C#01216

VOLUNTARY LABOR ARBITRATION

In The Matter of Arbitration Between:	)	Grievance of:
	)	
UNITED STATES POSTAL SERVICE,	)	ANTONIO SANCHEZ
CHICAGO POST OFFICE	)	(Disapproval of
CHICAGO, ILLINOIS, 60699	)	emergency annual leave
	)	based on untimely
and	)	submission of excuse
	)	and insufficient
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	explanation of reason
BRANCH 11	)	for emergency -
CHICAGO, ILLINOIS 60606	)	abuse of discretion.)
	)	
	)	
CASE NO: C8N-4D-C 13727	)	OPINION AND AWARD
Antonio Sanchez		
Chicago, IL		

APPEARANCES

For the Employer:

Michael P. Jordan, Labor Relations Representative

Ariel P. Hyde, Superintendent

For the Union:

Walter H. Belt, Chief Steward

Antonio Sanchez, Carrier and Grievant

ELLIOTT H. GOLDSTEIN
ARBITRATOR
3300 Manor Court
Evanston, Illinois 60203

I. INTRODUCTION

The hearing in this case was held on Friday, November 6, 1981, at the Main Post Office, 433 West Van Buren Street, Chicago, Illinois 60699, before the undersigned arbitrator, duly appointed by the parties pursuant to the Rules of the United States Postal Service Regular Regional Level Arbitration Procedures. At the hearing, both parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. The parties stipulated that the case was properly before the arbitrator and that the arbitrator had the jurisdiction and authority to issue a final and binding decision as to this matter. No formal transcript of the hearing was made and both parties waived the opportunity to file a post-hearing brief.

II. THE ISSUE

To the Union, the issue before me is:

> "Was the Grievant denied emergency annual leave without just cause, based on the denial of Grievant's explanation for his emergency absence and his written excuse, which was submitted after the first day of Grievant's return?"

To the Employer, the issue is:

> "Did Management properly record the absence of November 30, 1979, as absence without leave (AWOL), and, if not, what should the remedy be?"

After careful consideration I perceive the issue to be as follows:

> "Did Management abuse its discretion in denying Grievant emergency annual leave based on management's decision that Grievant had failed to submit acceptable evidence of his emergency, as Management alleges is required by local policy and the relevant Postal Service Employee and Labor Relations Manual Section Part 512.412?

III. PERTINENT CONTRACTUAL PROVISIONS

ARTICLE X, LEAVE

. . .

Section 2. 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.

. . .

ARTICLE XIX, 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 condition will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, 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 thirty (30) days after receipt of the notice of proposed change. Copies of those part of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employes covered by this Agreement, shall be furnished the Unions upon issuance.

CHAPTER 5, EMPLOYEE BENEFITS

510 Leave

511 General

511.1 Administration Policy

The U.S. Postal Service policy is to administer the leave program on an equitable basis for all employees, considering (a) the need of the USPS and (b) the welfare of the individual employee.

. . .

511.4 Unscheduled Absence

.41 Definition. Unscheduled absences are any absences from work which are not requested and approved in advance.

.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 mnake every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.

512 Annual Leave

. . .

.412 Emergencies. An exception to the advance approval requirement is made for emergencies: however, in these situations, the employee must notify appropriate postal authorities as soon as possible as to the emergency and the expected duration of the absence. As soon as possible after return to duty, employees must submit Form 3971 and explain the reason for the emergency to their supervisor. Supervisors approve or disapprove the leave request. When the request is disapproved, the absence may be recorded as LWOP or AWOL at the discretion of the supervisor as outlined in 512.422.

IV. FACTUAL BACKGROUND AND CONTENTION OF PARTIES

The Grievant, Antonio Sanchez, is currently a full-time, regular letter carrier at the Logan Square Station, Chicago,

Illinois. Grievant has been employed by the Service a little over two years. At all times relevant hereto, Grievant was working as a part-time flexible carrier at the Elmwood Park Station, Chicago Post Office, and had been employed by the Service for some seven months. Moreover, Grievant had, between April 25, 1979 and November, 1979, lost 64 hours of work time due to unscheduled absences. As the employer stated in uncontradicted testimony and documentation (See Empl. Ex. 1 consisting of 6 pages of Form 3971's), these unscheduled absences were a combination of emergency annual leave and sick leave. For the Employer, this record of ten full or partial days of unscheduled absence (absences which were not requested or approved in advance) in such a short time period cannot be tolerated by the Service and appropriately aroused suspicion and concern in local management.

The Grievant testified that he had sole responsibility for his infant son at all times relevant herein and that he had babysitter arrangements through a regular babysitter, or in emergencies, could take his child to Grievant's mother.

