

REGULAR ARBITRATION

C 6135

IN THE MATTER OF ARBITRATION BETWEEN *
THE UNITED STATES POSTAL SERVICE * Re: Walter Lee James - Vehicle Repair
"the Employer" * Grievance
and the *
NATIONAL ASSOCIATION OF LETTER CARRIERS * S1N-3U-C-30068
"the Union" *
*

APPEARANCES

Advocate for the Employer: Mr. Paul H. Mabus, Labor Relations Representative

Advocate for the Union: Mr. D. R. Beasley, Representative

At an arbitration on April 14, 1986 in Houston, Texas, the Employer and the Union authorized the undersigned to decide whether or not the Employer violated the 1981-84 National Agreement and/or Postal regulations when the Employer refused to allow the Grievant, Mr. Walter Lee James, Jr., official time to write up a vehicle repair tag on November 26, 1983; and whether or not the Employer violated the Agreement by refusing to give the Grievant a Form 13 to request Union representation. Both the Union and the Employer attended the arbitration. The parties stipulated this grievance was procedurally correct, all witnesses were sworn, the Union presented no witnesses, but the Union cross-examined the Employer's witnesses, and both parties made a closing argument at the conclusion of the hearing. The events leading up to this grievance were not in controversy, and I will relate the events as I believe the events occurred.

Preliminary Background Discussion

The Grievant was a Letter Carrier at the Irvington Station in Houston, Texas in November 1983. The Station had leased vehicles for the delivery of mail. The vehicles were serviced at a local gasoline service station. The service included typical service station activities such as gasoline, motor oil, water, air, and

transmission fluid. If the leased vehicle needed repairs, the repairs had to be approved for payment by the leasor.

On Friday, November 25, 1983, the Grievant made his deliveries in vehicle number 29325. He returned from the street and at 4:15 he filled out a Form 4565 Vehicle Repair Tag stating that the transmission was slipping. The Grievant was instructed to add fluid to the transmission.

On Saturday, November 26, 1983, the Grievant delivered his route, using vehicle 29325. He returned to the office that afternoon and at about 4:15 p.m. Supervisor Gregory Milton asked the Grievant if he had put up his raw mail. The Grievant was on overtime at that moment. The Grievant responded, "Yes," and Milton said, "Get off the clock."

At that point, the Grievant asked for a Form 4565 to make a 2nd complaint about his vehicle's transmission. Milton replied, "You are off the clock - you can not work when you are off the clock. You can report what you need on Monday." The Grievant requested a Form 13 for his Union representative. The request was denied.

On Monday, November 28, 1983, the Grievant submitted a Form 4565. The Form was dated November 26, 1983. Supervisor Joe Triola checked with the service station on Monday and the report from the station was that transmission fluid was added.

On December 6, 1983, Union Representative Amelia Gregory met with Milton to discuss a grievance over the incident of Saturday, November 26, 1983. The grievance was unresolved at Step 1 and Step 2 and in the Step 2 and Step 3 appeal, the Union alleged:

On 11/26/83 Mr. W. C. James, Jr. was denied his rights when management (G. Milton) refused to allow the Grievant time to fill out a vehicle repair tag while on Post Office time. After Milton refused this the grievant was then denied a form 13 for representation. The union is grieved to find that managers at the Irvington Station can not recognize that health and safety comes before a time clock since the grievant named above was not allowed the time to fill out a vehicle-repair tag.

The 1981-84 National Agreement contains the following:

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

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ARTICLE 15

GRIEVANCE - ARBITRATION PROCEDURE

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

Section 2. Grievance Procedure - Steps

Step 1: (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate

1. The triple asterisk (***) denotes that language immaterial to this grievance has been omitted.

a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office.

(b) In any such discussion the supervisor shall have authority to settle the grievance. The steward or other Union representative likewise shall have authority to settle or withdraw the grievance in whole or in part. No resolution reached as a result of such discussion shall be a precedent for any purpose.

