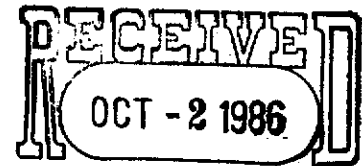


C#06565

Arbitration Award



NATIONAL BUSINESS AGENT
CENTRAL REGION

In the matter of arbitration between:

National Association of
Letter Carriers, AFL-CIO, Branch #11

and

United States Postal Service
Lincoln Park Station
Chicago, Illinois

Case #C4N-4D-C 4935
G. Davis Medical
Reimbursement

Appearances:

For the Union:

Warren E. Fredrich, Regional
Administrative Assistant
Gloria Davis, Grievant

For the Postal Service:

Harvey E. Walden, III, Labor
Relations Representative
Harley Hagler, Supervisor
Patricia A. Thomas, Supervisor of
Mails and Delivery

Date of Grievance:

March 27, 1985

Date of Arbitration Hearing:

January 31, 1986

Arbitration Hearing Site:

United States Post Office
433 West Van Buren
Chicago, Illinois

Hearing Transcript:

None taken

Post-Hearing Briefs:

None filed

I. Issue:

Pursuant to the collective bargaining agreement (Jt. Ex. #1) which is currently in effect between the United States Postal Service, hereinafter "Employer" or "USPS", and the National Association of Letter Carriers, AFL-CIO, hereinafter "Union," a hearing in the above - cited matter was held before John J. Mikrut, Jr., Arbitrator. At said hearing, the USPS presented a written

opening statement and the Union presented its opening statement orally. Both parties presented oral closing statements. No hearing transcript was kept, and neither party filed a post-hearing brief with the Arbitrator.

Upon the close of hearing, the parties attested that they had been accorded full and fair opportunity to present all relevant evidence, testimony and documentation necessary for the Arbitrator to render a decision in this matter. The parties further agreed that the following issue is properly before the Arbitrator for resolution:

"Should the Postal Service reimburse the grievant for procurement of a doctor's statement related to her absence of March 27, 1985?"

II. Controlling Contractual Provisions:

In support of their respective positions, the parties have offered the following provisions of their current National Agreement as either controlling or otherwise relevant in the resolution of this matter:

Article 10: Leave

* * *

Section 5. Sick Leave

The Employer agrees to continue the administration of the present sick leave program, which shall include the following specific items:

- A. Credit employees with sick leave as earned.
- B. Charge to annual leave or leave without pay (at employee's option) approved absence for which employee has insufficient sick leave.
- C. Employee becoming ill while on annual leave may have leave charged to sick leave upon request.
- D. Unit Charges for Sick Leave shall be in minimum units of less than one (1) hour.
- E. For periods of absence of three (3) days or less, a supervisor may accept an employee's certification as reason for an absence.

* * * * *

Article 14: Safety and Health

* * * * *

In addition to the foregoing, the parties also cite the following sections of the Employee and Labor Relations Manual (Jt. Ex. #4 and #5) as relevant herein:

513 Sick Leave

513.1 Purpose. Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.

* * *

.33 Application for Sick Leave

.331 General

Except for unexpected illness/injury situations, sick leave must be requested on Form 3971 and approved in advance by the appropriate supervisor.

.332 Unexpected Illness/Injury

An exception to the advance approval requirement is made for unexpected illness/injuries; however, in these situations the employee must notify appropriate postal authorities as soon as possible as to their illness/injury and expected duration of absence. As soon as possible after return to duty, employees must submit a request for sick leave on Form 3971. Employees may be required to submit acceptable evidence of incapacity to work as outlined in the provisions of 513.36 Documentation Requirements. The supervisor approves or disapproves the leave request. When the request is disapproved, the absence may be recorded as annual leave, if appropriate, as LWOP, or AWOL, at the discretion of the supervisor as outlined in 513.342.

.34 Form 3971, Request for, or Notification of, Absence

.341 General. Application for sick leave is made in writing, in duplicate, on Form 3971, Request for, or Notification of, Absence.

