

C#01357

VOLUNTARY LABOR ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

CAPE GIRARDEAU, MISSOURI POST OFFICE
Cape Girardeau, Missouri 63701

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS,
Branch 1015
Cape Girardeau, Missouri 63701

No. C8N-4K-C 4476

GRIEVANCE OF:

PAUL E. REYNOLDS
(Class Action - "Act
of God" Snowstorm
Grievance)

OPINION AND AWARD

APPEARANCES

For The Employer

Michael P. Jordan, Labor Relations Specialist
Vernon H. Sander, Superintendent Postal Operations
Billie L. Propst, Superintendent Postal Operations

For The Union

Charles J. Coyle, National Business Agent
Edward J. Marlotte, R.A.A.
Calvin Break, Letter Carrier
Paul E. Reynolds, Grievant
Eugene N. Blumer, Letter Carrier
Jerry Mathews, Letter Carrier

RECEIVED

AUG 12 1982

CHARLES J. COYLE
N.B.A. - 1015

ELLIOTT H. GOLDSTEIN
Arbitrator
29 South LaSalle Street
Suite 800
Chicago, Illinois 60603
Telephone (312) 444-9699

I. INTRODUCTION

The hearing in this case was held on Wednesday, March 17, 1982 at the Post Office, 320 North Frederick, Cape Girardeau, Missouri 63701, before the undersigned Arbitrator assigned by the parties pursuant to the Rules of the United States Postal Service Regional Level Arbitration Procedures. At the hearing, both parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. No formal transcript of the hearing was made and the Union filed its brief prior to the April 19, 1982 deadline. No brief was submitted by the Postal Service and on July 26, 1982, the Arbitrator received notification that the Postal Service waived submission of the brief in this matter. Thereupon, the hearing was declared closed. Both parties stipulated at the hearing as to this Arbitrator's jurisdiction and authority to render a final and binding decision in this matter.

II. STATEMENT OF THE GRIEVANCE

Facts and Union Contentions:

What Happened: Cape was hit by 24" of snow with drifts 5'-8' deep. City and county officials declared emergency noon, February 25th. Residents face arrest if found driving on streets - residents were ordered to stay at home and warned not to attempt walking. Businesses were told to close to keep people off street. National Guard ordered in to help. All banks and financial institutions closed.

Factories closed. Semo University closed - all area schools closed. Interstate 55 and 57 closed. Thousands of motorists stranded. Several roofs collapsed from snow. Driving ban was lifted at 6:00 a.m. 3-1-79. Postal Management allowed one day, February 26, charged to "Act of God Leave". Some employees were able to get to work - others weren't as [there] end of town wasn't opened to allow walking even [Wensday]. This city does not own any snow blower plows except blades put on refuse trucks which got stuck. People were taken to hospitals and doctor offices and other emergency by National Guard helicopters.

Corrective Action Requested: Branch 1015 believes the snow disaster that hit our city made it impossible to get to work because of breaking the law - also the danger of being hurt by snow removal equipment - also possible personal danger in stepping in snow over your head - possible heart attack without any possibility of being found until too late. Branch 1015 therefore request that the dates of February 27 and 28 be charged to "Act of God Leave" and that Carriers that were forced to take annual leave for those dates have [there] annual leave of 16 hrs. restored to [there] annual leave account. This community surely suffered an "Act of God".

III. STATEMENT OF AWARD

The grievance is hereby sustained in its entirety.

IV. PERTINENT CONTRACTUAL PROVISIONS

The Union has cited Articles III, IX, and Article XIV of Joint Exhibit 1, the 1978 National Agreement. Since I perceive these Contract sections to be only indirectly relevant here, they are not set forth in full in this Opinion but instead are merely noted for reference. Because this case centers around interpretation of certain sections of the various applicable Handbooks and Manuals, the most relevant contract section is in fact Article XIX, as follows:

ARTICLE XIX

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

As the critical basis of the grievance, the Union cited certain sections of the Employee and Labor Relations Manual as being extremely relevant. These sections are as follows:

519 Administrative Leave

* * * *

519.2 Events And Procedures For Granting
Administrative Leave

.21 Acts of God

.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.

.212 Authorizing Administrative Leave For Acts of God

a. Postmasters and Installations Heads. Postmasters and other installation heads have authority to approve administrative leave for up to 1 day.

b. Regional Postmaster General. Approval for administrative leave beyond 1 day must be obtained from the Regional Postmaster General. That official may authorize administrative leave beyond 1 day but not to exceed a total of 3 days. However, before approving administrative leave in excess of 1 day, the Regional Postmaster General should obtain complete details as to weather and road conditions, transportation, etc., to assist in making the decision.

