

C# 4636

In the Matter of

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

) CASE NO: S1N-3A-C 8327

) MARK BURCH

) NACOGDOCHES, TEXAS

APPEARANCES

For the Employer: - Larry Hensley, Arbitration Advocate

For the Union: - Cari Barnett, Arbitration Advocate

ISSUE

Did the Employer violate Article.10, Section 5E of the National Agreement by requiring the Grievant to bring medical documentation to substantiate his absence?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution.

Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for July 12, 1984, and the Hearing was held on that date in the Postmaster's Office, United States Postal Service, Nacogdoches, Texas, commencing at 9:00 o'clock a.m.

At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter.

SUMMARY STATEMENT OF THE CASE

Mark Burch (hereinafter sometimes referred to as "Grievant") is a Part-Time Flexible employee at the Main Office of the Employer in Nacogdoches, Texas. In May 1982, the Employer ordered the Grievant to supply medical documentation to justify a request for sick leave, his first such request in four years. The Grievant was thereafter required to visit a physician to obtain such certification at a cost to him of \$30.00. Thereafter, a grievance was filed on behalf of the Grievant, alleging that the Employer violated Article 10, Section 5E of the National Agreement in its application of the regulations specified in Chapter 513 of the Employee and Labor Relations Manual. The grievance was denied at Step 1 on May 11, 1982. On May 20, 1982, the grievance was appealed to Step 2, stating in relevant part as follows (Joint Exhibit No. 2):

**WHAT HAPPENED:** Mr. Burch went home sick & was told that when he came back to work even if it was less than 3 days to bring a doctor's statement on his return to work.

Mr. Burch is not on restricted sick leave.

Time limits extended by mutual agreement.

**CORRECTIVE ACTION REQUESTED:** That in the future that for less than 3 days sick leave a Doctor's statement not be required. And that in this instance he be payed for this Doctor's bill.

On May 25, 1982, the grievance was denied at Step 2 and, after a subsequent denial at Step 3 on June 24, 1982, it was appealed to arbitration on July 2, 1982.

Provisions of the National Agreement effective July 21, 1981, to remain in full force and effect to and including 12 midnight July 20, 1984, (hereinafter referred to as "National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

## ARTICLE 10

### LEAVE

\* \* \*

#### Section 2. Leave Regulations

The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours, and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

\* \* \*

#### Section 5. Sick Leave

The Employer agrees to continue the administration of the present sick leave program, which shall include the following specific items:

\* \* \*

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

\* \* \*

## ARTICLE 19

### HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes

violate the National Agreement (including this Article, they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

Provisions of the Employee & Labor Relations Manual, dated June 15, 1982, (Joint Exhibit No. 3) considered relevant to dispute are as follows:

**513.3 Authorizing Sick Leave**

\* \* \*

**.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.

\* \* \*

**511 GENERAL**

**511.4 Unscheduled Absence**

\* \* \*

**.42 Management Responsibilities.** To control unscheduled absences, postal officials:

- a. Inform employees of leave regulations;
- b. Discuss attendance records with individual employees when warranted;
- c. Maintain and review Forms 3972, Absence Analysis, and Forms 3971, Request For, or Notification of, Absence.

**.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.

### POSITION OF THE PARTIES

#### The Position of the Union:

It is the position of the Union that, inasmuch as the Grievant was not on restricted sick leave and had a good sick leave record, the Employer should not have required medical documentation for his absence of less than three days. The Union contends that the Employer has not made an adequate showing that the interests of the Employer necessitated such documentation and further that the Employer has used different standards to determine when documentation will be required in violation of the National Agreement.

#### The Position of the Employer:

The Employer takes the position that its decision to require medical documentation of the Grievant's illness was based upon the circumstances that existed at the time that the Grievant made his request for sick leave. The Employer contends that the Grievant did not make such request for sick leave until he had been instructed by the Employer to carry mail. Therefore, according to the Employer, medical documentation was properly requested to protect its interests and to account for the payment to another employee of three (3) hours overtime necessitated by the Grievant's absence.

### OPINION

Resolution of this matter, in the considered judgment of the Arbitrator, turns on a determination of whether, under the circumstances that existed at the time of the Grievant's request for sick leave, the Employer had proper cause to justify its request for medical documentation of his absence.

In justification of its action in this matter, the Employer points out that, on the day in question, the Grievant had made no mention of his illness until he was requested to carry a route. According to the Employer, the

Grievant claimed that he was too ill to carry the route but not too sick to serve as a clerk. This situation, the Employer maintains, required that it obtain the services of another employee to deliver the route and compensate that employee for three (3) hours of overtime work. Consequently, justification for the documentation request is said by the Employer to have existed as it was necessary that it protect its interests.

In further support of its position, the Employer points out that Chapter 513 of the Employee and Labor Relations Manual (Joint Exhibit No. 3) grants to management the right to require medical documentation even if an employee is not on restricted sick leave. However, a corollary implicit in this right of management to insist on medical proof of illness is that such a demand be based on a reasonable belief by a supervisor that documentation is essential to the protection of the Employer's interests. By way of example, if an employee has a record of continuous or excessive requests for sick leave, justification would clearly exist for requiring that employee to certify the need for absence. Where, however, the Employer cannot demonstrate a logical basis for medical certification of an employee's absence, as would be the case when that employee is not on restricted sick leave, the question could then reasonably be raised of whether such a request for certification was either arbitrary or capricious. One method of demonstrating whether a request for documentation was arbitrary or capricious would be through the comparison of two instances in the same facility where employees with similar work records have requested sick leave. If the Employer required medical proof in one case but not the other, such a variance in requirements would suggest that perhaps the Employer has improperly exercised its discretion and has, therefore, acted arbitrarily and capriciously.

In the present case, the Grievant is shown to have had a good work

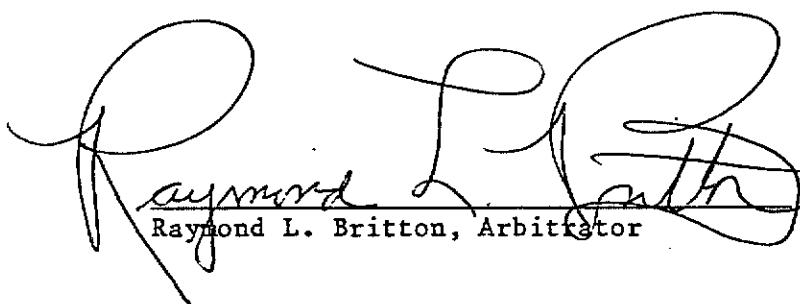
record without excessive sick leave requests. Further, the record submitted indicates that another request for sick leave by a similarly situated employee at this same facility was accorded different treatment than the Grievant in that the former was not required to certify an absence. When the Grievant's good work record is coupled with an instance of disparate treatment, as in the case at hand, the inference may rightfully be drawn that the Employer is acting in an arbitrary and capricious manner. So viewed, the Arbitrator is constrained to find that adequate justification for requiring medical certification did not exist in the instant case. Absent a convincing showing by the evidence that any interest of the Employer was jeopardized by the Grievant's undocumented absence, the Arbitrator is required to conclude that the Grievant is entitled to the remedy sought.

AWARD

For the reasons given, the grievance is sustained and the Employer directed to reimburse the Grievant in the amount of \$30.00 as reflected in his doctor's statement.

DATE:

January 7, 1985



Raymond L. Britton  
Raymond L. Britton, Arbitrator