C#07600

Arbitration Award

In the matter of Arbitration between:

National Association of Letter Carriers, AFL-CIO, Branch #39

and

United States Postal Service
Indianapolis, Indiana

Case #C4N-4G-C 30878
Issue: Employee Claim of M. Byrd
GTS No. 001512

Appearances:

For the Union:

David L. Klein, President-Branch #39
Mariam Byrd, Letter Carrier and Grievant
Gary Milbrath, Letter Carrier and Steward
Richard Hui, Manager of Stations and Branch Operations (Nora Station)
Mari Sechman, Supervisor

For the Postal Service:

Mark S. Hurley, Labor Relations Representative

Date of Grievance:	September 17, 1986
Date of Arbitration Hearing:	May 20, 1987
Arbitration Hearing Site:	Main Post Office 125 W. South Street Indianapolis, Indiana
Hearing Transcript:	None taken
Post-Hearing Briefs:	None filed

I. Issue:

Pursuant to the collective bargaining agreement (Jt. Ex. #1) which is currently in effect between the United States Postal

Service, hereinafter "Employer" or "USPS," and the National Association of Letter Carriers, AFL-CIO, hereinafter "Union," a hearing in the above captioned matter was held before John J. Mikrut, Jr., hereinafter "Arbitrator." At said hearing the Employer presented a written opening statement, and the Union presented an oral opening statement. No hearing trascript was kept in this proceeding. Each party presented witnesses and documentary evidence in support of their respective positions. The witnesses were duly sworn by the Arbitrator and each averred to tell the truth.

Upon the close of hearing, the parties chose to orally summarized their cases and each also attested that they had been accorded full and fair opportunity to present all relevant evidence, testimony and documentation necessary for the Arbitrator to make a decision in this matter. Lastly, the parties indicated that they were in agreement that the following issue is properly before the Arbitrator for resolution:

> "Did the Postal Service violate Article 27 of the collective bargaining agreement by refusing to reimburse the Grievant for loss of or damage to personal property which she suffered while on duty on September 17, 1986? If so, what is the appropriate remedy?"

II. Controlling Contractual Provisions:

In support of their respective positions, the parties, either jointly or separately, have cited the following sections of their collective bargaining agreement, either in whole or in part, as controlling or otherwise relevant in the resolution of this dispute:

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 the 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.

The above procedure does not apply to motor vehicles and the contents thereof. For such claims, employees may utilize the procedures of the Federal Tort Claims Act in accordance

with Part 250 of the Administrative Support Manual.

The procedure specified therein shall be the exclusive procedure for such claims, which shall not be subject to the grievance-arbitration procedure.

A tort claim may be filed on SF 95 which will be made available by the installation head, or designee.

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III. Background:

The Grievant is a regular Letter Carrier who is assigned to the Nora Station in Indianapolis, Indiana.

On Wednesday, September 17, 1986, the Grievant reported for work on the 6:30 AM to 3:30 PM shift which was her regular duty assignment. After casing her mail, and loading her Jeep that morning, the Grievant drove out to her route and began delivering her mail. The morning passed without apparent incident.

At approximately noon, the Grievant broke for lunch. When she returned to her Jeep at approximately 1 PM, she removed several plastic trays filled with mail from the rear storage compartment of the vehicle and placed them in the left side of the cab so that she could continue delivering her route.

As she was placing the trays into the cab compartment, however, the Grievant contends that one of the trays cracked -- or was cracked previously and worsened -- causing the mail in the tray to shift. According to the Grievant, this action, in turn, caused the tray to drop and her left hand (which was on the front of the tray) hit the left door or door post of the Jeep. No injury was sustained to the Grievant's hand in the incident, but soon thereafter, the Grievant allegedly noticed that the diamond

and setting of her engagement ring (which she was wearing on her ring finger on her left hand)[1] were missing, and had apparently been dislodged when her hand struck the Jeep door or post.[2]

The Grievant completed her route that day with one (1) hour of overtime and she returned to Nora Station at approximately 4:30 PM.

According to the Grievant, when she returned to Nora Station, which was after normal working hours, her regular supervisor had already left for the day, and she informed Richard Hui, the Manager of Station and Branch Operations, of the incident regarding her ring. She also asked for an Employee Claim Form (PS Form 2146) which she could fill out in order to report her loss. Mr. Hui allegedly could not locate a form and he told the Grievant to obtain one the next day from Mari Seckman, the Supervisor.

Regarding this same point, Mr. Hui maintains that as he was closing the Post Office on the evening in question, the Grievant approached him and made some general statements about a lost diamond, but she didn't give any details about it and he (Hui) was not aware that it was the Grievant's loss. Furthermore, Mr. Hui contends that when the Grievant requested a claim form, which she had done many times previously in her capacity as Steward, he did not think that she was requesting it for herself. In any event,

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1. The Grievant maintains that the ring was approximately ten (10) years old.

