

NICHOLAS H. ZUMAS 10/25/82
Art. 10 - Admin. Leave-Snow Storm
Art. 19 - E&LR Manual

1 - Won
1 - Modified
40 Lost

1722 (E8C-2D-C)

CH 00581

IN THE MATTER OF)
ARBITRATION BETWEEN)
UNITED STATES POSTAL)
SERVICE)
and)
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO)
Grievants: Marsiglia, et al.
Case No. E8C-2D-C 1722

OPINION AND AWARD

Background

This is an arbitration proceeding pursuant to the provisions of Article XV of the Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union"). Hearing was held in Baltimore, Maryland on April 29, 1982, at which time testimony was taken and exhibits offered and made part of the record. At the conclusion of the hearing, both parties agreed to file post-hearing briefs. The brief of the Service was received on June 18, 1982; the brief of the Union was received on June 16, 1982. The Service was represented by Ms. Marcelline F. Kloss, and the Union was represented by Mr. William T. Harper, Jr.

The delay in rendering this award was due to the extended recuperation period of the Arbitrator following his illness and surgery.

Issue

The issue to be resolved in this dispute is whether or not conditions existing in Baltimore, Maryland on February 20, and 21, 1979 met the requirements for granting Administrative Leave to the Grievants under the applicable regulations.

Statement of Facts

This is a Class Action grievance filed by Grievant Marsiglia and 41 other employees alleging that the Service violated the National Agreement when it failed to grant Administrative Leave to the Grievants who stayed home from work because of severe weather conditions.*/ All of the Grievants were Tour I employees with a reporting time of 10 p.m. and ending time of 6 a.m. Some of the Grievants failed to report on the night of February 19 and others failed to report on the night of February 20.

Snow began falling during the late afternoon on Sunday, February 18, 1979 in the Baltimore area. The snow ended some time on Monday, February 19, with an accumulation of approximately 22 inches of snow. According to the Baltimore Sun newspaper of February 20, 1979:

"Maryland came to a virtual halt yesterday as one of the worst snow storms in history dumped up to 22 inches of snow on the metropolitan Baltimore area, paralyzing transportation throughout the State and closing most businesses not already closed for Washington's Birthday.

Mayor Schaefer called a curfew from 7 p.m. until 5 a.m., both to get looters off the streets and to give snow plows a chance to break through on clogged streets.

About 175 snow plows were working on the major highways in the City last night and expected to have them 'passable' by this morning. Mayor Schaefer said last night that he would not ask people to stay home from work this morning.

But transportation officials warned that side streets were not being plowed last night and that even main highways would be clogged in some areas where abandoned cars stopped trucks from plowing.

They advised persons travelling into the City to come by bus if possible, since even those able to get downtown in their own cars will find parking spaces buried in snow.

*/ At the hearing, both the parties expressly waived the appeal to Step 4 of Article XV relating to an interpretative issue pertaining to the National Agreement.

* * *

Only 14 of 34 AMTRAK trains scheduled for yesterday morning were running. Edward T. Downes, an Assistant Division Manager, said some trains were being stopped by freezing switches.

Baltimore-Washington International Airport was closed yesterday, after snow plows there quit trying about 6 a.m. Airport officials said they expected service to resume about noon today.

Interstates 95 and 70 and the Baltimore Beltway were closed in places yesterday morning, though by early afternoon one lane was passable in each direction on both roads.

* * *

Today should be a respite from both snow and cold, with mostly sunny skies and temperatures in the mid-to-upper 30's forecast."

As noted earlier, Grievants were scheduled to report at 10 p.m. on Monday, February 19 and Tuesday, February 20. The Grievants contend that Administrative Leave should have been granted for those employees scheduled to report Monday night (February 19) and those employees who failed to report for work on Tuesday night (February 20).*/

Approximately half (49 percent) of the Clerk Craft employees on Tour I did report for work on the evening of February 19; and approximately 55 percent of the Clerk Craft employees scheduled on Tour I reported for work the evening of February 20, 1979. In addition, on February 20, 1979, approximately 60 percent of the Letter Carrier Craft employees reported for duty.

*/ All of the Grievants were assigned to Tour I on both days with reporting times of 10 p.m., with the exception of Grievant Golaboski who had a reporting time of 12 Midnight.

Subchapter 510 of the Employee & Labor Relations Manual (incorporated into the National Agreement by Article XIX (makes provision for the granting of Administrative Leave). It provides that a Postmaster or other installation heads have authority to approve Administrative Leave for up to one day in the event of an Act of God involving community disasters "such as fire, flood, or storms." The disaster "must be general rather than personal in scope and impact;" and "must prevent groups of employees from working or reporting to work." Approval for Administrative Leave beyond the one day must be obtained from the Regional Postmaster General, who may authorize Administrative Leave beyond one day but not to exceed a total of three days.

