C8N-4A-C-9427
Rene C. Neirynick
Addison, IL

C#01624

IN THE MATTER OF THE ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE
ADDISON, ILLINOIS

- and -

NATIONAL ASSOCIATION OF LETTER CARRIERS
BRANCH 825

Arbitrator: William Haber, Ann Arbor, Michigan

Case No.: C8N-4A-C 9427
Date of Grievance: August 8, 1979
Date of Hearing: January 16, 1981
Issue: Payment for Medical Certification

Opinion and Award: June 4, 1981

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1. Issue

This arbitration grows out of a grievance filed by Rene Neirynick, Jr., a full time regular carrier at the Addison, Illinois Post Office, objecting to the request of the supervisor that he bring in a medical certificate for a one day absence. He did and when the Employer declined to pay the $16.00 medical fee, he filed a grievance asking for an apology from the supervisor and reimbursement of the medical bill. The grievance was not resolved during the several steps of the grievance procedure and was submitted to arbitration before William Haber of Ann Arbor, Michigan, a member of the Regular Arbitration Panel.

2. Hearing and Appearances

A Hearing on this grievance was held in the Post Office in Addison, Illinois on January 16, 1981. The Postal Service was

represented by Lawrence G. Handy, Labor Relations Executive at the Chicago Regional Office, who presented the case. The Union was represented by Richard J. Treonis, Local Business Agent, who presented the case. Also present were Paul L. Koenig, Secretary of Branch 25, and the grievant, Rene Neirynick, who testified.

The Arbitrator was provided with several Joint Exhibits.

J 1 is a copy of the National Agreement.

J 2 consists of the grievance package. The grievance is dated August 8, 1979 and reads as follows:

> "Carrier called in sick about 5:00 a.m., Saturday, July 28, 1979. About 6:10 a.m. John Rodgers, supervisor called carrier and asked him if he could possibly make it in, and carrier stated that he had a severe headache und couldn't make it in. He then informed carrier that he would have to bring in a doctor's statement for the one day of sickness. Carrier then asked supervisor who was going to pay for the doctor's visit, and he told carrier that he would have to pay for the visit himself. Carrier then went to doctor and brought in certification as ordered by supervisor. Carrier has called in sick only about three times this year and has in excess of four hundred hours of (accumulated) sick leave."

The corrective action requested is that carrier receive an apology from Supervisor Rodgers, that he be reimbursed the $16.00 that it cost him to see a doctor, and that these tactics of ordering a carrier with an excellent record, such as carrier Neirynick, should cease.

The grievance was denied at step 2, the Postmaster stating that the grievant's supervisor used good judgment in requesting a doctor's statement. The grievance was denied at step 3 and the appeal to arbitration was made on February 6, 1980.

J 3 is an abstract from Chapter 5 of the E & LR Manual entitled Employee Benefits with the Arbitrator's attention called particularly to relevant sections of this Chapter, such as responsibility for approving or disapproving requests for leave; definition of unscheduled absences; employee responsibility to avoid unscheduled absences; sick leave; notifying Postal officials of unexpected illness and that employees "may be required to sub-

mit acceptable evidence of incapacity;" approval of Forms 3971 by supervisor; for absences in excess of three days employees are required to submit medical documentation; for three days or less supervisor may accept statement explaining the absence and medical documentation 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."

In addition to the Joint Exhibits the Employer submitted as an Exhibit some abstracts from the Federal Employment Benefits: Leave. It contains references to accrual and crediting of sick leave and in considerable detail the circumstances under which medical certification is required.

The Union submitted four Exhibits.

U 1 is a medical certification form made out for the grievant together with a statement from the physician that he had seen the grievant and the amount of the bill.

U 2 is a payroll register which indicates the date of the sick leave.

U 3 is a copy of Postal Service Form 3997 indicating that everyone was working that day and there were no vacancies.

U 4 is a synopsis of the grievant's sick leave record in 1977, 1978 and 1979 indicating that the grievant had used very little sick leave.

Post-Hearing Briefs were submitted by the parties. The Briefs were exchanged by the Arbitrator's office on April 28, 1981. The Employer Brief is signed by Mr. Handy and that of the Union by Mr. Treonis to which were attached four arbitration awards. These were by arbitrators Raymond Britton, January 18, 1980; James F. Scearce, February 22, 1980; J. Fred Holly, November 18, 1979; and Richard Mittenthal, July 7, 1980.

