

C# 04235

In the Matter of Arbitration Between :
UNITED STATES POSTAL SERVICE :
"Service" :
and : SIN - 3D-C 23303
NATIONAL ASSOCIATION OF LETTER :
CARRIERS - BRANCH 530 :
"Union" : Jack W. Latta
Before: James F. Scearce, Arbitrator :
Birmingham, Al

This case involves a dispute over the Service's demand of a claim for loss of property incurred by the grievant, Jack W. Latta, as a result of a robbery at the Pratt City Branch in Birmingham, Alabama. The hearing was held on December 12, 1983 at the main postal facility in Birmingham, Alabama. Both parties were afforded a full opportunity to present, examine and cross-examine witnesses and to submit exhibits. The proceedings were recorded by notes of the arbitrator. Both parties closed argument by briefs which were received in due course.

APPEARANCES

FOR THE UNION:

Collier M. James

Administrative Assistant NALC
(Presenting)

FOR THE SERVICE:

Walter Flanagan

Regional Labor Relations
Specialist
(Presenting)

BACKGROUND

The underlying facts in this case are not in dispute: on June 9, 1983 three armed persons entered the Pratt City Station - part of the Birmingham, Alabama postal system - by the back door and robbed the Station of certain funds.

They also robbed several postal employees of money and personal belongings, including watches, drivers' licenses and a ring - the latter which belonged to the grievant and which becomes the gravamen of this dispute. According to the grievant, the stolen article was a gold wedding band with five (5) diamonds, total weight 1/2 carat valued at \$850. He requested that the Service compensate him for such loss, which it refused to do. A grievance was filed and denied at all stages of the handling procedure, which now brings it to arbitration for final disposition.

POSITION OF THE UNION

Article 27 provides for reimbursement of loss or damage to personal property which is covered by the circumstances in this case. Claims by other employees who were robbed were satisfied by the Service; only the grievant's was denied.

The Agreement does not specify precisely what losses are reimbursable; the Service cannot show that the grievant is not entitled to his loss here. The Service contributed to this incident by failing to secure the back door even though the shop steward had specifically requested they do so on several occasions prior to this incident. The Service has never specified what personal items it would not consider reimbursable other than those stated in the Agreement. The grievant is entitled to satisfaction of his claim.

POSITION OF THE SERVICE

Article 27 qualifies claims for losses in that they must be related or incident to employment. Certain other items were considered sufficiently related to the affected employees' employment to warrant their replacement value under the conditions set out in Article 27. No such item was valued at more than \$59, which was a watch. Wearing a wedding band is not required by the Service and the Service consequently should not be expected to offset such loss at any price, particularly not at the value claimed by the grievant.

CITED/RELEVANT PROVISIONS OF THE AGREEMENT

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 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.

(Jt. Ex. 1)

THE ISSUE

Does Article 27 of the Agreement require reimbursement to the grievant, Jack W. Latta, under the conditions that arose in conjunction with the robbery at Pratt City Station on June 9, 1963?

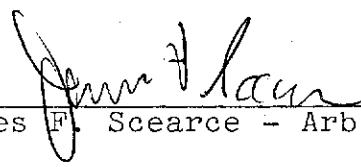
DISCUSSION AND FINDINGS

One aspect of the Union's contention in this case must be discounted. That has to do with the claim that the Service contributed to the incident by failing to secure the rear door even though this circumstance was complained about at some earlier time by a Union official. Such assertion was entered on the record after the hearing by copy of a letter purportedly executed on December 1, 1983 by a Union steward (McCrary) to the then president of Branch 530 (Johnson). Such letter claimed a request had been made to the Station Manager on two occasions prior to the robbery, to no avail. While such events may have transpired, the offering of such letter at the hearing would have been subject to challenge under the Rules of Evidence since it would have offered no opportunity for cross-examination. The offering of it post the hearing renders it even less acceptable. In sum, no probative value can be attached to such claim.

As regards the specific claim herein, the drafters of Article 27 presumably had a specific intent in the precision with which they drew the term "....in connection with or incident to the employee's employment" insofar as what was - and was not - reimbursable. (See page 4 of this document) The Union's argument to the contrary notwithstanding, an employee's personal money or an item such as driver's license or watch are reasonably construed as at least incident to his/her employment. The same cannot be stated for a wedding ring. This is not to demean the importance of marriage vows or the symbolism of a wedding band, but reason dictates that the construction of Article 27 anticipates exclusion of certain items which are neither connected to nor incident to the work performed by the employee. Essentially, it draws a line which requires interpretation and evaluation based on the specific circumstances of a given instance. I have taken arbitral note of the Union's arbitration citations and find either that the favorable Award involved lost or damaged items which were connected to or incident to the employment obligation involved, or resulted from properly proven Service negligence. Neither situation is deemed to exist here. It is a most unfortunate, reprehensible and criminal circumstance that resulted in the grievant's loss , and while this arbitrator recognizes the inequity the grievant may feel here, the arbitrator's authority is drawn from the will of the parties as set forth in the Agreement. In doing so I am compelled to conclude that the grievant's loss is not covered by the provisions of Article 27.

AWARD

Claim is denied.



James F. Scearce - Arbitrator

Atlanta, Georgia
April 14, 1984