Only two of the Grievants (Marsiglia and Robinson) gave testimony at the hearing before this Arbitrator. Grievant Marsiglia testified that he did not report for work on Monday evening (February 19, 1979) because the conditions made it impossible to get there by his automobile. He further testified that buses were not running in the Parkville area where he lives, approximately 12 miles from the facility. Marsiglia testified that he had good snow tires, but did not want to get stuck. He tried to move his car, but it was parked on a side street and the snow plows had not yet come into his area. He called in and asked for Emergency Annual Leave, but was granted eight hours Annual Leave instead. Marsiglia testified that he was able to come into work on the night of February 20 (and that his claim was limited to one day).

Grievant Robinson testified that he could not report in on the nights of February 19 or February 20. On February 19 he was able to get to his car, but could not get it out of the deep snow. On February 20, the conditions were not much better according to Robinson, and the snow plows did not arrive in his

area, which is approximately 12 miles from the facility, until the following day. Robinson did not know whether there were buses running, but he did not make an effort to get into work by bus. He also called and asked for Emergency Annual Leave, but was granted eight hours Annual Leave.

Thomas Keefe, the General President of the Local testified that he was off on Sunday and Monday (on Tour I) but was able to come into work on Tuesday night, February 20, but it took him an hour and one-half to two hours to get in.

Thomas Oswald, Manager-Delivery & Collections, testified that the Monday collection was cancelled completely because of the weather, even though it was a holiday. He did not come into work on Monday. Oswald testified that there was a limited collection on Tuesday, February 20. Oswald testified that he lived approximately 12 miles from the facility and was able to drive into work on February 20 in approximately 45 minutes. Oswald testified that almost all of the 60 Supervisors came in to work on Tuesday and Wednesday, and that approximately 60 percent of the Letter Carriers (numbering 1,578) came in to work on Tuesday. Not all of the Carriers, according to Oswald, came in on time but were given Administrative Leave for the period they were late. There were no difficulties in getting to work, according to Oswald, on February 21. Everything, by that time, was almost back to normal. Oswald testified that the decision to grant Administrative Leave to those employees who came in late was made on Tuesday, February 20, after discussions with the Postmaster. Oswald admitted that he could not distinguish between the granting of Administrative Leave for employees coming in late and for employees who did not report.

Findings and Conclusions

This Arbitrator, after reviewing the record placed before him by the parties, finds the following:

The storm conditions existing in the Baltimore area on the evening of Monday, February 19, 1979, were such as to warrant the granting of Administrative Leave of one day by the Postmaster. It is clear that as of that time, there existed a storm of such severity, general in its scope, that affected the entire metropolitan area of Baltimore. As of that time, it was so severe as to force a halt to community activity. Its effect on the Service was equally severe; the Manager of Delivery and Collection testified that the Monday collection was cancelled completely because of the weather, and that a decision was made on Tuesday, February 20, 1979, to grant Administrative Leave to those employees who arrived late. In this connection, it was noted by Arbitrator Gerald Cohen in a similar case, that "this is a recognition that conditions justifying Administrative Leave existed, otherwise there was no reason to give it even in a limited fashion."

There was no evidence at the hearing that would warrant a conclusion that the storm prevented employees from coming to work on Tuesday night, February 20, 1979, to commence their Tour into early Wednesday morning, February 21, 1979. Grievant Marsiglia testified, that even though he was unable to come into work the night of February 19, he was able to make it on the evening of February 20. Grievant Robinson testified that he made every effort to get into work on the evening of February 19, but did not try to get in on Tuesday, since he assumed that the conditions of Tuesday evening were the same as those of

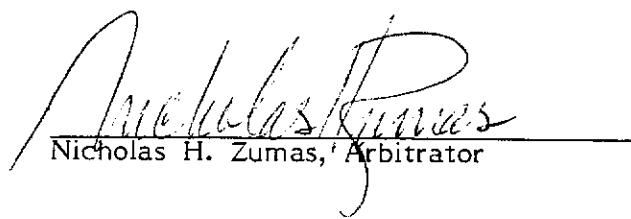
the previous night. He testified that he did not know whether buses were running, and made no attempt to get to work by bus.

As noted earlier, only two of the 42 Grievants testified. There were no affidavits or other probative evidence that would allow the Arbitrator to make a determination that the Grievants who did not appear made an effort to get to work on Monday evening, February 19, 1979. The absence of such testimony makes it impossible for the Arbitrator to make any determination as to whether Administrative Leave was warranted in these individual cases. See Case No. AC-C-17648.

Therefore, on the state of the record as presented, the Arbitrator is constrained to find that Administrative Leave was justified for Grievants Marsiglia and Robinson for their failure to report on the evening of Monday, February 19, 1979; that Grievant Robinson was not entitled to Administrative Leave for failing to report on Tuesday, February 20, 1979; and that the remaining Grievants are not entitled, by reason of failure of proof, to Administrative Leave for failing to report on either February 19 or February 20, 1979.

AWARD

Grievance disposed per Findings and Conclusions herein.


Nicholas H. Zumas, Arbitrator

Date: October 25, 1982