

C# 04086

IN THE MATTER OF THE)
ARBITRATION BETWEEN)
)
United States Postal Service)
Key West, Florida)
)
Employer)
-and-)
)
National Association of)
Letter Carriers)
)
Union)

OPINION AND AWARD
S1N-3W-C-24990
F. Perez

NALC
RECEIVED
FEB 1 1984
WAYNE E. WHITE, NBA
ATLANTA REGION

Before:

Robert W. Foster, Arbitrator

APPEARANCES

For the Employer:

R. Wayne Ray, Labor Relations Representative

For the Union:

Q. L. Pittman, Regional Administrative Assistant

PRELIMINARY STATEMENT

The undersigned was appointed to arbitrate a dispute between the United States Postal Service (Employer) and the National Association of Letter Carriers (Union) arising out of a grievance filed by Letter Carrier F. Perez (Grievant) and pursued by the Union to this arbitration proceeding according to the National Agreement between the parties. A hearing was held on December 12, 1983 in Key West, Florida attended by the Grievant and the above-named representatives of the parties who were accorded full and equal opportunity to present evidence and arguments. This matter is now before the arbitrator to render a decision according to the terms of the National Agreement.

ISSUE

Whether the Employer violated the National Agreement and the Employee and Labor Relations Manual incorporated therein by reference by requiring Grievant to submit medical certification to support his sick leave request for absence on July 16, 1983? If so, what shall be the remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE 10 - LEAVE

Section 5. Sick Leave

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

513.342 Approval/Disapproval. The supervisor is responsible for approving or disapproving applications for sick leave by signing the Form 3971, a copy of which is given to the employee. If a supervisor does not approve an application for leave as submitted, the Disapproved block on the Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reason for the disapproval. AWOL determinations must be similarly noted.

513.36 Documentation Requirements

.361 3 Days or Less. For periods 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.

.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. Such 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 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.

.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.

SUMMARIZED STATEMENT OF THE CASE

This grievance complains of Grievant being required to bring in medical certification to support his called in request for sick leave on July 16, 1983, and charges a violation of Article 2 of the National Agreement on the ground that other carriers have a worse sick leave record than Grievant. The remedy requested is that local management cease discrimination and disparate treatment of Grievant, that he be taken off the sick leave challenge list and compensated for the expenses incurred in procuring the required medical certification.

On the afternoon of July 15, 1983, Grievant was engaged in an accident while driving his assigned vehicle. He returned to the station at approximately 4:00 p.m. on that day. At about 4:20 p.m. he told the Carrier Foreman that he was going home. When the foreman asked Grievant about the mail, Grievant replied that it was after 4:00 and headed for the clock. The foreman then told Grievant to come in 30 minutes early the next day which Grievant did not acknowledge at first. According to the foreman, when he again told Grievant to come in 30 minutes early, the Grievant gave a "horse laugh." Since this led the foreman to think that Grievant may not report to work the next day, he instructed the morning supervisor that if Grievant called in sick to challenge him and require medical proof. The foreman testified that Grievant did not appear to be sick when he left work. He further stated that

the reason he had Grievant's alleged sickness challenged was because of the confrontation with Grievant and his poor attendance record.

Grievant, who was scheduled to report to work at 7:30 a.m. on Saturday, July 16, called in sick at about 7:00 a.m. and was told by the supervisor that medical documentation would be required in order to approve his sick leave request. When Grievant reported to work on Monday, July 18, his leave request was signed LWOP until medical certification was provided. The leave was subsequently approved when Grievant provided a doctor's certification that he was under his doctor's care for high blood pressure on July 16. Grievant had seen his doctor on July 22 for which he paid a \$25 fee and an additional \$112 for subsequent tests.

The local union president testified that he initiated the grievance at step 2 because of the charge of discrimination against Grievant based on an investigation of sick leave records which he believed indicated that five or six employees who were not on the sick leave challenge list had used more sick leave than Grievant who was on the list. In support of this position, this witness sponsored into evidence Grievant's sick leave record for 1983 through July 15 showing five unscheduled absences of 8 hours and ten occasions when Grievant worked less than a full work day. The record of several other carriers reflect more total hours of sick leave than Grievant. A management witness testified that Grievant had the worst absence record based on his calculation of unscheduled absences.

Grievant testified that as a result of an accident on the afternoon of July 15 he came back to the station late and was not feeling well. He denied making any response to the supervisor and stated that he called in sick the next day because he had suffered severe headaches during the morning of July 16. Grievant explained the reason for his absences during the first six months of 1983 as being caused by having his teeth removed.

