

C#10697

MAR - 5 1991

NALC-BR. 283
HOUSTON, TEXAS

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between) GRIEVANT: C. Wright
UNITED STATES POSTAL SERVICE) POST OFFICE: Houston, TX
and) CASE NO: S7N-3V-C 33759
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO)

BEFORE: ROBERT G. WILLIAMS, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Linda McKelvey

For the Union: Golden Fagan

Place of Hearing: Main Post Office Annex
1002 Washington
Houston, TX

Date of Hearing: February 13, 1991

AWARD:

The Grievance is hereby denied in part and sustained in part. The Grievant was liable to repay \$261.39. Her sick leave account shall be credited with the sick leave she was denied from June 13, 1990 to June 16, 1990. This Arbitrator retains jurisdiction in the event any dispute arises regarding the implementation of this award.

Date of Award:

February 26, 1991

RECEIVED - Robert G. Williams
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GARY H. MULLINS
NATIONAL BUSINESS AGENT
N.A.L.C.
DALLAS REGION #10

I. BACKGROUND

This case arose under the National Agreement effective from July 21, 1987 to November 20, 1990. On August 8, 1990 the Postal Service issued a claim's letter to the Grievant requesting the reimbursement of sick leave pay that had been disallowed. The Grievant paid the requested amount under protest, filed her written grievance and properly processed her case to this arbitration. An arbitration hearing was held on January 13, 1991 at which time the parties introduced their evidence, examined all witnesses and argued their respective positions. The issue presented at the hearing was as follows:

Under the Agreement is the
Postal Service entitled to recover
sick pay benefits for sick days
charged to LWOP and, if so, what
shall be the remedy?

Following the presentation of the parties, the hearing was closed.

II. FINDINGS

The material facts in this case are not disputed by the parties. The Grievant has been employed by the Service for approximately twelve (12) years. The Grievant was absent

from work from Wednesday, June 13, 1990 through Saturday, June 16, 1990. On Monday, June 18, 1990, the Grievant submitted her 3971 requesting sick leave for the four (4) days she was absent. Since she was absent for over three (3) days, her Supervisor instructed her to submit documentation of her incapacity to work. On or about June 26, 1990 the Grievant submitted the following statement from her Dentist:

This letter is to certify that Ms. Carlotta Wright was in our office on June 15, 1990 for pain and swelling in the lower right quadrant of the oral cavity.

If there are any questions feel free to call the office.

When he received this letter, the Grievant's Supervisor told her it was unacceptable because it did not establish her incapacity to work. She was instructed to obtain acceptable documentation. In the meantime the Grievant was paid leave for the days June 13 through 16, 1990. Since no acceptable documentation was submitted, the Grievant's Supervisor disapproved her 3971 on the grounds she was "AWOL." On August 8, 1990 the Manager of Accounting Services sent a claims letter to the Grievant. It stated, in part:

Attached is a copy of Invoice No. 555770 indicating your indebtedness to

the U.S. Postal Service. The indebtedness represents the recovery of monies for 24 hrs. SL used in PP 9013, week 2. Hrs. should be LWOP.

It will be appreciated if you will forward a cashier's check or money order made payable to the "Disbursing Officer, U.S. Postal Service" in the amount of \$261.39....

The referenced invoice provided:

Billing to collect for 24 hours sick leave used in pay period 9013 week 2. Hours should be leave without pay. Leave will be restored when this invoice is paid in full.

Following the receipt of this letter and invoice, the Grievant refunded the claimed amount under protest. At the time of the hearing, however, she had not received credit for this restored sick leave.

III. POSITIONS OF PARTIES

The Postal Service contends it is entitled to reimbursement for this undocumented sick leave. Employees are entitled to sick leave benefits only when they are sick. Under ELM 513.36 employees claiming sick leave benefits are required to submit certain documentation in support of their claim. ELM 513.362 expressly provides that employees absent in

excess of three (3) days "are required to submit documentation or other acceptable evidence of incapacity for work." The Grievant failed to submit the required evidence. She was not entitled to sick leave except possibly for the one (1) day she went to her dentist. Since she received benefits she was not entitled to receive, she must reimburse the Service for the wrongfully claimed benefits.

The Union, on the other hand, contends neither the National Agreement nor the local past practice provide for the reimbursement of sick leave benefits. A Union Representative from the same station as the Grievant testified that this case is the first one he could recall of the Service attempting to recover later disallowed sick leave payments. In the past sick leave payments, once made, were not disturbed after a pay period. The National Agreement makes no provision for the reimbursement of already paid benefits. In any event, the Grievant has not received credit for the sick leave hours now denied. The Grievance, therefore, must be sustained.

III. DISCUSSION

Article 10, Leave, Section 5, Sick Leave, provides, in part:

Section 5. Sick Leave

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

Section 6. Minimum Charge for Leave

The minimum unit charged for sick leave...is one hundredth of an hour (.01 hour).

