

C#O 1588

VOLUNTARY LABOR ARBITRATION

Employee claim
Romain E. Higgins
Cleveland, OH

IN THE MATTER OF ARBITRATION BETWEEN:

UNITED STATES POSTAL SERVICE,)
CLEVELAND, OHIO,) Grievance of
and)
NATIONAL ASSOCIATION OF LETTER) ROMAIN HIGGINS
CARRIERS,) (Claim for reimbursement for
BRANCH 40) broken eyeglasses)
Cleveland, Ohio)
Case No. 8-CLE EC 39) OPINION AND WARD

IMPARTIAL ARBITRATOR
ELLIOTT H. GOLDSTEIN

The hearing in this case was held on Wednesday, February 18, 1981 at the Brook Park Station, Cleveland, Ohio Post Office, 14770 Snow Road, Brook Park Ohio, 44142, before the undersigned arbitrator, appointed by the parties pursuant to the rules of the United States Postal Service Regular Regional Level Arbitration procedures. At the hearing, all parties were afforded a full opportunity to present such evidence and argument as desired, including an examination and cross-examination of witnesses. No formal transcript of the hearing was made and the parties each waived post-hearing briefs. The Union's presentation was made by Robert P. Harrigan, Executive Vice President NALC, Branch 40. The employer's presentation was made by Rodney A. Stone, Labor Relations Executive.

The witnesses presented were:

NALC

William Huff, Steward

Romain Higgins, Grievant

POSTAL SERVICE:

None

I. THE FACTS

On September 10, 1979, Romain E. (Danny) Higgins a regular letter carrier with 30 years service in the Postal Service, the last fifteen of which were spent assigned to the Brook Park Station, broke his eyeglasses. This event occurred at approximately 7:30 a.m. when the second dispatch of mail was being distributed for sorting. The circumstances surrounding the event are undisputed and extremely simple. Grievant Higgins was in the center aisle preparing to remove a tray of letter mail from a mobile tray cart referred to as a pie cart. As Higgins was bending down to remove the mail, he bumped a cloth hamper situated nearby with his forehead, which caused his glasses to fall to the floor. This in turn shattered the lenses and caused a crack in the eyeglass frame. Higgins testified at the hearing that he was unsure whether he bumped into the hamper by accident, or whether he was bumped or shoved by another employee working in this congested area at this particular time. There were numerous employees who witnessed this incident, including manager of the Brook Park facility at the time, Edward S. Slaminka. Since Slaminka is now retired, he was unavailable to give testimony at the hearing.

At any rate, the grievant contacted the steward, William

Huff within a day or two. Huff had not been working on September 10, when grievant's glasses were broken. Huff and the grievant then asked manager Slaminka for a Postal Service form 2146, Employee's Claim for Personal Property, so they could fill out the property damage claim and recover cost for replacement of the glasses. Slaminka, according to both grievant and Huff, did not have such a form available at the Brook Park Postal facility. The Postal Service stipulated at hearing that there were in fact no copies of form 2146 present at the time the request was made of Slaminka and that the form 2146 still was not present and on hand on the day of this hearing, approximately one and one-half years after the incident.

The evidence is clear that when Slaminka was asked for a form 2146 by grievant and Huff so as to allow them to process the above-described claim, Slaminka indicated that he would obtain the form within a few days. The Union presented no evidence that Slaminka told either grievant or Union Steward Huff that he would waive the fourteen day time limit duly instituted under the current contract (Article XXVII) for filing claims of this type. Neither did Slaminka inform the Union that he would accept claims submitted in a form other than the approved form 2146. He did indicate he would obtain the forms, but did not follow through on this promise. A few days later, (Never precisely defined at hearing by either Union witness) when the claim form was not forthcoming, Steward Huff again requested that the claim forms be given him. A few days later, now apparently at a time beyond the fourteen day claim period

provided for by Article XXVII of the National Agreement, the Union Steward again inquired of Mr. Slaminka whether he had obtained the forms that the Union perceived were required. At this time, when Slaminka responded in the negative, Steward Huff told Slaminka that he should "not worry about it," and that Huff would get the forms himself. Huff then called Union Vice President Harrigan, and asked for the forms. Harrigan obtained these forms from his own employer manager at the postal facility where he worked and mailed them to Huff. Upon receipt, Huff and Higgins filled out the forms and filed the claim. The completed form was filed on October 11, 1979, over a month after the date of the incident. On October 16, Manager Slaminka completed his portion of the form and apparently forwarded it to the responsible claims official in downtown Cleveland along with an estimate for the replacement cost of Higgins' glasses in the amount of \$74.91. See Joint Exhibit 2. On November 23, 1979, management denied the claim based on the lack of timeliness of its filing. (Joint Exhibit 3). This decision to deny the claim based on timeliness is that which has been appealed to arbitration.

