

## **REGULAR ARBITRATION PANEL**

In the Matter of the Arbitration )  
Between ) GRIEVANT: Class Action  
 )  
UNITED STATES POSTAL SERVICE ) POST OFFICE: New Haven, CT  
 )  
And )  
 )  
NATIONAL ASSOCIATION OF LETTER ) CASE Numbers:  
CARRIERS, AFL-CIO ) USPS: B16N-4BC 18112960  
 ) NALC: 19-036-18EH  
 ) DRT: 14-421821  
)

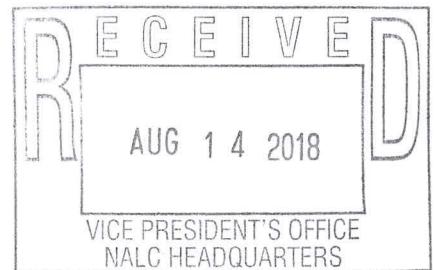
**BEFORE:** Sherrie Rose Talmadge, Esq., ARBITRATOR

#### **APPEARANCES:**

**For the U.S. Postal Service:** John Gigola, Jr., Labor Relations Specialist

**For the NALC:** Vincent Mase, Esq., Branch President

**Place of Hearing:** 50 Brewery Street, New Haven, CT  
**Date(s) of Hearing:** June 22, 2018  
**Date of Award:** July 28, 2018  
**Relevant Contract Provisions:** Articles 8 and 19  
**Date of Contract:** 2016 - 2019  
**Type of Grievance:** Contract



## **AWARD SUMMARY**

Management violated Articles 8 and 19 of the National Agreement when they sent Letter Carriers home due to unworkable conditions on January 4, 2018 and failed to pay them administrative leave and/or overtime pay up to 8 hours for non-scheduled carriers. Accordingly, the grievance is sustained.

For the remedy, Letter Carriers, who reported for work on January 4, 2018 at the East Haven Section of the New Haven Post Office and were sent home, are to be given administrative leave for the balance of the day, excluding Carriers Honore, Valenti and Kenneally (who were paid up to 8 hours). Carriers Legg, Morris and Rosa are to be paid the balance of their non-scheduled day overtime up to 8 hours.

*Marie Rose Galinsky*

## RECEIVED

## **Sherrie Rose Talmadge, Esq., Arbitrator**

AUG 01 2018

**'John J. Casciano, NBA  
NALC-New England Region**

### **STIPULATED ISSUES**

1. Did Management violate Article 8 and Article 19 of the National Agreement when they sent Carriers home due to unworkable conditions and failed to pay them administrative leave and/or overtime pay up to 8 hours for non-scheduled carriers?
2. If so, what then should the remedy be?

### **CONTRACT PROVISIONS, MANUALS and HANDBOOKS**

#### **Article 8, Section 1. Work Week**

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars.

#### **ELM, Section 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.

#### **ELM, Section 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 8 hours in any one day.

### **FINDINGS OF FACTS<sup>1</sup>**

On January 4, 2018, the State of Connecticut experienced a snow storm that made it difficult for carriers to make their deliveries. Management instructed carriers to make an attempt to deliver the mail. Carriers attempted to deliver the mail. Those Carriers who found it to be a safety concern returned to the office. The Carriers stayed on their combined morning office and street duties anywhere from 2 to 7.5 hours. Upon returning to the office, Management instructed carriers to clock out and go home.

Management told the carriers that they had to leave the building and use their own leave if they were unable to deliver the mail. Management told them that they could not stay in the building, stating that there was only street work available.

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<sup>1</sup> At the hearing the parties had the opportunity to question the sworn witnesses under direct and cross examination, and present material documentary evidence. At the conclusion of the hearing, the parties presented oral closing arguments.

