

C#09558

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of Arbitration)
between) GRIEVANT: E. MOLO
UNITED STATES POSTAL SERVICE) POST OFFICE: Los Angeles, CA
and) CASE NO. W7N-5D-C 14159
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO)
GTS - 13648
)

BEFORE: JAMES T. BARKER, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Marian L. Taylor

For the Union: Thomas H. Young, Jr.

Place of Hearing : 7001 S. Central, Los Angeles, CA

Date of Hearing : November 14, 1989

AWARD : The grievance is denied.

Opinion and Award

The Issues

The parties framed the issue as:

Was it appropriate for the Postal Service to charge
the employee, Emilie Molo with being AWOL for the dates
March 4 and March 7, 1989?

If not, what is the appropriate remedy?

Pertinent Facts

I

At relevant times the grievant has been employed as a letter carrier at the Westchester Station under the supervision of Rosie Wiggins. The grievant has been a Postal Service employee for approximately 13 years. She is identified in the standard grievance form as the shop steward of record.

On Saturday, March 4, 1989, she reported for duty after an absence of twenty-six (26) days due to illness. She was in uniformed and ready to go to work. Wiggins had pulled the grievant's time card and so she approached Wiggins in order to obtain to clock in. The grievant had obtained a medical certificate from her personal physician stating that between February 6, 1989 and March 3, 1989, she had been totally incapacitated due to "severe viral shydrome". According to the grievant, Wiggins informed her that this medical certificate would not do, that she had to have clearance from the Area Medical Unit. Wiggins recalls having placed a call to the medical unit located at the GMF, Los Angeles.

The grievant reported to the medical unit, as directed. She took the medical certificate which she had presented to Wiggins and presented it. She did not see the Area Medical Officer, Dr. Mayfield, but was instructed to obtain a medical release from her personal physician and return to see Dr. Mayfield whose duty hours commenced at 4:30 p.m. The grievant saw her personal physician and obtained a clearance "...to return to work with no restrictions."

Monday, March 6 was the grievant's non-scheduled day. She reported to the GMF medical unit after 4:30 p.m. on March 7, during Dr. Mayfield's duty hours. She obtained a release from Dr. Mayfield clearing her to return to regular duties. The release was dated March 7, 1989.

The following morning, March 8, the grievant reported and was returned to full duty.

She was charged with 8 hours of AWOL for March 4 and 8 hours of AWOL for March 7.

Wiggins testified that the 16 hours of AWOL was charged because the grievant returned to work after an absence of more than twenty-one (21) days

and had no medical release or clearance by a postal medical officer. Wiggins testified, in this regard, the clearance requirement was made known to the grievant and all other employees by an All Employees mailing which she had dispatched to the current mailing address of all employees of the facility, as reflected in the official file maintained in the normal course of business.

The All Employees mailing, dated August 19, 1988, notified employees that, in the event of absent due to non-job-related injuries or illness resulting in absences of 21 days or more, they were required to be cleared through the Medical Unit prior to returning to work.

In pertinent part, the notice direct returning employees that they should:

1. Obtain a detailed medical report from their physician--and not simply a statement of ability to return to work--containing sufficient data for the Postal Medical Officer to make a determination that they can return to work with or without limitations:
 - a. Diagnosis
 - b. Dates of Disability
 - c. Return to Duty Date
 - d. State Restrictions, if any
 - e. Duration of Restrictions
2. Bring the medical report to the Medical Unit at least one week prior to the anticipated or desired return-to-duty date.

Specified as one of the illnesses covered by this directive is "Communicable or Contagious Diseases.

For all practical purposes this memorandum traces the language and requirements specified in Section 342.2 of the Postal Operations Manual.

The grievant testified that she had not received this mailing and was not familiar with its contents.

Wiggins testified that when the grievant reported on March 4, she did not present the medical certificate from her personal physician, and recalled that, when told of the requirement of a release from the Area Medical Officer, the grievant stated that she was going to her automobile to retrieve it. According to Wiggins, the grievant left and she did not see the grievant again until she reported on March 8, at which time she presented the certificates from her personal physician and the release from Dr. Mayfield.

