

C#06723

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Arbitration Award

In the matter of arbitration between:

National Association of
Letter Carriers, AFL-CIO
Branch #74

and

United States Postal Service
Saginaw, Michigan

* Grievance: #C4N-4B-C 15559
* Grievant: Martha Royal
* Issue: Medical Documentation

Appearances:

For the Union:

Ron Brown, Regional Administrative
Assistant
Martha S. Royal, Grievant
Charles Henning, NALC Local Union
President

For the Employer:

Edward E. Mason, Labor Relations
Representative
Kendra Aldrich, Supervisor of Delivery
and Collection

Date of Grievance:

January 29, 1986

Date of Arbitration Hearing:

June 10, 1986

Arbitration Hearing Site:

Main Post Office
1233 South Washington
Saginaw, Michigan

Hearing Transcript Received

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 captioned matter was held before John J. Mikrut, Jr., Arbitrator. At said hearing both parties presented

written opening statements. No hearing transcript was kept. Neither party filed a post-hearing brief with the Arbitrator, but instead chose to present oral summarizations of their respective positions.

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. In addition, the parties have agreed that the following issue is properly before the Arbitrator for resolution:

"Did the Employer violate either Article 10, Section 5 of the National Agreement or Section 513.361 of the Employee and Labor Relations Manual when it required the grievant to provide medical documentation to support the six (6) hours of sick leave which she used on January 29, 1986? If so, what is the appropriate remedy?"

II. Controlling Contractual Provisions:

In support of their respective positions, the parties, either jointly or separately, have cited the following sections of their current collective bargaining agreement, either in whole or in part, as controlling or otherwise relevant in the resolution of this matter:

Article 3: Management Rights

* * * * *

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.

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Article 15: Grievance - Arbitration Procedure

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Article 19: Handbooks and Manuals

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In addition to the foregoing, the parties, either jointly or separately, have cited the following section(s) of the current Employee and Labor Relations Manual (Jt. Ex. #5) as also pertinent in this matter:

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 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 charged to annual leave, LWOP, or AWOL.

* * * * *

III. Background:

Martha S. Royal, hereinafter "grievant," is a Level 5, step 11, full-time, city carrier in the Saginaw, Michigan Post Office. Her seniority date is May 23, 1977.

On Wednesday, January 29, 1986, prior to reporting for work, the grievant allegedly experienced two (2) nose bleeds. The grievant was successful in stopping the nose bleeds and she reported for work at her regular starting time of 7 AM. According to the grievant, upon reporting for duty, she informed a supervisor (identity unknown) of her problem; and further informed the same supervisor that if the nose bleed reoccurred, then she (grievant) would not be able to perform her assignment on that day.¹

Later that same morning, at approximately 9 AM, the grievant experienced another nose bleed. She notified her immediate supervisor, Kendra Aldrich, of the situation, and further informed Supervisor Aldrich that she would not be able to carry her route that day but that she could perform inside work or possibly deliver a mounted route. The grievant contends that with a mounted route she would be in a jeep for the entire route and that her nose bleeding problem would not be aggravated as much as on a partial

¹ According to the parties, the grievant's route on the day in question consisted of two-thirds park-and-loop and one-third mounted.

walking route; and, more importantly, if she had a nose bleed while on a mounted route, she at least would be in the jeep and could handle the problem easier than if she was walking outside.

Supervisor Aldrich maintains that at the time of this exchange she did not actually see the grievant's nose bleed. Additionally, the supervisor also contends that she informed the grievant that no other assignment was available; that there were several employees who were on sick leave that day; and that if she left work, then she would have to obtain medical documentation for approval of sick leave.

The grievant returned to her case and completed her casing duties. The nose bleed continued, however, and the grievant decided to go home. She completed a Form 3971 (Request for Sick Leave) and, prior to leaving, the grievant was again informed by Supervisor Aldrich that she (grievant) would have to present medical documentation upon her return to work in order to have her sick leave approved.

Upon her return to work on the next day, Thursday, January 30, 1986, the grievant presented her supervisor with a doctor's statement (Jt. Ex. #4) from Dr. Gerard Scott. Said statement indicated that the grievant made a visit to Dr. Scott's office on the preceeding day and that there was a \$22 charge for the visit. There was no information on the statement regarding the nature of the grievant's malady or the treatment which was given to her.