.342 Approval/Disapproval. The supervisor is

responsible for approving or disapproving applications for sick leave by signing the Form 3971, a copy of which is given to the employee. If a supervisor does not approve an application for leave as submitted, the Disapproved block on the Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reason for the disapproval. AWOL determinations must be similarly noted.

* * *

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

* * *

.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.

.365 Failure to Furnish Required Documentation. If acceptable proof of incapacitation is not furnished, the absence may be changed to annual leave, LWOP, or AWOL.

III. Background:

Gloria Davis, hereinafter "grievant," is a full time City Carrier assigned to the Lincoln Park Station, Chicago, Illinois.

Her seniority date is April 21, 1970. Although originally assigned to the 5:30 AM to 2 PM shift with rotating days off, the grievant, assumedly for personal reasons, requested and had been granted a 6 AM starting time.

On Wednesday, March 27, 1985, there was a particularly heavy volume of mail at the Lincoln Park Station and, at approximately 5:30 AM, Supervisor Harley Hagler assigned a Floater, Chandler¹, to assist the grievant in casing her mail for Route 1482.

When the grievant arrived at work she first went to her case and saw Chandler "throwing flats." Upon inquiring, Chandler informed the grievant that she had been assigned by Supervisor Hagler to assist the grievant and that the two were to work together in the case casing mail.

The grievant left the case, walked over to the time clock, and punched her time card at 0613 (approximately 6:08). The grievant returned to her case and Chandler was still there. At that same time, Pat Thomas, the Supervisor of Mails and Delivery, was walking through the area and the grievant stopped her and told her that "...the case was too small for two people to work in and that she (grievant) didn't need any assistance." This exchange was brief, and Supervisor Thomas told the grievant to accompany her to her office where the discussion could continue. The grievant complied, and once inside the office the discussion became "heated" with much yelling and shouting between the two women. There is much

1. The Employer's written opening statement identifies this employee as "Braggs," but, at the arbitration hearing, the grievant and the two Employer witnesses identified this employee as "Chandler," who, later that same morning, apparently was replaced by "La Verne Braggs."

discrepancy in the record as to who said what and whether any obscenities were used, or whether Supervisor Thomas shook her finger in the grievant's face, or whether the womens' bodies touched in the exchange. The record is fairly clear, however, that the grievant said that she didn't need any assistance; that the case was too tight for two people to be working there; that she had "claustrophobia"; and that she didn't want to work with Chandler but instead would work with La Verne Braggs. According to Supervisor Thomas, the grievant also said, "... if (Chandler) is going to work in my case, I will get sick and go home." The grievant contends, however, that Supervisor Thomas said, "... if you won't work with (Chandler), then get sick and go home."

The grievant then left the Supervisor's office and returned shortly with a PS Form 3971 (Request For or Notification of Absence), (Un. Ex. #3) and said that she "... was going home." Supervisor Thomas signed the document and informed the grievant that, upon her return to work, she would have to bring in some substantiation of her illness. According to the grievant, she then said, "I don't see why I have to bring in some substantiation since I'm ready, willing and able to work." At that point, the grievant left the office, and clocked out at 0631 (approximately 6:19 AM).

The record shows that later that same day the grievant went to the Thorek Hospital and Medical Center and saw Dr. Arnold Kaplan, M.D., who, upon examining the grievant, wrote her a prescription for medication and, on the same slip (Un. Ex. #2), he also wrote the following statement:

"Due to exteme anxiety and stress on the job she will be off until 4/1/85."

The cost of the visit to Dr. Kaplan was \$23.00 (Un. Ex. #1).

According to the record, the grievant was off work Wednesday, Thursday and Friday, March 27, 28 and 29, 1985. Her scheduled days off that week were Saturday and Sunday. She returned to work on Monday, April 1, 1985, as per Dr. Kaplan's instructions

Upon returning to work, the grievant completed her Form 3971 (Un. Ex. #3) requesting twenty-four (24) hours of sick leave for the three (3) days of her absence. Said Form was submitted to Supervisor Thomas.

