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In the matter of

United States Postal Service
Woodstown, New Jersey

and

National Association of Letter Carriers
Branch 908

.....

Case # E1N-2B-C 9850
P. Eller/Medical Evidence

woodbury, NJ.

The above matter was heard at the South Jersey MSC, Bellmawr, N.J. on July 18, 1985. Philip J. Koehler, Director of Employee and Labor Relations was advocate for the Postal Service. The Union was represented by William J. Revak. Local Business Agent, NALC.

The issue agreed to by the parties was stated as follows:

Did the Postal Service violate the National Agreement and Employee and Labor Relations Manual on August 12, 1983, when it required the Grievant, Philip Eller, to present acceptable medical documentation to support his illness and absence from work on that date?
If so, what is the remedy?

At issue here are Article 10 Section 5.E of the National Agreement which reads

E. For periods of absence of three (3) days or less a supervisor may accept an employee's certification as reason for an absence.

Also, in question is the interpretation of Employee and Labor Relations Manual Section 513.361

Medical documentation or other acceptable evidence of incapacity for work is required only when the employee is on restricted sick leave or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

Section 513.38 is also in question

When the reason for the employee's sick leave is of such nature as to raise justifiable doubt concerning the

employee's ability to satisfactorily and/or safely to perform duties, a fitness for duty medical examination is requested through appropriate authority.

Relevant also is Section 513.332, which reads in part

An exception to the advance approval requirement is made for unexpected illness/injuries.....Employees may be required to submit acceptable evidence of incapacity for work as outlined in the provisions of 513.36.

The facts are substantially those reported in the Grievant's statement (Jt. Ex. #5) and related by both Union and Postal Service advocates at the hearing on July 18, 1985.

Philip Eller was at the time of this grievance 8/12/83 a Part-time Flexible Carrier attached to the Woodstown, N.J. Post Office, with about 1 year 9 months seniority. On August 11, 1983, at the end of his tour, Mr. Eller was orally criticized by his supervisor for operating a motor vehicle without fastening his seat belt. The Grievant was handed a PS Form 4584 stating the infraction of rules. Eller was upset and crumpled the paper in a ball and threw it in a waste can.

The next morning, Friday, August 12 at 6:29 am. Mr. Eller called the Post Office to report that he was ill and would not come to work for his shift beginning at 6:30 am. Eller was scheduled that day for a split shift 6:30-8:30 am. and 3:30 -5:30 pm. About 8:30 am. that same day, Eller called the Post Office and requested that his pay check, available that day, be mailed to his home and delivered by the carrier on his route that afternoon. Eller was informed by the Postmaster that he could not mail the check since Eller had not filled out the proper forms authorizing such mailing. Because money was needed that day, Eller stated in his grievance paper, he got out of bed and walked to the Post Office to get the check. Ms. Duane Smith, a postal clerk, notified the Postmaster, Mr. Spatafore, that Eller was in the lobby requesting his check. The Postmaster came out of his office with the check, approaching

Mr. Eller, and asked him if he were coming to work that afternoon. Eller replied that he was still ill and would not be in. The Postmaster became upset and told Mr. Eller he would be required to present a doctor's statement certifying his illness. A heated exchange took place in which Eller requested that he be sent to the Postal Service doctor. Mr. Spatafore refused stating that Eller should see his own doctor. Eller then asked for the name of the Postal Service doctor. Mr. Spatafore refused to give it to Eller. Eller then left. He went to a doctor, and received a doctor's statement with respect to his illness and was required to have a series of tests to determine the cause of the symptoms of vomiting, diarrhea and passage of blood. He returned to work at his assigned shift on Saturday, had sick leave approved and was paid for the lost time.

Eller consulted the Union and a grievance was filed claiming that the Postal Service violated the Agreement and ELRM in requiring him to have a doctor's certificate when he was ill for less than the three days set forth in these documents. The grievance was denied and has now come on to arbitration.

Position of the Parties

The Union contends that it was unreasonable for the Postmaster to request a doctor's certificate for Mr. Eller's absence for his 2 two hour shifts on Friday, August 12, 1983. Article 10 Section 5.E of the National Agreement states that the supervisor may accept the employee's word that he was ill. A doctor's certificate is required only after three days. Section 513.361 also emphasizes that a medical statement is required only after three days absence. Section 513.38 states that if a supervisor is in doubt about the capacity of an employee to perform his work satisfactorily or safely, the employee should be sent for a physical fitness examination by the Postal Service physician. Postmaster Spatafore demanded a doctor's statement for an illness of only one day and he refused to authorize a medical examination for Eller by the Postal

Service doctor.

Mr. Eller was genuinely ill as his doctor's certificate, and later medical history, indicate. He came to the Post Office to get his check Friday only because he had financial obligations which had to be met. The Postmaster refused to mail his check. Banks were not open to cash his check on Saturday when he got off work.

