

C-25644

REGULAR ARBITRATION

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

Grievant: Class Action

Post Office: Orlando Lee Vista, FL

Case No: HOIN-4H-C 04187065

NALC DRT No: 09-049371

BEFORE: Josie G. Frank,

ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:

Robin K. Sumner
Labor Relations

For the Union:

Dan Tegreeny,
Central FL Branch 1091
Executive Vice President

Tom Sherman
Technical Assistant

Place of Hearing:

US Postal Facility
10401 Post Office Blvd.
Orlando, FL 32862

Date of Hearing:

November 16, 2004

AWARD:

The grievance is sustained. The remedy is for all city letter carriers at the Lee Vista Station who were not already on approved leave prior to August 14, 2004, but who were scheduled to work and either reported for work or those who were prevented from reporting to work be granted eight hours of administrative leave.

Date of Award:

December 17, 2004

PANEL: FL/GA Regular Panel

Judith Willoughby, NALC
National Business Agent

DEC 31 2004

Received

JOSIE G. FRANK, Arbitrator

RECEIVED

JAN 05 2005
VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

ISSUE

Did management violate Article 19 and/or ELM Section 519 when administrative leave was denied to letter carriers who had been scheduled to work on August 14, 2004, but did not report for work? If so, what is the appropriate remedy?

STIPULATION

1. If letter carriers W. Lofton and S. Travis were present to testify then their testimonies would be similar to the other carriers' testimonies.

BACKGROUND

The grievants are letter carriers assigned and working at Orlando Lee Vista Station. Hurricane Charley made a direct hit to the Central Florida area including Orlando on August 13, 2004. Orlando Lee Vista Station had 70 letter carriers assigned and scheduled to work on August 13, 2004. The facts revealed that only 24% [seventeen (17)] of the letter carriers reported to work as scheduled while 76% [fifty-three (53)] of the letter carriers did not. Some of the carriers who did not report made statements detailing their efforts to get to work.

Management decided to pay the 17 letter carriers who reported for work on August 13, 2004 utilizing guaranteed time and not administrative leave. Also, management decided not to pay the letter carriers who did not report for work on that date leaving those postal employees to exercise their options requesting annual leave, sick leave or leave without pay.

The letter carriers made complaints about the situation through the union steward. The union steward filed a class action grievance. The grievance progressed through the Formal Step A and B dispute resolution process wherein an impasse occurred. The case was properly appealed to the arbitration and set for hearing on November 16, 2004. The hearing was fairly conducted at the 10401 Post Office Boulevard facility in Orlando allowing both parties ample time to present and argue their positions.

PERTINENT CONTRACT PROVISIONS

USPS/NALC National Agreement:

Article 19

ELM 519.21 et seq.

519.21 Acts of God

519.211 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.

519.213 Determining the Cause 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.

519.214 Early Dismissal Due to Acts of God

When employees are dismissed from duty before the normal completion of their duty due to an Act of God, the following applies:

- a. Full-time employees are entitled to credit for hours worked plus enough administrative leave to complete their tour of duty. This combination of work and leave is not to exceed eight hours in any one day.
- b. Part-time regular employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled hours of duty. This combination of work and leave is not to exceed eight hours in any one day.
- c. Part-time flexible employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled tour. The combination of straight time worked and administrative leave may not exceed eight hours in a service day. If there is a question as to the scheduled work hours, the part-time flexible employee is entitled to the greater of the following:
 - (1) The number of hours the part-time flexible worked on the same service day in the previous service week.
 - (2) The number of hours the part-time flexible was scheduled to work.
 - (3) The guaranteed hours as provided in the applicable national agreement.

519.215

Employees Prevented From Reporting

Employees scheduled to report who are prevented from reporting or, who after reporting, are prevented from working by an Act of God may be excused as follows:

- (a) Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty not to exceed eight hours.
- (b) Part-time flexible employees receive administrative leave, subject to the eight hour limitation, for their scheduled work-hours, as provided in 519.214c.

Orlando Local Memorandum of Understanding (LMOU):

ITEM 3A

During an emergency, such as hurricanes, etc., the installation head shall make fullest use of communication facilities (radio, TV, etc.) to notify employees if an administrative order is issued granting administrative leave.

ITEM 3B

Under no circumstances shall employees assume they are excused from duty unless public transportation is curtailed and the National Weather Service or a local law enforcement agency advised the general public to vacate the streets because of actual dangerous conditions.

ITEM 3C

Because of uncertainties during severe weather, it is practicable to issue general instructions only. All city carriers should report as scheduled, if conditions permit. If severe weather conditions prohibit reporting at normal times, but subside during the normal

service day, carriers should report for the remainder of their service day. Letter carriers shall not be required to attempt delivery when conditions described above exist. Any Administrative leave payment will be in accordance with Part 519 of the Employee and Labor Relations Manual.

