

BERNARD DOBRANSKI 12/29/82 Won
Art. 19 - E&LR Manual (Snow Storm)
Cross Ref. Art. 10
15780 (C8C-4H-C)

IN THE MATTER OF ARBITRATION BETWEEN) OPINION AND AWARD
American Postal Workers Union)
-and-) Case No. C8C-4H-C 15780
U. S. Postal Service) (Class Action)
Hutchinson, Kansas)

The hearing in the above-matter was held on January 18, 1982 in Hutchinson, Kansas before Bernard Dobranksi, designated as Arbitrator in accordance with the procedures of the Collective Bargaining Agreement in effect between the parties.

Appearances: Bill Wells
For the Union

L. G. Handy
For the Postal Service

Full opportunity to present evidence and argument was afforded the parties. Post-hearing briefs were filed by the parties before the extended March 26, 1982 deadline.

ISSUE

The issue is whether the Postal Service violated the National Agreement by its denial of Administrative Leave to certain employees on February 7 and 8, 1980.

BACKGROUND FACTS

On Thursday, February 7, 1990, a severe snow storm struck the State of Kansas. Particularly hard hit was the area of Hutchinson, Kansas. According to newspaper reports, 14 inches of snow fell on the

Hutchinson area, the heaviest accumulation in Southwest Kansas.

The severity of the storm was such that no regular mail delivery to Hutchinson's homes or businesses occurred that Friday. The schools and most businesses were closed. Many streets were closed and in the county, road crews were pulled off the road early Thursday night because high winds and drifting snow made it impossible to clear the roads. The sheriff declared the county roads impassable late Thursday evening, February 7, and police and sheriff's department did not respond to calls Thursday evening or Friday morning because, according to the Hutchinson News, "like everyone else, [they were] were snowbound." Bus service and air transportation were also shut down.

A number of postal employees scheduled to report to work on February 7 and 8 were unable to do so. Others either reported to work late or left early. All of these employees were granted annual leave and not administrative leave. Because administrative leave was denied, the instant grievance was filed. The grievance requests that all employees who were granted annual (or LWOP) leave on February 7 or February 8, 1980 (other than pre-scheduled annual leave) be granted administrative leave in lieu of any other leave. The Union further requests that any annual leave charged to those employees on these dates be added back to their annual leave balance, and that, in the event of a similar storm in the future, the provision of Article III of the Local Memorandum be implemented.

The Union presented its case primarily through the testimony of employees Julian Miller, Hornbaker, Brown, Towle, Regehr, Field, Shepherd, Oden, Plusz and Smith.

Julian testified that he was the steward at the time of the incident and was responsible for the investigation and handling of the grievance. He also provided the supporting testimony for Union Exhibits 1 through 8. Union Exhibit 1 consists of ten pages of newspaper clippings describing the February storm and Julian emphasized the information that he thought was particularly significant. According to Julian, pages 1 and 1(a) of the articles described a 14 inch snowfall on February 7 which made all the roads impassable by 11:30 P.M. that evening. Even the sheriff's deputies were snowbound and the Hutchinson bus and air terminals were shut down. The scope of the storm was not limited to Hutchinson but included the entire State of Kansas. Southwest Kansas, including Hutchinson, was the hardest area hit.

The articles further described that the ambulances of the Hutchinson hospital were snowbound the evening of February 7 and the hospital needed four-wheel drive vehicles for its runs that evening. Julian checked further and discovered that two four-wheel drive vehicles were sent out together in case one got stuck. In fact, one did get stuck and the National Guard had to be sent out to rescue it. These four-wheel drive vehicles also were used to deliver employees to the hospital. By mid-morning Friday, February 8, 35 employees still had not reported. Furthermore, mail deliveries on Friday, February 8, were also cancelled, except for mail to the Wiley Building located a short distance away from the Post Office. Julian was told by the Sheriff that most of the roads were shut down, including Interstate 70. Snowplows were ineffective to clear the roads because of blowing, drifting snow.

Page 4 of the articles indicated that almost all schools and many businesses were closed. ~~For the few businesses which were~~ open, many employees were unable to report to work because of the conditions existing at the time. ~~Extensive use was made of National Guard vehicles to transport medical and emergency personnel through the snow.~~

The article on page 6 described problems that the City Public Works Department had clearing the streets. The crews were pulled off early in the evening of February 7 because of drifting and blowing snow. They did not begin clearing the main thoroughfares in Hutchinson until the following day.

The article on page 7 described the use of four-wheel drive vehicles as ambulances to deliver doctors, nurses and patients to and from hospital and nursing homes, for rescuing stranded motorists and for other emergency functions. Julian confirmed the details of the article with Sturgeon, the head of the Search and Rescue Unit, without whose help the police and hospital could not have functioned.

