40s and 50s on Sunday.

All roads in the Florence area were officially declared impassable by the South Carolina Highway Patrol; utility companies worked to maintain utility service, most local businesses and schools closed by noon; and efforts were underway to provide emergency shelter as the winter storm hovered over the Pee Dee Thursday afternoon.

"All roads are to be considered impassable," said Capt. J.C. Garrison of the Highway Patrol. "Everyone should stay off all roads except in emergency situations."

The same newspaper for Sunday, January 9, 1988 reported, in part, as follows:

South Carolina remained in the stranglehold of a rare winter storm Friday as ill-equipped highway maintenance crews struggled to keep roads passable and many people just stayed home.

* * * * *

Schools, businesses and government offices were closed for a second day as the state dug out from the barrage of snow, sleet and ice.

* * * * *

Florence City Manager Tommy Edwards said the city had one plow clearing the roads but he said the city was aided in its efforts by both the state and the county.

Edwards said the city had suspended all services after the storm hit Thursday and continued Friday to operate only the necessary emergency personnel. The county also suspended normal operations Thursday and Friday.

* * * * *

The final numbers hadn't been tallied Friday, but volunteers in four-wheel drive vehicles and sheriff's deputies provided transportation to more than 200 medical personnel.

Leon Dickerson, herein called "the Grievant," is a city letter carrier at the Florence post office. He testified that on January 7 he had no problem finishing his route but that he knew it was going to get bad. He spoke to supervisor Jack Morgan and told him things were going to get worse, and he asked about what to do if he couldn't get in in the morning. He was scheduled to work at 7:00 a.m. on Friday, January 8. He testified that Morgan told him not to worry about it, to call in and let them know he couldn't make it, and "we'll take care of it." He testified further that he was at the post office at the end of his tour at 3:00 p.m., and that he learned that an employee who was president of the APWU had punched out at 3:00 p.m., and that he overheard the Postmaster tell supervisors to tell Tour III employees not to report to work.

The Grievant was unable to report to work on January 8 because of the storm. He testified he lives on a hill, and in order to get to work he has to go up a hill and across a bridge with snow and ice all the way. (He did not say how far he lived from the post office.) He usually rose at 6:00 a.m., but on January 8, he rose at 5:00 a.m. When he attempted to drive, his car slid down the driveway to the roadway. He was able to get it back onto the driveway, and he called the post office at 5:10 a.m.

He spoke to clerk supervisor, "Sonny" Powell, and told him he could not get in. Powell told him a lot of people already had called in and not to worry about it.

The Grievant testified that from the time he quit work on January 7, until probably midnight or 1:00 a.m. of January 8, it never quit snowing. He measured the snowfall at his home at 12 inches. He testified that doctors and nurses were transported to hospitals by the police. His information came from TV reports, and a deputy sheriff who told him that's all they did all day.

On January 9, the Grievant reported to work, but he testified he couldn't do anything because he kept getting stuck and was still on the first street of his route at 10:30 a.m.

That same day, he asked the timekeeper what type of leave had been charged for the previous day and he was told annual leave. On Monday, January 11, the Grievant spoke to supervisors Morgan and Coleman and told them he should have been charged administrative leave. They told him that they were told by Charleston to charge annual leave. On January 9, the Grievant put in a written request for administrative leave. Nothing was ever done about his request and he was charged annual leave for January 8, although he had never requested it. The Grievant met with supervisor of administration Don Watford at step 2 of his grievance and was told by him that they had been told by Charleston that they could not grant administrative leave. According to the Grievant, Watford did not explain the reason for Charleston's decision.

The Grievant testified he had eighteen grievances to present, a stack of evidence, including newspapers and a video tape of the storm, and that Watford did not look at anything he presented. The meeting last only five minutes. Watford told him that no matter what he presented, Charleston had told him he could not approve administrative leave.

Watford confirmed telling the Grievant the decision to deny administrative leave had been made in Charleston, but he testified he told the Grievant it was because the grievants did not meet the criteria. Watford testified the grievance was discussed to a certain extent. As to the materials presented by the Grievant, he testified he had gone over the material before the meeting. He did not view the videotape.

The Grievant testified the last time there had been a serious storm was 15 years earlier, and he hadn't been able to get to work and was paid administrative leave. He had been told that all he had to do was call in any day he could not make it to work to make sure he received administrative leave.

Jack Morgan is Supervisor of Delivery. He testified that the weather was real bad on January 7, that ice was falling and visibility was reduced. He testified that he had more difficulty getting home on January 7 than he did in getting to work on January 8. On that day, he reported to work with no difficulty. He lives about 3 miles from the post office in a development which is about 1/2 mile from a main thoroughfare. He testified that

there was about 5 to 7 inches of ice, and the roadway consisted of one set of tracks made by traffic. He drove to work in a 1982 pickup with regular radial tires.

