

C#9382

REGULAR ARBITRATION PANEL

SOUTHERN REGION

In the Matter of the Arbitration)	GRIEVANT: John Hawes
)	POST OFFICE: Mableton, GA
)	PS CASE NO.: S4N-3E-C 52067
)	GTS NO.: 5149
)	OPINION
)	and
UNITED STATES POSTAL SERVICE)	AWARD
)	
)	
)	
)	
NATIONAL ASSOCIATION OF LETTER)	
)	
)	
)	
CARRIERS, AFL-CIO)	
)	

BEFORE: F. Jay Taylor, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Katherine S. Brown
Labor Relations
Representative

For the National Association
of Letter Carriers: Judson Vaughn
Regional Administrative
Assistant

PLACE OF HEARING: U. S. Post Office
Mableton, GA

DATE OF HEARING: August 14, 1989

AWARD:

The grievance is sustained. The Letter of
Demand to the Grievant, John Hawes, is hereby
rescinded and all mention thereof removed from
his Personnel File.

DATE OF AWARD: August 22, 1989

The grievance was heard at the United States Post Office in Mableton, Georgia, on August 14, 1989, before F. Jay Taylor, Contract Arbitrator.

The parties were professionally represented by competent and experienced Advocates. They stipulated that the procedural steps of the grievance procedure as outlined and prescribed in the National Agreement have been complied with and that the issue was properly before the Arbitrator for hearing and adjudication.

The Advocates were afforded an opportunity to offer all relevant evidence, both oral and documentary, and to examine and to cross-examine the witnesses, all of whom testified under oath. At the conclusion of the Hearing, both Ms. Brown (Agency) and Mr. Vaughn (Union) stated that (a) they had no further proofs to offer in support of their respective contentions; that (b) subject to the objections entered into the Record, they were satisfied with the state of the Record; and that (c) the Postal Service and the Union had each received a full, fair, and impartial Hearing.

The Grievant, John Hawes, testified that he, too, was satisfied with the state of the Record and that he had nothing further to add in his own defense. He likewise testified that he had been fully and fairly represented by his Union, The National Association of Letter Carriers, in the proceedings.

The Hearing was tape-recorded by the Arbitrator for his use in preparing the FINDINGS and AWARD in the case. The parties presented closing arguments and waived the right to file post-Hearing Briefs.

THE ISSUE:

Did the Postal Service violate Article 28, Section 2, of the National Agreement as well as any other applicable rules and regulations when the Grievant, John Hawes, was issued a Letter of Demand demanding reimbursement in the amount of \$3135.14 due to his failure to deliver a registered article which was assigned to his custody? If so, what is the appropriate remedy?

PERTINENT PROVISIONS OF THE NATIONAL AGREEMENT:

(Joint Exhibit No. 1)

The parties have agreed that Article 28 as cited below is applicable to the issue submitted to the Arbitrator.

ARTICLE 28

EMPLOYER CLAIMS

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the USPS property, postal funds, and the mails. In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefor.

...

Section 2. Loss or Damage of the Mails

An employee is responsible for the protection of the mails entrusted to the employee. Such employee shall not be financially liable for any loss, rifling, damage, wrong delivery of or depredation on, the mails or failure to collect or remit C.O.D. funds unless the employee failed to exercise reasonable care.

STATEMENT OF THE CASE

This case arises out of a dispute involving a Letter of Demand issued to the Grievant, John F. Hawes, Jr., who worked as

a Regular Carrier in the Mableton, Georgia Post Office. Mr. Hawes began his career with the Postal Service in 1973 in Orlando, Florida. His employment at the Mableton Post Office began in 1979 where he has worked to the present day.

On March 29, 1987, the Employee was issued a Letter of Demand which stated in pertinent part that--

Letter of Demand - Lost Bank Register
#R275460974

On October 8, 1986, you signed for and received the above register which was an official remittance to the Georgia State Bank. This register contained \$3,020.00 cash and \$767.46 in checks, for a total deposit of \$3,767.46.