II

During the course of her absence, the grievant had received two separate mailings from supervision. The subject of the initial letter, dated February 11, 1989, was: Absence Due to Illness More Than Three (3) Days. The second letter was dated February 21, 1989, and the subject thereof was entitled: Extended Absence Due To Illness. The communications were similar in content in that they notify the grievant that she was being charged AWOL and informed her of the need to furnish both a PS Form 3971 covering her absence and a certification from her physician. She was also instructed to have her doctor certify her absence on his/her stationary letterhead. In the initial letter the grievant was informed, "If you anticipate a lengthy absence you should mail me your medical certificate immediately, indicating your probable return. This way you can change the charge of AWOL to an approved leave." In relevant part the second letter advised the grievant that she must submit a signed Form 3971 together with a written and signed medical statement from her doctor, and the letter contained the further caution that, "(t)his information must be sent to me immediately or make arrangements to submit a medical (sic?) within ten (10) days."

Section 864.41 of the Employee & Labor Relations Manual provides:

Employees returning to duty after 21 days of more of absence due to illness or serious injury require medical certification. Employees must submit medical evidence of their ability to return to work with or without limitations. A medical officer or contract physician evaluates the medical report and makes a medical assessment to assist management in employee placements to jobs where they can perform effectively and safely.

The grievant testified that she was aware of the necessity of providing a medical certificate after and absence of three days and further testified that she assumed that her extended absence was no different in this respect. She emphasized that she was not aware of the requirement of clearance by a postal medical officer.

In its Step 3 Decision, the Postal Service stated: The employee knew, or should have known, that, if he (sic) is off more than 21 days, a release from the postal service doctor is required to return to duty (see attached)." Attached was the All Employees memorandum, dated August 19, 1988, referred to above.

An April 29, 1985 Fourth Step resolution of a class action contractual grievance contains the following language:

In accordance with Section 342 of the P-11 Handbook, an employee returning to duty after an extended absence must submit evidence of his/her being able to perform assigned postal duties. If local policy dictates that the employee must be seen and cleared by the postal medical officer, the employee shall be reimbursed for travel expenses incurred to attend the examination.

The Contentions of the Parties

1. The Position of the Union

In support of the grievance the Union contends that the Postal Service took an inappropriate administrative action in charging the grievant with AWOL on March 4 and March 7. It is the contention of the Union that, in requiring the grievant to obtain clearance from the Area Medical Officer as a condition to returning to duty, management effectively refused the grievant access to the clock.

In the view of the Union, the testimony of the grievant is consistent with the events as they unfolded and are depicted by the documentary evidence. On the other hand, according to the Union, the testimony of Wiggins during the course of the arbitration hearing which gives the record a slant different from that justified by the documents and chronology, as well as the presentation of the Postal Service during the first three steps of the grievance process.

The Union stresses the testimony of the grievant to the effect that the All Employees mailing defining the necessity of obtaining clearance from a postal medical officer was not received by her. It stresses also that she reported for duty in a timely fashion following her clearance by her personal physician, but was not permitted to go to work until she had obtained clearance from the Area Medical Officer. The Union contends the absences of March 4 and March 7, for which the grievant was placed in AWOL, was the fault of the Postal Service deriving from the grievant's compliance with conditions imposed by supervision and GMF Medical Unit personnel that were not spelled out in the two communications dispatched by supervision to the grievant during the course of her illness, or by ELM provisions known to the grievant.

The Union seeks removal of the AWOL charge from the grievant's records, designation of the absences as "approved" administrative leave, and reimbursement of costs of travel and obtaining additional documentation.

2. The Position of the Postal Service

The Postal Service contends the grievant was properly charged with AWOL on the days in question in that he had been made aware through the All Employees mailing, the two letters dispatched during the grievant's extended absence and the ELM requirements, generally, relating to medical certification following absence. Moreover, the Service contends that as a shop steward, the grievant is presumed to have full insight into these requirements and procedures.

It is the contention of the Service that the testimony of Wiggins is credible and accurately describes the actual sequence of events. The Service notes also that Dr. Mayfield's clearance of the grievant to return to duty leaves blank the date on which the grievant had been cleared by her physician to return to duty, supporting, in the view of the Service, the essentials of Wiggins' testimony that the grievant did not report to duty on March 4 with the medical clearance and release required by the ELM and local procedures.