On February 11, 1986, a grievance was filed in protest of management's action herein. Said grievance specifically contended that the grievant's condition on January 29, 1986, was obvious and that management, therefore, should not have required her to obtain

a medical statement to verify said condition. In remedy of the alleged violation, the grievance requested that the grievant be reimbursed \$22 for the cost of her visit to the doctor.

The Employer, for reasons which will be discussed more fully hereinafter, denied the grievance 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 assigned to hear and decide the matter; and, pursuant to hearing, the matter is now properly before the Arbitrator for resolution.

IV. Positions of the Parties:

The Union's basic contention in this case is that the Employer violated Article 10, Section 5 of the collective bargaining agreement and Section 513.36 of the Employee and Labor Relations Manual by requiring the grievant to provide medical documentation for her nose bleed when it clearly was not necessary to do so. Although the Union does not contest the Employer's right to require medical documentation when needed, the Union maintains, however, that it is not an automatic requirement in every instance of employee illness, and the Employer instead is to view each situation individually and to respond appropriately. According to the Union, Section 513.361 of the Employee and Labor Relations Manual requires medical documentation for absences of three (3) days or less only when an employee is on restricted sick leave or when the supervisor deems that documentation is desirable for the protection of the interests of the Postal Service. The first of these situations, the Union maintains, is not applicable in the instant case; and, the second has been improperly relied upon by

the Employer to justify its position in this matter.

In support of this contention, the Union maintains that a supervisor's determination that medical documentation is needed in order to protect the interests of the Postal Service must be based upon reasonable grounds. According to the Union, if a supervisor reasonably believes that the Employer's interests are at stake in allowing an employee's sick leave, then medical documentation is appropriate. Similarly, in situations where there is an abuse of sick leave by employee who is not sick, or where there are suspicious circumstances surrounding the employee's illness and/or request, or when mail delivery is jeopardized by an employee's absence, then requiring medical documentation to substantiate the illness is proper. None of these circumstances, the Union argues, were applicable in the instant case. Furthermore, there can be no doubt of the grievant's condition at the time when she requested sick leave; the grievant's replacement carried her route in six (6) hours without overtime; and all the mail which was scheduled for delivery that day was delivered. Given these facts, the Union maintains that there is no evidence whatsoever that the interests of the Postal Service were jeopardized by the grievant taking sick leave for an obvious physical malady.

The Union next argues that Section 513.364 of the Employee and Labor Relations Manual allows for proof of an illness in ways other than medical documentation. In this regard, the Union charges that Supervisor Aldrich had direct, first-hand knowledge of the grievant's condition and, therefore, didn't need any medical documentation since it would not have served any useful purpose in

this case.

As its final significant area of argumentation, the Union offers as controlling the following Postal arbitration awards involving issues identical to that which is central to the instant case:

NALC V. USPS, CBN-4J-C 1165 (Goldstein);
APWU V. USPS, SBC-3W-C 2710: (Settle); and
NALC V. USPS, CBN-4E-C 23979-B1 (Goldstein).

For the foregoing reasons, the Union requests that the grievance be sustained; and, as a remedy, the Union further requests that the grievant be fully reimbursed in the amount of \$22 for the cost of her visit to Dr. Scott on January 29, 1986.

The Employer's position in this dispute is that its actions were not in violation of the cited provisions of either the National Agreement or the Employee and Labor Relations Manual since the applicable language therein gives the USPS explicit authority to protect its interests by requiring medical documentation as proof of an employee's incapacitating illness. In support of this contention, the Employer maintains that the purpose of medical documentation in such situations is not to prove the existence of an employee's illness, but to confirm the incapacitating nature thereof. Such action, the Employer maintains, protects the Employer's interest by preventing monetary loss which could result by paying for illegitimate absences.

The Employer also argues that the grievant only complained of minor nose bleeds which were quickly stopped; and that only one of the three (3) nose bleeds occurred at work -- and that nose bleed was successfully stopped as well. Moreover, according to the Employer, Supervisor Aldrich never actually saw the grievant's nose

bleed and was only later apprised of the situation by the grievant herself.

Next, the Employer contends that several employees were absent from work on the day in question and that because of this situation, Supervisor Aldrich was concerned that any further absences would adversely effect operations and thereby endanger the interests of the Postal Service. According to the Employer, since Supervisor Aldrich could not determine whether the grievant's condition was of a serious or disabling nature, she acted reasonably and properly in requiring proof of the grievant's condition.

