

C# 10820

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between)
UNITED STATES POSTAL SERVICE)
and)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS)

GRIEVANT: PAT SESSA
POST OFFICE: BLOOMFIELD, N.J.
MANAGEMENT CASE NO. N7N-IP-C-28985
UNION CASE NO. GTS# 0007070

BEFORE: ROBERT L. MITRANI, ARBITRATOR:

APPEARANCES:

FOR THE U.S. POSTAL SERVICE:

PAUL F. MC DONOUGH
POSTMASTER, W. CALDWELL, N.J.

FOR THE UNION:

ROBERT BORGOGNONI
BRANCH 38

PLACE OF HEARING:

UNION, N.J.

DATE OF HEARING:

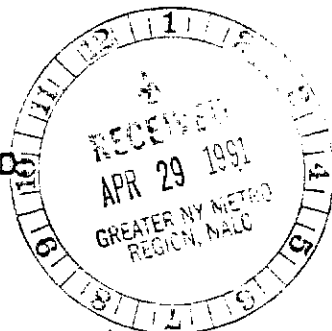
APRIL 19, 1991

AWARD:

THE SERVICE DID NOT VIOLATE THE CONTRACT WHEN IT DENIED MR. PAT SESSA'S REQUEST FOR ADMINISTRATIVE LEAVE AND TRANSPORTATION COSTS.

DATE OF AWARD

APRIL 24, 1991




ROBERT L. MITRANI, Arbitrator

IN THE MATTER OF THE ARBITRATION)	
BETWEEN)	
UNITED STATES POSTAL SERVICE)	
AND)	OPINION AND AWARD
NATIONAL ASSOCIATION OF)	
LETTER CARRIERS (AFL-CIO))	
REGIONAL CASE NO. N7N-IP-C-28985)	
GRIEVANT: PAT SESSA)	
GTS #0007070)	

This case was heard on Friday, April 19, 1991 in Union, N.J. before Arbitrator, Robert L. Mitrani, pursuant to the National Agreement between the parties. The Arbitrator is on the regular regional arbitration panel and this was a regular arbitration assignment.

APPEARANCES

U.S.P.S.	PAUL F. MC DONOUGH, POSTMASTER W. CALDWELL, N.J.
N.A.L.C.	ROBERT BORGOGNONI NALC BRANCH 38

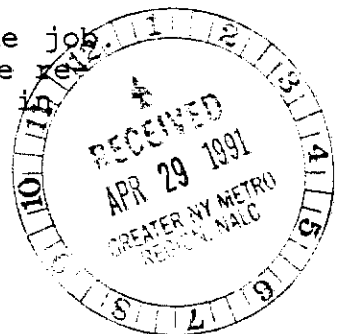
(A) ISSUE

Did the Postal Service have just cause to deny the grievant's request for Administrative Leave and transportation costs for a Return to Duty Physical Examination? If not, what shall be the remedy?

(B) BACKGROUND AND DISCUSSION

The Union filed a grievance on this matter that stated the following:

"Facts of the Case: Grievant was injured off the job. He was instructed by his supervisor that before he returned to work he must report to the Medical Unit in Kearny for a Fitness for Duty Exam.



Union's Position: Grievant was still on sick leave when he was told to report to the Medical Unit. Mr. Sessa should have been on the clock during the time period he was at the Medical Unit including his time and travel to and from his home.

Corrective Action Requested: 1 hr. and 15 min. of sick leave be changed to administrative leave. Grievant also be paid \$.20 per mile for 14 miles (\$2.80) traveled to and from his home. Duty examinations taken at the direction of the Postal Service are taken at no cost to the employee. This includes any travel expenses incurred. (Personal Operations 343.2)."

Mr. R. Fucci (Postmaster's Designee) answered the grievance on 2/27/90. Mr. Fucci's answer is attached to this award as an exhibit.

The basic facts of this case are not in dispute. Mr. Pat Sessa suffered an injury off-the-job on January 11, 1990. His first day back to work after the injury was February 12, 1990. Sessa was requested to get a physical by the Postal Service. He did this on 2/9/90 and he was still on a pay status as of 2/9/90. Sessa "passed" the physical and returned to work on 2/12/90.

