

IN THE MATTER OF ARBITRATION BETWEEN) OPINION AND AWARD

National Association of Letter
Carriers

and

U.S. Postal Service
Indianapolis, Indiana

C# 01389

Case No. C1N-4G-C 11781
(Grievance of Donald A.
Cadman)

The hearing in the above-matter was held on July 28, 1982 in Indianapolis, Indiana before Bernard Dobranski, selected as arbitrator in accordance with the procedures of the Collective Bargaining Agreement in effect between the parties.

Appearances: David L. Klein
For the Union

D.J. Shipman
For the Employer

Full opportunity to present evidence and argument was afforded the parties. The parties chose not to file post-hearing briefs.

ISSUE

The agreed upon issue is whether the Postal Service violated Article 27 of the 1981 National Agreement by its denial of a claim submitted by the grievant, Donald A. Cadman.

RELEVANT CONTRACT PROVISION - ARTICLE 27

ARTICLE 27 EMPLOYEE CLAIMS

Subject to a \$10 minimum, an employee may file a claim within fourteen (14) days of the date of loss or damage and be reimbursed for loss or damage to his/her personal property except for motor vehicles and the contents thereof taking into consideration depreciation where the loss or damage

was suffered in connection with or incident to the employee's employment while on duty or while on postal premises. 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. Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions. Claims should be documented, if possible, and submitted with recommendations by the Union steward to the Employer at the local level. 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. An adverse determination on the claim may be appealed pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure.

A decision letter denying a claim in whole or in part will include notification of the Union's right to appeal the decision to arbitration under Article 15.

The regional office will provide to the Union's Regional Representative a copy of the denial letter referenced above, the claim form, and all documentation submitted in connection with the claim.

The installation head or designee will provide a copy of the denial letter to the steward whose recommendation is part of the claim form.

BACKGROUND FACTS

On November 30, 1981, the grievant, Donald A. Cadman, filed a PS Form 2146, Employee's Claim For Personal Property. The basis of the claim was that the frames on his glasses broke on November 21, 1981 while he was on duty. The claim, along with the recommendations of the Union Steward and the grievant's supervisor, was submitted on December 4, 1981 to the regional office for determination.

On December 10, 1981, the claim was denied. The denial letter stated:

1. In Part One of Form 2146, the portion describing how the loss or damage occurred, the claimant wrote: "5329 Jackson -- was stopped open door to put small pkgs in mail box -- started up door started to close -- reach for door -- glasses slipped off on the floor of Jeep -- broke."

Because the above does not indicate the glasses were touched, struck, impacted by some object or force that would cause them

to slide or slip off the employee's face, it would seem, in our opinion, the eyewear was loose, did not fit properly, and was in need of a modification or fitting adjustment. Glasses simply do not slip off of one's face in merely reaching for a door, and a degree of negligence, on the claimant's part, is indicated. The claimant did not state for the record nor does the file relate the jeep had any operating defects relative to its doors or door locks;

2. The National Agreement provides that loss or damage will not be compensated when it resulted from wear and tear associated with day-to-day living and working conditions; that the damage or loss must not have been caused in whole or in part by the negligence of the employee; and
3. The facts do not report that the personal property damage was caused by any malfunctioning or defective U. S. Postal Service equipment.

Gadman explained that the damage occurred in the following manner: He pulled up in his jeep to the curb line mail box at 5329 Jackson with a small package. He pushed the sliding door back and reached out from the jeep and put the package into the box. He then closed the box and began to move the jeep to the next mail box. Because the next box was a short distance away, the door in the jeep remained open. As he started forward and before his head was completely in the jeep, the sliding door unexpectedly moved forward and hit the side of his glasses, causing them to drop to the floor which resulted in the frame breaking. Although the grievant was not certain, he suggested that the door came forward because the latch did not work. (Normally there is a latch which catches and holds the door when it slides back.) In fact, when he returned to the post office that day, he spoke to the maintenance man in the parking lot and asked him to check and, if necessary, adjust the door. Although

no repair tag was ever issued, the maintenance man later came back and told him that the catch with a latch was now "O.K." Cadman pointed out that due to the frequent vibrations it was not unusual for the locks and latches on the jeep to need adjustment, repair, or replacement.

