

REGULAR ARBITRATION PANEL

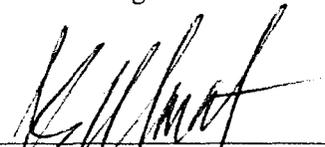
In the Matter of Arbitration (Grievant: Class Action
)
between (Post Office: Fargo, ND
)
UNITED STATES POSTAL SERVICE (USPS Case No: E06-C-4E-C 10120116
)
and (NALC Case No: 88JD12409\
)
AMERICAN POSTAL WORKERS ()
UNION, AFL-CIO ()

BEFORE: Jonathan S. Monat, Ph.D., Arbitrator
For the U.S. Postal Service: Nancy J. Brewer
For the Union: Willie Mellen
Place of Hearing: Fargo Post Office/Federal Building
Date of Hearing: December 14, 2010
Date of Award: February 1, 2011
Relevant Contract Provision: Article
Contract Year: 2006-2010
Type of Grievance: Contract

Award Summary:

The Postal Service did not violate the National Agreement and/or applicable handbooks and manuals when it denied Administrative Leave to Clerks in Fargo, North Dakota, who were prevented from reporting to work as scheduled by the continuing severe storm on December 26, 2009.

The grievance is denied.



Jonathan S. Monat, Ph.D.
Arbitrator

INTRODUCTION

A hearing was held at the Fargo, North Dakota, Post Office on December 14, 2010. The hearing proceeded in an orderly manner. The parties afforded a full and fair opportunity to present and examine witnesses, make arguments and present evidence. All evidence and testimony were admitted under oath duly administered by the Arbitrator. The parties stipulated that the matter was properly before the Arbitrator for a final and binding decision under the terms of the Collective Bargaining Agreement (CBA)(J1) and JCIM (J2). The Moving Papers (J3:1-18) were admitted as the only other joint exhibit. The parties presented oral closing arguments in lieu of written post-hearing briefs. The briefs were received by the Arbitrator by December 17, 2010. The hearing was closed upon receipt of the briefs.

ISSUE

The advocates could not agree on the specific phrasing of the issue for the Arbitrator to decide.

The Union, as moving party, proposed:

“Did the Postal Service violate the National Agreement and/or applicable handbooks and manuals when it denied Administrative Leave to Clerks in Fargo, North Dakota, who were prevented from reporting to work as scheduled by the continuing severe storm on December 26, 2009? If so, what is the appropriate remedy?”

Management proposed the issue as:

“Did Management violate the National Agreement when it failed to declare the winter storm on December 26, 2009, an “Act of God” and subsequently grant Administrative Leave to the Clerk Craft at the Fargo Post Office?”

The Arbitrator finds that, while each wordy appears to be substantially different, the issue as stated by Management more succinctly states the issue based upon the preconditions for administrative leave specified in the appropriate handbooks and manuals. Therefore, the Arbitrator will adopt Management’s issue statement with the addition of the remedy question offered by the Union.

BACKGROUND

The Fargo, North Dakota, area was hit by a major weather system on December 23, 2009. This storm and some of its effects continued through December 26. The storm had been forecast in timing and intensity well in advance of its arrival during the Christmas holiday. The parties differ in opinion as to how much snow fell, its effect on operations and how the storm compared to other storms in 2009. The Union took the view that the storm was severe enough for its effects to be called "Act of God" while the Service considered it no worse than other storms which did not require such a declaration. It was stipulated that FTRs may work more than twelve hours in December. The Union is asking for a remedy based on events of December 26, 2009, for all but Tour 3 employees.

PERTINENT CONTRACT/ELM PROVISIONS

ELM 519.1. "Administrative leave" is absence from duty authorized by appropriate postal officials without charge to annual or sick leave or without loss of pay."

ELM 519.211. "Acts of God involved community disasters such as fire, flood, or storms. The disaster situation must be general in nature rather than personal in scope and impact. It must prevent groups of employees from reporting to work."

ELM 519.212. "Postmasters and other appropriate postal officials determine whether absences from duty allegedly due to "Acts of God" were, in fact, due to such cause, or whether the employee or employees in question could, with reasonable diligence, have reported for duty."

