

C# 05432

ARBITRATION AWARD

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In the matter of arbitration between:

National Association of  
Letter Carriers, AFL-CIO  
Branch #533

and

United States Postal Service  
Kokomo, Indiana

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Case No. C1N-4G-C-28637

Class Action Grievance

Administrative Leave - Act of God

Appearances:

For the Union:

David L. Klein, President NALC Branch #3  
Mark Stevens, Letter Carrier  
Jerry Nelson, Letter Carrier  
Timothy Coate, Letter Carrier  
David L. Sears, Letter Carrier  
Douglas A. Lord, Letter Carrier  
David Melton, Letter Carrier and IE  
Facilitator

For the Postal Service:

Ralph E. Harrison, MSC-Director - Support  
Robert E. Becker, Director of Customer  
Service  
Bob Small, Supervisor

Date of Grievance:

February 28, 1984

Date of Arbitration Hearing:

September 4, 1985

Arbitration Hearing Site:

U.S. Postal Service Facility  
2719 South Webster Avenue  
Kokomo, Indiana

Post Hearing Briefs:

None Filed (Additional case citations  
received from Employer on September  
16, 1985).

I. Issue:

Pursuant to the collective bargaining agreement (Jt. Ex. #1) currently in effect between the United States Postal Service (hereinafter "Postal Service" or "Employer") and the National Association of Letter Carriers, AFL-CIO (hereinafter "Union"), a hearing in the above cited matter was held before John J. Mikrut, Jr., Arbitrator. The parties were accorded full and fair opportunity to present evidence and testimony in support of their respective positions. Upon the conclusion of the hearing the parties indicated that they would not file post hearing briefs in the matter. The parties attest that the case is properly before the Arbitrator and that the specific issue which is to be resolved herein is properly stated as follows:

Did the Postal Service violate the applicable terms of the collective bargaining agreement by refusing to grant administrative leave to em-

ployees in the Kokomo, Indiana Post Office for the circumstances which occurred in the Kokomo area on February 28, 1984? If so, what is the proper remedy?

II. Pertinent Collective Bargaining Provisions:

Article 10 -- Leave (Incorporating Sub-Chapter 519 -- Administrative Leave, of the Employee and Labor Relations Manual, Joint Exhibit #3);

Article 15 -- Grievance and Arbitration Procedure;

Article 19 -- Handbooks and Manuals;

Article 30 -- Local Implementation (Incorporating Section 3 of the Local Memorandum of Understanding of 1978, Joint Exhibit #5).

III. Background:

Beginning on Monday, February 27, 1984, Kokomo, Indiana and all of surrounding Howard County and central Indiana was engulfed in a severe snowstorm. The area received over a foot of snow and wind speeds exceeded 50 mph. Snow drifts of eight feet were reported. Almost all area businesses and industrial plants were closed. Schools and universities cancelled classes. The Wednesday, February 29, 1984 edition of the Kokomo Tribune reported that the storm "... was a late winter super snowstorm ..." that "managed to suspend practically everything in the city and county ..." (Employer Ex. #1 and Union Ex. #6)

Due to the extreme nature of the storm, city and county officials declared a snow emergency which lasted until 1 PM on February 28 in Kokomo and until the morning of February 29 in Howard county. According to records, a snow emergency had been declared on only one other occasion in the area in the past ten years, that being in February of 1978.

The snow emergency status of February 28-29 included restrictions on travel; and roads and streets were closed to all routine travel. Motorists who were not on emergency business were reportedly subject to misdemeanor charges and fines of up to \$250. The parties in this case dispute whether the respective City and County governments had the authority to enforce their travel restrictions. Notification of such restrictions, however, and possible penalties for violation thereof, were communicated to the public through the media.

Forty-eight letter carriers were scheduled to work at the Kokomo Post Office on Tuesday, February 28. Twenty-three of these letter carriers failed to report to work on that day. Fifteen of those who failed to report lived outside of the Kokomo city limits. Of the twenty-five letter carriers who

reported for work on said date, three were tardy between 9 and 45 minutes assumedly because of snow-related difficulties (Employee Ex. #2).

