

NATIONAL ASSOCIATION OF LETTER CARRIERS

CONTRACT ADMINISTRATION UNIT

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Administrative Leave

I. Introduction

All letter carriers try to follow the ideal: "Neither snow nor rain nor heat nor gloom of night stay those couriers from the swift completion of their appointed rounds". However, the Employee and Labor Relations Manual (ELM) recognizes that extreme conditions may make this impossible.

Section 519 of the ELM allows management to grant administrative leave to employees due to "Acts of God". This paper has been prepared by the NALC Contract Administration Unit to assist branch officers and stewards in handling problems concerning administrative leave for "Acts of God". This paper summarizes arbitration awards dealing with this section, discusses how arbitrators have handled the issues which frequently arise, and outlines the different criteria used by arbitrators in making their decisions.

References in this paper to "C" cases identify arbitration awards indexed by and contained in NALC's Computer Arbitration System. These cases may be obtained from NALC's Business Agents.

ELM Section 519, regarding administrative leave reads, in part:

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

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

519.213 *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 to duty.*

519.214(c) *Part-Time Flexible Employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled tour. The combination of straight time worked and administrative leave may not exceed 8 hours in a service day. If there is a question as to the scheduled work hours, the part-time flexible employee is entitled to the greater of the following:*

- (1) *The number of hours the part-time flexible worked on the same service day in the previous service week; or*
- (2) *The number of hours the part-time flexible was scheduled to work; or,*
- (3) *The guaranteed hours as provided in the applicable national agreement.*

II. The three criteria

ELM Section 519.211, specifies three criteria which must be met before administrative leave may be granted for "Acts of God". First, the "Act of God" must create a community disaster. Second, the disaster must be general, rather than personal, in scope and impact. Third, it must prevent groups of employees from working or reporting to work. The majority of arbitrators agree that all three of these criteria must be met before a request for administrative leave is upheld (See C-04883, C-00074, C-00235).

It is up to the Postmaster to 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 have, with reasonable diligence, reported for duty. However, the Postmaster's decision is not beyond question, and is subject to review by an arbitrator (See C-00359).

What is an "Act of God"?

A definition commonly used by arbitrators in determining whether an "Act of God" has occurred which is sufficient to justify the granting of administrative leave, is: "A natural occurrence of extraordinary and unprecedented impact whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight." (See C-04205, C-09057).

Snowstorms are most often the reason for granting administrative leave. To qualify as an "Act of God", the storm must be of such severity to disrupt normal community functions. Generally, arbitrators consider factors such as the amount of snow, the length of time it fell, wind strength and temperature in determining the severity of the storm (See C-00411). Not every snowstorm or rainstorm can be classified as an "Act of God" merely because of its unusual or above average intensity. The general rule is that an "Act of God" must create "disaster conditions" to justify granting administrative leave (See C-04205).

1. The "Act of God" must involve a community disaster.

According to the arbitrator in C-03964, "use of the term 'disaster' means, insofar as the community is concerned, a complete shutdown of all of the services of a community except for emergency services such as fire, police and hospitals." In this case, the arbitrator believed there was no doubt that the severe snowstorm which had occurred was an "Act of God". However, the arbitrator looked to the fact that even though there were no mail deliveries, over 5000 employees in a nearby military base, both civilian and military, reported for work. Thus, the impact on the community was not great enough to constitute a disaster, and administrative leave was denied.

Other factors arbitrators will consider include: whether a state of emergency has been declared, evidence of massive road closings, and whether the state police or local authorities have advised persons to stay home (See C-04964, C-04205, C-05432). In

C-00411, the arbitrator granted administrative leave where there was a three-day snowstorm and the National Guard was called out to rescue people stranded in their cars, while other stranded travellers were forced to sleep in schools (See also, C-00402, C-00074).

According to the arbitrator in C-03491, "Bad conditions, poor weather, difficult conditions and the like, are insufficient to constitute a disaster. A disaster must be an extreme situation." In this case, where the storm did not block main roads and during which many businesses were able to operate normally, the arbitrator denied administrative leave. (See also, C-06622).

