

CA 01452

ARBITRATION AWARD

In The Matter of the Arbitration )  
Between )  
UNITED STATES POSTAL SERVICE )  
Chicago, Illinois )  
And )  
BRANCH 11, NATIONAL ASSOCIATION )  
OF LETTER CARRIERS )

CASE No. 8 CPO EC 60  
Edward A. Smith, Jr.  
Chicago, IL  
ALBERT A. EPSTEIN  
ARBITRATOR

EDWARD A. SMITH, JR. - GRIEVANCE

THE PROCEEDINGS

The above parties, unable to resolve a grievance filed by City Letter Carrier, Edward A. Smith, Jr., with reference to his claim for broken eyeglasses' compensation submitted the matter to the undersigned for arbitration under the terms of their Labor Agreement.

A hearing on the matter was held at the Main Post Office in Chicago, Illinois on August 18, 1981. Both parties were represented and fully heard, testimony and evidence were received and both parties made oral closing arguments.

APPEARANCES

FOR THE POSTAL SERVICE:

|                      |                            |
|----------------------|----------------------------|
| Mr. John D. Marshall | Labor Relations Specialist |
| Mr. Clifford Lindsay | Labor Relations Assistant  |

FOR THE UNION:

|                      |                                   |
|----------------------|-----------------------------------|
| Mr. Edward Grieco    | Vice President                    |
| Mr. Eugene Wieczorek | Regional Administrative Assistant |

### THE ISSUE

Was Edward A. Smith, Jr. entitled to compensation for replacement of eyeglasses which were broken while at work on February 7, 1980, under the terms of Article XXVII of the Labor Agreement between the parties?

### PERTINENT LABOR AGREEMENT PROVISIONS

#### "ARTICLE XXVII

#### 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 documents, if possible, and submitted with recommendations by the Union steward to the Employer at the local level. The Employer will submit the claim, with the Employer's and the steward's recommendation, within 15 days, to the regional office for determination. The claim will be adjudicated within thirty (30) days after receipt at the regional office. An adverse determination on the claim may be appealed pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure.

#### DISCUSSION AND OPINION

The grievant was working on a mail cage when he reached down under the case to retrieve some flats which had been thrown there by a mail carrier. As he rose up, his glasses hit the edge of the case table and fell to the floor and broke. The grievant reported this to his shop steward, who talked to the station manager and was informed that the proper #2146 claim forms were not immediately available at the post office. The steward had been in office only one month and lacked working knowledge of many procedures and, therefore, a Tort Claim form was first filled out on behalf of the grievant. By the time the grievant obtained form #2146 and filled it out properly, he was unable to file it until February 23, 1980, 16 days after the incident. The grievant's claim for \$68.00, evidenced by a receipt from his optometrist, was denied, first because it was filed two days beyond the 14 day limit set forth in Article XVII of the Labor Agreement and, secondly because the Postal Service claimed that the grievant was negligent in the manner in which he rose up from under the counter.

The Union claims that the delay in filing was obviously due to the fact that the proper forms were not available and that neither the grievant or his steward learned of the proper procedure until it was too late to meet the 14 day deadline. With reference to the charge of negligence, the Union contends that the grievant's action was unintentional, that he was required to reach under his case because of negligence on the part of mail handlers who threw the flats and that such practices on the part of mail handlers have been corrected because they are required to stack the flats properly. In any event, the Union contends that there is no presentation of negligence on the part of grievant and, therefore, requests that he receive the proper compensation for his broken glasses.

The Postal Service contends, first that the claim was filed beyond the 14 day time limit and that it was the burden of the grievant and the Union to obtain the appropriate forms concerning which they should have had knowledge and, secondly that the grievant could have been more careful when he rose up from under the case and, therefore, could have avoided the damage to his glasses.

I find that the testimony and evidence and arguments clearly support the Union's position in this case. I find that the grievant's delay in filing form #2146 was caused by the lack of proper forms at the post office and by the lack of knowledge on his part and that of his steward as to the appropriate procedures. The intent to file the claim is evidenced by the fact that a Tort Claim form was actually filed within the 14 day period, and when it was discovered to be the wrong procedure the proper form was filed only two days beyond the 14 day limitation. Considering the circumstances and the obvious intent of the time limitation, I find that the claim should be considered, in effect, as being timely filed since the 14 day period should, in all equity, be extended in this case.

I also find that there was no such negligence on the part of the grievant on the day of the incident involved herein which would sustain the charge of the Postal Service that the grievant was negligent. I am, therefore, upholding the grievance and directing that the grievant be compensated in the sum of \$68.00, covering the cost of his broken eyeglasses as per the form #2146 claim which he filed.

A W A R D

Edward A. Smith, Jr. was entitled to \$68.00 compensation for replacement of eyeglasses which were broken while at work on February 7, 1980, under the terms of Article XVII of the Labor Agreement between the parties.

  
ALBERT A. EPSTEIN, ARBITRATOR

CHICAGO, ILLINOIS  
OCTOBER 16, 1981