

LETTER OF DEMAND
REGISTERED ARTICLE

C# 02968 X

NB-E-5724
Gasser 2-23-77

In the Matter of Arbitration Between:

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS

Case No. NB-E-5724
Robert Kurtz
Phildelphia, PA

Issued: February 23, 1977

Backoround

This case involves an employer claim against Letter Carrier Robert Kurtz for his failure to deliver and account for registered article #3366397. There was no record taken of the hearing. The parties filed timely post-hearing briefs.

The Grievant, Robert Kurtz, was a part-time flexible letter carrier at the William Penn Station of the Philadelphia Pennsylvania Post Office. On April 23, 1974 he was assigned to route #639. Route #639 is essentially a business route which includes a number of jewelry establishments. The route is known in the William Penn Station as the "Jewel Route." The Grievant cased his mail that morning and picked up his registered articles

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from the key table. Registered articles are handled in the following manner at the William Penn Station. When a carrier completes the casing of the mail for his route he calls his number to the Accountable Mail Clerk at the key table. If the clerk has prepared the accountable items for that route he calls the carrier to the table, gives the accountables to the carrier and requires that he acknowledge receipt of each accountable item by signing for it on an appropriate form (Form 3867). The carrier then returns to his case, prepares a receipt (Form 3849) for each accountable item and fuses it into his mail for delivery. In this way he can readily determine that an accountable item is destined for a particular customer when a receipt appears among that customer's mail. Accountables are placed in the bottom of the bag under the regular mail. As the receipts appear, the carrier delivers the accountable item to the appropriate customer and the customer acknowledges delivery by signing the receipt and returning the receipt to the carrier. When the carrier returns to the Post Office, he produces the receipts and reconciles them with the listing that he had signed out for earlier in the day. He does this in the presence of the Accountable Mail Clerk and if there is a complete reconciliation the clerk clears him of his liability for those accountables. In this case

Kurtz could not produce a receipt for one of the items listed on his Form 3867.

In this situation Kurtz had cased his mail and told the accountable mail clerk that he was prepared to receive his accountables. When the clerk was ready for Kurtz he called him. Kurtz picked up his accountables, signed out for them and returned to his case where he filled out and cased a receipt for each accountable item. He placed the accountables in the bottom of his satchel according to instructions and swept his case, bundled the mail, and put it in his satchel on top of the accountable items.

Having completed his work in the office he prepared to go out on the street. Before leaving he set his satchel on the floor near his case, threw his coat over it and went to the washroom. When he returned from the washroom he noticed nothing amiss, picked up his satchel and left for his route.

As the Grievant delivered his route he would finger the mail for each upcoming address. Approaching 111 South 8th Street he came across a receipt for registered parcel No. 3366397 addressed to the LaPais Jewelry Company. His procedure was to then look to his accountables in the bottom of his satchel for that parcel. Normally he would deliver the parcel and present the receipt to the addressee or his representative for signature. However, at this point

he discovered that parcel No. 3366397 was missing. He completed his deliveries and then retraced his route in an attempt to determine whether or not he had delivered the parcel to some other address in error. He was unsuccessful and he returned to his station.

Contentions

The Union claims that the Grievant exercised reasonable care in the handling of parcel No. 3366397 as required by Article XXVIII - Employer Claims which reads in pertinent part:

ARTICLE XXVIII - EMPLOYER CLAIMS

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the U.S.P.S. property, postal funds, and the mails. In advance of any money demand upon an employee for any reason, he must be informed in writing and the demand must include the reasons therefor.

x x x x x x x

Section 2. Loss or Damage of the Mails. An employee is responsible for the protection of the mails entrusted to him. Such employee shall not be financially liable for any loss, rifling, damage, wrong delivery of or depredation on, the mails or failure to collect or remit C.O.D. funds unless the employee failed to exercise reasonable care.

The parcel was stolen, says the Union, either when Kurtz left his case to sweep his mail from the center racks or when he went to the washroom. It insists that he

exercised reasonable care of the mail by delivering his route in a manner so as to keep his satchel in front of him as he walked. To establish proof of theft the Union points to the discharge of M. for pilfering the mail and established that M. was on the floor the morning of April 23, 1974. The Union claims that any carrier at the William Penn Station must leave his satchel unattended under certain circumstances in order to properly perform his duties. Therefore, it claims, it is unreasonable for Management to require the carrier to be responsible for the mail when he must leave the area without it.

