

C# 13674

NORTHEAST REGIONAL REGULAR ARBITRATION PANEL

X
IN THE MATTER OF ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE
Employer

and

NATIONAL ASSOCIATION OF LETTER CARRIERS
Union

GRIEVANT:
R. GINTHER

POST OFFICE:
Smithtown, NY

CASE NO.: A90N-4A-C 94006287

X GTS # 12446

BEFORE: ROGER E. MAHER, Arbitrator

APPEARANCES:

For The Union: Jules Cohen.....Regional Administrative Assistant
Fred Nuzzi.....Branch 6000 Area Rep.

For the Employer Peter Gillespie.....Labor Relations Specialist
George Fredericks.....Labor Relations Specialist
Charles Spina.....Labor Relations Specialist
Yvonne Cris Veal, MD.....Senior Medical Director
Jim Welsh.....Post Master Smithtown

Place of Hearing: 160 Duryea Road, Melville, NY

Date of Hearing: April 28, 1994

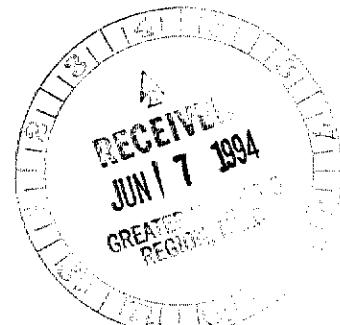
AWARD:

On the substantial and credible evidence of the case as a whole the Arbitrator finds the USPS in violation of the National Agreement's Articles 17 and 31 when it refused to provide the NALC's request for the medical report of Richard Ginther which R. Ginther had authorized for release in the NALC's processing of his grievance..

As and for the remedy, the USPS in the future, shall cease and desist from refusing to provide requested medical documentation to the NALC necessary for the processing of a grievance.

Date of Award: May 18, 1994

Arbitrator:



Pursuant to the arbitration procedures set forth under the National Agreement between the United States Postal Service and the National Association of Letter Carriers, (hereinafter referred to as the "USPS" and the "NALC", respectively) the undersigned was appointed Arbitrator to hear and decide the grievance herein and to render a final and binding award.

This proceeding involves a claim by the NALC that the USPS violated Article 17 and 31 of the National Agreement, EL-806 and the Privacy Act of 1974, Section 120.090 (Medical Records) when USPS management and or its medical director failed to provide the complete medical record (Psychological Report) of Richard Ginther, a letter carrier (Grievant) who had authorized the release of said information to the NALC and which the NALC requested in connection with the processing and representation of Richard Ginther in arbitration regarding a disciplinary suspension and fitness for duty issue.

A hearing in this matter was held before the undersigned Arbitrator at the office of the Postal Service at 160 Duryea Road, Melville, NY on April 28, 1994. The evidence adduced and the position and arguments set forth at the hearing have been fully considered in preparation and issuance of this opinion and its accompanying award. The parties were afforded ample opportunity to present evidence and testimony germane to their positions on the following disputed issue:

"Did management violate Article 17 and 31 of the National Agreement when it refused to provide the NALC the requested medical report of Richard Ginther?"

FINDINGS

The NALC argues this instant grievance evolves around the USPS's denial of its request for the complete medical report (Psychological Report) for the Grievant who was the subject of

two arbitrations (removal from bid assignment, alleged altercation on street and a fourteen day disciplinary suspension).

The NALC argues that Article 17 and 31, as well as EL 806 and the Privacy Act of 1974 grant to the Union the right to be provided with its request for medical documentation for the purpose of processing and representation in arbitration.

The NALC said on 6/1/93 it had officially requested the full medical file of the Grievant so as to adequately represent him in arbitration. The NALC states on 5/24/93 it had been provided a one paragraph summary of the Grievant's psychological report by the USPS medical director Veal . The NALC said this information was insufficient to defend the Grievant in arbitration It believed the entire report may have contained some favorable findings by outside physicians. At the Grievant's scheduled arbitration the NALC had not had its request for the complete medical report honored by the USPS, and consequently it believed it could not adequately represent the Grievant in arbitration because of same. Hence at this arbitration the NALC requested that the arbitrator adjourn the matter. The arbitrator granted the NALC a two week adjournment in order that it could acquire and review the full medical report of the Grievant.