Mail service in the Kokomo area was severely curtailed on February 28. Because of the road conditions, incoming mail was not able to be delivered to the Post Office; and, as a result, the only mail which was available for delivery to postal patrons was the local mail which was on-hand from the previous day. The parties are in agreement that only special delivery and express mail was actually delivered to patrons on that day. There is a dispute, however, as to whether any postal vehicles left the facility's parking lot on February 28. There is, nonetheless, general agreement among the parties that the day's general volume of mail on hand in the Post Office was only approximately 15% of normal.

At approximately 10 AM on said date, because of the low volume of mail and general lack of work, the twenty-five letter carriers who did ~~report~~ for work were given the option of either leaving early or remaining on ~~the job~~ for the remainder of the shift. The carriers were told that they ~~would have~~ to use annual leave or absence without pay (LWOP) if they exercised ~~this~~ option. Twenty-two of the twenty-five carriers in attendance chose to leave ~~work~~ early, and they completed the required forms to record their absences (Union Ex. #1). Of those carriers who left early, the vast majority opted to use ~~annual~~ leave to cover their absence (Employer Ex. #2). There is a dispute as to ~~whether~~ there was any work to be performed if all twenty-five carriers had ~~chosen~~ to remain on their jobs for the entire day. The Postal Service acknowledges that it did not order any of the remaining carriers onto the street to ~~carry~~ their respective routes or to substitute on routes other than their ~~own~~ regularly scheduled routes, because it would have been inefficient to ~~do so~~. Additionally, the Service further acknowledges that the carriers who ~~remained~~ at work performed on the sorting and casing of mail which was on-hand in the Post Office at the time.

On March 9, 1984, a class action grievance was filed in protest of the Employer's action as a violation of Section 519.211 through 519.215 of the Employee and Labor Relations Manual since the weather conditions of February 28, 1984 "... were bad enough that an 'Act of God' should have been called." Said grievance further specified that the carriers who were affected should have been paid under the administrative leave provisions of the collective bargaining agreement rather than having been forced to cover their ~~absences~~ with annual leave or leave without pay. The Employer, for reasons ~~which~~ will

be developed more fully hereinafter, denied the grievance throughout all of the steps of the parties' negotiated grievance procedure. The matter was subsequently appealed to arbitration and is now properly before this Arbitrator for resolution.

IV. Positions of the Parties:

The Union maintains that all Kokomo letter carriers who were scheduled to work on February 28, 1984, should be given administrative leave so that their hours of work total eight hours for the day, and that any tardiness or absence which may have occurred because of the snow storm should not be charged against the carriers' annual leave or leave without pay. The Union further asserts that the weather conditions in the Kokomo area on February 28, 1984, met the terms of the definition of an "Act of God" as described in Section 519.211 of the Employee and Labor Relations Manual (Jt. Ex. #3). The Union maintains that the subject snowstorm was a "... community disaster such as fire, flood or storm" and that it was "... general rather than personal in scope and impact." The Union further buttresses this claim by pointing out that the City and County declared a rare snow emergency and that the entire area was paralyzed by the storm. The remaining criterion for an "Act of God," according to the Union, is that it must prevent groups of employees from working or reporting for work. The Union maintains that the snowstorm met this criterion as well because it prevented nearly one-half of the Kokomo letter carriers from reporting for work on February 28, 1984, and left the remaining one-half with little or no work to perform even after they reported.

The Union further argues that the snowstorm also met the conditions for the curtailment or termination of Postal Service operations which are specified in Section 3 of the parties' 1978 Memorandum of Understanding (Jt. Ex. #5). In support of this contention, the Union argues that the storm affected the "safety and health of employees"; by definition, it was a "hazardous weather condition"; and it caused "the wholesale closing of businesses and other offices"; the "advice of, and policies of local authorities" was to suspend operations; and the storm itself was an "Act of God." The Union summarizes that since these Section 3 conditions were met, and since services at the Kokomo Post Office were in fact curtailed on the day in question, then the Postal Service must grant administrative leave for all employee absences which occurred as a result thereof.