The Union also claims that the failure of the Grievant to protest the 5-9-75 Letter of Warning was related to the Supervisor's remark "not to worry" when the loss was first reported. Further, it says, the letter was improper in that it was not in accordance with instructions issued by Senior Assistant Postmaster General Brown. The Union produced the following instruction from Brown:

November 7, 1973

MEMORANDUM TO: Assistant Regional Post-
masters General Employee
and Labor Relations
SUBJECT: Letters of Warning
FROM: Darrell Brown

Article XVI - Discipline Procedure of the
1973 National Agreement sets forth the
basic principle that discipline must be

corrective in nature rather than punitive. Our objective is to correct employees, not to punish or harass them. During the negotiations, the Employer emphasized its commitment to this philosophy and made it clear that letters of warning would be used in appropriate circumstances since they are legitimate disciplinary tools. It is USPS policy, effective immediately, that letters of warning be used in lieu of suspensions of less than five (5) days. There will be circumstances, of course, in which the offense is so grave that suspension or even discharge will be required without any previous letter of warning.

Managers must remember that for minor offenses, counselling in private should be employed. If letters of warning are used, they should contain the following:

1. A statement identifying the letter as an official letter of warning, including sufficient detail (names, dates, times, occasions -- not generalities) as to the deficiency or misconduct that the recipient will know what he is being charged with;
2. A statement that further disciplinary action may result if correction is not achieved;
3. Previous discussion and/or counselling which has gone unheeded, if pertinent to the current infraction;
4. Information as to the employee's right to appeal the issuance of the letter of warning through the grievance procedure. (Under-scoring added)

The Letter of Warning dated several months later is as follows:

DATE: May 9, 1974
SUBJECT: LETTER OF WARNING
TO: Mr. Robert K. Kurtz
P/T Flex Carrier
473 40 4399
William Penn Annex
Badge #7063

This official letter of warning is being issued for the express purpose of advising you of the following serious deficiency in your record which must be corrected immediately:

You failed to account for registered article #3366397 on Tuesday, April 23, 1974.

A copy of this letter of warning will be retained in your personnel folder for two years. If there is any repetition of the offense or you fail in any other manner to meet the requirements of your position more severe disciplinary action will be taken.

You are reminded that in accordance with present regulations employees who fail to meet the essential requirements of their position may have their periodic step increase withheld.

If you have any objection to the imposition of the above cited warning against your record, you may protest it in writing to the Postmaster within five days. Your protest will be reviewed on its merits by an authority different from the one that took the action and you will be advised of the decision reached.

BY: s/ John F. Lavello
SUPERVISOR'S SIGNATURE

5/14/74
DATE

s/ Robert K. Kurtz
SIGNATURE

s/
WITNESS

cc: Personnel, OPF
File
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Management claims that Kurtz took responsibility for the parcel when he signed out for it at the key table.

It maintains that he is constrained to handle the mail with care and the loss is his since the mail was entrusted to his care. The failure of the Grievant to protest the Letter of Warning, says Management, is proof that he recognized that he was responsible for the safe keeping of the accountable item. Management does not accuse the Grievant of stealing the parcel. It does not know how the parcel was lost but, in Management's view, the loss must be attributable to the Grievant's error and he is, therefore, liable for the monetary loss suffered by the Postal Service.

Findings

Article XXVII provides that a Carrier must exercise "reasonable care." It is not enough that a Carrier state that he exercised reasonable care since there is no manner in which the veracity of that statement can be substantiated. Under the present circumstances the Carrier must demonstrate that he was unable to exercise reasonable care due to factors outside his control.

In the case of Kurtz each of the possibilities raised by the Union must be explored. First, Kurtz demonstrated

that he delivered his route holding his satchel in front of him as he walked and fingered the mail. While this is a commendable and a useful precaution it serves only as self-protection for the carrier and does not relieve him from liability for loss on the basis of taking reasonable care. Carrying the satchel in front of him, then, does not demonstrate that the carrier was for some reason unable to exercise reasonable care.

