

C#235

Art. 10.2 Administrative Leave
Art. 19 - ELM

IN ARBITRATION

AC-C-23950

AC-C-37,571

AC-C-26,572

UNITED STATES POSTAL SERVICE,) Case Nos. 5 COL 3173/AC-C-23950,
and) 5 COL 3141/AC-C-26542,
AMERICAN POSTAL WORKERS UNION,) 5 COL 3283/AC-C-24049;
CLASS ACTION.) Arbitrator's File 81-05-575;
) Dates of Hearing:
) 3/4/81 and 1/6-7/82,
) Cincinnati, Ohio.

APPEARANCES

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O P I N I O N

Issue

Did the Postal Service violate the National Agreement and/or
Handbooks and Manuals when it refused to grant the Grievants
administrative leave on January 26, 27 and 28, 1978?

Facts

A number of grievances were filed in the Cincinnati, Ohio,
Main Post Office in which the grievants protested the refusal of
the Postmaster to grant them administrative leave as a result of

weather conditions for tours worked on January 26, 27 and 28, 1978.

The Union produced 21 witnesses to testify to the weather conditions, plus a number of documents in support of the Union's contention that the employees were entitled to administrative leave.

Because of the large number of witnesses produced, their testimony will be summarized.

One of the witnesses for the Union testified that the snow had drifted six feet deep in front of his garage door, and the electric garage door opener was frozen shut. The wind-chill factor was 30 to 40 degrees below zero. His house was not near public transportation, and he was not aware of what was available.

His car had regular tires and no chains. He had no warning of the coming snow. He had never seen conditions equal to those on the three days in question.

Another Union witness testified that he was the president and business agent of the local transit union. He worked on January 26 and 27 as a bus driver, but was off on January 28. He got to work on January 26 and stayed overnight at the terminal. School runs were cancelled on January 26 and 27. Other runs were either cancelled or only partially run. A very few runs were made as scheduled. He testified that there was only one bus route to the main Cincinnati Post Office, and it ran only partially.

The transit union president testified that he had been with the transit company for 10 years, and this was the first time in that period of time that all school bus routes were cancelled. He testified that his knowledge included only one division of the bus company. There were two other divisions, but his division was the largest of the system.

Another witness testified that he lived some 21 miles from the Post Office. The roads were impassable, and were not plowed until two days after the storm struck. No buses were available. The closest bus was 7 to 10 miles away. It was extremely cold during that period. Streets were icy, and the snow had drifted heavily. Weather bulletins advised persons not to shovel snow. They were also advised to stay off the roads unless they had four-wheel-drive vehicles. The public was warned that people could be fined for being on the roads.

Almost all of the employees who testified for the Union stated that they phoned in to report their inability to get to work, and were told that they could take annual leave. Most of them did, though a few took leave without pay.

One witness took pictures of the snow depth in his driveway showing conditions as they were during that period. He said that he had never had a problem before, or since, in getting to work.

Another witness testified that he put weights in the

trunk of his car to give him better traction, but it did not help him. He still was not able to get his car up hills in his subdivision.

One witness testified that his car had studded snow tires. However, he was still not able to go up hills on streets in his subdivision. It was necessary for him to back down several hills because he could not make it to the top of them. He stated that he had never had this problem with snow before, and had never missed delivering newspapers on the newspaper route which he operated prior to his Postal Service job. He said the streets on the days in question were impassable.

Another witness testified that she was scheduled to work the 3:00 P.M. to 11:30 P.M. shift on January 26. She left home on the 26th, but was stopped by the police and directed to go to a nearby firehouse to wait out the storm. However, she went to a sister who lived nearby. She did not get to her home until 2:00 the following morning. She was not scheduled to work on Friday, the 27th, but she did work on Saturday, the 28th. She stated that there were high winds and 10-foot snowdrifts in her area, and no one was plowing streets.

One witness testified that he attempted to come to work on Thursday in a pick-up truck. It slid off his driveway into his yard, and he could not get it out. He called a tow truck operator, and was told that he would get to his house when he

could. The witness was not able to get the stalled truck out of his yard until Saturday.

