

NATIONAL ASSOCIATION OF LETTER CARRIERS

CONTRACT ADMINISTRATION UNIT

Lawrence G. Hutchins
Vice President

Halline Overby
Asst. Secretary-Treasurer

Brian D. Farris
Director of City Delivery

Robert Vincenzi
Director, Health Insurance

Employee claims

I. Introduction

Accidents happen. When as a result of an accident or other event a letter carrier's personal property is damaged or lost at work, Article 27 of the National Agreement provides a mechanism by which the letter carrier may file a claim for reimbursement by the Postal Service.

This paper has been prepared by the NALC Contract Administration Unit to assist branch officers and stewards in handling problems related to this Article 27. This paper summarizes arbitration awards related to employee claims, discusses how arbitrators have handled issues which frequently arise, and outlines the 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.

Article 27 of the 1987 Agreement, regarding Employee Claims reads, in part:

Subject to a \$10 minimum, an employee may file a claim within fourteen (14) days of the date of the 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 on the postal premises. The possession of the property must be 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.

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The above procedure does not apply to privately owned motor vehicles and the contents thereof. For such claims, employees may utilize the procedures of the Federal Tort Claims Act in accordance with Part 250 of the Administrative Support Manual.

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Simply stated, Article 27 sets forth the following principles:

1. The claim must be filed within 14 days of the date of the loss.
2. The property claimed must be "personal property" in order to be eligible for reimbursement.
3. The loss or damage must be connected with or "incident to the employee's employment while on duty or while on Postal premises."
4. Possession of the property must have been reasonable or proper under the circumstances.
5. The damage or loss must not have been caused, in whole or in part, by the negligence of the employee.
6. The amount of the loss must reflect the depreciation value of the property.
7. The loss or damage will not be compensated

when it resulted from normal wear and tear associated with day-to-day living and working conditions.

II. Procedural requirements

Section 645.2 of the Employee and Labor Relations Manual (ELM) provides that Form 2146, Employee Claim for Personal Property, must be filed to document a claim. However, this section also provides, "any written document received within the period allowed is treated as a proper claim if it provides substantiating information." Claims should be supported with evidence such as (a) date of purchase, and (b) sales receipt or statement from seller showing price and date of purchase. (See C-02940).

Article 27 requires an employee to file a timely claim within 14 days after the loss or damage occurred. Generally, the employee is expected to know the proper procedures to file, including the time limits. In C-05754, the arbitrator ruled that the employee's unfamiliarity with the contractual 14-day limitation did not excuse him from it, particularly where management had no role in his lack of knowledge. However, in C-01452, where neither the employee nor the steward knew of the proper procedures and the employee made a good faith attempt to file within the time limit, the arbitrator ruled that the delay was unavoidable and would not act to bar the claim.

It is uniformly accepted that the claim must be in writing. In C-05562, the employee missed the 14-day time limit and asserted his claim as timely due to oral communication with his supervisor following the accident. The arbitrator ruled, "Verbal relating of the fact of the accident and loss of employee to his supervisor can't be regarded as the filing of a written claim within 14 days of the date of the loss or damage. Even though the language of the agreement does not refer to a written clause, uniform past practices show that the claim should be in writing."

The arbitrator will not necessarily hold the actual claim form to be binding, if it turns out to be incorrect. In C-01389, the employee incorrectly described his claim, yet the arbitrator allowed oral evidence at the hearing to control. The arbitrator stated, "The resolution of the claim does not depend solely on the claim submitted. Where the language is incomplete or ambiguous, the Postal Service should ask for clarification or additional information."

III. What constitutes personal property ?

"Personal property" includes cash, jewelry, clothing and uniforms as well as other items that are worn or

otherwise brought to work. Personal property does not include automobiles (see "The automobile exclusion," below).

On some occasions management has argued that uniforms should not be considered personal property, at least to the extent that they were acquired with Postal Service funds through the uniform program. Arbitrators, however, have universally rejected that argument. In C-03004, the arbitrator ruled that, "Article 27 does not draw a distinction between uniforms purchased with personal funds and those secured through the allowance program. Nor does the obvious intent of that provision permit such a conclusion. Reimbursement is anticipated so long as compliance with the eligibility standards set forth therein is present. To deny reimbursement for damaged or lost uniform items subject to the annual uniform allowance would be to deny almost every such claim. A result of that magnitude may be supported only by an express exclusion and no such exclusion appears in the National Agreement." (See also C-04462, C-02686).

