

C# 05223

IN THE MATTER OF THE ARBITRATION)
Between) Case No. E4N-2W-C 11309
UNITED STATES POSTAL SERVICE)
Utica, New York) Date of Hearing: November 12, 1985
and)
NATIONAL ASSOCIATION OF LETTER CARRIERS) Date of Award: November 19, 1985
Branch 375)

BEFORE

PHILIP W. PARKINSON

Arbitrator

Representing the Postal Service - William D. Wise
Director, Employee & Labor Relations

Representing the Union - Edward Talerico
President, Branch 375

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ROBERT J. MASSARONI

I. THE CLAIM

Mr. Thomas A. Giglio, a Letter Carrier at the Utica, New York facility of the United States Postal Service (hereafter referred to as the "Postal Service") filed a claim for personal property on September 13, 1983. The amount of claim, as listed on Postal Form, 2146¹, is \$1200.00 for an "18 Karat Gold LeCoultre Wrist Watch." The following description and circumstance for making the claim is set forth on the form as follows:

While delivering mail at 1015 Culver, I placed a small parcel inside a storm door. The door closed quickly striking my left wrist. A short time later I noticed that the face, bezel, crystal, hands & dial had disappeared from my watch. I retraced my steps to see if I could salvage the missing parts, but was unable to find them. I would be receptive to a replacement in lieu of money.

In accordance with the Loss Claim Form procedure, the President of Branch 375 of the National Association of Letter Carriers (hereafter referred to as the "Union") completed Part II of the form on September 16, 1983 by stating, "I recommend that this claim be paid." Mr. Giglio's supervisor rejected the claim on October 4, 1983 stating, inter alia, that the watch was not a part of the carrier's uniform and "It is my opinion that the claim should be denied in its entirety as the claim is both unreasonable in that the lost watch was a highly expensive piece of jewelry that was not required in the performance of his job, and secondly the employee was

1. U. S. Postal Service Employee's Claim for Personal Property.

extremely negligent in risking loss or damage to the personal jewelry where a normal, reasonable and prudent individual would have safeguarded such item by avoiding its use during the performance of his/her job. Thirdly, there is no evidence that would clearly link the loss of the watch to a job-related accident. The employee assumes that the loss occurred when his left wrist was struck by an outer door at a customer's residence. The employee, however, was unable to verify that by the recovery of the watch." The claim was then appealed to the Postal Service's regional level where it was rejected and thereafter was appealed to arbitration. The undersigned arbitrator was appointed to hear and decide the issue and, accordingly, a hearing was held on November 12, 1985 in Utica, New York. At the hearing the parties were afforded full opportunity to present evidence, both oral and written, to cross-examine witnesses and to argue their respective positions.

II. BACKGROUND

Mr. Giglio, a Letter Carrier, has been employed by the Postal Service for some thirteen years. He testified that at about 11:00 a.m. on September 12, 1983 he was delivering mail at 1015 Culver Avenue. He stated that in delivering magazines and small parcels he normally throws them between the door of a house because customers do not want them in the

mail box. In this instance, he opened an outer door and "it sprung back and hit his wrist." At this time he did not realize that his watch was broken because he was wearing a jacket which covered the watch. He continued delivering mail and when he got to Copperfield Avenue he looked to see what time it was. It was at this point that he noticed what was left of his watch. There was no face, dial, decorative or any moving parts left. He then drove back down to Culver to look for the parts. He retraced his steps and went back to the doorway, but he could not find any of the missing parts. He was left with only the internal workings and the strap. When he returned to the post office at about 2:45 p.m. he told his supervisor, Mr. Lanio, what had happened that afternoon and showed him what he had left of his watch. The watch was a Christmas gift from his wife given to him in 1979. He knew it was a valuable watch but he did not know the exact value.

As part of his claim he submitted the following signed, hand-written statement dated September 12, 1983 from Mr. Ed Resztenik of Resztenik Jewelers in Utica:

One 18Kt Yellow Gold LeCoultre 17 Jewel Gents wristwatch-with 14Kt Gold Overlay heavy mesh band and buckle - Dial composed of sticks and numerals 12-3-6-9 — sticks at 1-2-4-5-7-8-10-11 in Gold. The above watch was repaired and overhauled May 16, 1983 with a replacement value of \$1200.00. The only possible way of losing the Bezel-Crystal-Dial-Hands-Cannon Pinion-Hour Wheel through broken post on the Center Wheel-is from a severe impact.