POSITION OF THE APWU

The Union must show that the storm constituted a community disaster. The Christmas 2009 storm dropped seventeen inches of snow over four days in the region and Fargo/Moorhead. Snow drifts were high some employees could not exit their driveway. All interstates were closed for periods of time and the ability to move about was generally curtailed. The impact of this storm was general and not personal, preventing groups of employees from getting into work. The Postmaster (PM) relied upon super-

visors who spoke only to those who made it to work.

The PM was not present on December 26 but chose not to declare the situation an emergency caused by an "Act of God." There were managers and mail handlers who were performing bargaining unit work. Incoming trucks were canceled and outgoing trucks were delayed. Carriers who went to the street did so before mail arrived. While the period of time during which the emergency existed was short, the time period was critical. These circumstances were sufficient to qualify as an emergency that became eligible for "Act of God" administrative leave for clerks on Tours 1 and 2. It is an entitlement under the terms of the CBA since it met the requirements of ELM 519.

ELM 511.1 creates a balancing test between the needs of the Service and the employee. In addition to earned annual leave and sick leave, Administrative Leave comes into play as defined by ELM 519.1, 519.211 and 519.22. These regulations make it clear that certain specific conditions must be present before administrative leave due to an "Act of God" can be granted. The storm had a broad impact with waves of snow and high winds. Roads were closed throughout the region. There was no pattern to the no-shows in the map provided by Management. Tour 1 and 2 were heavily impacted by the snow events. The emergency was created by the storm and qualifies as an "Act of God." The grievance and remedy should be granted.

POSITION OF THE USPS

The Postal Service argued that no new snow fell after December 25, 2009. While there was blowing snow and some drifts, the roads in Fargo/Moorhead were clear. Union witnesses who testified about the conditions they faced in getting to work made no effort to get out. The great preponderance of employees made it in to work making the scope personal rather than general. Individual employees made a personal determination to try to get work. Groups of employees were not prevented from reporting to work. Overall, 113 clerk craft employees were scheduled to work at Fargo Main and Prairiewood Station with 63 reporting as scheduled. If employees took sick leave, they cannot be considered absent because

of weather conditions.

The ELM defines "Acts of God" as one thing and emergency as another. In the instant case, the amount of snow was not unprecedented and was anticipated. Roads were open on December 26 and were passable even if only one lane was plowed. The Union provided evidence of snowfall and road closures but most of the evidence applied to December 24 and 25. The fatality that the Union noted occurred 75 east of Fargo. Much of the evidence provided by the Union were for the days preceding December 26. The Fargo Post Office maintained normal window and retail operations. That some Mail Handlers and some managers had to help does not make the situation an "Act of God" emergency. The PM considered all the information available, applied the criteria and found no emergency.

The APWU claim that holiday pay was paid to those who were scheduled but did not report is not a valid claim. It is automatically paid by TACS to all regular employees. Management must take action to remove holiday pay, if applicable, but did not occur. In any event, even though it was perhaps an oversight by Management, the conditions on December 25 were different from the conditions on December 26. Second, the NA provides for an overtime exception period in December, a period which ended on January 3, 2010. All limits on overtime are lifted during this period. Utilizing an employee over twelve hours does not prove an emergency condition nor support an "Act of God" declaration. That Management performed some craft work only shows a shortage of employees, not an emergency.

The Mail Handler craft filed a grievance on its own behalf for December 26. It was denied at Step 3 and the Union dropped the case before arbitration. The Letter Carriers, city and rural, did not file a grievance for any dates relevant to this snow storm. The Union failed to prove that the criteria for an "Act of God" based upon the conditions on December 26, 2009.

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ARBITRATOR'S FINDINGS AND OPINION

The Arbitrator has carefully considered the entire record including the testimony of witnesses, the CBA, JCIM and ELM, arguments of the parties and prior arbitration decisions submitted. Based upon this study, the Arbitrator concludes that Management did not violate the CBA when it failed to declare the winter storm on December 26, 2009, an "Act of God" and subsequently grant Administrative Leave to the Clerk Craft at the Fargo Post Office. The compelling reasons for this decision are discussed below and reflect consideration of all evidence and arguments even if not mentioned.

