

VOLUNTARY LABOR ARBITRATION

C# 01597

In the Matter of the Arbitration between

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

-and-

UNITED STATES POSTAL SERVICE

Case No. C8N-4F-C 4678;
Grievance of
Wayne E. Heinfeld

Dayton, Oh.

ARBITRATION OPINION AND AWARD

This arbitration is pursuant to Article XV of the 1978 national agreement. Hearing was held July 31, 1980 in Dayton, Ohio, with the Employer represented by Mr. Lawrence G. Handy, Labor Relations Executive, and the Union by Mr. Joe W. Booher, Local Business Agent. With the receipt of post-hearing briefs, the record was closed September 2, 1980.

The instant grievance challenges the reasonableness of a supervisor's directive to grievant that without medical verification, his absence of March 3, 1979 would be designated as an absence without leave. In addition to the contention that the supervisor's order violated §513.371 of the Employee & Labor Relations Manual, the

Union also seeks payment to grievant of medical costs incurred for two visits to a physician.

Route inspections at the Dabel station were scheduled to begin Monday, March 3, 1979. In the preceding week, it was the "order of the week" for carriers to clean up all curtailed mail prior to commencement of the inspections. On Friday, March 2, carriers were informed via a public address system announcement that in the event they possessed curtailed mail, they would be allowed to disregard scheduled leaving times in order to case and take all remaining mail on their respective routes. Grievant was granted express authorization to remain at the station an extra hour that Friday morning "due to dry run inspection and cleaning up most of curtailed mail".

When grievant left the station on the morning of March 2, he did not take all the mail remaining for his route. When his supervisor subsequently asked why he had not "cleaned up his route" when instructed to do so, grievant said he was unsure if the supervisor had authorized more than the additional hour that Friday morning before leaving the station. The supervisor replied that although grievant should have "cleaned up the route that day", he could do so the following day, Saturday, March 3. Grievant offered no response.

Shortly after six o'clock on Saturday morning, March 3, grievant telephoned the supervisor, stating he had "a cold" -- that he then was suffering from a headache, a sore throat, and an upset stomach. According to the supervisor, when he reminded grievant of the preceding day's conversation regarding the following week's inspection, grievant stated he did the supervisor "a favor" by working on Friday since he was sick that day as well. The supervisor then told grievant that unless he submitted a doctor's statement for that day's absence, he would be charged with an AWOL.

The supervisor testified his reason for requiring medical verification for the one day absence of March 3 was the belief that grievant was "trying to get around the route clean up" even though he had been authorized overtime for that express purpose. There were between 700 and 750 pieces of mail curtailed by grievant when he left the station on Friday, March 2. In the course of the Saturday morning telephone conversation, the supervisor felt grievant "wanted to avoid cleaning up his route and possibly have excessive mail on hand for the inspection scheduled for the following Monday."

It was grievant's testimony that after describing his symptoms, the supervisor asked if he was going to see a doctor. Grievant said no, "he couldn't get in to see his family doctor on a

Saturday". According to grievant, the supervisor then ordered him to go to the doctor, adding he would be designated as "WOP" if he did not produce medical verification for the absence. He attempted to contact three doctors whose names he found in the phone book but could not obtain an appointment. However, a fourth doctor was able to see and treat him. Grievant was charged \$28 for the March 3 office visit, during which he was examined, received an injection, and was given medication. At the direction of the doctor, he returned on Monday, March 5, when he again was examined, received an injection, and was given medication. The cost for the second visit totaled \$26. Upon his return to work on March 5, grievant submitted the following medical statement:

For Wayne Heinfeld

Date 3-3-79

The above named patient was seen in this office for treatment of pharyngitis with upper respiratory infection.

s/David B. Russack, D.O.

Grievant submitted a PS Form 3971 for his absence on which the sick leave request for March 3 was approved by his supervisor.

During his employment, which commenced November 4, 1968, grievant had never been placed on restricted sick leave. His supervisor

acknowledged that prior to March 3, 1979, there never was any reason to discuss sick leave usage with grievant, nor was there any reason to consider placing him on restricted sick leave. From December of 1977 through December, 1979, grievant used a total of five sick leave days.

Because grievant was not on restricted sick leave on March 3 and on the basis of his "clean" attendance record, the Union contends there was no reason to require submission of medical verification for that day's absence. It is the Employer position that the supervisor "had good and reasonable cause to predicate his acceptance and approval of sick leave upon the certification of a medical doctor that the grievant was in fact, not able to perform his scheduled duties on March 3, 1979". The provisions of both the national agreement and the Employee & Labor Relations Manual clearly vest in a supervisor the authority to require medical verification for absences of three days or less, and also impose upon employees the responsibility for providing "acceptable evidence for absences when required". The Employer submits that under the facts of this case, the Employer's doubt as to the legitimacy of grievant's claimed illness was justified.

The primary thrust of the Union's argument is that since the grievant was not in a restricted sick leave status under §513.37

of the Employee & Labor Relations Manual when he called in sick on Saturday morning, March 3, 1979, and because his attendance record was good and did not evidence any possible abuse of sick leave, there was no basis upon which the supervisor could require medical documentation for his absence because of illness that day. However, that argument fails to take into account the rights, duties, and obligations of both supervisors and employees as delineated in the collective bargaining agreement as well as those Manual provisions pertaining to sick leave usage which are incorporated into the contract by virtue of Article XIX.

Article X, §5E, reads:

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

Selection of the word "may" clearly reflects the existence of circumstances when supervisors may elect not to accept an employee's own "certification" of the reason for an absence of three days or less. Accordingly, it is then necessary to review and analyze applicable sections of Chapter 5 of the Employee & Labor Relations Manual which speak to sick leave usage:

Chapter 5

Employee Benefits

510 Leave

511 General

511.1 Administration Policy

The U. S. Postal Service policy is to administer the leave program on an equitable basis for all employees, considering (a) the need of the USPS and (b) the welfare of the individual employee.

