

C#03819
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In the matter of
The United States Postal Service
Atlantic City, New Jersey
and
National Association of Letter Carriers
Branch 370
.....

1992
Case # E1N-2B-C-1992
Herron/Medical Evidence

Under arrangements set forth in Article 15 of the Agreement between the parties, the undersigned was designated to arbitrate an unresolved grievance concerning the basis upon which a supervisor may request medical evidence for leave of less than three days absence. A hearing was held in Atlantic City, New Jersey, on November 9, 1982. James Dolan, Regional Administrative Assistant, represented the Union. Spokesman for the Postal Service was James N. Gardner, Labor Relations Executive. Others in attendance at the hearing were

For the Postal Service

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| Arthur F. Smith | Carrier 204B |
| Joseph DeLuca | Supervisor |
| James Mazzone | Observer |

For the Union

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| Michael Herron | Carrier |
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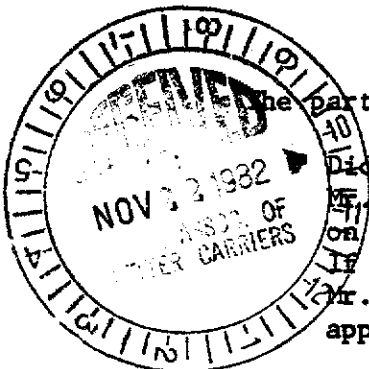
Witnesses were questioned and documentary evidence submitted for the record.

Both parties made oral summations.

The Issue

The parties agreed on the following statement of the issue.

Did the Postal Service have just cause for requiring Mr. Herron to submit medical evidence for his illness on February 11, 1982?
If not, is the payment by the Postal Service of \$31.22 to Mr. Herron for medical costs plus his travel cost, an appropriate remedy?



Section 513.361 reads

.361 3 Days or Less For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work is required only when the employee is on restricted sick leave (see 513.36) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

The Union, in this case, is not challenging the right of the Postal Service to request documentation. The issue is whether the Supervisor, Joseph DeLuca, had just cause to request documentation from Carrier Michael Herron on February 11, 1982.

The Facts

In general outline, there is no dispute about the facts, but with respect to certain essential details, the testimony of witnesses is sharply in conflict.

On February 11, Carrier Michael Herron reported for work at 6:45 am. as a floater. He was assigned to Route #61. This route was backed up and third class was cased in very heavily the day before. Michael Herron testified, and stated in his grievance, that about 7:30 he felt ill and spoke to the Supervisor, Arthur F. Smith, a 204B, stating that he was feeling sick and didn't know whether he could work any overtime to get the deliveries made. Supervisor Smith testified that he did not remember this conversation. Again, within the next hour, Herron told Supervisor Smith that he was ill, didn't know whether he could make it, and needed some help with the route. Smith testified he didn't remember Herron telling him he was ill. Herron testified that he was coughing up "stuff" from his chest. Smith testified that he reported to Herron that only one hour of assistance could be provided. Then, about 9:00 am. Herron felt too ill to continue and asked to go home. He filled out a 3971 (Jt. Ex. #3). Supervisor Smith took the 3971 to Joseph DeLuca, Supervisor of Deliveries. DeLuca testified that Smith had not mentioned to him that Herron had spoken to him

earlier about being sick. DeLuca also testified that he saw Herron talking to another carrier (Tweedle) and had remarked to Herron "You have time to talk but no time to work". To which Herron is alleged to have replied, "You mean I can't talk?" And DeLuca said, "No, you ask permission first". It was shortly thereafter that Smith went to DeLuca with Herron's 3971 and his request to go home.

DeLuca approved the sick leave but told Herron he would have to provide medical documentation for his illness.

Herron left the Post Office, went to a doctor, who gave him a statement (Jt. Ex. #3)

Above patient is in my care. Please excuse his absence.
May return to work on 2-15-82.
Diag. Bronchitis

Thanks

Mr. Herron's request for leave was approved. However, feeling that the request that he furnish medical evidence was unjust, he filed a grievance (Jt. Ex. #2) claiming repayment for the doctor bill of \$31.60 and 18 miles travel. The Postal Service denied the claim and the grievance has come on to arbitration.

