C#05773

IN THE MATTER OF THE ARBITRATION	)	Before Thomas J. Erbs, Arbitrator
	)	
Between	)	Central Region Panel Member
	)	
UNITED STATES POSTAL SERVICE Detroit, Michigan	)	C4N-4B-C 7449 G. Macieczni Grosse Pointe, MI
And	)	(Claim for Personal Property)
NATIONAL ASSOCIATION OF LETTER CARRIERS Branch No. 1	)	

Date of Hearing - February 4, 1986
Hearing Site - Detroit, Michigan

Management Appearances:

Bennie J. Powell - Labor Relations Representative

Union Appearances:

Kenneth Kwolek - Advocate
G. Macieczni - Grievant

The Issue as framed by the Arbitrator:

Should the Postal Service pay the claim for personal property in the amount of $113.50 filed by the Grievant on August 12, 1985?

OUTLINE OF CASE

Gregory Macieczni, hereinafter called "Grievant" filed a claim on August 12, 1985 seeking reimbursement in the amount of $113.50. His claim covered one (1) pair of survivor's boots purchased in January of 1984 for $90.00; a pair of snowmobile boots purchased in January of 1984 for $20.00 and one (1) lock for $2.50. It should be noted that the itemization of the items claimed does not total the $113.50 and in effect the Grievant has itemized claims totaling $112.50.

The Grievant was working at Grosse Pointe station when he asked his supervisor for a locker. The Grievant testified as to the lack of procedure in assigning lockers to the Carriers. He stated that there were no working locks on the lockers in the area of the station to which he was assigned, and so the supervisor told him to take any empty locker that he desired. As a result the Grievant used the locker he indicated as locker number 37. There were no working locks on this locker and as a result he purchased a lock and put it on there. He stated that he only used his locker during the winter to store his winter gear. He stated that at the end of the 1985 winter he placed his two (2) pair of boots in the locker along with some miscellaneous items such as a glove and scarf and locked it with his personal lock.

Some time in July an announcement was made at the station that a survey of empty lockers was to be made. No further explanation of that announcement was given. The Grievant stated that since his locker was not empty and had a lock on it he did

not think that it applied to him. Shortly after that announcement the bank of lockers in which the Grievant had allegedly stored his winter gear was moved to another station. No one could find any of his personal gear. When the Grievant noticed that his locker was missing he asked the supervisor to check on it and the supervisor was unable to find that locker. There was some confusion about which specific locker number was involved. The supervisor denoted in her records that the locker number was 38. The Grievant testified that the locker number was 37, and a person who had a locker in the same area testified that the locker number was either 37 or 39.

In any event a statement was presented from both the superintendent of the branch operations and from a fellow employee which indicated that there was one (1) locker in that area which had a padlock. No other evidence other than the Grievant's testimony as to what was in the locker was presented. The Grievant testified that he had purchased the boots in January of 1984 and that he purchased new boots every year or so when his clothing allowance was issued. The Grievant's testimony indicated that he had actually purchased the boots in November of 1984 but his claim form had indicated January of 1984 was the purchase date for both the boots.

The Grievant acknowledged that he was not specifically assigned to this particular locker but instead was told to secure any locker which was unoccupied. The Grievant did not present any proof of sale for the boots nor for the lock.

The parties have cited to the Arbitrator the following section of the National Agreement:

ARTICLE 27
EMPLOYEE CLAIMS

"Subject to a $10 minimum, an employee may file a claim within fourteen (14) days of the date of loss or damage and be reimbursed for loss or damage to his/her personal property except for motor vehicles and the contents thereof taking into consideration depreciation where the loss or damage was suffered in connection with or incident to the employee's employment while on duty or while on postal premises. The possession of the property must have been reasonable, or proper under the circumstances and the damage or loss must not have been caused in whole or in part by the negligent or wrongful act of the employee. Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions.

Claims should be documented, if possible, and submitted with recommendations by the Union steward to the Employer at the local level. The Employer will submit the claim, with the Employer's and the steward's recommendation, within 15 days, to the regional office for determination. The claim will be adjudicated within thirty (30) days after receipt at the regional office. An adverse determination on the claim may be appealed pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure."

UNION CONTENTIONS

The Union states that under Article 27 the claim was properly submitted. The loss incurred in connection with the Grievant's employment and it was reasonable for the Grievant to have had these Articles where they were at the time of the loss. The Union further states that there was no negligence on the Grievant's part in causing that loss. Therefore the Grievant should be reimbursed the full amount of his claim.

MANAGEMENT CONTENTIONS

Management contends that the Article 27 requires that the claim be properly filed and that the Grievant not be negligent.

In this case the Grievant had to be aware that he was in a hazardous situation for which he was entirely responsible. He must assume the blame for this loss, if, in fact, there was a loss. Management points out that no receipts were submitted. Management also points out that there was even some confusion over the locker that was involved. The supervisor's claim that it was locker 38 would seem to be more credible since it was written closer in time than the two (2) statements. Management also points out that even if the boots were in the locker the boots had been depreciated. Under all of these facts the Management states that the claim should not be allowed as being properly filed or due under Article 27.

DISCUSSION

Article 27 of the National Agreement specifically allows an employee to recover the value of any goods lost or stolen while on duty or on postal premises, provided the goods were lost or stolen in connection with or incidental to the employee's employment. In order to recover the value of such goods the employee must not have done any wrongful or negligent act which caused the damage or loss, either in whole or in part. The employee's possession of the goods must also have been reasonable or proper under the circumstances. The claim should be documented, if possible, and depreciation of the goods will be taken into consideration in determining their value.