3. Position of the Parties

The Employer's position, summarized at the brief Hearing and in a short Brief, is that both remedies sought by the grievant, namely, an apology from the supervisor and reimbursement of the $16.00 he paid for his medical certificate are clearly outside the National Agreement. Supervisors are not included in that Agreement and, therefore, an apology is out of the question. The payment of the medical bill would, in effect, create a new benefit and the Arbitrator simply has no authority to do so. There is no provision for such a payment in the National Agreement and were the Arbitrator to create it, he would be responsible for outlining the criteria under which a person would be entitled to such a benefit and determine whether the grievant met these criteria. The Arbitrator would, in effect, be exceeding his authority and departing from the limits of his powers which are clearly outlined in the National Agreement.

The Employer does have authority to require medical certification. It is not compulsory but permissive. Whether he requests it or not is at the option of the supervisor. The Labor Relations Manual is by virtue of Article XIX a part of the National Agreement and all of its provisions are applicable. Paragraph .43 in Chapter 5 of the E & LR Manual indicates that the employee is responsible to maintain his assigned schedule. The fact that

the grievant had unexpected guests and he had a teething baby to keep him up is hardly an excuse. He took no aspirin and apparently took no other precautions to make it possible for him to report for work in the morning.

The Labor Agreement and the leave regulations clearly indicate that the employee must provide documentary proof if he is absent for more than three days and that the Employer "may accept"such document if absence is for less than three days. There is no reference whatsoever as to the Employer paying for the cost of a medical certificate. The advocate insists that even if the supervisor was wrong and used poor judgment, there is still no basis for the Arbitrator awarding a new benefit, the cost of the doctor's bill. The Postal Service implied that this case is merely one instance of an attempt by the Union to gain a new benefit to which employees are not entitled under the Agreement.

The remedy sought by the Union, that is, the payment of a doctor bill, is not provided for and must be negotiated. The real issue, therefore, the Employer argues, is the question as to whether the matter is arbitrable rather than the merits of the issue. The Agreement precludes the Arbitrator awarding this remedy. At no place in the contractually relevant documents is there any provision for a payment by the Postal Service of medical bills incurred by the employee in securing an acceptable

medical statement. The grievant did nothing that a reasonable person would do to insure that he would be able to go to work as scheduled.

The position of the Union is that the grievant obeyed an order given to him by Management and procured a medical certificate. He obeyed and was not insubordinate. He had the privilege of filing a grievance after he obeyed, and this he did. The grievant, the Union pointed out, has been an employee for over five years. He has accrued a total of 544 sick leave hours at the rate of 104 hours per year. As of July 1979 he still had a credit of 458 hours which means that he used an average of two days of sick leave per year. He was not on restricted sick leave; his record was exemplary, states the Union.

Moreover, no claim was made by the Employer that the production requirements on the day in question was adversely affected by the grievant's absence. According to the Union, all assignments at the Addison Post Office were covered. The Union, therefore, concludes that the supervisor's action in requiring a medical certificate for a one day absence, from an employee who was not on restricted sick leave and who had an exemplary record with respect to attendance, was most unreasonable.

Concerning the arbitrability issue, which is the central thrust of the Employer's advocate presentation, the Union takes

the position that Article XV of the National Agreement defines a grievance quite broadly and that this particular grievance falls within that definition. It is properly before the Arbitrator. A grievance which alleges a wrong creates the responsibility on the part of an arbitrator to designate a remedy for that wrong. If the arbitrator finds merit in the grievance, wrote Arbitrator Richard Mittenthal in the NALC award (case N8-NA-0141), he is free to deal with the remedy question for the "grievance procedure is a system not only for adjudicating rights but also for redressing wrongs."

In another case, Arbitrator Raymond Britton stated, in effect, that since the grievant was ordered by the supervisor to go to the doctor and procure a medical certificate, the Employer should be responsible for the cost of obtaining such a certificate.

Arbitrator Holly, while denying the request for reimbursement because of thespecial circumstances in the case before him, sustained the grievance in principle.

