REGULAR ARBITRATION

C# 10351

SOUTHERN REGION

USPS - NALC

In the Matter of Arbitration	)	Case #S7N-3A-C-27946
Between	)	GTS #011204
United States Postal Service	)	Richard Knaggs, Grievant
Dallas, Texas	)	
and	)	
Lone Star Branch 132	)	
National Association of	)	Hearing File Closed:
Letter Carriers AFL-CIO	)	July 12, 1990

Before Irvin Sobel, Arbitrator of Record

Appearances:

For the National Association of Letter Carriers(Union, NALC)

Ms. Jeannie Beach

Local Business Agent

Dallas, Texas

For the United States Postal Service(Service, Employer, Management)

James B. Reeves

Labor Relations Assistant

Dallas, Texas

Preliminary Statement:

The hearing of the enumerated issues was conducted pursuant to Article 15 of the National Agreement (N/A) between the parties.

On March 22, 1990 following a first step denial on March 14, 1990 by Northwest Station Manager Bill Palmer, the Union filed a written grievance on behalf of Part Time Flexible (PTF) Carrier Richard Knaggs alleging the service violated the N/A by declaring the grievant's vehicle accident of February 5, preventable. The parties unable to resolve the issue through the grievance procedure assigned the matter to final and binding arbitration. The hearing was conducted by the above cited Arbitrator on July 12, 1990 at the Dallas Main Post Office. At the hearing the parties were accorded full opportunity to present witnesses for direct and cross examination, and to introduce such other evidence and argumentation each deemed pertinent to the matter under consideration. No issues of arbitrability, timeliness, or defect of form were raised by either party. Notwithstanding the fact that the Employer's 3rd step appeal designee James Bledsoe declared the grievance procedurally defective under Section 842.225 that contention was not pursued at the arbitration hearing and the issue at hand will therefore be decided on its substantive merits. The parties opted for closing arguments and the hearing file was closed as of July 12, 1990.

Facts in Case:

On February 5, 1990 the grievant while backing into a parking space was involved in a motor vehicle accident which was ruled as a preventable and at fault accident. In introducing the grievance the Union argued:

> There was no safety violation on the part of the grievant as he backed properly. The accident investigation was inadequate and inaccurate because the Postal vehicle had been moved prior to the arrival of the MSC Accident Investigation. Hal Waldman, of SC accident investigator, stated that the accident probably should be ruled 10% the fault of the grievant but that he could not write it up that way. When the investigative summary was written the grievant was found 25% at fault. For these reasons the accident should not have been ruled preventable. Union also feels that due to damage this should have been an incident rather than an accident.

The Employer counter claimed as follows:

> The postal vehicle was moved forward approximately 3'4" to allow the bumper of the vehicle to be removed from the top of other vehicles tire and postal vehicle to rest on all four wheels. Had grievant been maintaining a proper lookout when backing he would not have struck the other vehicle. Grievant admits that he looked left, looked right and never looked to his left again in the backing maneuver. Had he continued to look both ways during the maneuver he could have seen the front of the other car actually in his lane. Regardless of the percentage of fault on the part of the grievant the fact still remains that he was at fault by not maintaining a proper lookout while backing. Further investigation reveals that in the opinion of Hal Waldman the percentage of fault that was assigned should not be a factor in this case. His investigation shows that regardless of percentages Mr. Knaggs did not maintain a proper lookout and his accident should be classified at fault.

Relevant Provisions of the Employee and Labor Relations Manual (E/LM)

842.2 Safe Driver Award Program

842.211 The award plan is more than a means of rewarding drivers with good safety records. The guidelines in the

National Safety Council Safe Driver Award Rules establish what is expected of professional drivers in the way of safety performance: The ability to operate a motor vehicle without having a preventable (by National Safety Council definition) accident.

842.25 Safe Driver Award Committee

842.253 Purpose. The committed evaluates accident causes for educational purposes to prevent future occurrences of similar accidents. The committee must not develop punitive or disciplinary measures.

842.255 Appeals/Review. When the local Safe Driver Award Committee is unable to decide whether or not an accident is preventable, or when the committee has a tie vote, or when the driver appeals the committee's decision, the case must be submitted to the Headquarters Office of Safety and Health for review and decision.

Position of the Parties:

Introduction:

The essence of each party's position is so amply developed by the above cited contentions introduced under Facts in Case that little would be added by their reiteration under separate attribution. Accordingly only a brief summary statement of each party's arguments is necessary at this point.

