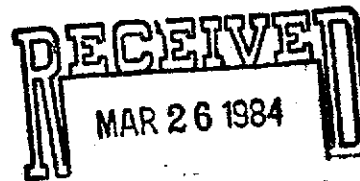


C# 04205



PAUL C. DAVIS
NATIONAL BUSINESS AGENT

In the Matter of Arbitration *

Between *

UNITED STATES POSTAL SERVICE *

And *

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO *

Class Action Grievance
Grievance No. W1N-5F-C-11340
W1N-5F-C-11341
W1N-5F-C-11342
Englewood, CO
Hearing: January 11, 1984
Arbitrator: George E. Bowles
Case No. W575-21

APPEARANCES

EMPLOYER

Don R. Freebairn, Employee & Labor Relations Executive
Mario A. Gonzalez, Labor Relations Assistant
Janelle D. Beaver, Superintendent, Support Services
O. Dan Sidebottom, Manager, Customer Services

UNION

L. A. Sant, Regional Administrative Assistant
Timothy J. Arntz, President, Br. 5996 NALC

Issue

1. Did the Postal Service violate Article 19 of the National Agreement when it refused to grant administrative leave for December 24 and December 27, 1982?
2. Did the Postal Service violate Article 19 of the National Agreement by charging the employees AWOL, on the dates of December 24 and December 27, 1982, when the employees declined to request annual leave or LWOP?

Essential Facts

On December 24, 1982, the Denver area had the worst snowstorm ever recorded by the U.S. Weather Bureau. The Employer concedes that the storm was of sufficient periodic intensity to cause some disruption of transportation patterns and delivery service for the U.S. Postal Service in the state of Colorado. The Denver Post ran an edition which included a Souvenir Section entitled, "Super Storm 1982" and subtitled "The Days Denver Stood Still". Detailed was a daily log broken down by hours as to how the storm entered the city, reached its peak, and affected the city.

On the morning of December 27, 1982, some letter carriers were unable to report to work and those that did found no mail to case and deliver. There was no mail delivery attempted at any postal installation in Denver or surrounding communities on December 27, 1982. Postal vehicles were prohibited from traveling, even on major streets, between postal units. Employees at all postal installations in the Denver MSC except Englewood

were granted administrative leave for December 24, 1982. Administrative leave was approved by MSC Manager/Postmaster Gary L. Packer in a bulletin dated January 4, 1983, and later approved for December 25, 1982 and December 26, 1982 - involving only the Clerk Craft since no carriers were scheduled on these days.

On December 27, 1982, the weather and road conditions had improved, if only slightly. Bus service was restricted to only three major streets. There were five victims of the storm. Mail delivery was tried at only one installation in the Denver MSC. Mail couldn't be dispatched to outlying units, and postal service delivery vehicles were not allowed on the streets. About 30% of the work force did not report to work. The Union contends that carriers who were able to report found no mail to work and spent some time shoveling snow. Carriers were instructed that if they wanted to leave they could but only on annual leave or leave without pay.

The Employer considers the magnitude of the storm as being measured only "in the eyes of the beholder". The newspaper reports are considered sensational exaggerations. It is said that the intensity and degree of the storm can best be measured and evaluated on the overall testimony of Employer witnesses who testified and gave evidence as to particular snow conditions encountered by them, as well as specific information as to individuals reporting for duty as scheduled. The conditions were different in various parts of the state as well as in different parts of the area immediately surrounding the area of delivery

responsibility of the Englewood Post Office. It is reasoned that the intensity of the snow storm has particular significance only to the degree that it impacts upon individuals who are seeking an opportunity to report for work as scheduled, and that the decisive consideration is whether the inability of the Grievants to report for work was of such a magnitude as to constitute an "Act of God".

The Employer concedes that of the several employees who did not report for work, at least some of them were in such a condition that no reasonably prudent man would have been able to report for work. The Employer claims "that because of the intensity of the storm, they did not think they should have to report for work". Several Union witnesses, it is argued, made an effort to report for work, and after only getting part way and experiencing difficulties went home.