This witness called the Post Office and asked for administrative leave because he could not get to work. He stated that he was a Union steward, and was aware of the Handbook and Manual regulations on administrative leave.

Another witness for the Union testified that he did not report for work either on Thursday, January 26, Friday, January 27, or Saturday, January 28. His street was blocked, and he had attempted to get to work with a neighbor who had a three-quarter ton four-wheel-drive pick-up. They first tried U.S. Highway 42, but they encountered tractor-trailers which had slid off the highway or had partially blocked the highway. They then went to I-75, another route to the Post Office. It was completely shut by stalled vehicles. They decided to return home.

On cross-examination, the witness stated that on January 28, the State used a "high-loader" to clear routes on State roads. The witness testified that he called the State Police and the Highway Department for road information, and was informed on the 26th that no streets were plowed and that he should not go on the highways. There were no public buses to take.

Another witness testified that the radio advised all persons to stay indoors unless they had four-wheel-drives or chains. Any person who got stuck in a vehicle without four-wheel-

drive or chains would be ticketed. On cross-examination, the witness stated that he had snow tires on his 1977 Thunderbird automobile, but the snow tires were ineffective because of the ice beneath the snow, and his wheels could not get traction. He stated that he did not call a cab because he had heard on both his television and his radio that no cabs were operating.

Another witness stated that his area had ice 18 inches thick covered by snow. There were hills that he had to traverse to get to work, but he was not able to do so. He said that on Saturday, a bulldozer tried to open the way and failed. Eventually backhoes were brought in to break up the ice. He testified that the weather was bitter cold, which prevented the ice from melting, and that situation created the biggest problem. On cross-examination he stated that his car had steel-belted radial tires, but these did not help on the ice, and the wheels just spun. He tried rocking his car to get it moving, but could not. He could not shovel the car out of the driveway because the ice prevented him from doing so. He stated that he could not and did not ask any neighbors for help, because none were in sight when he had to start for work at 7:00 A.M..

Another Union witness testified that on Thursday, he arrived at work on time just as the storm started. Near the end of his tour, he was offered administrative leave in the event he wished to leave early. He decided to do so, and received

administrative leave for the time not worked on his regular tour.

The same witness testified that he had a neighbor who was a supervisor who had tried to get to work but whose car slid into a ditch. The car was pulled out of the ditch two days later. The supervisor did not work any of the three days in question.

Other evidence indicated that all employees who arrived late for work during the three days in question or left early from work during those three days received administrative leave for the time missed.

One of the witnesses testified that on the second day of the storm, a Friday, he attempted to shovel out his driveway. However, as quickly as he shoveled the snow out, it blew back in. He tried to force his car through the drifts in his driveway, but was unable to do so.

Another Union witness testified that he lived 7 or 8 blocks from a bus line, but radio reports indicated that the buses were not on the regular schedules, and he had no idea when a bus would come by. He stated that his neighborhood was impassable on Thursday and Friday, but on Saturday the streets were plowed and traffic was moving.

Another witness lived in an apartment complex with a parking lot. He testified that he tried for 2-1/2 hours to get out of the parking lot, but was unable to do so. The parking lot was so clogged with snow and cars that it was impassable. Also,

the door to his car was frozen shut, and it took him a period of time to get the door open. There was no bus or other transportation in his area, and there was no way for him to get to work without driving.

This witness stated that he decided to seek administrative leave because he had received administrative leave on another occasion for being late due to a snowstorm not nearly as severe as this one.

He also testified that Cincinnati is hilly, and there is no way of getting to the Post Office without traversing hills. Hills were impassable in the weather conditions that existed.

Another witness testified that he lived on a ridge overlooking the city, and could see two of the main viaducts leading into the city. No cars were moving on the viaducts on either Thursday or Friday. Cars and buses were moving on Saturday. On Thursday and Friday vehicles had been abandoned on the streets and none were getting through. He did not see even police cars on the streets prior to Saturday, January 28, 1978.

