

C# 02686

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

RE: SLN-3T-C-107
Gary Carver
Canyon, Texas

APPEARANCES

FOR THE POSTAL SERVICE: Charles Weiser, Labor Relations
Representative

FOR THE UNION: Don Varenhorst, Regional
Administrative Assistant

ARBITRATOR: John F. Caraway, selected by mutual
agreement of the parties

The grievant, Mr. Carver, went on annual leave commencing August 31, 1981 and ending September 12, 1981. He was scheduled off on September 13 and 14. Upon his return to work he examined his assigned vehicle and noted that his rain gear was missing. An investigation revealed that his vehicle had been taken off of the facility for repairs and undoubtedly the rain gear was removed by unknown persons while the vehicle was away from the postal facility. He then filed a Form 2146, Employee's Claim for Personal Property for \$90.48 to recover the cost of the missing rain equipment. When the Postal Service denied the claim, the grievant processed the instant grievance which proceeded to arbitration.

Mr. Carver testified that he receives a uniform allowance to purchase items such as rain gear. The practice at the facility has always been to leave this rain gear in the employee's vehicle. The purpose is to avoid the double handling of removing the rain gear from one's locker, placing it in the vehicle, and then removing and storing the gear back into the locker at the end of the day.

The Postmaster at the facility had permitted this practice to exist. After Mr. Carver's incident, a rule was promulgated to bar the carriers from leaving their gear in their vehicles.

Postmaster Davis testified that he did not give permission for any carrier to leave rain gear or any property or items in their jeep overnight. He did admit recommending that the claim be paid but this was only to avoid the expense of arbitration.

CONTRACT PROVISIONS INVOLVED

ARTICLE 27

EMPLOYEE CLAIMS

"Subject to a \$10 minimum, an employee may file a claim within fourteen (14) days of the date of loss or damage and be reimbursed for loss or damage to his/her personal property except for motor vehicles and the contents thereof taking into consideration depreciation where the loss or damage was suffered in connection with or incident to the employee's employment while on duty or while on postal premises. The possession of the property must have been reasonable, or proper under the circumstances and the damage or loss must not have been caused in whole or in part by the negligent or wrongful act of the employee. Loss or damage will not be associated with day-to-day living and working conditions. Claims should be documented, if possible, and submitted at the local level. The Employer will submit the claim, with the Employer's and the steward's recommendation, within 15 days, to the regional office for determination. The claim will be adjudicated within thirty (30) days after receipt at the regional office. An adverse determination on the claim may be appealed pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure.

A decision letter denying a claim in whole or in part will include notification of the Union's right to appeal the decision to arbitration under Article 15.

The regional office will provide to the Union's

Regional Representative a copy of the denial letter referenced above, the claim form, and all documentation submitted in connection with the claim.

The installation head or designee will provide a copy of the denial letter to the steward whose recommendation is part of the claim form."

ISSUE

Did the Postal Service violate the National Agreement by denying the grievant's claim for a loss of \$90.48 representing rain gear which had been located in the grievant's vehicle?

ARGUMENT

The Union contends that the argument of arbitrability advanced by the Postal Service comes too late because it was first urged at the date of the arbitration hearing. Even so, there is merit to the plea of non-arbitrability because Article 27 does not limit loss or damage to the employee being on duty.

The Union argues that Mr. Carver is entitled to reimbursement for the value of the rain gear. His leaving his rain gear in his vehicle was in accord with the practice followed at the Canyon, Texas Post Office. The reason for this was because of the weather where rain showers come up in little or no notice. In addition, the practice avoided the double handling and loss of time in storing the rain gear. The Postmaster knew that this was the practice at the facility, yet he did not prohibit the employees from doing this.

The Postal Service argues that the grievance is not arbitrable since the loss did not occur in connection with or incident to Mr. Carver's employment while on duty or on the postal premises. It is undisputed during the two week period

Mr. Carver's vehicle was taken from the Canyon postal facility during the time when Mr. Carver was on annual leave. Article 27 clearly states that the loss or damage is only payable when it is incurred with or incident to the employment of the employee. This did not occur in the instant case.

The Postal Service contends that the articles involved in Mr. Carver's claim were not privately purchased because the Postal Service grants an annual allowance from which the employee purchases necessary uniforms and work clothes.