(c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) day period. Within five (5) days after the supervisor's decision, the supervisor shall, at the request of the Union representative, initial the standard grievance form that is used at Step 2 confirming the date upon which the decision was rendered.

ARTICLE 17

REPRESENTATION

Section 1. Stewards

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

Section 2. Appointment of Stewards

A. Each Union signatory to this Agreement will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of each Union. Stewards will be certified to represent employees in specific work location(s) on their tour; provided no more than one steward may be certified to represent employees in a particular work location(s). The number of stewards certified shall not exceed, but may be less than, the number provided by the formula hereinafter set forth. ***

B. At an installation, a Union may designate in writing to the Employer one Union officer actively employed at that installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance. The activities of such Union officer shall be in lieu of a steward designated under

the formula in Section 2A and shall be in accordance with Section 3. Payment, when applicable, shall be in accordance with Section 4.

C. To provide steward service to installations with twenty or less craft employees where the Union has not certified a steward, a Union representative certified to the Employer in writing and compensated by the Union may perform the duties of a steward.

D. At the option of a Union, representatives not on the Employer's payroll shall be entitled to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the regional level and providing such representatives act in lieu of stewards designated under the provisions of 2A or 2B above.

E. A steward may be designated to represent more than one craft, or to act as a steward in a craft other than his/her own, whenever the Union or Unions involved so agree, and notify the Employer in writing. Any steward designations across craft lines must be in accordance with the formula set forth in Section 2A above.

Section 3. Rights of Stewards

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.

In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office.

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

Section 4. Payment of Stewards

The Employer will authorize payment only under the following conditions:

Grievances:

Steps 1 and 2 - The aggrieved and one Union steward (only as permitted under the formula in Section 2A) for time actually spent in grievance handling, including investigation and meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance. In addition, the Employer will compensate any witnesses for the time required to attend a Step 2 meeting.

Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application.

Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the employee's or steward's (only as provided for under the formula in Section 2A) regular work day.

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

The M-41, City Delivery Carriers Manual for Letter Carriers contains the following:

750 OFFICE WORK AFTER RETURN

751 Record returning time.

752 Return all undelivered articles, endorsed to show reason for non-delivery, all receipts taken, money collected for accountable mail, and keys.

753 Obtain proper clearance for all accountable items (see subchapter 430).

754 Return all equipment to its proper place.

755 Record ending time at unit. Return truck to garage, inspect it, and prepare required reports (see subchapter 840).

840 VEHICLE MAINTENANCE

841 SERVICING

841.1 Return truck to garage or delivery unit on completion of route, or when so directed.

841.2 Inspect truck to determine if any damage has occurred while truck was in your custody. If damage has occurred, complete forms as outlined in part 842.

841.3 Have gas, oil, and water replenished by garage or station attendant as scheduled.

841.4 Complete Form 4570, Vehicle Time Record, and put in designated place.

842 REPAIRS

842.1 Reporting Defects

Driver must (a) report all mechanical defects or failures and major body damage on Form 4565, Repair Tag (see exhibit 8-3) as soon as noted, and (b) immediately turn in the completed form to a dispatcher or manager. Minor body damage can sometimes await repair until the next regular inspection and need not be reported more than once.

842.2 Preparation of Form 4565

Whenever a motor vehicle requires repairs, complete Form 4565 in triplicate as follows:

a. Enter vehicle number and the hour and date vehicle was checked in.

b. Put check mark opposite item requiring repair, or, if not listed, enter opposite Other Repairs.

c. Describe details of repair under Remarks. For example, if brake block is checked, state: pulls to the right, brakes fading, etc.

842.3 Disposition of Form 4565

.31 Deliver to the garage dispatcher or manager for initialing.

Driver copy will be returned to you and should be kept as proof that damage was reported.

.32 Attach dispatcher copy to Form 4570.

.33 Mechanic copy is sent to the garage with vehicle.