Mr. Eller has a good record of attendance. There is no evidence of abuse of sick leave. His absence because of illness on Friday, August 12, 1983 was no threat to the interests of the Postal Service which, according to ELRM, is the only justification for requesting medical evidence for illness of less than three days.

The Union claims it was unreasonable for the Postmaster to demand medical evidence from Mr. Eller and refuse to refer him to the Postal Service physician. Therefore, the Postal Service should pay for the \$24 which was the cost of the doctor visit.

The Postal Service position is that the Postmaster may request medical evidence for illness of less than three days if he has reasonable doubt that the employee is ill. When the Postmaster refused, because of regulations, to mail the pay check to Mr. Eller, Mr. Eller walked to the Post Office to get the check and when asked by the Postmaster if he was coming to work his afternoon shift, Eller replied that he was not. Hence, Mr. Spatafore, the Postmaster, had good reason to believe that Eller was not really ill. Hence, his request for medical evidence was justified under the Agreement and ELRM.

Assuring regular attendance is of vital interest to the Post Office. Arbitrators have held, in interpreting Section 513.361 ELRM, that preventing abuse of sick leave is "Protection of the interests of the Postal Service". (Jt. Ex. #4) Hence, Postmaster Spatafore was acting within the meaning of the Contract and regulations in asking Mr. Eller for medical evidence of illness.

The Postal Service argues that there is no basis for the Union argument that the Postmaster should have sent Eller to the Postal Service medical unit. Regulations governing referrals to Postal Service physicians are related to fitness for duty examinations where illness or injury occur on the job or on return from work after long absence due to illness or injury or in cases where chronic malingering is suspected or doctors' certificates are suspect. Postal Service doctors are not used for off-duty illnesses. The Postmaster acted properly in refusing to refer Eller to a Postal Service doctor or to give Eller the name or location of such doctor.

The Postal Service asserts that Mr. Eller was angry because of the criticism he received the day before for failing to use his seat belt. At that time he rolled the notice of violation PS 4584 into a ball and threw it into a waste can. His refusal to come to work Saturday was an emotional reaction to the criticism.

Since the Postmaster had reason to suspect that Mr. Eller was able to work, he was justified in requesting that Eller submit medical evidence of his illness. There was no violation of the Agreement or ELRM.

Award and Opinion

Unfortunately, the incident giving rise to this arbitration seems to have arisen as a result of personal antagonisms developed in the criticism of Mr. Eller for driving without his seat belt. The diagnosis of Dr. Bauman that Mr. Eller was suffering from "possible peptic ulcer disease" certainly ties in closely with a reaction to criticism on Thursday giving rise to illness on Friday. On the other hand, it was perhaps not unreasonable for the Postmaster to be irritated by Eller's rejection of criticism Thursday night and his assumed retaliation by refusing to come to work the next morning. In short, the emotional tension between Eller and his supervisor resulting from the incident Thursday night, makes it difficult to evaluate the events of Friday

as rational acts under the Agreement or the Employee and Labor Relations Manual.

Nevertheless, given Eller's record, which reveals no evidence of abuse of sick leave, there was no reason for the Postmaster to suspect that Eller was not ill Friday morning because he came to the Post Office. As is often the case, individuals who are ill and should be in bed, go out because of force of circumstances. A financial need which had to be met by cashing a pay check is one such circumstance. One could enumerate other conditions which force a sick person to take chances. The Postmaster is not a physician. He could not make a determination that Mr. Eller was not ill merely by looking at him and knowing that he had walked from his home to the Post Office.

The Post Office is not obligated to send every employee who claims to be ill to a Post Office doctor for a physical fitness examination. Such examinations are required only in unusual cases having to do with some real or alleged incapacity that needs to be verified in order to protect basic interests of the Postal Service. A one days absence by an employee with no record of sick leave abuse would not justify a referral to a Post Office doctor any more than it justifies a demand for medical evidence.

The written statement by Clerk Duane Smith, uncontested by the Postal Service and part of the grievance record, indicates that the Postmaster was upset and angry. Had there been a record of unscheduled absences because of illness, a show of disapproval by the Postmaster and request for documentation would have been justified. I find no evidence in this case, however, to support the Postmaster's request for a doctor's certificate.

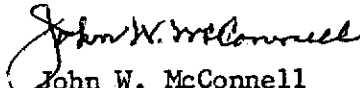
The wording of both the Agreement, Article 10 Section 5.E and ELRM Section 513.361 make a request for medical evidence a matter of judgment of the supervisor. He may accept an employee's own word for his illness or, when the "supervisor deemed documentation desirable for the protection of the

interests of the Postal Service" he may ask for a doctor's statement. The evidence in this case does not indicate any need to protect the interests of the Postal Service, and it seems to me the demand for medical evidence is not supported by the facts. Therefore, the grievance is sustained.

Award

The facts of the case do not support the Postmaster's demand for medical evidence. The Grievant should therefore be reimbursed for the amount of his doctor's visit.

Respectfully submitted,


John W. McConnell
Arbitrator

July 26, 1985