

REGULAR ARBITRATION PANEL

Q 447

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

N.Y. Metro Area.
Before Robert L. Stutz, Arbitrator

Grievant: Class Action

Post Office: North Jersey, N.J.

Case No: NIC-IN-C 6134
6051,6964,6136,5966,6511
6701

Appearances:

For US Postal Service

Paul E. McDonough, District Director. E & LR

For Union:

Neil Goham, Advocate

Date of Hearing: October 11, 1983

Place of Hearing: North Jersey Facility

Award:

The Service failed to properly adhere to Section 519.211 of the Employee and Labor Relations Manual when it failed to grant administrative leave to employees who failed to report or reported late on April 6, 1982. The records of the grievants should be corrected to reflect that they were on administrative leave on that date and that they be recredited with annual leave for April 6, 1982.

Date of Award: November 9, 1983

NOV 18 1983

Statement of the Case

A hearing on this matter was held on October 11, 1981 at Northeast Regional Headquarters in New York, N. Y., before the undersigned member of the regular panel of arbitrators for the Northeast Region. Appearing for the Union was Neil Goham, Advocate, and for the Service was Paul F. McDonough, District Director, Employee and Labor Relations.

The parties agreed at the hearing on the following statement of the issue:

Did the Postal Service properly adhere to Section 519.211 of the Employee and Labor Relations Manual when it failed to grant administrative leave to postal employees who failed to report or reported late for work on April 6 and 7, 1982?

The Section of the Employee and Labor Relations Manual cited in the submission question reads as follows:

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.

519.211 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.

This case involves claims made by the Union in a series of grievances in behalf of an uncertain number of employees who either did not work or were late in reporting for work at the North Jersey postal facility on April 6 and 7, 1982. The record shows that commencing at 6:00 a.m. on April 6 between 10"-13" of snow fell during

that day with wind speeds up to 35 mph. The record also shows that there was no precipitation of any kind on April 7 and that the wind continued at 25 mph.

Management records demonstrate that approximately 52% of the employees scheduled to work on April 6 worked all or part of the scheduled work day, and approximately 86% on April 7. Among the absent employees who claimed inability to get the work because of the storm, some requested administrative leave and some annual leave. In either event, they were granted annual leave. It is the Union's claim that the conditions prevailing in the area on April 6 and 7 met the Act of God requirements of Section 519.211 of the Employee and Labor Relations Manual and warranted the granting of administrative leave to all of the grievants. The Employer concedes that the storm on April 6 caused some driving problems and for that reason granted employees annual leave if they were tardy or absent on that day, but denies that the storm constituted the kind of community disaster which calls for the granting of administrative leave under Section 519.211. In support of this position the Employer cites: (1) the fact that no emergency was declared for the area; (2) the number of employees who reported for work; and (3) the evidence that all main arteries were open with traffic moving all day long. On the other hand, Neil Goham, the Union advocate and an employee at the nearby NYI & BMC, testified that he was unable to dig out either of his two cars - one at his house and the other in a lot close by - and that his effort to get to work by public transportation was unsuccessful and that the buses did not appear to be running on the morning of April 6.

No precise figures were presented as to the number of employees who reported for work on April 6 and April 7 but the management data reflecting actual hours worked versus planned hours indicate that approximately 735 employees reported for work on April 6 and 1,230 reported on April 7. The total number of employees in the Unit was about 1,400.

Opinion

There can be no question that there was a severe snowstorm in the North Jersey area commencing at approximately 6:00 a.m. on April 6, 1982 with between 10-13" of snow and wind velocity of up to 35 miles per hour. In generally similar conditions during the same storm, three different arbitrators have found tht employees were entitled to administrative leave in Hackensack, N. J., New London, Connecticut and Meriden, Connecticut. The Hackensack decision was a consent award. (See Case No. NIC-IN-C-6712, Hackensack, N. J., Case No. NIC-IJ-C 6157, Meriden, Ct., and Case No. NIC-IJ-C-6158, New London, Ct. See also Case no. E-IC-2U-C2446, Roanoke, Va.).

The arbitrators in those four cases have endorsed several principles in relationship to the interpretation of the Act of God language in Section 519.211. First, it is not necessary that a state of emergency be declared by government authority. Second, there is no requirement that postal operations be curtailed, stations closed or work unavailable. Third, it is not determinative that a significant number of employees were able to report for work. Fourth, the manual requires only that "groups of employees" must be prevented from working.

Although in the instant case it would have been useful if the Union had presented testimony from individual grievants as to the conditions which prevented them from working, the evidence in the record is sufficient for a presumption that the storm prevented the grievants from reporting or caused them to be late in reporting. The Union advocate, Neil Goham, an employee in another nearby postal facility, testified about the difficulties he encountered on the morning of April 6. He also stated that radio announcements urged motorists to stay off the roads. It is true that the Service was advised that all main arteries had been kept open and traffic kept moving, but with the foot of snow and windy conditions, there can be no question that driving was hazardous even on the main highways. Goham, who lives in Harrison, N. J. which is 2 - 3 miles from the facility with which we are concerned here, testified that it was impossible for him to get his car out to the main road. The fact that others were successful in digging their cars out and driving to work can not be interpreted as proof that the grievants did not exercise due diligence. Certainly those who drove to work but arrived late because of the storm should not have been forced to use annual leave for the period of their lateness.

This arbitrator finds no reason to ignore the principles laid down by the four arbitrators who decided similar cases in recent months. On the contrary, an unhealthy uncertainty would be introduced if an arbitrator rejected such precedents in a closely similar case, absent compelling reasons to do so.

On April 6, 1982 approximately 300 employees claimed that the

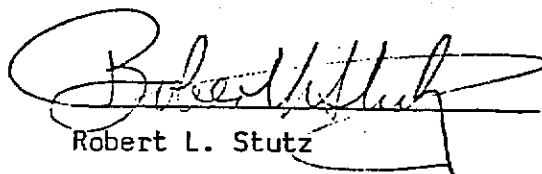
storm made it impossible for them to report or caused them to report late. This certainly satisfies the Section 519.211 requirement that the "disaster situation" be general in scope and must prevent groups of employees from reporting for work. The storm was of such magnitude that there must be a presumption that it was the cause of the employees' absences.

The same can not be said, however, about the weather conditions on April 7. There was no precipitation of any kind. No information about road or traffic conditions was presented. The vast majority of employees (86%) reported for work. No testimony was offered by the Union as to difficulty encountered by any employee in getting to work. There is no justification for a finding that the Service abused its discretion by denying administrative leave to employees who were absent or tardy on April 7.

The parties are in agreement that the arbitrator should retain jurisdiction over the remedy if a dispute arises as to the number of employees who are entitled to a remedy,

Award

The Service failed to properly adhere to Section 519.211 of the Employee and Labor Relations Manual when it failed to grant administrative leave to postal employees who failed to report or reported late on April 6, 1982. The records of the grievants should be corrected to reflect that they were on administrative leave on that date and that they be reccredited with annual leave for April 6, 1982.


Robert L. Stutz