The witness stated that, before the storm struck, he had watched television and had read the newspapers, but the storm had not been forecast. A few inches of snow were expected, but there was no blizzard warning. He was therefore unable to properly prepare for the weather conditions which prevailed.

Another witness testified that he attempted to get to work on Friday at his reporting time of 1:30 P.M.. He was unable to do so because the police had barricaded the ramp to the expressway which he took to get to work, and would not let anyone on the expressway. He tried another highway (the Dixie Highway), but he could not travel on it because of its condition.

One Union witness testified that on Friday, she attempted to get to work and got stuck on a road when her car skidded sideways. A policeman came to give assistance. She insisted that he pulled his service revolver, pointed it at her, and told her to go back home. She did, and did not try to get to work anymore during the storm. She did state that on Saturday the streets were plowed.

The first witness for the Postal Service was the Director of Mail Processing. He testified that he was Acting Postmaster on the days in question. He worked on January 26, 1978, and came to the Post Office through city and county roads. He did have difficulty, and a drive that normally took half an hour consumed and hour and a half. Though he had to traverse hills, it was possible to get around the hills by taking other routes.

The witness received reports from other managers at stations and branches, and was advised that employees were arriving at work from all areas. Most were late. Those that were late received administrative leave for from one to three hours, depending on .

individual need.

He further testified that he advised supervisors who received calls from employees to tell all employees who called that the Post Office was open and that there was work, and that the employees were expected to come to work. Those that could not make it could take annual leave.

The witness testified that those employees who left early were given one hour of administrative leave. Most employees did leave one hour early. Most employees who made it to work arrived less than two hours late. They also received administrative leave.

The Acting Postmaster testified that he worked eight hours on January 26, 1978, and then left for home. He was able to get to work on January 27, 1978, by using the same methods that he had used on the 26th. He advised his managers on the 27th to give out the same information to employees that they had given the day before. He also gave the same administrative leave as the day before.

On cross-examination, the Acting Postmaster stated that he considered the storm to be a blizzard. He was not sure whether the newspapers had called it the worst storm in 60 years, but in his experience he was not aware of a worse storm.

The witness was asked if he believed that conditions existed which would justify giving the administrative leave which he gave.

to those who came to work late and left early. His answer was in the affirmative. He stated that he gave administrative leave because those employees had made the effort to come to work.

A supervisor testified for the Postal Service that she had worked all of the days in question. She lived approximately 4 miles from the Post Office, and was able to get to work within 15 or 20 minutes on each day. She did not have any trouble, and the only indication of any difficulty that she saw was that an occasional supervisor was late.

The Manager of the station stated that he had talked to the managers of the stations and branches under his supervision. All of the stations and branches in the area had different numbers of employees reporting for work. He himself had worked out of his home on Thursday because he feared that he might be delayed in getting into the Post Office and would not be able to make the needed telephone calls. He was not scheduled to work on Saturday, but he did make calls from his house.

The Superintendent of Mails testified that he lived approximately 5 miles from his station. He arrived at work on Thursday morning at 9:30 A.M., because he had left early in order to make sure that he got to work. On the first day of the storm he did see some cars stranded on the hills. On the second day of the storm, he avoided those areas and had no trouble in getting to

work. He saw buses running on their routes, though he could not tell how frequently.

Another Postal Service witness stated that he was supposed to report to work on January 26, 1978, at 7:30 A.M.. He left for work that morning at about 6:15 A.M., caught a bus, and arrived sometime between 8:15 and 8:30. (He was 45 minutes to an hour late for work.) He worked until an hour prior to his normal quitting time, when he was dismissed. He went home by bus but had to walk part of the way because the bus could not make a hill near his home. He arrived home at about 5:30 P.M. on January 26th. On January 27th he again went to work by bus, leaving that morning at 6:45 A.M.. He arrived at work at about 8:30 or 8:45 A.M.. Again he was dismissed an hour early, and he made it home at about 5:00 that evening.

He testified that he frequently drove to work, but he did not drive on those two days because his car door was frozen shut. He finally got the car door open, but then his car would not start, so he went by bus. He stated that he received administrative leave.

