

RA-2379-A-75
Virgil Davis
Hot Springs, AR
NCS 11,990

C#03205

EXPEDITED ARBITRATION

IN THE MATTER OF AN ARBITRATION

BETWEEN

United States Postal Service
Hot Springs, Arkansas

AND

National Association of Letter Carriers, Branch 543
Hot Springs, Arkansas

Case #N5-MS-19924
Grievant: V. Davis, et. al.

Arbitrator: Elvis C. Stephens
Hearing date: September 18, 1981

APPEARANCES

For the union:

1. Johnny W. Breckenridge

For the employer:

1. Jerry Tedder, Labor Relations Representative
2. Louie Shiver

ISSUE

Did the Postal Service violate the contract when it refused to grant the grievants Administrative Leave for absences resulting from a snowstorm on January 12, 1978?

INTRODUCTION AND BACKGROUND

On September 18, 1981, there was an arbitration hearing on the above referenced case at the Main Post Office, Hot Springs, Arkansas. The arbitrator had been assigned the case by the Southern Region Office in Memphis, Tennessee. This grievance was filed under the 1975-78 contract. It was assigned to the arbitrator under the provision for scheduling the 1975-78 cases for expedited arbitration.

The case arose when several employees (about 11) were either late or

unable to report to work on January 12, 1978. The snowstorm was severe and caused considerable damage throughout the area. By all accounts, it was a severe ice and snowstorm. However, the majority of employees did make it to work, even though some of them were late. Some employees came to work in taxicabs. The grievants lived at various locations throughout the city.

The Postmaster decided that the Post Office would be open and deliveries would be attempted that day. Those employees who could not make it to work, or were more than several minutes late were given the option of taking Annual Leave or Leave Without Pay.

The grievants believed that the Postmaster should have given them Administrative Leave rather than the option of Annual Leave or Leave Without Pay. A grievance was filed on February 8, 1978, requesting Administrative Leave. This grievance was not resolved in the normal grievance process. The parties agreed that it was properly before the arbitrator.

POSITION OF THE UNION

The union contends that the conditions on the night of January 11 and on January 12 were very severe. The police were telling people to stay off the roads. The schools were closed and most meetings were cancelled, as was trash pickup.

The union contends that the weather conditions met the requirements for being an "Act of God" under the contract and in the Postal Manuals. The snowstorm was general in nature, in that it affected all parts of the city. There was a group of employees affected; therefore, the requirements for granting Administrative Leave were met. The union contends that the Postmaster should have granted Administrative Leave rather than requiring the employees to take Annual Leave or Leave Without Pay.

POSITION OF THE EMPLOYER

The employer contends that in order for the Postmaster to grant Administrative Leaves, the situation must be general in nature rather than personal, and groups of employees must have been prevented from coming to work. The Postmaster's decision to allow the employees to use Annual Leave or Leave Without Pay was a proper decision. It was not arbitrary or capricious, and no employee was disciplined for not coming to work.

The majority of employees made it to work from all different sections of the city. The employer also contends that several arbitrators have upheld the Postal Service in similar situations.

OPINION AND DISCUSSION

Regulations covering situations such as this one are found in the Timekeepers' Instructions (TL-23), the Personnel TL-219 Manual, and the F-21 Manual. The F-21 Manual, dated 11-4-77, defines an Act of God Leave in Section 331.1, which reads as follows:

Eligible employees who are prevented from reporting or working or who were forced to report late to work on a scheduled day by an "Act of God," such as a snowstorm, flood, or windstorm, may be excused by the installation head without charge to annual leave and without loss of pay. However, the time involved in the excused absence cannot exceed the limit stated below. The situation must be severe enough to affect the community as a whole, rather than individual employees.

The Personnel TL-219 Manual defines an Act of God as follows: "Acts of God involve community disasters such as fire, flood, or storms. The situation must be general rather than personal in scope and must prevent groups of employees from working or reporting to work." (721.921a) This manual also states that annual rate and hourly rate regular employees who are prevented from reporting when scheduled by an "Act of God" may be excused without charge to Annual Leave, or loss of pay.

Postmasters are given authority to approve Administrative Leave for up to one day. However, the Postmasters must determine if the absences were due to "Acts of God" or whether the employees might have reported for duty if they exercised reasonable diligence.

The Postal Service introduced several arbitration cases which it claimed upheld their contentions. In one of these (S8C-3F-C-1829) Arbitrator Caraway states that it is apparent that Administrative Leave cannot be granted unless an Act of God has occurred. The situation must be general in nature and prevent groups of employees from working or reporting to work. Arbitrator Caraway also states that the decision of the Postmaster must be upheld unless it is proven to be arbitrary, capricious, or unjust.

In that particular case some 37 employees were late reporting to work in Little Rock, Arkansas on February 25, 1979. The arbitrator concluded that the ice storm was not general in nature and groups of employees were not prevented from reporting to work. Therefore he upheld the Postal Service's action. Arbitrator Fisher, in a 1973 case, upheld the decision of the Portland, Oregon Postmaster in refusing to grant Administrative Leave to several employees who contended they could not report to work because of ice on the roads.

Arbitrator Fisher concluded that there were no provisions in the contract which required the Postmaster to grant Administrative Leave under those conditions. The arbitrator also concluded that the Postmaster made a decision on each individual case, and did not act in an arbitrary or capricious manner.

Similar decisions were rendered by Arbitrator Fasser (ND-C-5609) in a case dealing with the Cleveland District of Letter Carriers and Arbitrator Holly in a case dealing with the employees of the St. Petersburg, Florida Post Office.

Jim Zanner, who was Postmaster at Hot Springs during the time in question, testified concerning his decision not to grant Administrative Leave to the grievants. He testified that the weather conditions were severe, but he decided that the Post Office should remain open and carry out its mission. The snowstorm did not affect large groups of employees. Although several employees were late, nearly all employees did show up for work. Many employees took a taxicab to work, and other employees were picked up by supervisors who were driving four-wheel-drive vehicles, or vehicles with chains.

The employees who were either late or did not report were given the option of taking Annual Leave or Leave Without Pay. Zanner testified that he did not feel that the conditions met the requirements of an Act of God as specified in the Postal Manuals. The employees who are grievants in this case did not live in one area, but were scattered throughout the town. Thus, Zanner concluded that it did not affect groups of employees and was not general in nature.

The Postal Service pointed out several times that no employee was disciplined for either reporting late or not reporting at all. Each employee was given the option of either taking Annual Leave or Leave Without Pay for the hours missed.

The language in the manuals in question do not state that the Postal Service must grant Administrative Leave in these situations. The language specifies that the Postmaster "may" grant Administrative Leave--if certain conditions are met and the decision to grant Administrative Leave can be justified.

This arbitrator must agree with previous arbitrators that the decision to grant Administrative Leave rests with the Postmaster and is optional on his or her part. As long as the decision was not arbitrary or capricious such decisions are permissible under the manuals and contract. The only time an arbitrator might consider overturning the Postmaster's decision in such cases would be a situation where the requirements spelled out in the manuals were met, and the Postmaster's decisions appeared to be arbitrary and capricious.

AWARD

The grievances are denied.

Date: Sept. 25, 1981

Elvis C. Stephens
Elvis C. Stephens, Arbitrator