Before the Arbitrator the parties stipulated that were all of the witnesses to be called as initially indicated by the Union their testimony would have been essentially the same as to their effort and diligence.

It is pointed out that the Union's testimony went to only those employees represented by the National Association of Letter Carriers and did not take into consideration all of the other employees assigned to the Englewood Post Office; it is reasoned that to be an "Act of God" the impact of the storm must have a broad impact upon all employees, supervisory and Craft alike, assigned to a given office and/or area.

The Employer proofs, it is said, showed the employees who were scheduled to report for work on each of the days involved in the case and the numbers of employees who actually did report. Some employees did not report for work during the snow storms in question. The Employer representatives were aware that some employees could not have made it to work because of the residential areas in which they were living. Some employees were close to the mountains where the impact of the snow storm was felt much more severely. By and large, the great majority of employees reported to work as scheduled.

On Friday, December 24, 1982, virtually all of the employees scheduled to work on that date, without regard to the tour of duty to which scheduled or the branch or station to which assigned, did report. Only eight percent of the total work force scheduled for duty on Friday, December 24, 1982, failed to report. These were considered to constitute a group, it is reasoned, the number is not significant.

As to Monday, December 27, 1982, the Employer identified seven employees who could not report for work because of storm conditions, or 4.7 percent of the scheduled work force. The employees who were on sick leave were entitled to remain on sick leave and were not to be charged under the Employee & Labor Relations Manual requirements. Though some employees did not report December 24th, several of those reporting requested annual leave for the entire day. No employee was directed to take the annual leave, and all employees were advised that work was available if they desired to remain on duty. The absences of December 27,

1982, were slightly higher overall than those on December 24, 1982, but did not constitute a disaster situation, entitling employees to administrative leave.

Richard Martinez testified he could not come to work on Friday, December 24, 1982, one of only two carriers at the A.E. branch who didn't report. He did report on December 27, 1982, and worked six hours, conceding that he could have stayed had he wanted to do so. The majority of employees worked December 27, 1982.

Doris Achenbach, employed at the A.E. branch, did not report December 24, 1982. She testified she tried to get to work on that date but was unable to do it. She was approximately half way to the office at the time that she experienced difficulty, and went home. She was not scheduled December 27, 1982, and didn't try to get to work.

Ken Sitler reported for work on December 24 and 27. He was offered work to perform on each of the days.

Tim Valdez, employed at the main office, reported for work as scheduled on December 24 and took annual leave the last thirty minutes of his tour; he could have stayed, he testified, the thirty minutes, but felt he would like to go home because of the severity of the snow storm. He was not scheduled for December 27.

James Cain did not report for duty on either December 24 or 27. He lived about 30 miles southwest of the Downtown Station in the foothills. His area of residence received about twice as

much snow as the Denver or Englewood areas. He couldn't leave his residence.

Larry E. Watkins, A.E. Branch, was non-scheduled for December 24. He reported Monday, December 27, and after being there 15 minutes went home "without getting on the clock". He said that there was no work available.

Mike Gardunio, A.E. Branch, was non-scheduled for December 24, 1982, and did report as scheduled on December 27, working about five and a half hours, afterwards he was allowed to go home on annual leave on his request. He could have stayed had he wanted to do so.

Manager Beaver as well as Sidebottom, for the Employer, testified that they were able to report for work as scheduled and that most employees reported. Beaver reported not only on December 24 but also December 26 and 27. Supervisor Sidebottom testified that significant business and community affairs continued, including law enforcement, fire department services and the like.

Citations

Article 19 - Handbooks and Manuals - In part "Those parts of all handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or 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."

Section 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.

Section 591.211 - Acts of God - 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.

Section 519.213 - Determining the Cause of Absence.