.213 Determining the Cause of Absence. 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.

* * * *

.215 Employees Prevented From Reporting. Employees scheduled to report who are prevented from reporting or who after reporting are prevented from working by an "Act of God" may be excused as follows:

a. Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty not to exceed 8 hours.

b. Part-time flexible employees receive administrative leave for 2 or 4 hours, as provided in 519.214c.

* * * *

The Union also introduced into evidence Union Exhibit 2, an MSC Bulletin dated February 27, 1979, relevant portions are as follows:

ACT OF GOD LEAVE

Definition: Eligible employees who are prevented from reporting or working or who were forced to report late to work on a scheduled day by an "Act of God", such as a snowstorm, flood, or windstorm, may be excused by the installation head without charge to annual leave and without loss of pay. However, the time involved in the excused absence cannot exceed the limits stated below. The situation must be severe enough to affect the community as a whole, rather than individual employees.

* * * *

Installation heads can declare an "Act of God Leave" situation for up to one day. The Regional Postmaster General may authorize up to three continuous days of "Act of God Leave". More than three days requires approval of the Senior Assistant Postmaster General for Employee and Labor Relations. (Emphasis added)

The above information is found in the Time and Attendance F-21 Handbook. If anyone has any questions on the above subject, please contact this office.

Furthermore, the Union presented as Union Exhibit 3 the local Memorandum of Understanding between the NALC and the Service. A pertinent portion of this Exhibit is Article IX, which provides as follows:

IX SAFETY AND HEALTH

Management of Cape Girardeau Post Office in accordance with Article XIV of 1978 National Agreement will make every effort to protect the safety and health of its employees. Management will take into consideration weather, all other hazardous conditions, public service, orders of local authorities and prevalent practices of industry in the area in rendering all decisions in this area.

V. STATEMENT OF ISSUE

The stipulated issue is:

"Whether the Postal Service violated the National Agreement, and Section 519.2 of the Employee and Labor Relations Manual incorporated in the National Agreement by way of Article XIX, when it denied administrative leave to certain Letter Carriers for their failure to report to work due to a snow storm on February 28, 1979."

VI. FACTUAL BACKGROUND

There is little dispute that during the week of February 25, 1979, Cape Girardeau, Missouri and the surrounding area suffered from the effects of an extremely heavy snowstorm. Snow began falling sometime during the day of Sunday, February 25. The Union and Management contest whether the snow in fact began to fall in the evening or early that morning, but there is no doubt that within the twenty-four hour period, more than 24 inches of snow fell on Cape Girardeau. As the evidence clearly shows, a snowstorm of this severity is extremely unusual for the Cape Girardeau area and the local snow removal equipment was virtually non-existent. The snow was also accompanied by heavy winds, and blowing and drifting occurred in this hilly country immediately flanking the Mississippi River. At approximately 8:00 p.m. on that Sunday, February 25, a state of emergency was declared by the Cape Girardeau County Court. The officials of the City of Cape Girardeau formally requested that only emergency

traffic be allowed on the highways and streets until further notice. (The County Court of Cape Girardeau is the governing body of that county.) As set forth in the press release submitted at hearing (Union Exhibit 4), the Cape Girardeau County Court specifically stated:

The general public is expected to stay off the road and streets and Summons may be issued to drivers who block emergency and snow removal equipment. Vehicles blocking emergency and snow removal operations may be removed with heavy equipment.

These steps are being taken to insure that the roadways will be open to emergency vehicles and heavy snow removal equipment.

If you must get out, please walk and leave your automobile at home. If you have an emergency, call your local police or Sheriff Department for aid.

This Order will be reviewed on a 24 hour basis until the emergency is abated. (Emphasis by the Union)

The emergency condition described above continued for a substantial portion of the week in question. Because of the adverse weather conditions, many employees were unable to report to work from Sunday evening through Wednesday, February 28. The Postmaster, acting within the regulations cited above, allowed administrative leave for this "Act of God" situation for the one day in his discretion: Monday, February 26. The critical dispute in the case before me concerns the remaining two days when heavy snow and emergency conditions at least arguably continued. The Regional Postmaster General, who had discretion

to authorize up to three continuous days of "Act of God Leave", chose instead to authorize only Tuesday, February 27. Thus, although the rather complicated procedural history of this case (a remand from Step 3 back to Step 2 and long delays before achieving arbitration) continued to indicate a dispute over two days' pay, at hearing the dispute was narrowed to only the issue of whether Administrative Leave should have been granted for employees who failed to come to work on one day, Wednesday, February 28.

