C#03543

VOLUNTARY LABOR ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

UNITED STATES POSTAL SERVICE,
BETTENDORF POST OFFICE,
BETTENDORF, IOWA 52722

and

NATIONAL ASSOCIATION OF LETTER CARRIERS,
BRANCH NO. 3811,
BETTENDORF, IOWA 52722

Case No. C8N-4M-C-19875
ARB. No. 8255

GRIEVANCE OF:

JOHN DETTMERING (ALLEGED IMPROPER DENIAL OF REQUEST FOR FOUR HOURS SICK LEAVE TIME FOR DENTAL APPOINTMENT-CLAIM OF UNREASONABLENESS AND ABUSE OF DISCRETION-TIMELINESS OF FILING OF GRIEVANCE)

OPINION AND AWARD

APPEARANCES:

For The Union:

Charles J. Coyle, National Business Agent, NALC
Ed Brown, Local Business Agent, NALC
John Dettmering, Grievant
Michael Blossom, Carrier, Assistant Steward and Witness
Kevin Isaacs, Carrier
Stan Zelnio, Personnel Manager, Specialist Senior
(Adverse Witness)

For The Employer:

Rodney A. Stone, Labor Relations Executive
Richard L. Ross, Supervisor, Mails & Delivery
Stan Zelnio, Personnel Manager, Specialist Senior
(Union's Adverse Witness)

ELLIOTT H. GOLDSTEIN
Arbitrator
29 South LaSalle Street, Suite 800
Chicago, Illinois 60603
(312) 444-9699

I. INTRODUCTION.

The hearing in this case was held on Wednesday, April 21, 1982, at the Post Office, 933 West Second Street, Davenport, Iowa, before the undersigned Arbitrator duly assigned by the parties pursuant to the Rules of the United States Postal Service Regular Regional Level Arbitration Procedure. At the hearing, both parties were afforded full opportunity to present such evidence and arguments as desired, including an examination and cross-examination of all witnesses. The Postal Service asserted a threshold issue questioning the timeliness of the filing of this grievance (a claimed procedural arbitrability defect). Both parties stipulated at the hearing as to this Arbitrator's jurisdiction and authority to otherwise hear the matter and issue a final and binding decision. No formal transcript of the hearing was made and each of the parties waived the filing of a post-hearing brief. The hearing was thereupon closed on April 21, 1982.

II. STATEMENT OF ISSUES.

1. Is this grievance timely under Article XV of the 1978 National Agreement (Jt. Ex. 1)?

2. Did Management violate Articles III, X and XIX of the 1978 National Agreement by unreasonably denying the grievant sick leave as requested?

III. STATEMENT OF THE AWARD.

The grievance is hereby denied in its entirety.

IV. PERTINENT CONTRACTUAL PROVISIONS.

ARTICLE III

MANAGEMENT RIGHTS

The employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;
B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
C. To maintain the efficiency of the operations entrusted to it;
D. To determine the methods, means, and personnel to which such operations are to be concluded;
E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE X

LEAVE

...Section 2. The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours, and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

ARTICLE XV

GRIEVANCE-ARBITRATION PROCEDURE

...Section 2. Grievance Procedure--Steps
Step 1: (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its

cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. ...

...(c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) day period. ... (Emphasis Supplied)

...Step 2: (a) ...
...(b) Any grievance initiated at Step 2, pursuant to Article II of this Agreement, must be filed within 14 days of the date on which the Union or the employee first learned or may reasonably have been expected to have learned of its cause. ...

ARTICLE XIX

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions. Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article) they may then submit the

> issue to arbitration in accordance with the arbitration procedure within thirty (30) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

In addition, the Union cited to this Arbitrator, Part 513 of the Employee and Labor Relations Manual (E&LM), Sick Leave. The particular parts of the E&LM pointed out to the Arbitrator as being crucial to the resolution of this dispute are Part 513.1, Purpose, and Part 513.3, Authorizing Sick Leave. Because of the nature of the substantial documentary evidence presented and the testimony actually presented at the hearing, these sections will not be set forth in full but merely referenced to in the manner noted.