IV. The automobile exclusion

Article 27 excludes privately owned motor vehicles and their contents. (See C-00124, C-01182, C-04053). Note, however, that if a letter carrier's automobile is damaged by "the negligent or wrongful act" of the Postal Service, the letter carrier may seek recovery under the Federal Tort Claims Act. To initiate a Tort Claim, a Form 95 should be completed and submitted.

Note also that the standard for establishing liability under the Tort Claims Act is different than the standard for reimbursement under Article 27, because they treat fault differently. To make a claim under Article 27 it is merely necessary to show that the loss or damage was "not caused in whole or in part by the negligent or wrongful act of the employee" - whether or not there was also negligence on the part of the Postal Service. However, to recover under the Tort Claims procedure, it is not enough to demonstrate that the damage was not the fault of the employee - the employee must establish that the damage was the fault of the Postal Service.

A. Does the automobile exclusion apply to bicycles?

It is the position of the NALC that bicycles are not "motor vehicles". Instead, they are personal property for which reimbursement may be sought. However, arbitrators have differed on this point.

The arbitrator in C-05484 held that a bicycle is not a motor vehicle for purposes of Article 27 because the contract "specifically mentions motor vehicle - not method of transportation." In C-02885, the arbitrator ruled that "an employee's bicycle would be considered property, the loss or damage to which would be subject to a claim against the Postal Service." However, he also held that the property must be located on postal premises. The arbitrator stated, "If an employee brings a bicycle with the consent and permission of the Postmaster or officer in charge, stores that bicycle by lock at a point on the postal premises, and said bicycle is lost or damaged by some third person, then the Postal Service is liable for that loss or damage." According to this arbitrator, in order to avoid exposure under Article 27, the Postmaster of a particular facility must prohibit employees from storing or locating their bicycles on postal premises.

Other arbitrators have disagreed. In C-01373, the arbitrator held that the Article 27 exclusion should be interpreted as "including alternate means of employee personal transportation unless such loss was connected with, or incident to an employee's employment." The arbitrator stated, "For the Arbitrator to conclude that all employees who adopted some form of alternate personal transportation between their homes and the Post Office shifted the responsibility for the loss thereof from themselves to the Postal Service would be to place on the Postal Service a financial obligation which the parties did not mutually agree upon." Another arbitrator, in C-05753, ruled that the exclusion of "motor vehicles" must be construed as embracing all means of transportation.

V. What constitutes reasonable or proper possession incident to employment?

In determining "reasonable, or proper" possession arbitrators generally evaluate: 1) whether it was necessary for the employee to have the lost or damaged item in his or her possession at work, and 2) whether the value of the item was too great to justify taking the risk of damage or loss at work.

The Postal Service has no duty to inform postal workers what jewelry or articles of adornment are not required for the performance of their employment duties if a claim is to be denied. The Postal Service may issue reasonable regulations and orders to control the appearance and garb of its employees; however, according to the arbitrator in C-01930 it has "no power to instruct and direct an employee how much money he might have in his wallet while delivering mail nor what items of jewelry or personal adornment he chooses to wear." That notwithstanding, the arbitrator further ruled that in

order to successfully recover under Article 27, "the personal property for the loss of which reimbursement is sought, must be an item which the arbitrator can find, as a fact, was reasonably necessary for the postal worker to have on his person (or in his locker or at his work station)."

Generally, an employee's personal money and items such as a license or watch have been found to be incident to employment and possession deemed reasonable under the circumstances. (See C-07760, C-03968, C-04235, C-05223, C-06481). In C-05276, possession of a radio was also declared reasonable, where the Service allowed the carriers to use their radio headsets at their cases, signifying an affirmation that the use of radios was incidental to their work. (See also C-03408).