Lastly, the Union argues that administrative leave should further have been granted because by requiring the carriers to report for work on the day



in question, Kokomo Postal management placed these employees in the position of having to break the law by undertaking illegal travel. In support of this assertion, the Union introduced written statements from representatives from the Kokomo Police Department and the Howard County Sheriff's Department indicating that postal employees were not exempt from the travel restrictions imposed on February 28, 1984, and that such employees would be breaking the law if they drove their vehicles during a snow emergency (Un. Ex. #4A and #4B). In conjunction with this same line of argumentation, the Union also maintains that postal employees can be, and have, in fact, been disciplined by management for violating laws; and that by requiring its employees to violate the law in the instant case, then the Postal Service is inconsistent with its own policy and rule application.

As a summary of its basic position in this dispute, the Union maintains that the Kokomo Post Office should have been closed on February 28, 1984, and that all employees should have been given administrative leave for the day. The Union further charges that the subject snowstorm was an "Act of God", and that all letter carrier absences and latenesses which resulted therefrom should be counted as administrative leave.

The Postal Service maintains that the February 27-28, 1984 snowstorm was not an "Act of God," and, therefore, no administrative leave should be granted for any absences which might have occurred. In support of its position, the Postal Service cites numerous arbitration awards, several of which cite Arbitrator Bowles in Case No. 3182-CL-100 and Arbitrator Walt in Case No. 330-4M-C 27999, in which an "Act of God" is defined as:

"... a natural occurrence of extraordinary and unprecedented impact whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight (see Northwestern Mutual Insurance Company vs. Peterson, 572 Pacific Second 1023, 280 Or 773, 1977).

The Postal Service acknowledges that the subject snowstorm was severe in nature, but contends that it was not unprecedented nor unforeseeable for this particular area of the country. Continuing, the Postal Service further maintains that the nature of the contested snowstorm was "personal in scope and impact" as evidenced by the fact that some employees did report for work, and that there was no geographical pattern (Co. Ex. #4) which might explain why some employees reported and others did not. According to the Postal Service, various employees from all areas in the county were able to report, including

those residing outside the city limits, while some letter carriers who resided in the city did not report. The Postal Service attributes these inconsistencies to the undertaking of reasonable diligence on the part of those employees who were successful in reporting for work on February 28, 1984.

The Postal Services also argues that only the Kokomo Postmaster had the authority to declare a snow emergency for Postal employees. Accordingly, the Postal Service maintains that it is not bound by the decisions of local authorities in such matters. In support of this contention Postal Service witnesses offered testimony which established that, despite the authorities' declaration of travel restrictions, no arrests of motorists were made by local law enforcement officials during the snow emergency.

For these reasons, the Postal Service asks that the instant grievance be denied.

V. Discussion, Findings and Conclusions:

The Arbitrator has carefully read, studied and considered the complete record in this dispute and is persuaded that the Union's position, in major part, is correct and the grievance, therefore, except for that portion pertaining to those carriers who left work early on February 28, 1984, will be sustained.

The resolution of this dispute focuses upon whether the subject February 27-28, 1984 snowstorm was an "Act of God." The Union argues the affirmative of this question; and the Employer argues the negative. For purposes of direction Section 519.211 of the Employee and Labor Relations Manual (Jt. Ex. #3) provides as follows:

"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 for work.

Section 519.213 of that same document further provides:

"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 for duty."

The foregoing provisions, quite obviously (and, no doubt, purposefully designed as such by the parties in their negotiations) are generalizations which lack any particular degree of specificity, thus requiring that each situation must be evaluated on a case by case basis in order to determine if it qualifies as an "Act of God."

