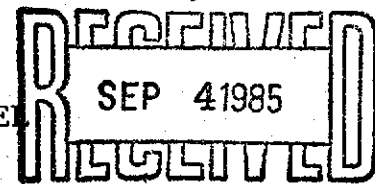


C# 05101

N.A.L.C. A.R.B.
Washington, D. C.



REGULAR REGIONAL ARBITRATION PANEL

Arbitration between

UNITED STATES POSTAL SERVICE
West Palm Beach, Florida

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS

Opinion and Award
pertaining to

SLN-3W-C-32151

B. Blackshire

Medical Certification

Arbitrator: J. Earl Williams

Hearing

The hearing of the subject matter in arbitration was held on December 10, 1984. However, the award was delayed in order to have it coincide with the second case, which was heard the same day but in which briefs subsequently were filed.

Appearances

For Management: Holloway Adair, Jr.
Labor Relations Representative
United States Postal Service
Southern Regional Office
Memphis, Tennessee 38166-0200

For the Union: Q. L. Pittman
Senior Regional Administrative Assistant
National Association of Letter Carriers
Post Office Drawer 450709
Atlanta, Georgia 30345

Background

The grievant reported to work on the morning of November 16, 1983. After being on the job a short while, he approached the supervisor with the indication that he was ill and would like to have leave for the remainder of the day. The supervisor told the grievant that, if he left on sick leave, he would need to provide acceptable documentation that he was unable to work. The grievant went to a doctor that same day, and, when he returned to work, he furnished a report of the examination he received. However, he filed a grievance, which indicated that he was not on restricted sick leave and should not have been required to go to a doctor. Consequently, the grievance requested that the grievant be paid \$50 for the doctor's visit and 20¢ per mile for twenty miles. There being no resolution of the grievance in the grievance procedure, it led to the subject arbitration.

Issue

Immediately prior to the start of the hearing, the parties agreed to the following statement of the issue:

Did Management violate the Agreement, when the grievant was required to furnish medical certification? If so, what is the appropriate remedy?

Primary Language Referenced by the Parties

(E&LR Manual, UX 1)

513 Sick Leave

* * *

513.3 Authorizing Sick Leave

* * *

.36 Documentation Requirements

.361 3 Days or Less. For periods of absence of 3 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 (see 513.36) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

Contentions of the Union

The Union feels that Management is in violation of the agreement by continuing to administer the present sick leave program despite the fact that it conflicts with the National Agreement. It does note that the Employee and Labor Relations Manual gives the supervisor discretion to require certification for an absence of three days or less, if he deems it to be in the interests of the Postal Service. However, the Union feels that it must be clear that the supervisor had reason to doubt the employee's story and/or bona fide reasons to require documentation. However, in the grievant's case, the Union indicated that he did not call in sick, despite the fact that some comments allegedly

were made about his willingness to work when there was a high volume of mail. He came to work, even though he was sick, and asked to be relieved only after it became clear that he could not continue to perform. Thus, the Union feels that there was not enough doubt for the supervisor to have reason to require certification.

Contentions of Management

Management points to the language of the E&LR Manual which gives it the responsibility for controlling unscheduled absences and gives the supervisor the discretion to require medical certification in an absence of less than three days when he deems it to be in the interests of the Postal Service. This discretion is used on a case-by-case basis. In the subject case, the past sick leave record of the grievant, as well as a number of comments which were made about the grievant's willingness to work on the days in question, caused the supervisor to be suspicious when the grievant contended that he was ill. Thus, it was not an arbitrary and/or capricious decision.

Discussion

The subject case is governed largely by Part 513.361 of the Employee and Labor Relations Manual. In fact, the Arbitrator has developed a standard for such cases as utilized by regional postal arbitrators. The relevant parts of that standard are referenced

on a case-by-case basis. While the Union referenced a settlement between the parties, whereby it was agreed that the attendance policy at West Palm Beach cannot be more restrictive than the language in the National Agreement (UX 2), it will not be in violation of the agreement if it falls within the confines of the standards as developed by regional postal arbitrators.

The Union was in agreement with the fact that 513.361 contemplates that there may be occasions when an employee, who is on restricted sick leave, will be required to furnish medical certification. This requirement is at the discretion of the supervisor when he/she "deems documentation desirable for the protection of the interests of the Postal Service." Of course, there must be some basis for the request, and the decision cannot be arbitrary and/or capricious. Arbitrators generally make a determination in regard to the reasonableness of the supervisor's requirement for documentation. The Union's point was well-taken, when it indicated that it must be clear that the supervisor had reason to doubt the employee's story. However, in making this decision, the supervisor may consider the past record of the grievant, including a review of the pattern of sick leave absences.

In the subject case, the grievant had been under the supervisor in question for only two weeks. There was very heavy mail, and it was not possible to get it all out. Thus, extra people

were being called in. The supervisor overheard comments from fellow employees of the grievant, the gist of which was that, when the grievant saw the heavy mail, he either would not come in or would leave sick. He then checked the grievant's attendance record. It showed that, within a period of approximately ten months up to the day in question, the grievant had had fourteen sick leave incidents, ten of which were in connection with a non-scheduled work day or Sunday. In addition, there were three isolated incidents of AWOL. Consequently, he left word with the relief supervisor the following day to require medical certification if the grievant called in or left sick. It was based upon the comments of other carriers and the sick leave pattern of the grievant. The relief supervisor, on his first day ever in that position, heard similar comments to the extent that the grievant would go home sick as soon as he saw the heavy work load. The grievant did see the heavy work load, and he did go home sick shortly after. Thus, it is clear to the Arbitrator that both supervisors had reason to doubt the grievant's story.

Award

Management did not violate the Agreement, when the grievant was required to furnish medical certification. The grievance is denied.

A handwritten signature in cursive script, reading "J. Earl Williams". The signature is written in dark ink and is positioned above a horizontal line.

J. Earl Williams, Arbitrator

Atlanta, Georgia

August 27, 1985