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The parties stipulated that the nineteen (19) letter carriers who completed signed statements would testify to the contents and accuracy of those statements under oath. Five of those nineteen carriers who had provided signed statements, testified at the hearing. Six of the carriers, Michelle DeCilla, Leslie Covert, Anthony Ferrara and Michael G. Spadory, John Barron and Kenneth Honore testified that after arriving at work on January 4, 2018, the snowstorm intensified. They were told by management to attempt to deliver mail, although the parking lot and the streets had not been plowed. They all attempted to deliver the mail despite the unsafe conditions. Each carrier testified that upon their return to the post office, when the conditions were unsafe to continue delivering mail, Supervisor Kelly Powell instructed them to leave with building without casing the mail.

Carriers Covert and DeCilla, both with over 30 years of seniority, testified that they had found the driving on the hills on their routes extremely unsafe even with chains on their tires. Covert testified that she had gotten stuck at a stop sign and her truck did a 360. When she turned around at the intersection, the snow was higher than the bumper on the truck. Covert testified that upon returning to the postal facility, Supervisor Kelly Powell directed her to leave the mail on the floor, scan the packages as inclement weather and not to re-case the mail. Covert testified that Kelly told all the carriers that they were not to remain in the building, and if they had no Annual Leave to use LWOP. Covert testified that in 31 years there had only been about 2 or 3 occasions when she had to return to the facility because of weather. Covert further testified that they had been plenty of occasions when she and other carriers had been directed to return from the street and were given duties to perform to complete their 8-hour tour. Both Covert and DeCilla testified that they would have preferred to remain in the building and perform other duties rather than use their own time. Covert, along with the other carriers, completed their Form 3971 and placed them on the desk in front of 204B Paul Lamb, the Acting Supervisor, and then punched out and went home. Covert testified that when completing the 3971, the steward recommended putting "pending administrative leave" on the form, which she did.

Carrier Ferrara, with 45 years of seniority, testified that when he attempted to deliver the mail, the streets were not plowed, and his vehicle became stuck in the snow. He turned around and got stuck in the parking lot upon his return. Ferrara testified that once in the post office, Supervisor Powell told them to put the mail down, scan the packages indicating "inclement weather", complete the Form 3971 and go home. Ferrara

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testified that along with other carriers, he wanted to remain to case the mail, but Kelly instructed them to leave the building.

Carrier Spadory, with 31 years of seniority, also testified to the difficulty of delivering the mail when there was 10 -12 inches of snow and most roads were not plowed. Spadory testified that in the past, when it snowed, management had allowed the carriers to stay at the facility and case the mail up to 8 hours. He noted that on January 4, upon returning to the post office, he had 6 – 8 feet of DPS mail to case but was told by 204B Lamb that Supervisor Powell directed them to either attempt to deliver the mail or go home. Spadory testified that this was the first time the carriers were not allowed to remain in the post office to case the mail during a storm.

Carrier Barron, with 13 years seniority, testified that when he returned from the street Supervisor Powell told everyone to go off the clock and not to re-case the mail. Barron testified that when some of the carriers asked whether there were other duties they could perform, Powell told them "no".

Kenneth Honore, with 33 years of seniority, testified that despite having chains on his tires, he had trouble going up a hill with fifteen inches of snow on the ground and one of his chains was missing. It took him 20 minutes to turn his vehicle around and returned to the post office by 2:00 p.m. Honore told Supervisor Powell that he had lost the chain on one of the tires and if he could get another chain, he would go out again. He testified that Powell replied that there was no one to put the chain on his vehicle and that management did not want anyone on the street after 3:00 p.m. Honore further testified that Powell told him to bring in the mail but not to case it. When Honore returned with the mail, he testified that he spoke to 204B Lamb who told Honore to fill out the 3971 for AL or LWOP and go home. Honore testified that when he explained that he was on his non-scheduled day and could not take either AL or LWOP, Lamb told him to clock out, which he did. Honore testified that he did get paid for the day.

On January 4, 2018, 204B Supervisor Paul Lamb was the immediate supervisor of the carriers in the East Haven Section of the New Haven Post Office. Lamb had been a 204B only a couple of months at the time of the January 4 snowstorm. Lamb testified that on January 4 he had instructed the carriers to deliver the mail, but if it was unsafe to return to the post office. Because of the snowstorm, the plant was closed. He noted that the carriers returned from the street early although they did not all return at the same time. Lamb stated that no carrier finished his or her route. Lamb acknowledged that the carriers were told that they could not rack their mail when they returned from the street.

