

C# / 8462

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration (GRIEVANT: John Lewis)
between (POST OFFICE: Hamburg, NY)
UNITED STATES POSTAL SERVICE (CASE NO: (Management Case No.)
and (B94N-4B-C-9608306)
NATIONAL ASSOCIATION OF LETTER (NALC Case No.)
CARRIERS, AFL-CIO (162-96 / GTS 11821)

DATE OF HEARING: April 17, 1997

BEFORE: ARBITRATOR Thomas F. Sharkey

APPEARANCES:

For the U.S. Postal Service: Francis MacNamara, Advocate
Lori Jablonski, Supervisor Customer Relations

For the NALC: Donald Karp, Advocate
John Lewis, Grievant/Witness

Place of Hearing: Hamburg, NY

AWARD:

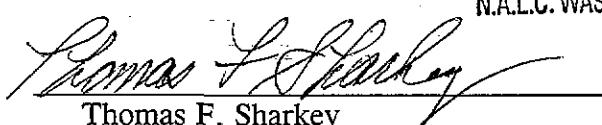
The U.S. Postal Service did violate the National Agreement when it required grievant to provide documentation for use sick leave for dependent care. See text for details and remedy.

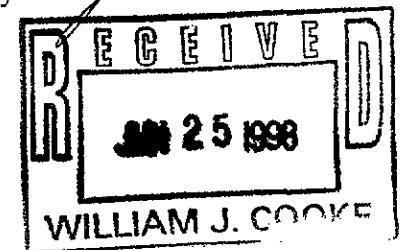
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JUL 17 1998

Date of Award: June 19, 1998

CONTRACT ADMINISTRATION UNIT
N.A.L.C. WASHINGTON, D.C.


Thomas F. Sharkey



ISSUE

The parties agree that the issue before the Arbitrator is as follows: "Did the U.S. Postal Service violate the National Agreement when it required documentation for his (grievant's) use of dependent care leave on May 21, 1996? If so, what is an appropriate remedy?

BACKGROUND

At 6:50 a.m. on May 21, 1996, grievant John Lewis called the Hamburg Post Office and reported that his son Ryan became ill on the way to his day care center and threw up in the family car. Grievant normally drops off his son at the day care center and then proceeds to work. Because his son became ill, he returned home with him after calling to report off via his personal cellular phone. At approximately 7:30 PM, he received a phone call from a time clerk who told him he would need documentation. The next day, at the Post Office, grievant authored a note explaining his absence the day before and requested family care leave. Supervisor Lori Jablonski refused, but approved use of annual leave instead.

Grievant subsequently provided a note written by someone at the day care center (Joint Ex. 2, p. 12) attesting that Ryan Lewis had vomited on his arrival at the day care center and that grievant took his son back home. This letter was accepted and the sick leave for dependent care was granted. Nonetheless, the refusal to grant Family Care leave without documentation was grieved by the NALC. The issue was unresolved throughout the grievance procedure and the undersigned, a current member of the Northeast Regional Regular Panel

was assigned to resolve the dispute. At the hearing, both sides had full opportunity to examine and cross examine witnesses, all of whom offered sworn testimony. Both parties submitted documentary evidence in the form of exhibits and offered opening and closing remarks. The case file was closed at the conclusion of the hearing.

POSITION OF THE PARTIES

The union argues that there was no need for grievant to provide any documentation to substantiate that his son became ill and grievant was required to provide care for him, thus requiring grievant to be absent from work. Grievant has an outstanding attendance record and has never been on restricted sick leave. The ELM, incorporated into the National Agreement via Article 19, proclaims that an explanation of the reason for absence provided by a carrier for absences less than three (3) days is sufficient for the granting of sick leave. Supervisor Jablonski was wrong for denying the sick leave request and overreacted in her narrow definition of the sick leave policy at the Hamburg, New York Post Office. Grievant was embarrassed when forced to seek a note from the day care center to support his story that his son became ill upon arrival at the day care center. Moreover, he was inconvenienced in terms of time and effort when forced to return to the center for corroboration of his son's illness.

The union maintains that the Service has admitted Jablonski was wrong in denying grievant's request for sick leave for dependent care and was forced to approve it subsequently. As a matter of remedy, the union asks:

- (1) That a letter of apology be sent to the Hamburg Day Care Center.
- (2) Management must return the two (2) notes to grievant.

- (3) Pay grievant for time and mileage to secure the note from the Day Care Center.
- (4) Award grievant 8 hours of administrative leave.

The union urges the arbitrator to find in their behalf and sustain the grievance.

The Service posits that it was perfectly appropriate for Supervisor Jablonski to require documentation before approving grievant's request for sick leave for dependent care.

According to the ELM, 511.45 (Joint Ex. 6) Employee Responsibilities:

"Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required."

Moreover, clearly grievant was treated fairly. Once he provided the documentation requested by Jablonski, his request for sick leave for dependent care was granted, so there is no injury to be treated here. For one day, grievant was listed as being on annual leave. That was adjusted to sick leave upon presentation of the note from the day care person.

As to the remedy sought by the union, the Service views it as punitive. The notes were given to the Service by the grievant and are now the property of the Post Service. His request that they be returned should be denied by the arbitrator as it was by the Service. All other remunerations requested by grievant should be likewise denied. The Service urges the arbitrator to reject the grievance in its entirety.