Essentially the case comes down to the plain fact that over 50% of the regular Carrier work force did in fact get to work on that Wednesday. Various figures were testified to at hearing as to attendance that day and the number of Carriers who did not in fact show up for work. The dispute in reality really concerned whether part-time flexibles should or should not have been counted. Putting that matter aside, the evidence shows that 13 regular Carriers came to work that Wednesday and 10 regular Carriers did not. Apparently, two part-time flexible Carriers also came to work and two part-time flexible Carriers did not. Subsequently, the employees who did not get to work on Wednesday requested Administrative Leave for their inability to report in. The Service, however, refused to grant such request, although it did permit employees to take Annual Leave or AWOP to cover their absence.

The Union presented its case primarily through the testimony of four of the employees who were unable to work on February 28.

These employees included Reynolds, Mathews, Blumer, and Break. The four Letter Carriers testified they lived at various locations in and around Cape Girardeau and that all were prevented from coming to work by the deep snow and impassable roadways. Moreover, all testified to being concerned about the governmental warnings concerning non-emergency driving and the threat of Summons, arrests and the towing of vehicles for any vehicle stuck in the snow and blocking plowing activity of the local police force or the National Guard (who were called in and used both helicopters and earth-moving machinery in their attempts to clear the arterial roads in and around Cape Girardeau). The four named individuals also all testified that they were unable to report to work on Monday, Tuesday or Wednesday of the week in question despite a willingness to do so because the streets they lived on and the roads they traveled were unplowed and impassable and because each perceived a real danger to himself in any attempt to walk through the hilly and drifted countryside to the Post Office. Because of the small size of Cape Girardeau, apparently no public transportation was available. The Union witnesses also testified and presented documentary evidence as to the radio, television and state police reports advising individuals to stay off the roads and not to travel unless it was an emergency (Union Exhibits 4 and 5).

The picture painted by the Union witnesses clearly shows the intensity and severity of the storm that hit Cape Girardeau on February 25. The evidence indicates that the National Guard

in fact had to be called out for both helicopter emergency rescues and, through the use of heavy earth-moving equipment, for clearing the roads. The evidence also shows that the initial attempts at snow removal centered around hospitals, police and fire stations, and the downtown business area. The Post Office is approximately one block from the downtown business area. The next step in snow removal was to clear the main arteries of traffic, including Broadway Avenue, upon which at least one of the Grievants lived. However, according to the Union witnesses, the snow removal progression was not completely consistent due to many factors, including the hills and the substantial drifts (up to eight feet in places, according to the Union). At any rate, there is no dispute that the side roads were cleared last. Clearly, both the egress and ingress along all but the main arteries was still difficult until the emergency was officially lifted at 6:00 a.m. on Thursday, March 1. (Union Exhibit 6-7).

The Postal Service presented its case primarily through the testimony of Superintendent Sander, Superintendent, Postal Operations. Sander of course emphasized that at least 13 to 15 Carriers made it to work on February 28. To Sander, the remaining Carriers who did not report in on that Wednesday were prevented from working because of circumstances personal in nature. He testified that specific streets or peculiar local circumstances prevented the four Carriers who testified at hearing from coming to work on February 28.

Specifically, Sander stated that the snowstorm really began as early as 7:00 a.m. on Sunday, February 25. Moreover, a number of employees were able to report in on February 26 or February 27. The Clerk Craft employees who were working at the Post Office on Sunday night slept at the Post Office and continued to perform their duties the next day. The Post Office, therefore, was never closed. On February 28, 20 Clerks managed to work and only 10 Clerks did not work. According to the map presented as Management Exhibit 1, prepared by Sander, many of the individuals who managed to come to work on February 28 (both Clerks and Carriers) lived out of town or out in the outskirts. At least several of the people who did report to work lived substantially farther away than the Carrier Craft employees who failed to show up that day. Moreover, several individuals (a certain Mr. Sams, for example) lived within a few blocks of Union witnesses Mathews and Blumer, in the same part of town (actually, somewhat north of Blumer and Mathews and therefore farther from the Post Office) and still arrived at work at 7:45 a.m. on February 28.

Moreover, Sander testified that the Post Office was opened for business on February 28, although no deliveries of mail were made, and that numerous residents came in for window service all through the day. To Sander, if the Carriers involved here had reported for work on that Wednesday, productive work was available and the Carriers would have been assigned such tasks as casing mail or window service.