Cadman also explained that he used the phrase "slipped off" on the claim form because he was not knowledgeable about what to say on the form. He was also trying to simplify the explanation so that he could get all of the writing in the small space provided on the form. A more accurate description of what occurred was not that the glasses slipped off but that they were knocked off by the door sliding forward. He further pointed out that because he was near-sighted and dependent upon the glasses for driving, the frames were periodically adjusted. He put the new frames on at the hearing and demonstrated that they would not fall off even when he shook his head. Similarly, the frames which were broken on November 21 fit in the same manner. Thus, it was not possible for the frames to merely slip off.

The Postal Service presented its case mainly through argument. Much of its case was based Joint Exhibit 2 (which consisted of the claim and the supporting recommendations of the Union steward and supervisor; the receipt in the amount of \$21.00 for new glass frames; the letter to the regional director from the Postmaster which accompanied the Form 2146; the denial letter; and the union appeal to arbitration) and the implications derived therefrom.

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

POSITIONS OF THE PARTIES

Union Position

The Union contends that the evidence clearly establishes that the grievant was entitled to have his claim for damages honored by the Postal Service. They slipped off onto the floor not because of his negligence but because they were hit by the door. In fact, as the grievant demonstrated at the hearing he was in the habit of keeping them in good repair and adjustment. The claim was timely made and there was no dispute that the damage occurred while the grievant was on the clock and working. His possession or wearing of the glasses under the circumstances was certainly reasonable and proper and the damage was not caused in whole or in part by any negligence or wrongful act of the grievant. Moreover, it cannot be legitimately claimed that glass frames falling to the floor and breaking after contact with a vehicle door is normal wear and tear associated with day to day living. For all these reasons, the grievance should be sustained and the grievant awarded \$21.00 for the damage to his glasses.

Postal Service Position

The Postal Service contends that it is from the information submitted on that claim that a decision must be made whether to honor or deny the claim. Thus, the operative document is the claim submitted by the grievant. An examination of that claim indicates that the "glasses slipped off on the floor of the jeep - broke." Such a description indicates that the damage was caused in whole or part by the negligent actions of the

grievant. As the denial letter pointed out, "[g]lasses simply do not slip off of one's face in merely reaching for a door, and a degree of negligence, on the claimant's part, is indicated." Thus, the denial of the claim submitted -- which is the issue before the Arbitrator -- was proper because the claim as written indicated negligence.

The Postal Service further argues that even under the grievant's version presented at the hearing as to how the damage occurred, the claim still should be denied. First, an absence of care is indicated when the grievant moved the vehicle forward before his head was completely inside. Moreover, his own testimony indicated that the latches were notoriously unreliable and failed to latch properly with regularity. If this is correct, the only conclusion that can be drawn from the grievant's conduct in having his head in the doorway when the vehicle was moving forward and knowing that the latches were unreliable and subject to move because of the vibrations is an absence of care, which is a proper ground for denial of the claim under the terms of Article 27.

In summary, either under the claim as written or as the incident was described by the grievant at the hearing, it is clear that the damage resulted at least in part from the grievant's negligence and, therefore, the grievance should be denied.

DISCUSSION AND OPINION

Although the issue is a close one, it is my conclusion that the grievance should be sustained. My reasons are as follows:

Article 27 of the agreement in essence permits an employee to file a claim for or damage to his personal property where the damage was suffered while the employee was on duty. Possession of the property must have been reasonable or proper under the circumstances and the damage must not have been caused in whole or in part by the negligence or wrongful act of the employee. Moreover, compensation will not be paid for the damage if it resulted from normal wear and tear associated with day-to-day living and working conditions.

In this case, it is clear that the grievant suffered damage to his glasses while on duty. It is also beyond dispute that the the possession or wearing of the glasses by the grievant was reasonable and that the damage suffered -- the breaking of the frames -- could not reasonably be attributed to normal wear and tear.