V. STATEMENT OF THE GRIEVANCE.

> PURSUANT TO ARTICLE XV OF THE NATIONAL AGREEMENT, WE HEREBY APPEAL TO STEP 2, THE FOLLOWING GRIEVANCE VIOLATION: INCLUDING BUT NOT LIMITED TO NATIONAL (ART. & SECT.)
>
> X, Sect. 2, sub. 510, local (Art. & Sect.)
>
> Other Grounds: 513.1, 513.3c., of Subchapter 510 of the Employee and Labor Relations Manual.
>
> FACTS AND UNION CONTENTIONS: Date, Time & Location: On 8/12/80 at approximately 8:45 A.M. at the Main P.O.

WHAT HAPPENED: Supt. of Mails R.L. Ross refused Grievant sick leave for dental appt. on 8/12/80 at 1:00 p.m., Ross stated he had seven people off and no one to carry. Mr. Ross acted unreasonable, arbitrary and capricious.

CORRECTIVE ACTION REQUESTED: That employee request for pre scheduled sick leave be granted promptly without management second-guessing the reason and time needed for treatment and examination and Grievant be reimbursed for cost of broken appointment.

VI. FACTUAL BACKGROUND.

On July 25, 1980, the Grievant, a full-time, regular letter carrier assigned to the Bettendorf, Iowa Postal facility, requested four hours sick leave to be used on August 12, 1980, for the purpose of visiting a dentist as part of a continuing gum and tooth problem requiring extensive dental examination and care. The Grievant in requesting this sick leave filled out Postal Service Form 3971, Request for Notification of Absence. On July 26, 1980, the Grievant was informed by his immediate supervisor, Employer witness Ross, that he did not need four hours sick leave for a dental appointment; that the appointment could be made later in the day; and accordingly held to two hours. Supervisor Ross made the notation on the Form 3971 (Employer Exhibit 1) as follows:

> "A one p.m. dental appointment does not warrant 4 hrs. off. ... Appointments can be made later in day and held for 2 hrs. off."

As revealed on Employer Exhibit 1 (in contradistinction to Union Exhibit 4) Ross later noted on his copy (and not the copy given to Grievant):

> "Carrier said he was going anyway. You can't control my sick leave usage."

According to the testimony of Grievant and National Business Agent and Union witness Charles Coyle, Grievant at this time (July 26, 1980) contacted Coyle's office by telephone and spoke with Coyle concerning this problem. Coyle testified that he in turn telephoned the Sectional Center, Rock Island, Illinois concerning this matter and spoke with Stanley Zelnio, then Labor Relations Specialist, and was assured that the Grievant would be allowed the sick leave requested. Coyle testified that he was unsure of the precise date of this conversation, but was certain that it was well prior to the requested sick day off, August 12. According to Coyle, Zelnio responded that he would take care of this matter, as per "a standing agreement concerning sick leave requests" in the Rock Island Sectional Center jurisdiction. Zelnio, again according to Coyle, assured him that the Grievant would be allowed the sick leave requested and that there was no need to file a grievance. Coyle testified that Zelnio indicated to him that the notice given to local Management was indeed ample to allow proper scheduling, and that he could see no basis for a denial, given Grievant's ample sick leave bank or balance of well over 1,000 hours. Coyle

further testified that Zelnio told him that the Union would be permitted to file a grievance, if the sick leave was ultimately refused. Coyle asserts the Union relied on these explicit promises.

Zelnio testified at hearing as an adverse witness and indicated that he had no recollection whatsoever of ever making any of these assertions. Zelnio asserted that he had no authority to determine or control local Management's granting or refusing sick leave requests. He conceded that he remembered discussing Grievant's concerns with Coyle by telephone at some point, but denied having promised anything. Zelnio expressly denied advising Coyle not to file a timely grievance to protect Grievant and the Union's rights under the contract.

Based on Coyle's understanding of his telephone discussion with Zelnio, which both sides concede was not memorialized or written down in any form, Coyle advised Grievant that the matter was taken care of and that there was no need to reschedule his appointment or to file a grievance.

