

IN THE MATTER OF THE ARBITRATION

2960 (C-4B-C)

LOCAL ARBITRATION

between

UNITED STATES POSTAL SERVICE)

Case No. C1C-4B-C 2960

Grievance of Deborah Eiland

and)

AMERICAN POSTAL WORKERS UNION)

Decided, October 19, 1982

Before
NEIL N. BERNSTEIN,
Arbitrator

APPEARING

FOR THE SERVICE:- Mr. Michael P. Jordan, Labor Relations Specialist,
Arbitration Branch, United States Postal Service,
Central Regional Office, Chicago, Illinois 60699

FOR THE UNION:- Mr. Phil Tabbita, Industrial Relations Director,
American Postal Workers Union, 20530 Southfield,
Detroit, Michigan 48235

STATEMENT OF FACTS

The Grievant has been employed at the Detroit, Michigan Post Office as a clerk since May 1977.

The present grievance arises out of an incident that occurred on December 14, 1981. On that day, the Grievant, Deborah Eiland, was scheduled to work from 3:30 p.m. until midnight. She reported as scheduled and began her tour. At approximately 8:30, she told her supervisor that she was feeling ill and wanted to go home for the remainder of the shift. The supervisor sent her to the general foreman for permission to leave. The general foreman in turn told her that she could not leave unless she was able to substantiate her illness and sent her back to her supervisor. The supervisor then sent the Grievant to the medical unit for examination. The nurse in the medical unit took the Grievant's temperature, pulse and blood pressure, all of which were normal. The nurse gave her cough lozenges, advised her to see a private physician if her symptoms persisted, and sent her back to work.

After several conferences between the Grievant, her supervisor, the general foreman and a Union representative, the Grievant was told that she should go home if she was ill, but if she did so, she would have to bring in a doctor's statement to substantiate her illness. The Grievant left the Post Office at approximately 9:45 p.m.

The Grievant returned to work the next day as scheduled and brought in a slip from her doctor certifying that she was unable to work. The Service paid her sick leave for the time she missed on December 14.

Ms. Eiland filed the instant grievance on December 29, 1981, claiming that the Service violated the National Agreement by requiring her to verify

her illness. The grievance requested that she be reimbursed for the cost of obtaining the statement plus compensation for her time and mileage in going to the doctor's office. Her grievance has been processed through the pre-arbitration steps in the parties' disputes' procedure. When, in all such prior steps, the Service denied her grievance, the Union invoked arbitration of it in this proceeding.

APPLICABLE CONTRACTUAL PROVISION

Employee and Labor Relations Manual, Section 513.361:

"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 protection of the interests of the Postal Service."

POSITIONS OF THE PARTIES

Union

The Union contends that the Grievant's situation did not meet either of the two criteria that entitle the Service to require documentation for an illness of three days or less. She was not on restricted sick leave and the documentation did not protect any valid interest of the Service. Her supervisor was merely trying to pass the buck to convince either the general foreman or the nurse to excuse the Grievant. When neither would do so, the supervisor imposed the documentation requirement. This demand was arbitrary and capricious, and the Grievant should be made whole for the expenses she incurred in complying with it. The Service is seeking to expand the provision beyond reasonable limitations.

Service

The Service acknowledges that the Grievant had not been properly placed on restricted sick leave, but it claims she had been put on notice that she had a sick leave problem.

The Service contends that the documentation requirement did not violate the National Agreement. The Grievant's station was experiencing a very heavy mail volume period and she had no illness symptoms that were observable to either her supervisor or the nurse on duty in the medical unit. The supervisor balanced the equities and reasonably concluded that some documentation would be appropriate. The Service has an obligation to protect against excessive payment of sick leave benefits.

OPINION OF THE ARBITRATOR

As both parties recognize, Section 513.361 of the Employee and Labor Relations Manual gives management discretion to require verification of an illness of three days or less in only two situations: (1) when the employee is on restricted sick leave, or (2) where the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

The Service admits that the Grievant was not properly on restricted sick leave at the time of this incident. It had apparently attempted to place her on restricted sick leave in November 1980, but it failed to provide her with the written notice required by Section 513.372. Therefore, its efforts to place her on the restricted list were not effective. Nevertheless, the Grievant's supervisors may well have believed that she was on

restricted sick leave in December 1981, and that ~~beliefs~~ may explain some of the actions taken in this case.