However, often where reimbursement for lost or stolen cash is requested, the Service has adopted a practice of setting a \$20 maximum on reimbursement, an amount that management deems would be reasonable for an employee to have on his person on any given working day. Arbitrators have differed in their treatment of this practice. In C-05543, the arbitrator held the \$20 maximum reimbursement sum set by the Postal Service, although not supported by any specific contractual language, to be "reasonable and reflective of a past consistent and fair practice." However, in C-09154, the arbitrator ruled that the \$20 guideline was "too arbitrary and would preclude fair consideration of the circumstances of a given loss." In C-04501, the arbitrator held that where cash is held for personal reasons only, such as to pay a bill or purchase groceries after work, possession was not reasonable.

The reasonableness of a claim generally turns on the value of the item. Where the item being claimed is of unreasonable or excessive value, arbitrators generally rule in favor of the employer. In C-05223, the arbitrator held that where the employee damaged his expensive watch while delivering mail, the employee exercised poor judgment, and should have known the risk of damaging such an expensive piece of property. Therefore, the wearing of the watch was unreasonable.

Most arbitrators have ruled that expensive jewelry items such as personal rings or necklaces are not reasonably or properly connected with an employee's job duties as a letter carrier so as to justify responsibility in the employer (See C-08188). In C-06224, the arbitrator stated, "Whether or not a carrier wears a ring while at work is purely a personal decision. Such item is not required by the carrier's job. The employee is furnished a locker in which to keep personal belongings which he does not wish to take with him on his route." Generally,

however, in cases involving wedding or engagement rings, arbitrators have ruled possession to be reasonable. In C-02145, the arbitrator ruled that although the wearing of expensive jewelry may create unreasonable risks, "it cannot be said that the wearing of a wedding ring or engagement ring while performing duty in the workplace is unreasonable or improper under the circumstances." (But see, C-04235).

VI. What constitutes negligence?

Under Article 27 of the Agreement, the Postal Service has no obligation to an employee who suffers loss if the loss is caused in whole or part by the negligent act of the employee. Negligence implies an absence of care; it involves the failure to act in a manner in which a reasonable person would have acted under the same circumstances.

In order to successfully deny a claim, the employer bears the burden of proving that the employee was negligent or failed to exercise reasonable care. Generally, a positive showing that the employee was not exercising reasonable care is required to establish negligence or a wrongful act. (See C-06482). Where there is a common practice among employees, of which management acquiesces, the employee usually will not be found negligent in following this practice. (See C-02686).

In some cases, however, arbitrators have required the employee to show that there was no negligence involved. (See C-05531, C-04088). In C-02145, the arbitrator ruled in favor of the employer where management found no support for the employee's claim that heavy machinery had damaged her ring, and the employee failed to establish that the damage was not caused by her own negligence.

A. The employee must take reasonable measures to safeguard personal property.

In most cases employees are expected to take reasonable measures to safeguard their personal property. Therefore, when an employee fails to attach a lock, chain or cable to secure his bicycle, he will likely be held negligent if his bicycle is stolen, and his claim will be barred. (See C-01589, C-06356). In C-01589, the arbitrator held that it was not reasonable for the employee to rely on the presence of a mail handler in the area as adequate protection against theft. In addition, the arbitrator ruled that a reasonable person should not need to be told to secure an expensive bicycle, therefore, the Postal Service has no obligation to give such notice.

In cases involving theft out of postal vehicles, it is generally required that the employee show that the

vehicle was locked and adequately secured, and all reasonable measures were taken to protect the employee's property. (See C-03408; See also C-05542).

Arbitrators generally agree that possession of a purse in a postal vehicle by a female worker is a reasonable and common practice and does not constitute negligence or unreasonable possession for purposes of Article 27. (See C-03968 and C-06481). Where an employee leaves her purse unattended, in an open area, however, the employee will most likely be found negligent. (See C-07382).

B. Damage or loss due to an accident

Where damage or loss is sustained due to an accident which is beyond the control of the employee, arbitrators are generally reluctant to find the employee negligent. In C-00132, the arbitrator ruled, "An accident is simply an unexpected incident which results in damage to property or person. It is not normal, it is unexpected and when the incident results in the loss of property, it is provided for by Article 27."