DISCUSSION AND FINDING

The fact that the grievant's time and attendance record was adjusted to reflect use of sick leave for dependent care, rather than annual leave, for May 21, 1996 does not necessarily

create a "no harm no foul" scenario. Nor does it establish that the supervisor was wrong in her initial rejection of the request and her requirement for documentation. However, both of those conditions must be considered along with other factors extant in this case. The ELM 513.361 --3 Day or Less - seems to be the authority claimed by the Service in denying. It reads:

"For period of 3 days or less supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity to work is required only when the employee is on restricted sick leave (See 513.37) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

Grievant's absence falls into the category of 3 days or less. He informed the Service that he would be in work the day following his son's illness, May 22, 1996. Grievant is not now or never was on restricted sick leave so the requirement for documentation of his incapacity to work is not necessary under that section. Supervisor Jablonski could have accepted his statements, first verbal, then written by him explaining his absence, although she was not required to do so. The final sentence of the paragraph provides yet another option, that is ". . . or when the supervisor deems documentation desirable for the protection of the interest of the Postal Service."

However, if one invokes that portion of the ELM, one must then explain what interests they were protecting and what factors or conditions drove one to conclude that something was woefully amiss. Nothing in grievant's record suggests that he is or was a time abuser. Quite the contrary is true.

There is no question that being off from work for a day to care for a child who

becomes violently ill on short or sudden notice qualifies for use of sick leave for dependent children. The question in Supervisor Jablonski's mind seemed to be whether it was necessary for grievant to provide that care or whether his wife was available to tend to the sick child, if in fact the child was ill at all. As it turned out, the child's mother was already at work at the time the child became ill enroute to the day care center.

At issue is only whether or not the decision of Jablonski to withhold approval of sick leave for dependent care without documentation was a violation of the collective bargaining agreement. Her claim that her decision was based on the "needs of the Service" in that grievant's absence made it necessary for her to provide a replacement for him on relatively short notice, falls significantly short of my interpretation of the language of ELM 513.361.

First off, there was no refusal to grant time off to grievant. Jablonski authorized annual leave thereby allowing grievant to be absent that day. Any replacement or route coverage that would have inconvenienced the Service that day by granting sick leave for dependent care was experienced anyway since Jablonski authorized annual leave to grievant. Secondly, at work, the Service was inconvenienced only to the point of rescheduling other carriers to cover grievant's route for one day, with the knowledge that grievant would be present on the following day. Avoiding inconvenience does not rise to the level of protecting the interests of the Postal Service.

Moreover, there was no real reason on the record to suspect that grievant's account of his son's illness and thus the need for sick leave for dependent care was a fabrication. Grievant's time and attendance record is an admirable one, not one that would give rise to

suspicions about his absence.

The requirement for documentation from the day care center is a little troubling. What if grievant's son had become ill earlier in the trip to the day care center and grievant had decided to return home immediately instead of proceeding to the center? Depending on how far he was from either location, it could have been a logical call. Would his inability to provide substantiation from an eyewitness have negated his contractual right to sick leave for dependent care? I think not.

Finally, the request for sick leave was for one day, clearly within the bounds of authority of the supervisor to grant by accepting the employee's statement. Grievant is not now or never was on a restricted sick leave program. I can only conclude from a review of the entire record before me that Supervisor Jablonski simply did not understand, or did not consider, the full implications of 513.361. Based on the aforewritten, I find and make the following

AWARD

The U.S. Postal Service did violate the collective bargaining agreement when it required documentation for grievant's use of sick leave for dependent care.

THE MATTER OF REMEDY

The union asks for a four (4) fold remedy that includes the following:

1. A letter of apology to the Hamburg Children's Center.
2. That the Postal Service return the two (2) notes to grievant.
3. That grievant be reimbursed for time and mileage to acquire the note from the day care center.
4. That grievant be awarded eight (8) hours of administrative leave.

Postmaster Patterson in his Step 1-A Grievance Appeal opines that grievant was not denied the sick leave nor discouraged in any way with using the leave. Further Patterson describes the remedy requested by the union as inappropriate and offensive.

After careful consideration of the arguments presented by the parties, the arbitrator finds the following:

Grievant was discouraged from use of sick leave for dependent care, notwithstanding Postmaster Patterson's expression to the contrary. In fact, his request was denied until such time as he provided justification that satisfied Supervisor Jablonski, a position that I have already determined to be a contract violation. However, the union's request for a letter of apology is unsupported. The arbitrator is not aware of any inconvenience to the Center nor does the record support any need for an apology.

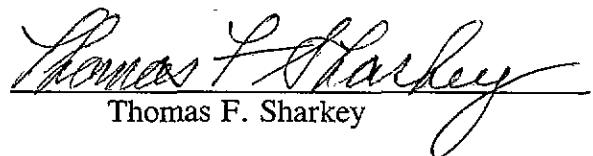
Similarly, the request that the notes be returned to grievant is also denied. He presented the first one written by himself and the second from the day care center to his supervisor. At that point, the correspondence became the property of the U.S. Postal Service.

Grievant is most certainly entitled to such time and mileage reimbursement as was necessary to secure the letter of documentation from his supervisor. The record does not reflect a specific amount of time or distance necessary to complete this task; however, the arbitrator assumes that one (1) hour should be sufficient to go to the center from his home or post office, secure the note and return to his home or post office. Since that hour was outside of his regular shift, it will be paid at the rate of time and one-half. The arbitrator must leave it to the parties to determine the number of miles traveled and compensate grievant at the current

mileage rate.

Finally, the arbitrator must address the extent to which any further redress is appropriate. I recognize the concern of the Service as expressed by its advocate and am wary of issuing harsh punitive awards. However, I also feel strongly that the decision that only finds the other party wrong and offers no or exceedingly little penalty provides no deterrent at all to future violations. "You shouldn't do that again" seems woefully inadequate in the face of the record. Therefore, I find that grievant should be granted four (4) hours of administrative leave.

Date of Award: June 19, 1998


Thomas F. Sharkey