

RECEIVED DI

FEB 8 1980

INDUSTRIAL
RELATIONS

1/19/80
Britton
C#00067 Regional Center
I
WON

COPY

* * * * *)
In the Matter of)
UNITED STATES POSTAL SERVICE)
AND)
AMERICAN POSTAL WORKERS UNION, AFL-CIO)
* * * * *)

S8C-3W-C-2610

J. J. Settle

Pensacola, Florida

APPEARANCES

For the Employer: - Roland McPhail, Labor Relations Executive

For the Union: - Thomas E. Byerly, National Vice President

ISSUE

Did Management violate Parts 513.361 or 513.364 of the Employee & Labor Relations Manual by requesting Mr. J. J. Settle to provide medical or other acceptable evidence indicating he was unable to perform his normal duties for the remainder of his tour on March 10, 1979? If so, what should the remedy be?

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 September 19, 1979, and the Hearing was held on that date in the Conference Room, Main Post Office, 1400 W. Jordan, Pensacola, Florida, commencing at 10:00 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.

After the Hearing, it was agreed that the parties would file Post-Hearing Briefs with the Arbitrator by placing such Briefs in the mails not later than October 1, 1979. The Post-Hearing Brief filed by the American Postal Workers Union, AFL-CIO, (hereinafter referred to as "Union") was received by the Arbitrator on September 28, 1979. The Post-Hearing Brief filed by the United States Postal Service, (hereinafter referred to as "Employer") was received by the Arbitrator on October 4, 1979.

SUMMARY STATEMENT OF THE CASE

On March 10, 1979, Mr. J. J. Settle, an LSM Operator in Pensacola, Florida, (hereinafter sometimes referred to as "Grievant") at approximately 3:30 o'clock a.m. asked his supervisor, Mr. Tom Wolfenden for permission to go to the restroom. This request was granted by Mr. Wolfenden. Upon his return, the Grievant advised

Mr. Wolfenden that he had vomited and suggested someone be assigned to clean the area. The Grievant thereupon returned to his assignment as an LSM Operator.

Supervisor Wolfenden some twenty (20) minutes later decided to reduce the crew on the letter sorting machine. Both the Grievant and Ms. Susan Basham were taken off the machine by Supervisor Wolfenden and the latter instructed them to report to Supervisor Messer to work SCF Letters or Flats. Shortly thereafter, Supervisor Wolfenden asked Supervisor Messer if he needed someone on SCF Flats and the latter responded in the affirmative. Supervisor Wolfenden then observed the Grievant proceeding to the LSM Supervisor's Desk and completing a PS Form 3971 requesting sick leave for the remainder of the tour. According to Supervisor Wolfenden he asked the Grievant what the problem was, and the Grievant said he was sick, and if he had to work flats he was going home. At this point, Supervisor Wolfenden asked the Grievant to provide acceptable medical documentation to support his alleged incapacity for duty because of illness. The Grievant went home at approximately 4:00 o'clock a.m. He thereafter visited his personal physician on Monday and provided a medical certificate. His request for sick leave was approved.

The Union thereafter through General President Steve Inglett filed Local Grievance No. 79-14 in behalf of J. J. Settle (Joint Exhibit No. 2) alleging a violation of Article XV, Section 1 of the Agreement (Joint Exhibit No. 1) and Section 513.361 of the Employee and Labor Relations Manual by Mr. Tom Wolfenden in ". . . requesting

Mr. J. J. Settle to bring in a doctor's excuse for the sick leave absence of 3-10-79."

On March 27, 1979, a Step 1 meeting was held and pursuant to Article XV of the Agreement appealed to Step 2 on April 11, 1979 and to Step 3 on April 20, 1979 for the following reasons:

- "1. APWU feels Management violated Art. XV, Sec. 1 of the National Agreement and also E & LR Manual 513.361 by requiring Mr. J. J. Settle to bring in a doctors certification.
2. Mr. Settle was not on restrictive sick leave.
3. The supervisor was well aware that Mr. Settle did regurgitate and was sick on March 10, 1979.
4. APWU feels that since Mr. Settle was not on restrictive sick leave and that Management was aware that Mr. Settle was sick; that Mr. Settle should be reimbursed the money he spent for the doctors appointment and also transportation to and from the doctor.

