

IN THE MATTER OF AN ARBITRATION

BETWEEN

National Association of Letter Carriers
Branch 181

AND

United States Postal Service
Austin, Texas

Case No. S1N-3U-C 4014
Grievant: Enrico Reedy
Hearing date: September 27, 1983
Arbitrator: Elvis C. Stephens

APPEARANCES

For the Union: Don Varenhorst

For the Employer: Roland McPhail

ISSUE

Did management violate the National Agreement or Part 513.361 of the Employee and Labor Relations Manual when it required the grievant to furnish medical documentation for his sick leave request on January 7, 1982? If so, what is the proper remedy?

INTRODUCTION AND BACKGROUND

On September 27, 1983 there was an arbitration hearing on the above referenced grievance at the Main Post Office, Austin, Texas. The case had been assigned to the arbitrator through the procedures agreed upon by the parties. During the hearing the parties had opportunity to introduce evidence and present and cross examine witnesses. Post hearing briefs were filed. The union advocate was given an extension for the filing of his brief due to a death in his family. The briefs were received by November 21, 1983.

On January 7, 1982 the grievant reported to work as scheduled at the South Austin Station. He informed the supervisor that he was nor feeling well, but could case his route before leaving. He filled out a 3971 requesting sick leave after casing, and this was approved. Shortly after break time, the grievant filled out another 3971 requesting sick leave then. The supervisor at that time (Bushover) questioned him about this request. There was a discussion about the grievant filing a CA-1 or CA-2 concerning the cold and drafty conditions at the office. (The grievant's

case was nearest the North wall.) Supervisor Bushover required the grievant to obtain medical certification and return it to the station. A grievance was filed protesting this request. The parties were unable to resolve the grievance, and stipulated that it was properly before the arbitrator for a decision.

POSITION OF THE UNION

The union agrees that management has the right to require medical documentation, but only if the employee is on restricted sick leave, or when the supervisor deems it desirable for the protection of the interests of the Postal Service. However, supervisors cannot be arbitrary in their requests for documentation.

Carrier Reedy has 18 years with the Postal Service, but has never been placed on restricted sick leave, nor has been accused of abusing sick leave. When he reported at 7:00 a.m. he informed Supervisor Lara that he was ill, but would attempt to case his mail. A 3971 was completed. Shortly after his break, the grievant became worse, and he filled out another 3971 and told Supervisor Bushover that he was going home sick. However, Bushover required the grievant to obtain a fitness for duty examination. There was some discussion concerning this exam and Department of Labor forms, then the grievant left for the doctor's office. He returned two hours later with the documentation. His medical bills totaled \$57.50, and he was told to remain off work for one week.

The union contends that the supervisor did not have just cause to require the medical documentation. Arbitrator Seidman, in case No. C8N-4B-C 22840, set forth criteria which can be used to determine if the "protection of the interests" clause is met. In the instant case there was no record of sick leave abuse; the grievant had over 900 hours of accumulated sick leave; there was no indication of any absenteeism at the station that day; there was no indication of any problem in regard to the mail flow; and the supervisor did not have any good reason to deny the request for sick leave.

The supervisor's testimony and statements in the grievance documents are inconsistent. The supervisor described the grievant as being in a jovial mood in an exhibit, but at the hearing he testified that the grievant was no different than what was usual. The supervisor admitted that he was not medically trained, thus could not be expected to recognize the symptoms of Bronchitis.

Arbitrator Bowles, in case No. C8N-4F-C 13163, sets forth criteria which also can be used to determine if the Postal Service has operational difficulties sufficient to require an employee to document his request for a sick leave. None of the difficulties were present at the South Austin Station on January 7, 1982.

Supervisor Bushover agreed that the grievant's case was the nearest to the North door, and it was cold and drafty in that location. It is

certainly likely that such conditions would have an effect on a person with Bronchitis.

Management instructed the grievant to report back to the station on the same day with the medical documentation. Therefore, he should have been carried in a pay status for the time required to obtain the documentation. The requested remedy of pay, reimbursement of medical costs, and restoration of sick leave is appropriate and has been granted by other arbitrators.

POSITION OF THE EMPLOYER

The employer contends that the exhibits and testimony of Supervisor Bushover supports its case. The union advocate was attempting to introduce new evidence and contentions at the hearing, but should be prohibited from doing so because of Article 15.

Part 513.361 of the E&LRM gives management the discretion to require medical documentation when there exists reason to believe that the employee is not incapacitated for duty. Supervisor Bushover had doubt considering the circumstances of this case. It is true that if the grievant had called in before his tour, Bushover would have probably have accepted his word and not required documentation.

There was no evidence to suggest that management abused its discretion provided for under Part 513.361. Several arbitrators have upheld management in similar cases (copies of cases were enclosed with the brief). The fact that the grievant was actually sick does not show that management's action was arbitrary. The critical issue is the facts available to the supervisor when he made the decision that documentation was required.