Of the \$767.46 in checks a total of \$632.32 has been recovered, leaving a total balance due of \$3135.14.

Investigation by Postal Inspectors H. W. Kilgore and W. F. Bridges failed to provide any leads relating to this loss.

Since the register was not delivered to the bank and you were unable to account for same, the amount of \$3,135.14 is due by you upon receipt of this letter, which is March 20, 1987.

The Union protested the Letter of Demand and a grievance was filed on April 7, 1987, wherein the Union requested that the "...Letter of Demand be rescinded and the Carrier involved not be accountable in any way for these monies; also all facts pertaining to this case be removed from his file." The Union contended that the Demand was "unreasonable" in that the Carrier used "reasonable care" while the registered item was in his possession. Furthermore, Management did not provide the Carriers

with satchels or any other method of securing accountable mail despite repeated requests to do so.

The Agency denied the grievance, however, noting that it is evident "...that the grievant did not exercise reasonable care in safe guarding his mail." Thus, the issue was joined. Failing resolution of the dispute through the various steps of the grievance procedure, the Union submitted a demand for final and binding arbitral review.

SUMMARY POSITION OF THE UNION

The Union argued that it would be a miscarriage of justice to require the Grievant to pay \$3135.14 to the Agency under the circumstances pertinent to this case. The Union does not question that the Carrier signed for and received the registered item in question and it was properly in his custody. It must be emphasized, however, that the Employee exercised reasonable care in his handling of the registered article. The Register was only out of his sight twice; once when Mr. Hawes left his mail deliveries, including the accountables, while he punched the time clock and again when, after loading the mail in the postal vehicle, he left for approximately ten minutes on scheduled break time. The Carrier is unsure whether he locked the vehicle prior to going on break. Thus, it cannot be accurately determined if the missing registered item was taken prior to the time that the Grievant left the Office or while he was on break.

There were three registered items assigned to the Georgia State Bank which was the third stop in the Carrier's Route. Upon

arriving at the Bank, Mr. Hawes discovered that he had only two of the three registered items in his possession and ready for delivery. He immediately notified his supervisor. A diligent search was made but the missing registered article could not be found. Nor were the Postal Inspectors able to discover any leads which were related to the loss of the Register.

The Union contends that the missing Register was stolen by a Clerk in the Mableton Post Office. The Clerk was in the immediate vicinity at the time the Carrier was preparing to leave on his Route. Other thefts had also occurred in the Mableton Post Office. The suspected Clerk was later apprehended and charged with theft of Postal funds. He was convicted and is presently serving time in Federal prison. Although the Clerk admitted stealing other items in the Post Office, he never admitted taking the missing Register. It is apparent he did so, however.

The Carriers have requested on several occasions that they be provided with some means of securing accountable items once they were placed in the custody of the Carrier. Management, however, failed to do so. A lock box, a satchel or any method of safeguarding a Register would help secure the chain of custody. If Management fails to assist the Carriers in protecting accountable mail, then it must assume some responsibility if the losses occur.

John Hawes is a long-term, thoroughly honest Employee. His record is unblemished. Thus, it is grossly unfair to subject him to a Letter of Demand imposing such a heaving financial

burden. The Union requests, therefore, that the grievance be sustained and the remedy prayed for be granted in its entirety.

SUMMARY POSITION OF THE AGENCY

While conceding that the missing Register was likely purloined by the Clerk even though there is no direct evidence, the Agency argued that the missing accountable was still in the possession and custody of the Carrier once he signed for it. He did not deliver it to the addressee. Thus, the responsibility for the loss falls squarely on the shoulders of Mr. Hawes.

