

C# 04964

IN THE MATTER OF AN ARBITRATION)
)
Between)
)
UNITED STATES POSTAL SERVICE)
(Gresham, Oregon))
)
And)
)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS)

Regular Arbitration
Case No. W8N-5D-C10180
Branch

MAR 11 1985

JIM EDGEMON, NBA
National Association Letter Carriers

AWARD OF THE ARBITRATOR

March 8, 1985

This matter came on for hearing in Portland, Oregon, on July 20, 1984, before Arbitrator William E. Rentfro, selected by the parties to hear and render a final decision on the issue in dispute.

The Union was represented by Robert Weaver, NALC Business Agent. The Postal Service was represented by Robert Funge, Postal Advocate.

THE ISSUE

Did the Postal Service violate the National Agreement, and section 519 of the Employee and Labor Relations Manual, when it denied Administrative Leave to the employees of the Gresham, Oregon Post Office on January 9 and 10, 1980?

If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

Article III. 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;

E. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Article XIX. 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, shall contain nothing that conflicts with 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.

Employee & Labor Relations Manual

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

.21 Acts of God

.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.

.212 Authorizing Administrative Leave for Acts of God

a. Postmasters and Installations Heads . Postmasters and other installation heads have authority to approve administrative leave for up to 1 day.

b. Regional Postmaster General. Approval for administrative leave beyond 1 day must be obtained from the Regional Postmaster General. That official may authorize administrative leave beyond 1 day but not to exceed a total of 3 days. However, before approving administrative leave in excess of 1 day, the Regional Postmaster General should obtain complete details as to weather and road conditions, transportation, etc., to assist in making the decision.

.213 Determining the Cause of Absence. 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 for duty.

STATEMENT OF THE CASE

The grievance in this case was filed by the Union on January 23, 1980. It alleged a violation of the E&LR Manual, Section 519, because employees who did not or could not report for work on January 9 and 10, 1980, because of a heavy snowstorm, were not granted administrative leave, but were instead charged with annual leave or leave without pay for those two days. At the hearing in this matter the Union presented testimony that on January 9 and 10, 1980, twelve to eighteen inches of snow fell in the Gresham-Portland area. On January 9th, fifteen of thirty employees failed to report for work. On January 10th, eighteen of thirty-six scheduled employees failed to report. Only a limited amount of mail was delivered those days. The carriers who did report spent their time

casing mail and were dismissed early and granted administrative leave for the balance of the day. Some employees called in to report that they could not get to work, or to inquire whether they should report. They were told by Bob Rodgers, described as "supervisor when no other supervisor was around," that they should not worry about coming in if conditions were too bad. Those who did not report were later given the choice of taking annual leave or leave without pay, but were not granted administrative leave.

The testimony presented by the Union was limited and brief. Over four years has elapsed since the storm of January 1980. Shop Steward Lawrence Bauman recalled that on the morning of January 9 there was a foot to a foot and a half of snow on the ground at his house. He did not know how much snow fell on other parts of the area. A downed power line blocked his driveway, so he called in and talked to Rodgers. He testified that Rodgers told him that the carrier supervisor had instructed that "if carriers call in--tell them to come in if they can make it, but if not, don't worry about it." Bauman did not report on January 9, but did report on time on January 10. He cased his routes and went to lunch with some other employees, where they got stuck. When he called in, the Post Master told him to go on home.

Bauman testified further that he recalled a conversation with Steve Apling, Superintendent of Mails, on January 10,

after he reported for work, in which Apling told him that anyone who called in or made an attempt would get administrative leave. Three weeks later the MSC manager issued a letter stating that no administrative leave would be granted. Apling testified that he was on emergency leave on January 9 and 10 and not on duty. He stated that he called Rodgers and told him to tell employees who called in to say they wouldn't be in, to stay home; that he didn't talk about leaves to anyone. The next day he and the Postmaster discussed it, talked to the Portland office, and were told that there would be no administrative leave.

Two additional witnesses testified for the Union. Carrier Bishop stated that the roads were bad the night of January 8 when he drove his girl friend to Portland to work. Early on January 9th, the snow was deep in his driveway. He stated that his house was over 100 yards from the street and "I didn't feel like shoveling snow at 5:30 in the morning, so I went back to bed." Later in the morning he called in and told Rodgers he would be in if he could. There was no discussion about how leave would be handled if he didn't make it. Bishop did not show up for work, but drove by the Post Office later in the day and noticed it was closed.

One other carrier, Stewart Thorpe, testified. He stated that he was scheduled off on January 10, but called in on the 9th to see what he should do. He stated that he was told to stay home if he couldn't make it, but that nothing was said

about leave. He acknowledged that he knew it was snowing the night before, but made no special plans to get to work. When he couldn't get his car out of the driveway, he didn't consider alternate forms of transportation.

