C# 11163
A-C

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	**Grievants:** Vincent Peterson Ramona Torruellas Sarah Santiago
between	
UNITED STATES POSTAL SERVICE	**Post Office:** General Post Office of NY (FDR Station)
and	
AMERICAN POSTAL WORKERS UNION	**Case Nos.:** N4C-1A-C 36371 N7C-1A-C 2100 N7C-1A-C 1535

Before Arthur Talmadge, Arbitrator

Appearances:

For U.S. Postal Service: Anthony Collica

For Union: Anthony Caniano

Date of Hearing: May 9, 1990

Place of Hearing: Morgan General Mail Facility
341 Ninth Avenue
New York, New York

Award: The grievances are sustained. The Service shall recredit the Grievants with the hours of annual leave for the time they were not permitted to work.

Date of Award: May 25, 1990

Arthur Talmadge

Arthur Talmadge, Arbitrator

Pursuant to the rules and procedures of the Collective Bargaining Agreement between the American Postal Workers Union ("the Union") and the United States Postal Service ("the Service"), the undersigned was designated to hear and decide an unresolved dispute. The parties were afforded full opportunity to present their evidence, examine, cross-examine witnesses, and state their positions.

It was agreed by the parties that the issue may be stated as follows:

ISSUE

Did the Postal Service violate the National Agreement when it failed to allow these three employees, Vincent Peterson (Patterson),* Ramona Torruellas** and Sarah Santiago,*** to work on these respective dates: August 11, 1986, July 13, 1987 and July 10, 1987? If so, what shall the remedy be?

Relevant Contractual provisions material to this dispute:

Article 3
Management Rights

Article 5
Prohibition of Unilateral Action

Article 8
Hours of Work

Article 9
Salaries and Wages

Article 14
Safety and Health

Article 19
Handbooks and Manuals

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*N4C-1A-C 36371, **N7C-1A-C 2100 and ***N7C-1A-C 1535. These employees were assigned to the FDR Station, New York 10022. Since these grievances were grounded in the same circumstances the parties agreed they be heard in this proceeding.

Position of the Union

The arguments presented may be distilled and condensed.*

> It was a very hot summer day and Grievant reported to work with short pants.
>
> Employee's shorts conformed with the shorts that letter carriers wear.
>
> Other employees were permitted to wear shorts and there were no instructions to employees that they cannot wear shorts.
>
> Employees were told to go home and use annual leave.

The following additional points were addressed by the Union in support of its position that the grievances be affirmed.

The Postal Service dress code provides directions as to proper attire for Carriers and those Clerks who are in contact with the customer public. These Clerk Craft employees perform their duties not in public view.

The Postal Service has not articulated a dress code but for the wearing of proper footwear in the circumstances of adverse weather. (In support the Union cited "Supervisor's Safety Handbook," Handbook EL-801, July 25, 1985.)

The Postal Service has not proscribed the wearing of shorts, but rather it has attempted to prescribe the length of shorts, i.e., no more than two (2) inches above the knee. If, as the Postal Service suggested, the added two (2) inches of leg exposure creates a greater safety hazard it has failed to prove that a greater risk is imposed on the Clerks if the shorts worn are four (4) inches above the knee rather than the "prescribed" two (2) inches. [Cf. New York Division Postscript, Photograph of August 28, 1987, re: "Eagle Express Network."]

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* Step 3 Grievance Appeal, April 28, 1987.

The regulations as to appropriate walking shorts attire were first circulated by FDR Station management following the triggering of the instant postal action and resultant grievances. [Jt. Exhibit #2, Item #7, under date of July 23, 1987. Memorandum from Operations Manager, FDR Station, to all employees.]

As to remedy: The Postal Service should recredit the Grievants with hours of annual leave for time they were not permitted to work.*

Position of the Postal Service
The arguments presented may be distilled and condensed.

There is no reason whatever to pay the employee annual leave for his (her) having appeared on the work floor in improper attire (i.e., the wearing of shorts). As an example, the wearing of improper footwear is also reason to deny an employee the opportunity to work.**

There exists no violation of Articles 16 and 19 of the National Agreement. The Grievants made a request for annual leave which was approved.***

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* See respective 3971s.