Postmasters and other appropriate postal officials determine whether absences from duty allegedly due to "Acts of God" were, in fact, due to such cause or whether the employee or employees in question could, with reasonable diligence, have reported to duty.

Section 519.214 - Early Dismissal Due to Acts of God.

When employees are dismissed from duty before the normal completion of their tour of duty due to an "Act of God", the following applies:

- a. Full-Time Employees are entitled to credit for hours worked plus enough administrative leave to complete their tour of duty. This combination of work and leave is not to exceed 8 hours in any 1 day.
- b. Part-Time Regular Employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled hours of duty. This combination of work and leave is not to exceed 8 hours in any 1 day.
- c. Part-Time Flexible Employees:
 - (1) In installations having 200 or more man years, and the part-time flexible employee works less than 4 hours, the part-time flexible employee is entitled to credit for hours worked plus enough administrative leave to produce 4 hours of creditable time.
 - (2) In installations having less than 200 man years and the part-time flexible employee works less than 2 hours, the part-time flexible employee is entitled to credit for time worked plus enough administrative leave to produce 2 hours of creditable time.

Section 519.215 - Employees Prevented From Reporting.

Employees scheduled to report who are prevented from reporting or who after reporting are prevented from working by an "Act of God" may be excused as follows:

- a. Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty not to exceed 8 hours.
- b. Part-time flexible employees receive administrative leave for 2 or 4 hours, as provided in 519.214c.

Discussion

Much has been written in the decided cases arising out of the applicable contract and Manual provisions. Often cited is the judicial pronouncement in *Northwestern Mutual Insurance Co. v. Peterson*, 572 Pacific, 2nd, 1023, defining "Act of God" as a "natural occurrence of an extraordinary and unprecedented impact with magnitude and destructiveness that could not have been anticipated or provided against by the exercise of ordinary foresight". *Corrington v. Kalicak*, 392 Southwest 2nd, 888, contains the language, "It is an event in nature so extraordinary that the history of climatic variations in the locality afford no reasonable warnings of their coming". It is elementary that every big or unusual snow storm or rain storm does not constitute an "Act of God" within the language of the decided court cases.

It would seem obvious that it is not unusual for snow to fall within the greater Denver-Englewood area. Even one who has traveled to and from Denver over a period time, to say nothing of residents themselves, know that snow can be expected, and seldom disappoints. Certainly a snow storm might be so totally unprecedented and cause such wide disruption of service that it would constitute an "Act of God".

While it is not uncommon in arbitration proceedings for either or both parties to rely, in part, upon newspaper reports, ordinary human experience inclines to the view that such reports must be taken with the proverbial grain of salt. Newspapers, and good newspapers, are interested in selling the most copies, and accordingly, dramatic exaggeration is common and expected. One could hardly fashion his conduct or plans upon what newspapers say has happened or is likely to happen. Most certainly, in a deliberative proceeding, such as an arbitration, I as Arbitrator must be conscious of the necessity of weighing the evidence, both as to its weight and persuasiveness. A case cannot be made out by numbers or dramatized incidents. Every destructive snow does not result from an "Act of God".

As Arbitrator, I must be mindful of what has been decided by other arbitrators, although not binding, as entitled to respectful consideration and assessment. Perhaps, as a central consideration, I must look to the clear and specific language that the parties themselves have provided in defining "Act of God", and limiting the force and effectiveness of the "Act of God" concept so far as the allowance of administrative leave.

Administrative leave was paid to employees on December 24, 1982, in Denver and surrounding areas except for Englewood. Postal installations located north, south, east and west of Englewood were granted administrative leave; in fact, higher level management did issue instructions, as the Union points out, to improve administrative leave for December 24, 1982.

As to the Employer testimony, the Union points out that Beaver and Sidebottom made a management decision that the conditions were too severe to allow delivery vehicles in the street, but also testified that productive work was available to different stations. This work was work on case labels, change of address cards, and sorting income tax forms. Case labels are supposed to be current at all times, the Union says, and Postal regulations require the posting of change of address cards on a daily basis. There was no testimony that the income tax forms were actually available.

