

EXPEDITED ARBITRATION PANEL

Case: Schneider #3

IN THE MATTER OF THE ARBITRATION
BETWEEN:

EMPLOYER, Grievant: Nancy Grape
-and-
UNION,

BEFORE: Karen Bush Schneider

TYPE OF GRIEVANCE: Contract

AWARD SUMMARY

The grievance is granted. The Employer shall restore 8.0 hours of annual leave to Grievant's account.

Karen Bush Schneider, Arbitrator

ISSUES PRESENTED

Did the Employer violate the collective bargaining agreement in charging Grievant with 8.0 hours of annual leave for her absence on June 1, 1998, under the circumstances pertaining on that day?

The Grievant/Union responds, "Yes."

The Employer responds, No."

The Union has the burden of proof.

THE UNION'S/GRIEVANT'S CASE

Grievant was hired by the Employer in March of 1967 and has served as a Window Clerk, Box Clerk, and, most recently, as a Charge Clerk.

On May 31, 1998, the Someplace, Michigan area experienced a severe storm. High winds caused widespread property damage and resulted in power outages to more than 850,000 homes and businesses in the state.

Grievant was scheduled to begin work on June 1, 1998, at 4 a.m. She began calling the employer's facility Sunday evening, May 31, 1998, and again at approximately 2:40 a.m. on June 1st in order to learn whether she should report. She called more than a dozen times before she finally reached Supervisor Apple at approximately 9:30 a.m. Supervisor Apple confirmed that the power had been out at the Someplace facility and that the clerks who were scheduled to report "early" [before 7 a.m.] had been excused and sent home. According to the Grievant, Apple indicated that there was "no dire need for her to come in." Grievant then inquired regarding her compensation and what type of leave

would be allocated to her absence. Supervisor Apple indicated that he could not determine that at that time.

Despite the fact that Grievant never applied for annual leave to cover the absence on June 1, her annual leave account was charged 8.0 hours and her absence was designated as "unscheduled."

Clerks who reported for duty on June 1, 1998, prior to 7 a.m. were asked to sign a standby sheet showing their name and time of arrival. [Testimony of Mary Orange and Irene Raisin.] A number of employees were then excused, since the employer's facility did not have any power at the time and the employees could not run equipment or see their work. Such employees were paid without charge to annual leave or designation of LWOP.

Grievant maintains that she would not have been able to work on June 1, 1998, due to the power outage of the facility. This was confirmed by Supervisor, Robert Apple. Consistent with the Employer's compensation of other clerks who had an early report time, Grievant should have been excused and provided with administrative leave for her scheduled hours that day. Grievant contends that she has been a victim of disparate treatment by her Employer.

EMPLOYER'S CASE

The Employer maintains that the Union has failed to meet its burden of proof. It belatedly attempts to characterize this case as a disparate or inconsistent treatment case, rather than as an act of God case. Further, the Employer argues that it did not violate the collective bargaining agreement by charging Grievant 8.0 hours of annual leave for June 1, 1998, since Grievant failed to report and sign in as did other employees whom

the Employer compensated without charging their annual leave account. Lastly, the Employer argues that this case does not present an "act of God" event.

The Employer presented Supervisor, Robert Apple, who testified that he spoke with Grievant on June 1, 1998, at approximately 9:30 a.m. He told Grievant that there was "no dire need" for her to report. Clerks who had reported prior to 7 a.m. had been excused. However, employees who had reported for Tour 2 at 7 a.m. or after, had not been excused from their duties. Those employees waited in the swing room or on the dock until the power outage ended.

Supervisor Apple confirmed that Grievant would not have been deployed to another employer's facility installation to work at the time she reported. She merely would have sat in the swing room until she was excused. Supervisor Apple confirmed that clerks who reported for work earlier than 7 a.m. were sent home and compensated for their absence without regard to their annual leave or LWOP.

The Employer also called Pamela Peach, who was the Step 2 Designee for the Employer. She identified the Employer's Step 2 answer (see Joint Exhibit "2"). Ms. Peach confirmed that the Employer's criterion for payment of employees who were excused from their duties on June 1, 1998, was that they had to report to work and sign in on the standby sheet (Joint Exhibit "7").

OPINION

The Arbitrator has carefully reviewed the relevant provisions of the collective bargaining agreement and the ELM, as well as the testimony of the witnesses in this matter and the exhibits. The Arbitrator concludes that the Union has met its burden of proof in this case necessary to sustain the grievance. The Arbitrator will address the issues separately.

With regard to the Employer's claim that the Union belatedly raised the disparate or inconsistent treatment argument, the Arbitrator finds that there is sufficient language contained in the grievance chain to encompass this argument. (See Joint Exhibit "2.) In the Statement of Grievance, the Union alleged as early as June 17, 1998, that "[m]anagement has compensated other employees as prescribed by the ELM for this occasion, but clerk Grape found out on pay day (June 12, 1998), that 8 hours of annual leave [had] been taken from her balance without her knowledge or consent." The Step 2 answer to the grievance states that Grievant argued that "management has compensated other employees as prescribed by the ELM for this occasion." Further, in the Step 3 appeal, the Union alleged that "[m]anagement failed to grant this clerk administrative leave, while many other Tour 2 employees were granted paid leave." Alleging that Grievant was not compensated in the same manner as other clerks had been amounts to a disparate or inconsistent treatment argument. Thus, the Arbitrator is satisfied that the Union made this argument on a timely basis prior to arbitration.

Looking to the merits of the grievance, the Arbitrator is also persuaded that the Union has met its burden of proof. Regardless of whether one concludes that an act of God occurred or did not on June 1, 1998, this Arbitrator is persuaded that Grievant should not have been charged her annual leave for June 1, 1998, and that her absence on that date should not have been characterized as "unscheduled." It was unrefuted that Grievant, in the face of the severe storm which was experienced on May 31, 1998, and the damage that it caused, began, in good faith, to attempt to contact her employer's installation the evening of May 31, 1998, and repeatedly from approximately 2:40 a.m. until she was finally able to make contact with her Supervisor at 9:30 a.m. on June 1, 1998. She was

aware that the University campus which was adjacent to the employer's installation was closed due to the power outage.

Those employees who attempted to report for work prior to 7 am. on June 1, 1998, were instructed to sign a standby sheet and then were excused by the Tour 1 Supervisor. It was undisputed that if Grievant had actually physically reported for work on that date, she would have been excused. She would not have been deployed to another employer's installation. Thus, the only difference between Grievant and the clerks who received compensation without a charge to their accrued leave, was the lack of Grievant's physical presence at the Someplace employer's installation on June 1, 1998.

In at least one other case, an employee at the facility did not report, but received compensation for her absence on June 1, 1998, without a charge to her annual leave. [Employee Spencer] Thus, even if one could argue that the criterion of reporting to work in order to obtain an excused absence was a prerequisite to receiving paid leave without charge to a personal leave account, that argument fails in light of the Employer's inconsistent treatment of at least one other employee at Grievant's employer's installation.

AWARD

The grievance is granted. The Employer shall restore 8.0 hours of annual leave to Grievant's account.

Karen Bush Schneider, Arbitrator