MMB By process of elimination, the Service must justify its direction that the Grievant submit a doctor's statement to ~~justify~~ ^{verify} her illness on the alternative ground that "the supervisor deems documentation desirable for the protection of the interests of the Postal Service." In that regard, the Service relies upon the contentions that the incident took place in December, a period of heavy mail volume, and that the Grievant exhibited no symptoms of illness that were apparent to either her supervisor or the medical unit nurse.

The fact that the incident took place during a period of heavy mail volume appears to be immaterial. The basic question is whether the Grievant was entitled to sick leave for the time she missed on December 14; the answer to this question depends in turn on whether she was "incapacitated for the performance of official duties." If she was so incapacitated, she is entitled to be absent on sick leave, whether the Service has a desperate need for her labor or not. If she was not incapacitated, she is not entitled to leave work and claim sick pay, even when there is no work for her to do and she would just stand around for the remainder of her shift if she remained at work. Nothing in the Labor Agreement justifies a Service position of lenient dispensation of sick leave in periods of slack demand or vice versa.

Thus, we are left with the Service's final argument, that it required her to bring in a doctor's statement because there were no observable symptoms to support her illness claim. Given the broad language of Section 513.361, this circumstance might be enough by itself to justify a demand for documentation in an appropriate case.

However, in the present case, this explanation is insufficient because it only explains why the Grievant was required to produce a medical statement when she was finally allowed to leave work. The fatal flaw is that there is no explanation for the initial reluctance of the Grievant's supervisors to allow her to claim sick leave when she initially requested it an hour or so earlier. The arbitration record indicates that the Grievant initially approached her supervisor with a request to leave early because of illness, which is a relatively straight-forward request. The supervisor presented no explanation as to why the request was not simply granted at the time. There is nothing to indicate that the supervisor had any reason at that point to be suspicious that the Grievant did not have a bona fide illness. She did not, for example, have a history of sick leave abuse; although she may have had some problems a year earlier, her use of sick leave during 1981 was relatively modest, and she had built up her sick leave reserve from 28 hours to 100 hours over that period. In addition, there was no evidence that the Grievant had tried to leave earlier on personal grounds, and resorted to a claim of illness only when her request for other leave was refused.

However, for reasons that were never explained at the hearing, the Grievant's supervisor refused to pass upon the Grievant's initial request, and instead sent her to others for authorization. First the Grievant was sent to the general foreman; when he refused to let her leave, the supervisor sent her to the medical unit. It was only when the nurse in the medical unit did not send the Grievant home, and when she still insisted upon taking sick leave and brought the Union into the controversy, that management agreed to let her go home on sick leave provided she brought a doctor's statement in with her when she returned to work.

The Arbitrator holds that the procedure followed in this case did not comply with Section 513.361. That section basically allows an employee not on restricted sick leave to utilize sick leave for an absence of less than 3 days on his or her statement of incapacity for work in all situations except when the supervisor believes a special circumstance exists that justifies a demand for a doctor's statement. Moreover, it follows that a burden is on the Service to disprove arbitrary or capricious behavior by showing objective evidence that such a situation existed. The Service failed to provide any objective reason for the supervisor's failure to allow the Grievant to take her sick leave when she asked to go home. Nothing was present to raise any suspicion that the claimed illness may not have been present. Consequently, there was no justification for sending her to the general foreman and to the medical unit, and finally for imposing the verification demand upon her. For this reason her grievance must be sustained.

On the question of remedy, the evidence shows that the Grievant made a visit to her doctor, which cost her \$25.00 plus an additional \$4.00 for the certification of inability to work. In addition, the Grievant had to drive a round trip of ten miles and expend some of her own time on the journey. However, the Grievant testified that she would have gone to the doctor whether or not the Service had demanded medical verification because she was ill and ^{needed} ~~needed~~ medical treatment. Therefore, the only additional expense that she was required to incur was the \$4.00 charge for the certification, and this is the only reimbursement to which she is entitled.

THE AWARD

The December 29, 1981 grievance of Deborah Eiland is sustained. The Service is directed to pay her \$4.00 for the medical certification she was improperly required to submit.

Neil N. Bernstein

Neil N. Bernstein,
Arbitrator