Superintendent of Mails Apling testified that he had no authority to grant administrative leave; that the Postmaster had to make such decision. He said that the Postmaster had not said anything about administrative leave and that he did not tell anyone it would be granted to those who didn't make it to work.

POSITIONS OF THE PARTIES

Union

It is the position of the Union that the snow storm on January 9 and 10, 1980, constituted an Act of God as defined in Section 519.211 of the Employee and Labor Relations Manual. It claims that the snowstorm: (1) was a community disaster, (2) was general rather than personal in scope and impact, and (3) prevented groups of employees from working or reporting to work. The Union claims that the storm was unusually severe; that half of the Post Office employees failed to report to work and that virtually no mail was delivered on either January 9 or 10. Further, it points out that even if its members had made it to work, they would have been sent home after working part of the day and would have been paid.

The Union argues that the Postal Service, by telling its employees not to worry about coming in, implied that those

employees who could not report would be granted administrative leave. They were not told that they would have to use annual leave.

Postal Service

It is the Postal Service's position that the snowstorm of January 9 and 10 was not an Act of God as defined in Section 519.211 of the Employee and Labor Relations Manual. The storm, although severe, was not a "community disaster" in any sense of the word. Although it snowed throughout the Gresham/Portland area, the storm was personal rather than general in impact. Employees failed to report to work because their cars were too low, their driveways were too long, or they simply didn't feel like shoveling snow. Further, the Postal Service argues that groups of employees were not affected since half of the employees reported. It stresses the fact that there was no correlation between those who failed to come in on the 9th and those who failed to come in on the 10th. Although it began snowing before the 9th, many employees failed to take reasonable steps to ensure that they could make it to work, and there is no evidence of efforts to find alternate means of getting in.

It stresses the fact that no one in authority told the employees who called in that they would be granted administrative leave if they could not report. It argues that employees

who were told "not to worry about coming in" had no reason to believe they would be granted administrative leave. It was implied that they would be excused and not disciplined if they felt they couldn't come to work.

DISCUSSION AND CONCLUSIONS

The granting of administrative leave in situations of this kind is within the discretion of the Postal Service. However, it has an obligation to act reasonably when making its decision. The Employee and Labor Relations Manual contains guidelines for the Postal Service to follow in determining whether to grant administrative leave for an alleged Act of God. Under Section 519.21 the Postmaster and the Regional Postmaster General are authorized to approve administrative leave only if: (1) there is a community disaster, (2) the disaster is general rather than personal in scope and impact, (3) it prevented groups of employees from working or reporting to work and (4) the employees involved could not, with reasonable diligence, have reported for duty.

It is the conclusion of the Arbitrator that the storm of January 9 and 10, 1980, did not constitute such a community disaster. The Oregon Supreme Court has defined an Act of God as a natural occurrence of extraordinary or unprecedented impact whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight. Northwestern Mutual Insurance Co. v. Peterson, 572 P.2d 1023. It has been held that not every storm can be

classified as an Act of God because it is of unusual or more than average intensity. Southern Pacific Co. v. Loden, 508 P.2d 347.

It is clear that the storm involved in this case was severe and unusual for Portland. It would not be considered nearly as severe in Denver or Billings. Postal employees make it to work often on days of more severe weather than that experienced in Gresham on the days in question.

In order to prevail in an Act of God case, the Union has the burden of showing with clear evidence that the snow storm amounted to a community disaster. All of the evidence presented is set forth above. Its burden has clearly not been met. In a community disaster situation there would be much evidence of massive road closings, the shutting down of schools, business and public services, and the failure of public transportation. The Arbitrator inquired as to the status of public transportation that day, but the Union did not know whether it was operating or not.


There is a great difference between a storm that literally shuts things down and makes it impossible for people to report to work, and a bad storm that makes it difficult. It is likely that many employees who found it difficult, like Mr. Bishop who didn't feel like shoveling so much snow that morning, decided not to go in for that reason. Others were

prevented from getting to work. But this fact does not trigger the Act of God provision for approving administrative leave. No community disaster existed because half of the employees went in to work on each of the two days, and they lived throughout the Gresham/Portland area in the same parts of the city where those who didn't report lived.

It is also noteworthy that there is no evidence of efforts made by employees to report in spite of the difficulty caused by snow in driveways and on the roads. No evidence was presented of efforts to check out public transportation, calling on a co-worker or friend for assistance, or any number of other precautions and measures used in times of emergency. It is expected that when it snows, extra effort is required to get to work on occasion. If half of the employees, living in the same area, can make it, why not the others? True, some could not make it after diligent effort. But that fact does not convert a storm into a disaster, and is not grounds for an across-the-board grant of administrative leave on the theory that the storm was a disaster amounting to an Act of God.

AWARD

The Postal Service did not violate the National Agreement and Section 519 of the Employee and Labor Relations Manual when it denied administrative leave to the employees of the Gresham, Oregon, Post Office on January 9 and 10, 1980. The grievance is denied.


William E. Rentfro
Arbitrator