The Postal Service maintains that the loss of Mr. Carver's property was due to his negligent and wrongful act by leaving the rain gear in his vehicle when he went off on annual leave. Knowing that he would be absent two (2) weeks required Mr. Carver to remove these articles from the vehicle and place them in his assigned locker. His failing to do so constituted negligence which bars his recovery.

DECISION

Article 27 permits an employee to file a claim for the loss of personal property where that loss was suffered in connection with his employment while on duty or while on Postal premises. The possession of the property must have been reasonable and proper and the loss cannot be caused in whole or part by the negligent or wrongful act of the employee. These are the guideline principles which emanate from Article 27 and which must be applied to the facts of the instant case.

The rain gear in question which was stored in the employee's vehicle must be deemed to be the personal property of the employee.

The basis of this conclusion is that the property is purchased out of an allowance which the employee receives through the Postal Service. If this allowance is not exhausted the employee does not receive any cash differential. If the employee loses this personal property he must replace that property. For example, if the rain gear was stored in his locker and was stolen, the employee would be required to replace that rain gear. Further, the rain gear cannot be worn outside of official duty, for example, on a hunting or fishing trip. When the employee terminates his employment with the Postal Service he keeps that personal property. This criteria convinces the Arbitrator that the property in question, in this case, is the personal property of Mr. Carver as construed under Article 27.

For Article 27 to be operative it is necessary that the loss be incidental to the employment, while on duty, of the employee or while on Postal premises. The argument of the Postal Service is that the rain gear was stolen while Mr. Carver was on annual leave and not performing any official duties. The weakness of the argument of the Postal Service is the fact that there was an existing practice that carriers were permitted to store their rain gear in their assigned vehicle. This was a long standing practice and was known to supervision as well as to the Postmaster and was acquiesced in. As a consequence it must be concluded that the loss, in fact, did occur to property while it was located on the Postal premises because the rain gear was by acquiescence and waiver stored without objection from supervision in the employee's vehicle.

A corollary argument is advanced by the Postal Service that Mr. Carver was negligent by leaving his rain gear in the vehicle while he went on a two week annual leave and this negligence bars his recovery. But for there to be a negligent act it is required that there be an instruction as to what constitutes negligence. In the instant case, it was not deemed to be a negligent act for the employee to store his rain gear in his assigned vehicle. To the contrary, it was considered to be an ongoing and

practice of the carriers. It should be noted that it was only after the Carver grievance was filed that the Postal Service issued a regulation that all rain gear and personal property should be removed from the assigned vehicle after completion of the day's work and stored in the employee's locker. This attests to the existence of the practice of legitimately leaving rain gear and personal property in the employee's assigned vehicle. With regard to the argument of negligence, it can be argued with equal merit that whoever brought the particular vehicle to Amarillo, Texas to the repair facility was guilty of contributory negligence by driving that vehicle or transporting that vehicle to Amarillo and leaving it at the repair facility without removal of the rain gear which was stored in the vehicle.

Any doubts as to the validity of this claim must be resolved in favor of the employee by reference to the answers of the Postmaster on Part 3 of Form 2146. In answering that part of the form, the Postmaster stated that the claim was timely, the possession of the lost property was reasonable, proper and an incident to his employment, and that there was no negligence on the part of the employee. The Postmaster recommended payment of

the claim. The Postmaster certainly is the individual with the closest contact with the claim and the accompanying facts. If it is his recommendation that the Article 27 had been complied with and he recommended payment, this must carry great weight in judging the validity of the claim.

One final argument must be disposed of. It is the Postal Service contention that the claim should be reduced by depreciation of the wear of the property. However, Article 27 states "Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions." The loss in question did not result from normal usage but resulted from the article being stolen. It also should be noted that during the various steps of handling the grievance the Postal Service did not advance the argument of depreciation. Further, the Postmaster recommended payment of the full amount of the claim, specifically \$90.48. There was no assertion by the Postmaster that this amount should be reduced by depreciation of the rain gear.

AWARD

The Union grievance is sustained. The Postal Service violated the National Agreement by refusing to pay the claim of Mr. Carver of \$90.48 pursuant to a properly filed Form 2146. The Postal Service shall pay Mr. Carver \$90.48.


John J. Harvey
IMPARTIAL ARBITRATOR

New Orleans, Louisiana

December 21, 1982