

C# 04129

ARBITRATION AWARD

In the Matter of the Arbitration)
Between)
UNITED STATES POSTAL SERVICE)
STERLING HEIGHTS, MICHIGAN)
And)
BRANCH #4374, NATIONAL ASSOCIATION)
OF LETTER CARRIERS)

CASE NO. C1N-4B-C 20829

ALBERT A. EPSTEIN
ARBITRATOR

RECEIVED

FEB 03 1984

JEFFREY SABBAG GRIEVANCE

Jack R. Sebolt

THE PROCEEDINGS

The above parties, unable to resolve a grievance filed by employee Jeffrey Sabbag in which he requests compensation for \$22.00 advanced by him for a doctor's fee in connection with a medical documentation requested upon his return to work in July of 1983, submitted the matter to the undersigned for arbitration under the terms of their Labor Agreement.

A hearing on the matter was held at the Main Post Office in Sterling Heights, Michigan on October 27, 1983. Both parties were represented and fully heard, testimony and evidence were received and both parties made oral closing arguments.

APPEARANCES

FOR THE POSTAL SERVICE:

Mr. Eddie L. Dixon Labor Relations Specialist

FOR THE UNION:

Mr. Ronald Brown Regional Administrative Assistant
Mr. Jim Korolowicz President of the Local
Mr. Jeffrey Sabbag Grievant

THE ISSUE

Was Jeffrey Sabbag entitled to be compensated for \$22.00 which he paid to a physician for medical documentation required by the Postal Service before his return to work on July 11, 1983?

PERTINENT EMPLOYEE & LABOR RELATIONS MANUAL PROVISIONS

Section 513 Sick Leave Application

513.36 Documentation Requirements

.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 documen-

tation desirable for the protection of the interests of the Postal Service.

.362 Over 3 Days. For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work.

.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.

DISCUSSION AND OPINION

On July 4, 1983 the grievant was injured at home and went to a medical clinic where it was found that he was suffering from a cervical muscle strain. He indicates that he was told by the doctor not to work on July 5, 6 or 7 and that on July 5 his sister called the Postal Service telling them that he would be off on those dates. On the afternoon on July 5 the grievant called his supervisor telling her that he would be off on the 5th, 6th and 7th and that he would come back to work on his next scheduled work date which was Monday, July 11th because he was scheduled off on the prior Friday, Saturday and Sunday. Supervisor Portly told him during that

conversation that he would need additional documentation indicating that he was fit to return to duty. The grievant was thereupon required to go to a private physician and this physician, Rodolfo Yapchai, provided him with a return to work authorization. The grievant therefore appeared on July 11th with this authorization as well as the prior one from the Warren Clinic which his supervisor deemed insufficient because it indicated that the grievant should be excused from work but did not indicate a specific day for return. The grievant paid his \$22.00 fee which he was charged by Dr. Yapchai and when the Postal Service refused to compensate him for it he filed a grievance which became the subject matter of this arbitration.

The Union claims that Supervisor Portly abused her discretion under the provisions of Section 513.361 of the Employee and Labor Relations Manual. It notes that for periods of absence of 3 days or less, a supervisor may accept the employee's statement explaining the absence. This was not done in the instant case. It further provides that 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. It is the contention of the Union that the grievant was not on restricted sick leave and that the protection of the Postal Service could not be involved based upon the grievant's record of 3 days of sick leave in the past five year period. The Postal Service further

claims that the grievant's name did not appear on the excuse which he brought in from Dr. Freeman but the Union points out that this item was not raised before the arbitration.

In summary the Union contends that there is no requirement for medical certification for the grievant to return to work considering the facts in this case and his prior record. The interest of the Postal Service are not affected to any degree which would justify Portly's action according to the Union. Therefore it submits that arbitral precedents and ordinary equity and good judgment supports its position that the grievant should not have been required to go to another doctor for an excuse and therefore he is entitled to reimbursement for the \$22.00 fee which he expended in this effort.

The Postal Service contends that inasmuch as the first statement brought in from the Warren Clinic did not contain a specific authorization for return to work it would be impossible for the grievant's supervisor to know his condition when he returned to work. Because of the nature of the grievant's injury, that being acute cervical muscle strain, the supervisor was properly protecting the interest of the Postal Service when she requested an additional specific medical authority to return to work. Otherwise the Postal Service points out that there might be a claim for injury if the grievant returned to work without medical authorization and damaged himself. Because the Postal Service insists that the supervisor could not be sure of the propriety of the first notice the Postal Service argues that the supervisor would have been in a position where a doctor's certificate authorizes

3 days of on July 5th, 6th and 7th but leaves the return for work up in the air and this could have created a difficult situation. It is the position of the Postal Service that arbitral precedents have upheld a supervisor's right to request a medical certification where in his judgment it is required and it contends that the facts in the instant case justified the request for the additional certification.

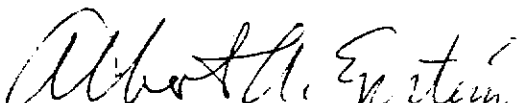
A review of the testimony, evidence and arguments of the parties indicates that the sole issue here is whether or not the supervisor involved acted appropriately when she deemed documentation desirable for the protection of the interest of the Postal Service, one of the clauses set forth in the documentation requirements of the Manual. The other situation set forth is when an employee is on restricted sick leave and that did not cover the grievant in the instant case. The record reveals that the grievant brought in a statement which might have been construed to be indefinite but it did indicate that the grievant was excused from work on 3 particular days and therefore it could have been construed as an authorization to return to work after the third day which was July 7, 1983. The grievant was not scheduled to work until the eleventh and when he appeared the supervisor took it upon herself to challenge his documentation and requested the grievant to obtain additional medical certification which he did obtain and which he paid for.

I must agree with the Union that the sick leave record of the grievant was extremely exemplary so that a record of three days of absence in a five year period certainly does not justify a judgment on the part of the supervisor that the grievant was an individual who took excessive sick leave or was perhaps a malingerer thus requiring medical documentation. The grievant's record certainly would never have justified his being placed on a restricted sick leave which would require a medical documentation and the judgment of the supervisor that she deemed documentation desirable for the protection of the interest of the Postal Service does not appear to be at all justified. I do not agree with the position of the Postal Service that the nature of the grievant's illness was such that he might have hurt himself at work if he were returned by the supervisor and the facts set forth in the instant case simply do not justify the request for the additional medical certification.

Based upon the findings it follows that if the supervisor did not have sufficient justification to require medical certification the direction that the grievant should obtain such and should be required to pay for a certification from a private physician becomes the responsibility of the Postal Service. The grievant expended \$22.00 because of the supervisor's unjustified request and the grievant is therefore entitled to reimbursement for the money for which he expended. An Award will issue accordingly.

A W A R D

Jeffrey Sabbag is entitled to reimbursement of the sum of \$22.00 which he expended in July of 1983 for medical documentation for return to work which was required by his supervisor.


ALBERT A. EPSTEIN
ARBITRATOR

NORTHBROOK, ILLINOIS
JANUARY 31, 1984