

C#03032

RECEIVED

AWARD IN ARBITRATION

MAR 5 1983

JIM EDGEMON, NBA

National Association Letter Carriers

UNITED STATES POSTAL  
SERVICE,

Employer,

-and-

NATIONAL ASSOCIATION OF  
LETTER CARRIERS,

Union.

WIN-5D-C-2269  
MEDICAL VERIFICATION  
HARRY CUSTER  
Seattle, WA

The above captioned matter was duly processed through the parties' grievance procedure, being unresolved appealed to and heard before the undersigned in arbitration on February 16, 1983, at the Employer's Main Post Office, Seattle, Washington.

Making appearances on the record were:

Julian F. Hunter, USPO representative

Robert J. Weaver, NALC representative

At the outset of the proceedings the parties stipulated the matter was properly before me for arbitral determination and the issue for resolution to be:

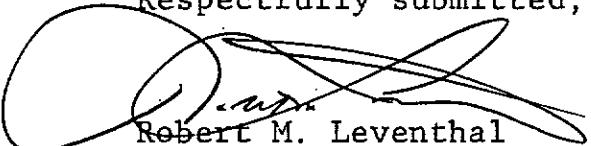
1. Did the Postal Service violate Articles III and X of the National Agreement as well as Chapter 5, sub-chapter 513.361 of the Employee and Labor Relations Manual, by requiring the Grievant to provide medical verification for his absence of November 28, 1981?

2. If so, what is the appropriate remedy?

At the conclusion of the evidentiary portion of the proceedings the parties elected to make oral argument on the record. Having carefully reviewed the entire record in this case it is my Award that:

1. The Employer did violate Articles III and X of the National Agreement as well as Chapter 5 of the manual by requiring the Grievant to provide medical certification of his absence.
2. As remedy, the Grievant is to be paid the sum of \$22.00.

Respectfully submitted,



Robert M. Leventhal

Submitted this 3rd day of March, 1983  
Culver City, California

## BACKGROUND

At the outset of the proceedings the parties were able to stipulate to the following facts:

1. The Grievant was employed as a regular full time letter carrier assigned to Wallingford Station since July, 1978.
2. The Grievant was not on restricted sick leave in November, 1981.
3. Review of the Grievant's records show, as per Joint Exhibit 5, that as of pay period 25 (November 14 through November 27, 1981) for the year to date he had earned 92 hours sick leave, had used 16 hours and had a carry over from the prior year of 136.52 hours.
4. On November 27, 1981, the Grievant did inform his station manager he was feeling ill and might not be able to report for work the next day.
5. The Grievant did report for work on time on November 28, 1981, punched in, went to a supervisor to advise he could not do his entire assignment, but felt he could case his route (see Joint Exhibit 4).
6. The manager advised the Grievant he would be required to bring in medical verification of his illness for November 28, 1981.

7. The Grievant left work and returned to work again on November 30, 1981, without a sick slip, he advised the supervisor he was unable to see the doctor over the weekend, requested and was granted 1.9 hours sick leave to go and he did then see a doctor on November 30, 1981.
8. The Grievant presented Joint Exhibit 6 upon return to work on November 30, 1981, and all sick leave for November 28, 1981, and November 30, 1981, was based upon that medical advisory, approved and paid.
9. Employees accumulate 104 sick leave hours per year.

The relevant provisions of the collective bargaining agreement appear to be:

ARTICLE X LEAVE

Section 5. Sick Leave

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

EMPLOYEE AND LABOR RELATIONS MANUAL

Subchapter 513.361. 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.

Therefore, at issue in the instant case is if the circumstances of this incident fall within the purview of: "for the protection of the interests of the Postal Service."

#### POSITION OF THE PARTIES

##### The Union

In defense of its member the Union's major arguments may be summarized as follows:

1. The Grievant had an exemplary sick leave record and there was no basis whatsoever for the Employer to suspect abuse.
2. The Grievant was obviously ill and so advised his supervisor in advance.
3. The Grievant's illness was not pretextual to avoid work.
4. A heavy workload is not a valid basis to require an employee to provide medical verification.
5. At no time has the Employer ever told the Grievant the criteria which justify its requesting a medical verification.
6. The weight of arbitral opinion supports the Grievant in this case and supervision may not act in an arbitrary, capricious or unreasonable manner to require medical verification.

The Employer

In support of its decision to deny the instant grievance the Employer's major arguments may be summarized as follows:

1. The Employee Labor and Relations Manual at 513.361 is clear and grants the Employer the right to act as they did in the instant case.
2. The supervisor expressly noted the level of undelivered weekenders and that such would represent a very heavy work day. For this reason when the Grievant returned from the street he expressly sought him out and reminded him of the work to be done the next day and it was only at that time the Grievant responded he may not come in due to illness.
3. By the Grievant's response on November 27, 1981, after the heavy workload had been expressly discussed, the Employer had a good faith question as to if in fact the Grievant was ill and in order to insure the mail would be delivered without undue disruption, the Employer acted within its rights to advise the Grievant, in advance, that if he did in fact stay home ill on November 28, 1981, a medical verification for sick pay would be required.