According to Morgan, 13 city carriers reported for work, and 6 or 8 rural carriers. He testified there are 25 city routes and 12 rural routes. He testified further that he told the carriers who reported that he appreciated their coming in. He also testified that in his opinion it was a bad decision to send the carriers out, but it was not a matter within his authority. About 6:00 a.m., he had received a call from Postmaster O'Hara who had instructed him to call Charleston. He had done so and had been told to send the carriers out. Morgan did not know how well the carriers who reported for work performed on that day. He just knew they tried to make their deliveries. One city carrier delivered 100 percent of his route.

The parties stipulated that employee Horton Smith lives one-half mile from the post office, that he attempted to drive to work, was unable to, and walked to work. Employee Jim Nichols drove to work in a four wheel drive vehicle which he borrowed. Leon Yarborough lives 16 miles from the post office. He drove to work in a Toyota four wheel drive. Bobby Richards called and said he could not get to work and was told not to worry about it. He did not report. Supervisor Coleman did not report to work.

Roy Huggins is employed at the post office in Hartsville, South Carolina. Hartsville is about 20 miles from Florence and is

under the administration of the same sectional center as is Florence, namely, Charleston, South Carolina. He testified that he has a four wheel drive truck and was able to report to work on January 8. He said that only one other employee had reported to work, and that he had walked to work, and that a supervisor with a four wheel drive vehicle also reported. He testified that when he came in he was told by the acting supervisor that the Postmaster had informed her that the employees were to case their routes and go home. Huggins worked two hours and went home.

Either at the time he received his instructions, or the next day, Huggins learned from management that he had been charged annual leave for the time left on his tour of duty which he had not worked. In his discussions with management, he was told that the Hartsville office was doing what it had been told by the Charleston office. Huggins filed a grievance on the ground that he had done as he had been told and that the charge for annual leave was made without his permission. The grievance was resolved in his favor and Huggins was granted administrative leave for January 8. He testified that all the employees who were scheduled to work and who did not report were also granted administrative leave if they had attempted to get to work.

Watford testified that he reported to work at about 9:00 a.m. on January 8. His normal reporting time is 8:00 a.m. He testified further that he had heard about other postal facilities sending employees home early and he spoke to Postmaster O'Hara

about granting administrative leave to employees of the Florence facility, and that O'Hara said no. O'Hara did tell him to check with Charleston and Charleston said no.

Watford testified that some employees were granted administrative leave on January 7 because of concern about the road conditions for employees leaving work at night. He testified that it is the responsibility of the Postal Service to grant administrative leave to regular full time employees who are sent home from work by management before the completion of their tour of duty. Watford testified that there is no procedure to arbitrarily assign annual leave to an employee, but that the employees who did not report to work on January 8 were charged annual leave, despite the absence of a request, to assure that they received 40 hours pay with the understanding that they could reverse that in the case of any employee who did not agree. In such event, the employee would be charged leave without pay.

Robert O'Hara is Postmaster of the Florence post office and he has the authority to grant administrative leave to employees of that facility. He testified that he came to work very early on January 8, and that he traveled the streets to get an idea of the road conditions. He testified that he denied administrative leave to the employees who did not report to work on January 8 because they did not meet the criteria under ELRM 519.211. He admitted that he had not checked other businesses, and that he had heard some businesses were closed. He had not heard that nurses and

doctors were being transported to hospitals. He did not know of any industry being closed. O'Hara testified conditions were better on January 8 than on January 7. He admitted the storm was a rare one for South Carolina. He testified that the post office closed at 3:30 p.m. on January 7 so that employees could get home and employees were granted administrative leave for time lost. On January 8, no office employees reported for work and O'Hara testified he ran the telephones himself.

CONCLUSIONS

The basic question presented by the foregoing is whether or not the storm of January 7 constituted an Act of God within the meaning of ELR&M Section 519.211. The question is not only whether there was a storm, but also whether it created a situation general in scope and impact which prevented groups of employees from reporting for work.

The answer to the question is not a simple one. In support of its position that it properly denied the Grievant's request for administrative leave, the Postal Service relies on the assertion that on January 8, 50 percent of the carriers reported for work, as well as all supervisors but one. On the basis of this assertion, it concludes that the situation of the Grievant was personal in scope and impact, rather than general as specified in Section 519.211.

It is clear from the language of Section 519.211, and the Arbitrator concludes, that the situation giving rise to an employee's failure to report for work must be general in scope and impact. If it is not, the particular circumstances that prevented a particular employee from reporting to work are immaterial. If it is not, the place of residence of the Grievant, and the difficulties he faced in getting to work, must be viewed as matters "personal in scope and impact."