2. When is a disaster general in scope and impact?

According to the arbitrator in C-00542, the "scope and impact" of the storm is indicated by the amount of absenteeism among employees scheduled to work that tour. Many arbitrators will consider the number of absences on a given day, but most look to the pattern of absenteeism to make a determination of scope and impact.

Where it can be shown that employees from a large general area were prevented from reporting to work by a storm, administrative leave will usually be upheld (See C-09024). Maps are useful in demonstrating areas where employees live and whether the storm prevented employees from specific areas or general areas from reporting to work (See C-00359, C-00410). Most arbitrators will consider a particular employee's difficulties in reporting to work. However, if other employees living in the same area were able to report, arbitrators usually find the disaster to have been personal in scope and impact, unless the employee can demonstrate otherwise. (See C-03489, C-04964, C-08197).

In C-09025, the arbitrator found that the severe thunder and wind storm which hit the area was a community disaster which was general in its scope and impact. However, the arbitrator denied administrative leave where he found that the conditions which prevented the grievants from reporting to work were not generally encountered by other employees.

Occasionally, arbitrators determine the scope and impact based upon whether the Postal Service has suspended operations or curtailed mail delivery. In C-01176, the arbitrator denied administrative leave

where there was little impact on Postal operations, and held that, since there was no curtailment of mail, it was "impossible to conclude that there was a disaster situation which was general in nature." (See also, C-09033, C-04483). However, most arbitrators agree that the ELM does not require the Post Office to close its doors before administrative leave is granted (See C-00402). In C-00713, the arbitrator stated, "the determination of an entitlement to administrative leave does not depend upon whether the Post Office was closed or not. Section 519.211 imposes no requirement that the office be closed or operations curtailed before employees may receive such leave." (See also, C-00447, C-03433, C-04542).

3. What constitutes "groups of employees"?

Arbitrators most often deny administrative leave to employees because "groups of employees" were not prevented from reporting to work. Arbitrators are divided on their interpretation of what constitutes a "group". In C-04205, the arbitrator stated, "As a rule of thumb, it has been held that 50% of the employees in the group, must be unable to come to work because of disaster conditions. The rationale of the 50% rule is that if half or more of the employees in the group, exercising reasonable diligence are unable to get to work, it is persuasive evidence that the conditions were most abnormal. If less than 50% of the employees in the group are unable to get to work, the inference may be drawn that with the exercise of reasonable diligence, employees could get to work." (See also, C-00235, C-03964, C-04483, C-09025, C-09033, C-09068).

Other arbitrators reject that rule. The arbitrator in C-00447 held, "it is not determinative that a significant number of employees were able to report to work. The manual only requires that groups of employees must be prevented from working." The 14% of the workforce unable to report because of the snowstorm were granted administrative leave (See also, C-00452, C-00713). Other arbitrators fall somewhere in the middle of this spectrum, and will allow administrative leave if it can be demonstrated that the group is "substantial". According to the arbitrator in C-01357, "The requirement is not that all employees be unable to report to work but that the groups of employees who were unable to do so be general, substantial and that each employee has used reasonable diligence to get to work."

The Postal Service's method of grouping employees can alter the percentages dramatically. In C-00448, the Postal Service grouped employees over a 24 hour period, and using these numbers was able to

demonstrate that more than 50% of the employees reported to work. The arbitrator held that this was improper, since weather conditions had changed over the 24 hour period. The arbitrator ruled that the Postal Service should group them by tour of duty instead.

III. The postmaster has the discretion to grant administrative leave.

Most arbitrators will not substitute their judgment for the judgment of the Postmaster unless it was arbitrary or capricious. The ELM gives the Postmasters the discretionary authority to grant administrative leave. It does not require that administrative leave be granted. (See C-09033). According to the arbitrator in C-03205, "The only time an arbitrator might consider overturning the Postmaster's decision in such cases would be a situation where the requirements spelled out in the manual were met, and the Postmaster's decision appeared to be arbitrary or capricious." (See also C-02340, C-03368).