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Lamb testified that the carriers were told that they could go home, if they wanted, and should indicate either Annual Leave or LWOP on the Form 3971. Lamb testified that if the carriers wanted to work in the office until 4:30 there was work available such as edit boxes and nixies, but no carrier asked to remain until 4:30. Lamb also noted that the carriers could have gone back out to deliver mail in the afternoon. The PS Form 3971s that were submitted in the case file had no manager's signature that they were notified or received the requests. Under cross-examination, Lamb testified that he was not present when Supervisor Powell may have told the carriers to go home. Supervisor Powell was not called to testify.

### **POSITIONS OF THE PARTIES**

#### **UNION'S POSITION**

The Union met its burden of proving that Management violated Articles 8 and 19 of the National Agreement when they sent Carriers home due to unworkable conditions and failed to pay them administrative leave and/or overtime pay up to 8 hours for non-scheduled Carriers. Article 8 guarantees letter carriers eight hours of work or pay in lieu of. The Carriers have testified that they were not given that right. Even if some carriers, who had chains on their tires, stayed out longer than others on January 4, they could not deliver all the mail because of the unsafe conditions as a result of the snowstorm. This storm met the criteria as an Act of God which had an adverse impact on the majority of carriers who worked in the East Haven section.

Lamb's testimony that management gave the carriers the option of whether or not to go home when they returned from the street was not credible. All six carriers testified that Supervisor Powell instructed them to go home. All the Carriers testified that they followed Powell's instructions not to case the mail and to leave the building. Powell did not testify. If not a state of emergency, the tractor trailers should have delivered mail to New Haven. The carriers wanted to remain and case the mail but were directed by Powell not to re-case the mail because they would not have mail from the plant the next day. Moreover, Management did not do their job when the Supervisors did not approve or disapprove the Form 3971s submitted by the carriers on January 4.

The Union urged sustaining the grievance. As a remedy, the Union requested that all carriers, who reported to work on January 4, 2018 and were sent home, are to be given administrative leave for the balance of the day excluding Valenti and Kenneally.

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Carriers Legg, Morris and Rosa are to be paid the balance of their non-scheduled day overtime up to 8 hours.

### **POSTAL SERVICE POSITION**

The Union did not meet its burden of proving a contractual violation. Supervisor Lamb, the carriers' immediate supervisor, testified that on January 4 he instructed the carriers to attempt delivery and to return if it was unsafe. Carriers stayed on their combined morning office and street duties anywhere from 2 hours up to 7.5 hours. Upon the carriers' return to the post office, Lamb directed them not to re-case the mail. However, he gave them the option of attempting re-delivery or going home and taking Annual Leave or LWOP. There is no proof that the 3971s were turned into the supervisor. The twenty-two PS Form 3971s that were submitted in the case file had no manager's signature that they were notified or received such requests. There was no proof that the carriers were not given a choice to re-deliver the mail. Carrier Honore was out 7+ hours that day. There was work the carriers could have performed in the office such as case labels, edit books or a re-delivery of the mail. Lamb credibly testified that the carriers were given an option whether to go home early on January 4 or remain to perform carrier duties.

The Union's request for administrative leave should be considered "unjust enrichment". This was a normal snow storm during which the post office delivers mail. These employees were given an option by management and elected to go home. The Service maintained that Management did not violate the National Agreement and that the grievance should be denied.

### **DISCUSSION**

At issue is whether Management violated Articles 8 and 19 of the National Agreement when they sent Carriers home due to unworkable conditions and failed to pay them administrative leave and/or overtime pay up to 8 hours for non-scheduled carriers. The Union has met its burden of proving a contractual violation.