Other possibilities brought forth by the Union bear more heavily on factors outside the control of the Grievant. The carrier is issued his accountables an hour before he leaves the office. During that time he is required to leave his case to go to mail racks in the center of a large room to sweep mail for his route from racks that are constantly being worked by clerks. If the carrier has already obtained his accountables, he must leave them unattended at his case while he sweeps mail from the central racks. There was no evidence that there is a procedure in effect enabling a carrier to protect his accountables during this time. On another point it was stated by the Union and not denied by Management that carriers are not permitted to take their satchels into the washroom. The normal practice is for a carrier to leave his satchel at his case or outside the washroom when he uses the washroom for a period of five or six minutes prior to his leaving for the street. Kurtz

claims that his satchel was left unattended on April 23, 1974 under these exact circumstances.

The Grievant testified that he and a Union Steward promptly discussed the matter with a Supervisor (now retired and unavailable to testify) who is alleged to have told them, "Don't worry about it" and, "I am not at liberty to tell you anything, just don't worry." Management made no attempt to deny the allegation nor did it confirm the Union's statement. Another carrier, M., was apprehended on June 8, 1974 and discharged on June 21, 1974 for theft of the mail. The Union maintains that since M. was on the floor at the time Kurtz's bag was unattended, it is reasonable to conclude that M. purloined the package. The Postal Service states that if M. would have gone near Kurtz's bag, other carriers working cases nearby would have noticed his presence. There is no evidence that M. was seen in the vicinity of Kurtz's case. In any event, says Management, M. was discharged because he stole mail that was entrusted to him.

The connection between the presence of M. on the day of the Grievant's loss and the loss is much too tenuous to reasonably assume that M. pilfered Item No. 3366397. According to reliable testimony of the Union witnesses, it is possible that the statement of the Supervisor "not to worry" was in error and subsequent events could not link M. to the loss of parcel No. 3366397.

Management's contention that Kurtz's failure to grieve the Warning Letter of May 9, 1974 limits his defense concerning the Letter of Demand dated March 25, 1975 is without merit. The Warning Letter was not properly constructed as directed by Senior Assistant Postmaster General Brown and even if it were the Warning Letter must be considered a part of the total Management action against the Grievant. The Grievant, therefore, did not waive his right to grieve the Letter of Demand when he failed to protest the Warning Letter.

The practice of leaving the satchel when sweeping the clerk's racks or when using the washroom puts the carrier at risk. He must either entrust his satchel to another carrier or take it with him. It doesn't make sense to sweep the center racks carrying a satchel and taking the satchel into the washroom is against regulations. Certainly the integrity of fellow carriers is not generally open to question. However, M. was a fellow carrier and he was discharged for stealing mail. The carriers in the William Penn Station must gamble each time they leave their cases as they must do in order to perform their duties.

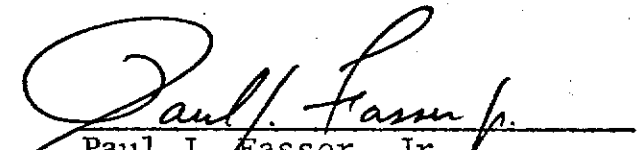
The ultimate issue in this case is by no means free from doubt. There are cogent arguments suggesting

that the Grievant should not be held liable for this specific loss. On the other hand there are even stronger factual considerations indicating a lack of due care on the part of Kurtz.

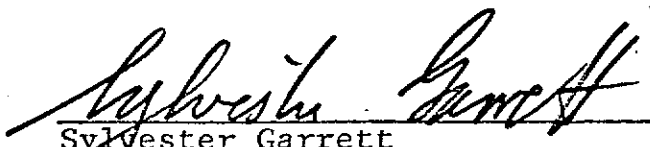
Thus, the hard fact is that he noticed nothing amiss with his satchel when he returned to his case on the morning of April 23. It is undenied that the other carriers noticed nothing unusual about, nor any stranger near, Kurtz's satchel while he was in the washroom. This indicated that the parcel was lost outside the Post Office. Finally, Kurtz could not demonstrate that some factor outside his control caused him to lose the parcel even though he claims that he exercised reasonable care. Given these critical facts, the conclusion is clear that Grievant Kurtz properly was held responsible for the loss in issue.

Award

The Grievance is denied.


Paul J. Fasser, Jr.
Associate Impartial Chairman

Approved:


Sylvester Garrett
Impartial Chairman

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