

### OPINION AND AWARD

-and-

Case No. 5 MIN EC 24

(Grievance of Janet E. Mitchell)

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bikes were taken, there was a mail handler on duty in the dock area. He was sitting at his desk which was approximately 25 feet away from the bicycle rack and apparently did not notice the boys taking the bikes.

On August 11, the grievant filed a claim with the Postal Service for the loss of the bicycle. (Joint Exhibit 2) She indicated that the bicycle was purchased in June 1978 for \$207.00, the replacement cost of a comparable bicycle was \$250.00, and the amount of the insurance deductible was \$100.00 (later modified to \$50.00).

Thorsen set forth the basic facts surrounding the loss on the portion of the claim form to be completed by the employee's supervisor. He also noted that in October 1978 a work order was submitted to have a fence put up to keep unauthorized personnel from entering the dock area but the request was refused. In March 1979, another work order was submitted requesting a button lock so the rear door would lock behind anyone exiting from the employee entrance but nothing was done in response to this request. For these reasons, Thorsen stated that the employee's claim was a valid one and recommended reimbursement for that portion of the loss which the grievant's insurance company did not cover. The form, however, did not request any recommendation from the supervisor.

On August 21, management officials Martin and Thewis recommended to Larsen, Manager of the Employees Services Branch of the Central Region, that the claim be denied because it was due to some negligence on Mitchell's part.

On August 27, 1979, the Postal Service denied the grievant's claim for the following reasons:

1. The claim was excessive since the original cost was only

\$207.00 and the bicycle was more than one year old. Depreciation on the bicycle was 10% per year;

2. There was an element of negligence on the claimant's part;
3. There is reasonable expectation that the grievant's insurance company would pay the claim; and
4. The employer has not recommended approval of the claim.

Subsequently the grievant's insurance company reimbursed her for \$156.00 of the original cost. Apparently no depreciation was charged. (Union Exhibits 1 and 2) The grievant now seeks to recover the approximately \$50.00 difference between the original price and the insurance company reimbursement.

The grievant was unable to testify at the hearing but did provide a written statement. (Union Exhibit 3) She indicated in the statement that she had been riding her bicycle to work and parking it in the bike rack on the loading dock since she began working for the Postal Service in April 1979. Many other employees did not lock their bikes and no supervisor ever informed her that the bicycle should be locked. She further believed that the loading dock was a secured area because there was a mail handler on the dock nearly all the time and registered parcels and other non-ordinary mail were left there.

The only witness testifying at the hearing was Irish, the President of the Local. He testified as to his discussions with Thorsen who estimated the Lake Station to be approximately 98% secure. Irish did not know what the basis of Thorsen's estimate was.

Thorsen also described to Irish the basic facts surrounding the theft and indicated that he could not understand how the mail handler who was in the dock area and sitting less than 25 feet away did not see or notice the boys taking the bicycles off the rack.

Thorsen further indicated to Irish that he had never announced

to the employees the need to lock their bikes nor did he make any announcement about the security of the dock area. He did not think it was necessary to do so.

Irish was unaware of any provision in the National Agreement that required the Postal Service to provide security for employee bikes. The closest provision was one relating to parking.

#### POSITIONS OF THE PARTIES

##### Union's Position

The Union argues that it has met all the conditions of Article XXVII. The grievant's mode of transportation is incident to her employment and her negligence has not been established. The grievant believed that the area was secure because a mail handler was nearly always present. Moreover, other employees used the bike rack without padlocking their bicycles. Furthermore, no supervisor ever cautioned or alerted her to the fact the bicycle should be padlocked. Finally, the grievant's supervisor recommended that the claim be paid. Thus, the grievant performed in a responsible manner since she did nothing other than what a responsible person would have done under the circumstances.

##### Employer's Position

The Postal Service asserts that the loss was caused in part by the grievant's own failure to secure the bicycle. Although the Union tries to shift the burden to the Postal Service to provide security for the bicycle, the Postal Service has not such obligation. Moreover, merely because a mail handler was on duty at the time does not mean that someone was in attendance to secure the bicycles or to secure the dock area. The grievant acted on a series of assumptions which proved to be incorrect. She improperly assumed that the mail

handler would guard her bicycle and she assumed that no one would take it even though it was unlocked. It is commonly understood that people with expensive 10 speed bicycles, such as the one owned by the grievant, should properly secure them. One reason why a bicycle rack was set up was to provide something to which an employee could attach a bike. Although the grievant used the rack, she did not secure the bike to the rack. Thus her simple negligence contributed to the loss and under Article XXVII she is not entitled to compensation.

Further, the Postal Service argues that it never did recommend payment of the claim. Thorsen's comments were gratuitous ones. His responsibility was only to verify the loss not make recommendations as to the merits of the claim. The employer recommendation referred to in the Postal Service's letter of August 27 was not the one made by Thorsen.

#### DISCUSSION AND OPINION

Under Article XXVII of the Agreement, the Postal Service has no obligation to an employee who suffers a loss if the loss is caused in whole or part by the negligent act of the employee. Negligence implies an absence of care; it involves the failure to act in a manner in which a reasonable person would have acted under the same circumstances.

Applying this standard to the facts, it is my conclusion that such an absence or lack of care on the grievant's part existed and was in part responsible for the loss. The fact that the grievant attached no lock, chain, or cable to secure the bicycle established that due care was not exercised. A reasonable person in possession of an expensive 10 speed bicycle would have secured the bicycle,

even if it was believed that someone would be in attendance most of the time.

Moreover, the fact that a mail handler did work in the area most of the time does not change the conclusion. The mail handler was not there as a watchman or security guard to watch the bicycles in the rack but to perform his duties as a mail handler. In such circumstances, it was not reasonable to expect that he would always be there to guard the bicycles.

Furthermore, the fact that no supervisor ever informed the grievant that her bicycle should be locked does not entitle her to compensation. Given the common knowledge about the susceptibility of bicycles to theft, a reasonable person should not need to be told to secure the bicycle.

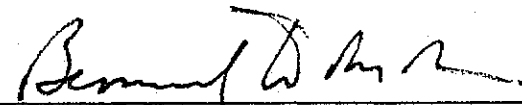
Finally, the fact that Thorsen stated his belief that the claim was valid does not obligate the Postal Service. It is clear from the record that Thorsen's responsibility in the matter was only to verify the claim and not to make recommendations. Moreover, there is no reason why the Postal Service may not disregard his recommendation if the responsible officials disagree with it.

In summary, the circumstances reveal that due care was not exercised by the grievant and thus there was an element of negligence on her part. Therefore, the Postal Service was not obligated to reimburse her for the loss.

AWARD

For the reasons set forth above, the grievance is denied.

South Bend, Indiana  
December 15, 1980

  
Bernard Dobranski  
Arbitrator