Julian also pointed out that many county courthouse employees did not show up for work. The County Commissioners, however, were considering paying the employees anyway because it was not their fault they could not report for work.

Julian also testified about Union Exhibit 2, a map of the Hutchinson area with numbers and letters keyed to the homes of various bargaining unit employees and postal officials.

Other Union Exhibits referred to by Julian are as follows: Union Exhibit 3 was a list of employees who requested administrative leave on February 7, 1980. Each employee on the list was assigned

a number which corresponded to the same number on the Hutchinson map in Union Exhibit 2.

Union Exhibit 4 is a similar list, similarly keyed for employees who requested administrative leave on February 8, 1980.

Union Exhibit 5 is a three page list of all APWU members. Each member was assigned a number and most of the numbers corresponded to identical numbers on the Hutchinson map.

Union Exhibit 6 is Manpower Daily Report for February 7, 1980. It shows the number of hours an employee worked or the number of hours of sick leave or annual leave taken. It also has a designation for employees with four-wheel drive vehicles.

Union Exhibit 7 is a similar report for February 8.

Union Exhibit 8 is the February 8 Manpower Daily Report covering carriers, supervisor and maintenance employees. As regards this exhibit, Julian testified that he estimated the number of clerical employees who could not report to work or who were late to work on February 7 - 8 as approximately 50 percent. The number of carriers was approximately 33-1/3 percent.

Union Exhibits 9 and 10 are signed statements of employees Rexroad and Jackson indicating that while they were on the clock and with authorization of the Postal Service, they picked up or took home postal employees in their four-wheel drive vehicles.

Union Exhibit 11 is a February 9, 1980 report of the Postmaster to the Wichita office indicating the mail delivery service was curtailed at the Hutchinson Post Office during the storm.

Julian further testified that he conducted his own investigation into the conditions on the two days. He also talked to most of the

employees who did not report or reported late on February 7 or 8. Most of them simply called the Post Office and said that they could not make it in because of the snow without asking about administrative leave. One of the employees he spoke to was G. R. Gum. Gum told Julian that he was stuck in his driveway on Thursday and unable to get out. Julian did not know if Gum called the Post Office on Friday, February 8, to say that he would rather stay home and perform plowing work rather than report to work.

On cross examination, Julian indicated that the police department did work on February 7 and 8, though he did not know if all officers reported for duty. He had no knowledge of Fire Department or public utility operations on those two days. The newspaper also was published on the two storm days.

Miller, employed on Tour I, testified that he could not get out of his driveway because of the deep snow. He called the Post Office and told them that he was stuck and could not make it in. He was told that if he was needed "we'll come and get you." No mention was made of the kind of leave that he would be given. He drove a 1978 Chevy Van which was fitted with glass belted tires but no snow tires or chains. He lived a little over five miles from the Post Office and identified its approximate location in relation to the map (the precise location was not on the map).

Hornbaker, who was employed on Tour II, did not complete his Tour the day of the storm because the supervisor informed him that the weather was getting bad and he should leave after a while. Hornbaker lived approximately 8 miles away and was able to make it home only because he had a truck. The next day, Friday, February 8,

after much difficulty, he reported four hours late for work. That morning, he began to shovel snow and dig himself out soon after he awoke. It then took him approximately 35 to 40 minutes to get to work.

Brown also indicated that she was unable to get in for work on February 7 because of the snow conditions. Her automobile was a 1963 Chevy Nova and did not have chains or snow tires. When she called in to inform the Postal Service of her inability to get in, Brown asked if she would be given "snow leave". The Postmaster replied that there would be no snow leave (administrative leave), but that annual leave would be given to her. She was able to report Friday night for her Saturday morning Tour because the snow plows had cleaned the road.

Towle testified that he was unable to report for work because two feet of snow had drifted across his driveway. The situation was so bad that a four-wheel drive was stuck on the road. Towle did not even try to make it in his pick-up truck, which was outfitted with snow tires but no chains, because he knew it would be useless. He called the Post Office, spoke with Taylor and informed him that he could not report to work because of the snowdrifts. Taylor asked if he would come in if someone was sent for him, and Towle replied that he would. He could not recall requesting any particular type of leave.

Regehr, a part-time flexible at the time, worked the day the storm began and had much difficulty on the drive home. Eventually he got stuck approximately one mile from his home and had to walk the remaining distance. He lived 12 miles northeast of town. The

township grader was stored at his house and he started it and cleared the way so that he could bring his pick-up truck to the house. He also called the Township and asked them if they wanted him to continue to grade but was advised not to because it was still snowing. He was not scheduled to work the next day.