In further support of its position, the Employer cites the following Postal arbitration case as precedent: APWU V. USPS, C1C-4B-C 1655 (Dobranski).

For the foregoing reasons, the Employer contends that Supervisor Aldrich's actions herein were proper, and the grievance, therefore, should be denied.

V. Discussion, Findings and Conclusions:

The Arbitrator has carefully read, studied and considered the complete record in this case, and is convinced that the Union's position, as presented, is correct and, therefore, must prevail.

The rationale for the aforesaid determination is as follows:

Section 513.361 of the Employee and Labor Relations Manual gives the Employer the right to require medical documentation for an employee's absence of three (3) days or less. Said section, in pertinent part, states as follows:

"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."

In light of the foregoing language, as well as the facts of the case and the thrust of the parties' argumentation, there are four (4) critical questions which must be resolved in this analysis. These questions are as follow:

- 1) did the grievant suffer a nose bleed on the day in question;
- 2) was the grievant incapacitated as a result of said nose bleed;
- 3) were the "interests of the Postal Service" sufficiently jeopardized by the grievant's request for medical leave so as to require medical documentation of her condition; and
- 4) was there some other "acceptable evidence of incapacity" available to Supervisor Aldrich by which to make a determination regarding the grievant's incapacity?

Regarding the first of these inquiries, the Employer in its argumentation has raised some concern as to whether the grievant even suffered a nose bleed as alleged since no other witnesses were available to verify this contention. Moreover, according to the Employer, Supervisor Aldrich testified that she did not see any evidence of the grievant's alleged nose bleed when she was approached by the grievant on the morning of January 29, 1986.

While it is true that Supervisor Aldrich testified that she did not see any physical evidence of the grievant's nose bleed, she also testified that she had "no doubt" that the grievant had suffered a nose bleed, and that she was "very concerned" about the grievant's condition. Still yet further on this same point, it is significant to note that this threshold issue was never raised in any of the preceeding steps of the grievance procedure but was raised for the very first time by the Employer at the arbitration hearing itself; and, additionally, the grievant was never charged

with "abuse of sick leave" in this case, but instead the entire thrust of the Employer's argumentation was solely that it had the right to request medical documentation to verify the grievant's condition. For these reasons, it must be concluded that the grievant's nose bleed(s) actually occurred on January 29, 1986, as argued by the Union.

As for the second inquiry, Section 513.364 of the Employee and Labor Relations Manual defines "incapacity" as an employee's being "... unable to perform his normal duties for the period of absence." The condition with which the grievant was afflicted on the day in question was a nose bleed. The grievant testified that she had two (2) nose bleeds while at home before leaving for work on January 29, 1986, and that she experienced a third nose bleed while at work later that very same day. The grievant further testified that her route, for the most part, was a walking route (two-thirds park-and-loop) and that she feared that walking would aggravate the problem. Given the frequency, duration and intensity of the grievant's nose bleeds on the day in question, there can be little doubt that if the grievant experienced another nose bleed while she was carrying her route, then she would have been "incapacitated" under the provisions of Section 513.364 of the E&LRM. Not only would walking be a problem, thus endangering the grievant's safety and well-being, but a nose bleed can also be symptomatic of numerous other potentially life-threatening illnesses. Another factor which cannot be overlooked in this matter is the condition of the mail which could have resulted if the grievant's nose bleed reoccurred while she was delivering her route. For these reasons, the Arbitrator is persuaded that, given

the facts of the instant case, the grievant's nose bleed and possible reoccurrence thereof on the day in question, caused her to be incapacitated for purposes of delivering her regularly assigned route.

The third inquiry concerning the Employer's right to require medical documentation "... when the supervisor deems documentation desirable for the protection of the interests of the Postal Service," can only be approached in light of the particular facts of a given case. In this regard, there can be no question that the applicable language of Section 513.361 of the E&LRM is "extremely vague" and, by some interpretations, could even be interpreted to mean that management could require medical documentation whenever there is an unscheduled absence. This interpretation, however, must be rejected (and, in fact, was rejected by Arbitrator Dobranski in Case No. C1C-4B-C 1655 which was cited by the Employer in its argumentation as precedent) because such an interpretation, according to Arbitrator Dobranski, "... strips it (Section 513.361) of any reasonable meaning ...". Therefore, in determining whether management can require medical documentation because of what management believes to be "... desirable for the protection of the interests of the Postal Service ...," then that determination must be predicated upon some type of fair and reasonable basis. Moreover, such a contention on the Employer's part is a positive defense which necessitates the proffering of a sufficient quantum of probative evidence in order to prove its case. The mere fact that management would be inconvenienced by an employee's absence, or that other employees may have been previously required to

provide medical documentation in similar situations, or that productivity and/or efficiency may be negatively impacted by an employee's unscheduled absence, are insufficient reasons -- in and of themselves -- to justify the requiring of an employee to provide medical documentation to verify an unscheduled absence.