2. The record is unclear as to the exact location where the incident occurred; or if the Grievant immediately noticed that the diamond and setting had been lost; or if the Grievant spent any time at the scene attempting to locate the lost diamond and setting.

Mr. Hui could not find a form that evening and he told the Grievant to secure one from Ms. Seckman the next day.

The Grievant maintains that she spoke with Supervisor Seckman about the incident the very next day. Supervisor Seckman contends, however, that the first time she was made aware of the matter was on Friday, September 19, 1986, when the Grievant stopped by her office early in the day in order to obtain an Employee Claim Form.

On September 24, 1986, the Grievant submitted the appropriate Employee Claim Form (Jt. Ex. #2) to her Supervisor and on it she described the circumstances involving the loss of the diamond and setting which allegedly had occurred on the preceeding week. Also attached to the Form was what appears to be a business card from a Randal K. Sieferd, an employee of Goodman Jewelers, Indianapolis, Indiana, upon which the following was hand written, "Ladies diamond approx. 1/4 ct. $385.00 plus setting $440.00."[3]

The Grievant's Claim was reviewed by Herman Wilson, Supervisor of Delivery and Collections, and was denied on October 15, 1986. Said denial was appealed by the Grievant in accordance with Articles 15 and 27 of the collective bargaining agreement. Subsequently, the matter was further appealed by the Union to arbitration, and pursuant to hearing, is now properly before the Arbitrator for resolution.

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3. The Grievant maintains that she went to Goodman's for the appraisal because she purchased the ring there approximately ten (10) years previously. However, because of the length of the intervening period, Goodman's did not have any record of the original purchase, so the appraisal was done as an "estimate."

In order that the background portion of this award might be complete, the record in this case further indicates that on or about March 5, 1987, the Grievant submitted to the Postal Service a second estimate (Jt. Ex. #4) of the replacement value of her ring. This second estimate was prepared by an unidentified employee of Osterman Jewelers and contanied the following statement:

> "The following is an approximate estimation for the replacement of
> .25 carat round shape diamond
> 51. clarity
> Retail cost of $600.00
> Cost of Repair Labor $60.00
>
> The above is entirely an approximate replacement cost."

IV. Positions of the Parties:

The Union's basic position in this case is that the Employer violated Article 27 of the collective bargaining agreement by refusing to reimburse the Grievant for the loss of the diamond and setting from her engagement ring which she suffered in connection with the performance of her letter carrier duties on September 17, 1986. In support of its contention, the Union maintains that there is no evidence available in the record to indicate that the Grievant was negligent in any way or engaged in any wrongful act at the time when the loss occurred. Furthermore, according to the Union, the Grievant's wearing of her engagement ring in the performance of her duties was not prohibited and was a reasonable action on her part under the circumstances.

Continuing, the Union also argues that the manner in which the

Grievant documented her loss was adequate and was in compliance with the requirements of Article 27. Regarding this point, the Union asserts that said Article does not require that an estimate of loss must come from the original store where the ring was purchased; and additionally, the Grievant's submission of two (2) estimates (Jt. Ex. #2 and #4) from two (2) different jewelry stores is sufficient proof of the value of the loss incurred.

The next general area of argumentation proffered by the Union in this case is that the Grievant's account of the manner in which the accident occurred is entirely credible. Thus, the Union asserts that the Grievant was engaged in the course of her normal work duties (transferring trays of mail from the storage area of the Jeep to the cab compartment) when one of the trays cracked causing the mail to shift and further causing her to lose her grip on the tray. In her attempt to prevent the mail from falling on the ground, she regripped the tray and while in the process of doing so, she hit her hand on the Jeep door or door post. Such an occurrence, the Union argues, is not all that unusual and other employees have experienced cracked mail trays when delivering mail.

In summary of its position in this case, the Union contends that the intent of Article 27 is to provide repayment for a loss of personal property suffered by an employee in the course of her/her employment; that the testimony and material evidence available in the record in the instant case is sufficient proof that the Grievant suffered such a loss; and that the Grievant, therefore, is entitled to be reimbursed by the Employer for her

loss in the amount of the higher of the two estimates which were submitted.

The Employer contends that it did not violate Article 27 by refusing to reimburse the Grievant for her alleged loss. In support of its position, the Employer offers the following arguments:

First, the Employer maintains that such a loss must be incurred "... in connection with or incident to the employee's employment while on duty ...." In this regard, the Postal Service argues that the Grievant's ring was neither connected with nor incident to her employment as a letter carrier so as to be covered under Article 27 in the same manner as a watch or hat might be (USPS v. NALC, Case #SIN-3D-C 23303, Searce). According to the Employer, the intent of Article 27 is not to compensate an employee for any expensive jewelry which might be worn to work and lost while on duty -- such as the Grievant is attempting in this instant case.