Upon entering the Bettendorf Post Office on August 12, 1980, the Grievant inquired as to what was the work assigned to him, as he was to be at the dentist later that day. Supervisor Ross then reiterated to Grievant that no sick leave had ever been approved by him and that he was scheduled for and would be expected to work the rest of the day. According to Ross, both the initial denial and his posture on August 12 were

based on the work schedule demands, the prime time vacation period and the fact that seven other carriers were off work at that time, for various reasons. There are 26 carriers who customarily work in Bettendorf.

On August 22, 1980, the Grievant filed a grievance requesting that Management apply the sick leave policy reasonably and that the Grievant be reimbursed for costs incurred as the proximate result of the unreasonable cancellation of his sick leave and his inability to keep his appointment at the dentist.

Management from that point on consistently maintained that the requirement for the filing of the grievance at Step 1, or, under appropriate circumstances, the immediate initiation of the grievance at Step 2, "within fourteen days of the date on which the Union or the Employee first learned or may reasonably to have been expected to learn of its cause" had been violated on its face in this matter. The Union, on the other hand, continued to process the grievance through Steps 1, 2 and 3 and to this Arbitration, based on Coyle's belief and assessment that a binding promise had been made by Zelnio and/or Management, or that at minimum, it was estopped from asserting the timeliness defense under these facts.

The Union contends that Grievant is entitled to have his sick leave requests reasonably honored. It is no longer asserting a claim for reimbursement for the broken appointment on August 12, 1980, based on the opening statement made by Union Advocate Coyle at hearing.

The Union maintains that Grievant gave ample notice, that there is substantial evidence on the record to indicate that employees were available to work the requested sick leave hours (Union Exhibits 2-3 and testimony of Union witnesses Blossom and Issacs), and that Management acted unreasonably in this case. Therefore, according to the Union, there is no doubt that the Grievant is entitled to the relief sought: that sick leave at the Bettendorf Post Office facility be granted in the future, when reasonable requests are made consistent with Postal policy.

With reference to the procedural arbitrability issue, the Union contends that claims such as this are not common occurrences in the Postal Service. The Union asserts that both Union and Management rely on the reciprocal promises of Labor Relations Specialists and Business Representatives who are properly authorized and have legal authority, under the National Labor Relations Act and other pertinent statutes and rules, to bind each respective party. The Union asserts that National Business Agent Coyle's testimony is clear and convincing as to the promise specifically made by Zelnio. Zelnio's convenient lack of memory should be appropriately discounted and Coyle's testimony asserting a clear promise held controlling. Whether Zelnio was specifically authorized to make this promise or not, Management should be estopped,

at minimum, from asserting untimeliness, when Management itself, through its official representative, created the problem in the first instance. Any other decision would reward Management for violating a trust and put a stumbling block on labor relations between the parties in the future. Finally, a finding that the grievant was untimely would place the onus in this particular case on the innocent employee who relied on Management, through the communication and intercession of the Union, clearly to his detriment. Therefore, this grievance should be sustained in its entirety, as the sick leave request obviously should have been granted on July 26, 1980.

The Postal Service contends the contractual requirements involved here mandate that an employee and/or the Union must file a grievance under Article XV within fourteen days of when Union and/or employee first learned of its cause. This requirement has not in any way been waived by Management here; therefore, Article XV controls and this grievance is not subject to arbitration. This position is precisely the one Management has maintained throughout the proceedings in the instant case. Moreover, the Union has not convincingly proved its claim that the responsible Management official promised anything at all and certainly it has not proved that Mr. Zelnio told the Union not to file

a grievance or protect its rights. The evidence reveals that Zelnio had no authority to grant sick leave requests for the Bettendorf Post Office facility. He was not involved in any way in the processing of this grievance. That Zelnio discussed the matter with Coyle when it first arose, by telephone on an unspecified date, is certainly not sufficient to do away with Management's contract rights and expectations to have grievances timely filed under the clear contract language.

