

ARBITRATION DECISION - AWARD
October 31, 1985
Case #CIN-4C-C 26480 Class Action

C# 05290

Between

U.S. Postal Service
Owatonna, Minnesota

and

Nat'l Assn. Of Letter Carriers
Branch 776

ARBITRATOR: Daniel G. Jacobowski, Esq.

DISPUTE: Refusal of administrative leave for November 28, 1983 snowstorm.

JURISDICTION

APPEARANCES: The postal service was represented by the St. Paul office employee and labor relations director, Joel S. Berman. The union was represented by local business agent Stephen Hult.

HEARING: The October 7, 1985 hearing was held in Owatonna, on this contract grievance dispute, pursuant to the procedures and stipulations of the parties under their collective bargaining agreement.

ISSUE

QUESTION: Did the postmaster violate the contract in refusing administrative leave for the November 28, 1983 snow storm absences? Did the circumstances meet the 519 criteria?

CASE SYNOPSIS: On the morning of November 28, 1983, the area of Owatonna was in the midst of a severe heavy snowstorm blizzard, which shut down most of the city's activity, and resulted in the absence of 1/2 of the total employees, and most of the carriers. The postmaster did not apply nor grant administrative leave, generally on the grounds that the storm was not that severe, and that many of those absent could and should have reported, as did those who did actually come in, some from the same neighborhoods.

CONTRACT PROVISION APPLICABLE: Article 19 of the contract makes reference to provisions and regulations of the postal service handbooks and manuals. Section 519 of the Employee and Labor Relation's Manual, provides as follows:

"519 Administrative Leave

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.

519.2 Events And Procedures For Granting Administrative Leave

.21 Acts of God

.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.

.212 Authorizing Administrative Leave For Acts of God

a. Postmasters and Installations Heads. Postmasters and other installation heads have authority to approve administrative leave . . .

.213 Determining the Case 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 for duty."

BACKGROUND - FACTS

Owatonna is a southern Minnesota small city of some 15,000. On early Monday morning, November 28, 1983, the Owatonna area was in the midst of an unusually severe heavy snowstorm blizzard. At least 9 inches or more of snow fell during the course of the storm. Its intensity was multiplied by 30 to 40 mph winds, which caused blinding conditions and extensive drifts. From the description, waist high drifts of 3 to 3 1/2 feet commonly covered many driveways and were even higher as the wind blew the snow against homes and doorways. During the height of the storm and throughout the morning, shoveling and removal attempts of the snow was futile, with wind blowing it right back in. The streets and roads were impassible to ordinary vehicles. Snow-plowing equipment shut down in the morning until the storm began to abate later in the afternoon. The snowfall had commenced late the prior Sunday evening. The storm reached and continued its greatest intensity throughout the Monday morning, and began to abate by about mid afternoon. It was mid or late afternoon when the plows again resumed operation and began to clear paths through the major streets. The highway conditions of the surrounding countryside were similar or worse as affected by the wind and drifting. During the morning and early afternoon, much of the city was shut down, with schools and most businesses closed, until some activity began emerging and resuming later in the afternoon. The severity was described by a number of the employees and the conditions they experienced, and the attempts they made. They described the closings they heard on the radio and the weather report advice of no attempted movement until the storm abated. According to many this was the worst storm they had experienced over their many years, and the city recorded a number of "firsts" in terms of activities halted. They expressed why in their judgment they did not feel it prudent nor safe to go out and report for work under these conditions. Most who testified awoke in the neighborhood of 6:00 a.m. with various starting times from 6:45 to 8:00 a.m. with one scheduled to report at 9:30.

The superintendent of operations admitted the storm was severe, but did not feel it was the most severe that he had witnessed over his many years. He walked in a mile and one half from his residence following the city streets. He did admit however that this was the most number of employees that were ever absent during such a storm. Normally he drives the mile and one half. This was the first time he walked; he estimated it took him one half an hour. He found the main city street on his route plowed. His starting time was 7:30 a.m. He has been a jogger.

Of the 33 employees scheduled for that day, 16 reported in, 17 did not. Of the 16 City carriers scheduled, 5 made it in and 11 did not. Among the total employees, most who made it in live in the city, except for one over 2 miles out. The postmaster and superintendent, both in their 50's walked in. The postmaster lives about 1/2 a mile away and had a 6:15 a.m. reporting time. Of those employees who did not report, this included most who lived some miles outside the city, as well as some inside the city, some from neighborhoods where others did get in.

In defense, the union noted that among the employees who did make it in, 2 had four-wheel drive vehicles, and a number were clerks who start early at 4:00 a.m. In counter, management noted that a number of those who did not make it in had home locations which were more susceptible to wind drifting by reason of location, or distance.