511.2 Responsibilities

.21 Postal officials:

a. Administer the leave program.

...

c. Approve or disapprove requests for leave.

...

511.4 Unscheduled Absence

.41 Definition. Unscheduled absences are any absences from work which are not requested and approved in advance.

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.43 Employee Responsibilities. Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.

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513.3 Authorizing Sick Leave

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.33 Application for Sick Leave

.331 General

Except for unexpected illness/injury situations, sick leave must be requested on Form 3971 and approved in advance by the appropriate supervisor.

.332 Unexpected Illness/Injury

An exception to the advance approval requirement is made for unexpected illness/injuries; however, in these situations the employee must notify appropriate postal authorities as soon as possible as to their illness/injury and expected duration of absence. As soon as possible after return to duty, employees must submit a request for sick leave on Form 3971. Employees may be required to submit acceptable evidence of incapacity to work as outlined in the provisions of 513.36, Documentation Requirements. The supervisor approves or disapproves the leave request. When the request is disapproved, the absence may be recorded as annual leave, if appropriate, as LWOP, or AWOL, at the discretion of the supervisor as outlined in 513.342.

...

513.3

...

.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.

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.36 Documentation Requirements

.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.

...

.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.

.37 Restricted Sick Leave

.371 Reasons for Restriction. Supervisors (or the official in charge of the installation) who have evidence indicating that an employee is abusing sick leave privileges may place an employee on the restricted sick leave list. In addition, employees may be placed on the restricted sick leave list after their sick leave use has been reviewed on an individual basis and the following actions have been taken.

Pursuant to §513.361, supervisors are empowered to require medical "documentation or other acceptable evidence of incapacity for work" not only when an employe is on restricted sick leave but also "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service". Assuming for the moment the existence of a valid reason for such medical documentation, it is clear the Employer has the right to require it in the case of a single day's absence -- even when the employe has not been placed on restricted sick leave pursuant to §513.37. Under the Manual, a concomitant obligation extends to employes. Where a directive for medical documentation is properly invoked pursuant to §513.361, the employe "must provide acceptable evidence for absences when required". §§511.43, 513.332.

The key question for resolution is whether the supervisor entertained a reasonable concern or belief that grievant's claimed illness on March 3 followed the intentional curtailment of mail on March 2 so that mail would be on hand for the March 5 inspection. The fact that the subsequently submitted medical documentation clearly establishes grievant's illness of March 3 in no way affects the reasonableness, or lack of reasonableness, of the supervisor's action since that action must be evaluated under circumstances existing at the time of grievant's telephone call on

the morning of March 3. Nor is it necessary to reach any determination concerning grievant's "intent" in regard to the curtailment of mail on Friday, March 2. Rather, it is only necessary to analyze the events as they existed when grievant called in sick on the morning of March 3 in determining whether the supervisor's directive complied with the mandate of §513.361.

All carriers at Dabel station were notified of the need to "clean up" their respective routes prior to the inspections. In fact, one of the purposes grievant was authorized to leave the station late on Friday morning, March 2, was to enable him to case and remove all mail then on hand. Time records reflect grievant was authorized to, and did, work 1.3 overtime hours on March 2. Furthermore, in discussions with the supervisor held later in the day on March 2, the curtailment of mail that morning was discussed with the supervisor stating that grievant would be expected to have all mail removed the following day. Although grievant subsequently stated he was ill that Friday, he did not advise the supervisor of that fact before leaving the station on Friday afternoon.

With that factual background, it is understandable that when the supervisor was informed grievant had a cold and was suffering from a headache, a sore throat, and an upset stomach, he, the

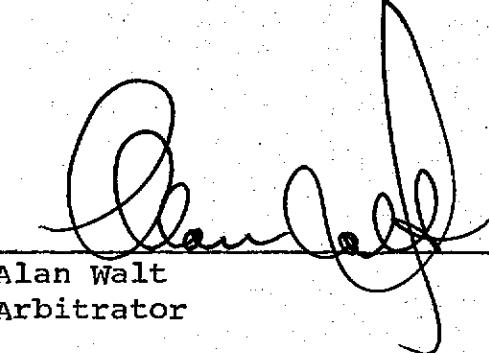
supervisor, would want medical verification of the "claimed" illness. The curtailment of mail immediately preceding route inspections, while not unique, was a sufficient reason for the supervisor to require submission of medical documentation in light of the prior day's overtime authorization to enable grievant to prepare for the inspection and to remove all curtailed mail. The fact that grievant had not complied with supervisory directives concerning the casing and removal of all route mail that week was a sufficient reason to protect the interest of the Employer from what the supervisor then perceived as a possible abuse of sick leave. As above noted, that grievant's illness on March 3 was subsequently verified does not change the facts existing before and at the time of grievant's telephone call on the morning of March 3, nor does it have the retroactive effect of rendering unreasonable the supervisor's directive that grievant would be designated as AWOL in the absence of medical verification.

It must be emphasized that in reaching this conclusion, there has been no finding that grievant intentionally curtailed mail on March 2 so that additional mail would be present when his route was inspected the following Monday. Whatever his intent, the conclusion is still mandated that the supervisor's directive was not unreasonable and was based on his desire to protect the in-

terests of the Postal Service as contemplated by §513.361 of the Employee & Labor Relations Manual.

AWARD

The grievance is denied.



Alan Walt
Arbitrator

Southfield, Michigan

September 10, 1980