The M-39, Management of Delivery Services Manual, for managers contains the following:

127 OFFICE WORK WHEN CARRIERS RETURN FROM ROUTE

The carrier unit managers must observe and direct carrier activity when carriers return from the route. Observe such things as:

- a. See that carriers promptly clock in on return to office.
- b. Note any excessive undertime as determined from the posted returning schedule.
- c. See that clerks are available to check in accountable items as efficiently and promptly as possible.
- d. When carriers have ended their tour of duty, review the carrier work areas for curtailed mail not reported on Form 1571.
- e. If not under PSDS, complete Forms 1813 and 3997. PSDS offices complete Daily Carrier Report Printout for late returns assure any sequence or other timekeeping errors are corrected daily.
- f. Assign work to carriers who are undertime.
- g. Assure that all vehicle repair tags are reported to the vehicle maintenance facility or maintenance contractor, as appropriate.
- h. Review Form 3996, Carrier - Auxiliary Control, as it relates to time authorized and time used.
 - i. Review Form 4570, Vehicle Time Record, or PSDS Report No. 4, Vehicle Utilization, and the tachograph chart, where used, to assure that mileage traveled does not exceed authorized mileage for the route. In this connection:
 - (1) Compare actual daily mileage driven to the authorized mileage shown on current Form 3999, Inspection of Letter Carrier Route, and 3999B, Inspection of Collection Route.
 - (2) Where unreasonable deviations are found, determine cause and take necessary corrective action.

The M-52, Fleet Management Manual, for managers of vehicle operations contains the following:

120 FLEET MANAGEMENT ORGANIZATIONS

121 GENERAL

The postmaster is responsible for the safe, efficient, and economical operation of vehicles under his jurisdiction.

136.2 OTHER SUPERVISORS

.21 All supervisors involved in the vehicular movement of mail have a responsibility for effective fleet management. Dispatch point supervisors must exercise a continual monitoring of the vehicle operations program to assure that drivers under their supervision are properly using and caring for the vehicles they operate.

.22 Dispatch point supervisors are responsible for determining whether or not a vehicle is safe to operate. When in doubt, consult vehicle maintenance personnel.

.23 Dispatch point supervisors should insure that vehicles used are clean and neat appearing. In many situations they are the only supervisors in a position to observe the vehicles for extended periods.

The parties did not agree upon a precise statement of the issue, but from the evidence, I have framed 2 questions at issue, to wit:

1. Did management violate the 1981-84 National Agreement and/or Postal regulations by refusing the Grievant official time to complete a Form 4565 at 4:15 p.m. on Saturday, November 26, 1983? If the answer is "Yes," what will be the remedy?
2. Did management violate the 1981-84 National Agreement and/or Postal regulations by refusing the Grievant official time to complete a Form 13 to file a grievance at 4:15 pm. on Saturday, Novemeber 26, 1983? If the answer is "Yes," what will be the remedy?

The Union's Position

The Union pointed out that there was no dispute that the Grievant was denied the Form 4565 on Saturday, November 26, 1983; and that there was a rule requiring that a Letter Carrier must report all mechanical defects on a Form 4565 as soon

as noted. The Union pointed out that the rule did not exclude reporting on Saturdays or exclude reporting while on overtime.

The Union pointed out that there was no assurance that the Grievant would be at work on Monday, November 28, 1983; and, if he had called in sick, the supervisor on duty would not have known of the defect. This might have caused serious damage to the vehicle or possibly caused an accident.

The Employer's Position

The Employer's position was that there was no violation of the National Agreement or Postal regulations because the Grievant had been instructed to end his tour. The Employer pointed out that the delay from Saturday to Monday in filling out the Form 4565 did not endanger any employee. The Grievant was aware that the contract service station would add transmission fluid on Monday morning so that it was unlikely that there would be a breakdown in the vehicle on Monday.

Opinion

In this grievance, the Union maintained the Employer violated Postal regulations when management refused to allow the Grievant official time to complete a Form 4565 to report a vehicle defect. The Employer maintained that there was no violation of Postal regulations because the Grievant had been told to end his tour. After carefully considering all the evidence, I find that management did violate Postal regulations and the answer to the 1st question at issue is "Yes, management violated Postal regulations when management refused to allow the Grievant to complete a Form 4565 on Saturday, November 26, 1983." I will explain my reasons for this finding.