Because of the severity of the storm and transportation halted, no mail came in over the highways, and no deliveries were made by the carriers. The radio announced no mail arrival nor deliveries. However, the downtown post office itself remained open. In support of its position, management emphasized the following facts. That many of those that didn't come in were from the same neighborhoods as some who did. Management cited the amount of business that still took place over the counter that day. It stated that it had available work for those employees who did not report, and would have had them work on some bulk and low priority mail that remained, straightening out address cards, and general clean up and catch up of their work areas.

The union sought to discount these contentions by opposite submissions, such as the following. That conditions were so bad that the persons who did not report in could conclude that it was unsafe and imprudent to do so. A number of the persons who came in, did have earlier starting times. The union sought to show that the amount of low priority residue mail was only a very small and short duration amount. It also noted that management was unable to show how much of its business came in from the earlier part of the day, suggesting that much of it may have occurred late in the afternoon, and resulted from two large businesses which have headquarters locations across the street from the post office.

After the snowstorm, the absent employees were only extended the option of either no pay or annual leave. When the union stewards first discussed the request for administrative leave with the postmaster, his response was in the negative, noting that he and others made it in, and stating that if he granted it in this instance, then they would want it whenever it snowed a couple of inches. In later denying the formal written grievance, the postmaster stated his reasons more specifically: That the morning radio announced only that there would be no deliveries, but that the post office would be open. Sizable business was done at the window that day. The postal service provides a vital service and employees are expected to be diligent in reporting. There have been worse storms. Work was available for the employees. It would be an unfair penalty to allow administratively when many made it in. Employees who had homes located in more distant open areas did so as a matter of personal choice.

ARGUMENT

UNION: In brief, the main points of the union are as follows: The storm was so severe and widespread, that absent employees had a valid basis for their judgment that it was imprudent and not safe to come in. The futility of those who tried and attempted to clear away the snow demonstrated a compliance with diligent effort. This was one of

the worst, if not the worst snowstorm experienced by the veterans of many years, and the most absences ever encountered. In reality, little work was available anyway for those absent. The storm's prevention of mail arrivals and delivery demonstrates both the severity and the lack of work. 519 does not require heroics, only reasonable diligence. Of those who did report in, many had earlier starting times and some simply may have been more heroic or risky. Supportive decisions of other arbitrators were cited.

EMPLOYER: The main arguments of the postal service in denial are summarized as follows. Basically, the 519 criteria for the granting of administrative leave were not present. The storm was not that severe, there have been others worse. The many who lived in the city could have made it in, as did the many who did, even some from the same or companion neighborhoods. The post office remained opened to the public and sizable business was done that day. Work was available for the employees if they would have reported. Those absent employees who had homes in open areas or some miles distance outside of the city, have done so as a matter of personal choice and their absences are therefore individual matters, and not a common group basis. A supportive decision of another arbitrator was likewise cited.

DISCUSSION

In reviewing the evidence and analyzing the case, this arbitrator has first ascertained the broad principles applicable to the employees generally, and then applied them more specifically to the actual letter carriers covered by this grievance.

First then, as to the general severity of the storm, I am satisfied and find that the magnitude of the snow storm, particularly its blowing and drifting snow, was so severe and of such unusual intensity that it did prevent groups of employees from reporting for work and was a valid basis for judgment by the many absent employees that it was futile, unsafe, and imprudent to report for work. The various evidence factors of the heavy drifting, the futility of snow removal attempts, the weather warnings, and the widespread effect and shutdown, all contribute support for this conclusion. Normal automobile traffic was brought to a halt, or so risky as to be foolhardy if attempted. This literally prevented many employees from reporting who lived the greater distances more on the outskirts, or several miles away and out of town.

Second there then remain those absent employees who lived in the city, closer to some who did report in, and who more arguably could have walked. This involved employee distances from several blocks up to about 2 miles distance. Even in most of these instances, I am satisfied that the absent employees had a valid basis to exercise the judgment that it was unsafe and imprudent to come in, particularly as the height of the storm continued to rage in the early morning with the then apparent prospects of its continuance. In saying this, I allow some exception for those employees who lived very close, within a few blocks; in their case, the argument is greater that they could have made it in. But where employees lived a greater distance, approaching a mile, I feel they had a valid basis for judging it imprudent or unsafe to report in.

Third, as a generality, I do not feel that those employees who lived some miles distance outside of the city, are discounted by that distance as such. At that point the amount of the distance was irrelevant, since the storm was so widespread and similarly affected employees whether they lived in the city or some miles outside of it.

Fourth, I do not feel as a generality, that management had a valid basis to exclude the many employees, as to the distance or open location of their house, on the basis that their choice of residence was a personal individual matter, and should not be included within the concept of a common group prevention of reporting. While that could be true if there were differing circumstances with the storm effects more individualized, I do not feel it is relevant here, since the severity and shutdown effect of the storm was so widespread. Further, in todays day and age, with automobiles, highways, and suburban or rural outskirt living and with the reality of the small size of Owatonna, I do not regard it as reasonable to expect all employees to live within the city's grid pattern of blocks as management seems to expect and argue as a rationale.

