

C#07760

USPS - NALC ARBITRATION PANEL

SOUTHERN REGION

WILLIAM J. LeWINTER, ARBITRATOR

In the Matter of Arbitration Between :

UNITED STATES POSTAL SERVICE :
(Houston, Texas) :

- and - :

NATIONAL ASSOCIATION OF LETTER CARRIERS :
(Branch No. 283) :

S4N - 3U - C 7639

: Hearing Date: July 23, 1987

: Hearing Closed: July 23, 1987

Appearing for Employer:
Elizabeth Wallace
Labor Relations Assistant

Appearing for Union:
D. R. Beasley
Local Representative (Houston, Texas)

William J. LeWinter
Arbitrator
5001 Collins Avenue, Suite 14B
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JOE Z. ROMERO
NATIONAL BUSINESS AGENT
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Preliminary Statement

A grievance was filed by the Union on Behalf of Raul Martinez alleging the employer failed to reimburse him sums lost in a robbery while on duty.

Issue

Does Article 27 of the Collective Bargaining Agreement (CBA) require full reimbursement to Grievant for the loss of a wrist watch, a gold/diamond ring, a gold necklace and a nuggett medallion taken in an armed robbery: If so, what is Grievant's remedy?

STATEMENT OF FACTS

The Grievant was robbed at gunpoint by two unidentified assailants shortly after he had finished lunch in September, 1985, at Gatti's Restaurant. This restaurant was on Grievant's line of travel, and he ate lunch there on a regular basis. However, Gatti's was not the lunch location authorized by the Employer.

Nevertheless, the Employer conceded the robbery occurred in the course of the Grievant's duties. It reimbursed Grievant \$30.00 in cash in his possession when he was robbed because that amount is "considered reasonable." The Employer, however, refused to reimburse Grievant for the following items he claimed were stolen: a wrist watch worth \$495.00; a diamond/gold ring worth \$225.00 to \$250.00; a gold necklace and a nuggett medallion worth \$175.00 to \$225.00. The Postal Service's reason for denying reimbursement was that the foregoing property items were not deemed "reasonable, proper and incidental to your employment as a letter carrier." The Grievant also claimed in his testimony that he has not received the \$30.00 the Postal Service stated in a letter to him dated October 21, 1985, that he would be paid as his reimbursement for the stolen cash.

The relevant language of Article 27 of the National Agreement reads:

"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.
(Emphasis added)

The Grievant testified the watch was only twenty to thirty days old and was given to him as a birthday present. He testified it was necessary for him to carry a wrist watch on his person to properly fulfill his job duties as a letter carrier. He also testified the other items of jewelry were worn "all the time" whether on or off the job. Grievant presented the sole evidence as to the value of the jewelry items stolen.

DISCUSSION

The Employer does not dispute the Grievant was the victim of an all-too-common social malady, an armed robbery. The Union and the Postal Service contemplated in their agreement that employees may be the victims of criminal misconduct while performing job duties or while their property is located on the Employer's premises.

In this case, the Employer argues that the loss was not "in connection with or incident to the Employee's employment while on duty" because he deviated from authorized lunch locations. The Arbitrator agrees with the Union's contention, however, that the Postal Service effectively waived this contention when it determined Grievant's cash loss claim was "reasonable." If that item of property was lost "incident to" Grievant's employment, the Employer may

not pick and choose between other items of property lost incident to job performance. Moreover, no showing was made that lunch break locations are assigned to employees to prevent robberies. Grievant, in today's social climate, was as susceptible to a crime whether the lunch was at Gatti's or some other restaurant, authorized by the Employer. Accordingly, the authorization of a specific lunch location bears no relationship to the exposure to robbery.

The Employer's next contention, however, is more meritorious. The Postal Service contends, and the Arbitrator agrees, that possession of the property was not entirely "reasonable, or proper under the circumstances." The Arbitrator does not find fault in the Grievant's desire to wear a \$495.00 watch recently presented as a birthday gift or other valuable items of jewelry he is accustomed to wearing.

