

ALF 27

C# 3408

UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION

RE: SLV-3D-C-9258

Grievance of Floyd Weaver
Atlanta, Ga. - February 14, 1984

APPEARANCES

FOR THE UNION

Daniel Powers, National Representative
Clerk Craft

FOR THE POSTAL SERVICE

Wayne Ray, Regional Labor Relations
Specialist

ARBITRATOR

John F. Caraway, selected by mutual
agreement of the parties.

On June 16, 1982 Mr. Weaver took a dispatch to the downtown Postal Office in Atlanta in a 5-ton vehicle. He parked the vehicle and locked both the driver's and the passenger's doors. He unloaded his truck and pushed the mail into the cargo elevator. He then carried the mail downstairs into the Post Office. Upon completion of these duties he returned to his truck and found the right door of the truck open and a radio with car adapter missing. He immediately reported the incident to the Security Office of the main Post Office.

Mr. Weaver testified that he had locked both doors and left the right window cracked one or two inches. There was no evidence of a physical break in. He stated that he had had this particular radio since September 28, 1981 and had purchased it for about \$60.00. He carried the radio in his truck as did all drivers.

The grievant filed a Form 2146, Employee's Claim For Personal Property, asking for the amount of \$60.00 for the loss of the radio. The Foreman recommended payment of the claim. In

the Foreman's statement it is to be noted that he stated that Mr. Weaver always carried his radio in the truck and that the Foreman considered the use of it to be reasonable.

CONTRACT PROVISIONS INVOLVED

ARTICLE XXVII

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."

ISSUE

Did the Postal Service violate the National Agreement by refusing to pay the claim of Mr. Weaver for the loss of a radio which occurred on June 16, 1982?

ARGUMENT

The Union maintains that the Postal Service should honor the claim. Foreman Carlson recommended payment. He found no negligence on the part of Mr. Weaver and that his use of the radio was reasonable. The evidence showed that Mr. Weaver and other employees carried radios in their vehicles without objection from any Supervisor.

The Postal Service contends that Mr. Weaver's possession of a radio in a postal vehicle was completely unnecessary and had

no reasonable relationship to his job duties. His statement that it kept him awake is unacceptable in that he is being paid for an 8-hour job and must be alert at all times.

The Postal Service maintains that Mr. Weaver was negligent in a high crime area by leaving his truck window open. That Mr. Carlson found no negligence is not binding on the Postal Service.

DECISION

Article XXVII is determinative of this dispute. For an employee's claim to be honored all of the criteria of this provision must be met. The Arbitrator finds that the terms and conditions of Article XXVII have been satisfied in Mr. Weaver's case.

Mr. Weaver suffered the loss of a radio while he was in a Postal Service vehicle on duty. While it is true that there was no need for his having this radio in the Postal Service vehicle, the evidence showed that most of the drivers had a radio in their vehicles. This fact was known to supervision and no objection was made on having the radio in the Postal vehicle truck. In recommending that the claim be paid, Mr. Weaver's Foreman specifically marked in the affirmative the question as to whether the possession of the property was reasonable, useful or proper. Certainly Foreman Carlson was in the best position to know whether the use of this radio was proper and reasonable. His assertion to that effect satisfies the requirement of Article XXVII.

Mr. Weaver's claim could properly be denied by the Postal Service if there was proof of negligence on the part of Mr. Weaver. Mr. Weaver parked his truck in the usual and

customary manner. He locked both doors of the truck. He cracked the right door window one or two inches. The reasonable assumption would be that a person intending to steal the radio would not break into a Postal Service vehicle. Mr. Weaver took every reasonable step to secure his vehicle by locking both doors. Obviously some expert at jimmying door locks gained access to the truck because Mr. Weaver found the right hand door open. There were no other safety precautions which Mr. Weaver could have taken other than locking the vehicle. Even that is no barrier to an experienced thief who desires to break into a vehicle.

The contract provision does require that the property which is lost shall be subject to an offset for depreciation. The radio in question was purchased on September 28, 1981 and was stolen on June 16, 1982. Assuming this radio has a useful life of four (4) years, the Postal Service is entitled to one (1) year's depreciation. The claim of Mr. Weaver will be honored except it shall be reduced to \$45.00.

AWARD

The Union grievance is sustained. The Postal Service violated the National Agreement by refusing to pay the claim of Mr. Weaver for the theft of a radio on June 16, 1982. The Postal Service shall pay Mr. Weaver the sum of \$45.00 for his claim.

John B. Rogers

IMPARTIAL ARBITRATOR

New Orleans, Louisiana

April 7, 1984