Position of the Parties

Union Position

The Union argues that, although a supervisor has the right to request medical documentation, he must have clear-cut evidence that the plea of illness is a subterfuge and without substance. No such evidence exists in this case. The grievant's record on sick leave is clean. There can be no question that he has not requested sick leave except when he was ill. His record of attendance is good. He has accepted both mandatory and voluntary overtime assignments without complaint. He has worked route #61 many times before so he is aware of the time required.

The testimony of Postal Service witnesses regarding Herron's statements concerning his illness on February 11 are confused. The Postal Service was able

to cover Herron's work without additional expense. Supervisor DeLuca had no reason to believe that the interests of the Postal Service were threatened in any way by Herron's request for leave. Conversely, however, DeLuca did testify that he frequently requested medical evidence just to prevent abuse of sick leave.

Other arbitrators have held that grievants were entitled to payment of the cost of obtaining medical evidence when there was not just cause for the demand that they provide such evidence. (Award of Arbitrator Britton, Case #S8C-3W-C-2610 Settle, and of Arbitrator Goldstein, unnumbered award, Grievant Diamond, Milwaukee, Wis.) The circumstances of these cases were similar to Herron's situation. The grievance should be sustained and Michael Herron paid the cost of his doctor visit and medication \$31.60 and 18 miles travel.

Postal Service Position

Management has the right under the Agreement and Sections 511.43 and 513.361 to require medical evidence for incapacity for work. If the period of absence is less than three days, medical evidence may be required 1) if the employee is on restricted sick leave, or 2) if the supervisor deems documentation desirable for the protection of the interests of the Postal Service. The Union does not contest the right of Management to require medical evidence, but rather that there was no good reason to require such evidence from Michael Herron on February 11, 1982.

It is the Postal Service position that

.....there existed doubt as to the validity of his request simply because of his reporting sick after he was admonished by a supervisor of his unnecessary talking after being denied additional auxiliary help. At this particular point, Management had every right to become suspect of such a request to be excused from work, and therefore, in the best interest of the Postal Service, they had every reason to request medical documentation under the authority outlined in Parts 511 and 513 of the Employee and Labor Relations Manual. (Closing statement)

The Postal Service contends that references to Mr. Herron's good attendance record and infrequent use of sick leave are not relevant. It is the circumstances existing

on February 11, 1982 which must determine whether the Supervisor abused his discretion in requiring Herron to submit medical evidence for his illness.

The Postal Service cites three arbitration awards which sustain its position in this case. Arbitrator Holly (Case #S1N-3U-C 473) makes it clear that the grievant's actual submission of the medical evidence when requested does not affect the justification for the request. It is the circumstances at the time the request is made which determine whether or not there was justification. Arbitrator Holly found that sufficient justification existed in that particular case.

Arbitrator Snow (Case #W8C-5D-C 7257/Kuntz) held that Management has the authority to request medical evidence. A supervisor does not have to accept an employee's statement that he is ill and the employee must assume the burden of establishing that he is ill.

Arbitrator Cohen (Case #C8C-4B-C 30517/Chornoby) holds that it is the obligation of the Union and the grievant to prove that a supervisor has abused his discretion in requiring medical evidence. Mr. Cohen found that, while a supervisor might make the wrong decision, that does not prove that he abused his discretion in making the decision as he did.

The Postal Service concludes that there was good reason to doubt Mr. Herron's statement that he was sick and could not continue work on February 11. Therefore, the grievance should be denied.

Award and Opinion

As Arbitrator Holly noted in his award (Case #S1N-3U-C 473), the fact that an employee provides adequate medical evidence does not prove that a supervisor did not have good cause to request such evidence at the time. Whether or not there was good cause for the request depends upon the factual circumstances at the time the request was made.

During the course of the Grievance Procedure in this case before me, the

Postal Service never responded to the basic issue. (Jt. Ex. #2) Management responses at steps 2 and 3 referred simply to the right of the supervisor to require medical evidence. The Union concedes this right. The real issue is whether Supervisor DeLuca had good cause to believe that Carrier Herron was not ill and unable to continue his tour at 9:00 a.m. February 11, 1982. Unfortunately, the testimony of witnesses as to what actually took place between 7:30 a.m. and 9:00 a.m. that morning is contradictory and inconclusive. There is no doubt that Herron was faced with a heavy work load and he requested assistance.