Last, the Postal Service emphasized that the Union's own exhibits, specifically Union Exhibit 4 and Union Exhibit 5, revealed that by Tuesday, February 27, emergency vehicles were clearly free to use the streets and people with emergency-type jobs could have reported to work. The Postal Service maintains that its services fall into the emergency category and that the need for such mail as social security checks, pension checks, and retirement payments made it important and crucial that the employees report even under an emergency basis. Thus, to Management, the request for people with non-essential jobs to stay off the roads did not apply in the first place to the Carrier employees who should have done more than the minimum to get to work as soon as possible.

Accordingly, the Service maintains that the grievance should be denied in its entirety.

VII. POSITION OF THE PARTIES

A. The Union

The Union contends that all the conditions for an "Act of God Leave" set forth in the precedent award in the grievance of Boyd Q. Smith (1973) by Arbitrator J. Fred Holly are involved in this grievance. First, the Union notes that the Postmaster clearly had the authority to approve up to one day for "Act

of God" Leave. Postmaster Wessel did in fact do so in this case. This strongly supports the Union's assertions that the conditions were of an emergency nature and fell squarely within the "Act of God" doctrine traditional with the Service for many, many years.

Second, the Union stressed the fact that the emergency situation created by the snowstorm was general and not personal. The Union presented substantial evidence to show that these conditions existed throughout the area of Cape Girardeau and were not localized and specific to one locale, as were the flood conditions in the Holly award often cited as precedent for "Act of God" Leave disputes.

Third, the Union contended that groups of employees were prevented from coming to work, and not single or isolated individuals.

Fourth, the Union stressed that the evidence is uncontested and overwhelming that each Carrier who did not report in on February 28 attempted to use due and reasonable diligence to get to work. The Union notes that the Management witness who testified did not accuse any Carrier of failing to report for duty as soon as possible. All four of the Union witnesses stated very clearly that they could not report to work because of the common disaster even with reasonable diligence and effort.

The Union also submitted two arbitration decisions and orally discussed others in support of its position herein.

Based on the foregoing, the Union contends the grievance should be sustained in its entirety and the ten affected employees granted Administrative Leave.

B. The Employer

The Postal Service emphasized that the situation in Cape Girardeau by February 28 was not general but was personal in scope and impact. Moreover, Management stressed the Postal Service employees should have considered themselves as workers dealing with emergency jobs and should not have categorized themselves in their own minds as being in the same category as schools and non-essential businesses which clearly were ordered closed through February 28. The Postal Service noted that even Union Exhibit 4 shows that employees of employers like the Postal Service were not really requested to remain at home and could have come to work. Specifically, the press release by Cape Girardeau County Court dated February 27, 1979 states in pertinent part:

The Court order issued by the County Court and the City officials of Cape Girardeau requesting schools and non-essential businesses closed and employees to remain at home will be extended through 2-28-79. Vehicle traffic in the County and in the City of Cape Girardeau is again limited to emergency operations and those drivers violating the ban on non-emergency driving will be subject to the possibility of a Court Summons. Vehicles impeding snow removal

activities will be forcibly removed with heavy equipment. The public is again asked to work if they must get out and call their local police or Sheriff's Department for aid if an emergency. (Emphasis supplied).

Most important, Employer Exhibit 1 demonstrates that numerous employees scattered throughout the Cape Girardeau area were in fact able to report to work on February 28. Some of these employees lived within close proximity of the Carriers who said they could not make it in. The excuses given by the Union witnesses were thus peculiar and local in nature and did not fit within the "Act of God" Leave doctrine. Accordingly, the grievance should be denied.

XIII. DISCUSSION AND OPINION

From careful analysis of all the evidence on the record, including the precedent awards cited to me, the Arbitrator's conclusions are that the grievance should be sustained in its entirety.

This case is extremely similar in facts and contract issues to the award cited to me by the Union by Arbitrator Dobranski involving the Service and the APWU. (Case Nos. C8C-4B-C 4070-4072). Like Dobranski, I perceive that the conditions for granting Administrative Leave set forth in Chapter 519 of the Employee and Labor Relations Manual set forth above are all present here. Section 519.211 provides clearly for the granting of Administrative

Leave for "Acts of God". The arbitration awards and documentary evidence reveals that "Acts of God" to these parties are defined to include community disasters, and especially storms. The disaster situation must indeed be general rather than personal in scope and impact, as Arbitrator Holly found. Moreover, the storm or other disaster must prevent groups of employees from reporting to work.