In the introduction part of this case Management introduced a Notice dated 2/14/89 which they stated was posted on the Bloomfield Post Office's bulletin boards. This was a three page notice dated 2/14/89 and issued by William P. Ferry, Director Human Resources, Newark Field Division. The subject of the notice was Return to Duty. Attached to this award as an exhibit is the first page of the notice.

In its opening statement the Union pointed to Chapter 340 of the P-11 as well as Section 146 of the F-21 and Section 432.7 of the ELR.

Mr. Bob Hock testified that he has been a shop steward at the Bloomfield post office for 15 years. He never saw the Notice dated 2/14/89. Usually the management at Bloomfield reviews any new policies with the Union before it is posted. This was not done with the Notice dated 2/14/89.

Under cross-examination Hock said it was possible that the Notice was posted but he didn't see it.

Mr. Pat Sessa testified that he has 12 years of service all in the Bloomfield post office as a letter carrier. He has been a shop steward for the last five years. He never saw the

2/14/89 Notice nor was it ever discussed with him as other policies were.

Sessa said that he hurt himself off the job on 1/11/90. On 2/6/90 he saw his own doctor who said he could return to work on 2/12/90. Sessa called Chris Young (supervisor) regarding his return. Young told him to go to the Service's S. Kearny Medical Unit for a physical before he returned. Sessa made an appointment for 2/9/90 and was examined by a Postal Service doctor and was approved to return to work on 2/12/90. Sessa arrived at the Medical Center about 11:00 a.m. and left about 12:15 p.m.

Sessa said that he had to go to the S. Kearny Medical Center and get the appropriate form completed. This was a direct order from supervision. He should have received Administrative Leave for the time in question and the expense of getting to the Medical Center.

The Postal Service made a closing statement in which it presented its case. The examination involved in this case was a Return to Duty exam and not a Fitness for Duty exam.

Section 343 of the P-11 is entitled Fitness for Duty Medical Exam. The language regarding Fitness for Duty Medical Exams clearly states in Section 343.2 (cost) the following:

"343.2 Cost

Fitness for duty examinations are taken at the direction of the Postal Service at no cost to the employee. This includes any travel expenses incurred."

Section 342 is entitled Return to Duty After Extended Illness or Injury. Section 342.1 states the following:

**"342 Return to Duty After Extended Illness or Injury
342.1 Certification After 21 Days**

Employees returning to duty after 21 days or more of absence due to illness or serious injury must submit medical evidence of their ability to return to work, with or without limitations. A medical office or contract physician evaluates the medical report and, when required, assists in employee placement to jobs where they can perform effectively."

The Service states that there is nothing in the language of 342 that indicates costs are covered as is the case under 343.2 for Fitness For Duty exams. The Service stated this was

no mere oversight. And it was confirmed in the Notice of 2/14/89 (see first page attached).

The Union cannot be permitted to gain something in arbitration that it did not gain in negotiations. The specific language of the different Sections of 340 was available to the Union at all times. There is a distinct difference in the language.

In its closing statement, the Union said that Sessa was ordered to see the Postal Service doctor in order to return to work. He complied with this and should be compensated.

The over-all heading of 340 is Physical Fitness After Appointment. If an employee is ordered to take a physical, he must be compensated.

In the presentation of its case, the Union presented a prior arbitration award as well as a Step 4 decision. However, in both cases, the term "fitness for duty" was used.

The language of 340 makes a distinct difference between a Fitness For Duty Exam and a Return To Duty After Extended Illness Exam. The language of 343.2 clearly refers to the Fitness for Duty medical Exam. There is no such language applicable for Return To Duty exam.

There are two separate categories of exams and they have been separated by distinct headings. It is true that they are both under 340, but the language under each separate section is quite different.

Furthermore, in the attached Notice of 2/14/89 regarding Return To Duty Exams, the language states . . . "Such assessments will be conducted off-the-clock and must take place prior to returning to duty."

There can always be an argument if an exam was for a Return To Duty or Fitness For Duty. In this case, it is quite clear that the exam was for Return To Duty. All the evidence and facts indicate that it is covered by the language of 342.1.

