

C# 01224

ARBITRATION PROCEEDINGS

Before

Peter DiLeone

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In the Matter Between:	:	
UNITED STATES POSTAL SERVICE	:	<u>OPINION AND AWARD</u>
Oak Forest, Illinois	:	Case No. C8N-4A-C-24004
-and-	:	Joanne Behrens
NATIONAL ASSOCIATION OF	:	
LETTER CARRIERS	:	
Branch No. 4016	:	
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APPEARANCES

For the Postal Service:

Michael Jordan--Labor Relations Executive
Etta Williams--Postmaster, Oak Forest
Ronald J. McClusky--Superintendent, Postal Operations

For the Union:

Norbert R. Dombrowski--Local Business Agent
William F. Mulcahy--Steward
Joanne Behrens--Grievant

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OPINION

The grievance in this matter was filed November 29, 1980 by the Union on behalf of the grievant, Joanne Behrens, and it relates to an incident which occurred on Saturday, November 1, 1980. The grievance states as follows:

"Sat. Nov. 1, 1980--Oak Forest P.O. Grievant was casing mail on Sat. Nov. 1, when she started to feel dizzy. This is due to a recurring sinus condition that the grievant has been suffering from since 1971. At this time grievant requested to be relieved of her duties so she could go home. Grievant was told by Mr. McClusky, Superintendent of Postal Operations, that "she was to take it slow."

Grievant, through past experience with her problem, felt that it would be unsafe for her to drive the vehicle. Grievant then filled out a sick leave request, Form 3971, and requested Mr. McClusky's signature. Mr. McClusky then requested that the grievant bring in a doctor's excuse upon her return to work.

Grievant is not on restricted sick leave. The Union is requesting that management adhere to the E and LR section 513.361 in all cases and in this instance, the Union is requesting that management in the Oak Forest P.O. pay the medical bills derived from the order given to the grievant that a medical excuse was necessary for her to return to work or to be granted sick leave."

On December 5, 1980 the Postmaster responded at the Step 2 level as follows:

"Subject grievance, discussed at Step 2, 12/5/80, is denied. Management requested medical documentation and has a right to do so when management believes medical certification is necessary. Ms. Behrens has been off frequently sick. She was talked to November 1, 1980 about sick leave usage and advised of the consequences. While she has not been placed on restricted sick leave at this writing, trying to permit her an opportunity to improve. The Superintendent is certainly within his right to require her to submit a doctor's statement in view of her statement that she was too sick to work and in view of her claim that she has had this medical problem for some time. Management thinks at this point that

since this is a recurring problem, the employee should have medical attention inasmuch as it is interfering with her attendance and job performance."

The matter in dispute was appealed to arbitration and finally came before the undersigned arbitrator on July 20, 1982 at a hearing in the South Suburban Mail Facility in Chicago, Illinois.

It must be stated at the outset that the sole issue in this matter is whether medical documentation was deemed necessary when the grievant became suddenly ill after she began casing mail on November 1, 1980.

It appeared to the Superintendent on the morning in question that the grievant was "faking" dizziness at the time, and that her explanation for wanting to leave early was unsatisfactory. The Superintendent believed it desirable for the protection of the interests of the Postal Service that a doctor's certificate be procured by the grievant to support the claimed illness; otherwise, the grievant would be charged with an absence without justifiable reason for such absence.

The Superintendent testified that the heavy mail accumulation on November 1, 1980 made it necessary to rely on the grievant's presence to case and deliver mail. To release the grievant from her carrier duties at this time would have required much "shifting" of personnel as well as assigning personnel to unnecessary overtime.

The grievant testified that she has had sinus problems,

and when infection sets in, her dizziness occurs. She testified that this annoyance was known to the Superintendent since she had taken time off for the same reason on occasions prior to the November 1 incident without so much as a "peep" out of the Superintendent on any of those prior occasions. She testified further that she couldn't understand why she had to spend time and money on this occasion to get a doctor's statement when it was obvious that she could not continue her work because of her dizziness, let alone driving her Postal Service vehicle after she had cased the mail.

