

C#03860

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER  
CARRIERS

Grievant: Frank DeNicola  
Post Office: Branford, Conn.

Case No: NIN-IJ-C 12917

Before Robert L. Stutz, Arbitrator

Appearances:

For US Postal Service

Thomas A. Migge, Regional Labor Relations Assistant

For Union:

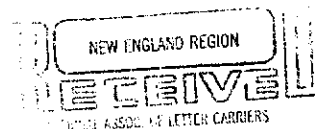
Edward Halloran, Local Business Agent

Date of Hearing: September 14, 1983

Place of Hearing: New Haven, Connecticut

Award:

The Employer violated the Agreement by ordering the grievant to provide medical certification for his absence on August 30, 1982. He should be reimbursed in the amount of \$15.00 for the cost of the visit to the doctor's office to procure certification.



OCT 25 1983

Date of Award: October 20, 1983

## STATEMENT OF THE CASE

A hearing on this matter was held at New Haven, Connecticut on September 14, 1983 before the undersigned member of the regular panel of arbitrators for the Northeast Region. Appearing for the Union was Edward Holloran, Local Business Agent, and for the Service was Thomas A. Migge, Regional Labor Relations Executive.

The parties agreed at the hearing on the following statement of the issue:

Did the Employer violate the Agreement by ordering the grievant to provide medical certification for his absence on August 30, 1982? If so, what should be the remedy?

The grievant, Frank DeNicola, is employed as a letter carrier at the Branford, Connecticut post office. On August 30, 1982 he reported for work at his regular 7:30 a.m. starting time. At approximately 8:30 a.m. he informed his supervisor, Dwight Peterson, that he was not feeling well and was going home. Mr. Peterson then told him that he would have to provide medical certification for his illness. When the grievant asked him why (he was not on the restricted sick leave list), Peterson told him he was short-handed and was pivoting routes already. The grievant then filled out an absence permission request form indicating that he was sick and left. When he returned to work on September 2, DeNicola submitted medical certification that he had received treatment for diarrhea and bronchitis on August 30 and could return to work on September 2. The grievant was granted sick leave and was paid for August 30, August 31

and September 1.

A grievance was filed on DeNicola's behalf claiming that the Employer had violated Section 513.361 of the Employee and Labor Relations Manual, which is incorporated by reference in article 10.2 of the National Agreement, by requiring De Nicola to provide medical certification for his illness. In addition, the Union sought payment by the Employer of the doctor's bill totalling \$126.00 for the visit and tests performed on August 30. The bill listed the charges as follows:

Brief office visit	\$15.00
Electrocardiogram	25.00
Urinalysis	6.00
Accusan	48.00
X-ray chest	32.00

\$126.00

The Employer's position is that there was no violation in the requirement that DeNicola submit a medical certificate since, under the circumstances, it was deemed to be in the best interest of the service to require certification under 513.361. Further, the Employer asserts that there was nothing arbitrary nor capricious in the request. In addition, the Employer claims that it is not the policy of the Service to pay doctors fees when medical certification is required.

Section 513.361 of the Employee and Labor Relations Manual states as follows:

.36 Documentation Requirements

.361 3 DAYS OR LESS. For periods of absence of 3 days or less, supervisors may accept the employees 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 or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

The Union argues that it was not warranted for the Employer to require the grievant to provide medical certification simply because there was a high degree of absenteeism on August 30 and the supervisor was already pivoting routes. According to the Union, there was no reason for the supervisor to question DeNicola's illness. He appeared to be ill; he was not on restricted sick leave; he was paid sick leave for the three days of his absence; there was no evidence that he had abused sick leave in the past. Since he would not otherwise have gone to a doctor, the Union claims that he should be reimbursed for the entire cost of the visit.

#### OPINION

Under the provisions of Section 513.361 of the ELRM, an employee can be required to provide medical documentation of incapacity for work only: (1) when he is on restricted sick leave, or (2) when a supervisor deems it desirable for the protection of the interests of the Postal Service. No evidence was presented as to how the second option has been administered. Since DeNicola was not on restricted sick leave, the issue, then, is whether Supervisor Peterson abused the discretion granted him in Section 513.361 by requiring DeNicola to provide medical documentation for the

protection of the interests of the Service.

There can be no question that the fact that other employees were absent on August 30 did not justify a requirement that DeNicola provide documentation of his claimed illness. There was no evidence that his absence was in any way connected with those other absences.

Since DeNicola was not on sick leave restriction, there was no presumption that he was inclined to abuse or over-use sick leave. In fact, the record shows that DeNicola had never been put on notice that there was any question about his use of sick leave. Under the circumstances, it was incumbent on the supervisor to provide some logical and compelling reason why he believed that it was desirable for the protection of the Service to require DeNicola to prove that he was incapacitated for work. The fact that he was short-handed was not such a reason.

The implication is that Peterson thought DeNicola was malingering. However, he failed to question him about the nature of his illness, which seems the minimum he should have done so that DeNicola would have had a chance to respond. When Union steward Acambora questioned him about why he was requiring a certificate and remarked that DeNicola looked sick, Peterson simply repeated that he was short-handed.

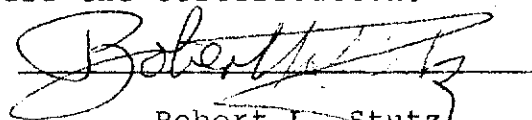
The conclusion to be gleaned from all this is that the supervisor had a right, indeed he had a responsibility, to question the grievant about the reason for his inability to continue at work. If, after questioning the grievant, he was not satisfied with the explanation, he might then have been justified in requiring

documentation. To conclude that the grievant was not ill because he perceived no outward manifestation of illness was not enough. One can only speculate, but it seems a fair assumption that if Peterson had not been short-handed that day, he would not have asked DeNicola to provide medical documentation. Under the circumstances, the supervisor's action was an abuse of the discretion granted him by Section 513.361.

While the Employer is not ordinarily expected to bear the expense of the medical documentation referred to in 513.361, where, as here, an employee experiences unnecessary expense to satisfy an unreasonable requirement, it is only fair to reimburse the employee. However, all the supervisor required was certification of incapacity to work, not a series of expensive testing procedures, which may or may not have been related to DeNicola's illness on August 30, 1982. The bill lists a charge of \$15.00 for a "brief office visit." It is that amount for which DeNicola should be reimbursed.

#### AWARD

The Employer violated the Agreement by requiring the grievant to provide medical certification for his absence on August 30, 1983. He should be reimbursed in the amount of \$15.00 for the cost of the visit to the doctor's office to procure the certification.

  
Robert L. Stutz