ARTICLE 28 EMPLOYER CLAIMS

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of ...postal funds.... In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefor.

(Emphasis Added)

The Employee and Labor Relations Manual (ELM) sets out the evidentiary requirements for documenting a sick leave claim presented on a 3971 form:

513.36 Documentation Requirements

513.361 3 Days or Less. For periods of absence of 3 days or less, supervisors may accept the employees' 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 513.37) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

513.362 Over 3 Days. For absences in excess of 3 days, employees are required to submit documentation or other acceptable evidence of incapacity for work.

513.364 Medical Documentation or Other Acceptable Evidence. When employees are required to submit medical documentation pursuant to these regulations, such documentation should be furnished by the employee's attending physician or other attending practitioner. The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation to perform duties. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.

513.365 Failure to Furnish Required Documentation. If acceptable proof of incapacitation is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

When Supervisors have evidence indicating an employee is abusing sick leave, procedures are established for placing employees on restricted sick leave which requires them to support all sick leave applications with documentation described in ELM 513.364. See ELM 513.37 Restricted Sick Leave. These provisions are controlling in this case.

Under the National Agreement employees are entitled to paid sick leave when they are sick and unable to work. They earn this potential sick leave with every hour of actual work. As long as they have accumulated sick leave hours, they are entitled to use them when they are too ill or injured to work. The Postal Service, at the same time, has a right and obligation to manage the sick leave program including disciplining employees who intentionally make false sick leave applications or employees who carelessly diagnose themselves as being too ill or injured to work. The ELM in 513.36, Documentation Requirements, and 513.37, Restricted Sick Leave tell employees what evidence they must provide to substantiate their claims for sick leave.

Employees initially have the burden of proving they are too ill or sick to work. Of course, employees know or should know when they are temporarily incapacitated. In the absence of any evidence to the contrary, an Employer must accept an employee's own diagnosis of their inability to work as the result of sickness or injury. At the same time management is entitled to require medical documentation to support or corroborate a sick leave claim. The ELM essentially describes the corroborating evidence, if any, needed to prove a sick leave application. Supervisors

may not require any documentation from employees who rarely use sick leave and are absent for three (3) days or less. The ELM, on the other hand, requires documentation of incapacity from other employees. The failure of an employee to provide required documentation simply means that employee has failed to prove his or her sick leave claim.

In this case the Grievant simply has failed to prove her claim. The statement from her dentist described her condition at the time of her office visit on Friday, June 15, 1990. It did not state the Grievant's condition prevented her from working at any time from Wednesday, June 13th to Saturday, June 16th. Her Supervisor, therefore, properly rejected this documentation as proof and denied her application for sick leave. In the meantime, the Service paid her sick leave for the pay period 9013.

Now, the Postal Service is attempting to recover the paid sick leave that should not have been paid in the first place. The National Agreement includes express provisions allowing the Employer to file such a claim. Article 28 provides for Employer Claims. It permits the Employer to make "any money demand upon an employee for any reason" as long as the claim is made in writing and includes the

reasons for the demand. Just as any employee or Union, the Employer has a right to petition for redress of grievances. Otherwise, an agreement would be meaningless because a party to the agreement would have no standing to enforce the agreement. In this case the Grievant failed to prove her claim for sick leave pay. She, therefore, must reimburse the Postal Service for the mistaken payment of her sick leave. At the same time she is entitled to credit for this sick leave in her accumulated sick leave account.

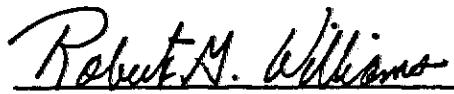
This result must be distinguished from any management effort to discipline employees for making intentionally false sick leave applications or carelessly making sick leave applications that can not be supported by acceptable documentation. The Employer has the burden of proving an employee intentionally made a false sick leave claim. Such a burden requires the Employer to prove that at the time the employee applied for sick leave, he or she knew they were not injured or ill and incapacitated. For example, an employee who applies for sick leave for a day he was observed fishing on the beach is subject to severe discipline including discharge for filing a false claim. An employee who forges a doctor's statement is subject to the same offense and discipline. Such cases must be distinguished

from incidents involving employees who believe they are too injured or ill to work, but don't have acceptable medical documentation. They simply are absent or tardy and subject to progressive discipline under the Employer's attendance program and the just cause doctrine. In other words, the fact that this Grievant failed to prove her sick leave application and had to refund her sick leave pay, does not change the burden of proof management has in any disciplinary action against the Grievant for unsatisfactory attendance. Management still has that burden of proving her attendance is irregular in a discipline case.

V. AWARD

The Grievance is hereby denied in part and sustained in part. The Grievant was liable to repay \$261.39. Her sick leave account shall be credited with the sick leave she was denied from June 13, 1990 to June 16. 1990. This Arbitrator retains jurisdiction in the event any dispute arises regarding the implementation of this award.

This the 26th day of February, 1991.



Robert G. Williams, Arbitrator