After all, the Employer argues, Article XV required the grievance to be filed within fourteen days of the refusal to grant the sick leave request, concededly, July 26, 1980. All parties admit that this is the point at which the Union and Grievant knew an alleged reason for the grievance had arisen, if indeed there is any grievance involved at all in this case. This on its face reveals the timeliness defect and the basis of the arbitrability contentions so strongly asserted by Management in this matter. Since the waiver issue raised by the Union has not been maintained convincingly in its proof, the Employer asserts (Zelnio having denied ever making such a promise to waive the time requirements for this or other, similar grievances), there is no basis for the Arbitrator to proceed on the merits. Clearly the Union's own inactions and lack of care caused the problems and not supposed actions or promises of Management. Under these facts and circumstances, there is absolutely no waiver by the

Employer; this grievance is not arbitrable based on the clear procedural defects. No evidence presented by the Union at the hearing shows in any convincing way that the Employer in fact caused the Union to sleep on Grievant's rights.

With reference to the merits, Management submits that it is clear that Grievant herein has not in fact filed a valid grievance. First, no other sick leave requests by this Grievant were denied by Supervisor Ross when appropriate manpower and the scheduling demands were not so extreme. Second, discretion is vested in Management to schedule work and to assess and grant sick leave requests. Third, notice of the denial was given in sufficient time to allow this Grievant to reschedule or to take other, reasonable action to permit appropriate dental care. It would have been easy for the Grievant to move either his dental appointment to another time or schedule the appointment on his off day in the first place. Therefore, on the merits, there is absolutely no violation of the contract on the facts actually presented.

Based on all the foregoing, the Employer asserts that this grievance should be denied in its entirety, and the original denial of the Postal Service based on the lack of timeliness issue be affirmed.

The Union's posture on the merits, as extensively presented at hearing, is that local supervision simply acted unfairly in making its determination that the Grievant only needed two hours sick leave and that Grievant would be able to change his dental appointment. The Union concedes that discretion is vested in Management to schedule work under Article III of the Labor Contract. That this Article also gives Management the right to determine whether or not sick leave should be granted is also not disputed. However the Union notes that other arbitrators have found the contract, and particularly the provisions of Article X, Section 4 of this Agreement, to require that Management's conduct must, in general, meet the "test of reasonableness." Management's contention that Grievant could easily have changed his dental appointment with a busy specialist, when the appointment was made several months in advance (Grievant's unrebutted testimony) and when made at a time before Grievant could know his actual days off, flies in the face of reality and common knowledge. Moreover, there is no dispute that Grievant had a genuine, on-going dental problem, that required much care. Thus, Management's assertions that Grievant was unreasonable are specious and unconvincing, the Union contends.

The Union also introduced exhibits and substantial testimony that attempted to show that there were employees in fact available who could have been assigned the duties of the Grievant on August 12th. The Union contends that the request was made far enough in advance for local Management to schedule available part-time flexible employees, as well as an available summer casual employee who worked less than eight hours that day. Ross' concern with overtime and his own poor judgment are at the center of this unreasonable and arbitrary rejection of the sick leave request, the Union submits.

The Union stressed that there is no issue that Grievant had ample sick leave available when he made his request well in advance of the time which he sought to be off. In addition, there is no issue that Grievant applied on the appropriate form and gave sufficient information to comply with all requirements in that area.

Accordingly, on the merits, the Union contended it had clearly satisfied its burden of proof and the grievance should be sustained in its entirety.

VII. DISCUSSION AND OPINION.

After careful consideration of the documentary and testimony presented at hearing, I find as follows:

A. The Threshold Issue.

With reference to the threshold arbitrability issue, I agree with the Employer that Grievant's grievance (Jt. Ex. 2 herein) was obviously not timely filed. The contract calls for a grievance to be filed within fourteen (14) days of the date on which the Union or the Employee first learned or may reasonably have been expected to learn of its cause. There is no dispute that the date which fits the requirements of the contract language in this case is July 26, 1980, the date on which Supervisor Ross initially rejected Grievant's request for sick leave. Both the Form 3971 itself and the testimony of Ross and Grievant leave no doubt that this is the date on which the fourteen day requirement for filing would ordinarily begin to run. Since Grievant did not file his grievance until August 24, 1980, obviously a grievance filed nearly a month after the event which gave it rise does not comply with the contract.