However, the Postal Service should not reasonably be required to compensate an employee's subjective needs and desires just because he or she suffers job-related misfortune. The Arbitrator interprets Article 27 requires a more objective test, to be applied on a case by case basis, for arriving at what property items are "reasonable" or "proper."

Certainly, a reasonably prudent letter carrier should realize beforehand that the more valuable the items of personal property he or she chooses to wear, the more inviting the person became as a target for criminal wrongdoing. Were the Arbitrator blindly to require the Employer to reimburse employees for lost personal property, regardless of value, then an employee might be less cautious concerning personal effects. Further, such an interpretation might encourage fraudulent or inflated claims by employees.

The loss must be reasonable or proper under the circumstances. Here, the Arbitrator believes that jewelry items like a personal ring and necklace, regardless of value, are not reasonably or properly connected to Grievant's job duties as a letter carrier. Thus, if he chose to wear such items on the job, he did so at his own peril.

A watch, on the other hand, is another matter. The Arbitrator is of the opinion that a watch is a functional, not just an ornamental, item of property which is reasonably necessary to properly perform job-related responsibilities of a letter carrier. The Employer violated Article 27 to the extent it denied reimbursement for this item.

However, the Arbitrator believes that it is neither reasonable nor proper under the circumstances for an employee to wear a watch worth \$495.00 on the job, especially when the possibility of loss by robbery has been contemplated in the contract. No employee can expect to wear enormously valuable jewelry worth thousands of dollars on the job and be fully compensated for a resulting loss. The Arbitrator believes the sum of \$50.00 is a reasonable sum to allow an employee for reimbursement of a wrist watch.

The Arbitrator has carefully read three prior arbitration decisions submitted by the parties construing Article 27 of the National Agreement. The earliest of these cases, Case No. SIN-3D-C-23303, decided by Arbitrator James F. Searce, on April 14, 1984, denied the grievant's claim for reimbursement of a wedding ring stolen in a robbery. Arbitrator Searce commented that an employee's

personal money or a watch "are reasonably construed as at least incident to his/her employment. The same cannot be stated for a wedding ring." This Arbitrator agrees with this view of Article 27's meaning.

Another Arbitrator, Elvis C. Stephens, determined in Case No. SIN-3U-C-13397, decided October 22, 1984, that the Postal Service did not violate Article 27 when it denied full reimbursement of \$120.00 in cash stolen from an employee in a robbery. The Employer only reimbursed the employee \$30.00. Arbitrator Stephens sustained the Employer's action, finding "a large portion of the cash the grievant carried was for personal purposes only, and not in any way in connection with his employment." He also stated, "The key to the issue [under Article 27] is whether or not the possession of the property is reasonable under the circumstances." This Arbitrator also agrees with the view expressed by Arbitrator Stephens.

The third decision rendered on November 8, 1985, by Arbitrator John F. Caraway in Case No. SIN-3U-C-27516, determined that possession of a Walkman AM/FM Cassette radio was reasonably incident to employment because it enhances job performance of letter carriers involved in casing mail. Nonetheless, the Arbitrator found the value claimed by the employee for the stolen radio (\$159.00) was excessive and reduced the claim to \$102.00.

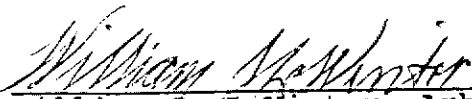
These decisions are highly persuasive in this case. The case by case analysis of the three prior Arbitrators have persuaded this Arbitrator that the intent of the drafters of Article 27 was to

inquire in each instance when robbery or theft occurs if possession of stolen property was incident to employment and was reasonable or proper under the circumstances.

DECISION

The grievance is partially sustained. The Employer shall pay Grievant the sum of \$50.00 as the reasonable value for a watch stolen during the course of Grievant's employment. Further, Grievant claims he has not received the \$30.00 agreed to by the Employer prior to filing the within grievance. It should be a simple matter of record-checking to ascertain whether the payment was made. In the event the payment of said \$30.00 has not been made, the Arbitrator orders said payment to be made forthwith.

Respectfully submitted,



William J. LeWinter, Arbitrator
DATED: January 29, 1988