

Sustained 11/24/82

C# 02695

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF LETTER
CARRIERS

RE: SIN-3W-C-4642
Grievance of S. Nimphius
Tampa, FL

APPEARANCES

FOR THE UNION:	John S. Bailey, Local Business Agent
FOR THE POSTAL SERVICE:	Roland McPhail, Labor Relations Executive
ARBITRATOR:	John F. Caraway, selected by mutual agreement of the parties

On December 31, 1981 the grievant, a regular letter carrier, suffered a dog bite. This was at about 3:00 PM. He stated that the wound was bleeding so he went to his mother-in-law's house. She works for a hospital. She dressed the wound. He then returned to the postal facility and reported the dog bite to Supervisors Cutro and Wilson. Mr. Wilson called the Public Health Service and was informed that if Mr. Nimphius had a tetanus shot within the past year, no further medical attention was required except for dressing the wound. Mr. Nimphius had, in fact, received a tetanus shot within one year of December 31, 1981.

During their discussion, Mr. Cutro suggested to Mr. Nimphius that he go see a doctor. Mr. Nimphius replied that there was no need to see a doctor because he had had the tetanus shot and the wound had been dressed. Mr. Wilson then instructed him to go home. January 1, 1982 was a holiday. On January 2, 1982 Mr. Nimphius reported for work. While he was casing his mail, he told Supervisor Solar that he was unable to continue working because his

leg was stiff. Mr. Nimphius stated that he asked Mr. Solar for a CA-16 to receive medical attention. Supervisor Solar replied that it was necessary for Mr. Nimphius to see Mr. Wilson on Monday which was January 4, 1982 in order to get these forms. January 3 was Sunday and an off day. On Monday, January 4 Mr. Nimphius stated that his leg was sore and that he was unable to work. He called in sick. On Tuesday, January 5 he was scheduled off. He reported for work on Wednesday, January 6. On that day Mr. Solar gave Mr. Nimphius a Form CA-16. Mr. Nimphius then saw a doctor on January 6 and he was off duty for twelve (12) days.

The instant grievance was filed asking for 11.62 hours of continuation of pay [hereinafter referred to as COP]. This was broken down into a request that he be credited 6.41 hours of sick leave and paid 5.21 hours at his straight time rate.

ISSUES

1. Is the grievance arbitrable?
2. Did the Postal Service violate the National Agreement by refusing to pay the grievant 11.62 hours of COP?

ARGUMENT

I. Arbitrability

The Postal Service maintains that the sole authority for deciding COP for an on-the-job injury is the Office of Workmen's Compensation [hereinafter referred to as "OWCP"]. The findings of this agency are final and binding and not subject to either judicial review or review by an Arbitrator. In the instant case Mr. Nimphius was denied COP for the time period in question because he failed to produce any medical evidence to

support that he was disabled for work due to the injury suffered on December 31, 1981. The grievant did not appeal this determination by the Department of Labor, Workmen's Compensation Division. The issue is now closed and the Arbitrator has no authority to make a determination adverse to that ruling.

The Union argues that it is not asking the Arbitrator to interfere with the ruling of the Office of Workmen's Compensation. The Union points out that an employee is entitled to 45 days of COP unless his claim is controverted by the Postal Service. No such controversion occurred in the instant case. The entire basis of the Union's position is that Mr. Nimphius was unjustly denied 11.6 hours of wages and sick leave because the Postal Service failed to provide him with Forms CA-1 and CA-16 so that he would be eligible for COP. The thrust of the Union's grievance is the failure of the Postal Service to provide the necessary forms for the grievant to receive medical attention which then would have entitled him to COP.

II. Merits

The Union contends that it is the responsibility of the Postal Service to provide the necessary forms to an employee to seek medical attention when on-the-job injury occurs. A dog bite is considered a medical emergency. This requires the Postal Service to issue a Form CA-16 within 48 hours.

On December 31, 1981 Mr. Nimphius reported the accident to his immediate Supervisors. These Supervisors did not provide him with Form CA-1 and Form CA-16 as Postal Service rules and regulations require. Supervisor Cutro did not instruct the grievant to get medical attention. He only suggested to the

grievant that he get medical attention. The Union argued that Supervisor Cutro had a greater obligation than merely suggestion but he should have, in fact, given him the forms at that point.

The Union shows that on January 2 Mr. Nimphius could not complete his shift, in fact, asked Supervisor Solar for the necessary forms to get medical attention. Mr. Solar refused to provide the forms saying the matter had to be decided by Supervisor Wilson.

The Postal Service shows that Supervisors Cutro and Wilson told Mr. Nimphius on at least three occasions that he should report to a doctor or a hospital to receive treatment for the dog bite. Mr. Nimphius refused to seek that medical treatment nor did he request Forms CA-1 and CA-16. This was his responsibility and not that of the Postal Service. Mr. Solar denied that Mr. Nemphius requested a CA-1 Form on January 2 or on any other date.

Mr. Nimphius knew that he was required to secure Forms CA-1 and CA-16 in order to file a claim for COP for an on-the-job injury. He had been a Shop Steward for two or three years, filed numerous grievances and was well aware of that procedure.