SUMMARIZED POSITION OF THE PARTIES

The Union

The Union charges management with disparate treatment of Grievant, who was not on restricted sick leave, by requiring him to bring in medical proof while others with worse records were not so required. The Union further claims that the upsetting effect of the accident on July 15 was the cause of his inability to work the next day. The Union also points to Grievant's problems with his teeth as the reason for his use of sick leave during the first six months of 1983.

Because of what the Union sees as an improper demand upon Grievant to provide medical documentation, it asks that Grievant be reimbursed for the total doctor's bill of \$137.

The Employer

The Employer contends that the supervisor had reason to question Grievant's alleged illness due to the confrontation when he was told to come in early, and his eleventh unscheduled absence for 1983 on July 16. Accordingly, the Employer asserts that management acted within the authority of E&LR Manual section 513.361. The Employer further denies the Union's charge of disparate treat-

ment since it interprets Grievant's sick leave record as being higher than any other employee's.

Finally, the Employer contends that the maximum amount for which it would be responsible to Grievant in any event is the \$25 doctor's fee for the visit necessary to procure the medical documentation, and not the additional charges for the follow-up medical tests.

DISCUSSION AND OPINION

At the outset, reference should be made to a companion decision authored by this arbitrator ruling that the locally promulgated "Supervisor's Leave Control Challenge Instruction" is invalid to the extent that it attempts to displace the E&LR Manual provision regarding restricted sick leave. Accordingly, since Grievant was not on restricted sick leave under the procedure of E&LR Manual section 513.371, the only justification for requiring Grievant to provide medical documentation for absence of one day must fall within the alternative ground as stated in section 513.361 of the Manual, "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service." Whether that condition existed under the factual circumstances when Grievant was required to provide medical documentation will govern the outcome of this grievance.

The "interests" referred to in the Manual is management's right to control the possible abuse of sick leave by authorizing considerable managerial discretion in determining whether "a supervisor may accept an employee's certification as reason for an absence," as authorized by Article 10, section 5E of the National

Agreement, or elect to require proof of the alleged illness. This discretion may not be abused, however, by imposing this burden on an employee in a discriminatory manner or in the absence of some reasonable and objectively identified indication of a factual basis creating a justifiable concern about the validity of the claimed illness.

In applying that standard to the facts of this case, it is necessary to view the circumstances under which Grievant requested sick leave for the day in question as viewed through the eyes of the supervisor who made the decision to challenge the Grievant. There is first the absence of any indication on the afternoon of July 15 that Grievant may not be feeling well. Moreover, there is some evidence of Grievant's initial resistance to the supervisor's suggestion that Grievant stay over to complete the processing of mail. That displeasure with the supervisor was apparently heightened when the supervisor then told Grievant to come in early the next day, as indicated by the absence of any initial response from Grievant. These signs of Grievant's attitude at the time could be easily dismissed if it were not for the credible testimony of Grievant's "horse laugh" when he was again told to come in early as he was leaving. When combined with Grievant's excessive sick leave use in the past, this action by the Grievant was sufficient to raise a substantial doubt in the mind of a reasonable person as to whether Grievant did not intend to report to work the next day because of his irritation created by the demand for additional work. It was therefore in the interest of the Postal Service to

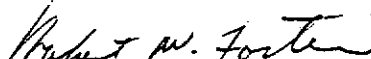
determine the true fact as to whether it was a mere coincidence that Grievant's reported sickness coincided with the previous indication of his resistance to the supervisor's demand to come in early.

With this conclusion that the demand for medical documentation was justified by a reasonable basis of suspicion that Grievant was not actually sick when he called in on the morning of July 16, the conflicting evidence as to whether Grievant's sick leave usage was greater than other carriers becomes irrelevant. In any event, there is no basis to support the Union's charge of disparate treatment of Grievant since the demand for medical documentation was not based solely on his prior sick leave record or that he was on the local leave control challenge list.

AWARD

After careful consideration of the evidence and arguments of the parties, and based on the reasons set out above, the award is that the Employer did not violate the National Agreement or the E&LR Manual incorporated therein by reference by requiring Grievant to submit medical certification to support his sick leave request for absence on July 16, 1983.

Accordingly, the grievance is denied.


Robert W. Foster, Arbitrator

January 26, 1984

Columbia, South Carolina