The Union contends that Higgins is entitled to reimbursement in the amount of \$74.91. It maintains that grievant was not negligent, that the eyeglasses were in fact totally destroyed, and that they should be replaced, and that grievant's possession of the property at the time in question was clearly reasonable and proper under all the circumstances, as required by Article XXVII. Therefore, there is no doubt that the grievant is entitled

to the amount claimed on the merits.

With reference to the procedural arbitrability issue, the Union contends that claims such as this are not common occurrences in the Postal Service and therefore complete familiarity with the time filing requirements and forms to be utilized is not the responsibility of the Union. Instead, the Union asserts that it is management's responsibility to provide the proper forms for filing. Since the manager involved herein, Mr. Slaminka, failed to provide the proper forms, and continued to promise that he would do so, there was a waiver of the contract requirement of fourteen (14) days for filing a claim. Any other decision would reward management for not having the required forms readily accessible to employees at the local postal facility and would place the onus in this particular case on the innocent employee who relied on management (and specifically the clear promises of Slaminka) clearly to his detriment. Therefore, this grievance should be sustained in its entirety as the claim should have been granted over a year and one-half ago.

The Postal Service contends that the contractual requirement (that an employee must file a claim under Article XXVII, within fourteen (14) days of the loss or the damage) has not been waived in any way by management here, and that therefore Article XXVII controls and this grievance is not subject to arbitration. This position is precisely the one management has maintained throughout the proceedings herein, and caused the claim to be denied on November 23, 1979 by the responsible management official. After all,

the employer argues, Article XXVII required the claim to be filed within fourteen (14) days of loss or damage, and yet all parties concede that the damage occurred on September 10, and the date of the original claim was not until October 11. This on its face reveals the timeliness defect and the basis for denial. Moreover, the waiver issue raised by the Union has not been maintained in its proof, the employer asserts, since manager Slaminka did not promise to waive the time requirement but merely indicated that he would obtain the form 2146 for grievant. After a few days, Huff, the Union steward involved herein, indicated to management that he could obtain these forms through the Union and had no need for management's help. In addition, the contract clause involved herein does not require a specific form or a particular manner of filing a claim. Therefore, the involved employee could have established his claim in writing by any method, including a hand-written note with an estimate for replacement costs and the date and purchase price of the damaged eyeglasses themselves. There is no form number nor other specifics for establishing the claim, merely the requirement that it be done in the fourteen (14) day time period. This particular requirement in Article XXVII is new language appearing in the National Agreement for the first time in the current contract so that both parties should have been aware of the highlighted time requirements and responded thereto. It is therefore clearly the Union's own inactions and the lack of reading and care by the Union steward involved herein that caused the problem with

delayed filing. Under these facts and circumstances, there is absolutely no waiver by the employer, and this grievance is not arbitrable based upon the clear procedural defects. No evidence presented by the Union at the hearing shows in any convincing way that the employer in fact caused the Union to sleep on grievant's rights.

With reference to the merits, it is clear that grievant herein has not in fact filed a claim which is susceptible of reimbursement. First, the grievant clearly was negligent in his actions, even as described by himself on the day in question, and at least in part caused damage to himself and his property. He fell or was bumped while bending over in an enclosed space between a mail tray and a hamper. It would have been easy for the grievant to move either the hamper or to have tried to perform his work task in a less congested area. Therefore, on the merits, there is absolutely no liability on the Service's part.

Last, the demand for compensation or reimbursement is based on replacement costs of eyeglasses (not even the eyeglasses broken, but a prior estimate before any damage occurred). No purchase date or length of wear, nor any depreciation, was taken into account in the Union's filed claim. This violates the requirements of Article XXVII which mandates that depreciation be taken into account in claims of this type.