The difficulty with this case is that it does not appear that the Postal Service ever weighed all the facts to determine whether the storm had created a situation of general applicability. Rather, it appears to have weighed only one fact; that is, the percentage of employees who did report to work.^{1/} If one accepts the Postal Service's figures that 50 percent of the employees reported for work, the fact remains that 50 percent did not. That 50 percent clearly constituted a group of employees

^{1/} It is not entirely clear what percentage of employees reported for work on January 8. According to supervisor Morgan, there are 25 city routes, and 13 city carriers reported for work. There are 12 rural routes and 6 to 8 carriers reported. These figures support the Postal Service's assertion that 50 percent of the employees reported. However, the record indicates that there are 5 city routes and one auxiliary route out of Southport Station, but there is no indication of the attendance figures there. In closing argument, the Union adverted to floaters and 5 or 6 PFT employees and argued for a work force of a minimum of 40 employees. An advocate's statement cannot be considered as evidence, and it is not clear if the Union, in using a figure of 40, is referring only to city carriers or is including rural carriers. In any event, the precise percentage of employees who did or did not report for work is not dispositive of the case.

as required by Section 519.211. The Postal Service does not appear to have addressed the question of administrative leave from this perspective at all. In addition, the record indicates that little or no consideration was given by the Postal Service to the criteria contained in Article XXX, Item 3, of the local memorandum of understanding entered into by the parties pursuant to Article 30 of the National Agreement. The Postmaster testified that he traveled the streets of Florence to determine conditions, but he appears to have done little else. Admittedly, he did not check other businesses, although he had heard some businesses were closed. Nor had he heard that nurses and doctors had been transported to the hospital. Yet, the Florence Morning News of January 9 reported "Schools, businesses and government offices were closed for a second day," and it reported that the City Manager said the city "... had suspended all services after the storm hit Thursday and continued Friday to operate only the necessary emergency personnel. The county also suspended normal operations Thursday and Friday." In confirmation of the Grievant's testimony, the newspaper reported "The final numbers hadn't been tallied Friday, but volunteers in four-wheel drive vehicles and sheriff's deputies provided transportation to more than 200 medical personnel. The volunteers included Sheriff William Barnes and Clerk of Court George Terry." In addition, the newspaper for January 8 contained the report that "All roads were officially declared impassable by the South Carolina Highway Patrol."

It is also noted that, although the Postmaster at the Florence post office had the authority to authorize administrative leave, it appears from supervisor Morgan's testimony, and from the testimony with regard to step two of the grievance, that the decision to deny administrative leave was in fact made by Charleston, the sectional center for the Florence post office. There is no showing, however, why the decision made was different from that involving the Hartsville post office which is only twenty miles away.

The Arbitrator finds that the conditions described by the newspapers depicted a situation general in scope and impact. Yet, as stated earlier, the fact that 50 percent of the carriers reported for work on January 8 was deemed by the Postal Service as sufficient reason for denying the Grievant's request for administrative leave. On the basis of this analysis, it would follow, as the Grievant stated, that the step two grievance meeting was a mere formality.

In the view of the Arbitrator, the percentage of employees reporting for work is only one factor to be considered in determining whether the criteria of Section 519.211 have been met. It is evident that just as there are personal situations which prevent some employees from reporting for work, there are personal situations which facilitate other employees getting to work. For example, employee Horton Smith lives one-half mile from the post office and was unable to drive to work. Nevertheless, he reported

because he was able to walk to work. Employees Jim Nichols and Leon Yarborough drove to work in four wheel drive vehicles. But for these personal advantages, these employees might not have been able to report for work on January 8. Using percentages alone distorts the picture.

In the judgment of the Arbitrator, the totality of the circumstances must be considered, such as the severity of the storm as described by the witnesses and the newspapers, the fact that storms of this severity are infrequent for this area (this was the worst storm in 15 years), the fact that roads were deemed impassable, that it was necessary to provide transportation to medical personnel, the fact that businesses and schools were closed, and the number of employees affected by the described conditions. Considering all these circumstances, the Arbitrator concludes that the storm of January 7 created a situation of general scope and impact which prevented a group of employees from reporting to work, and that the failure of the Grievant to report to work on January 8 was attributable to an Act of God within the meaning of Section 519.211, and the Postal Service abused its discretion in denying his request for administrative leave.

In reaching his conclusion, the Arbitrator has considered Arbitrator Walt's decision cited by the Postal Service and finds it distinguishable in three respects. First, the decision relied heavily on the fact that severe storms were not infrequent in the area. In the instant case, a storm of the severity of that of

January 7 had not been experienced for 15 years. Second, in that case all rural routes were delivered, whereas in this case, the Postal Service did not know how well the carriers had performed, only that they had tried to make deliveries. Only one city carrier had completed his route. Third, although the Union had asserted in that case that 50 percent of the employees had been unable to report to work, administrative leave had been sought for only 7 of 37 employees scheduled to work. Although only the Grievant's case is before me, the record indicates that administrative leave was sought for 18 employees, a number larger than all the city carriers who reported.

In light of the conclusion that the Grievant was improperly denied administrative leave, the contention that he was illegally charged with annual leave need not be decided. That issue becomes moot since the remedy required by the Arbitrator will void the charge to annual leave and grant administrative leave.

The argument of the Postal Service that it would be unfair to the employees who reported to work to grant administrative leave to the Grievant is rejected. The Grievant's right to administrative leave is predicated on the National Agreement and all provisions that implement it, and it cannot be denied for such a consideration.

AWARD

The grievance is sustained. The Postal Service shall void the annual leave charged to the Grievant for January 8, 1988, and grant administrative leave.

Dated: July 25, 1988

Bernard Cushman, Arbitrator