At this point, the record, once again, becomes somewhat clouded.

According to the parties, upon receipt of the completed Form 3971, Supervisor Thomas again informed the grievant that she would have to submit some type of substantiation in order to verify her illness. The record also shows that on April 4, 1985, Supervisor Thomas approved the grievant's request for twenty-four (24) hours of sick leave. In addition, the record also shows that a copy of Dr. Kaplan's prescription/statement was received in the Employer's Employee and Labor Relations Division on April 16, 1985.

Previously, however, on April 10, 1985, a formal grievance was filed by the grievant and submitted to Supervisor Thomas in protest of her action in this matter. Said grievance specified that Supervisor Thomas' attitude and remarks on the morning of March 27, 1985, "... caused (grievant) to leave work to seek medical attention." As a remedy, the grievance requested that the grievant "... be paid for lost time and medical expense due her."

Said grievance, for reasons which will be discussed more fully hereinafter, was denied, in major part, by the Employer throughout

all of the steps of the parties' negotiated grievance procedure. Thereafter, the matter was appealed by the Union to arbitration; the undersigned Arbitrator was appointed to hear and decide the matter; and, pursuant to hearing, the matter is now properly before the Arbitrator for resolution.

So that the background portion of this case may be complete, the record shows that at some point in the processing of this grievance that part of the grievance remedy request for "payment of lost time" was apparently withdrawn or settled. The specific issue which is the sole focus of the instant dispute, therefore, is whether the Employer should be required to pay/reimburse the \$23 doctor's bill which was incurred by the grievant as a result of her visit to Dr. Kaplan on Wednesday, March 27, 1985.

IV. Positions of the Parties:

The Union charges that the Company's actions in this case were in violation of Article 14 and Article 10.5(E) of the parties' current National Agreement, as well as Section 513.361 of the Employee and Labor Relations Manual. According to the Union, Article 14, in pertinent part, provides that, "(I)t is the responsibility of management to provide safe working conditions ... and to develop a safe working force." It is the Union's position that the Company failed to comply with the basic principle articulated in Article 14 for the following reasons: (1) the Supervisors were aware of the grievant's claustrophobia problem which made working with another person in a "tight", "crowded" space an unsafe and unhealthy condition for her, yet the supervisors knowingly placed the grievant in such a situation; and

(2) the continued hostile attitude of Supervisor Thomas brought extreme stress and anxiety upon the grievant. Both of these actions, the Union maintains, clearly demonstrate that the Company failed to provide a safe working environment for the grievant.

Continuing, the Union next argues that, on the morning in question, the grievant was actually following Supervisor Thomas' directive because it was Ms. Thomas who told the grievant to get sick and go home if she didn't want to work at her case with employee Chandler. It was also Supervisor Thomas who told the grievant to bring in medical verification of her illness and the grievant, again, was simply carrying out that order.

Lastly, the Union argues that there was no real reason for Supervisor Thomas to require the grievant to bring in medical verification in the first place because the grievant was not on restricted sick leave; at the time of the incident, she had approximately five hundred (500) of accumulated sick leave credited to her; and there was no reason for Supervisor Thompson to doubt the validity of her claustrophobic condition because all the supervisors, including Thomas, were aware that the grievant suffered from such a condition.

The Union argues that these reasons, together with the fact that Supervisor Thomas' hostile action brought on the grievant's illness, in the first place, warrants the Employer's reimbursing the grievant for the total cost of her visit to Dr. Kaplan.

