

C-26130

## **Regular Panel Arbitration**

**NATIONAL ASSOCIATION OF  
LETTER CARRIERS, AFL-CIO**

Before: Arbitrator Kathryn Durham, J.D.

### Appearances:

For the Service: Cynthia Johnson  
For NALC: Paul Barner

**Judith Willoughby, NALC  
National Business Agent**

SEP 06 2005

Place of Hearing: Alpharetta, GA  
Date of Hearing: June 15, 2005  
Post-Hearing Briefs: July 17, 2005  
Date of Award: Sept 1, 2005  
Type of Grievance: Contract Interpretation  
Contract Term: 2001-2006

## **AWARD SUMMARY**

Management presented no evidence to rebut the prima facie case established by the Union. Management presented only the single written statement of the District HR Director that the weekend storm did not constitute a disaster situation. Management had no other testimonial or documentary evidence to support its single lined conclusion. For want of appropriate response in the Alpharetta office, in the face of the unrebutted, credible evidence presented by the Union, the Union carried its burden of proof. Grievance sustained. Management violated the National Agreement when it made administrative leave unavailable to employees that were prevented from reporting to work, after exercising due diligence, because of the January 29, 2005, snowstorm (Act of God). The evidence at hearing established that the snow and ice storm had impact general in scope that prevented groups of employees from

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reporting to work. DPS and first class mail did not arrive. Truckers refused to drive. No city routes were delivered from the Alpharetta office. To this extent, Postal operations were terminated and/or curtailed. Over sixty-six (66%) of the carriers were unable to report. The Union witness who was able to report testified that there wasn't enough work to keep them busy. He testified that carriers spent up to two hours in the break room and he was sent home early. The Postmaster explicitly refused to give any consideration to the effect of the January 29, 2005 snowstorm on Postal operations and commute conditions existing for Alpharetta carriers. His designee at the Formal A added nothing to the record.

*Kathryn Durham*  
Kathryn Durham, Arbitrator

## I. ISSUE

As stated at the hearing: Whether management violated Article ELM 519.21 Acts of God and/or Article 3 of the Alpharetta, GA, LMOU when it denied administrative leave to carriers who did not report for duty on Saturday, January 29, 2005. If so, what is the appropriate remedy?

As contained in the Step B Decision: Whether management violated Article 19 of the JCAM/National Agreement as it relates to ELM 519.211 Acts of God, by not issuing Administrative Leave. Whether management violated contract when issuing administrative leave to personnel who showed for work and not for personnel who did not show? If so what is the remedy?

As stated in Management's Post-Hearing Brief: Did the Postal Service violate the National Agreement when it did not grant Administrative Leave to Alpharetta Post Office Employees who failed to report for work on January 29, 2005?

## II. OPINION

The Union is seeking administrative leave for affected employees under Article 3 of the Alpharetta, GA, LMOU and under ELM 519.21 Acts of God. The ELM provides in relevant part:

Acts of God involve community disasters such as fire, flood, or storms. The disaster must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting to work. ELM 519.211

Postmasters and other appropriate postal officials determine whether absences from duty allegedly due to "Acts of God" were, in fact, due to such cause or whether the employee or employees in question could, with reasonable diligence, have reported. ELM 519.213

The facts of our case are rather straight-forward. There was a snow and ice storm affecting the Atlanta Metro area on Saturday January 29, 2005. Witnesses established that it was unusually severe and out of character for this area. As a result, only 37.5% of the carrier work force was able to report to the Alpharetta facility that Saturday, no trucks delivered mail to the facility, no DPS or first class mail was received (bulk mail had come in earlier), and none of the routes were carried. Those few carriers who did make it in cased bulk mail and took longer than usual "breaks". One Union witness testified that he delivered two pieces of express mail.

Carriers testified as to the diligent, concerted efforts they made to come to work. One carrier testified that in addition to his driveway being iced in, the surface streets were impassable. Another carrier testified that she got up at 5:30 a.m. and, after leaving her driveway, slid into the first stop sign. At the second stop sign, she testified that she couldn't drive any farther. She walked 1 mile and saw two cars that had slid sideways off the road. She returned home and called in and spoke with a clerk because the supervisors hadn't made it in. Both carriers testified that they kept watch for the situation to improve and that it did not that day.

A carrier testified that when she reported back to work on her next scheduled day she was given a choice of only annual leave or leave without pay for the 29<sup>th</sup>. She testified, "Management never asked me what efforts I had made to get to work. I've never not come before due to weather. (sic) It was a disaster."

The Union summarized its evidence quite effectively in its brief:

Carrier Halsey entered a written statement into the file in which he described watching a news report the morning of the storm of a tractor trailer at dead stop sliding sideways on one of the major metropolitan interstates. (Jt2.14-15) Halsey testified at the hearing that he had viewed news reports of major interstate closings on Jan 29 occurring throughout the metro area along with warnings to stay off the roads except for emergency and reports of traffic accident fatalities. ... Halsey testified as to the inability of his wife, her co-workers, her clients, and their neighbors to carry out their business due to the disastrous conditions... Carrier Williams testified that in 18 years he has never before requested Administrative Leave. ...