In C-00680, administrative leave was granted to those employees who arrived late to work during a severe snowstorm, but denied to those employees who failed to report to work. The arbitrator held that by granting administrative leave in this limited fashion, management recognized that conditions existed which justified administrative leave. In this case, the Postmaster testified that he had never previously granted administrative leave to those employees who failed to come to work, because he believed that employees would have less incentive to make an effort to get to work in the future. The arbitrator held that the Postmaster was arbitrary in his decision and that there was not a valid reason for denying administrative leave.

Most arbitrators agree that Section 519.211 is applicable to a "scheduled tour" on any day, including a day outside an employee's regular schedule. However this does not change the provisions of ELM Section 433.1 which mandates that an employee cannot be given more than 40 hours of straight time pay in a service week. In C-06365, where the granting of administrative leave would have given the employees more than 40 hours of straight time pay, the arbitrator held Section 433.1 to be an overriding limitation on the scope of administrative leave, and denied the employees' request, even though they had met the other three criteria (See also, C-09228).

IV. Proof of "reasonable diligence"

To justify a request for administrative leave, most arbitrators require the employee to have exercised reasonable diligence in attempting to report to work. Some arbitrators will make this determination based upon the general conditions of the area, and do not require specific proof. Other arbitrators require the employee to present specific proof that they have exercised reasonable diligence and still were unable to report to work.

In C-00616, the arbitrator held that where the Postmaster concluded that some employees did not exercise reasonable diligence because their neighbors were able to report to work, this established a *prima facie* case which the Union had to refute by submitting proof that the absent employees did, in fact, exercise reasonable diligence. In C-03433 the arbitrator denied requests for administrative leave where the Postal Service did not suspend operations and the arbitrator was given no evidence of the diligence of the employees.

In C-00581, where the storm was of sufficient severity to force a halt to community activity and had an equally severe effect on the Service, the arbitrator granted administrative leave to the two grievants who testified. However, the arbitrator denied administrative leave to the other employees who failed to produce affidavits or other evidence that they had exercised reasonable diligence in their efforts to report to work. According to the arbitrator in C-00411, "Proof of such effort will involve the various means available to the employee to get to work and the feasibility of those means. Such means can be a personal automobile, or various specialized automotive vehicles such as 4-wheel drive vehicles, snowmobiles, trucks and the like." The arbitrator held that an employee must show that alternate means were unavailable or the effort would have been futile, before administrative leave is granted (See also, C-09024).

According to the arbitrator in C-05290, in determining reasonable diligence, one must look to the general norm or a reasonable range of expected behavior. In this case, even though half of the employees were able to report to work, the arbitrator held that the storm was severe enough to be a legitimate basis for the judgment of many that reporting in would be futile, unsafe, and imprudent (See also, C-00402).

V. Converting other leave to administrative leave

Generally, where employees report to work, and management has work available, administrative leave will not be warranted if the employee elects to leave early. In C-00614, management gave employees who reported to work and worked most of their shift the option of leaving early, or performing additional work that was available. In this situation, the arbitrator held that administrative leave was not justified for those employees who elected to leave early (See also, C-01590, C-01850).

When an employee has been granted annual leave or leave without pay to cover an absence due to an "Act of God", most arbitrators hold that this will not prevent the employee from receiving administrative leave, if it is later determined to be warranted. In addition, when management grants administrative leave to excuse those who arrived late or left early during a disaster, most arbitrators consider this to be a recognition by management that the three criteria were met. In these circumstances those who were unable to report to work often are granted administrative leave as well.

In C-00680, management granted administrative leave to those employees who arrived late to work, but denied it to those who were unable to report to work. The arbitrator held that by granting administrative leave to late employees, management recognized that the conditions justifying administrative leave were present. Therefore, the arbitrator found that management acted unreasonably, and that administrative leave was warranted for those employees who were unable to report to work on that day (See also, C-00411 C-00614).

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