The ELM, Section 519.211 provides that "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. In this case, on January 4, 2018, the Letter Carriers for the East Haven section of the New Haven facility reported to work, but while at work the snow storm intensified. Management

Arbitration decision continued.

instructed the carriers to attempt to deliver mail but to return if the conditions were unsafe. All the carriers attempted to deliver mail; however, as the storm intensified and between 11 -15 inches of snow fell, the carriers found that the unplowed roads were becoming hazardous safety conditions and they returned to the postal facility without completing the mail deliveries. The Letter Carriers testified that even with chains on their tires they were not able to safely negotiate the roads and deliver the mail. Although a State of Emergency was not declared, because of the hazardous conditions, the plant in Springfield, MA closed. Six carriers testified to the severity of the unsafe driving conditions as a result of the snow storm. I find that the snow storm met the definition of an "Act of God" as a snow storm that was a community wide disaster that was general, rather than personal, in nature, and affected groups rather than single employees.

The Service's primary argument is that Management did not curtail all work on January 4, but rather gave the employees an option whether or not to remain. Thus, the question is whether the employees were "dismissed". The Union presented credible testimony from six Letter Carriers that support a finding that the employees were "dismissed" by Supervisor Kelly Powell. Each carrier testified that upon returning to the post office Supervisor Powell directed them to leave the post office after bringing their mail inside. The Carriers testified that they were specifically instructed not to re-case the mail and to clock out. Although some of the Carriers asked whether there were other office duties that they could perform, they were instructed by Powell to clock out and leave the building. Supervisor Powell was not called to testify, and thus I credit the Letter Carriers' testimony that they were directed to go home. Acting Supervisor Lamb acknowledged that he was not present when Powell instructed the carriers to leave the building. In light of the Carriers' testimony that had they not been directed by Powell to clock out early, they would have preferred to remain at the facility and continue performing carrier duties, as they had done during prior snowstorms, I do not credit Lamb's testimony that he had given the Carriers the option of whether to remain and perform carrier duties or clock out. Had that been the case, the Carriers testified that they would have preferred to remain at work for the remainder of the day and not use their own time. I also credit the Carriers' testimony that they completed the PS Form 3971s and left them on Lamb's desk prior to leaving the facility. There was insufficient evidence to determine why management did not sign the Form 3971s either on January 4, or thereafter.

Having concluded that the Carriers were dismissed by Management from duty before the normal completion of their work day on January 4, 2018 due to an act of God,

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the ELM, Section 519.214(a) provides that full-time employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled hours of duty, not to exceed 8 hours in any one day.

Consequently, I find that Management violated Articles 8 and 19 of the National Agreement when they sent Carriers home due to unworkable conditions on January 4, 2018 and failed to pay them administrative leave and/or overtime pay up to 8 hours for non-scheduled carriers. Accordingly, the grievance is sustained.

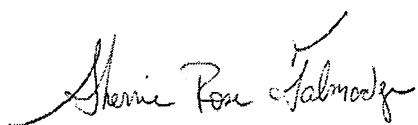
For the remedy, Carriers, who reported for work on January 4, 2018 at the East Haven Section of the New Haven Post Office and were sent home, are to be given administrative leave for the balance of the day, excluding Carriers Honore, Valenti and Kenneally (who were paid up to 8 hours). Carriers Legg, Morris and Rosa are to be paid the balance of their non-scheduled day overtime up to 8 hours.

#### AWARD

Management violated Articles 8 and 19 of the National Agreement when they sent Carriers home due to unworkable conditions on January 4, 2018 and failed to pay them administrative leave and/or overtime pay up to 8 hours for non-scheduled carriers. Accordingly, the grievance is sustained.

For the remedy, Carriers, who reported for work on January 4, 2018 at the East Haven Section of the New Haven Post Office and were sent home, are to be given administrative leave for the balance of the day, excluding Carriers Honore, Valenti and Kenneally (who were paid up to 8 hours). Carriers Legg, Morris and Rosa are to be paid the balance of their non-scheduled day overtime up to 8 hours.

Respectfully submitted by:



Sherrie Rose Talmadge, Arbitrator