Replacement of parts, repair and an 18Kt Bezel would be literally impossible because of the unavailability of parts.

The above information is submitted for insurance purposes.

This statement was not contested by the Postal Service.

III. POSITION OF THE PARTIES

A. POSTAL SERVICE

The Postal Service argues that the grievant's claim is unreasonable "in that the wearing of a \$1200.00 watch is certainly uncalled for in the daily commission of his duties as a letter carrier." They contend that he must assume the full responsibility for this loss since it was his decision to wear such an expensive piece of jewelry. By so doing, his choice was a personal one and therefore removed any responsibility for the loss from the Postal Service.

Although the loss of the watch is unfortunate, Article 27 of the parties' collective bargaining agreement² states "...the possession of the property must have been reasonable...." They aver that a \$1200.00 watch worn by a letter carrier is not reasonable and ask that the grievance be denied.

B. UNION

The testimony reveals that Mr. Giglio damaged his watch while delivering mail and that he filled in the proper form within the allotted

2. AGREEMENT between United States Postal Service and American Postal Workers Union, AFL-CIO National Association of Letter Carriers, AFL-CIO July 21, 1981-July 20, 1984 (hereafter referred to as the "Agreement").

time frame pursuant to the regulations providing for the loss of property. Therefore the issue is whether or not a time piece is a necessary ingredient of the grievant's employment. The Union argues that it is, while noting several reasons, such as, being required to be at a certain block at a given time, to be at a collection box within the time limits posted on said box, breaking for lunch at the prescribed time, returning to the post office at the prescribed time, etc. They further argue that if an employee breaks his glasses, or tears his pants, such items are accountable. A time piece is also accountable because it is not precluded in the rules nor do the rules provide for the worth of an item. They conclude that a time piece, irrespective of cost, is a necessary item that must be worn by all employees in order to adhere to the rules and regulations of the Postal Service. The Union requests that the grievant be made whole for the cost of the watch.

IV. PERTINENT 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 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 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.

V. OPINION

It is noted that the Postal Service did not argue at the hearing that Mr. Giglio's watch was not damaged during the course of his employment, nor that it was not an expensive time piece as set forth on the claim. Therefore, the arbitrator would have no reason to dispute the grievant's contention as to how the watch was damaged, the extent of the damages, or the estimated value of the watch. Rather, the basis for argument was that the

wearing of an expensive watch in the performance of his job duties constituted negligence by the grievant and the claim is not reasonable. Although the Union argued that a time piece is a necessary ingredient of the grievant's employment, this point was also not contested by the Postal Service. The question, however, that must be addressed is whether Mr. Giglio's claim herein is consistent with the spirit and letter of Article 27 of the Agreement. The key and controlling language of Article 27 is that "The possession of the property must have been reasonable, or proper under the circumstances...." It is noted that Mr. Giglio testified that customers prefer having magazines and small parcels thrown between the doors because they do not want them in a mail box. This work practice, of course, led to the reason the watch was damaged. Given this practice by a Letter Carrier, it is not unreasonable to conclude that damage could occur to apparel or other items worn in the area of the wrist or hands. A quick slamming door, such as the one which apparently caused Mr. Giglio's watch to be damaged, would not be a highly unusual occurrence during the delivery of magazines and small parcels. Therefore, given these circumstances, the wearing of a \$1200.00 time piece while in the performance of his work functions would be unreasonable and improper. The grievant knew that the watch was monetarily valuable and he also attached sentimental value to it. However, because of the nature of his work he should have been aware that there was a distinct risk factor of damage to this item.

Although it is logical and perhaps necessary for a Letter Carrier to have a time piece on his person, it strikes me as poor judgment for one to wear an expensive gift watch such as Mr. Giglio wore while performing Letter Carrier duties. Even aside from the possibility of damage due to door deliveries, when one carries various types and amounts of mail, sorts and delivers it, such tasks would only increase the possibility of damage to a wrist watch. I do not question Mr. Giglio's reason(s) for wearing a time piece, however, the use of this expensive wrist watch as part of his work functions leads me to conclude that it is contrary to the intent of the reimbursement conditions of Article 27.

AWARD

Mr. Thomas A. Giglio's claim herein is denied.


Philip W. Parkinson

Philip W. Parkinson

Washington, Pennsylvania

November 19, 1985