Field testified that when he completed his tour of duty Friday morning he left his car at the Post Office and got a ride home in a four-wheel drive vehicle. Another employee picked him up Friday afternoon and drove him to work. Even if Field had had his car at home, he would not have been able to drive in.

Shepherd testified that it took him thirty minutes to drive the 3 miles to his home on Thursday evening. He had a 1976 GMC pick-up truck with radial tires, but no snow tires or chains. Although he spent most of Friday shoveling his driveway, the conditions were still so bad that he could not get to work or take his foster daughter to school. He did not ask for any specific kind of leave, when he called in to say he could not report.

Oden also described his problems in reporting to work. Earlier in the day he had been stuck and could not get in his driveway. It required the help of a neighbor with a four-wheel drive vehicle to get unstuck and into the driveway. He later called the Post office and told them that he could not report for work. He was not offered administrative leave when he called in. He lived six or seven miles from the Post Office. His 1977 Caprice was fitted with radial tires, but not snow tires or chains. His second car, a 1979 Chevette, was also fitted with radial tires. Even with snow tires he would not have been able to drive to work because there was two feet of snow

in the driveway. He did not ask his neighbor with the four-wheel drive to take him into work. He also said that if he could have made it to work he would have done so.

Plush left the Post Office Thursday evening at approximately 5:30 P.M. and drove home. The next morning, he could not get out of the driveway. He worked on the driveway until 11:00 A.M. and then started in to work (his starting time was 8:15 A.M.). He drove approximately 3 miles but could not get any further because of blocked highways and stalled cars. He then returned home and called the Post Office.

Smith testified as to the difficulties he had in returning home on February 7. The snow was so heavy that he could only get to within a block of his house. The next morning, the snow that he had cleared the evening before had drifted back. He tried to dig his automobile out but it was impossible. His street was also blocked. He then called the Post Office and told them that he would not be able to get in. He was not advised that administrative leave was possible. Smith lived 6 - 6-1/2 miles from the Post Office and drove a 1971 Chevy pick-up truck equipped with snow tires.

The Postal Service presented its case primarily through the testimony of Taylor, the manager of mail processing, and Postmaster Byrn.

Taylor explained that when a storm is anticipated there are a number of things a postal employee can do to prepare to come to work. One is to arrange a ride with someone else. Another is to equip your automobile with snow tires and chains. He also added that he did not have any difficulty in getting to work on the days

in question because he lived within walking distance.

Taylor further testified that he reported to work at 3:00 A.M. on Thursday and left for home at 5:00 P.M. Snow had begun to fall in the interim. Work was available for all employees who reported to work on Thursday. He returned to work between 7:30 and 8:00 P.M. Thursday evening. At the time, he was advised that some trucks had not yet reported and some employees were calling in indicating that they could not report. He stayed on duty until 5:00 P.M. the next afternoon. While on duty he picked up employee Legge and took home Legge and Vase. Both employees lived in his area. He drove a 1975 GMC pick-up truck with large tractor type tires on the back and radial tires on the front. He was careful not to stop except to pick up or drop off the passenger. Work was available on Friday for those employees who reported.

Taylor further testified that he had conversations with a number of those who called in on Friday to report that they were unable to get to work. He also gave permission to Rexrod, who owned a four-wheel drive vehicle, to go out and pick up certain employees. He could not recall if any employee who called in on Thursday or Friday said that he would come in if he could be picked up.

Taylor testified that 69 percent of the total office complement of craft employees and supervisors between Tour III on Thursday and Tour II on Friday reported to work. Taylor also stated that employee Gum was granted permission to go home early Thursday evening. Before he left, he also asked for annual leave for Friday. The reason for his request was to have time to plow out a church

parking lot. His request was subsequently granted. Employee Schrock also earlier asked for and was granted annual leave for the day.

Taylor also testified as to the contents of Employer Exhibit 1 and which consisted of (a) lists of those employees on the various tours on February 7 - 8 who reported at the scheduled time, who did not report or who reported late, and (b) two maps of Hutchinson, color coded with the numbers of the employees. The exhibits revealed that 55 employees reported to work at the scheduled time on the two days. They were broken down by Tours as follows: 13 employees on Thursday Tour III, 13 employees on Friday Tour I; 13 employees on Friday Tour II; and 11 employees on Friday Tour III.

The exhibits also revealed that 21 employees reported late on either of the two days. The breakdown is: no employees on Thursday Tour III or Friday Tour I; 20 employees on Friday Tour II; and 1 employee on Friday Tour III.

