

2890 (E8C-2B-C)

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In the matter of

INDUSTRIAL

RELATIONS The United States Postal Service
Philadelphia, Pennsylvania

and

Case # E8C-2B-C-2890

American Postal Workers Union
Philadelphia Area Local

Under provisions of the National Agreement, the undersigned was designated to arbitrate an unresolved grievance charging a violation of Article XXVII: Employee Claims. A hearing was held on the above matter in Philadelphia on June 16, 1981. The Postal Service was represented by Joseph DeMarco, Regional Labor Relations Executive. Spokesman for the Union was John D. Brady, Director of Industrial Relations, Philadelphia Area Local APWU. Others in attendance at the hearing were

For the Union

Davola Sutton
Sara L. Johnson

Grievant (Clerk Stenographer)
Steward

For the Postal Service

Paul S. Langa
Frank DiLella, Jr.

Manager, Arbitration Branch,
Eastern Region
Labor Relations Representative
Eastern Region

Witnesses were questioned and documentary evidence submitted. Both parties filed post-hearing briefs.

The Issue

The issue, as phrased at the hearing and accepted by the parties, reads as follows:

Was the payment of \$20 to Miss Davola Sutton, in settlement of her claim, proper and reasonable under Article XXVII of the National Agreement? If not, what is the remedy?

As the undisputed facts will show, Ms. Davola Sutton, at that time (March 8, 1979) a Clerk Stenographer in the EEO of the Philadelphia Post Office, currently a supervisor, had stolen from her purse, at her work station, the sum of \$325 which she intended to deposit in the bank during her lunch hour. On March 14, 1979, Ms. Sutton filed a claim for loss of the \$325. (Jt. Ex. #4) Following a careful investigation (Jt. Ex. #5) a check for \$20 was sent to Ms. Sutton by Mr. Francis Keenan, Program Manager, Contract Administration, Eastern Region.

(Jt. Ex. #6) Mr. Keenan explained

A check in the amount of \$20 is enclosed. The National Agreement provides that the possession of the property must be reasonable under circumstances. It has long been the position of the Postal Service that a reasonable sum to be carried on the person during duty hours is that necessary to meet his immediate needs at that time and that \$20 is the reasonable amount.

Ms. Sutton appealed the decision claiming the \$325 in her possession at the time of the theft was reasonable. (Jt. Ex. #6) Her claim was denied and was carried on to arbitration through the grievance procedure as provided in Article XXVII of the Agreement.

The essence of the Union position is that Ms. Sutton had good reason for having \$325 in her possession on March 8, 1979, that her testimony that she had \$325 at the time was credible, that the Postal Service was negligent in protecting employees' property in the EEO office, and the \$20 limit on payment of claims because of loss of money by employees was arbitrary and established unilaterally by the Postal Service without knowledge of the Union, hence in violation of Article XXVII.

The Facts

The facts are not in dispute, except to the extent that the Postal Service does argue that Ms. Sutton's statement that she had \$325 in her purse at the time it was stolen is not verifiable.

On March 8, 1979, Ms. Sutton who had worked for the Postal Service since 1969, was newly appointed to the EEO office located on the third floor of the Philadelphia Post Office. The Equal Employment Opportunity Office counsels prospective job applicants and has an "open door" policy. The third floor location had been recently occupied by the EEO; it was overcrowded and poorly designed for the service to be rendered. Ms. Sutton's desk, as receptionist station, was situated just inside the door and blocked off from those of the employment counselors. Her desk had no lock and she was not provided with a locker or cabinet although appropriate furniture was on order. (Un. Exs. #1 and #2) Ms. Sutton's official duties required that she leave her office approximately fifteen times each day for periods of from 10 to 15 minutes.

At around 1:00 pm. on March 8, 1979, Ms. Sutton stepped out of her office to make copies of letters in Personnel on the floor below. On her return about 1:10 pm. Mrs. Willey, an EEO counselor informed her she had seen a man leaving the office who appeared to be hiding something under his arm. Ms. Sutton immediately checked under her desk where her purse had been placed and found that her wallet containing \$325, along with other cards and papers was missing. The Inspection Service was notified. An investigation of the incident was made by L. J. Rys, Postal Inspector, who verified, through interviews with several persons in the Post Office building, that an unknown man, acting very suspiciously, had been in the building at the time of the theft. In the days following the theft, Ms. Sutton received through the mail and through the Lost and Found Office at Penn Station various items that had been in her purse but not the \$325. (Inspector's Report Jt. Ex. #5).