DECISION

The evidence shows that Mr. Nimphius suffered a dog bite injury on December 31, 1981. He reported the injury to Supervisors Wilson and Cutro. They suggested that he see a doctor. His reply was that he had already had a tetanus shot and the wound had been treated. Thereupon, Mr. Wilson

advised him to go home. It is at this point that inquiry must be made as to whether the Supervisors acted reasonably in advising Mr. Nimphius of his rights to assure protection of his pay. The Employee and Labor Relations Manual [hereinafter referred to as ELM], Section 544.1 states that the Supervisor must "provide the employee Form CA-1 or a Form CA-2." In the event of a traumatic injury the Supervisor must advise the employee that he has a right to select COP of 45 days or use annual or sick leave. He also must advise the employee whether COP would be controverted. The Supervisor then is required to send the employee for completion of Form CA-16.

The Arbitrator believes that the Supervisors did not carry out their duties to the full extent required by the provisions of ELM. Mr. Nimphius had just suffered a severe traumatic injury. The Supervisors admitted that it was a nasty wound. Eventhough the grievant did not wish to go to a doctor, certainly it was incumbent upon the Supervisors to advise Mr. Nimphius that he should fill out a Form CA-1 and CA-16 in order to assure continuance of pay. The provisions of ELM require the Supervisor to do this. The language of ELM is not phrased in a discretionary manner and, that is, provide the forms to the employee if he requests them. Certainly some employees will have no knowledge that the execution of such forms is necessary in order to have pay security and that Workmen's Compensation could not be provided unless the employee sees a doctor and has Form CA-16 executed. Under the mental upset of just suffering a traumatic injury, this employee could not be expected to remember that he must secure these forms and execute

them in order to assure COP. It is for that reason that the ELM imposes that responsibility upon the Supervisor.

The next day, January 1, 1982 was New Year's Day and a holiday. On January 2, 1982, a Saturday, Mr. Nimphius reported to work. He advised the Supervisor that he was unable to continue casing mail. He stated that he asked the Supervisor for a Form CA-16 to see his doctor. Mr. Nimphious testified that Supervisor Solar said he could not issue this form until he checked with Mr. Wilson on Monday, which would be January 4. It is difficult for the Arbitrator to see why Supervisor Solar could not give the employee the form. Even if the testimony of Supervisor Solar was deemed more credible, that is, that Mr. Nimphius did not request a Form CA-16, when the employee said he was unable to work because of his leg condition, Supervisor Solar had the responsibility to see that the employee had the necessary forms to see a doctor. The authority again is ELM, Section 544.1.

Examining the Form 3971 dated January 2, 1982 signed by Supervisor Solar, it is noted that the employee requested COP which was denied because "no medical evidence of disability". Had the Form CA-16 been given to Mr. Nimphius at that point, certainly the employee would have seen his doctor, have the form executed and assured payment of COP. When he finally saw a doctor on January 6 this placed him off duty for twelve (12) days of the dog bite, this was one week after the actual incident and some four (4) days after he attempted to return to full time work on January 2, 1982. Even if he had seen the doctor on January 2, 1982 the doctor could have made a sufficient statement in his medical certificate which would have covered some of the loss time

prior to January 2, 1982. It certainly would have protected the grievant insofar as his loss pay on January 2, 1982 was concerned.

This decision does not involve a review of the determination of the Department of Labor, Workmen's Compensation Division, in its denial of Workmen's Compensation to the grievant. This determination is not subject to review by either a court or an Arbitrator. The sole question in this dispute is whether the failure to provide the Office of Workmen's Compensation with Forms CA-1 and CA-16 was the fault of the Supervisors or was through the negligence of Mr. Nimphius. If the Supervisors had carried out the responsibilities imposed upon them by ELM, Section 544.1 then these forms would have been supplied to Mr. Nimphius. Eventhough Mr. Nimphius refused to see a doctor, the Supervisors were mandated to supply him with the necessary forms in order to assure that his payrights would be protected. It is difficult to believe that Mr. Nimphius would not have gone to a doctor and had the necessary forms filled out if he realized that his pay would be jeopardized if he failed to do so.

The conclusion is that the loss of 11.62 hours in pay was caused primarily by the failure of the Supervisors to provide Mr. Nimphius with Form CA-1 and Form CA-16. Had the forms been supplied to him which required execution in part by a physician, then the right to COP would have been preserved by the grievant. Since this loss of pay resulted from the fault of the Supervisors, a fair and just decision requires the Postal Service to make Mr. Nimphius whole for his loss of benefits.

AWARD

The Union grievance is sustained.


I.

The grievance is arbitrable since there is no review of the determination of the Department of Labor, Office of Workmen's Compensation involved.

II.

The Postal Service violated the National Agreement by failing to provide the grievant with Form CA-1 and Form CA-16 which had the effect of making him ineligible for COP.

The Postal Service shall credit Mr. Nimphius with 6.41 hours of sick leave and pay him 5.21 hours of his straight time pay for loss of wages.



IMPARTIAL ARBITRATOR

New Orleans, Louisiana

November 24, 1982