For further direction in this same area of consideration, the parties have also offered numerous arbitration awards which, according to the parties, support their respective positions, and which, therefore, should be considered as precedent in the instant case. In this regard it is interesting to note, however, that given seemingly comparable sets of basic facts in those citations, said awards, nonetheless, reach divergent conclusions; and the arbitrators in those cases, for the most part, identify a particular factor or set of factors which is/are considered to be the critical element in each case and upon which the ultimate decision is based. This determination convinces the Arbitrator that the instant case must also be considered in terms of the specific facts and circumstances attendant to the February 27-28, 1984 snowstorm itself, and then must further be considered in terms of the general provisions of Sections 519.211 and 519.213 of the Employee and Labor Relations Manual cited above in order to determine if the snowstorm was, in fact, an "Act of God" as is required.

There is little doubt in this Arbitrator's mind that the contested snowstorm met the minimum, requisite "Act of God" conditions contained in the previously cited sections of the Employee and Labor Relations Manual. Although the snowstorm apparently did not cause any direct loss of life or injury, or any wide-spread property damage or destruction, said storm, nonetheless, can reasonably be considered as a community disaster because it certainly held the potential for such calamitous happenings to occur; it necessitated the expenditure of considerable private and public funds to help handle the results of the problem; local officials -- both city and county -- instituted a rare snow emergency to help cope with the situation and to help minimize the potentially hazardous/life-threatening consequences thereof; and numerous individuals undoubtedly suffered deprivations and actual losses because of the occurrence. Additionally, the storm affected all forty-eight carriers who were scheduled to work on February 28, either by preventing them from reporting, causing them to be late, or by curtailing the amount of work available for them to perform on that day.

Still yet further, the following factors, proposed by the Union and substantiated in the record, provide additional support for the conclusion that the storm was an "Act of God": (1) despite the fact that the area was generally known to experience much harsh winter weather, the storm was considered as an "extremely fierce", "super" winter snowstorm; (2) the snow emergency

ordinance declared by both the city and the county had only been invoked on one other prior occasion; (3) the amount of snow (over 12 inches in an 18 hour period) was unusual for the area, where a "normal" snow storm averages 8 inches; (4) the wind conditions and subsequent drifting were "extraordinary"; and lastly (5) there was no general mail delivery on that day thus further attesting to the unusual nature of the storm.

In addition to the foregoing, and perhaps more than anything else, the one element which confirms the "Act of God" status of the storm (at least in this Arbitrator's mind), which serves to distinguish this case from those cited by the parties and which further serves to exonerate the employees from any degree of responsibility or culpability herein, is the fact is that the local officials -- city and county -- declared a snow emergency in their respective jurisdictions from 7:30 PM on February 27, 1984 to 1 PM on February 28, 1984 in the city, and until 6 AM on February 29, 1984 in the county. The import of the "snow emergency" is deemed to be of critical significance in the resolution of the instant dispute because, in conjunction with the declaration of said emergency, all motorists were warned to stay off the streets, roads and highways -- except in emergency situations or in situations in which it was absolutely necessary to drive -- and further warned that they could be fined and/or arrested for violating this directive. In this regard, it must be noted that such a "snow emergency" is not merely a "travelers' advisory" or "warning" in which motorists are simply "advised" by the highway department or streets department of possible inclement weather or "warned" to drive cautiously because of the existing inclement weather conditions. In a snow emergency motorists are warned not to drive and warned further that they will suffer some type of penalty if they become stuck or stranded as a result of their driving.