On December 27, 1982, a much larger portion of the work force failed to get to work, and all mail delivery was curtailed except for the main office in Englewood. The Englewood Postmaster had intended to curtail mail delivery but word reached her after she had ordered the carriers to attempt delivery; only one employee was successful in completing his route. He was a rural route carrier. So far as the available work, letter carriers were used to shovel snow on the morning of December 27, 1982; there was no mail to work.

The Union attacks the Employer exhibit, saying that the figures are inaccurate since they include Tour I and Tour II Clerks already at work when the storm began December 24, and that the December 27 figures are incomplete or inaccurate. In brief, the Union says that the figures show that 51 out of a possible 148 employees, or slightly more than 33%, failed to reach work on that date.

Ruling

The Arbitrator has examined carefully all the Opinions cited by the parties:

American Postal Workers Union and U.S. Postal Service,
Case No. C8C-4M-C-27999 (9/9/81) (Attachment A)

American Postal Workers Union and U.S. Postal Service,
Case No. C8C-4B-C-35436 (9/7/82) (Attachment B)

American Postal Workers Union and U.S. Postal Service,
Case No. E8C-2B-C-231 (4/14/82) (Attachment C)

American Postal Worker's Union and U.S. Postal Service,
Case No. E8C-2D-C-630 (9/30/82) (Attachment D)

American Postal Worker's Union and U.S. Postal Service,
(5/31/83) (Attachment E)

USPS and NALC (Grievant Kenneth Allen) (7/6/81)

USPS and NALC (Grievant Paul E. Reynolds, Class Action)
(8/2/82)

USPS and APWU (Grievant - Class Action) (1/18/80)

Certainly, the Postal Service employees take more risk as to weather than do employees generally. They are expected to get to work. Their function is so vital to personal needs and commercial intercourse that an extra effort must be made; hence, the fundamental rationale that an "Act of God" relates to disaster conditions.

There were no declarations of emergency by any public authority or pronouncement of disaster. Security functions, police and fire, were not interrupted. There were driving difficulties and highway closings, but the proofs did not show that these had not occurred in the past, or in similar frequency. Nor were there any proofs before the Arbitrator that employees

involved in this proceeding were prohibited from travelling the streets and highways. Nor were Postal operations suspended. In fact, those who testified for the Union, almost without exception, in recounting the events of the day testified that they were able to get to work or at least to make their way or a portion of the route to work, but decided to go home rather than to complete travel to their assignment.

Impressive are the factual findings of Arbitrator G. Allan Dash, Jr., in Case No. E8C-2D-D 630. Indeed, that Opinion is a model for factual findings based upon a full and complete record provided by the parties. Arbitrator Dash specifically noted that while a given date, February 20, was not a completely normal day, a large part of city life was resumed, and the earlier paralysis on February 19 no longer existed. He noted resumption of public services, federal, local and suburban government offices, police and fire department personnel, and the like; hence, he concluded that a community disaster did not exist that date, that is February 20, he upheld the denial of administrative leave for that day.

There then is the question of numbers or percentages. In another Denver case, Arbitrator William E. Rentfro in Snowstorm Cases of November 19-21, 1979, cited an earlier Opinion of Arbitrator Gerald Cohen (5Col. 3173/AC-C-23950, July 26, 1982) in which he observed:

"No percentage figures are set out in the handbooks to show how large the group must be. The number, of course, must be substantial enough to constitute a group. In many instances as many as 50% of the employees failed to report for work. That is a large enough number to be a group."

As applied to the Denver case, Arbitrator Rentfro did note that most employees made an extra effort, and with reasonable diligence, most employees were able to get to work.

The Employee & Labor Relations Manual, Section 519.21 Acts of God and 519.211 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."

Drawing inferences most favorable to the Union evidence and Union theory, approximately 8% of the total work force scheduled for duty on Friday, December 24, 1982, failed to report, and as to December 27th Union's estimate is that 33% of the work force failed to report.

