

C-23653

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration Between: Grievant: Hausey Woodfolk

-and-

USPS: K98N4KCO2167459

**National Association of Letter Carriers,
AFL-CIO-CLC**

DRT: 13-039413

BEFORE: Mollie H. Bowers

APPEARANCES:

For the Postal Service: Carolyn L. Turner

For the Union: Alton R. Branson

Place of Hearing: Bowie, Maryland

Date of Hearing: September 4, 2002

Date of Award: September 5, 2002

Relevant Contract Provisions: Article 28.3

Contract Year: 1998-2001

Type of Grievance: Contract Interpretation

AWARD SUMMARY

The evidence and testimony presented at the Hearing proved that the Service violated Article 28.3 of the National Agreement when it sent the Grievant a letter of demand to pay for a lost scanner. A full discussion of the award follows.

Mollie H. Bowers

Signature of Arbitrator

USPS: K98N4KCO2167459
Bowie, Maryland

Hausey Woodfolk

DRT: 13-039413
September 4, 2002

BACKGROUND

Most of the facts are undisputed. The Grievant is a Letter Carrier who has worked for the Service for sixteen (16) years. On May 19, 2002, the Grievant was delivering mail on Route 2115, which he had worked for eight (8) years.¹ One of the accountables the Grievant is responsible for on a daily basis is a scanner. This device has been in use for about two (2) years and provides various types of information including checking when a Carrier leaves the office, accounting for a Carrier's whereabouts at certain check points, and accounting for delivery of certified mail.²

The Grievant's route begins with a high rise, proceeds to some street work, and, at about the middle of the route (served between approximately 1:00 and 2:00 p.m.) a fairly small shopping center. At the cluster box which is located at the shopping center, the Grievant has his first check point where he must use the scanner. On May 19, the Grievant followed his usual practice of scanning in, placing the scanner on top of the cluster box in front of him, and delivering the mail (which takes about 10 minutes). Among the mail on May 19, was a certified letter for a business at the other end of the shopping center. He got in his truck, drove to the business (which took about 30 seconds), and then, when he went to scan the certified letter, the Grievant discovered his scanner was missing. It took him approximately two (2) to three (3) minutes to search his truck for the scanner. He delivered the letter, made written note of the appropriate

¹ Both parties agree that the incident did not occur on May 19, 2002, however, neither has the correct date. The Grievant thought the date was May 21, 2002.

² The scanner is labeled property of the US Postal Service and is scripted with the request that anyone finding a scanner drop it in any US Postal Service mailbox. The scanner cannot be used for any purpose other than that for which it was designed.

information, and back tracked to the cluster box in further search for his scanner. It was not on the cluster box so the Grievant checked every box; the scanner was not there. There is a Postal Service collection box directly across from the cluster box. The person who did the collection was "Ray", whom the Grievant consulted to find out if his scanner was in the box; it was not.

When the Grievant returned to the office, he said he told Supervisor Barbara Palmer about the loss of his scanner. The following day an Accountables Clerk told Supervisor Roger McGhee (who had been a Letter Carrier and was promoted to Supervisor about 6 months ago) that the scanner was missing. McGhee met with the Grievant and asked what happened. After the Grievant told him, McGhee asked no questions, but concluded that the loss "its kind of a negligent act". The Grievant was not disciplined, but on May 31, 2002, McGhee sent a Letter of Demand to the Grievant stating that he owed the Service \$493.00 to replace the scanner and that "It is your responsibility to protect all equipment entrusted to your care". Terms for satisfying this debt were also outlined as well as the Grievant's right to file a grievance. (JX-2, p. 8)

A grievance was filed on June 7, 2002. Absent from that document is any statement by management about what "facts and contentions" it disputed. (JX-2, p.6) On June 14, 2002, Tony Mendoza, Postmaster, wrote the Step 2 decision denying the grievance and stating, "The debt is based on the loss of the scanner. It is his [the Grievant's] responsibility to protect all equipment entrusted to his care". It is unknown why Mendoza wrote the Step 2 decision because he did not preside over the Step 2 meeting.