On cross-examination, this witness stated that in January, 1978, he had been the Director of the Clerk Craft, but was not at the time of the hearing. He said that he had filed a large number of grievances for employees. He felt that, since he had received administrative leave for the time he did not work,

others should have received it also.

The witness said that, while there was mail to be worked on the days in question, there was not much. He also stated that a number of supervisors did not report for work.

On cross-examination, he testified that the weather on those three days was "terrible". The roads were covered with ice, and snow drifts were as high as 8 to 10 feet. The wind was very strong, and the wind-chill factor was well below zero. The temperature itself was 0° to minus 10° .

A number of Postal witnesses testified that they were able to get to work all three days, although the streets had not been plowed. They travelled slowly and were late, but they were able to make it. The extra time needed to do so was anywhere from a half again longer than usual to twice as long as usual.

One of the supervisors testified that one of his clerks was in need of insulin because he had not had a shot since the night before. This supervisor drove him to several drug stores before they found one that was open where the clerk could get his insulin shot. The road conditions were bad, but passable.

One supervisor testified that he knew the snow was coming on January 26th because he had heard it forecast on television the night before the 26th. He had made arrangements to keep vending machines supplied, and the truck servicing the vending machines made three trips on Tour 2 on January 26th. A number of employees

were absent and a number were late. Mail was available to work, although in less volume than normal.

The Postal Service introduced a number of documents, including several maps. The general import of the documents and maps was that a number of employees reported and a number did not. The documents disclosed that all branches in the area were manned to some extent.

A letter from one of the local transit authorities disclosed that all routes had some service on Thursday, January 26, Friday, January 27, and Saturday, January 28. There were delays, but some 20,000 passengers used the service over the three-day period. A map produced by the Postal Service showed that employees reporting and not reporting were scattered throughout the whole area.

Discussion and Opinion

The position of the Union is that the severity of the storm was such that employees not reporting for work were entitled to administrative leave.

The Union pointed out the fact that the storm was characterized as the worst blizzard in Ohio's recorded history, or that it was the worst blizzard in 60 years. Other factors, according to the Union, also justified administrative leave: Winds were up to 49 miles an hour, and the wind-chill factor on occasion was as low as -52° . Very thick ice covered with almost 10 inches

of snow made travel impossible. The Governor of Kentucky had ordered all state highways closed, and had declared a state of emergency.

The Union contended that the percentages of employees absent on various tours affected were so great that the number should be characterized as groups of employees not reporting for work. The Union pointed out that the percentage of 91% of the employees who reported for work on Tour 1 on January 26th was that high because Tour 1 started late in the evening on January 25th, and those employees had arrived at work before the storm had actually started.

The Union's conclusion is that all the criteria for administrative leave were satisfied.

The Union cited Case No. 5 COL 3168 'AC-C-24768, in which this very same storm had been considered with regard to Maintenance Craft employees. In that case, this Arbitrator had determined that the proof satisfied the criteria of Section 721.9 of the Handbooks so as to justify administrative leave. The Union also submitted several other decisions in which administrative leave had been approved to show that the circumstances in those cases were similar to the ones in this grievance, and that administrative leave was justified.

The Postal Service, on its behalf, argued that the storm made travel difficult but not impossible. Employees who made an

effort to get to work were able to do so. Buses were running, though not regularly. However, employees could have taken extra measures and been able to get to work in some way.

Postal employees who called the Post Office were advised that it was in operation.

The Postal Service also pointed out that significant numbers of employees were able to report from all geographic areas. From this it drew the conclusion that failure to report, therefore, was personal to the individual not reporting.

The Postal Service also contended that, since the Postal Service has no right to determine where an employee will live, the fact that an employee lives at a distance from the Post Office, thus making it difficult to get to work, or lives in an area that is inaccessible, is the individual's choice, and should not relieve him of his responsibility to come to work.

The Postal Service pointed to the fact that a number of unions had filed grievances protesting lack of administrative leave for this very same storm and had withdrawn their claims. One grievance had been arbitrated on behalf of the Vehicle Craft, and the arbitrator had denied the grievance.