AWARD

The Service did not violate the contract when it denied Mr. Pat Sessa's request for Administrative Leave and transportation costs.

Robert L. Mitrani

ROBERT L. MITRANI, Arbitrator
April 24, 1991

UNITED STATES POST OFFICE

Bloomfield, N.J. 07003-9998

DATE: 2/27/90

OUR REF: RF:ac

SUBJECT: Medical Evaluation Pat. Sessa
for Off Clock Injury

TO: Paul Berto Exec. Vice President
NALC U.S. Post Office
2414 Morris Ave.
Union, N.J. 07083-5708

A meeting was held with you on 2/27/90 to discuss the above mentioned grievance.

The Union contends that the grievant should be compensated for all travel expenses incurred going to the Medical Unit for a Return to Duty Examination. They further contend that since the grievant was instructed by management to go to the Medical Unit for a RTD Exam that it should be on the clock.

On 2/14/89 the Newark Division's policy for RTD Exams was posted on all bulletin boards at the Bloomfield Post Office. This policy was effective immediately and brought this office into the guidelines established by Postal regulations as stated in the Personnel Operations Handbook (EL-311).

The Postal regulations as defined in EL-311, Section 342 are explicit when RTD Exams are required. This policy is for the protection of both the employee and the Postal Service. If an employee is out sick for any of the reasons stated in this section, such as communicable or contagious diseases, mental or nervous conditions, epilepsy, etc., hospitalization, or out of work for twenty-one days or more, they are required to submit evidence of their ability to return to work, with or without limitations. A medical officer evaluates this documentation at the RTD Exam and if approved returns the employee to duty.

It is management's position that until a Postal Medical Officer makes a medical evaluation at the RTD Exam to return the employee to duty, that the employee should be in a non-duty status, therefore, the examination is conducted off-the-clock. However, if the examination is conducted during the employee's normal work schedule, then sick leave or other requested leave is approved. Since employees are required to take a RTD Exam for an illness/injury that did not occur during Postal employment, they are not compensated for other expenses incurred going to the medical unit, such as parking or mileage. It is only when management would direct an employee for a Fitness For Duty Exam that the employee would be on the clock and all allowable expenses reimbursed. Management is in compliance with all Postal regulations. There being no violation of the National Agreement this grievance is denied.

R. Fucci
R. Fucci - Postmaster's Designee

UNITED STATES POST OFFICE

Newark Division

Newark, New Jersey 07102-9998

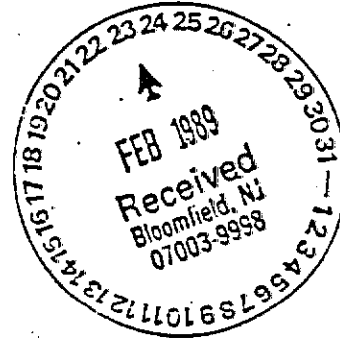
DATE: February 14, 1989

CUR REF: NED9:JAJones:fb:9406

POST ON ALL BULLETIN BOARDS

SUBJECT: Return to Duty

TO: Directors
Postmasters
General Manager, NJF
General Manager, NJI & BMC
Managers, Stations & Branches
Newark Field Division



This updates policy relative to returning employees to duty and supersedes instructions issued February 22, 1988.

1. Return to Duty After Extended Illness or Injury

Employees returning to duty after 21 days or more of absence due to illness (including substance abuse) or serious injury require medical certification. Employees must submit medical evidence of their ability to return to work, with or without limitations. A medical officer or contract physician evaluates the medical report and makes a medical assessment to assist management in employee placement to jobs where they can perform effectively and safely. (Employee and Labor Relations Manual 864.41).

Employees returning to duty under these circumstances must contact the Medical Unit prior to the date and time they are expected to return to work to arrange for a Return to Duty Evaluation by the Medical Officer. Employees can contact the medical units between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday to make an appointment to see the Medical Officer. Such assessments will be conducted off-the-clock and must take place prior to returning to duty.

On those occasions when a medical officer or a nurse finds an employee Not Fit For Duty (NFFD) for the Balance of the Tour (BOT), this should be enough documentation for the BOT absence.