The Union argued that as long as the grievant was not on "restricted sick leave," there was no basis for the demand to obtain medical documentation, and that even though it was obtained by the grievant on the very day she was ill, it should have been obvious to the Superintendent as it was to other employees including the Union steward that the grievant was ill.

The steward testified that the grievant could not perform her duties because of her condition on the day in question. He testified that it was clear to him that the grievant's sinus was acting up again.

The Union argued that it was unreasonable on the part of the Superintendent on this occasion to demand medical documentation, and that the "interests of the Postal Service," were not in the least jeopardized.

The Postal Service argued that the grievant had established

a pattern of absences which created serious doubts, at least in the mind of the Superintendent, that the claimed illness of the grievant was valid.

To support his position that the Superintendent acted justifiably, the Postal Service introduced the record of absences of the grievant which was claimed to be an "abuse of the privileges accorded employees who are in fact taken ill." These records, says the Postal Service, constituted the basis for the request to obtain supporting medical documentation.

The documentation requirements set forth under Section 513.36 of the "Employee and Labor Relations Manual," which Manual is incorporated by reference as part of the National Agreement, provides as follows:

"For periods of absence of three days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work is required only when the employee is on restricted sick leave. . . or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

It is clear that the part relied upon by Management in this section is that part dealing with the judgment of the Supervisor who deemed it necessary for the protection of the interest of the Postal Service to submit the grievant to the procurement of supporting medical documentation for any claimed illness.

The real question in this case narrows down to whether or not the grievant took sick after she started work on November 1, 1980 or whether or not she feigned illness. After

an examination of the evidence, this Arbitrator finds that the Superintendent was unreasonable when he made the decision to require the procurement of medical documentation. It wasn't as though the Superintendent was unknowledgeable about the recurring dizzy spells of the grievant. He knew that the grievant suffered from sinus disorders and he also knew that the grievant was absent from work on prior occasions for this very same sinus problem and on none of those occasions did he require medical documentation.

The evidence seems to indicate that the superintendent was concerned more about whether the grievant was abusing her sick leave privileges when she became ill at work on November 1, 1980. He believed that because she was absent a number of times before this occasion that the circumstance of November 1, 1980 was a feigned illness. The Superintendent testified that most of the prior absences preceded or followed an off day or holiday which raised in his mind the question of whether or not the grievant actually was ill on the day in question.

In the opinion of this Arbitrator, an employee can have a lousy record of attendance but still can become ill at work which would justify excusing him from work. This is what occurred in this case. It was clear in the mind of the Union steward that the grievant was unsteady on her feet as he took up her cause with the Superintendent. The evidence also supports the proposition that the Superintendent said the grievant looked

sick, but he didn't believe it. Instead, he drew the conclusion that she was feigning illness in order to go home. Further in this regard, the Union steward testified that he had sinus attacks and that the subjective analysis made by the grievant on the day in question was the same experiences he had suffered since he was afflicted with sinus problems as well. The Union steward further testified that he relayed this to the Superintendent in the hope that he would allow the grievant to leave without the need to procure medical documentation.

There is no question that under this contract, the Postal Service possesses the right to demand medical documentation when an employee is not on restricted leave, but it must be said that such a demand must be made when the Supervisor deems such evidence necessary. It must not be unreasonable. Sure, the Postal Service had a lot of mail to case and deliver on the day in question, but when it observed a sick employee on its hands, one who suffered from dizziness caused by a severe sinus problem, all of which could have endangered her if she were obliged to drive her vehicle under those circumstances, it can hardly be deemed either reasonable or prudent to subject her to the rigors of the day or procure medical documentation to prove her illness when it appeared that she actually was ill at the time she said she was.

AWARD

Based upon the evidence in this case, the undersigned Arbitrator has no alternative but to sustain the grievance.


Peter Dileone

Dated this 30th day of July, 1982
at Cleveland, Cuyahoga County, Ohio.