** Step 3 Grievance Appeal Reply to case #N4C-1A-C 36371, dated April 3, 1987.

*** Step 3 Grievance Appeal Reply to cases #N7C-1A-C 1535 and N7C-1A-C 2100 under dates of December 2, 1987, and December 3, 1987. The Arbitrator finds no useful purpose to seek an explicit answer as to the circumstances for the Grievants requesting "their not being permitted to work" be changed to Annual Leave. See the respective 3971s. The issue of "the granting of annual leave" when the grievants reported in their <u>inappropriate</u> attire was not pursued by the parties. Suffice it to say we were informed that the Grievants requested the charging to annual leave, as they would have otherwise lost a day's earnings.

The following additional points were addressed by the Service in support of its position that the grievances should be denied.

The Postal Service contended that Article 3(E) (Management Right) of the National Agreement provides:

> The Employer shall have the exclusive right ... to prescribe a uniform dress to be worn by letter carriers and other designated employees ...

The concern for well being and safety by the Postal Service was conveyed to all employes by practice and policy. The specific implementation of the dress code as an integral aspect of the operating safety policy was transmitted by the FDR Station management verbally to all concerned. [See July 23, 1987, memorandum from Operations Managers.]

The Supervisor at each FDR Station location informed the employees of the appropriate dress attire, as part of the regular safety talks. Supervisor Pearson was clear that the shortness of the pants beyond the acceptable two (2) inches exposed the leg to possible "tears" when caught on the edges of the manual cases. Additionally the employees were under increased risks when their bodies brushed up against the mechanized equipment.

In sum, the Service argued, the employees were informed of the dress code and indeed the National Agreement provides that Management can prescribe a dress code.

The grievance should be denied.

Opinion

There is little dispute that management has the right to promulgate and to enforce reasonable rules relating to employees' dress and grooming while at work.

When dress and attire are challenged the Arbitrator's task is to determine whether a particular restriction is to serve a legitimate interest of the employer. While Article 3 of the National Agreement accords Postal management with considerable discretion, it is well established that an unreasonable exercise of management's rights should not be enforced.

The best summary of current arbitral standards is provided by Arbitrator Peter Maniscalco where he observed:

> ... there must be a showing of a reasonable relationship between the Company's image, health or safety considerations and the need to regulate employee appearance. Therefore, management's right to regulate in this area is not absolute. Its exercise in any specific manner may be challenged as arbitrary, capricious or inconsistent with the obligation for which the right is being exercised.
> Missouri Publishing Co., 77 LA 973 (1981)

The obligation of the management to provide a safe working place is not challenged. The arbitrator, though most reluctant to enter the fray as to the Service's concern, however, cannot find after considered reflection that there is any increased hazard or risk imposed on the employee when the length of the pants he or she wears is four (4) inches above the knee rather than the presumed two (2) inches.* The Arbitrator admittedly is not qualified to make an anatomical or physiological or clinical evaluation. The burden of proof to sustain the allegation

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* In the case of Vincent Peterson, N4C-1A-C 36371, we are left with some unresolved questions: a) Were the pants he wore that August 1986 evening one (1") inch above the knee, not in excess of the stipulated two (2") inches; b) Did the California postal facility from which he was transferred permit him to wear pants of the length he wore to work the August 1986 evening.

of added safety hazard must be met by the Service. The Arbitrator was not persuaded that it has met this challenge.

The Service takes the position that the employees knew the rules and regulations. As is true of other facility (work) rules, safety rules must be adequately communicated to the employees in some manner.

The Arbitrator cannot find that in the particular circumstances, adequate notice of the dress rules had been given.

The evidence fails to show any definite announcement of a walking shorts policy whose length should be no more than two (2") inches above the knee.

It was not controverted that the pronouncement of policy was not circulated until July 23, 1987. The alleged infractions occurred August 6, 1986 (N4C-1A-C 36317), July 10, 1987 (N7C-1A-C 1535); and July 13, 1987 (N7C-1A-C 2100). There was no showing that the Service had provided actual or constructive notice of the dress code prior to the imposition of the "discipline," namely, the respective employees having been told to go home (not to work) and "request" or use their annual leave account (or lose a day's earnings).

Accordingly, in the instant circumstances, the Arbitrator concludes the Postal Service recredit the respective Grievants with the hours of annual leave for time they were not permitted to work.

AWARD

The grievances are sustained. The Service shall recredit the Grievants with the hours of annual leave for the time they were not permitted to work.

Arthur Talmadge
Arbitrator