Arbitrator Scearce would have ruled in favor of reimbursement had there been a finding of unreasonableness on the part of the supervisor.

The Union also disputes the logic of the Employer's claim that the grievant had an option to forget about sick pay and

list his absence as LWOP or AWOL. Hardly an option, the Union implies, since the grievant had accumulated a substantial "bank" of sick pay.

4. Discussion: Opinion and Award

Concerning the merits of the supervisor's request, the Arbitrator has not the slightest hesitation in indicating that the supervisor's action was arbitrary and quite unreasonable and perhaps vindictive. Every employee has a responsibility to so conduct himself as to be able to meet his obligations to report for work at his proper tour of duty. The circumstances explained by the grievant have happened to all of us. The Arbitrator does not know what leads certain individuals to prejudice or allergies when taking certain forms of medication, such as aspirin, which all of us use. The grievant testified that he did not use it.

In any event, the grievant was sufficiently uncomfortable to call at 5:00 a.m. and report that he could not be at work when his shift began. Had he been an individual who had a record of abusing sick leave, had he, for example, at one time been on restricted sick leave or had he, in fact, used up much or most of his accumulated sick leave and thus complicated the supervisor's problem of "manning" his shift, there might be some basis of understanding the supervisor's order that the grievant have a medical certificate when he returns to work. From a technical point of view he had a right to make such a request.

It is clear from the operating policy, as outlined in the E & LR Manual, that for absences in excess of three days employees are required to submit medical documentation. Such a requirement, however, for absences of less than three days applies only to an employee who is on restricted sick leave or when the supervisor deems documentation desirable "for the protection of the interests of the Postal Service."

The grievant was not on restricted sick leave and no evidence was cited,whatsoever, that the interests of the Postal Service would be adversely affected by the grievant's one day absence. The Arbitrator simply has not been persuaded that it was necessary, or wise and, in view of the fact that the work was "covered," it could hardly be claimed that the medical certificate was necessary. The grievant was mistreated! The question as to the remedy is more complicated.

The Arbitrator is not untroubled by the claim of the advocate for the Postal Service that the National Agreement makes no reference to reimbursement for medical expenses. In effect, it is clear that the cost of medical certification for employees who are absent more than three days is paid for by the employee and not by the Employer. This requirement is not unreasonable. An individual who is sick for more than three days in all probability has had medical attention and securing a medical certi-

fication does not necessarily involve a special visit but is part of the employee's association with the doctor during his temporary illness.

This is not the case with an individual who feels out of sorts, especially fatigued, "coming down with a cold," a severe headache or such other forms of discomfort which lead to incapacity or at least a strong disinclination to report for work. The Agreement does not require medical certification. The Employer "may accept" a statement explaining the absence and the supervisor may deem documentation desirable under certain circumstances. These circumstances did not, in the Arbitrator's judgment, exist in this instance. To say, as the Employer's advocate states, that even if the supervisor had been wrong, no relief is possible, in effect defeats the intent of the grievance procedure.

This Arbitrator associates himself with the logic of Richard Mittenthal's July 7, 1980 decision and has concluded that where a gross error is made by the supervisor and the effects of the error fall upon an employee who is not on restricted sick leave and who has not "taken advantage" of a very substantial sick bank, since his sick leave payments have been negligible, the Employer ought to bear the responsibility of paying the cost of a medical certificate which the grievant has been directed to procure.

The Arbitrator rejects the claim of the Employer's advocate that he is creating a new benefit and that he is barred by the Agreement from doing so since such a benefit must be negotiated and made a part of the National Agreement. The Arbitrator is dealing with an individual case where an injustice has been done. He is not creating a "right" to reimbursement for a doctor's certificate testifying to the grievant's incapacity to work. That right does not exist and is not created by this Award. Employees on restricted sick leave are required to provide a medical certificate and pay for it. Employees who have had a record of abuse of sick leave are subject to the same requirement. The grievant does not fall in either category and he is entitled to reimbursement.

It is the Arbitrator's Opinion and Award that the grievance is sustained with respect to reimbursing Mr. Neirynick $16.00 for the expense incurred in obtaining the medical certification.

Respectfully submitted,

William Haber

William Haber