The Employer's basic contention in this dispute is that there was no contractual violation nor a violation of Section 513.361 of the Employee and Labor Relation Manual in this case, and that medical verification was a reasonable request in light of the

highly suspicious nature of the grievant's alleged illness. In support of this contention, the Employer argues that there is no evidence whatsoever in the record to support the grievant's claim that her alleged claustrophobia condition would make it hazardous, unsafe or unhealthy for her to work with another employee while casing mail. According to the Employer, the grievant made no effort to prove that she had such a condition or that it was of such proportions that it would have prevented her from sharing her casing duties with employee Chandler for a few hours on the day in question. The Employer further argues that it was not claustrophobia that led to her objection to the assignment, but rather because of the particular person (Chandler) who was assigned to work with the grievant. This feeling, according to the Employer, was verbally expressed to Supervisor Thompson by the grievant and it was the grievant's uncooperative attitude toward the Supervisor's order -- and not a concern for health and safety -- which kept the grievant from working on that day.

The Employer further argues that it should not be held responsible for the payment of the grievant's medical expense because the request itself was reasonable. According to the Employer, there was a large volume of mail on the day in question, and the grievant was needed to work; however, the grievant verbally stated that "... if (Chandler) was going to work in the case, then she (grievant) would get sick and go home." It was after this statement, the Employer argues, that the grievant formally requested sick leave by presenting the Form 3971 to Supervisor

Thomas. Thus, according to the Employer, the grievant's own words brought suspicion to her request, and it was at that point that Supervisor Thomas deemed it necessary to request verification in order to protect the interests of the Postal Service as per Section 513.361 of the E and LR Manual. Further embellishing this point, the Employer maintains that the grievant's immediate Supervisor has the authority to approve leave requests and also the responsibility for verifying that the request is legitimate and justifiable. According to the Company, at the particular time in question, because of the suspicious nature of the circumstances surrounding the grievant's request, Supervisor Thomas' request for verification was both necessary and reasonable, and, therefore, proper.

Concluding its argumentation, the Company maintains that there was no violation of any contractual provision which would have made the Company responsible for the payment of the grievant's medical expense; nor was the request for verification unreasonable. Moreover, the Employer has the right to request medical verification and, under the circumstances of the instant controversy, Supervisor Thomas' request was reasonable and necessary. For these reasons the Employer ask that the grievance be denied in its entirety.

V. Discussion, Findings and Conclusions:

As an initial point of departure in this analysis, it is significant to note that there are no contractual provisions which address the issue of verification of an employee's sick leave, or when the Employer can require such verification, or under what circumstances a request for verification will be reimbursed by the Employer. Section 531.361 of the Employee and Labor Relations

Manual, however, does specify that in situations involving absences of three (3) days or less, "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."

Quite obviously, since the Employer can require medical documentation in the two enumerated instances involving absences of three (3) or less days, and since the applicable language does not specifically provide for the reimbursement of medical expenses in these instances, then the Employer is obligated to reimburse the employee for his/her medical expenses in any other type of situation in which medical documentation is required. The critical question in the instant case then becomes whether the situation which occurred on the morning of March 27, 1985, fell within the two (2) enumerated categories specified in Section 513.361 of the E and LR Manual. In this regard, the record clearly indicates that the grievant was not on sick leave. As a matter of fact, the grievant at the time of the incident had an accumulation of five-hundred (500) hours of sick leave credited. Since the grievant was not on restricted sick leave, the next significant question is whether the March 27, 1985 situation fell under the second category of the Section 513.316 exceptions (i.e. -- "... or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service").

To say that the foregoing language of Section 513.316 is "ambiguous" would be an understatement indeed! However, anyone who

is involved in any phase of labor-management relations knows that, given the unestimable number of unforeseen situations which could arise in a collective bargaining relationship, a certain degree of "flexible restrictiveness" is desirable and serves the interests of both parties. Given this reality, therefore, when confronted with such ambiguity, each case must be evaluated on its own merits, and when making such a determination an arbitrator must consider, among other things, whether the Employer's actions were properly motivated, were reasonable, and were applied in a fair, equitable and non-capricious manner. After carefully reviewing the complete record in this case, the Arbitrator is persuaded that the Employer's actions herein fulfilled each of these requirements, and, therefore, was proper.

