

C-24587

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE
"EMPLOYER"

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO
"UNION"

) Grievant: L. Cormier

) Post Office: Savannah, GA

) USPS Case No.:

) H98N-4H-C 01239863

) NALC Case No.:

) ES3801 [GTS #55022]

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SEP 15 2003

BEFORE: JAY D. GOLDSTEIN, Arbitrator

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

APPEARANCES:

For the U.S.P.S.:

JULIE SMITH,
Labor Relations Specialist

For the N.A.L.C.:

DON C. GRIGGS,
Union Advocate

Place of Hearing:

Savannah, GA

Date of Hearing:

August 1, 2003

Date of Award:

August 28, 2003

Relevant Contract Provision:

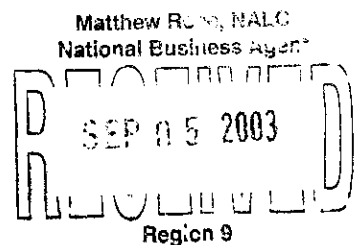
Article 27, 19, 15

Contract Year:

2001-2006

Type of Grievance:

Contract; Employee Claim



Award Summary:

The Postal Service violated Article 27 both procedurally and substantively. Undisputed evidence of repeated failure and/or refusal to furnish Grievant a Form 2146 prohibited her timely filing of a personal property loss claim. This was a *prima facie* contract violation; denying her access to the process and potential relief for a loss.

Although Management subsequently claimed that negligence of the Grievant contributed to her loss, it had initially denied the claim for another reason; neither explained nor consistent. There was no evidence of negligence or unreasonable behavior by the Grievant.

Accordingly, Grievant shall be paid the entire amount of her claim [\$736.00]; plus statutory interest from the date presented to the U.S.P.S., to date of payment.



Jay D. Goldstein, Arbitrator

INTRODUCTION

On or around May 27, 2001, Letter Carrier Linda Cormier [hereinafter the "Grievant"] had her purse stolen out of her LLV while on a walk-and-loop delivery route. The vehicle was locked and entered by a shattering of the right side door-window glass. Apparently no other property was stolen. Management initially denied the claim [for, "...no proof of items taken"], and thereafter, at Step 2 changed it's position, concluding at that point Grievant was negligent; allegedly having left the purse in plain view on the tray in the front of the vehicle. It failed and refused to furnish Grievant or her Union with an Employee claim form and denied the claim she ultimately filed without the form.

The parties stipulated no claim form had been given to the Grievant at any time during this process. Also, that time limits had been extended by mutual consent.

A grievance was filed on or about "8-27-01" [Joint Exhibit #2, Pg. 6]. Processed through Step 3 of the Collective Bargaining Agreement [herein "Agreement" or C.B.A."] It was appealed to arbitration. Neither party raised procedural issues in that regard.

A hearing was held August 1, 2003 at the main postal facility, Savannah, GA. Both sides were ably represented and acknowledged the stated issue was properly before the undersigned neutral Arbitrator. Each side had full opportunity to present sworn oral testimony and exhibits and afforded broad opportunity to cross-examine. The Grievant was present at the Hearing and testified.

The parties elected to close on oral argument, followed by the submission of two cited prior Awards, on August 1, 2003, whereupon the record closed.

ISSUE

Whether the USPS properly applied the contractual principals of Articles 27 in either the failure to process or, denial of Grievant's claim for stolen property. If so, what shall be the remedy?

FACTS AND BACKGROUND

The Introduction above contains all the pertinent facts necessary to understand the nature of an incident on 05-27-01 while Grievant's LLV was parked at the corner of McCormick and Anderson Streets. Grievant was away from the vehicle delivering mail on a park-and-loop route when the break in of the vehicle occurred.

A significant period of time (nearly 3 months) elapsed between the incident and filing of a grievance. Testimony and argument established that immediately after the incident Grievant repeatedly requested an Employee Claim Form (P.S. 2146) for Personal Property; which was repeatedly ignored, refused, and/or not granted.