Specifically, with reference to the matter at bar, Grievant had picked up his child after work in the late evening on November 29, 1979. The baby-sitter told Grievant that his son was sick, that the child was running a fever and that the baby-sitter would not be able to take care of the child the next day. The Grievant took the child home and attempted to doctor him himself that evening. The child continued to be ill the following morning (November 30, 1979), so Grievant called in at approximately 4:00 a.m. and asked for emergency annual leave for the day. Grievant does not remember with whom he spoke that morning, but does remember that his child's fever had persisted and that the baby was then running a 103† temperature. Based on this, Grievant packed the child up, including clothes and formula, and took the baby to Grievant's mother, where Grievant remained that day. The Grievant does not recall being told during the morning telephone conversation to bring in a written excuse.

Upon Grievant's return to work (the dates are unclear from the testimony, but apparently on Monday, December 3),

Grievant was told he was non-scheduled. Since he was not informed of that fact prior to reporting, he was paid four hours time. On that same day, Grievant talked to Superintendant Hyde. Grievant does not recall whether Hyde informed him at this time that he must bring in a written note to substantiate the emergency, but did testify that he was so told at some time very soon after his return. Within four to five days, according to the Grievant, he supplied such a note (Union Ex. 1). The note was written by his baby-sitter's daughter, since the baby-sitter cannot read or write nor can she speak English. According to the Grievant, the baby-sitter did dictate the content of the note. The note states as follows:

> "To Whom It May Concern:
> Antonio Sanchez' son was sick on Thursday 11/29/79.
> I informed him to stay home with his son. If any
> other information call 227-0010.
>
> Mrs. Herminlinda Lecaras"

According to Grievant, he submitted this note - handwritten on an index card - to someone in management. Grievant was told this was not sufficient evidence, because, management informed Grievant, acceptable evidence of the emergency would have to be a medical doctor's note. Grievant asserted at hearing that he informed the Service at that time, and reiterated at hearing, that his child had only a common cold, which he had had before, and that Grievant did not take the child to the doctor because Grievant believed no doctor's care was required. Instead, Grievant asserts that he took care of the child himself while staying at his mother's house.

According to management, Grievant had been informed of the local policy at the Elmwood Station which requires that written documentation in the emergency leave context must be submitted immediately upon the employee's return to work. Superintendent Hyde asserted that Grievant should have been aware of this policy based on at least two sources: the weekly Monday morning safety talks by Hyde himself or other supervisors, which would

have given oral information to all "substitutes" (part-time flexible employees) concerning the local Elmwood Park policy; and the Postal bulletin board which contains notices of general interest, general orders of the Postal Bulletins and which should have indicated to Grievant the need for bringing in his excuse immediately upon his return from emergency annual leave. (The Employer presented no written evidence of such a local policy, and the only written documentation of the need for an excuse with reference to emergencies is part 512.412 of the Employee and Labor Relations Manual, set forth above.)

Management asserts that the Grievant was familiar with the requirement of bringing in documentation for an absence, since Grievant had been required so to do several times prior to the above incident. Thus, on cross-examination, management inquired of Grievant whether he had brought a doctor's note in to his employer when he had been injured playing football, and had gotten glass in his eye. Management further examined and presented several form 3971's (included in Employee Exhibit #1) to illustrate that Grievant had indeed brought in documentation several times in the past; in fact, as illustrated on the first sheet of management's exhibit, Grievant had brought in a doctor's statement on November 20, 1979, just ten days prior to the incident before me.

Superintendant Hyde testified at hearing that his local policy at Elmwood was that if an employee called in for emergency annual leave, the form 3971 was not put into the transactor until the employee came back to work, whereupon a form 3971 was approved and the annual leave implemented and credited if the employee brought in acceptable and convincing evidence. To Superintendent Hyde, the very vague statement on "a scrap of paper" that Grievant ultimately presented some four or five days after his return, and the fact of his being late with the excuse, meant that his excuse and request for emergency annual leave was unacceptable. The making of this determination, Hyde asserted, was in part influenced by Grievant's unschedulued absences from April 25 through November 3, as set forth above. These absences in

such a short time were extremely influential in forcing management to require reasonable and acceptable evidence; instead of Grievant's mere word that he was at home taking care of his sick infant.

V. DISCUSSION AND OPINION

After careful consideration of the matter, including an analysis of the evidence on the record and the inherent probabilities of the testimony given, I find for the Employer and deny this Grievance.

The Employer argues that the vague and unconvincing nature of Union Exhibit 1 was weighed by it in determining that there was no basis for emergency annual leave. I agree with this point. It also, however, argued that the tardiness of the excuse was also an important basis for its turning down the emergency leave request. In fact, the arbitrator notes that the actual reason given for the denial on the form 3971 (Joint Exhibit 3) was as follows:

> "Reason not accepted - evidence not submitted for absence when first day return to duty."