The evidence presented by the Union does indeed convincingly establish that such an "Act of God" occurred in Cape Girardeau on February 25. Management conceded this with reference to the Administrative Leave granted for February 26 and February 27. Under the facts presented, however, especially the news release included in Union Exhibit 4, it is evident that the general chaos and virtually impassable roads were still present on February 28, although concededly the conditions were improving. The police and Cape Girardeau County Court were still threatening traffic Summons and still emphasizing that people should stay home if at all possible and only the most basic and critical emergency vehicles should be on the road. The Postal Service presented no evidence that its services are "emergency" in the same sense as those provided by the police and fire departments or by hospitals and medical personnel. Absent such proof, I agree with the Union that the Postal Service employees perform critical functions, but of a somewhat less important nature than

public safety or health. The clear meaning and purport of all the various media messages and evidentiary documents presented was that employees employed by this Employer, as well as others performing equally important tasks, should not take to the roads until conditions were such that their vehicles had a reasonable likelihood to get them through to work. Therefore, the employees who were unable to report to work because of these conditions were entitled to Administrative Leave on Wednesday, February 28, as well as the leave granted for the prior two days.

First, there is no question that the situation was of sufficiently disastrous proportions as to qualify as an "Act of God" on the days immediately prior to February 28. The snowfall was not only very heavy (more than 24 inches) but was accompanied by drifting and blowing snow. More important, Cape Girardeau is a town completely unaccustomed to heavy snow and was totally unprepared and unequipped to handle it. The National Guard emergency plan of digging out the town further shows that this emergency lasted longer than in locales more accustomed to severe winters. Moreover, as the witnesses testified, the news advisories and County Court actions still emphasized that people should stay off the streets and only travel in emergencies through the disputed day, February 28. Although employees are expected to make every effort to avoid unscheduled absences, it was certainly not unreasonable under these circumstances to expect that substantial numbers of employees could not report to work.

Second, it is clear from the evidence that "groups of employees" were affected by the storm and were prevented from reporting to work because of the conditions still in effect on February 28. For example, whether using part-time flexible Carriers in counting attending or not, almost 50% of the Carrier work force could not in fact report in. Only two-thirds of the Clerks got to work on the day in question. Thus, although a number of employees did report to work on February 28, many other employees were unable to report to work and at least four testified that it was directly due to the storm situation and the fact that all but the basic or arterial roads were still being plowed out on February 28. Therefore, it is my finding that the employees who did not report to work were of a sufficiently large number as to constitute a group within the meaning of the regulations.

Third, it is also clear from the evidence that the storm was general throughout the area rather than confined to one segment or one location in the community. This places the particular grievance before me squarely within the reasoning and holdings of Arbitrators Dobranski and Cohen in the awards submitted to me, and outside the distinguishing facts of Arbitrator Holly's precedent award in the Smith case, discussed above. There is no doubt from the evidence presented that the storm prevented employees throughout the Cape Girardeau area, and

not just those from a particular area or location, from reporting to work and that such conditions were still generally present on February 28. This is shown by the fact that the employees unable to report to work came from varying distances and directions and experienced similar snow conditions.

As noted by both Arbitrators Dobranski and Cohen, under these circumstances the fact that Postal operations in Cape Girardeau were not cut off or completely curtailed during the weekend storm and the fact that some employees made it to work on February 28 does not take this case out of the "Act of God Leave" situation. Instead, the facts show that the problems of getting to work were still general rather than specific and personal on February 28. The requirement is not that all employees be unable to report for duty but only that groups of employees be unable to do so. Both Arbitrators Cohen and Dobranski have developed this reasoning in a most articulate manner and further extensive explication would be redundant. Simply put, the requirement is not that all employees be unable to report to work but that the groups of employees who were in fact unable to do so be general, substantial and that each employee has used reasonable diligence to get to work. Under these circumstances, the map introduced as Employer Exhibit 1 and the testimony concerning the number of employees who in fact came

to work on the disputed day is insufficient to counter the evidence that the employees who did not arrive at work fall within the "Act of God" criteria.

As indicated above, it is my conclusion that groups of employees were affected by a disastrous situation created by the snowstorm as late as February 28, the disputed day involved in this grievance, and that it is unlikely that Postal employees were contemplated by public officials as being "emergency employees" except from the state of emergency order, as were doctors, police, firefighters and the like.

In sum, the evidence persuasively establishes that on February 28, the heavy snowstorm which concededly created an "Act of God" situation the prior two days was still present in the general Cape Girardeau area. The grievance is sustained.

IX. AWARD

Accordingly, for all the reasons set forth above and incorporated herein as if fully rewritten, the Class Grievance signed off by Union Steward Paul E. Reynolds is hereby sustained. All the employees who were unable to report for work during the time in question (Wednesday, February 28, 1979) due to the snow-storm are, therefore, awarded Administrative Leave for the period requested.



ELLIOTT H. GOLDSTEIN
Arbitrator

Chicago, Illinois
August 2, 1982