MARSHALL SEIDMAN 5/9/83 Won
Art. 10 - Medical Documentation Reimbursement
Art. 19 - E&LR Manual

IN THE MATTER OF ARBITRATION BETWEEN 15335 (C1T-4B-C)

UNITED STATES POSTAL SERVICE (DETROIT, MICHIGAN)

- AND -

AMERICAN POSTAL WORKERS UNION, DETROIT DISTRICT AREA LOCAL

CASE #C1T-4B-C 15335 (ANDRZJCZAK)

ARBITRATOR'S FILE #83/41-B

BEFORE MARSHALL J. SEIDMAN, ARBITRATOR

APPEARANCES:

FOR THE SERVICE: LARRY HANDY, LABOR RELATIONS EXECUTIVE

FOR THE UNION: PHILLIP A. TABBITA, DIRECTOR, INDUSTRIAL RELATIONS

OPINION AND AWARD

This is a contract interpretation case. On December 27, 1982 the Union, on behalf of the grievant, grieved as follows:

"On December 23, 1982, PS-7 M.P.E.Mechanic Edward Andrzjczak called in to work requesting sick leave and was told by his immediate supervisor, Mr. George Colvin, that he would have to present a letter to substantiate his illness from a doctor.

Mr. Colvin states his reason for doing such was because of letters received from the Postmaster's Office, Mr. Gene Cole.

This employee is not on the restricted sick leave list, and is not abusing his sick leave.

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Corrective action requested. The Union requests that the grievant, PS-7 Edward Andrzjczak be made whole the $20. doctor's fee for his examination by his private physician - the mileage used to go to his physician's office - and his regular pay for all time used to and from the physician's office and his home."

Management answered the grievance at the third step on March 9, 1983, as follows:

"Management properly requested medical documentation from the grievant to support his claimed incapacity for duty. Accordingly this grievance is denied."

At the hearing the grievant testified that he was scheduled to begin his tour of duty at 6:00 A.M. on December 23, 1982. When he awoke that morning he felt ill because of a stomach upset that incapacitated him from work. He decided to stay in bed that day and to take over the counter medication which he had previously used to relieve the symptoms of his illness. Prior to the beginning of his shift he called in to the Post Office, advised Night Tour Superintendent Phil Collins of his medical problem and stated that he would not be in to work. Collins replied that he would note his request for sick leave and did not require verification.

Thereafter about 7:45 A.M. Day Tour Supervisor George Colvin telephoned the grievant to request that he verify his absence with medical documentation. Andryczsjak was not on the restricted sick leave list and never during his many years of employment had he

been on the restricted sick leave list. Andryczsjak was not placed on the restricted sick leave list as the result of this incident. Andryczsjak had never before received any discipline arising out of any absenteeism or tardiness or any abuse of sick leave.

Supervisor George Colvin testified that when he received notice of Andryczsjak's request for sick leave he called Andryczsjak to request substantiation because the following day, December 24, was a holiday; because this was the Christmas rush and he needed all the people he could get at work; and because he believed Andryczsjak was guilty of "hooking", attaching sick leave to a holiday or to a non-scheduled day.

Andryczsjak's regular schedule was from Monday through Friday with Saturday and Sunday as his non-scheduled days off. For the week beginning December 18 with Friday being a holiday and Saturday and Sunday being his regularly scheduled days off the only way Andryczsjak could not have been guilty of "hooking" was to have been sick on Tuesday or Wednesday. If he were to become sick on Thursday he would be "hooking" onto the Friday holiday, and if he became sick on Monday he would be "hooking" onto the Sunday off day, Thus of the five working days of the week, the only two that Colvin would have permitted Andryczsjak to have been sick on were Tuesday and Wednesday to avoid the charge

of "hooking". Unfortunately, sickness strikes in a random way. It can occur on any of the seven days of the week and solely as a matter of statistical theory is as likely to happen on any one day as upon any other.

Further, Colvin's charge of "hooking" against Andryczsjak was not substantiated in the evidence. Andryczsjak's attendance record for all of the 26 payroll periods of 1982 showed only 2 instances of possible "hooking" which occurred when Andryczsjak took sick leave on a Monday and a Tuesday in the week beginning April 3, 1982 and when he took sick leave on a Monday in the week beginning April 17, 1982. From that date until December 23, 1982, there was no single incidence of alleged "hooking" charged against him. This hardly constituted such a pattern of "hooking" that would enable Supervisor Colvin reasonably to believe there was a liklehood of abuse of sick leave when on December 23, 1982 Andryczsjak's called in sick.

Finally, Andryczsjak had at least a satisfactory attendance record, if not a superior one. He also was not an abuser of sick leave because at the end of the pay period 26 for 1982 he had 343 accumulated sick leave hours available. It is apparent that Colvin required medical substantiation because of a policy determination that all employees who requested sick leave on December 23 would be required to provide such substantiation.

A blanket prohibition of sick leave, without taking into account individual factors which mitigated against a belief that sick leave was being abused by the requester, amounted to an abuse of manager-

ial discretion and in Andryczsjak's case became therefore arbitrary and capricious. This is not to say that the Service may never require substantiation of sick leave on the day prior to a holiday connected to Christmas rush. It simply states that at this time, as well as at all other times, no blanket rule can be applied. The determination for medical substantiation must be individual. The circumstances must be such as to constitute reasonable suspicion that the requester is abusing sick leave, which is less than a reasonable cause for such a belief. In this case the Service did not even have a basis for this lesser threshold of proof to justify its demand.

Under the above facts and circumstances, and for the above reasons, the grievance is sustained. However, the remedy will be limited to the $20. requested to reimburse the grievant for the cost of his physical examinations provided, however, that such cost has not already been paid for, in whole or in part, by the Service under any insurance program. To the extent that any part of it has been paid, then the Service shall only be responsible to pay the difference between the amount previously paid and the total amount.

The claim for $10., for the one hours time that the grievant spent in the doctor's office, is denied. So is the request for $.40 mileage charge for use of the grievant's car going to and from the doctor's office. Both of these items would have been utilized by the grievant if he had gone to work instead of remain-

ing home on December 23, 1982. His savings in not going to work recompensed him for these requested charges so he suffered no loss and required no reimbursement.

Marshall J. Seidman,

Arbitrator

Dated at Indianapolis, Indiana this 9th day of May, 1983.