Based on all the foregoing, the employer asserts that this grievance should be denied in its entirety, and the original denial of the Postal Service based on the lack of timeliness, be affirmed.

II. STATEMENT OF ISSUES

1. Is this grievance timely under Article XXVII of the National Agreement?
2. Is grievant entitled to reimbursement in the amount of \$74.91, under Article XXVII, based on the facts set forth at the hearing.

III. PERTINENT CONTRACTUAL CLAUSES

ARTICLE XXVII, 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 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.

Claims should be documented, if possible, and submitted with recommendations by the Union steward to the Employer at the local level. The Employer will submit the claim, with the Employer's and the steward's recommendation, within 15 days, to the regional office for determination. The claim will be adjudicated within thirty (30) days after receipt at the regional office. An adverse determination on the claim may be appealed pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure.

ARTICLE XV, GRIEVANCE-ARBITRATION PROCEDURE

Step 3, (c)

The Employer's written Step 3 decision on the grievance shall be provided to the Union's Step 3 representative within fifteen (15) days after the parties have met in Step 3, unless the parties agree to extend the fifteen (15) day period. Such decision shall state the reasons for the decision in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Step 2. Such decision also shall state whether the Employer's Step 3 representative believes that no interpretive issue under the National Agreement or some supplement thereto which may be of general application is involved in this case.

IV. OPINION

After careful consideration of the documentary evidence and testimony presented at hearing, I find as follows: With reference to the threshold arbitrability issue, I agree with the employer that grievant's claim, Joint Exhibit 2 herein, was obviously not timely filed. 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 does not comply. The only issue then, is whether management, by and through its agent Slaminka, caused grievant and the Union to sleep on their rights, or by management's actions caused a waiver of the applicable time limit. Manager Slaminka has since this incident retired from the Service and is now apparently resident in Florida. His version of the event, therefore, is not capable of being presented to this arbitrator. However, the documentary evidence and statements by Union wit-

nesses reveal a rather typical scenario of a small postal facility enjoying good management-employee labor relations. Grievant Higgins is a thirty year employee with no record of prior claims or of prior discipline. The Union asserts that, under these facts, it would be grossly unfair not to allow the employee involved and the Union to rely on management's assurances that it would obtain proper forms so that the claim could be filed. Management, which created the form, should be responsible for having them available on the premises. While there is some appeal to this argument, I note that the Union did not assert that manager Slaminka promised to waive the time limits involved, under the applicable contract section. Both the Union and the employer representative are capable of reading the contract and being aware of the pertinent time limits. Obviously, from what actually occurred in this case, the Union representative was able to obtain the form 2146 on his own. Also, as management asserts, a letter or other writing not on the form 2146 would have satisfied the contract requirements and protected grievant herein. I know that Postal Service emphasizes and utilizes many forms, and has a firm and almost wooden mentality concerning using proper forms, with proper numbers and content. However, 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.

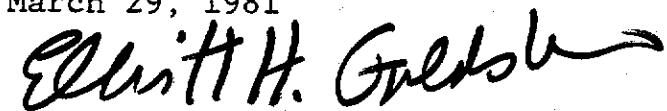
Although not necessary to my decision, I also note that the grievant's glasses were clearly used in the performance of his duties. Therefore, his possession was reasonable and proper under the circumstances on September 10, 1979. The loss described above was clearly suffered in connection with or incident to grievant Higgins employment while he was on duty. However, the facts above also show that the grievant and Union have failed to prove due care on grievant's part and therefore, on the merits, the loss was, in my opinion, caused at least in part by a negligent act of this employee. In other words, I believe that an employee that is exercising due care should not have broken his glasses by bumping into or jostling into the corner of a hamper. Bending over in such tight quarters was a lack of judgment sufficient to block the claim on the merits.

Other issues raised are irrelevant based on the above analysis and will not be further developed by me here.

V. AWARD

Grievant Higgins is not entitled to remibursement for the reasons stated above, attached hereto and made a part hereof as if fully rewritten. The grievance is hereby denied in its entirety.

March 29, 1981



ELLIOTT H. GOLDSTEIN
ARBITRATOR

Chicago, Illinois