Article 28, Section 2, of the National Agreement clearly states that "An employee is responsible for the protection of the mails entrusted to the employee. Such employee shall not be financially liable for any loss, rifling, damage, wrong delivery of, or depredation on, the mails or failure to collect or remit C.O.D. funds unless the employee failed to exercise reasonable care..." In this case it is apparent that Mr. Hawes, indeed, failed to exercise reasonable care. He simply failed to fulfill the responsibility entrusted to him. He left the Registers unprotected while he clocked out and he is not even sure that he locked the vehicle door after the mail had been placed inside and then he went on break.

As for satchels or some kind of lock box to secure accountables, while the subject may have been broached to Management by the Carriers, it was not pursued and no grievances were filed. Management did check into the possibility of securing satchels but could not find them listed in the supply catalog.

For his carelessness and negligence, the Employee was assessed a ten calendar day suspension. He was informed by the Superintendent of Postal Operations that--

You are hereby notified that you will be suspended for a period of ten (10) calendar days beginning on April 27, 1987, 0645 am. This suspension will run through May 6, 1987, 0315 pm. You are to return to duty on your first normally scheduled tour thereafter.

The Reason for this Suspension is:

Charge 1: Failure to Properly Secure Registered Mail. On October 8, 1987, you were assigned to Rt. 5902. In checking out, you signed for Register #R275460974 which was addressed to Georgia State Bank.

At approximately 9:40 am you returned to the post office and advised me that when you arrived at the bank you did not have the above register. While questioning you and attempting to retrace your steps, I asked you if your vehicle was secure while you were on break in the office before leaving for route. Your response was that the passenger door had been left unlocked. We immediately searched the surrounding area including the post office, parking area and adjacent wooded area. The postmaster was informed and the Postal Inspection Service was immediately contacted.

Postal Inspection Service has completed an investigation of this lost register and reported no leads regarding the loss of register #R275460974.

After consultation with the Union and the Grievant, it was mutually agreed that the ten day suspension would be reduced to three days--May 15-17, 1987.

While the circumstances of this case presents a "sad situation," Mr. Hawes' liability cannot be removed by the

Arbitrator. The grievance, therefore, has no merit. It should be denied and dismissed in its entirety.

FINDINGS

It is the finding and conclusion of the Impartial Arbitrator, after carefully reviewing and weighing the oral and the documentary evidence, the arbitration cases cited, the cogent and well-reasoned arguments advanced by Mr. Vaughn on behalf of the Union and Ms. Brown on behalf of the Postal Service, that there are, indeed, extraordinary and mitigating circumstances present in this case. While Carrier Hawes may not be as blameless as the Union contends, I am not persuaded that he is as blameworthy as the Agency considers him to be. Therefore, I do not consider it fair and reasonable to require the Employee to reimburse the Agency \$3135.14. The rationale and reasoning supporting this decision are enumerated below.

First, I would note that all parties, including the Arbitrator, agree that Grievant John Hawes is a thoroughly creditable witness. I believe that he was honest and forthright in his testimony. Whether he was negligent and careless with the Register on the day in question under the circumstances is subject to debate. In any event I am not persuaded that Mr. Hawes must be assessed full responsibility for the loss. Having said this, I want to emphasize that although I am basically a compassionate person, compassion, sympathy and concern for the Employee have not dictated the FINDINGS and AWARD in this case.

There are three areas of concern involving Management which have helped formulate my opinion in this case and which indicate some degree of culpability on the part of the Agency.

(a) All agree that the Clerk was the guilty party. As the Postmaster testified: "There is no doubt in my mind but that [the Clerk] stole the Register...Everybody knew he was a thief...You could not leave anything around, [he] would steal it." The Clerk later admitted other thefts in the Mableton Post Office. He was found guilty and is presently serving time in Federal prison. Those Employees with shortages in their accounts and who had been assessed Letters of Demand had such Letters rescinded once the Clerk admitted the theft. Even though the Clerk did not admit taking the missing Register, I, too, am persuaded that he was the guilty party. The circumstantial evidence is most convincing. He, along with one other Employee, was in the immediate vicinity of the Register just prior to the time that the Carrier left on his Route. He refused to take a polygraph test when requested by the Inspections Service. (Mr. Hawes readily took the Lie Detector examination with apparently negative results.) And the Clerk admitted other thefts. So it is a safe assumption that he was the guilty party.