There is no evidence of what Management did in regard to pursuing the matter, until after grievance processing occurred. Customer Service Representative Julius Williams testified to his denial of the grievance on "8-4-01" [Joint Exhibit #2; Pg. 7]; indicating that his, "Reason Given" was; "NO PROOF OF ITEMS TAKEN". When asked during testimony, he acknowledged this was the only reason provided to the Union at the time.

In a subsequent reply document, [Step Two Appeal decision, dated September 21, 2001; Joint Exhibit 2, Page 5] Management did not contest the lack of proof. This time it based the claim denial on an alleged,

"...initial investigation (which) reveals... Grievant did not lock...purse in the rear of the LLV as she had been instructed - it was in plain view so her negligence did contribute..."

A separate procedural issue arose at the Hearing. Management claimed the Union had raised a new argument at the Hearing which the positions of the parties will address [as to whether, and to what extent each side believes the claim that the stolen purse was in the back of the LLV].

SUMMARY OF POSITIONS

It is the **Union's Position** that Grievant had a valid claim for her stolen property; was repeatedly refused the forms necessary to file such a claim and when she filed a claim without the form, was refused.

Also, contends the Union, it was Management's failure to provide the forms, which resulted in the delay; ironically argues the Union, creating an argument for Management that the matter should somehow be time barred. It was also Management's negligence, argues the Union; for failing to insure Grievant received instructions about placement of her purse.

Further and in answer to the procedural argument about having raised a new matter, the Union contends Management did receive it's answer at Step 2 that **the Union disagreed** with Management's view of Grievant's negligence. Thus, argues the Union, this is not new argument, there being neither direct testimony nor independent proof of Grievant's negligence.

The Union argues that Management's negligence was clear in the delay and, failure to have given Grievant its own form; so Grievant created her own and supported her losses with a police report. The Union contends the Award should be to make Grievant whole for all her losses suffered.

It is the **Employer's Position** that this is a case where Grievant's losses were caused by her own negligence, despite her own testimony to the contrary. Further, argues the Employer, Mr. Williams gave a standup talk to the effect of this being a high crime area and Management's Step 2 denial spoke of the purse having been in plain view.

Next argues the Employer, the Union's "additions and corrections" section does not address the very first sentence of Management's denial; which is contrary to Article 15.2.G. Thus, argues Employer, the Union's new allegation of the purse having been in

the back of the LVV was not stated that way, previously.

Management finds it hard to believe Grievant's purse was in the back and that nothing else, including her mail tray, was disturbed. Further, Employer contends it is not believable that all doors were still locked suggesting that the thief climbed in through the window; thus Management feels the grievance should be denied.

FINDINGS AND OPINION

I have carefully reviewed all of the evidence presented, including all documents and my notes of the testimony given; taking into account the positions taken and arguments advanced by both parties. The relevant portions of the National Agreement between the parties dated 2001-2006 are reproduced in pertinent part, as follows:

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 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 at the local level. The Employer will submit the claim, with the Employer's and the steward's recommendation, within 15 days, to the Step B Team for determination. An **impasse** on the claim may be appealed to **arbitration** pursuant to **Article 15, Step B (d) of this Agreement**.

A decision letter **impassing a claim** in whole or in part will include notification of the Union's right to appeal the decision to arbitration under Article 15.

The **Step B Team** will provide the **National Business Agent** a copy of the **impasse** referenced above, the claim form, and all documentation submitted in connection with the claim.

The **Step B Team** will also provide a copy of the **Impasse** to the steward whose recommendation is part of the claim form.

The entire Step Two Appeal document referenced in the Facts above is re-printed hereunder for reasons discussed below:

DATE: September 21, 2001
REF: Step Two Appeal
SUB: Grievance Appeal #ES-38-01 (H98N-4H-C-01239863)

This refers to grievance appeal ES-38-01, filed by on behalf of Linda Cornier in which you allege a violation of Article 15, 19 and 27 of the National Agreement.

We met to discuss this grievance on 9/4/01. Time limits were extended by mutual consent.

ISSUE: Reimbursement for Stolen Items.

