

C#03814

PL

In the Matter of Expedited Arbitration Between the:

United States Postal Service

and the

National Association of Letter Carriers, AFL-CIO

Grievant: Patricia Carr, Case No. N1N-1J-C 5872,

Stafford Springs, CT, Contract Violation,

Article 27

Before: Harry Grossman, Arbitrator

Appearances: For the Employer, George May, MSC Director E&LR,
USPS, Hartford, CT 06101.

For the Union, Edward Halloran, Local Business
Agent, NALC, New Haven, CT.

OPINION AND AWARD

The above matter came on for hearing before the undersigned Arbitrator at Hartford, Connecticut, on December 2, 1982, on the following issue framed by the parties: Did the Employer violate Article 27 of the National Agreement in effect between July 1978, and July 20, 1981, and its successor Agreement when it denied the grievant's claim for payment for lost personal property, a pair of eyeglasses?

That Article in both Agreements makes an adverse determination by the Postal Service Regional Office on a claim for reimbursement for such loss subject to the grievance-arbitration

procedures of Article 15.

Article 27 in both agreements set forth the following conditions for receiving reimbursement:

1. The claim is filed within 14 days of the date of loss.
2. The loss was suffered "in connection with or incident to (Postal) employment while on duty or while on postal premises."
3. Possession of the property must have been reasonable, or proper under the circumstances.
4. Loss must not have been caused in whole or in part by the negligence or wrongful act of the employee.

The Employer's Northeast Region issued an adverse determination on the claim by letter of May 13, 1982, assigning as the reasons for denial that: 1) The claim was untimely; 2) Employee Negligence; 3) It was not incident to employment; 4) No proof of purchase.

Upon careful and thorough examination of all the evidence before me, I find the following facts and reach the following conclusions.

First, Article 27 is silent on any requirement for submission of proof of purchase, and therefore failure of the grievant to submit evidence showing purchase date and price was not a proper basis for rejection. Her bill for replacement was sufficient to show ownership.

Second, the loss was suffered incidental to the grievant's employment as a Carrier, according to the evidence which was undisputed. The eyeglasses were left in a purse in a Postal vehicle used by the grievant while delivering her route, from which the purse was apparently removed unlawfully, i.e., stolen. The Regional Office erred in its view that incident to employment means that the property is for use by the employee to do his/her job. That phrase, 'incident to employment,' means occurring in the course of employment. It refers to when and where the loss took place as it relates to one's job.

Third, there was no showing of negligence on the part of the grievant causing the loss. A reasonably prudent female Carrier would not be expected to carry her purse along with her mail satchel every time she leaves her vehicle to make her deliveries. The grievant took the ordinary precautions expected under the circumstances, having a vehicle with a malfunctioning door lock, which she shut.

The critical question was one of untimeliness. On this, the local management officials must share the responsibility for delay, since they knew of her loss and failed to give the grievant proper information in response to her timely inquiry as to procedures for submitting her claim. Under these circumstances and since delay was not prejudicial to the Employer, it ought not militate against the grievant's recovery.

Finally, as Management's advocate pointed out, the grievant is not entitled to the full cost of replacing the loss, since

Article 27 calls for "taking into consideration depreciation" and the grievant acknowledged that she had had these eyeglasses for a period of years.

In sum, I conclude that the rejection of the grievant's claim by the Employer was not warranted and constituted a violation of Article 27 of the National Agreement.

AWARD

The grievance is sustained. The Employer shall reimburse the grievant for the loss in the sum of \$59.00, representing 50% of the cost of replacing the eyeglasses, taking into consideration depreciation or value received from use of the property prior to the loss.

DATE: DEC 8 1982

Harry Grossman
Harry Grossman
Arbitrator