It is the contention of the Postal Service that the administrative action taken was proper and that the grievance should be denied.

Analysis

It is concluded that the Postal Service is not guilty of an inappropriate administrative action in conditioning the grievant's return to duty upon clearance by a postal medical officer.

This conclusion is reached on the basis of the facts as described at Section I, Pertinent Facts, above, and not on the basis of the events as recalled by Wiggins.

It is clear that under Article 19 of the National Agreement, Section 864.41 has status as a statement of policy and procedure applicable to the grievant, in the circumstances defined in this case. It is noted that ELM 864.41 does not explicitly mandate certification by a medical officer as a precondition to return to duty in circumstances analogous to the grievant's attempted return to duty on March 4, after an absence of approximately 26 days. However, the language of the section carries the clear implication of such a requirement, and the language of the provision is entitled to a construction which results in a reasonable and rational result, and not in confusion or absurdity. Moreover, under acceptable management principals, and well defined public policy, the Service is entitled to assurance that an employee returning after a lengthy absence is physically and medically able to perform his/her duties without jeopardy to his/her health, or that of other employees. The requirement of evaluation and recommendation by a postal medical officer as a prerequisite or precondition of return to duty is both reasonable and is rationally related to the proper interests of the Service and its employees.

Although the parties did not directly address the issue, it is assumed for the purpose of this case that the grievant's defined "severe viral syndrome" falls within the definition of "communicable or contagious disease", as referenced in the All Employees memorandum, dated August 19, 1988. Receipt by the grievant of this memorandum in the normal course of the mails is presumed. Her inability to recall its receipt is understandable in context of

an assumption that it lacked then-present imperative at the time of its receipt. However, the Service had resorted to a reasonable means of apprising employees of important policy, and the employees, including the grievant, possess a concomitant obligation to acquaint themselves, within reason, with the policies and procedures foreseeablely pertinent to their employee sick leave rights and obligations.

Moreover, in the grievant's case, as an employee of some 13 years, and a shop steward, she was charged with knowledge that, in returning to duty after a lengthy absence due to illness presumably seriously debilitating in nature, certification by her doctor of an ability to resume full duties was minimally required, and that clearance by a postal medical officer was a distinct possible prerequisite.

While this Arbitrator believes that supervision, including Wiggins, could have been more forthcoming and definitive in apprising the grievant, in advance of her return, that certification and clearance by a postal medical officer would be required as a condition of her being permitted to return to duty, an affirmative obligation nevertheless pertained on the grievant's part, in view of the length of her absence and the nature of her illness, to have taken an initiative and to inform herself of what management would expect and require. To be certain, the communications dispatched to the grievant during the course of her absence were not definitive and fully informative in this regard. However, it must be noted that they addressed procedures to be followed and requirements to be met by the grievant during the interim of her illness and not those mandated upon her eventual return to duty. Accordingly, there was no basis for the grievant to conclude that these communications

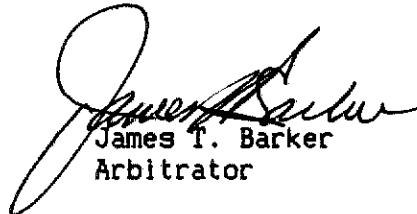
overlapped to encompass the latter so as to relieve her of an obligation to become informed.

Contrary to the Union, and on the basis of the foregoing, it is found that the fault resulting in the grievant's loss of two days of work on March 4 and March 7 lies with the grievant and the responsibility for that loss does not, in the final analysis, reside with the Service.

A theoretical case could be made that supervision, including Wiggins, was too inflexible in dealing with the grievant, and that some accommodation was in order which would have avoided the harsh result of charging the grievant with 16 hours of AWOL. However, in recognition that postal management is charged with faithfully executing policies and procedures designed to protect the health and interest of all its employees, as well as the broader interests of the Postal Service, this Arbitrator is not disposed to set aside the action here taken, solely on equitable grounds, when, as here, management is shown to have acted properly under the terms of the National Agreement.

AWARD

The grievance is denied.



James T. Barker
Arbitrator

Coronado, California
November 28, 1989