CONTENTION OF PARTIES

Union:

The Union contends that management violated the National Agreement, Article 19 and the ELM Section 519 when they denied administrative leave to those letter carriers who were scheduled to work on August 14, 2004, but did not report for work.

The Union alleges that Hurricane Charley made a direct hit on the Central Florida area leaving mass destruction of property as well as loss of life. There were massive power outages, downed trees and power lines. Additionally, traffic signals across Central Florida were down or inoperative. Airports were shut down and except for emergency services, residents were asked to stay off the roadways by local law enforcement. Law enforcement declared a curfew until 7:00 a.m. Saturday. Hurricane Charley was the worst hurricane to hit the Central Florida area since Hurricane Donna, over forty years ago. The Lee Vista Station was inoperative because of the storm.

The Union further contends that the United States Postal Service did not deliver mail on August 14, 2004. The union claims only 24% (17) of the letter carriers assigned to Lee

Vista and scheduled to work were able to report to work while the remaining 53 (76%) carriers who were scheduled to work were prevented from reporting to work.

The NALC asserts that Hurricane Charley falls within the definition of an "Act of God" pursuant to ELM Section 519.21.

They contend the residual affect of Hurricane Charley created a community disaster. Both the Federal and State Government declared Central Florida to be a "disaster area". It is their belief that the disaster situation was general rather than personal in scope and impact. The Hurricane Charley disaster prevented groups of employees from working and from reporting to work. Management paid guaranteed time to the carriers who reported to work on August 14, 2004. Only those letter carriers who were prevented from reporting to work were not paid.

The union believes that the postal service's decision to substitute guaranteed time for administrative leave is their attempt to avoid having to pay PTF employees more than their guaranteed minimum of four hours even if they were scheduled to work eight hours or had worked more than four hours on the same service day in the preceding service week. In addition, management's attempt to avoid having to pay administrative leave to those employees who were prevented from working due to the immediate aftermath of Hurricane Charley. Management's decision is arbitrary, capricious and unreasonable.

The Union continues that there is no reasonable doubt that the reason there was no mail delivery service on August 14, 2004 was directly due to Hurricane Charley. If not

for the hurricane, postal operations would not have closed on Saturday, August 14, 2004. All employees would have reported for work as scheduled and worked their scheduled hours of duty except in cases of personal emergency or unexpected illness. It was Hurricane Charley that prevented those employees who reported for work from doing so and prevented those employees who were scheduled to work but were prevented from doing so. The Union stated that management's contrary position is disingenuous.

In further support of their contentions, the Union alleges that the Orlando LMOU states that under no circumstances is an employee to assume that he or she is excused from duty unless public transportation is curtailed and the National Weather Service or a local law enforcement agency advised the general public to vacate the streets because of actual dangerous conditions. The NALC believes that the instant case meets those requirements because public transportation was in fact curtailed. LYNX, which is the Central Florida transportation system did curtail their services on August 14, 2004 by not operating. Additionally, local law enforcement told the public to stay off the streets due to dangerous conditions such as downed power lines, downed trees and inoperable traffic signals.

In the instant matter, NALC states that the non-reporting letter carriers did not do so because conditions did not permit it. Others reported but by the time they arrived the postal facility had already closed. To show support of their contentions, the Union received

personal statements from 20 employees showing that each of those employees displayed due diligence in their attempts to report for work.

The Union avers that there are three requirements for establishing whether an Act of God caused those employees who were scheduled to work on August 14, 2004, but were prevented from working. All three requirements clearly exist in this case. They believe that management's position to pay guaranteed time to only those employees who were fortunate enough to be able to report for work is an attempt to paralyze those employees who were prevented from reporting. Management is attempting to unjustly enrich themselves at the expense of their employees and that is unreasonable, arbitrary and capricious.

The remedy requested by the grievance is granting all city letter carriers at the Lee Vista Station who were not already on approved leave prior to August 14, 2004, but who were scheduled to work and either reported for work or those who were prevented from reporting to work, eight hours of administrative leave, or any other make whole remedy deemed appropriate by arbitration.

MANAGEMENT

The USPS contends that no violation of Article 19 and ELM Section 519 is present in this case when they denied administrative leave to letter carriers who had been scheduled to work on Saturday, August 14, 2004, but did not report to work. This is a

contract case and the moving party has the burden of proving their case. The service believes that the Union failed to meet that burden.

The service admits that Hurricane Charley passed through the City of Orlando, Florida, Friday evening, August 13, 2004. Management made the decision to curtail operations on Friday beginning at 3:30 p.m. The employees were instructed by Mr. Thomas Deaddio, acting Manager, Customer Service at the Orlando Lee Vista Annex to report to duty at 7:30 a.m. on Saturday, August 14, 2004 and to use reasonable diligence in order to report for duty. Local news media ran alerts for all Central Florida postal employees to report to work at 7:00 a.m. Saturday, August 14, 2004. The service states that the postmaster did not notify the local news media that postal operations were suspended or terminated so the postal employees knew or should have known they were to report as scheduled per instructions.