The exhibits further revealed that 36 employees did not report as scheduled. The breakdown is: 4 employees on Thursday Tour III; 5 employees on Friday Tour I; 23 employees on Friday Tour II; and 4 employees on Friday Tour III.

In other words, there were 112 craft employees scheduled to report to work over the four Tours. Of that number, 55 reported for work on time; 21 reported late; and 36 did not report for work as scheduled.¹

¹ The exhibits also showed that of the eight supervisors scheduled, 5 reported on time and 3 reported late.

All those who reported late or did not report at all were granted annual leave.

Taylor was not certain whether more employees lived within the city limits of Hutchinson than outside the limits. He also pointed out that one part-time flexible employee who lived 28 miles southwest of Hutchinson reported to work during the storm.

Postmaster Byrn testified that on February 7, he came in at approximately 7:30 A.M. and left at about 5:00 P.M. The storm began Thursday afternoon and people soon began calling in indicating that they were having trouble getting to work. Byrn also worked on Friday after employee Rexrod brought him in at approximately 9:30 A.M. The snowfall was of such proportion as to cause him concern about delivery service that day. The postal lot was snowed in and the post office did not have its own snow removal equipment to get the vehicles out. Since most of the delivering routes required vehicles and because snow was piled up around the curbs, deliveries were curtailed that day. Although deliveries were curtailed there was, for the most part, other work available for employees who reported that day. The only Friday delivery was to the nearby Wiley Building which could be reached by foot.

Some employees who reported Friday did so by driving standard two-wheel drive vehicles. He did not know if any of these employees drove in on county roads.

Administrative leave was not granted because employees reported in from all parts of the employment area. Thus, it was not a justified excuse for an employee to claim that a reasonable effort was

made to report when other employees did in fact report. He also could not recall any employee specifically asking for administrative leave. He further explained that the reference in the first paragraph of Union Exhibit 11 to four-wheel drive vehicles as the only type able to move around without real risk of getting stuck, was a reference to postal vehicles and not to any other vehicles.

It is upon these facts that the case now comes before the Arbitrator.

POSITIONS OF THE PARTIES

Union Position

The Union argues that the criteria for granting administrative leave were met in this case. There was a community disaster which was general rather than personal in scope and impact and it did prevent groups of employees from working or reporting to work. The Union also submitted two Arbitration Awards in support of its position. Based on the record established during the hearing through the witnesses and exhibits, the grievance should be upheld and the grievants granted administrative leave in accordance with Section 519 of the Employee and Labor Relations Manual.

Postal Service Position

The Postal Service contends that the evidence establishes that even though a major storm hit the Hutchinson area approximately 70 per cent of the employees scheduled to report did so. Although the effects of the storm were widespread, employees from all geographical areas of the Greater Hutchinson area came to work. The same streets were traveled by those who did not come to work. The evidence also

shows that neighbors of non-reporting employees came to work. Thus, the effect of the storm must be categorized as personal in scope and impact. It also did not prevent groups of employees from reporting to work. No geographical area had groups employees who were prevented from coming to work. The logical rendering of the meaning of group -- as applied to the facts of this case -- cannot include the scattered employees who did not report to work.

The Postal Service further argues that the courts have defined the "Act of God" concept and that this definition is the one that should be applied in this case. Moreover, the facts in this case clearly show that the union witnesses in the main failed to exercise "ordinary skill and foresight" in preparing themselves to get to work. Additionally the "history of climatic variations in the locality" clearly put the employees on notice that such a storm could occur. That notice should have included reasonable preparations, including snow tires and chains.

For all the above reasons, the grievance should be denied.

DISCUSSION AND OPINION

For all the reasons set forth below, the grievance is sustained.²

The resolution of this grievance depends on the interpretation and application of Sections 519.211 and 213 of the Employee and Labor Relations Manual, which sets forth the criteria to be used in

² The Union agreed in its brief that employee Gum had previously scheduled annual leave for February 8 and, therefore, should not be considered for administrative leave. Thus, he is not entitled to administrative leave under the terms of this Award.

determining whether an "Act of God" occurred and whether the absences were caused by such an act. Section 519.211 defines an "Act of God" as a community disaster such as fire, flood, or storm. Such disaster situation must also be general rather than personal in scope and impact. Finally, the disaster situation must prevent groups of employees from working or reporting to work. Section 519.213 provides the Postmaster and other appropriate postal officials with the authority to determine whether absences from duty allegedly due to an "Act of God" were, in fact, due to such cause or whether the employees could, with reasonable diligence, have reported for duty.