What must be borne in mind is that not only is the question posed of whether or not the snow on December 24 and December 27 constituted a disaster, a wholly unanticipated and unprecedented event, but also whether the specific requirements of Section 591.211 Acts of God - General have been satisfied.

"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."

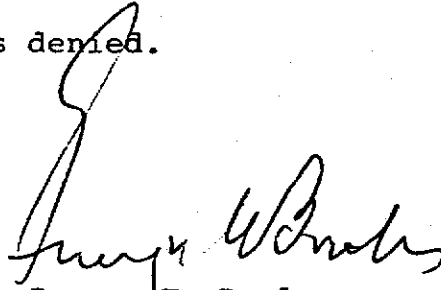
As Arbitrator Elliott H. Goldstein observed in No. CRN-4K-C 4476, "Both Arbitrators Cohen and Dobranski have developed this reasoning in a most articulate manner and further extensive explication would be redundant. Simply put, the requirement is not that all employees be unable to report to work but that the groups of employees who were in fact unable to do so be general, substantial and that each employee has used reasonable diligence to get to work." As a rule-of-thumb, it has been held that 50% of the employees in the group must be unable to come to work

because of disaster conditions. The rationale of the 50% rule is that if a half or more of the employees in the group, exercising reasonable diligence, are unable to get to work it is persuasive evidence that the conditions were most abnormal. If less than 50% of the employees in the group are unable to get work, the inference may be drawn that with the exercise of reasonable diligence employees could get to work.

Section 519.213 - Determining the Cause of Absense speaks of Postmasters and other appropriate Postal Officials; it is clear under this language that the Postmaster, specifically Gary L. Packer, MSC Manager/Postmaster correctly stated in his bulletin of January 4, 1983, "Postmasters and other installation heads have authority to approve administrative leave up to 1 day." Hence, at the local level, the installation heads at Englewood had authority to determine whether the operations of the Postal Service would be attempted, and whether, even though deliveries were not to be made, whether there was work available to those who did report. It is not persuasive to the Arbitrator that administrative leaves should be granted because employees reporting did not engage in deliveries. Once having reported to work, employees were subject to such assignment of work as supervision considered feasible.

I believe that the conclusion is inescapable that the Union did not establish that the subject group here involved, those employees represented by the Union at the Englewood Post Office, constituting the group under Section 591.211, were prevented from working or reporting to work. The numbers themselves are most persuasive; there is not even a claim that over half of the em-

ployees were unable to report for work. The affected group of employees, those represented by the Union at the Englewood Post Office, were not prevented from reporting to work or from working. Accordingly, the grievance is denied.

A handwritten signature in dark ink, appearing to read "George E. Bowles", is written over the typed name.

George E. Bowles
Arbitrator

March 23, 1984

AWARD

Issue

1. Did the Postal Service violate Article 19 of the National Agreement when it refused to grant administrative leave for December 24 and December 27, 1982?

Answer

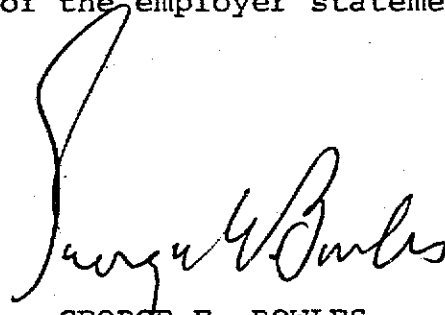
No.

Issue

2. Did the Postal Service violate Article 19 of the National Agreement by charging the employees AWOL, on the dates of December 24 and December 27, 1982, when the employees declined to request annual leave or LWOP?

Answer

The Employer having indicated that the AWOL's given employees would be withdrawn, this matter is referred to the parties for implementation of the employer statement that such AWOL's would be revoked.



GEORGE E. BOWLES
ARBITRATOR

March 23, 1984