The only issue then is whether Management, by and through its agent, Zelnio, caused Grievant and the Union to sleep on their rights or, by Zelnio's actions and statements, caused a waiver of the applicable time limit to have been effectuated.

Both Union witness National Business Agent Coyle and Personnel Manager (then Labor Relations Specialist) Zelnio testified at this hearing. Coyle's testimony is clear that Zelnio made certain promises as part of an on-going arrangement dealing with sick leave request grievances arising in the Rock Island Sectional Center area. Coyle testified that Zelnio specifically told him not to file a grievance since the claim either would be resolved by Zelnio or the Union would be permitted to file later, despite the fourteen day contract limit. Zelnio admits discussing the matter with Coyle by telephone, but denies making any such promise or offer of waiver of the timeliness clause.

The Arbitrator finds that the real issue is not the credibility of either Coyle or Zelnio, but whether such promise, even if made, could act as a binding waiver or could estop Management from asserting the procedural arbitrability defect because it had caused the Union to sleep on valuable rights. Assuming, for the purpose of discussion that the telephone conversation between Coyle and Zelnio went exactly as Coyle testified, problems with authority to waive by Zelnio and the overall enforcement of the contract are readily apparent.

It is to be remembered that Zelnio was not, at this stage, involved in any way with this particular claim and/or potential grievance. In fact, the parties concede that Zelnio never formally and officially participated in the grievance

at any step. Should the Union have the right to rely on Zelnio's promises, if in fact made, under these circumstances?

The problem is perplexing and one which this Arbitrator has given considerable thought. The Union asserted that such deals and agreements between Labor Relations Specialists and Union officials are a rather typical part of the interactions between this Union and Management and are crucial to good management-employee labor relations. The Union contends that for an arbitrator to take an ultra-legalistic viewpoint and pay no attention to these reciprocal, informal promises would fly in the face of the actual practices of these parties and all other practitioners of labor-management relations. It would seriously undermine the ability to continue effective interchanges by these parties in the future. Simply put, the Union argues for either an estoppel or waiver finding by the Arbitrator if he credits Union witness Coyle on the facts.

Certainly the Union has a point in this basic assertion. The Arbitrator does indeed take arbitrator's notice that similar conversations and "deals" are a rather typical scenario in labor-management interactions in the work-a-day world. A second, additional point in the Union's favor is that arbitrators generally tend to scrutinize cases where procedural arbitrability issues are presented by either side to block resolution on the merits of a particular grievance. See, e.g., the cogent and persuasive discussion of Arbitrator

Krebs in Associated School Bus Service, 78 LA 962 (1982) (citing Elkouri and Elkouri, How Arbitration Works, 3rd Ed. 1973, at 149). See also Lear Siegler, Inc., 75 LA 612 (Greer, 1980) at 614. Compare Great Lakes Pipeline Co., 34 LA 617 (Howard, 1959) and Menasco Mfg. Co., 45 LA 502 (Boles, 1965).

This general proposition is counterbalanced in this particular case by several factors. First, then-Labor Relations Specialist Zelnio was not officially involved in the grievance in any way whatsoever when he allegedly discussed the matter with Coyle. His official authority, if at all, came much later, at Step 3, when he could have resolved the instant case. In this actual grievance, Zelnio participated in no way at all. Second, Management raised the timeliness issue from the very beginning and preserved it throughout the entire process. This distinguishes this matter from the numerous arbitration awards which find ratification by the Employer by inaction, the discussing of the grievance as if it were arbitrable or other acts which reasonably can be interpreted as constituting a waiver of the time notice issue while the grievance itself is being processed to arbitration. Zelnio's actions occurred prior to any filing, and were never ratified by Management while the grievance was being processed to the point of the actual hearing in this case. Therefore, the substantial arbitrable precedent which goes

against a finding of a defect in filing outside the contractual time limits so as to avoid the forfeiture of the right to process the grievance and the merits are largely inapposite to the particular and peculiar facts involved. I so find.