The evidence presented by the Union demonstrates that each of the criteria has been met. First, the storm of Thursday, February 7, was a community disaster within the meaning of Section 519.211. The testimony and supporting documentation disclosed a very severe snowstorm which dropped approximately 14 inches of snow on the community within a short period of time. As a result of the storm, schools were closed, bus service and air transportation was shut down, hospitals operated with shortage of staff and through the use of four-wheel drives, and most businesses and local governmental offices were closed. County roads were closed and country road crews were pulled off the roads early Thursday night because of high winds and drifting snow. Four-wheel drive vehicles were the only kind able to move around without real risk of getting stuck. Although many main arteries were cleared by February 8, most side roads remained impassable. It was even necessary to curtail delivery service at the Hutchinson Post Office because of the storm. With

the exception of one building in downtown Hutchinson within walking distance of the Post Office, mail deliveries were not made on Friday.

Second, the scope and impact of the storm was general and not personal. The storm, although statewide, had its heaviest impact on the Hutchinson area. As the above discussion makes clear this impact was felt by the entire community. Moreover, the maps submitted by the parties demonstrated that the employees who did not report or reported late came not from one or more isolated areas but came generally from all the various areas surrounding the Hutchinson Post Office.

Third, groups of employees were prevented from working by the storm. In this regard, it is not necessary to show that no employee worked to prove entitlement to administrative leave under the regulation. As long as an appreciable number of employees were unable to work, then the requirement that groups of employees were prevented from working has been met. In this case, although a large number of employees were able to report, a significant or appreciable number were not. More specifically, the evidence reveals that of 112 craft employees, only 55 -- less than one half -- reported for work on time during the two days. Of the remaining 57, 21 reported late and 36 did not report at all. To my mind, this clearly establishes that there was a group of employees who were prevented from reporting to work, and, therefore, the group requirement of the regulations was met.

Finally, the requirement that employees use reasonable diligence in their efforts to get to work was met in this case. It is true that some employees did make it to work on time. That fact, however, does not compel the conclusion that those who did not failed because

of a lack of reasonable diligence. On the contrary, the testimony of the various union witnesses of their attempts to get to work was very convincing in establishing reasonable and diligent, albeit unsuccessful, efforts to get to work. I was also not persuaded by the Postmaster's testimony that with diligence an employee could have arrived safely to work. In the circumstances existing at the time, the employees did not in any realistic sense have a choice of coming to work or not.

Moreover, I note that a number of employees who did report to work either lived close to main thoroughfares or possessed four-wheel drive vehicles. The Postmaster in his February 9 memorandum also indicted that four-wheel drive vehicles were the only type able to move around without risk of getting stuck.³ Reasonable diligence however, does not require each employee to arrange access to a four-wheel drive vehicle.

I also reject any suggestion that the grievants were somehow lacking in reasonable diligence because some failed to use snow tires or chains. First, these employees indicated that their vehicles had radial tires, a commonly accepted substitute for snow tires. Moreover, and perhaps more significantly, their testimony persuasively established that even with snow tires or chains they would not have been able to get to work.

³ At the hearing, the Postmaster explained that the reference was in the context of why mail was curtailed and referred only to postal vehicles. Whatever the case, there is no reason to assume that two-wheel drive postal vehicles are any more or less likely to get around than other two-wheel drive vehicles.

In addition, the fact that work was available at the post office for the employees who did report to work does not compel a different conclusion here. For an "Act of God" to provide an entitlement to administrative leave, it is not necessary that the Post Office be completely shut down. It is only necessary to show that the criteria of the regulations were met. As discussed above, the evidence demonstrated that they were. I also note that although the post office was not shutdown, the effect of the storm was so severe that it was necessary to curtail mail deliveries on Friday. In a situation so bad that deliveries were curtailed, it is not surprising that groups of employees were unable to make it to work, even with reasonably diligent efforts.

In summary, the snowstorm which struck Hutchinson on February 7 was a community disaster within the meaning of the term "Act of God". It was also general, not personal, in scope and impact, and prevented groups of employees from working or reporting to work. Moreover, the evidence establishes that these conditions prevented the employees from reporting and that the employees could not, with reasonable diligence, have reported for duty.

Finally, I have carefully examined the Arbitration Awards submitted by the Postal Service and I find them either distinguishable on the facts or I disagree with the conclusions drawn therein.

AWARD

For all the reasons set forth above, the grievance is sustained. The Postal Service is ordered to grant the grievants administrative

leave for the dates in question, and to restore to them any annual leave charged for those dates.

December 29, 1982
South Bend, Indiana



Bernard Dobrinski
Arbitrator