CORRECTIVE ACTION REQUESTED: That Mr. J. J. Settle be reimbursed for the money spent for the doctors appointment and also money spent for traveling to the doctor and in the future that Management adhere to Sec. 513.361 of the E & LR Manual."

On May 14, 1979, Roland McPhail, Labor Relations Division, in a letter to Mr. James E. Fouts, National Vice President, Subject: Step 3 Grievance Decision, stated in relevant part as follows:

"This is to confirm the disposition of the subject Step 3 grievance appeal which was recently discussed.

Based on information presented and contained in the grievance file, the grievance appeal is denied. The grievant provided medical documentation as instructed to support the request for sick leave. Management is not responsible for medical expenses in this particular fact situation.

The time limit for processing at Step 3 was extended by mutual consent.

In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article XV of the National Agreement.

Please return one copy to us showing whether an appeal will be made to arbitration."

On May 17, 1979, notice of appeal to arbitration was given by Thomas E. Byerly, National Vice President.

Provisions of the National Agreement effective July 21, 1978, to remain in full force and effect to and including 12 midnight July 20, 1981, (hereinafter referred to as "Agreement") (Joint Exhibit No. 1), considered pertinent to this dispute by the parties are as follows:

"ARTICLE XV

GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition. A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement."

Provisions of the Employee & Labor Relations Manual considered pertinent to this dispute by the parties are as follows (Joint Exhibit No. 3):

"513.361 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.

513.364 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."

POSITION OF THE PARTIES

The Position of the Union:

It is the position of the Union that the Grievant followed all instructions of his Supervisors to produce medical evidence of his sickness and that the Employer now has an obligation to make the Grievant whole for the cost of the doctor's visit plus the time spent traveling to and from the doctor's office.

The Position of the Employer:

The Employer takes the position that Supervisor Wolfenden's request of the Grievant that he provide medical or other acceptable

documentation was reasonable and warranted and that Supervisor Wolfenden's actions were in accordance with Parts 513.364 and 513.361 of the Employee & Labor Relations Manual.

OPINION

Resolution of this matter turns primarily on Part 513.361 of the Employee & Labor Relations Manual (Joint Exhibit No. 3). Specifically, the Arbitrator is here asked to determine whether Supervisor Wolfenden acted in accordance with such provision when he requested the Grievant to provide acceptable medical documentation under the particular factual situation presented.

Seemingly, there is no question that Supervisor Wolfenden knew that the Grievant had become ill when the latter informed Wolfenden that he had vomited in the restroom. At that time, according to the testimony of Supervisor Wolfenden, he would have approved a request for sick leave, if the Grievant had made such a request immediately after returning from the restroom. However, as the Grievant said nothing about being too sick to work and having returned to his assignment on the letter sorting machine Wolfenden is said to have felt that the Grievant could perform his regular duties. Wolfenden testified that it was not uncommon to have employees performing their regular duties while suffering from minor illnesses such as diarrhea or headaches and inasmuch as Grievant said nothing about being too sick to work and having returned to his assignment

on the letter sorting machine he evidently believed this was the case with Mr. Settle because the latter did not ask for sick leave.

Supervisor Wolfenden further testified that the Grievant stated that he was going home sick, if he had to work SCF Flats. This statement together with his negative attitude toward his change in schedule, according to the Employer, left a reasonable doubt in the mind of Supervisor Wolfenden concerning the alleged inability of the Grievant to continue working and reasonably warranted the request that he provide acceptable medical documentation.

Whether the Grievant made the statement that he was going home sick if he had to work flats, which he denies, and his attitude toward his change in schedule can be said to have reasonably warranted the request by his supervisor that he provide acceptable medical documentation need not be determined by the Arbitrator.

The alleged statement of the Grievant that he was going home sick if he had to work flats, which he denies having made and his attitude toward his change in schedule which is not firmly established as being connected to his ability to continue working is not deemed by the Arbitrator to be controlling in this matter.