The Union emphasized this fact in its assertion that management acted hastily and abused its discretion herein. However, the lack of a reference to the written excuse is readily explainable when it is noted that Grievant had not, at the time management refused to grant him leave, in fact supplied a written excuse demanded by management. Thus, up to this point, management acted reasonably and within what I perceive to be its sound discretion, given the background facts as to Grievant's excessive or unusual use of unscheduled time during the prior few months.

It is management's actions and reaction when Grievant brought in Union Exhibit 1, the written substantiation from his baby-sitter, that form the real core of this case. Was it an abuse of the employer's discretion to demand more of Grievant, given his record of the last few months? I think not.

First, the Union contends that the offer of a phone number and further information on Union Exhibit 1 is sufficient to satisfy its burden of proof that management acted unreasonably in stating that Grievant had not presented acceptable evidence to prove that he was faced with a genuine emergency on November 30. I disagree. Instead, I hold that the Grievant's excuse as presented at hearing and presumably presented to management on December 3, 1979 would raise reasonable doubts and concerns, given Grievant's prior background of unscheduled absences over the few months in which he worked at Elmwood. The problem with this case, from the Union's point of view, is the really minimal nature of the written document he was able to present. Very frankly, to this arbitrator, this inability indeed may reflect the lack of an emergency situation on the evening of November 29 and the morning of November 30. For Grievant not to be able to present a prescription, a doctor's note or something beyond a statement by his baby-sitter that the child was sick, means Grievant failed to present "acceptable evidence" of the emergency, or at least allowed management so to find in its discretion.

Grievant asserts that his son was running a 103 degree fever. Grievant asserts that he could not take the child to his mother's or arrange other baby-sitting care. Yet Grievant contends that he felt he could care for the child himself and that no medical attention was necessary. These assertions and the mere presentation of a note saying the child was sick presented management with a fact pattern where a manager could, within his sound discretion, decide to deny the leave request, I believe.

That, of course, is the crux of this matter. The arbitrator reminds the parties that he is cognizant that the case herein is calling for a review of discretion, and not one calling for or permitting the arbitrator to substitute his own personal values or judgment for that of Superintendent Hyde. Frankly, the Arbitrator is sympathetic to the plight of Grievant as a single parent with a sick infant. However, from the facts actually introduced on this record, I believe no abuse of discretion has been proved. Under part 512.412, Grievant is required to explain

the reason for his emergency leave request. Then, this section continues by clearly granting supervision discretion to approve or disapprove the leave request. Therefore, the only issue is the issue of abuse of discretion by local management. Union Exhibit 1 and Grievant's assertions that he had a sick child do not convince this arbitrator that a reasonable and conscientious manager could not deem that the story presented did not constitute an emergency requiring unscheduled leave with pay. Under these circumstances, management's acts herein were not hasty but instead were a reasonable use of discretion in attempting to get acceptable documentation from an employee who obviously had no emergency as that word is used in the context of unscheduled absence from work. To management, Grievant does not deserve special consideration here because of the requirements of child care, since many employees are single parents, have similar problems, and succeed in making viable child care arrangements that cover child illness not serious enough to call for medical attention. Management's reaction to the substantial amount of unscheduled absences, and its reasonable disapproval of this particular "excuse," require that the Grievance be denied in its entirety. Therefore, the Arbitrator finds that the Union has not sustained its burden of proof and the grievance must be denied.

In denying this grievance, I do not in any way suggest that the failure by grievant to supply a doctor's note constitutes an automatic basis for turning down Grievant's request, as employee witness Hyde seemed to suggest. Management witness Hyde asserted that medical certification would be the only reasonable documentation available here. I take it that, by medical documentation, Hyde means a formal note from a doctor on some sort of typed form. I find no such requirement in the Employee and Labor Relations Manual, part 512.412. This arbitrator does note that such requirement is found in parts 513.332 and 513.361, for instance, dealing with sick leave. Therefore, management knew how to provide for such documentation in the Employee and Labor Relations Manual when they really wanted to do so.

Second, I do not in any way suggest by denying this

grievance that, from the facts presented, a written excuse must be presented on the first day back in every instance when emergency annual leave is requested at Elmwood. Management certainly did not prove that in this case. However, as management argued, its reasonable disapproval of this particular "excuse" requires the Grievance to be denied in its entirety.

VI. AWARD

The Grievance is hereby denied, for the reasons set forth hereinbefore.

Evanston, Illinois
FEBRUARY 27, 1982

ELLIOTT H. GOLDSTEIN
ARBITRATOR