The only question presented in this case is whether the damage was caused in whole or in part by the grievant's negligence. Based on the evidence presented at the hearing, I do not believe that it was. The grievant persuasively and convincingly established through his testimony that the damage to his glasses resulted when the jeep door, which should have stayed back, slid forward and knocked the glasses to the floor, causing the frames to break. This was something over which the grievant had no control and it was something which he could not reasonably have anticipated.

It is true, as the Postal Service points out, that the grievant testified that road vibrations made the locks and the

latch on the Jeeps unreliable. However, there was nothing in his recitation of unreliability which suggested the latch on his particular jeep was such a persistent problem that he should have anticipated that the door would slide forward when the jeep began to move, and hit his glasses, causing them to fall and break.

Nor do I believe there was a lack of care exhibited when the greivant started the jeep forward before his head was completely in the jeep. As the grievant described the incident, he opened and slid back the door, put the package in the mailbox without leaving the jeep, closed the mailbox, and as he was pulling his head back in the jeep began to start forward to the next box. This recitation or description of how he performed the task impressed me as the normal -- and certainly not an unusual -- way a carrier would perform in such circumstances. I note also that it was the grievant's glasses which were hit by the door and not his head. This suggests that his head was almost completely in the jeep when it began to move and, when the door, which should have remained open, slid forward and struck the glasses.

In short, I conclude that the grievant's testimony established that the damage which was suffered was not caused either in whole or in part by his negligence.

In reaching this conclusion, I also reject the Postal Service argument that the arbitrator should look only to claim and decide from the language of the claim whether the damages were the result of the grievant's negligence.

Certainly if the evidence established that the glasses merely slipped off during the course of his work because they

were not fastened or adjusted properly, the Postal Service should not be responsible for that damage under Article 27. However, as stated above, the grievant's testimony at the hearing convinced me that this was not how the damage occurred. It is true that the grievant did not spell out the details of the incident on the form with the same precision that he narrated them at the hearing. More specifically, the grievant merely stated on the form that the glasses slipped off on the floor of the jeep and broke. He explained at the hearing, however, that he was not a skilled draftsman or an attorney, was not aware of the precision required in drafting the claim, and did not have sufficient space for more details on the form. I found this explanation as to why he did not provide the details on the form acceptable.¹

I believe that Cadman, for reasons of space and lack of sophistication in filling out the form, simply omitted the step which would have explained why the glasses slipped off or fell to the floor. It is true that "slipped off" normally connotes something other than "knocked off." However, I believe the use of the term "slipped off" was simply inartful phraseology on his part.

Moreover, the meaning of the phrase is not so certain and clear that it permits only the inference drawn by the Postal Service, i.e. that some degree of negligence on the grievant's part must have been involved. Rather, it is sufficiently

¹ The grievant impressed me as an honest, candid and forthright witness, and I found his testimony to be persuasive throughout.

incomplete or ambiguous to at least put the Postal Service to the burden of asking for clarification or additional information. The Postal Service did not do this, however, but merely presumed negligence.

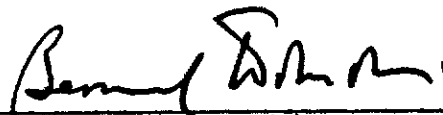
Furthermore, the grievant's explanation of the lack of space for a more complete description of the incident accorded with my examination of the form he filled out. The space provided on the form for the explanation of what occurred is not very large. When the grievant reached that part of his explanation which led to the breaking of the frames, he began to run out of space and his writing became cramped. It is very likely in these circumstances that the grievant was simply describing the end result of the door hitting the glasses -- slipping off onto the floor of the jeep and breaking -- while omitting the concededly important previous step of the cause of the glasses slipping off and breaking, i.e., the unexpected sliding forward of the door.

In summary, I do not believe that the resolution of this grievance depends exclusively on an examination of the claim as it was inartfully and inadequately set forth by the grievant in his Form 2146. Moreover, I conclude that the grievant's explanation provided at the hearing of how the damage occurred convincingly established that the damage was not due to any negligence, in whole or in part, of his.

AWARD

For all the reasons set forth above, the grievance is sustained and the grievant is entitled to have his claim of \$21.00 honored by the Postal Service.

August 26, 1982
South Bend, Indiana



Bernard Dobranski
Arbitrator