The Employer, in this particular aspect of the case, argues that the local government officials did not have the proper legal authority to institute such a declaration; that said declaration was not controlling upon Postal employees because of the "emergency" nature of their job duties; and that numerous Postal employees did not heed the warnings, reported for work on that day, and were not fined or arrested by the authorities. The Employers' assertions in this regard cannot be supported because, regardless of the local authorities' action, said declaration, nonetheless, was made; the effected Postal employees, absent any showing to the contrary, had every reason to believe that such a declaration was a legitimate act of governmental authority which was legally binding upon them; and, most important insofar as the resolution instant case is concerned,



local Postal management, either prior to the incident or at the time of the incident itself, made no apparent effort whatsoever to apprise the employees of their responsibility or expected course of action in such a situation. Nor did management convey its expectation in this regard to the Union either for its dissemination to the bargaining unit members, or for discussion purposes as is required under Section 3 of the parties' Local Memorandum of Understanding (Jt. Ex. #5). Having received no direction from the Postal Service as to their proper and/or expected course of action, and in light of the particular set of circumstances which confronted them on the morning of February 28, 1984, the individual employees were left to decide on their own how best to handle the situation.

The Postal Service has not contended, nor did it introduce any probative evidence that any given employee absence was actually caused by an employee's failure to exercise of "reasonable diligence" in reporting for work on the day in question. The general thrust of the Employer's argumentation has been that the February 27-28, 1984 snowstorm was not an "Act of God" as contemplated by Sections 519.211 and 519.213 of the Employee and Labor Relations Manual. On the basis of the foregoing, however, the Arbitrator concludes that, given the weather conditions and the travel restrictions which existed on the morning of February 28, 1984, and further given that local Postal Service management never instructed its employees as to their responsibility in such a unique situation, the subject snowstorm is deemed to have been an "Act of God" and the employees who did not report for work on said date or who reported late are found to have exercised reasonable diligence in the performance of their employment responsibility.

The foregoing normally would be sufficient to conclude this matter. One additional item remains, however, which must be addressed, and that is the Union's remedy request in this dispute.

As was noted previously, it is the Union's contention that as a result of its failure to consider the contested snowstorm as an "Act of God" and by subsequently refusing to grant administrative leave for February 28, 1984, the Employer thereby violated the rights of three separate groups of employees: (1) those who failed to report for work; (2) those who reported late for work; and (3) those employees who, after reporting, elected to leave work early.

After carefully considering this particular element of the case, the Arbitrator concludes that the remedy requested by the Union herein shall only apply to the first two employee groups enumerated above (those who ~~did~~ not report and those who reported late -- and then only for the period of their

lateness). The third group of employees (those who left work early after reporting) shall not be included in this remedy for the following reasons:

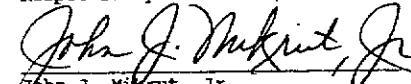
(1) said employees were clearly given the option by their supervisor either to remain at work performing casing and other inside duties or to leave early and to have such absence counted either as leave without pay or counted against annual leave; (2) as the day progressed, the weather conditions moderated and the "snow emergency" was lifted in the city at 1 PM which was approximately three hours prior to the employees' shift end for the day; and (3) the Union has failed to substantiate its contention that there was insufficient work available in the Post Office at the time which the reporting employees could have performed for the remainder of the shift.

VI. Award:

On the basis of the foregoing discussion, findings and conclusions it is determined that the Postal Service violated the applicable provisions of the collective agreement by refusing to grant administrative leave to various employees in the Kokomo, Indiana Post Office for circumstances which occurred in the Kokomo area on February 28, 1984. In remedy for this violation, the following award will be directed:

1. Those employees who failed to report for work on February 28, 1984, as a result of the snowstorm which existed on that day shall be granted administrative leave for their absence and shall be made whole for any loss of wages which they may have incurred on that day; and
2. Those employees who reported for work late on February 28, 1984, as a result of the snowstorm which existed on that day shall be granted administrative leave for the period of their lateness and shall be made whole for any loss of wages which they may have incurred on that day as a result of said lateness; and
3. Administrative leave shall not be awarded to those employees who reported for work on February 28, 1984, and who later left work early on that same day.

Respectfully submitted,

  
John J. Mikrut, Jr.  
Arbitrator

Date: January 2, 1986

Witness: Nicholas Stedman