Instead, the Arbitrator notes the particular facts of this master or National Agreement and the importance attached to the following of the contract sections and procedural requirements that both parties have evidenced by both the care in which the pertinent language is drafted and the extensiveness of the provisions themselves. This comprehensive procedural structure is designed to handle, and does handle, the thousands of grievances arising under this labor contract. This acknowledging of the scope and size of the task involved in administering the National Agreement was articulated by Arbitrator Feldman (see Feldman opinion dated December 30, 1979) issued in a case between the Postal Service and the American Postal Workers Union, having no case number or named grievant but in turn cited by me in the James Mueller grievance between this Union and the Service at Rockport, Indiana and dated June 2, 1981. (Case No. C8N-14-C 5414). Feldman stated in his Opinion:

> "Let me indicate and state that the Central Region of the United States Postal Service has an untold number of local unions working at many facilities. There are probably 100,000 members of the American Postal Workers Union or more in the Central Region with the locals being located in many states that are adjacent and contiguous with the Regional Headquarters

> in Chicago, Illinois. It is impossible, unless the situation arises, to police the many local agreements in that local region on a basis so as to disallow some improper clauses from filtering through into the system of local memoranda of understanding."

Obviously, both Feldman's award noted above and my decision in the Mueller grievance deal with local agreement inconsistency, another section of the master contract or National Agreement than that involved here. Concern for uniformity and the need to follow the Agreement in its precise terms and adhere to the procedural requirements, however, is no less persuasive under these facts, as far as timeliness of filing requirements, as is the need for uniformity and consistency overall, and in the specific area of local agreements and memoranda of understanding. Simply put, there is a genuine countervailing consideration involved here: the need to adhere to the contract and its various procedural requirements so clearly negotiated for and placed in the contract between these very parties. This is, in turn, based on the fact that the thousands of claims and grievances must be efficiently, expeditiously, as well as fairly, processed by both the Union and Employer involved in this dispute.

In addition to the general, crucial policy decisions at war in this case, the Arbitrator notes that it would have been extremely simple for the Union in this matter to have filed the grievance at the appropriate time on its standard form, so as to preserve its rights and adhere to the clear

contract requirements for timely filing, and then work out any settlements and/or resolutions of the claim later, if the parties ultimately deemed it appropriate to their respective interests. By not adhering to the contract, based on an oral conversation which Union witness Coyle cannot date nor supply any writing or note in corroboration, the Union placed both the Arbitrator and the process in the very position which the parties clearly intended to avoid by the structured contract language, with its comprehensive procedural requirements so clearly spelled out. I so hold.

As I noted in the grievance of Romain Higgins, between these identical parties (Case No. 8-CLE EC 39, Cleveland, Ohio, March 29, 1981), there is a reciprocal responsibility between Union and Management for adherence to the important time limitations placed in the contract. Absent more compelling reasons than those presented here, I believe, the mere promise "to take care of" the claim for the improper denial of sick leave allegedly made by Zelnio, just does not constitute a waiver of the clearly spelled out fourteen day time limit. In other words, the Union has not achieved its burden of proof to persuade me that such a deal was made, since the facts actually adduced do not permit me to either credit or discredit Coyle or Zelnio or to conclude more than a difference of memory or perception might lie at bottom here. Second, the importance of the obligation to respect the

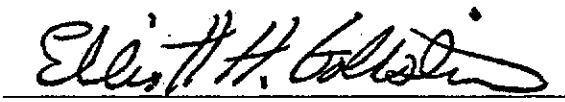
contract involved here and, specifically, the timeliness requirement, requires more than the telephone conversation, if held as described by Union witness Coyle, to operate as a binding waiver or to create an estoppel here. I so hold.

B. The Merits

Given my holding above, I find I have no authority to reach the merits in the instant matter. In accordance with the above analysis, other issues raised by the parties are irrelevant here and will not be further developed or reached by this Arbitrator.

VIII. AWARD.

In accordance with the reasons set forth above and incorporated herein as if fully rewritten, the Arbitrator finds that this grievance was not timely filed under Article XV of the 1978 National Agreement. Consequently the Arbitrator has no authority to reach the merits or resolve the second issue presented at hearing. The grievance is denied.



ELLIOTT H. GOLDSTEIN
Arbitrator

Dated at Chicago, Illinois,
May 9, 1983.