Dispositive of this matter in the view of the Arbitrator is the express language contained in Part 513.361 of the Employee & Labor Relations Manual (Joint Exhibit No. 3). Such provision is clear that medical documentation is required only ". . .when the employee is on restricted sick leave or when the supervisor deems

documentation desirable for the protection of the interests of the Postal Service." Neither of these conditions in the judgment of the Arbitrator are shown to be present here.

The record indicates that the Grievant had approximately one hundred thirty (130) hours of sick leave to his credit at the time and has never been placed on the Restricted Sick Leave List. There is no persuasive showing that his use of sick leave since he has been in the Postal Service is excessive, and in this instance he used only some three (3) hours.

Similarly, there is no evidence that documentation was desirable for the protection of the interests of the Postal Service. To the contrary the Supervisor, when asked about the mail flow on the morning in question, testified that the LSM distribution of mails was in good shape, indicating that he could release two (2) employees off the LSM to go to manual distribution. From this it would appear that the Grievant going home on sick leave would not involve the protection of the interests of the Postal Service.

Although the Employer maintains that the language in Part 513.364 of the Employee & Labor Relations Manual indicates not only that Management may require medical documentation to prevent fabrication of sickness, it is evidence that sick leave can only be granted for illnesses that actually incapacitate employees from the performance of normal bid duties. The Arbitrator, in light of the findings hereinabove made, does not agree that this construction

of Part 513.364 of the Employee & Labor Relations Manual furthers the position of the Union in this matter.

Based on the entire record presented the Arbitrator is constrained to conclude that Supervisor Wolfenden in requiring that the Grievant provide medical documentation under the circumstances here described, did not act in accordance with the terms of Part 513.361 of the Employee & Labor Relations Manual (Joint Exhibit No. 3). Inasmuch as the Grievant was in effect ordered by his Supervisor to go to the doctor and to bring in a medical certificate, it seems to the Arbitrator that the Postal Service should be responsible for the cost of obtaining the medical certificate and the time involved in traveling to the doctor's office.

In this connection the evidence establishes that the statement of Rudolf Orgusaar, M.D., was in the amount of \$25.00 for the month of March and that the Grievant paid \$24.80 on April 24, 1979 (Union Exhibit No. 1). It is also shown that the Grievant took approximately two (2) hours to travel to the doctor's office, be examined and return home.

The Employer urges that the Grievant as a disabled veteran would be entitled to reimbursement of his private medical expenses up to \$40.00 per month from the Veteran's Administration and if he also receives payment from the Postal Service in the amount of \$25.00 he would receive a net profit of \$25.00. This argument cannot properly be accorded persuasive merit here for whatever

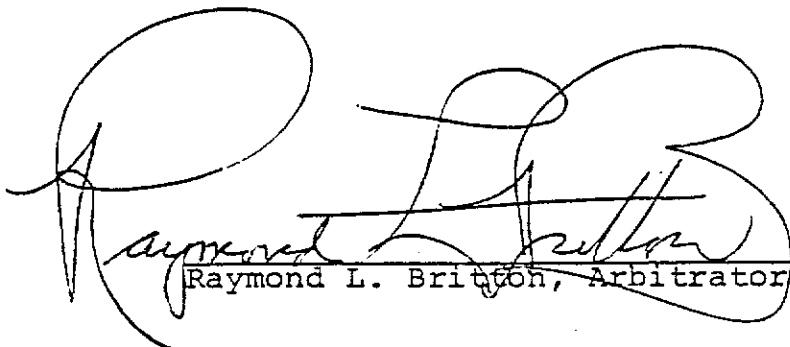
additional benefits the Grievant may be entitled to as a disabled veteran have no bearing on the obligation owed to the Grievant by the Postal Service under the circumstances presented.

AWARD

For the reasons given, the grievance is sustained and it is directed that the Grievant be made whole for the cost of the doctor's visit plus the time spent traveling to and from the doctor's office.

DATE:

January 18, 1980



Raymond L. Britton, Arbitrator