MANAGEMENT: Initial investigation reveals that the grievant did not lock her purse in the rear of the LLV as she has been instructed – it was in plain view, so her negligence did contribute to her loss. Furthermore, Article 27 states in part that "an employee may file a claim within 14 days of the date of loss or damage to his/her personal property except for motor vehicles and the contents thereof . . ." The grievant's purse and its contents are not covered under these provisions. And, finally, the list submitted by the grievant for expenses totaling \$736.00, contains no documentation that these items were contained within the LLV or that their replacement amounts to that figure.

No evidence has been introduced to support the Union's claim. I can find no violation of the National Agreement. Therefore, it is my decision to deny this grievance.

/s
Therese Powers Willis
Step II Designee

[Joint Exhibit 2; Page 5]

There were two primary considerations here. First, there can be no dispute that the contractual requirements of Article 27 were largely ignored. Second, even when considered [after the fact] at all; there was no proper basis for denial of the Grievant's claim. Based upon the totality of the evidence, the premise for sustaining the grievance has more to do with patent fairness and less about the fact of a pure contractual violation.

RATIONALE FOR DENIAL OF CLAIM

Although procedural issues were presented both, early on in the process and another alleged at the Hearing; each of those were overshadowed by an overwhelming deficiency in the substantive evidence. Management's ultimate conclusion for denying this personal property loss claim was Grievant's alleged negligence, as a contributing factor for the loss. Yet, the evidence substantiated several major concerns about that theory.

First was an obvious and apparently awkward delay in the required filing, processing and claim handling. The loss occurred May 27, 2001. The evidence is clear that management failed and/or refused to furnish the Grievant with it's own claim form. [P.S. 2146]; despite apparently repeated requests to her supervisor. No explanation, reasonable or otherwise, was provided for this lapse of management's obligation.

Since the claim wasn't filed the processing and denial of same could not follow the prescribed format of Article 27. A grievance was ultimately filed [Joint Exhibit 2; Page 6, dated "8-21-01"); which partially overlooked the fact of management's very clear contract violation, in favor of grieving management's refusal to pay the loss.

Management's initial explanation or rationale for denial was given, on "8-4-01" at the Step 1 Meeting (confirmed/acknowledged; Joint Exhibit 2; Page 7) as, "No Proof of Items Taken". Despite that response, I find the evidence to be contrary. Also, under the circumstances of management failing to provide Grievant a Form 2146; I find the Union did comply with the essence of Article 27 by apparently providing [Union Contentions: "An itemized list of Cormier's loss is attached"] an appropriate response to the employer's first rationale for denial of the claim, as above stated.

CREDIBILITY

A more significant concern involves the overall credibility of the employer's case.

This becomes obvious later in the grievance process. At Step Two (cited above under Facts; with emphasis added) Management's posture changed abruptly from that of a curable lack of "proof" contention to another, and fresh argument. Contributory negligence as a theory here was totally without foundation, either expressed or implied.

My problem with this aspect of the case is that Management utterly failed to explain then or, later at the hearing, its foundation for the newly alleged theory. Instead, it relied upon casting aspersions of disbelief surrounding the incident and expecting the Arbitrator to do so as well.

Perhaps if its denial had been timely rendered after giving the Grievant a proper form to file a claim; and remained consistent from the approximate time frame of the incident – there might have existed some basis for concluding that management's process was credible. I found none of the above to exist here.

This was exacerbated by management's failing to address, even at the hearing; the rather obvious issues presented by the documents. Its opening was deferred until the Union's case was finished and yet, even then failed to address its own evidentiary deficiencies. It relied instead on pointing up such disingenuous concerns as the, "crime filled" neighborhood in which Grievant delivered mail and postulating, but never proving how it came to be that Grievant must have known about the correct manner of securing her purse. Unfortunately, there was no evidence offered that she specifically was either present at a stand-up talk or spoken to individually about this procedure. Not only was the testimony by Supervisor Williams concerning these alleged directions highly vague and inconsistent, as further discussed below, Grievant's contradictory testimony was clear, concise and credible. Her version of where her purse was placed (under parcels in the rear of the LLV) was testified to in a believable fashion.

As discussed further below, management apparently relied on statements of Mr. Williams and other unsubstantiated theories to reach its conclusion that she must have been negligent. I remain totally unpersuaded of any argument thus presented, in defense of denying the Grievant's loss-claim.