The Employer has rules that a Letter Carrier must follow regarding vehicle operations. The rules have been hereinbefore cited from the M-41. Furthermore, the Employer has rules that managers of delivery services and managers of fleet operations must follow. Those rules have been hereinbefore respectively cited as M-39 and M-52. The purpose of all those rules is to provide safe and dependable

vehicles for the collection and delivery of mail. A vehicle with a slipping transmission is not a safe vehicle. Power from the engine reaches the wheels through the transmission. There are many situations where power failure can be dangerous. Any driver who has had a vehicle stall on an express highway, or at a busy intersection, or at a railroad crossing, or on a bridge would understand what I mean when I write that any failure in the drive train mechanism of a vehicle can be dangerous.

Rule 842.1 of the M-41 requires that a driver "must ... report all mechanical defects or failures ... on Form 4565, Repair Tag ... as soon as noted, and (b) immediately turn in the completed form to a dispatcher or manager." That safety rule applies in all situations. I considered the Employer's argument that the Grievant could have delayed from Saturday afternoon to Monday morning in reporting the leaking transmission. That is true; but, if the Grievant had called in sick Monday morning, the Jeep would have gone out in an unsafe condition. It would have taken less than 2 minutes to fill out the Form 4565 and it would not be worth saving 2 minutes time to avoid the possibility of an accident.

The 2nd question at issue is whether or not management violated the National Agreement and/or Postal regulations in refusing to allow the Grievant official time to write out a Form 13 to file a grievance. In my opinion, there was no violation of the National Agreement when management refused to allow the Grievant official time to write a grievance on a Form 13. I will explain my reasons for this finding.

The purpose of the shop is production, that is the collection, processing, and delivery of mail. The shop is not a debating society. The proper procedure for a grieved employee to follow is to tell the supervisor that the employee is grieved and would like to speak with a Steward. Article 17 Section 4 provides that a grieved employee will receive straight time pay for time spent in grievance handling. Furthermore, Article 17 Section 4 provides that a Steward will receive

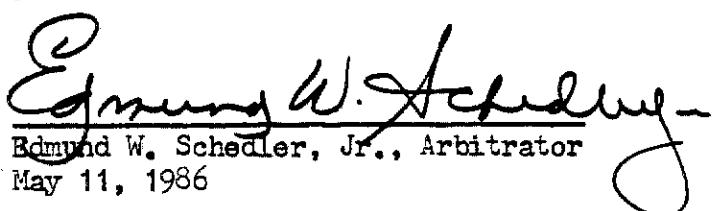
official time at a straight time rate of pay for grievance handling. It is management's responsibility to meet the contractual requirements of Article 17 Section 4 without disrupting the mission of collecting, processing, and delivering mail. The Employer has agreed to authorize official time to an aggrieved employee and 1 Steward and such time must be allowed without disrupting services.

More than likely, there would have been no disruption of services at 4:15 p.m. Saturday, November 26, 1983 if the Grievant had been allowed official time; however, the Grievant was on overtime and I believe it would have been somewhat doubtful that he could find a Steward at 4:15 pm. on Saturdays. Under these circumstances, I find no violation of the National Agreement.

Award

After a careful consideration of all the evidence and upon the foregoing findings of fact, I find that the answers to the questions at issue are:

1. Yes, management violated Postal regulations in refusing to allow the Grievant, Walter Lee James, official time at 4:15 p.m. Saturday, November 26, 1983 to fill out a Form 4565 to report a mechanical defect on his vehicle. The Employer will immediately notify appropriate managers at the Irvington Station that the Station must comply with Rule 842 of the M-41 and allow Carriers official time to write up mechanical defects on a Form 4565.
2. No, management did not violate the 1981-84 National Agreement or Postal regulations in refusing to allow Walter Lee James official time to write a grievance at 4:15 pm. Saturday, November 26, 1983.


Edmund W. Schedler, Jr., Arbitrator
May 11, 1986