

C-26227

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

(Grievant: Group Grievance
(
(Cincinnati
Post Office: Ashtabula, OH

)
)
(USPS Case #:C01N4C-C050065674
(
) NALC Case No: 05-999-0039
(
(

BEFORE:

Timothy B. Tobin, Arbitrator

APPEARANCES:

For the U.S. Postal Service:

Doris Roberts

For the Union:

Gary Griffis

Place of the Hearing:

Cincinnati, OH

Date of Hearing:

October 28, 2005

Date of Award:

October 31, 2005

Relevant Contract Provision:

Sections: Articles 5, 19 ELM 519

Contract Year:

2001-2006

Type of Grievance:

Act of God

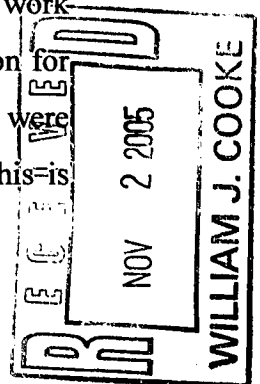
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VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

Regular Regional Award Summary:

Management violated the rights of the Branch 43 Carriers that were scheduled to work either their non-scheduled day or their holiday, on December 23, 2004. The reason for this decision and award is that all other Carriers in the Cincinnati District, who were unable to work due to the level III snow emergency, were paid for the day. This is



definitely a case of desperate treatment that needs to be corrected. It should be noted that at the arbitration hearing, the Service agreed to pay eight hours pay at the overtime rate, to any of the employees in the pool of Grievant's, who actually showed up for work on the 23rd.

The grievance is granted. Management is ordered to pay the remainder of the employees from the affected group eight hours of pay at the overtime rate.

ISSUE

Did Management violate Articles 5 and 19 of the National Agreement as well as ELM Section 519, when they refused to compensate Carriers who were properly scheduled to work either their holiday or non-scheduled day, but due to inclement weather, were unable to report to work on December 23, 2004? If so what is the appropriate remedy?

Stipulated and Undisputed Facts

During the course of the lower steps of the grievance procedure the parties agreed to the following list of stipulations:

1. All carriers on the attached sheet (i.e. the pool of Grievant's) were scheduled to work on 12/23/04.
2. All Carriers listed were scheduled to work either their non-scheduled day or their holiday which would have resulted in overtime.
3. All Carriers listed were not able to report to work due to inclement weather as well as a level three snow emergency being declared throughout the counties.
4. All Carriers who were scheduled to work on 12/23/04 as a regularly scheduled work day and were unable to report due to the inclement weather and the level 3 snow emergency, were granted 8 hours of administrative leave.

5. All Carriers who were scheduled to work and reported late were granted administrative leave from their normal start time until they arrived at work
6. All Carriers who were scheduled to work and were sent home prior to the end of their normal work schedule were granted administrative leave to complete their tour of duty. (Jt. ex. 2 @ pg 5)

Position of the Employer

USPS said that the Union has failed to shoulder their burden of proof by showing that Management violated either Article 5 or Section 519 of the ELM. The Service argued that paying the remaining Carriers who were impacted by Management's refusal to pay them for December 23, 2004, would result in unjust enrichment. They pointed out that the Carriers who were scheduled to work their holiday, on the day in question, have already been paid 8 hours of holiday pay.

Management argued that there is absolutely no proof that all of the employees of the list of Grievants (Jt. ex. 2 pgs 6-7) actually made an attempt to come to work on the 23rd. The Service admitted that this was definitely an "act of God" snow emergency, but asked that, for the reasons stated above that the grievance be denied.

Position of the Union

The Union presented testimony from eight different Letter Carriers who testified, in detail about the terrible weather conditions that existed on December 23, 2004. The Union noted that each of these Carriers made valiant efforts to come into work on 12/23/04, but were unable to do so. One of the Carriers who testified, Lisa Caddell, actually made it to

the interstate ramp, only to be turned away by the police. She was "ordered to return home".

They argued that it is totally unfair for the group of employees that were scheduled to work their day off or the holiday, to be denied pay when every one else in Branch 43 was granted pay, under exactly the same weather conditions. They felt that this group was being singled out because overtime pay was involved. They asked that the grievance be granted and the impacted employees be paid 8 hour at the overtime rate of pay.

Findings

A "level three snow emergency" is defined by the County Sheriff's Department as follows:

All Municipal, Township, County, and State roadways are closed to Non-emergency personnel. No one should be out during these conditions unless it is absolutely necessary to travel. Those traveling on the roadways in violation of this Level III Snow Emergency are subject to arrest. (Jt ex. 2 @ pg 26)

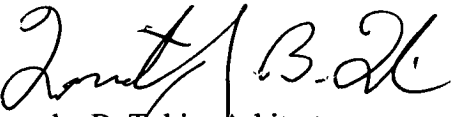
There is absolutely no dispute that the weather was terrible on December 23, 2004, it was very dangerous to attempt to travel. The police were warning all citizens to stay off the roads or be subject to arrest. In fact, one Carrier who made it out to the roadways was confronted and turned away by the police; she was lucky. All of the Carriers who testified at the hearing recited various stories of pain, misery and heroics, due to there attempts to come to work.

The Postal Service argued that there is no proof that all Carriers, on the list of Grievants, tried to come to work. That is true, but that argument lacks merit on a day when the Police and other local government officials were warning people that they would be subject to arrest if they attempted to drive. Even Postal management officials were on local radio telling customers not to expect mail to be delivered on the 23rd. In short, there was no reason to even try to leave your house, for any reason, under these very dangerous conditions.

The fact that every one, except this group, received some form of pay for their trouble on December 23, 2004, is hard to understand. This group, who were scheduled and willing to work their day-off over the Christmas holiday should be treated no different than all the other Carriers who suffered through the exact same conditions on the 23rd. As one of the Union's witnesses testified, "next time this happens I'll stay in bed, I am not going to be paid anyway". I didn't think that the Service wants that outcome. The grievance is granted.

AWARD

For the reasons outlined above the grievance is granted.


Timothy B. Tobin, Arbitrator
Washington, DC

October 31, 2005