Ms. Sutton filed a claim (Form 2146 Jt. Ex. #4) on March 14, 1979, which claim was approved but compensation limited to \$20 as explained in Mr. Kennan's letter of June 4, 1979 (Jt. Ex. #6) as a matter of Postal Service policy.

Position of the Parties

Union Argument The Union argues that Ms. Sutton's possession of the \$325 on March 8, 1979 was reasonable and proper under the circumstances and the theft of the money was in no way due to her negligence or wrongful act. The money was to be deposited during Ms. Sutton's lunch hour to maintain the minimum balance required by her account. (Un. Exs. #3, #4, #5) Ms. Sutton fully met the criteria of a compensable claim as set forth in Article XXVII. The Postal Service itself was negligent in failing to provide a desk drawer with a lock, or a secure cabinet or cloakroom or other secure place where Ms. Sutton could place her valuables. Postal Service dress requirements prevented her from carrying valuables with her when she left her office. Ms. Sutton's supervisor attested that it was reasonable and proper for her to have \$325 in her possession at the time of the robbery. (Jt. Ex. #4)

The Union avers that the existence of a policy limiting compensation for claims arising from theft to \$20 was made unilaterally in defiance of Article XXVII which requires only that the sum in possession be reasonable and proper and the loss not due to negligence or wrongful act by the claimant. Neither the Union nor the employees had ever been informed that a policy existed limiting compensation for theft to \$20.

Finally, the Union contends that, while there is no corroborating evidence that Ms. Sutton did have \$325 in her purse at the time of the robbery, she is a credible witness and her excellent record in 10 years of service as a postal employee affirms the truth of her testimony. The fact that the robbery did take place was circumstancially established by the Inspector's report and has not been challenged by the Postal Service.

The Union holds that the policy of limiting awards on bona fide claims resulting from robbery to \$20 is arbitrary, not in accord with Article XXVII which establishes no such limitation and hence, should be held a violation of

the Agreement. Ms. Sutton should be paid in full for her claim of \$325.

Postal Service The Postal Service argues that the \$325 allegedly in the possession of Ms. Sutton on March 8, 1979, has not been verified. Were the arbitrator to award Ms. Sutton this amount it would open the flood gates for the payment of claims of substantial amounts merely on the say so of an employee. Such a situation would be intolerable.

It was not reasonable and proper for Ms. Sutton to have \$325 in her possession at her work place. The Postal Service has determined that \$20 in cash is all that an employee would require for reasonable expenses while at work. Ms. Sutton did not use good judgment in protecting her property. She was aware that she had no lockable drawer or cabinet in which to leave valuables, yet she left \$325 in her desk, making no effort to secure her money or to alert any of her colleagues that she was leaving money in her desk.

The Postal Service position is that an employee losing money at his work station should be reimbursed in accordance with Article XXVII, that is, for an amount that is reasonable and proper "to meet his immediate needs at the time of the loss. Our general proposition has been that an employee, under normal circumstances, need not carry more than \$20.00 in cash for the purpose of meeting his immediate needs." (Br. p. 3) This conclusion has been written down as a "management guideline" concerning the payment of such losses. Since numerous claims have been adjudicated since this guideline went into effect in 1972, the Union cannot claim surprise at the existence of such guideline and it is untimely to challenge the propriety of the policy at this late date.

A policy limiting the amount of compensation for theft or loss of cash while at work is necessary both to alert employees to the impropriety of bringing large sums of money to work and to discourage fraudulent and/or unverifiable claims. Ms. Sutton herself acknowledged both the wisdom and practicality of such limitation when she testified that, since the robbery, she had not brought

such large sums of money to work.

The Postal Service urges that the grievance be denied.

Discussion and Award

The testimony and documentary evidence establish clearly that a robbery did take place in which Ms. Sutton lost some money. The Postal Service accepted these facts by approving Ms. Sutton's claim and compensating her to the extent of \$20. The basic issues, therefore, are 1) whether the Postal Service policy (or guideline) limiting compensation to \$20 was a violation of Article XXVII; 2) whether the amount of \$325 was reasonable and proper for Ms. Sutton to have in her possession at the time of the robbery; and 3) whether she was negligent in protecting her property.

The language of Article XXVII is clear.

.....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.

.....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.