Particularly troubling was the testimony of Customer Service Representative Williams. His answers to many of the questions posed to him were vague, evasive and inconsistent. When asked how Management concluded Grievant was negligent, Williams replied, "from the Police Report and talking to the Grievant. At that time I asked her where the purse was and she replied, 'down between the seat and where the tray was filled with mail and broken glass.'" Yet, and also clearly stated by Mr. Williams' in the documentation above from the Step 1 Meeting, his sole reason given for denial of the claim there had nothing to do with Grievant's contributory negligence [i.e. the purse left-in-plain-view-theory].

He repeated that same testimony; adamantly insisting that Grievant said her purse was in the front, not the rear compartment. Unfortunately, it was never explained to me why he failed to note anywhere, at any time in the process, these alleged admissions by Grievant and thus his conclusions, apparently reached sometime after the Step 1 Meeting.

Also significant in the same regard was the testimony of the Step Two Designee Therese Willis. Ms. Willis candidly admitted that all of the information contained in her Step Two decision came from Mr. Williams and, that she did not question nor, "know what proof he had", of the purse being, "left in plain view". The significance of this entire line of testimony is that if Grievant had admitted to leaving the purse in plain view it surely should have been mentioned at Step 1 or; at the very least attributed to a statement by Grievant at Step 2. Neither occurred and again, leaves this arbitrator without evidence of the employer's contentions for it's actions.

This cast further suspicion regarding Mr. Williams' vague testimony when asked if Grievant had requested the PS 146 Claim form ["I can't recollect that particular form..."]. Also, whether it was incumbent upon him to give her the form ["Yes, if requested"]; and then, to acknowledge in the affirmative that she had at some point asked for the form; but, stating "No", when asked if he gave her the proper form.

When asked, on cross, if he knew for a fact that she was present at, "stand-up

talks" about securing personal property, Mr. Williams did not answer that question. Based on the lack of credibility in his testimony and a clearly, "pro-forma", response at Step 2, there is little if any basis to demonstrate Management's rationale for denying this loss claim.

There is no basis upon which to conclude that Grievant was negligent or had contributed in any significant way to her loss. I was not made aware of any secure locker facility provided by the employer at this location and hence the significant amount of cash she carried (\$140) that day was appropriate under the circumstances. Her testimony of expecting to entertain an out-of-town guest for the evening was both plausible and very credibly explained.

The other items on her list of losses claimed also seemed plausible. Since there was no evidence that a timely investigation into these amounts was even attempted; there was no basis at the juncture of a hearing to question them beyond a cursory review which only the arbitrator attempted.

Taking all of the aforementioned into consideration; I conclude Management must pay the loss claim of the Grievant. Based upon both the three month delay-and-refusal to provide a claim form and denial of the claim without sufficient basis to do so; a clear message is necessary to dissuade the employer at this facility from taking similar actions in the future. Therefore, Grievant shall also be paid statutory interest on her claim, from date of incident to date of payment:

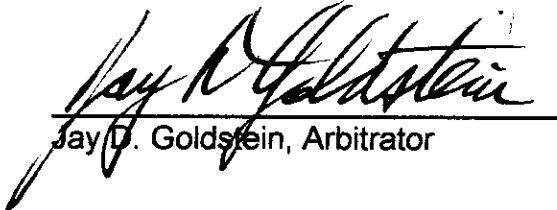
My Award follows.

AWARD

The Postal Service violated Article 27 both procedurally and substantively. Undisputed evidence of repeated failure to furnish Grievant a Form 2146 prohibited her timely filing of a personal property loss claim. This was a *prima facie* contract violation; denying her access to the process and potential relief for a loss.

Although Management subsequently claimed that negligence of the Grievant contributed to her loss, it had initially denied the claim for another reason; neither explained nor consistent. There was no evidence of negligence or unreasonable behavior by the Grievant.

Accordingly, Grievant shall be paid the entire amount of her claim [\$736.00]; plus statutory interest from the date presented to the U.S.P.S., to date of payment.


Jay D. Goldstein, Arbitrator

DATED: August 28, 2003
Jenkintown, Pennsylvania