Knowing that a thief was in their midst but not knowing at the time whom it might be, it is difficult for the Arbitrator to understand why Mableton Management did not take special precautions to protect accountable mail and other valuables, at least until the culprit was apprehended. Seemingly nothing was done; no precautions were taken. Thus, each Employee, Clerks and

Carriers, were left in vulnerable positions when Management could have lessened the risks involved. The Postal Service must assume some responsibility for security within its own facilities.

(b) I am further persuaded that at the time (October 8, 1986) Management was negligent in not having clearly posted written instructions concerning procedures relative to the handling of accountables, particularly registered mail. This problem apparently no longer exists at the Mableton Post Office, but I believe that it did in October, 1986. For example, if a Carrier had signed for custody of a registered item, what procedure should be followed if the Carrier finds it necessary to go to the lavatory? It was suggested at the Arbitration Hearing that he should take the registered item with him. In my years of working with the Postal Service, however, I have never known it to be permissible to take a registered item into a restroom. My point is, when an Employee finds it necessary to leave his accountables unattended, there should be established procedures that would protect both the accountables and the Carrier.

(c) This Arbitrator has no authority to rule that Management is mandated to provide the Carriers with satchels, or a locked container, or some other means of security for accountable mail. That is for Management to determine and the Union to grieve if it is felt that the Agency is not fulfilling its Contractual commitments. I do know from experience, however, that in many Post Offices such are provided. Some provide satchels with a locked pocket. Others provide a locked container that is attached to the inside of the Postal vehicle.

Be that as it may if Management elects, for economic or for any other reason, not to provide satchels or some other means to safeguard accountable mail, then it must share some of the responsibility when problems arise concerning safekeeping registered items. Furthermore, such failures, including failure to maintain locks on postal vehicles, make it even more difficult for the Agency to prove that an Employee failed to exercise "reasonable care" in the handling of accountable mail.

It is not clear whether the theft of the missing Register occurred inside the Post Office or after the Carrier loaded his vehicle. The Union argued that the theft occurred inside the Post Office prior to the time that Mr. Hawes took the hamper of mail, including the accountables, to his vehicle. The Agency contends that it occurred after the Carrier loaded the mail into his vehicle, failed to lock the door, and then went on break. The evidence is lacking, however, which would prove either contention. Thus, I cannot give full weight to the unlocked vehicle door theory advanced by the Agency. And even accepting the Service's contention that the Carrier left the vehicle door unlocked when he went on break, I cannot conclude that it outweighs the other FINDINGS in the case.

Both parties have agreed that John Hawes has been and is an able, hard working Carrier whose integrity is not questioned. The Postmaster's evaluation best proves this point: "John is one of our best employees...He knows his business...He is an excellent Carrier...We have used him to instruct other Carriers."

(Taped Record) In a close call, this kind of employment record has helped tip the scales in favor of the Grievant.

Nothing in this Opinion and Award should in any way be construed as a weakening of the clearly stated responsibilities of Postal Employees specifically enumerated in Article 28, Section 2, of the National Agreement. I have no such authority. This mandate is inviolate. I have only ruled on the particular circumstances and conditions pertinent to the case at bar.

Therefore, after due consideration, and for the reasons stated above, the undersigned, duly designated Arbitrator makes the following

AWARD

The grievance is sustained. The Letter of Demand to the Grievant, John Hawes, is hereby rescinded and all mention thereof removed from his Personnel File.



F. Gay Taylor, Contract Arbitrator

Dated at Ruston, LA
this 23rd day of August, 1989