The parties have each produced decisions in other cases relative to this same storm. In one instance, the case was decided by this Arbitrator, and administrative leave had been allowed.

The observation must be made, as it has a number of times,

that a previous decision is never conclusive with regard to the case under consideration. Each case stands or falls on the evidence presented in that case. No party can assume that, simply because they have a favorable decision that is based on the same factual situation as the instant situation, they are thereby relieved of the obligation of producing evidence before the arbitrator hearing the pending grievance. Previous decisions are persuasive, but unless there is evidence to support the contention that the previous decision should be accepted, it would not lend weight to a party's position. Likewise, the withdrawing of other grievances for similar claims is worthy of note but not conclusive. Other unions might have reasons for withdrawing similar grievances that have nothing to do with the merits of the grievances.

I believe that the decisive testimony in this case was given by the witness who was Acting Postmaster during the month of January, 1978. He testified that, ordinarily, his duties were that of Director of Mail Processing, but he was Acting Postmaster during January because the regular Postmaster was ill. When he was asked why he gave administrative leave to those who arrived late or left early, his answer was that he did so because those employees made an effort to get to work. He was also asked, "Did conditions exist to give administrative leave?". His answer was "Yes".

To me this is a clear acknowledgement by the Acting Post-

master of the facts disclosed by the evidence: The conditions which existed as a result of the storm made travel extremely hazardous and even foolhardy. One supervisor's car went into a ditch and could not be retrieved for two days. Another employee was ordered off the roads, according to her, at gunpoint by a policeman.

All of the public announcements indicated that this storm was the worst that the area had experienced up to that time. It was characterized as the worst blizzard in history, or the worst blizzard in 60 years. Innumerable employees recounted the difficulties that made travel just about impossible.

The Acting Postmaster stated that he gave administrative leave for late arrivals and early departures to employees who had come to work because they had made the effort to get to work. However, the evidence was clear that a number of employees made an effort to get to work and still could not do so. They recounted frozen cars, impassable streets, unsuccessful attempts to shovel snow to clear paths, and the like.

The evidence indicated that administrative leave was actually given as a reward to those who came to work. This is not the role of administrative leave. Administrative leave is given when certain criteria are established. Among those criteria is the fact that conditions amount to a community disaster. I believe that in this case they did. When the coating of ice is

so thick that heavy equipment must be called in to remove it, as some witnesses testified, and deep snow is then piled on top of the ice, that situation alone - without the howling winds that were in evidence - constitutes a disaster.

It is also clear that groups of employees were absent, as required by Section 731.9 of the Handbooks and Manuals. No percentage figures are set out in the handbooks to show how large the group must be. The number, of course, must be substantial enough to constitute a group. In many instances as many as 50% of the employees failed to report for work. That is a large enough number to be a group.

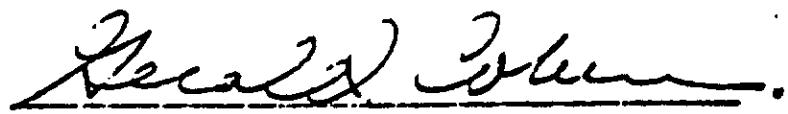
The weather conditions must also be general in scope. It is clear that the storm covered the whole greater Cincinnati area. It was not confined to one specific street or block, as a tornado might be. It affected all areas of the Metropolitan Cincinnati area equally. That criterion was satisfied.

The evidence convinces me that weather and travel conditions in the Greater Cincinnati area commencing with the second tour on January 26, 1978, through the final tour of January 27, 1978, were in such a bad state that administrative leave was justified for those employees unable to report to work on those tours. (A number of employees testified that by January 28th, a Saturday, the streets had been plowed to an extent large enough to enable persons to get to work.)

The grievance is sustained. Administrative leave is awarded to employees unable to report for work on those tours commencing with Tour 2 on January 26, 1978, through Tour 3 on January 27, 1978.

The costs are assessed equally.

Dated this 26th day of July, 1982.



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