Section 640 of the Employee and Labor Relations Manual is more explicit with respect to the filing of claims and their adjudication. Section 645.3 requires that the local installation head and the immediate Headquarters manager make recommendations and submit the claim to the General Manager, Headquarters Personnel Division. Section 645.4 requires the Regional Director or the General Manager, Headquarters Personnel Division to make a decision on the claim. If the claim is denied in whole or in part, a written explanation is sent to the claimant. There is no provision in either Article XXVII or Section 640 of E & LR for establishing an arbitrary limit of \$20 for claims resulting from money loss.

The document setting up the \$20 guideline (Memo #12 dated May 4, 1972,

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submitted after the hearing) makes no mention of contractual support, but explains the \$20 limitation as follows:

An employee entitled to be reimbursed for a cash loss should be paid only the sum which is considered reasonable to meet his immediate needs at the time of the loss. We have operated under the general proposition that an employee, under normal circumstance, need not carry more than \$20.00 in cash for this purpose (underlining in the original). Of course, if the employee can substantiate his need to have a greater amount of cash at the time of the loss-- for instance, if he is in travel status-- the amount which is determined reasonable should be paid.

The above document, while establishing the \$20.00 guideline, makes room for some flexibility in adjusting a claim if circumstances show that possession of a large sum was reasonable at the time. This wording is substantially different from the inflexibility of the \$20.00 limit as stated in Mr. Keenan's disposition of Ms. Sutton's claim in his letter to her of June 4, 1979. (Jt. Ex. #6)

I fully appreciate the desire of the Postal Service to limit its liability with respect to cash losses, which the \$20 limit is designed to accomplish. However, the use of such guideline has two serious consequences. First, the guideline tends to become an arbitrary limit and preclude fair consideration of the circumstances of a given loss, as appears to have been true in the decision on Ms. Sutton's claim. And two, the small amount of \$20 encourages the settlement of claims at that amount, whether worthy or not, since the cost is insignificant compared to the time necessary to make a careful review of the facts of a given claim.

After a full consideration of all the evidence, I find no contractual support for the Postal Service policy or guideline which limits reimbursement for cash loss to \$20, particularly when applied in an inflexible and arbitrary manner.

The second part of the issue to be addressed is whether Ms. Sutton's possession of \$325 was reasonable and proper at the time of the robbery and

whether she was in some way negligent in protecting her property. The Postal Service contends, arbitrarily, that only an amount up to \$20 would be considered reasonable and proper, and further, that there is no supporting evidence that Ms. Sutton actually had \$325 in her possession at the time of the robbery. While Ms. Sutton's testimony that she did have \$325 is not directly supported by any corroborating evidence, the bank statements, submitted by the Union as Exhibits #3, #4 and #5, indicate, circumstantially, that she might well have had that amount of money with her at the time. Her testimony regarding a justification for having that sum was credible, and her record and reputation as a Postal Service employee subscribe to her credibility.

In my opinion, however, she was not entirely without fault in this matter. She was aware that in her office there were not as yet, because of recent occupancy, secure places for one's valuables. There was no lockable drawer in her desk, nor any secure cabinet or cloakroom, which is not an unusual condition in new and poorly furnished office space. She knew that her desk was at the entrance to the office since she was the receptionist, and that this entrance was easily accessible to the public. To have left her pocketbook containing \$325 unattended under these circumstances strikes me as careless. Ms. Sutton must bear some responsibility for her loss.

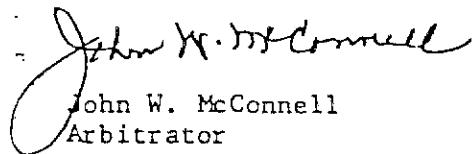
I must conclude, therefore, that to have established a \$20 maximum for settlement of an employee claim for money loss without consultation with the Union and public announcement to employees regarding such policy violates the wording and intent of Article XXVII. Absent agreed upon limitation, Article XXVII required that Ms. Sutton's claim be judged on its merits under criteria set forth in the Article and Section 640 of the Employee and Labor Relations Manual. This was not done. Ms. Sutton must bear some responsibility for her loss since a prudent person would not have left \$325 in an unattended purse under the circumstances. Ms. Sutton should receive \$200 in full and final

settlement of her claim.

Award

The payment of \$20 to Ms. Davola Sutton in settlement of her claim was not reasonable and proper under Article XXVII of the National Agreement and its supporting policy in Section 640 of the Employee and Labor Relations Manual. She shall receive \$200 in full and final settlement of her claim.

Respectfully submitted,


John W. McConnell
Arbitrator

August 4, 1981