Carrier Wright testified that [the HR Manager memo] is one piece of evidence confirming that the impact of the storm was general in nature. ... Wright (also) testified that he had to forego his plans (to go to Savannah for the weekend on pre-arranged annual leave) and sit at home on annual leave due to the disaster this ice/snow storm created.

Management's evidence was quite succinct: It consisted entirely of a memo from the Human Resources Manager for the Atlanta Post Office (Duluth, GA) to all associate offices, Postmasters, Station Managers, MDOs, etc. in the Atlanta area (including the Alpharetta office) stating that the "weekend weather condition did not constitute a disaster situation. Therefore administrative leave should not be paid as a result of employees not reporting to work." (jt.2.3)

Alpharetta management relied totally on the email from HR and advised all employees that the only leave available for January 29 was LWOP or Annual. It gathered no information from employees. No other information, evidence, or argument was included in the record to support management's position. At Formal Step A the Station Manager (Postmaster's designee) wrote, "Management of the Alpharetta P.O. complied with the Directive dated 1/31/05 from the manager of Human Resources at the Atlanta District Office. A copy of this Directive is included in this package." (Jt.1.10)

The Union's evidence was sufficient to establish a prima facie case that the storm constituted a general disaster preventing groups of employees from reporting to Alpharetta. Those who testified established that they exercised due diligence and were still unable to report.

According to the evidence of record, neither the Postmaster nor any designee evaluated employees' efforts to come to work or the circumstances of the ice and snowstorm for their community.

The HR directive, standing alone, was insufficient to overcome the Union's evidence. The HR Manager did not testify, nor did the Formal A Step Designee. When the Postmaster took the stand to testify the Union objected on grounds there was no foundation in the record for him to speak about anything, as he had been uninvolved up to this point; anything the Postmaster would say at hearing would be new argument or new facts. After a review of the record and lively debate over the substance and appropriateness of the postmaster testifying, the motion was sustained.

#### Case Citations

The Arbitrator read the ten prior Awards from fellow Regular Panel Arbitrators attached to the Postal Service post-hearing brief. Each of these awards are distinguishable from the grievance at bar on their factual circumstances and have, therefore, not persuaded the Arbitrator toward the Service's position. The distinguishing features of the cases presented by the Service are as follows:

Linda Byars, North Metro Atlanta-Snowstorm Jan&Feb 1996: "The evidence establishes that the mail was processed and dispatched at North Metro on all the days in question. There was no evidence presented by the Union to show that any postal operation was curtailed during the periods in question. The testimony of Union witnesses establishes that they made no attempt whatsoever to report for work."

Christopher Miles, Atlanta P&DC - Snowstorm Jan 2000: "weather was severe but did not reach "disaster" proportions. In both cases (referring to his and the case before Linda Byars in 1996), the evidence establishes that mail was processed and dispatched in a normal manner on all

the days in question. There was no evidence presented by the Union to show that any Postal operations were curtailed during the periods in question. ... most roadways were open, as indicated by the fact that the majority of employees were able to report as scheduled. ... less than 20% of the scheduled workforce failed to report..."

Robert Foster, Austin, TX Jan 1982: The sleet and ice storm clearly falls within the phrase "an Act of God." But the fact that the mail was not curtailed leads to the compelling conclusion that the situation was not general. ... Moreover, the fact that only a small percentage of employees assigned to the station were absent on the days in question preclude a finding of the remaining condition that groups of employees were prevented from working or reporting to work."

Robert McAllister, Bloomfield Hills, MI - Snowstorm Feb 1982: "...office-wide, thirty-one of fifty came to work. ... The testimony of two witnesses demonstrated a reasonable effort was not even made by them. ... at least one witness acknowledged that the storm was not unusual because "We're in a snow belt." Main roads were plowed, and the presence of vehicular traffic was attested to. The post office was open, and postal patrons transacted business, but on a reduced scale. ... the Union has the burden of proving that the February 1, 1982 snow storm was a community disaster. It is insufficient to prove that some employees were unable to come to work."

Alan Watt, Waterloo, IA Feb 1981: "...although some detours were required on February 10, all rural routes in the Waterloo Post Office were delivered that day. ... administrative leave is being sought for only 7 of the 37 employees scheduled on Tour 1 and for 11 of the 40 employees on Tour 3. ... considered in conjunction with the fact that public transportation within Waterloo was operative..."

James Scearce, Boston Dec 1981: "the applicable regulations are clear in requiring a showing of "general impact." This arbitrator construes such term to apply to the work group as a whole and concludes that it must be demonstrated that a pattern of impact occurred. ... more than half of the employees scheduled for duty on Dec 6 did so and almost 80% reported on December 7, 1981."