DISCUSSION AND OPINION

The subject of medical documentation for sick leave requests has been a constant source for grievances and arbitration cases between the unions and the Postal Service. This is due in part to the imprecise language of Part 513.361 of the E&LRM, as pointed out by several arbitrators. Nearly all arbitrators agree that the Postal Service has the right to require documentation when it deems it desirable to protect the interests of the Service, but such decision shall not be arbitrary or capricious. It is also generally accepted that the facts available to the decision maker at the time of the decision are controlling--the subsequent medical report should have no weight in determining if the decision was proper.

Although the union contends that the grievant was sent for a fitness for duty examination, the arbitrator does not agree. The supervisor appears to have questioned whether or not the grievant was unfit to continue working that day. However, there was none of the procedures and paperwork completed which are necessary to order a fitness for duty exam.

The remaining question is whether the supervisor's decision to require medical documentation was arbitrary or capricious, or was justified under the provisions of Part 513.361 of the E&LRM. It is true, as the management advocate states, that many arbitrators have upheld the employer's right to require documentation. However, such requirement must be based on the grievant's past record of abuse, or deemed desirable for the protection of the interests of the Service.

The employer advocate included several arbitration cases with his post hearing brief to support his contentions. This arbitrator does not have any problems with accepting any of the cases. However, the fact situation in each of these cases is different from that in the instant one. For example, Arbitrator Dobranski, in case No. C8C-4B-C 22183, ruled that the request for documentation was proper given the fact of the grievant's sick leave record, and the shorthanded situation on the workroom floor. In case No. C8M-4F-C 13155, Arbitrator Seidman ruled that the Service did not abuse its discretion by requiring documentation when the service of the grievant was vitally needed, and he requested off at the busiest time of the tour.

The grievant was trying to make a three day weekend by using sick leave, after having been denied a change of schedule for the same purpose, in case No. S1N-3U-C 473, according to Arbitrator Holly. In a similar case (N1C-1J-C 2277), Arbitrator Robins ruled that the Service had the right to require documentation when the grievant requested sick leave on December 30, after having been denied annual leave for December 31. Arbitrator Krimsly, in case E8C-20-C 1666, ruled that the Service had good reason to require all employees requesting sick leave prior to a holiday to provide documentation.

Arbitrator Foster, in case No. S1N-3U-C 4359, ruled that a supervisor had good reason to require documentation from a grievant who refused to work overtime, claiming that he had a doctor's appointment that day and each day the rest of the week. In case No. C8C-4J-C 15600 Arbitrator Cohen ruled that the supervisor was within the contract by requiring documentation from a grievant who had a known injury and some 59 instances of sick leave or other types of leaves in about 15 months. It appeared that the request in question was for the purpose of avoiding overtime.

In case No. C8N-4E-C 13215 Arbitrator Walt held that the supervisor was justified in requiring documentation from an employee with a history of sick leave abuse. In a different type of situation, Arbitrator Searce, in case No. S1N-3U-C 1245, ruled that the Service had the right to require the grievant to prove his fitness for duty. He had been injured during his off days, and had requested sick leave for two days, which had been granted. When he returned to work wearing a back brace, he could only work a couple of hours. When he requested sick leave, the supervisor required documentation that the employee could meet the requirements of his job without aggravating his problems.

When comparing these cases with the instant one, it is apparent that there are substantial differences. In Reedy's case there was no evidence of sick leave abuse, or even any allegation of such by management. Also,

there was no reason to suspect that the absence of Reedy would have caused the station to be short of employees. There had already been a Form 3971 approved for the grievant to leave after casing his mail.

Supervisor Bushover testified that he required the documentation because he did not think Reedy was ill. This conclusion evidently was based on the fact that Bushover saw Reedy during the coffee break talking to other employees, and not appearing ill. There is no indication that Bushover ever asked Reedy to indicate the type of illness or anything else about his condition. Bushover did admit that if Reedy had called in and requested sick leave, it probably would have been approved.

In this situation the grievant did not have a history of sick leave abuse and there was no indication that the absence of the grievant would have caused problems at the station. The supervisor's only reason given to require documentation was that he did not think the grievant was ill. However, there was no reason, based on the grievant's record, to doubt the grievant. It appears that it would have been reasonable for the supervisor to have requested the grievant to have described his illness if the supervisor thought that he did not look ill. Thus, the supervisor's decision under the circumstances appears to this arbitrator to have been arbitrary and not justified by the facts of the situation.

The grievance appeal to Step 2 requests reimbursement of medical expenses, two hours of administrative leave, and the reinstatement of two hours of sick leave. Since the requirement of documentation was improper, and the supervisor required the grievant to return the documentation that day, rather than upon returning to work as seems to be usual, the arbitrator believes that the requested remedy is appropriate. There was no contention by management that Bushover had not required the documentation to be returned that day, as the grievant had testified.

AWARD

The employer violated Part 513.361 of the E&LRM when it required the grievant to provide medical documentation for a requested sick leave. The grievant shall be reimbursed for the cost of the medical visit, paid for two hours administrative leave, and have two hours sick leave restored to his record.

Date: December 21, 1983

Denton, Texas

Elvis C. Stephens

Elvis C. Stephens, Arbitrator