On 9/7/93 the USPS labor relations specialist also made a formal request to the medical director in the hope to expedite the release of this medical report to labor relations as well as the NALC. The NALC states the USPS never complied with its request for the full medical report of the Grievant. The NALC states it eventually received the Grievant's full medical report from the Grievant himself, presumably which the Grievant obtained from his treating physician.

The NALC contends if the Grievant had not been able to supply it with his full medical report its absence would have unquestionably adversely effected its representation of the Grievant in the two aforementioned arbitrations.

As the Grievant's arbitrations have already been decided, the NALC presently seeks a finding that the USPS violated Article 17 and 31 and as remedy that a cease and desist order be awarded in this matter.

Conversely the USPS asserts it did not violate the National Agreement, EL 806 or the Privacy Act of 1974. It also asserts it complied with its obligations to disclose medical information. The USPS contends that EL 806, Section 222.13 provides that medical personnel are responsible for determining what information on file is relevant to satisfy the request.

The USPS acknowledges that the NALC is one of the exceptions for requesting medical information. However, the aforementioned Section of EL 806 further provides that in the event of a dispute, the medical officer will contact the regional medical director for a determination. In this matter medical director Veal contacted the national medical director who in turn determined that the information that Veal had initially provided to the NALC was sufficient. In the opinion of the national medical director so long as the Grievant's treating physician had been provided with the Grievant's full psychological report the USPS was in compliance with EL 806. The USPS maintains it complied with EL 806 Section 223.13 when the medical director summarized that portion of the medical report necessary and relevant to the NALC's need.

The USPS offered the testimony of medical director Veal. She said in complying with EL 806 Section 223.22 it was her medical opinion that the one paragraph summary of the Grievant's psychological report was sufficient for the NALC's purpose. She further believed that disclosure

of the full medical report, "Would be likely to affect the subject adversely." Veal said on 5/27/93 she forwarded the Grievant's full medical report to his treating physician as provided in EL 806 Section 223.221.

Veal said in her capacity as medical director she was treating the Grievant in order to determine fitness for duty after he was involved in an alleged altercation on the street. Veal said she authorized a psychological examination by an outside psychologist and psychiatrist to determine the Grievant's fitness for duty. Veal said this examination determined the Grievant was depressed, had a personality disorder, and may have difficulty controlling his temper when he is in a stress situation. Veal said her review of this outside medical report found it inappropriate to provide the Grievant with the full diagnosis because it would likely have an adverse effect on him and or postal customers.

In closing the USPS asserts the NALC's right to request information on behalf of an employee is not universal or absolute. It maintains the NALC's request for information must be in compliance with the National Agreement and applicable manuals. The USPS for purposes of this instant matter, asserts it was in full compliance with EL 806's exception to full disclosure as it was its medical director's opinion, given the psychological depression and personality disorder of the Grievant, that disclosure of the full diagnosis was likely to have an adverse effect on the Grievant. The USPS emphasizes when the Grievant requested that his treating physician receive a full report of his psychological exam, its medical director immediately complied with same. For all of these reasons the USPS respectfully requests that the Arbitrator deny this grievance in its entirety.

OPINION

Upon a review of the parties arguments, evidence and testimony adduced at the hearing the Arbitrator finds the USPS in violation of Articles 17 and 31 of the National Agreement when it failed to provide medical documentation authorized for release by the Grievant and requested by the NALC for the purpose of representing the Grievant in arbitration.

The Arbitrator bases his determination on a review of the applicable Articles and Manuals. Article 17, Section 3 in relevant part provides, "Union representatives may request and shall obtain access through appropriate supervision to review documents, files and other records necessary for processing a grievance...Such requests shall not be unreasonably denied."

