

C-24662

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SEP 29 2003

NALC Region 4

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)
between:) Class Action Grievance
)
UNITED STATES POSTAL) Post Office:
SERVICE,) Columbine Hills
) (Center Littleton)
Employer,)
and) USPS Case No.
) E01N-4E-C 03124822
)
NATIONAL ASSOCIATION) NALC Case No.
OF LETTER CARRIERS,) DRT 04-040076
AFL-CIO,)
Union.)

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OCT 09 2003

Before Robert D. Steinberg, Arbitrator

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

Appearances:

USPS: Paul J. Neumann, Labor Relations Specialist

NALC: Roger Bledsoe, Regional Administrative Assistant

Place of Hearing: 5703 Prince Street, Littleton, CO

Date of Hearing: August 19, 2003

Date of Award: September 24, 2003

Relevant Contract Provision: National Agreement, Articles 10 and 19

Contract Year: 2002

Type of Grievance: Contract Interpretation

AWARD SUMMARY

The Union alleges an increasingly heavy snow storm in the Denver area on March 18, 2003, was an "Act of God" affecting the general community, which largely prevented the delivery of mail. Because of the gravity of the situation and because there was no work to be performed, Management should have sent the Letter Carriers at Columbine Hills, CO, home on paid administrative leaves.

For reasons set forth *infra*, the grievance is sustained.

DATED: September 24, 2003

R. D. Steinberg
Robert D. Steinberg
Arbitrator

SUMMARY OF THE FACTS

Columbine Hills is one of five stations within the jurisdiction of the particular Denver, CO, Postmaster. It commenced snowing in the late hours of March 17, 2003, and by the Carriers' 8 a.m. report time on March 18, it had already deposited six inches of snow. While 40 of 41 scheduled Carriers reported for work, mail delivery to the station itself was delayed and it was uncertain whether the Carriers would be able to service their routes. They cased the mail on hand and awaited further instruction. Between 10:30-11:30 a.m., the Postmaster ordered the mail to be delivered as best as possible, and after a check of the nearby roads, the Station Manager instructed Carriers to stay on the main, plowed roads within a five-mile radius.

Three Carriers delivered all or most of their respective routes. Others made an attempt to deliver but were largely unsuccessful. Two of them testified (one by stipulation) to having been told by Management or supervision to return to the station. Several Carriers did not make an attempt to deliver mail because of safety and family concerns. All who wished to do so were allowed to leave, and most did so between 1 and 3 p.m. after completing Form 3971 where each had to signify whether the work hours missed would be treated as annual leave or LWOP. According to all who testified, the weather conditions were worsening throughout the day, and according to at least one, by mid-afternoon up to a foot of snow had fallen. The snow continued to fall into March 20, and the media reported the snowstorm to be the worst in a century. March 19 was treated as a community disaster by the Employer and employees remained home that day on administrative leave.

The Union timely grieved the failure of the Postmaster to grant administrative paid time off for employees leaving work early on March 18. The Dispute Resolution Team representatives could not agree as to the severity of the storm and which party was correct in its interpretation of ELM

519.21. It did certify as a matter of fact that there was no (meaningful) work to be performed at the Columbine Hills station by 1:00 p.m.

ISSUE

The parties stipulated the following issue as properly before the undersigned for final and binding award:

Did the Employer violate JACAM (Articles 10 and 19) and ELM Section 519 when it refused to grant administrative leave for employees who left work early on March 18, 2003? If so, what is the appropriate remedy?

CONTROLLING CONTRACTUAL LANGUAGE

While agreeing that Articles 10 and 19 are the relevant provisions of the National Agreement, the parties stipulated ELM Section 519, Administrative Leave, controls:

“519 Administrative Leave

“519.1 Definition

“Administrative leave is absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.

“519.2 Events and Procedures for Granting Administrative Leave

“519.21 Acts of God

“519.211 General

“Acts of God involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting to work.

“19.212 Authorizing Administrative Leave for Acts of God

“The following provisions concern administrative leave for acts of God:

- "1. Postmasters and other installation heads have authority to approve administrative leave for up to 1 day....

"519.214 Early Dismissal Due to Acts of God

"When employees are dismissed from duty before the normal completion of their duty due to an "act of God," the following applies:

- "a. Full-time employees are entitled to credit for hours worked plus enough administrative leave to complete their tour of duty. This combination of work and leave is not to exceed 8 hours in any 1 day.
- "b. Part-time regular employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled tour of duty. This combination of work and leave is not to exceed 8 hours in any 1 days.
- "c. Part-time flexible employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled tour. The combination of straight time worked and administrative leave may not exceed 8 hours in a service day."

SUMMARY OF PARTY POSITIONS

Union:

The conditions of ELM Section 519.21 were met. The March 18, 2003, snowstorm constituted an "Act of God, " it was general rather than personal in scope and impact, and it prevented most of the employees at Columbine Hills from delivering the mail. The credible testimony of Letter Carriers is that it became largely impossible for them to function on the road and that Management or supervision instructed certain Carriers to return to the station, where after returning undelivered mail to the station, there was nothing for the Carriers to do. Under the above-referenced conditions, the Postmaster was required, but failed, to send employees home, granting them administrative leave. [citations omitted.]