4. The Grievant's conduct on November 28, 1981, of reporting for work and then offering to only case the mail further supported the Employer's conclusion that medical verification was a reasonable request.

#### ANALYSIS

From the awards cited by the Union in C8N-4A-C 9427, C8N-4F-C 13163, C8N-4E-C-15142, WIC-5K-C 2433 and C8N-4B-C 10454, 12479, it is clear that the operative concepts of this case have been subjected to repeated arbitral review.

It appears clear that management may request medical verification only if there is some demonstrable need to "protect" the interests of the service, absent such requesting a medical verification from employees may be an abuse of discretion and it also appears well settled that when such a finding is made the employee may seek as a remedy reimbursement of medical costs which would not have been incurred "but for" the Employer's improper requirement.

The Union's argument the Employer has not outlined in advance the criteria to require medical verification for less than three day absences for employees not on restricted sick leave, is rejected. The Employer is within its rights to evaluate each instance on a case by case basis.

What emerges to me in this case are a number of concepts which should be present either singularly or in

concert in order to establish a reasonable basis for the Employer to require medical verification for employees not on restricted sick leave for the protection of the interest of the postal service.

- A. A pattern of sick leave utilization which while not yet warranting restriction, is indicitative of abuse in a particular circumstance where the supervisor has a good faith reason to question the bona fide of the absence.
- B. Where an employee by his conduct has given good cause to conclude his use of sick leave is pretextual for the withholding of services or for some purpose not authorized for sick leave utilization.
- C. Where the absence (perhaps on very short notice) will cause substantial disruption to the Employer's operation.

In the instant case the Grievant's lack of sick leave utilization while acknowledged by the Employer as "above average" was, exemplary. Clearly, the Grievant had no history whatsoever of questionable practices.

It was also undisputed that the Grievant's route was covered and the work completed that day. Therefore, the Employer's business interests cannot be demonstrated as "harmed" in any manner by the Grievant's absence.

At issue is if the Grievant, by his conduct, gave the

supervisor reasonable cause to conclude his alleged illness was pretextual to withhold his services not for a bona fide sick leave purpose.

The supervisor asserted the Grievant first raised his illness when the volume of mail for Saturday was discussed and therefore he decided the Grievant required medical verification.

The supervisor did not assert he had a good faith belief the Grievant was not in fact ill or for that matter considered any factor other than the heavy work load discussion. On its face, I cannot find this a reasonable conclusion.

In evaluating the testimony I found the Grievant's version of events credible. He was not feeling well for several days prior and this was apparent. The supervisor who ordered the medical verification because the carrier foreman (the Grievant's immediate supervisor) had already gone home, should at a minimum checked with the carrier foreman before he reached the conclusion the Grievant was in fact trying to "pull a fast one." In fact, a check with the carrier foreman in all probability would have confirmed that the Grievant was reporting the undelivered weekenders on the appropriate forms. Other significant information may also have been secured as to the Grievant's work habits and state of health.

In brief, even if I fully credited the supervisor's

version of the discussions, under the facts of this case, there was no basis to conclude that paragraph B conduct was present and there was no contention that paragraph C was operative.

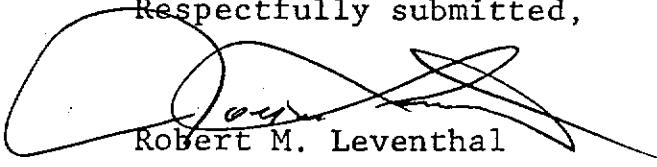
Accordingly, the Employer did act improperly when it required medical verification of the Grievant for November 28, 1981. At issue is remedy.

As already discussed it appears well settled that when the Employer impermissably exercises its right for medical verification, the effected employee has a right to be made whole for any medical expenses incurred.

In the instant case I award the Grievant the \$22.00 billed by Dr. Tracy for the examination. I concur with the Employer that if in fact the Grievant had the good faith belief he really didn't need to see the doctor or that the taking of medication was not called for, he was free not to fill the prescription. Proof of filling the prescription was not required to meet the Employer's medical verification and therefore the Grievant elected to fill this prescription and take the medication at his own risk.

Accordingly, the Grievant's prayer for prescription reimbursement is denied.

Respectfully submitted,

  
Robert M. Leventhal

Submitted this 3rd day of March, 1983  
Culver City, California