In the instant case, Supervisor Aldrich's decision to require such documentation was apparently based upon the following considerations: (1) there allegedly were several employees who were off work that day due to illness and management was operating "short-handed"; and (2) another letter carrier, Mary Gutterez, whose letter case was next to the grievant's, was allowed to leave work early that same day because of illness, and she too was required to present medical documentation in order to verify her illness.

While the Arbitrator has no reason to doubt the validity of the two foregoing Employer assertions, neither of them (either alone or in combination) are sufficient to require medical documentation for the grievant's absence under consideration. The grievant was not on restricted sick leave; there was nothing of a suspicious nature regarding the grievant's request; and management, in the instant proceeding, has failed to produce any evidence whatsoever to prove or even support the contention that the interests of the Postal Service would have been or were jeopardized or harmed in any way because of the grievant's absence on the day in question.

The fourth and final area of inquiry in this analysis is whether there was some "other acceptable evidence of incapacity for work" available to Supervisor Aldrich at the time by which to make

a determination regarding the grievant's condition and incapacity. In resolving this particular area of inquiry, it is significant to note that the grievant was not charged with abuse of sick-leave for her absence; and, moreover, as noted previously, Supervisor Aldrich testified that she had no reason to doubt that the grievant had suffered from a nose bleed. If Supervisor Aldrich had no reason to doubt the grievant's condition, and if she (Aldrich) was also "concerned" about the grievant's condition at the time, as she contends, then these determinations should have been sufficient to serve as "other acceptable evidence of incapacity for work ..." as is allowed under Section 513.361 of the E&LRM. Either Supervisor Aldrich believed that the grievant was suffering from a nose bleed and thus no medical documentation was needed to verify the grievant's condition; or Supervisor Aldrich didn't believe the grievant's story and medical documentation, therefore, was needed. As the facts of record show, Supervisor Aldrich believed that the grievant was suffering from, or had suffered from a nose bleed, but she, nonetheless, required the grievant to provide medical documentation to verify her condition. This type of treatment obviously places an employee in a "Catch - 22 situation" -- if management has some reason not to believe that an employee is legitimately ill, then management can require the employee to provide medical documentation in order to verify the illness; but on the other hand, however, if management does believe that an employee is ill, then management can still require the employee to produce medical evidence "... for the protection of the interests of the Postal Service." This latter scenario, which was the

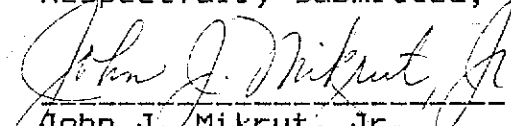
precise set of fact circumstances involved in the instant case, is not a proper interpretation or application of Section 531.631 of the E&LRM since it would allow management to require medical documentation virtually anytime an employee calls-in sick or requests sick leave. Furthermore, such an interpretation/application would nullify the intent of that very same section. For these reasons, therefore, it is determined that there was some other "acceptable evidence of incapacity" available to Supervisor Aldrich by which to make a determination regarding the grievant's apparent incapacity on the day in question. For this reason, even if taken alone, the Employer's position in the instant case must be rejected and the grievance must be sustained.

V. Award:

On the basis of the foregoing discussion, findings and conclusions, it is determined that the Employer violated Article 10, Section 5 of the National Agreement and Section 513.361 of the Employee and Labor Relations Manual by requiring the grievant to provide medical documentation to support the six (6) hours of sick leave which she used on January 29, 1986. The grievance which has been filed in this matter, therefore, will be sustained, and the Employer will be directed to reimburse the grievant in the amount of \$22 for her visit to Dr. Scott on the day in question.

Respectfully submitted,

Date: December 6, 1986


John J. Mikrut, Jr.
Arbitrator