Employer:

The Union must justify its claim by a preponderance of evidence, and it has failed to do so. Snowstorms are not unusual in the Denver area, all but one Carrier reported to work and mostly on time. Most voluntarily left work early for personal reasons. Mail delivery, within the limitations set by Management, was proper, several Carriers completed all or a substantial portion of their routes, and employees knew they would be leaving on LWOP or on annual leave if they left early.

The Postmaster's decision not to grant administrative leave was proper. The Service cannot afford to let employees be the decision-maker. It is a question of both customer service and economics, and the Employer's judgment is entitled to deference. [citations omitted.]

DISCUSSION

I have carefully read the many awards tendered by the parties, and it is clear there is no dispute among neutrals as to the controlling factors set forth in ELM Section 519. Beyond that, however, application differs widely depending upon the extant facts and circumstances and the impression testimonial and documentary evidence has made upon the respective arbitrator.

When and how to excuse employees from work is Management's decision to initially make, and it is appropriate to defer to the judgment of Management absent a persuasive showing that its exercise of discretion was faulty. The Union must prove, in effect, an abuse, and it met its burden in the case at hand.

Road conditions were somewhat treacherous by the 8 a.m. report time, but Carriers were able to report to work, even with difficulty. The mail truck was not so fortunate, and the Carriers had ample time to case the mail on hand and to confer with Management as to whether they would work their routes. Management hesitated making this decision until it secured an updated weather

projection and it tested road conditions. It was not until late morning the Postmaster made the decision to deliver where reasonably possible, and delivery was restricted to main arteries within a five-mile radius of the station. Both Carriers, and supervision when leaving to inspect the routes, were getting stuck going from and coming to the station.

It was evident from all who testified that the snowstorm and road conditions were increasingly worsening. The Station Manager willingly released all who wanted to leave work rather than attempt delivery of their routes, understanding their safety and family concerns. By early afternoon, he and/or his supervisor were concerned with the difficulties certain Carriers were having circumnavigating their routes and told these Carriers to return to the station. It is apparent that conditions had worsened to the extent that only an extraordinary effort by two or three Carriers enabled them to complete most or all of their abbreviated routes, and in order to do so, they had to extend into overtime hours.

By stipulation, and as supported by credible evidence, there was no work to be performed by Carriers once they unloaded their vehicles after returning to the station, or by 1:00 p.m. for those not leaving. With the existing confusion, one or two Carriers, who had made an effort to deliver and had returned by mid-afternoon, sat around for an hour or more doing nothing, not realizing they could go home. Those who decided to leave early, and most left between 12:30-1:30 p.m., believed they were under direction to work routes or go home, not to sit idly by in the station.

Those opting to leave early cannot be said to have made a "voluntary" choice. The increasingly severe snowstorm prohibited, or so they thought, safe, effective mail delivery, and there was no other work for them to perform. The Station Manager echoed their concern as to safety and the worsening conditions and, after the fact, told others he believed administrative leave would have been appropriate.

On this evidence record, the inescapable conclusion is that by the afternoon of March 18, the Denver area was in the throes of a severe snowstorm constituting an Act of God. It did not merely affect isolated individuals but adversely affected a majority of the Carriers and, increasingly, the community as a whole. The Service had made the effort to perform its function as per its credo but had reached a state of severely diminished capacity. By the time the majority of employees sought to leave, the worsening snowstorm was preventing a "group of employees from working..." which allowed for the granting of administrative leave.

Credible evidence attests to the fact that circa. 1 p.m. on March 18, 2003, all but a handful of the Columbine Hills Carriers could no longer function outside or in, and conditions dictated they be dismissed due to an Act of God. From a safety standpoint and because there was no more mail to case, it was then appropriate to grant the employees administrative leave. At that point, the Postmaster's failure to do so, at least for the employees of Columbine Hills, was indefensible.

An examination of the actual hours worked by Carriers that day indicates a minimum of 4 $\frac{3}{4}$ hours was the norm. Accordingly, those employees who had to take annual leave or were otherwise treated as being on LWOP should be made whole, treated as having worked a regular eight hours.

AWARD

Having fully reviewed the evidence record, upon due deliberation and for the reasons set forth above, the undersigned impartial arbitrator hereby renders the following Award:

1. The Employer violated the National Agreement and ELM Section 519 when it refused to grant administrative leave for those employees who left work early on March 18, 2003.

2. Employees who were forced to take annual leave shall have their leave bank restored up to a maximum of 3½ hours.
3. Employees who were not paid for the time after they left (LWOP'd) are entitled to administrative leave by up to a maximum of 3½ hours.

Respectfully submitted,



Robert D. Steinberg
Arbitrator

DATED: September 24, 2003