In this case the Grievant filed a claim for two (2) pairs of boots and a lock which he claims were lost when a bank of lockers

was moved from the Grosse Point Station. The Grievant has no documentation as to what goods, if any, were inside the locker, or what value the goods had at the time of the loss. The fact that there was no documentation for the lost goods is not fatal to the Grievant's claim. Article 27 states that "claims should be documented, if possible..." It does not state that all claims must be documented in order to be grieved or subsequently allowed.

Evidence presented to the Arbitrator from both parties indicates that there was a lock on one of the lockers in the bank that was moved from Grosse Point. There is some discrepancy as to which locker the lock was on, but this discrepancy does not dispute the uncontroverted fact that there was one lock on one of the lockers removed from the Grosse Point Station. This is consistent with the Grievant's story.

Management argues that the Grievant's claim should be denied since the Grievant was negligent in having his lock on the lockers that were moved. The Arbitrator disagrees. The Grievant was justified in putting his lock on one of the lockers in question since the evidence presented to the Arbitrator indicated that there were no formal procedures for assigning lockers at Grosse Point, or if there were, they were not followed in this case.

The Grievant testified that there were no working locks on any lockers in the area to which his supervisor had assigned him. After informing his supervisor of this, the Grievant followed the supervisor's directions and just "took" one of the empty lockers by placing his own lock on the locker. Since there was no other

evidence presented which contradicts this explanation of how the Grievant's lock got on the locker in question, the Arbitrator is hard-pressed to find the Grievant negligent when the Grievant is following the directions of his supervisor. It was reasonable and justified under the circumstances for the Grievant to have his lock on one of the lockers that was moved from Grosse Point.

Management also claims that the Grievant was negligent by not removing his lock and goods after Management had given the employees a notice that a survey of empty lockers was to be made. Again, the Arbitrator disagrees. The notice given was too vague and inadequate to hold the Grievant responsible for not removing his goods from the locker.

First, the notice stated that empty lockers were to be surveyed. The Grievant's locker was not empty, and therefore the notice may not have even been effective in reaching the Grievant. In fact, the Grievant testified that he did not think it applied to him since he had a lock on his locker.

Secondly, the notice only indicated that a survey was to be taken. This vague statement gave no reason for the survey, nor did it give any indication that some lockers were going to be removed from the premises. Also, the evidence presented to the Arbitrator indicated that no notice was given as to any dates or deadlines within which the survey, or more importantly the removal of lockers was to occur.

Finally, the evidence indicated that no notice was given to employees in general, and the Grievant specifically, to remove

locks and/or goods from any lockers prior to the removal of the lockers in question. The Arbitrator is again hard-pressed to find the Grievant negligent for leaving his goods in the locker under these circumstances.

Besides finding the notice concerning the lockers vague and inadequate, the Arbitrator questions why the lock was not removed and any possible contents cleaned out when the lockers were moved. The lock was most likely going to be removed when it got to its destination anyway and generally speaking a locked lock on a locker implies that there is something of value to someone inside the locker. Thus, the lock should have been removed at Grosse Point, and the contents sequestered to avoid the possibility of having this exact type of grievance arise.

Since the Arbitrator finds the Grievant was not negligent in placing and keeping his lock on the locker in question, and that to do so was reasonable and incidental to the Grievant's employment, the only questions left to be decided are whether or not the goods claimed as lost are reasonable, and if so what the value of the goods were at the time of the loss.

The Arbitrator finds the Grievant having the lock on the locker to be reasonable under the circumstances. Evidence indicated that there were no working locks in the area assigned to the Grievant, and a lock is a reasonable protection for workers to keep their goods safe while working.

While the Grievant has no documentation to support his claim for lost boots, no such documentation is required under Article

27, and the Arbitrator heard no evidence to contradict this claim. The testimony of the Grievant is accepted as to the value. Other cases may well require documentation as each case is separate and must be viewed under the evidence avalable. The Arbitrator also finds that people generally do not place locks on lockers unless something of value to them is contained inside. Thus, the issue focuses on whether the Grievant's claim for two (2) pair of boots is reasonable.

A Postal Carrier keeping boots in his locker at work is reasonable under most circumstances. However, the Arbitrator questions the reasonableness of the Grievant having two (2) pair of boots in his locker. It is not reasonable or incidental to employment for the Grievant to store excess personal belongings in his work locker. The Arbitrator finds that one (1) pair of boots in the locker would be reasonable under the circumstances, especially in light of the Grievant's own testimony that he bought one (1) pair of boots each year for work. The claim for the snowmobile boots is denied.

The Grievant claims he paid $90.00 for his pair of boots. No evidence was presented to contradict this claim, but there was some discrepancy in the Grievant's testimony as to when he actually purchased the boots; his report states January 1984 as the purchase date, but in oral testimony he claimed he purchased them in November of 1984. The lockers were moved in the summer of 1985, therefore regardless of the purchase date the boots' value had depreciated at the time of the loss. The Arbitrator, under

Article 27, must take depreciation into consideration in reviewing the Grievant's claim.

The Arbitrator finds the depreciated value of the one (1) pair of boots to be $45.00 at the time of the loss. The Arbitrator also finds the value of the lock lost to be $2.50. Therefor, the Arbitrator finds the value of the Grievant's reimbursable loss to be $47.50.

The grievance is partially sustained and the Grievant is to be reimbursed for $47.50. The balance of the grievance is denied.

Signed in the County of St. Louis, State of Missouri, this 21st day of February, 1986.

Thomas J. Erbs, Arbitrator