When an employee sustains a loss due to slipping or falling while performing his job duties, the claim is generally upheld. In C-01453, the grievant slipped on an icy sidewalk while making his rounds. According to the arbitrator, "Special training in walking on ice and snow indicates a degree of risk. There is always the possibility of an accident." Since there was no evidence of negligence on the part of the employee, the arbitrator upheld the claim.

C. Eyeglasses

There have been a significant number of employee claims pertaining to loss or damage done to an employee's eyeglasses. Arbitrators generally require the employee to maintain well-adjusted glasses in order to receive recovery. In C-01389, the arbitrator stated, "If the evidence established that the glasses merely slipped off during the course of his work because they were not fastened or adjusted properly, the Postal Service should not be responsible for that damage under Article 27." Where glasses are knocked off during the course of a normal job performance, the employee will generally recover. (See C-00132, C-01452).

When the employee has taken affirmative steps to safeguard his/her property, arbitrators generally find this to be reasonable behavior. In C-00795, the employee lost his glasses while shoveling heavy snow, after placing his glasses in a case and affixing them to his clothing by a clip. The arbitrator found the employee "took those steps to safeguard his

property which are usually taken by a reasonable person," and upheld the claim. Similarly, where an employee took reasonable precautions and left her glasses in a locked vehicle which was later broken into by a third person, the arbitrator found this to be reasonable behavior, and upheld the claim. (See C-01488, C-03814).

Arbitrators will look carefully at the judgment of the employee in the particular situation. Where the employee appears to have exercised poor judgment or acted carelessly, arbitrators usually rule that the claim cannot be justified. (See C-00194, C-01588). In C-01252, the employee left her glasses out on her work space temporarily, and they were crushed by a falling newspaper roll. The arbitrator stated, "While anyone knows that glasses are easily broken, the average reasonably prudent person does take off his or her glasses occasionally and for short periods and places them either on the desk or other work place with the expectation that the glasses, after the short interval, will be picked up and worn. What the average reasonably prudent person does is not negligence or want of due care. On the other hand, to place glasses on a desk or other work place indefinitely, and unprotected, is a breach of due care."

VII. What constitutes normal wear and tear?

According to Article 27, "Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions." Normal wear and tear constitutes that damage that occurs during the normal course of working and day-to-day living. In C-02111, the arbitrator concluded that damage done to an employee's shirt by a customer's package was not ordinary wear and tear. In C-04462, where 5 pairs of trousers were damaged due to the employee's vehicle seat, the arbitrator ruled that this damage, all occurring in the same area, could not constitute ordinary wear and tear and upheld the claim.

VIII. Proof of value

The employee and the Union bear the burden of proving the value of the personal property lost or damaged. The best evidence of value is a purchase receipt. If a receipt is unavailable, the claimant's own unsupported valuation of the lost or damaged property may not always satisfy the demands of proof. In C-07600, the arbitrator denied the claim where the evidence of value was only the testimony of the employee herself.

Although documentation is ordinarily the easiest way of proving the value of the damaged items, arbitrators may use their discretion in allowing

recovery. In C-05773, the arbitrator concluded, "The fact that there was no documentation for the lost goods is not fatal to the grievant's claim. Article 27 does not state that all claims must be documented in order to be allowed.

IX. Remedy

Once an arbitrator concludes that management violated Article 27 in denying the employee's claim, a remedy is due. Article 27 establishes that the employer's obligation to provide reimbursement includes "taking into consideration depreciation." In C-00795, the arbitrator ruled, "The amount of the loss to which the employee is entitled is the depreciation value of the property loss, not the new or replacement value." Generally, in the absence of evidence showing the depreciation value, arbitrators have tended to award the employee 50% of the amount of replacement rather than conduct a new hearing to present evidence of depreciation value. (See C-00795, See also, C-01488).

If the property lost or damaged has a value clearly in excess of the reasonable value of personal property claimed to be needed for the performance of employment duties, the employee will have no assurance that he will be reimbursed for the full value of the property. In C-03408, the arbitrator determined that although possession of a radio was reasonable, the value claimed by the employee was excessive and reduced the claim. Similarly, in C-07600, the arbitrator found a claim for an expensive watch excessive and reduced it to a reasonable amount.

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