Gerald Cohen, Lansing MI Feb 1981: "... mail arrived as usual. ... one trip was late, but the mail volume on the workroom floor for the evening of February 10 was about the same as usual, although processing of the mail was delayed due to a reduction of staff. ... the witness stated that he had no specific recollection of the storm involved in this case, since it was no more severe than usual. ... on tour 3 ... 88 employees worked, 79 employees requested administrative leave, and another 24 employees requested other types of leave, such as sick leave or the like. On Tour 1 ... 74 employees worked, 26 requested administrative leave, and 16 others requested some other type of leave such as sick leave, emergency annual leave, or the like. ... The last condition, which must be proven, is that a disaster occurred as a result of an Act of God. In this respect, the evidence produced by the Union fell short of the required proof. ... The proof offered indicated a severe winter storm of the type that occurs from time to time in this area."

Vernon Jensen, Philadelphia Bulk Mail Center Jan&Feb 1978: "Evidence of diligent effort on the part of the employee is crucial and Arbitrator must recognize it as controlling. In the absence of the evidence to this effect, or that the installation head ignored such evidence—which is not the issue in this dispute—the grievances must be denied."

Lawrence Loeb, Merrifield, VA in Jan 2000: "At best, the statements indicate that four out of two hundred fifty employees didn't make it into work. [The statements] say nothing about the seriousness of the situation, whether government offices were closed, whether motorists were warned to stay off the roads, whether other businesses were shut down or anything else which would let Management and the Arbitrator know that the situation ... was general rather than personal in nature and scope."

Edward Pereles, Philadelphia BMC Feb 2001: "What kind of disaster can it be where the evidence provided that the roads in the area surrounding the facility did not have too much snow on them and what ice that may have formed on the roads did not substantially interfere with the most of the Tour 3 members of the bargaining unit reporting for duty. (sic) Most public transportation was running late but was not cancelled. There is simply no evidence of a community disaster; considerable evidence of community inconvenience but, disaster no."

In contrast to the cases cited by management, in our case the unrebutted evidence established that the Postmaster did ignore evidence of employees' diligent efforts (compare to Arbitrator Jensen's case where management did not ignore); more than half the employees (66.67%) were unable to report (a large group); the testimony and documentary evidence described an unusually intense and severe storm creating a community-wide disaster; no routes were carried (Operations curtailed or terminated).

The Arbitrator is cognizant of a tendency in human nature to prefer not to work if there is an "excuse" not to. This decision should be read as requiring employees to exercise reasonable diligence in the face of snow and ice to come to work. Administrative leave for reason of community disaster should be a relatively rare occurrence.

Had local management gathered evidence and responded during the local grievance procedure, this case may have turned a different way. As it was, though, management had effectively nothing in the file to support its claim that no community disaster existed.

#### Relief for Affected Employees

Only employees who exercised reasonable diligence in attempting to come to work and were prevented from reporting by the community disaster are entitled to relief under the ELM. However, management made no effort at the time to determine who exercised due diligence and who didn't. Its opportunity to challenge employees' contentions of due diligence is now lost.

The Union presented witnesses at the hearing whose testimony established that they exercised due diligence. The record contains supporting affidavits from other affected employees. It would not be practicable for the Union to call every employee denied administrative leave to testify at arbitration.

#### LMOU Claim

The Union also argued in the grievance package that management's actions violated the Local Memorandum of Agreement. LMOU Article 3, at Joint Exhibit 1, page 48, provides as follows:

### Curtailment or Termination of Postal Operation

Letter Carriers shall not be required to attempt delivery during periods of inclement weather of such severity that Postal Management considers road travel hazardous. Whenever Postal operations are terminated, all affected regular employees will be placed on administrative leave for up to 8 hours.

The record establishes that no routes were delivered on January 29, 2005 due to the hazardous conditions. The record establishes that the only mail in the facility was bulk. Trucks carrying DPS and first class mail were not traveling due to hazardous conditions. The record established that a carrier who was able to report did what work there was to be done, took several hours worth of "breaks" and was ultimately released early.

Management rebutted none of the Union's contentions and proofs during the local grievance process. Management presented no contrasting opinion or argument as to the LMOU claim.

Neither party argued this claim in its brief. The Arbitrator will reserve ruling on this claim given that the requested relief is afforded the class by virtue of the Act of God ELM claim.

### **III. REMEDY**

Grievance sustained. All employees who took annual leave or leave without pay because they were prevented from reporting to work by the snow storm shall have their leave converted to administrative leave. They shall be made whole. If any employee believes that s/he did not exercise due diligence in the face of the conditions to report for work, s/he may opt out of the class. Where LWOP taken, the affected employee shall receive pay for the 8 hours. Where Annual Leave taken, it shall be restored to the employees Annual Leave balance.

The Arbitrator shall retain jurisdiction of the grievance to resolve any dispute over the appropriate application of the remedy.

*Kathryn Durham*  
Kathryn Durham, Arbitrator