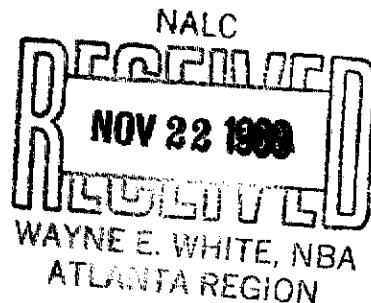


C#09481



REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
)
 GRIEVANT: J. Wright
between)
 POST OFFICE: Jacksonville, FL
UNITED STATES POSTAL SERVICE)
 CASE NO: S7N-3R-C 20939
)
and)
)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS)
)

BEFORE: Robert G. Williams, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Glenn Reeves

For the Union: Gerald L. Wilson

Place of Hearing: 1100 Kings Rd.
Jacksonville, FL

Date of Hearing: October 24, 1989

AWARD:

The Grievance is hereby sustained in accordance with
the opinion. The 2.88 hours of AWOL shall be converted to
annual leave with pay.

Date of Award:

November 20, 1989

Robert G. Williams

I. BACKGROUND

This case arose under the National Agreement effective from July 21, 1987 until November 20, 1990. On February 13, 1989 the Grievant was late to work as the result of car trouble. He requested annual leave, but his request was denied. He protested this denial, filed his standard form grievance on March 10, 1989 and properly processed his case to this arbitration. An arbitration hearing was held on October 24, 1989 at which time the parties stipulated undisputed facts, introduced their evidence, examined all witnesses and argued their respective positions. The issue presented at the hearing was as follows:

Did the Service violate the
Agreement when it denied the
Grievant's request for annual
leave and, if so, what shall be
the remedy?

The hearing was closed following the oral argument of the parties and the submission of their case authority.

II. FINDINGS

The Grievant is a Regular Carrier scheduled to work on Monday, February 13, 1989. His reporting time was 0700 hours.

His postal facility was approximately 3-5 minutes away from his home by motor vehicle. He normally leaves his house at 0645 hours. On the morning of the 13th, he went outside to warm his wife's vehicle in which he was to ride to work and found a flat tire. At 0650 hours he called his Supervisor who said, "Come in as soon as you can." The Grievant replied, "Don't worry, I'll be in." The Grievant, however, could not find a tire wrench so he went looking for one. He finally borrowed a 4-way tire wrench from a neighbor. When he took his tire off, his brake shoes and components fell off. The Grievant had the front brakes repaired earlier, but did not have the money to repair the rear brakes. In any event, the Grievant called and told his Supervisor about his brake problems. His Supervisor responded, "I need you here." When the Grievant did not report, his Supervisor called him several times to check on his status. Finally, the Grievant got to work 2.88 hours late. The Grievant requested annual leave on form 3971. It was denied and the Grievant was recorded as tardy.

III. POSITIONS OF PARTIES

The Union contends the Grievant is entitled to annual leave for the 2.88 hours of lost work. The Grievant encountered emergency circumstances. His vehicle was inoperative and

needed to be repaired so he could get to work. He called his Supervisor and made him aware of the emergency circumstances. Under 512 of the ELM the Grievant was entitled to annual leave.

Management, on the other hand, contends the Grievant was responsible for maintaining regular attendance. He has a record of tardiness. The 13th was just another instance of tardiness. The Supervisor had the right to approve or disapprove annual leave.

IV. DISCUSSION

The National Agreement in Article 10, Leave, Section 2 provides that the leave regulations in Subchapter 510 of the ELM "shall remain in effect for the life of this Agreement." The ELM's Chapter 5, Employee Benefits, Subchapter 510, Leave, part 512, Annual Leave, provides:

512.11 Purpose. Annual Leave
is provided to employees for
rest, recreation and for personal
and emergency purposes.

(Emphasis Added)

512.411 General. Except for
emergencies, annual leave for
all employees except...must be
requested...and approved in
advance....

512.412 Emergencies. An exception to the advance approval requirement is made for emergencies;....

512.422 Approval/Disapproval. The Supervisor is responsible for approving or disapproving application for annual leave by signing Form 3971....

This language is clear and unambiguous.

Employees are entitled to take annual leave for "rest, recreation and for personal and emergency purposes." In other words, the Postal Service has agreed to pay employees for not working. Employees claiming annual leave for reasons ranging from resting (including loafing) to emergency time are entitled to pay. Employees simply must show one or more of these broad range of purposes was the basis for an annual leave request. When these circumstances are shown, a Supervisor is obligated to grant annual leave requests in the absence of any contractual provisions limiting the amount of annual leave allowed at any one time. This Arbitrator recognizes how disruptive such a program is to the efficiency of operations. The employee benefit is clear. It is a job right. Arbitrators don't have the authority to change, alter or modify such language. Management agreed to it, so they must live with it until it is changed.

In this case the Grievant has shown his request falls within the scope of annual leave purposes. He related an emergency scenario of car trouble that was communicated to his Supervisor before the beginning of his shift. These car troubles were unexpected and qualified as an emergency. Management's Supervisor had no basis for rejecting the Grievant's explanation. He did not check at the Grievant's house 3-5 minutes away to observe a different scenario. The Grievant has met his burden of proof. The Grievance must be sustained with the 2.88 hours changed from AWOL to annual leave with pay.

Management contends the Grievant has an attendance problem with repeated tardiness incidents. He has taken annual leave and/or sick leave on other tardiness days. Such claims had to be based on sick leave or emergency annual leave requests. If an employee is suspected of sick leave abuses, follow the procedures for correcting such misconduct. If an employee is suspected of creating "emergencies," require him to provide documentary or other independent evidence of the emergency. Of course, other forms of annual leave require prior approval for the paid time off. In any event, an employee is entitled to receive his leave benefits without running afoul of attendance requirements. Management simply left itself wide open for emergency annual leave claims as

grounds for covering tardiness.

The award in this case, however, must be coordinated with an employee's attendance obligations. Employees' leave benefits are intended to protect an employee's pay. Employees who take their allotted amount of annual leave can not be penalized or disciplined for doing what they were entitled to do under the National Agreement. Employees who actually are sick are entitled to their sick leave without fear of discipline. An employee's obligation to maintain regular attendance is not breached by these legitimate claims of contract benefits. The misrepresentation of an illness or an emergency scenario is a serious offense under the just cause doctrine and warrants severe discipline up to and including discharge. Management simply must take the initiative to prove such offenses. If employees exceed their contract benefits and protection, they have failed to meet their attendance obligations and are subject to progressive discipline under the just cause doctrine. If they do not have the physical and/or mental ability to be regular in attendance, the just cause doctrine allows an opportunity to cure the condition before termination, not as a matter of discipline, but simply because the person can no longer perform his work.

V. AWARD

The Grievance is hereby sustained in accordance with the opinion. The 2.88 hours of AWOL shall be converted to annual leave with pay.

Robert M. Williams