The basis of the Union's argumentation in this case is twofold: (1) the Union argues that the Employer knew of the grievant's claustrophobia problem and tried to place her in an unsafe work environment thus in violation of Article 14 of the collective bargaining agreement; and (2) when the grievant refused the improper work assignment, the increasingly aggressive and hostile attitude and actions of Supervisor Thomas added to the grievant's anxiety and stress and caused her to become ill. At that point, the Union argues, the Supervisor's request for medical verification was seen by the grievant as an order to take medical leave; and that since the supervisor brought on the grievant's illness, then the Employer should pay for the grievant's visit to Dr. Kaplan.

After carefully considering the Union's arguments, the Arbitrator believes that the Union's position is fatally flawed for

the following reasons:

First, the grievant's contention that she suffers from claustrophobia, has suffered from the illness for many years (since she was a child), and continues to suffer from the illness since the March 27, 1985 incident, is not supported by one single bit of probative evidence. The grievant, in this regard, testified that she has never received a medical examination or any type of treatment for her alleged malady. In such situations, the burden of proof is the grievant's, since she is the moving party, and nothing has been offered in the record to substantiate or even give the least bit of credence to the grievant's contention. The mere assertion that the grievant suffers from such an illness is insufficient for our purposes.

Second, Dr. Kaplan's written statement makes no mention whatsoever of "claustrophobia," but merely states that the grievant was suffering from "... extreme anxiety due to stress on the job..."

Third, the grievant's contention that she was "ready, willing and able" to work on the day in question is refuted by her very own actions. She refused to work!

Fourth, the grievance, which was written by the grievant approximately three (3) weeks after the incident, makes no mention of "claustrophobia" but merely indicates that the grievant "... didn't need help (in casing her mail), very seldom gets help ... and ... (T)he (case) area is too small." If the grievant was suffering from claustrophobia as she claims, why didn't she specifically state that in her grievance?

Fifth, and perhaps most significantly, there is evidence in the record, including various statements by the grievant herself, to indicate that the problem with the disputed work assignment wasn't the confined workspace of the case, but the particular person (Chandler) who had been assigned to assist the grievant in her casing duties. If this be true, then the grievant's entire claustrophobia defense must be discredited.

Sixth, the chronology of the incident on the morning in question, particularly the grievant's announcement that she would get sick and go home if she had to work at her case with employee Chandler, sounds more like a "threat" which, most understandably, would have caused Supervisor Thomas to become suspicious of the grievant's motives.


Seventh, and finally, even if one was to give the grievant the benefit of a doubt and totally accept her version of the incident, including her claim of claustrophobia, one still would be extremely hard-pressed to find any significant amount of sympathy for the grievant's cause. The assignment was only for a short period of time (a few hours) for the one day; it was necessary for management to make the assignment because of the heavy volume of mail, and because the grievant had requested and was granted a late starting time, and she was late in reporting for work that day; and, additionally, while a letter carrier's case is far from being a spacious accommodation, a three (3) wing case, such as that which the grievant was working in, is large enough to hold two (2) average sized female employees for a short period of time while engaged in normal casing duties. Under these circumstances, the grievant would have been best advised to have followed that classic tenet of

labor arbitration which provides, "work now and grieve later." As the facts of this case demonstrate, the grievant's refusal to perform the disputed assignment, the suspicious circumstances surrounding that refusal, and the reasonableness of management's directive, combined to make the grievant's position extremely vulnerable. For these reasons, taking all the evidence as a whole, the Arbitrator is compelled to rule that the Employer is not liable for the reimbursement of the grievant's medical expenses as claimed in the grievance. The Employer acted reasonably in its request and said request was in compliance with Section 513.361 of the Employee and Labor Relations Manual which allows a supervisor to request documentation "... for the protection of the interests of the Postal Service."

VI. Award:

On the basis of the foregoing discussion, findings and conclusions the grievance which has been filed in this dispute will be denied in its entirety.

Respectfully submitted,


John J. Mikrut, Jr.
Arbitrator

September 20, 1986