The service asserts that postal service employees provide a vital public function and are relied upon by the community they serve. The service states that civil authorities did not prohibit citizens from traveling Saturday, August 14, 2004; citizens were advised that they should refrain from driving if they did not have to be on the roads. Further, some roads were impossible, but the primary highways and roads surrounding the City of Orlando and in particular, the Lee Vista Annex, could be driven on. The best evidence of the road conditions was the fact that 20 city letter carriers and other personnel did report for duty. Although there was property damage and that same geographical area lost power

and some residential streets had trees and power lines down, that did not prevent the majority of its residents, including postal employees from going to work on Saturday, August 14, 2004.

The service states that the Lee Vista Annex did not have power to the office on August 14, 2004, as a result, the employees who reported to work as scheduled were released and paid for the remainder of the workday which is consistent with the leave regulations and is not a justification for granting administrative leave to those who did not request as scheduled. Respectfully, the service requests that the arbitration deny this grievance in its entirety.

DISCUSSION

The Arbitrator finds the record validates the conclusion that Hurricane Charley was an "Act of God". In accordance with the ELM Section 519 regarding administrative leave where a definition is given in ELM Section 519.211; Hurricane Charley involved a community disaster, including both flooding and storms. Hurricane Charley was general in scope and impact. Webster's Dictionary defines the word general as affecting the whole or every member of a group or class; common to most. Hurricane Charley fits all of the above: it affected the whole of Central Florida and every resident and visitor of the area were affected by the storm and all ramifications of the storm were common to most of the people. There were a few exceptions, but the majority was affected. Hurricane Charley prevented groups of employees from working or reporting to work. i.e.: 53 of 70 assigned

city letter carriers were prevented from reporting to work while 17 of 70 assigned city letter carriers reported to work but were prevented from working because the facility was inoperative and other facilities were prevented from operating efficiently because there was no mail delivery to be worked if power had been operating. Another example was the bus drivers for LYNX : Since the city transportation service was not operating, then drivers were prevented from working. Additionally, all employees of the airport were prevented from working.

To further explain and reveal the three requirements of the Act of God: First: Hurricane Charley involved a community disaster because the testimonial evidence established that although the weather was calm and sunny after the actual passing of the storm, the community of Orlando and its surrounding areas experienced a complete shut down of all the services except for emergency services such as fire, police and hospitals. The airport was shut down. How often does that occur? The sheriff asked the residents to stay off of the streets and stay home. The President of the United States declared a state of emergency for Florida. The state government declared a state of emergency.

Secondly: Was the disaster general in scope and impact? Scope and impact as indicated by the amount of absenteeism among employees scheduled to work that tour. Fifty-three out of 70 is a high rate of absenteeism. Although 20 employees showed up, the greater amount was prevented from reporting to work because of the storm. The statements and testimonies of 14 letter carriers established the fact that they were

prevented from reporting to work because of the hurricane. There was no electric power, no phone service, no cell phone reception, no television; and radio did not address the issue. There were trees in streets, on highways, on lawns, on roofs, blocking driveways and garages. There were families emotionally shaken from the passing of the most severe storm in 40 years. The bottom line of it all, the Lee Vista Annex was not able to operate that day because of the storm - **that is certainly general scope and general impact.**

Thirdly: Were there groups of employees who were prevented from working or reporting to work? Yes, greater than 50% of the city letter carriers for Lee Vista Annex were prevented from reporting to work. Yes, the groups of employees who did report for work did not work that day. Conditions had to be abnormal because the Orlando Airport, the gateway to Disney World, was shut down therefore, many groups of employees (airline personnel, airport employees, shop owners, vendors, restaurant staff, hotel staff, etc.) were prevented from reporting to work.

Sometimes arbitrators recognize that management is eager to put in place a decision to minimize the negative impact of certain circumstances. But on August 14, 2004 the negative impacts of Hurricane Charley can only be fairly, reasonably and equitably handled by following the National Agreement and its regulations in the ELM. For the above reasons, the grievance is sustained. The remedy is for all city letter carriers at the Lee Vista Station who were not already on approved leave prior to August 14, 2004, but who were scheduled to work and either reported for work or those who were to work and

either reported for work or those who were prevented from reporting to work, be granted eight hours of administrative leave.

AWARD

The grievance is sustained. The remedy is for all city letter carriers at the Lee Vista Station who were not already on approved leave prior to August 14, 2004 who were scheduled to work and either reported for work or those who were prevented from reporting to work, be granted eight hours of administrative leave.

Date: December 17, 2004



JOSIE G. FRANK, Arbitrator