Fifth, I fully understand the complicating factor that half of the employees did report in to work. This has a twofold effect; on the matter of equity of paying an administrative leave to those who didn't; as well as the arguability that those who were absent could have made it in if they were more diligent. However, I feel there are two significant counters to the rationale of management on this situation. One is that there can be reasonable differences and evaluations between individuals, and the other is that there are certain distinguishing factors present with many of those who did report in.

People can differ in their individual judgment and evaluation as to what is safe, prudent, and reasonable diligence, with regard to whether to report under the circumstances of this type of storm. Some may be more heroic or greater risk takers. Conceivably, some could even be regarded as more imprudent and foolhardy in reporting attempts, even if individually successful. In applying a standard in this type of situation, we look for a general norm or reasonable range of expected behavior. Again I repeat, the severity of the storm was a legitimate basis for the judgment of many that reporting in would be futile, unsafe, imprudent. The exercise of such judgment can be affected by the reality of additional circumstances, such as the urgency or need of the individual's tasks and responsibilities. For example, the postmaster and superintendent may have felt a greater urgency for their presence to exercise appropriate supervision and decision making in the face of the storm. In similar reverse, there was no particular urgency for the absent employees, in view of the impossibility of mail arrival and delivery. As a credibility factor, those absent employees who testified, for the most part were veterans of considerable years of service, with demonstrated loyalty and diligence in past severe storms.

Further, a number of more condusive factors are present in the case of many of the employees who did report in. A number started earlier, at 4:00 a.m., or before 6:45 a.m., the earliest time scheduled for letter carriers. Several lived closer in, some only a few blocks distance. Two were upper management, and at least two had four-wheel drive vehicles.

By way of contrast, of those who didn't come in, only one lived in close, a few blocks distant, a rural carrier. The rest of those absent lived some greater distance, at least approaching a mile, or more. Most had later starting times, closer to 7:00 and 8:00 a.m.

In examining the 16 scheduled city carriers, we can see how the above discussed general principles have determinative application to them. Most of the city carriers had a starting time around 8:00 a.m.; some earlier, with the earliest at 6:45 a.m. Of the five reporting in, two lived close by within a few blocks; two lived about a mile distant, and the fifth with a four-wheel drive lived two miles distance. Of the 11 who did not report in, 5 lived about a mile away, and the rest were more distant. The 2 closest lived 3/4 of a mile distance. Of the city carriers most comparable, living a

distance of about a mile, then, 2 came in, whereas 5 did not.

On the basis of applying these general principles to the city carriers who did not report in because of the storm, I find that the union's grievance is sustained, that those carriers had justifiable merit in exercising their individual sound judgment in not reporting in due to the severity of the storm and its continuing prospects. Accordingly they are entitled to have their pay records corrected to show and be credited for administrative leave that day. In finding in their favor, I have generally taken into account the severity of the storm, their starting times, and their distance beyond a few blocks.

While that thus decides the case, a few additional observations are in order. One argument of the union was that there was very little work actually available for the absent employees that day anyway. While there may have been a certain amount of relative merit in this contention by the union, I did not regard that as a key relevant determinate. If an employee otherwise with reasonable diligence was able or lived close enough to report for work, the amount of work likelihood would not excuse him; this is not his decision to make. I accept the submission and prerogative of management to decide that work was available that could have been performed for those employees able to get in. Also, the union's original grievance seems to request a more blanket administrative leave exemption for all employees, rather than more individualized or categorized determinations, even if made on a broad basis. I don't subscribe to that either, feeling that management again was within its prerogative to keep the post office open for what amount of public did come in, to expect that those close by within a few blocks could make it in, and to allow for the likelihood of some additional employees who still might make it in because of their more heroic or daring dispositions or more capable vehicles.

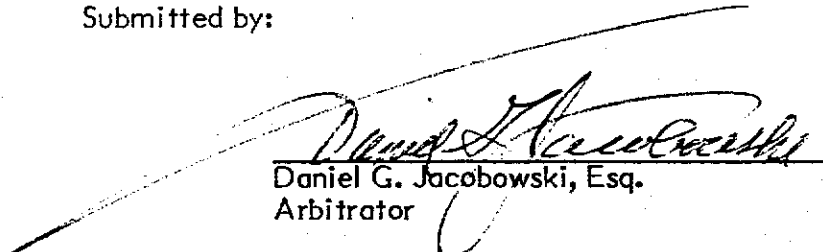
DECISION - AWARD

Based upon the evidence and submissions and in accord with the the above discussion, the decision is here made in favor of the union, that the city carriers who were absent and did not report in on November 28, 1985 due to the unusual severe snowstorm blizzard, did satisfy the criteria of Section 519 and are entitled to administrative leave credit for their absence that day.

AWARD: The Postal Service is directed to so correct their pay records, and credit them with administrative leave accordingly.

Dated: October 31, 1985

Submitted by:


Daniel G. Jacobowski, Esq.
Arbitrator