

C# 02145

REGULAR ARBITRATION PANEL

In the Matter of Arbitration

Between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION,
AFL-CIO

)
)
) Grievant: Ruby Harris
)
) Post Office: Brooklyn GPO
)
) Case No.: NLC-1A-C 15157
)
)
)
)
)
)

Before Nicholas H. Zumas , Arbitrator

Appearances:

For U. S. Postal Service: George Long

For Union: A. Caniano

Date of Hearing: October 27, 1983

Place of Hearing: New York Regional Headquarters

Date Briefs Filed: N/A

By Service:

By Union:

Award: Grievance denied. The Service did not violate Article 27 when it refused to reimburse Grievant for the damage to her ring.

Date of Award: February 17, 1984

FEB 23 1984

In the Matter of Arbitration
Between
UNITED STATES POSTAL SERVICE
and
AMERICAN POSTAL WORKERS
UNION, AFL-CIO

OPINION AND AWARD

Nicholas H. Zumas, Arbitrator

Grievant: Ruby Harris
No. N1C-1A-C 15157

Background

This is an arbitration proceeding pursuant to the provisions of Article 15 of the Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union".) Hearing was held in New York City on October 27, 1983, at which time sworn testimony was taken, exhibits offered and made part of the record, and oral argument was heard.

Appearances

For the Service: George Long

For the Union: A. Caniano

Statement of the Case

This grievance arises as a result of the refusal by the Service to compensate Grievant for damage to an engagement ring while Grievant was working.

The parties, having failed to resolve the dispute during the various Steps of the grievance procedure, referred the matter to the undersigned Arbitrator for resolution.

Issue

The parties have stipulated that the question to be resolved is whether Article 27 of the National Agreement was violated when the Service denied Grievant reimbursement for damage to personal property.

Statement of Facts

Grievant filed a claim in the sum of \$185. on November 15, 1982 claiming reimbursement for damage to an engagement ring while she was working at the Brooklyn GPO on November 5, 1982. The claim was made under the provisions of Article 27 of the National Agreement, which provides in part:

"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...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 or loss must not have been caused in whole or in part by the negligent or wrongful act of the employee. Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions."

On January 25, 1983, the Service denied the claim stating, in pertinent part:

"Your claim has been reviewed and the same is denied for the following reasons:

1. Employee Negligence. The wearing of expensive jewelry on the work floor is not a job requirement; rather, the wearing of such jewelry is matter of personal preference and is indulged in at the employee's own risk.
2. Safety Violation: The wearing of jewelry such as necklaces, rings, etc. while working on moving machinery is contrary to safety rules and procedures.
3. Substantiation Lacking: Claimant states that she did not realize it (the ring) was broken until a few hours later, leaving open to conjecture whether the damage actually occurred during working hours or at some other time and place."

Grievant, an employee with the Service since December 1980, was employed at the Brooklyn GPO since 1981. She testified that on November 15, 1982 while working on an LSM machine in the back cleaning out bins, she banged her hand

against a bin. She later realized that her engagement ring, part of a wedding set, had been broken. She had had it for approximately ten years. After she realized that her ring had been damaged, she immediately informed her supervisor. Grievant did not get the ring repaired, but submitted an estimate from a jeweler indicating that it would cost \$185 to repair.

Mr. Jack Falchuck, Grievant's Supervisor at the Brooklyn GPO, testified that he was informed by Grievant that she had a claim to make because she had damaged her ring on the side of a bin as she was cleaning out the LSM. After Grievant returned the claim form to him, Falchuck testified that he filled in the portion to be completed by the Supervisor and checked the "no negligence" box and recommended payment. Falchuck testified that both of these were errors on his part, because he did not realize at the time that the damage was really Grievant's fault, and also that it was a violation of the safety regulations to wear jewelry.

Falchuck testified that Grievant and other employees were advised not to wear jewelry during safety talks, and also testified that there was a notice sent to employees' homes regarding the wearing of jewelry while at work. The notice that Falchuck referred to was a memorandum dated October 12, 1982 regarding Proper Attire. The pertinent portion of that memorandum reads:

"Maybe that ring you wear is beautiful and maybe the reason you wear it means a lot to you. Maybe that wristwatch, bracelet, or watch chain is something you cherish, but don't wear them while you are working on or near machinery. If a machine snags a ring, it will probably take your finger off with the ring. If it snags a bracelet, wristwatch or watch chain, it could cause a serious injury. These may sound like far-fetched possibilities, but they are not. They have happened in Post Offices."

Grievant testified that she was aware of the possibility that damage could be done to her ring, but that she "didn't even think about it." Prior to this time, Grievant testified that she was only told not to wear hanging jewelry but did not recall ever being told not to wear rings.

Findings and Conclusions

Applying the criteria set forth in Article 27 of the Agreement against the factual situation in this dispute, the Arbitrator is compelled to conclude that the grievance must be denied.

It is clear that the "loss or damage was suffered in connection with or incident to the employee's employment while on duty or while on postal premises." While it may be argued that the wearing of rings might constitute a safety hazard while working around machines, it is also clear nonetheless that traditionally married or engaged employees have worn wedding and engagement rings performing duty in the work place. It cannot be said that the wearing of wedding ring or engagement ring was unreasonable or improper under the circumstances. The Service would obviously come under great criticism if it were to mandate that all employees were forbidden to wear commonly accepted symbols or their marital or romantic status.

The critical question then becomes: was this loss or damage caused "in whole or in part by the negligent or wrongful act of the employee?" Negligence is generally described as the failure to exercise that standard of care that a reasonable and prudent person would have exercised under the circumstances. The burden of proof, of course, is on the Grievant to prove that she exercised reasonable care, and that the loss was not due, in whole or in part, to her negligence.

Assuming that the Grievant did not intentionally bang her ring against the side of the bin with such force so as to cause extensive damage, it is incumbent upon Grievant to show that such damage would have been caused in any event even if she exercised reasonable care. Grievant has failed to show this, and this Arbitrator can only conclude that the damage was caused either in whole, or in part, by her negligence.

Under these circumstances, the grievance is without merit.

AWARD

Grievance denied. The Service did not violate Article 27 when it refused to reimburse Grievant for the damage to her ring.

Date: February 17, 1984

Nicholas H. Zumas
Nicholas H. Zumas, Arbitrator