Article 31, Section 3 in relevant part provides, "The employer will make available for inspection by the unions all relevant information necessary for collective bargaining or enforcement administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance....Nothing herein shall waive any rights the Union may have to obtain information under the NLRA as amended."

EL 806, Section 222.13 in relevant part provides, "Medical personnel are responsible for determining what information on file is relevant to satisfy the request, except when the requester is a collective bargaining unit representative, a USPS attorney, or a court of law. In the event of a dispute the medical officer will contact the regional medical director, who will determine what information is relevant for disclosure."

The Arbitrator finds Doctor Veal's release on 5/24/93 of a one paragraph summary of the Grievant's psychological report in response to the Grievant's 5/13/93 request to release his medical report to the NALC was initially appropriate and within the requirements of EL 806,

Section 222.13. The Arbitrator acknowledges that on 5/27/93 Doctor Veal did comply with the Grievant's 5/24/93 request to release his full medical report to his treating physician.

It is quite understandable that Doctor Veal was concerned about releasing the Grievant's entire psychological report to him personally as she feared he would have an adverse reaction to its content. However, when on 6/1/93, the NALC formally requested a release of the Grievant's full medical report, the USPS had a contractual obligation to comply with said request. The Arbitrator holds at this time the Grievant was no longer exclusively a patient being treated and diagnosed by Doctor Veal. He was now the subject of a multiple disciplinary arbitration requiring representation by the NALC.

The medical ethics of Doctor Veal are admirable and expected, but her authority as a USPS employee to disclose requested medical information is governed by and within the confines of the National Agreement and relevant Manuals. Articles 17 and 31 explicitly provide that when an authorized union representative requests information for the processing of a grievance the employer is obligated to furnish such information. Additionally the Arbitrator finds that EL 806, Section 222.13 provides that a collective bargaining representative is one of three exceptions to the medical discretion for degree of disclosure.

On 6/1/93 the Union made a written request for the Grievant's full medical report and provided as reason for its request whether it should file or continue to process a grievance on behalf of the Grievant. The Arbitrator holds the USPS's failure to comply with the NALC's request was violative of the National Agreement. The Arbitrator finds the USPS, at the very least, should have complied with its own 9/7/93 labor relations request for the Grievant's full medical report. This 9/7/93 letter stated "The only information that is in the record is Doctor

Veal's summary dated 5/24/93." Presumably USPS labor relations had need for the full report in order to supports its position in arbitration that the Grievant was not fit for street duty and dealing with the public and to sustain the Grievant's 14 day suspension. Certainly the NALC would need the requested information to adequately defend the Grievant in arbitration.

It stands to reason that the USPS relied upon the Grievant's full medical report to sustain discipline in a scheduled arbitration. The USPS's denial of this information to the NALC seems inherently unfair. The right of privacy regarding an individual's medical record and diagnosis should not be treated cavalierly. Both labor and management must comport themselves in accord with the appropriate Manuals and the National Agreement.

The USPS had raised the issue that the full release of the medical document could have an adverse effect on the Grievant. However, this concern was breached in May 1993, when Doctor Veal, the Grievant, the Grievant's Post Master, and shop steward had a two hour meeting wherein they discussed the Grievant's diagnosis and what should be the appropriate method of treatment and employment status for the Grievant.. The record does not suggest the Grievant acted adversely during this discussion. Presumably the Grievant knew the extent of his diagnosis from his own treating physician, as result of his outside medical examination and his attendance at this meeting.

The Arbitrator holds when the USPS seeks to take disciplinary action against an employee and relies upon medical records as evidence and the basis for its initial determination, the right to privacy vis a vis medical records not being released is no longer within the protected confines of physician and patient. That veil had been pierced by management's initiation of discipline of which the bona fides would be decided in an adversarial proceeding necessitating union representation of

the Grievant. Therein lies the intent and explicit requirements of Articles 17 and 31 which provides that the Employer shall furnish to the union information requested in the processing of a grievance.