OPINION

UNITED STATES POSTAL SERVICE
Employer,

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS (AFL-CIO)
Union

Case No. C1N-4B-C 3220
Grievant: Patricia J. Brown
Flint, MI

C #01252

This was the first of two hearings held at Flint, Michigan on August 12, 1982, beginning at 10:00 a.m.

Appearances

For the Employer:
Rodney A. Stone, Labor Relations Executive
Dennis M. Teffner, Director, Employment & Labor Relations Acting

For the Union:
Pete Kennedy, Branch President

The Grievant, Patricia J. Brown, filed an Employee's Claim for Personal Property setting forth as follows:

> The newspaper roll fell out of a flat case on to top of carrier's table top and fell on my glasses, lying on table top. Broke frame on left side (top) glasses.

Supervisor Allen in his recommendation said:

> I feel Pat's glass frames be replaced. There was no carelessness on her part. The Post Office should be responsible for the cost of the new frames.

His further report said:

> Carrier brought her glasses over to me the morning of 12/12/81 and said that a magazine roll had fallen from the shelf where she sorts flats and hit her glasses breaking the lens.

Alexis Knighton, Labor Relations Representative in denying the claim asserted:

> The newspaper roll placed on top of the sorting case was in violation of Supervisor's Handbook P-13, Part 532.4. In addition, you failed to exercise reasonable care by laying your eyeglasses on a ledge. Fragile property of this type left in this working area is subject to damage.

The Postmaster used the same basis for denial of the claim.

TESTIMONY:

The testimony of the Grievant and the supervisor did not vary the reports already made by representatives of the parties.

The Grievant testified that she was casing mail, placing letters in flats. She is a part-time flexible employee of some 3½ years. She placed a roll, in her judgment where it should have been, on her shelf to the right of where she was working. The glasses were placed in the farthest corner from the floor. A tour taken by the Arbitrator in the presence of the parties showed the placement of the letter case and the flat case. The flat case extends out and cannot be moved. The glasses, the Grievant demonstrated, were placed in the farthest right-hand corner of the configuration of the two cases. She conceded on cross-examination that she has a locker and that her uniform has pockets and said that if she put the glasses in the pocket she might have broken them in moving around. She wears them substantially all the time and they were not off very long. She did not have a case for them. The Grievant did not recall any motion on the part of the case where the roll of paper some 2½ inches in circumference and weighing 10 ounces had been placed; it was length-wise and should not have fallen off. She did not intend to leave the glasses off very long - - she wanted to clean them before going on route.

Supervisor Allen confirmed his recommendation that the claim be paid. When questioned as to whether an employee was allowed to place rolls or objects on top of the letter cases he answered "No". He did not remember seeing the roll of paper. He accepted the Grievant's version of the incident.

The Supervisor's Safety Handbook at 525.4 and more specifically at 532.1 speaks of organizing the work area:

> Organize work areas so that every tool, chair, waste-basket and other piece of equipment has a designated place; keep everything in place.

In the same safety handbook at 221.2 it says, "organize work areas so that everything has a proper place".

An inspection of the main office in the Vehicle Maintenance Facility on February 26, 1979, showed among other things that the "tops of cases and lockers are used in many places for storage. The tops of such places must be maintained

free of obstruction. This not only causes potential hazards but also precludes proper dusting. The men's swing room has an accumulation of dirt and debris on top of and beneath the lockers." On the same inspection check list under 21 there was this showing, "tops of lockers, filing cabinets, cases and other relatively high objects free of material", indicating that this requirement was not met.

DISCUSSION:

The contract language at Article XXVII, "Employee Claims", says in part, "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. . ."

This provision, of course, does not establish a standard of comparative negligence, that is, that any negligence of the Grievant is to be compared with the negligence of some other person. It simply states - and is not subject to any construction or interpretation - that if the loss is caused in whole or in part by the negligent act of the employee, that employee may not recover.

Negligence is ordinarily defined as "due care under all the existing circumstances;" the standard is that of what an ordinarily prudent person would do under the same or similar circumstances to avoid loss. The theory is that one should not be able to recover if the loss is due to her or his own failure to exercise due care.

There are those cases where a claimant is relieved from responsibility for his or her own negligence if it is a situation of momentary forgetfulness--if the person is pre-occupied with something else or if an unanticipated event occurs which diverts the attention of the claimant elsewhere. There is a further limiting rule which says that one need not anticipate the negligent acts of other persons.

There is no proof except that of the Grievant as to how the incident occurred, and the Arbitrator considers her to be truthful and direct in her narrative. Cross-examination did not tend to vary her testimony.

It could be that the roll of paper fell off because it was not properly placed; however, that is speculation or conjecture on the part of the Arbitrator.

He must accept the statement of the Grievant that she placed it in the normal manner and cross-wise so that it would not fall off. She thinks that someone else bumped the case and caused the roll of paper to fall off. That is a plausible explanation and for purposes of decision, the Arbitrator will assume that is the way it happened.

The central and decisive question is whether the Grievant acted and discharged her duty or obligation with due care, to do that which a reasonably prudent person would do under the same or similar circumstances. Is it prudent to leave glasses where she left them unprotected?

While anyone knows that glasses are easily broken, the average reasonably prudent person does take off his or her glasses occasionally and for short periods and places them either on the desk or other work place with the expectation that the glasses, after the short interval, will be picked up and worn. What the average person - the average reasonably prudent person - does is not negligence or want of due care. On the other hand, to place glasses on a desk or other work place indefinitely, and unprotected, is a breach of due care. True, many persons would not place their glasses on the desk or other work place or where the Grievant placed her glasses, but such persons exercise, in the judgment of the Arbitrator, more than reasonable care.

If it was a case of the Grievant putting her glasses down where she did indefinitely and with no expectation of picking them up and wearing them soon, the Arbitrator would rule it was negligence. In brief, under the established facts, we find no negligence on the part of the plaintiff. The accident or loss was caused solely by the negligence of some other person.

As to damages, the Grievant is not entitled to be placed in a better position than she would have been in but for the loss. She eventually got new frames; the exact frame was not available so she was charged somewhat more than the replacement cost of the original frame. Some discount, therefore, is in order. The grievance is granted, and the money adjustment will be $25.00.

A W A R D

ISSUE:

Is the Grievant, Patricia J. Brown, entitled to grant of her claim for loss of personal property?

ANSWER:

Yes. Grievance is granted and the money award will be $25.00.

GEORGE E. BOWLES
ARBITRATOR

Date of Award: September 20, 1982