C#6482

ARBITRATION DECISION - AWARD
September 10, 1986
C4N-4C-C-14230

United States Postal Service Minneapolis, Minnesota	and	National Association of Letter Carriers, Branch 9

ARBITRATOR: Daniel G. Jacobowski, Esq.

DISPUTE: D. Winer claim for broken eyeglasses, denied on claimed negligence.

JURISDICTION

HEARING: Conducted August 20, 1986, in Minneapolis, on this contract grievance dispute, pursuant to the provisions and stipulations of the parties under their national agreement.

APPEARANCES: USPS: Labor Relations Representative, Thomas P. Gergen.
NALC: Regional Administrative Assistant, Stephen Hult.

ISSUE

QUESTION: Did management properly deny the grievant's claim for broken eyeglasses, on the grounds that she was negligent?

CASE SYNOPSIS: On a windy December 16th, when the grievant was opening the screen door to place the mail on the porch, the wind slammed the door against her breaking her glasses. Her claim for the replacement loss was denied by management, on the grounds that she failed to utilize proper care and procedure in opening the door.

CONTRACT PROVISION APPLICABLE:

ARTICLE 27 - EMPLOYEE CLAIMS

"Subject to a $10 minimum, 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 except for motor vehicles and the contents thereof taking into consideration depreciation where the loss or damage was suffered in connection with or incident to the employee's employment while on duty or while on postal premises. The possession of the property must have been reasonable, or proper under the circumstances and the damage loss must not have been caused in whole or in part by the negligent or wrongful act of the employee. . ."

BACKGROUND - FACTS

This is the first of the two cases heard at this hearing. This accident occurred on December 16, 1985, which is part of the normal heavy Christmas delivery season. The day was cold and windy. The grievant was on residential deliveries. As she approached this house, she had the mail for this stop in her right hand, with some mail for the next following stops in her left hand. At this particular stop, the mail opening slot to the left of the door, was too small for the amount of mail, so she decided to put it inside the porch. In the process of opening the screen door, the wind caught the door, slamming it against her, and breaking her eyeglasses. Somewhat dazed, she went to a neighbor for assistance and then called supervision, who then came out to help.

The grievant claimed that the screen door had no vacuum cylinder attachment, but only an upper chain. The supervisor noted that there were no similar wind accidents reported that day, and that he has only experienced or heard of one such type of wind accident over the course of his years.

The following aftermath events occurred. In his written December 18, 1985, report of the accident, her supervisor noted that she had eight accidents in the past three years, that she did not have a firm grip on the door when it was caught by a wind gust, and that for corrective action, he gave her proper instructions. The proper instructions were to grasp the doorhandle firmly with the left hand, to keep the left knee forward to restrict the movement of the door, and to hold the head upright and away from the door until it is secure.

Over the union's objection, management brought forth that it had issued a December 23, 1985, warning letter to her for failure to exercise care in this matter, which ultimately was later reduced to a job discussion, as part of the grievance settlement in January, 1986. The union makes point that the settlement did not constitute an admission of negligence by the grievant.

The grievant first made immediate repair attempts with epoxy but it didn't hold, and she then went to Group Health to have the glasses repaired. A complete replacement of the glasses was required, with a repair estimate of $71.00 given her on December 24, 1985. She filed her claim for this repair on December 26, 1985.

In his December 27, response to her claim, although her supervisor noted some contributory negligence on her part, by her failure to use proper care in opening the door, he recommended a partial payment of 50% of her claim as a fair settlement. However, the post office ultimately denied the claim based upon its charge of her negligence and failure to exercise proper care.

The grievant has been with the postal service since 1982, and a carrier since 1983. At the hearing, her supervisor described the proper care or procedure in opening a porch door, by blocking it with a firm grip and the left knee, as a precaution against wind, dogs or animals, and little children. He described how such instructions are or should be included in the standard training sessions. He includes such specifics in the sessions he has conducted. However, he was unable to confirm whether or not the grievant had received any such specific instructions before, though he would have liked to assume that she did.

ARGUMENT

UNION: In summary, the union argues that the grievant suffered her injury in the ordinary course of work, that she was not negligent and did not contribute to the injury, and that managment's denial of her claim is in violation of the contract. It supplied supportive decisions of other cases.

EMPLOYER: The employer contends that it properly denied her claim based on the evidence that she failed to use proper care and procedure in opening the door. Article 27 precludes a claim where the damage loss was caused in whole or in part by the employee's negligence or wrong. Other case decisions were also cited.

DISCUSSION

After weighing the evidence and merit on both sides of this question, I have decided in favor of the grievant, for the following reasons. First, I feel that management's claim of her negligence is more a matter of their speculation and assumption, rather than a proven fact or conclusive logical deduction. Second, the evidence is insufficient to establish that her actions and manner of opening the door were a negligent or wrongful act. She was engaged in an ordinary work function. It is possible that if she had utilized a firmer grip and better body block on the door, that the accident might have been prevented but even this is a speculation. Even this is insufficient to establish that her position and grip was not ordinary and customary under the circumstance. Third, even if the grievant did not use the prescribed procedure in opening the door, which itself is somewhat an assumption, there is no proof nor assurance that such exact procedure would have prevented the accident. There is no way of measuring the particular velocity or suddenness of the gust that occurred, or the irregularity of the gustiness conditions at the time. Even if the exact bodily procedure were used, the accident still might have happened. For example, a sudden or unusually heavy wind gust could have caused her body to be thrown off balance or to involuntarily bend forward to stiffen the resistance. Fourth, the supervisor only assumed she had been instructed in the prescribed procedure, and could not verify nor confirm that this had been specifically given her in the past. Fifth, her supervisor's initial recommendation of paying her 50% of her claim as a fair settlement, is itself an implicit acknowledgment that she was not engaged in a negligent or wrongful act per se. Sixth, the possibility that she might have exercised better care and that it might have prevented the accident, is not sufficient to establish that she was negligent or committed a wrong act. The establishment of negligence or a wrongful act requires a more positive showing than the employer has brought forth in this case.

Although deciding in favor of the grievant in this case, I do recognize that there was some valid basis for the employer's concern and scrutiny on the claim. These include her prior string of accidents, her forewarning that it was a windy day, expected ordinary common sense in opening a door under windy conditions, the procedure instructions to prevent such an occurrence, and the fact that this is a rare type of accident, with none such other reported that day. Although these were valid factors of concern by the employer, at best they only raised the question and speculation over whether she was negligent and whether greater care and prescribed procedure would have prevented the accident. It is insufficient to establish a more required positive showing that she was negligent or engaged in a wrongful act as a contributory cause of the damage loss resulting from the accident.

DECISION - AWARD

DECISION: There is no inherent showing nor established proof by the employer, of any negligence or wrongful act by the grievant in the breaking of her glasses. Accordingly, the grievance for her claim is sustained.

AWARD: The employer shall reimburse grievant Winer the $71.00 for her claim of the replacement loss for her glasses.

Dated: September 10, 1986

Submitted By:

Daniel G. Jacobowski, Esq.
Arbitrator

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IN RE

United States Postal Service
Minneapolis, Minnesota

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D. Winer

and

National Association of Letter Carriers,
AFL-CIO, Branch 9

DISPUTE:

Claim for broken eyeglasses, denied on claimed negligence.

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