The matter was then referred to Step B, but the parties were unable to reach a resolution of this matter. Leopold A. Potsiadlo was the Service's Representative at Step

B. The reasons he gave for maintaining that the Service's position should prevail were:

- (1) "the Grievant was financially liable for the replacement cost of the missing scanner in this instance";
- (2) "The Grievant's failure to exercise the minimum reasonable care expected of him when he lost or misplaced his scanner on 5/19/02 was justification for the claim of indebtedness"; and
- (3) "The Grievant's carelessness cannot be excused because . . . he . . . should be held accountable for an obvious failure to safeguard Postal Property entrusted to his safekeeping." (JX-2, p.4)

The matter is now before the Arbitrator for final decision.

POSITIONS OF THE PARTIES

Position of the Union:

The Union relies primarily on the language contained in Article 28.3 of the National Agreement and in the JCAM interpretation thereof to assert that the Letter of Demand must be rescinded. Specifically, the Union asserts that the language is clear and unambiguous that in order for a Postal employee to be financially liable for loss of or damage to Service property, it must be proven that the loss or damage was "willful or deliberate misconduct" by the employee. These words mean, the Union contends, that the loss or damage must be intentional; an allegation never made by the Service in this case.

The Union further contends that the "exercise reasonable care" standard enunciated in the Service's position at Step B does not apply to loss or damage of Service Property and Vehicles, but rather is the standard set forth in Article 28.2 regarding "Loss

or Damage of the Mails". It also maintains that no procedures have been provided by the Service regarding the proper handling of a scanner.

Finally, the Union emphasized the Grievant's sixteen (16) years' service and the absence of any indication in the record that he had any inclination whatsoever to willfully or deliberately lose or misplace Service property. It therefore asks that this grievance be sustained.

For the Service:

The Service asserts that the scanner is an accountable item which the Grievant knew well that he was responsible for checking out and back in on a daily basis. Handling the scanner was not new to the Grievant because it had been used by him for at least two (2) years; "like a habit, this is what you do". The Service claimed that the Grievant "didn't remember too much of anything about that day [the date of the incident], but since no one witnessed what he did at the cluster box and "willfulness is a state of mind" it is impossible to prove whether his act was willful or deliberate, but "that little scanner is not just going to disappear". The Service also noted the Grievant's testimony that prior to his meeting with McGhee the day after the incident, he thought he was going to have to pay for the scanner. According to the Service, this is an admission against interest and when coupled with the fact that the scanner is gone and has not been turned in since the incident, this means the Grievant is financially liable for the loss. The Service asks that this grievance be denied.

ANALYSIS AND OPINION

The grievance is sustained. Regardless of McGhee's opinion, the fact is that the Grievant was not charged with nor was he disciplined for negligence; or anything else. In

fact, during his sixteen (16) years with the Service, no showing was made that he ever had been either negligent or careless with accountables. He had not lost his keys, he had not left his vehicle unlocked so mail could be/or was taken, etc., and he had not ever lost or misplaced a scanner. This is not the record of someone who, suddenly on May 19, 2002, **decides** to willfully or deliberately loose/misplace his scanner. It may not be possible to get inside someone's mind, but in this case there are no indications that whatever was in the Grievant's mind that he acted either willfully or deliberately to loose/misplace the scanner.

At Step B, the Union is correct in asserting that Potsaidlo applied the wrong standard, "exercise reasonable care" to the loss of the scanner. The other reasons given at any time by the Service amount to nothing more than its effort to get the Grievant to pay for the scanner. In writing the clear and unambiguous language contained in Article 28.3 of the National Agreement and in jointly agreeing on the interpretation of that language in the JCAM, the parties meant and the Arbitrator agrees that Article 28.3 "protects letter carriers against management claims for the loss or damage to other USPS property, including vehicles, **unless** the loss or damage resulted from "**willful or deliberate misconduct**" of the letter carrier". (emphasis added) (JX-3, p 28-2) The Service made no such showing and, thus, the grievance is sustained.

AWARD

The grievance is sustained. The Letter of Demand shall be rescinded immediately upon receipt of this award by the Service.

Date: September 5, 2002

Mollie H. Bowers

Mollie H. Bowers, Arbitrator