Second, the Employer further argues that the Grievant has failed to adequately prove that the loss occurred while she was on duty. As support for this assertion, the Employer maintains that there were no witnesses to the incident; that the Grievant failed to specify the time and place of the incident on her Claim Form; and that the Grievant's version of the incident has not been consistent, and therefore lacks credibility. Regarding the Grievant's allegation concerning the cracked mail tray, the Employer argues that the tray was never produced in order to substantiate the Grievant's story; and, more importantly, a Union witness testified under cross-examination that he never heard of a

mail tray cracking in a manner such as that which the Grievant described. For these reasons, the Employer contends that the Union has not met its burden of proof as to the validity of the alleged incident.

Management's third general area of argumentation in this case is that if the incident occurred in the manner as the Grievant alleges, then it can be attributed either in whole or in part to the fault of the Grievant herself. Accordingly, the Employer contends that the Grievant should not have been wearing such a ring while performing such a physical task because, in doing so, she was only inviting risk. Further related to this same point, the Employer also charges that if the Grievant would have been performing her duties properly, then she should have seen that the mail tray was cracked and she should have discarded it which is the proper procedure to follow in such circumstances. For these reasons, the Employer maintains that the loss was due to the negligence or wrongful actions on the part of the Grievant; and that such loss, therefore, is not compensable under Article 27.

The fourth and final argument presented by the Employer in this case is that the Grievant has not submitted adequate proof of her loss; and that, in accordance with Article 27, management is only obligated to reimburse an employee for legitimate claims. In support of this contention, the Employer maintains that the Grievant was not able to provide any actual proof of purchase, or quality of the lost item(s), or the original purchase price of the ring itself. Absent such proof or other adequate measures to establish the actual amount of loss sustained by the Grievant, it

is the Employer's contention that no reimbursement can be made under the provisions of Article 27.

In light of the foregoing, the Employer requests that the grievance be denied.

V. Discussion, Findings and Conclusions:

The Arbitrator has carefully read, studied and considered the complete record which has been presented in this case, and is persuaded that the Employer's position is correct and that the grievance which has been filed in this case, therefore, must be denied.

While there are any number of elements involved in this case which could serve as the rationale for the aforestated determination, suffice it to say that there are two (2) major deficiencies in the Grievant's argumentation which are considered to be fatal to her case. These are: (1) there is no reliable evidence available in the record which would serve as proof of her loss; and (2) even if such evidence was available, there is no proof that the actual value of the items lost was in the amount as claimed by the Grievant.

In this regard, Article 27 specifies that "(C)laims should be documented, if possible ..." and, in addition, Part I of the Employee Claim Form, PS Form 2146, further specifies that the employee who is filing the Claim is supposed to "(I)nclude paid receipt or other evidence showing purchase date and original price of lost or damaged article."

In the instant case, the only evidence presented to support the Grievant's contention that she lost the diamond and setting from her engagement ring, or that she even owned such a ring in

the first place, was the testimony of the Grievant herself. Likewise, the only evidence available in the record regarding the value of the lost items was the mere speculation of two (2) jewelry appraisers who had nothing more upon which to base their conclusions concerning the original purchase price, quality and size of the diamond and setting than information which had been orally provided to them by the Grievant herself. The imprecision and unreliability of such a procedure -- which further reflects upon the inadequacy of the procedure for such appraisal purposes -- lies in the fact that the two (2) appraisals differed by 33% ($660 versus $440) as to the value of the diamond and its setting! This variation in the appraisals themselves and in the manner in which the appraisals were conducted make them completely unacceptable as measuring instruments for the purpose of the filing of an Employee Claim such as that which is under consideration herein.

While the Arbitrator has absolutely no reason whatsoever to believe that the Grievant is fabricating her loss or is attempting to perpetrate a fraud upon the Postal Service by submitting a false claim in this matter, it is equally clear to the Arbitrator that the evidence which is needed to serve as proof of loss or proof of the value of the lost item(s), as contemplated in Article 27, has not been presented in the instant case. For these reasons, therefore, the Grievant's claim must be denied.

VI. Award:

On the basis of the foregoing discussion, findings and conclusions, it is determined that the Postal Service did not violate Article 27 of the collective bargaining agreement by

refusing to reimburse the Grievant for loss of or damage to personal property which she allegedly suffered while on duty on September 17, 1986. The grievance which has been filed in this matter, therefore, will be denied in its entirety.

Respecfully submitted,

John J. Mikrut, Jr.
Arbitrator

Issued in Columbia, Missouri on November 11, 1987.