Michael Herron's original grievance and his testimony at the hearing indicate that at 7:30 a.m. he mentioned to his immediate supervisor Mr. Arthur Smith, that he was ill and didn't know whether he could complete the day; and, further, he spoke to Smith again stating he was ill and needed help. Smith stated on the witness stand that he could not recall these conversations yet he testified that he reported back to Herron that only one hour additional help was available. When Herron filled out the 3971 at 9:00 requesting sick leave to go home, Smith presented this to his supervisor, Joseph DeLuca. But DeLuca testified that at that time he had not been aware that Herron had earlier stated that he was ill. DeLuca did testify that he observed Herron talking to another carrier and had admonished him that, apparently while he had time to talk, he complained that he had no time to get his work done. DeLuca concluded that Herron's request for sick leave was not a bona fide illness but a way of getting back at DeLuca for criticising him for talking and for refusing additional help on his route.

The Postal Service argues that Michael Herron's past record is not relevant to a consideration of this issue. I believe it is. It seems to me unlikely that a carrier who had never been known to abuse sick leave, whose attendance record was good and who willingly filled assignments both during regular tour and overtime, would resort to a feigned sickness to take petty revenge for criticism or a refusal of assistance. On the other hand, Supervisor DeLuca did

admit that he occasionally used his discretion in requesting medical evidence in order to prevent abuse of sick leave. Similarly, Herron, a steward, testified that he had had numerous complaints from carriers because they were required to submit medical evidence. Apparently, there was some friction between Management and carriers because of these requests for medical evidence.

The picture of just what took place on the morning of February 11, 1982, is very confused. The most credible evidence indicates that Michael Herron was sick and his request for sick leave was reasonable. His past record and the doctor's certificate supports this conclusion. On the other hand, Supervisor DeLuca did not have all the information needed to make a decision. He made a quick judgment based upon certain assumptions and an observation of Herron talking with a fellow carrier. He had no direct contact with Herron until he received the 3971 from Smith in which Herron requested leave. Mr. DeLuca did not question Herron about his illness but assumed, as he testified, that the request for leave was Herron's way of showing resentment because of the refusal of help on his route. He therefore required Herron to submit medical evidence.

Both parties in this case were exercising rights accorded to them under the Agreement and relevant rules and regulations. Michael Herron had a right to request sick leave and to go home if he felt ill and unable to complete his work. Certainly, Supervisor DeLuca had a right to request medical documentation of Herron's illness if he had some reason to doubt that Herron was actually ill. He has an obligation to protect the Postal Service from the abuse of sick leave. The question is, then, did Supervisor DeLuca have a reasonable basis for believing that Herron was not ill? I conclude from the testimony that he did not have good reason to doubt that Herron was ill. Supervisor DeLuca testified that he believed that Herron was using illness as an excuse to avoid completing his route because DeLuca had denied him the help he requested and criticized him for talking. This assumption was based solely on Smith's reports

and on DeLuca's observation of Herron talking to another carrier. DeLuca did not bother to check with Herron regarding his illness when presented with Herron's 3971 by Supervisor Smith. He jumped to a conclusion which I do not believe was supported by the facts.

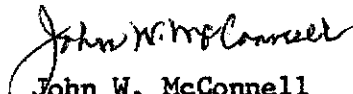
I realize that control of sick leave is one of the most troublesome aspects of personnel management. It is very tempting to use a device such as requiring a doctor's certificate as a check on questionable requests for leave. But I do not believe the device can be used indiscriminately just to make sick leave tougher to get. Such a practice would unduly penalize those who were genuinely sick and thus thwart the intent of the Agreement. In the case presented to me, the evidence does not show that Supervisor DeLuca had either personal knowledge or circumstantial evidence that Herron was not ill as a foundation for his request for medical documentation of Herron's illness. The grievance is therefore sustained.

Award

The demand that Carrier Herron furnish medical documentation to support his request for sick leave was based upon lack of information and certain unfounded assumptions regarding Carrier Herron's actions on February 11, 1982. The request for evidence was without just cause.

Carrier Herron should be paid his medical and travel costs.

Respectfully submitted,


John W. McConnell
Arbitrator

November 16, 1982