The ELM, Section 519.211, establishes three criteria by which an "Act of God" is determined to exist. It must be a community disaster such as fire, flood or storm. In this case, the Union alleged the community disaster was a four-day blizzard. The disaster must be general in nature rather than personal in scope. The event must prevent groups of employees from reporting to work. If the Union fails to establish any one of the three criteria, its claim will fail. An "Act of God" is defined by Merriam Webster as "an extraordinary interruption by a natural cause (as a flood or earthquake) of the usual course of events that experience, prescience, or care cannot reasonably foresee or prevent." This definition suggests that the conditions must be unprecedented.

The record established that the storm was forecast well in advance of its arrival in Fargo area. There was ample time to prepare for the storm. Under these circumstances, the amount of snow that fell was not as significant as when it fell. By Saturday, December 26, most of the snow had fallen. Roads were not blocked nor impassible. There were no systemic closures of the highways in and around the Fargo area although there was some drifting snow and snow drifts in a few spots. The conditions in Fargo presented some inconvenience. A majority of employees in all crafts reported for work although Tour 1 did have about a 50% absence rate (AA).

Customers came in on a regular basis and truck deliveries, for the most part, made it in and out though sometimes late. All city and rural carriers completed their rounds. All maintenance employees

reported for work (M3). It is recognized that non-curtailement of operations is not part of the criteria of ELM 519-211. The reference here is to show that no groups of employees were prevented from reporting to work. The community was not brought to a standstill. The "no travel" advisory issued by NDDOT was primarily for NW North Dakota on the other side of the state from Fargo. There is insufficient evidence to support the finding of an "Act of God."

The second criterion requires that the storm be general in nature rather than personal in scope. The Union cited a fatal accident that occurred 75 miles to the east in Minnesota. There was no evidence provided that any Fargo employees came from that direction or, generally, from that far away. An analysis of the maps provided by Management (M4, Attachment 8) show the commuting patterns of all employees who work at the Fargo Post Office downtown. This evidence does not show a general inability of Fargo Postal employees to report to work. On each map employees from the same neighborhoods and even within the same block made it in and some did not.

The majority of these employees made it to work along routes that included interstate highways alleged to be impassable by Union witnesses. The testimony of witnesses made it clear that, in most cases, employees stayed home for their own convenience (for example, shoveling snow, no four wheel drive). There was no pattern to show that one area of Fargo was impacted more than another. Many news items in evidence are data December 26, 2009, discussing the previous days' weather issues. Items U and V make it clear activities in the Fargo area were trending toward normal on Saturday. It is reasonable to conclude from the evidence that a community disaster did not occur.

Flooding cited by the Union presents a very different scenario for travel that, in important ways, cannot be compared to the Christmas storm. As discussed above, a majority of Fargo employees were able to report to work from all over town. The Red River floods effectively immobilized the entire city especially for those in the flood zone or east of the flood zone. On December 26, 2009, the no-shows were largely decided by individual decisions of personal scope and lack diligence, not on the basis of per-

sonal safety. Driving was more difficult but roads were passable. No particular group of employees was impacted although Tour 1 evidence about a 50% no show rate. The testimony of several Tour 1 clerks indicates that personal convenience was the reason they were unable to report on December 26.

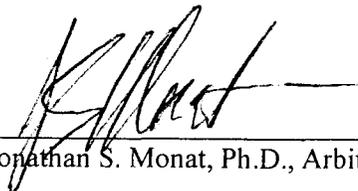
The Union alleged that an emergency existed because managers were performing bargaining unit work because of the emergency created by an "Act of God." An emergency situation may be created by a variety of circumstances. The criteria for an "Act of God" are defined in ELM 519.211 in fairly specific terms. Clerks and other employees did not report on December 26, 2009, for reasons personal in scope, a situation that may have been different earlier in the storm. On December 26, the emergency was understaffing created by decisions personal in scope by Postal employees.

Thus, having considered the evidentiary record, testimony, ELM and CBA, and decisions of other arbitrators, it is my conclusion that the Union did not prove that the criteria in ELM 519.211 for the payment of administrative leave based upon an "Act of God" on December 26, 2009, were met.

AWARD

The grievance is denied.

February 3, 2011


Jonathan S. Monat, Ph.D., Arbitrator