The Union's Position:

The Union contended that the grievant took every (contractually) required precaution for backing into a parking space and, therefore, cannot be held accountable for the irresponsible actions of others. Unfortunately accidents happen under the best regulated circumstances. There is a distinction between an At Fault declaration by the Accident Investigator and the classification of a given accident as Preventable by the Safe Driver Award Committee.

Since the two categories are not synonymous, and require different standards of judgement by the two entities, the Committee by utilizing Accident Investigator Waldman's report as the sole basis for its decision without resorting to its independent fact finding responsibilities not only aschewed its obligations under the N/A but erred as well.

The Union also contended that the 2nd step declaration of "Resolution" of the grievance was not binding upon it and thus it had every right to carry the matter upward.

The Employer's Position:

The service contended that the grievant was not looking in the correct direction and had he done so the accident would not have taken place. It argued that MSC Investigator Waldman's report declaring the grievant 25 percent at fault had nothing to do with the Committee's classification of the accident as preventable and thus by questioning chief Investigator Waldman's assignment of "At Fault" the Union was confusing "apples and oranges". Although management argued that the Union committed a procedural brief by not carrying the matter up to higher Headquarters, as stipulated by ELM 842.225 and the 2nd step grievance "resolution", it also rejected the grievance on its substantive merits.

Opinion and Award:

The key question which must be responded to in the resolution of the instant grievance are: 1) What is the meaning and significance as related to the issue of preventability of Accident of Claims

Investigator H. Waldman's report of the accident of February 5, 1990; 2) Did the Safe Driving Committee property conduct an investigation of the accidents; 3) Is the Employer's contention that the grievant disregarded safe driving practices, as stipulated by the appropriate manuals, a tenable one

Mr. Waldman's testimony provided the essence of the Employer's contentions. Although an Employer witness, his role as the individual who must investigate without bias and draw conclusions from the evidence, was evident. He stated that his investigation and subsequent determination not only had a different purpose but also his assignment of a 25 percent degree of fault to the grievant, based on his determination of Backed Without Safety, did not necessarily mean that accident was a preventable one. The two determinations are for different purpose, and in some cases, the frequency of which he did not specify, accidents, in which the grievant was held at fault, were declared preventable while in other situations the reverse was held true. Pressed by the Union as to whether he had said the grievant was only 10 percent at fault but he had to classify him as 25 percent he replied, "I don't recall, but I could have said that". He added that whether the person concerned was only 10 (or even 1 percent) at fault the minimum responsibility he could assign according to the "rules" was 25 percent. His specification for the other driver's offense was "Improper Turn and Inattention".

The unrebutted testimony indicated that the only evidence before the Safety Driving Committee was Hal Waldman's report and it was used and cited as the basis for declaring the accident a preventable one. The Employer, who also cited two other at fault accidents attributed

to the grievant, failed to conform to the separability and differential purposes of the two judgements and although the Employer's advocate was well aware of the difference it was not clear that such was the case for the Safe Driving Committee.

Accidents are such a frequent occurence in our industrial society in which individuals interact with each other in the presence of complex machines, which also do not perform perfectly, that the principle of "liability without fault" constitutes the basis for Worker's Compensation. In determining preventability the accident may be caused by a mechanical failure, or a fellow worker, or in the case of driving may be so much caused by the fault of one driver as to render that accident non-preventable by the other. In the instant grievance the candid statement by Waldman that the other driver "drove like a fool" was a significant factor. The other factor in the determination is that despite the inference to the contrary about "not looking to the left again or he could have avoided the accident", the grievant did so. He backed into the parking space rather than going into it forward as instructed. He looked right, left, right as instructed. He stated to back slowly into the space. Once he reached the edge of the space the grievant (Knaggs) had to concentrate on the backing in procedure, to stay within the lines. In this context the driver in order to back in straight has to look back and slightly downward to find the line closest to his side. Once the rear of the vehicle enters into the space, as was the case according to the diagrams, the driver is normally occupied looking backward. To have to swirl ones' head to look to the other side would be distracting and would interfere with his proper alignment.

It is all to easy to say that a driver has to keep looking in a certain direction once his rear wheels have entered into the parking space but very hard to accomplish.1

For the above reasons the accident as pertains to grievant Knaggs must be deemed non-preventable.

Award:

The grievance of Mr. Knaggs is hereby sustained. The classification by the Safe Driving Committee of the accident of February 5, 1990 will be changed from preventable to non-preventable.

1 This arbitrator repeated the backing in process at a shopping mall and once having entered the space was looking downward and back.

Tallahassee, Florida
October 15, 1990

This is a certified true copy of Arbitration Award

Irvin Sobel

Irvin Sobel, Arbitrator