

11841 (CIC-4F-C)

C 45-2

ARBITRATION PROCEEDINGS

Before

Linda DiLeone Klein

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In the Matter Between: : Regular Regional Arbitration
U.S. POSTAL SERVICE : Case No. CIC-4F-C 11841
Cincinnati, Ohio : Grievance of Bert Franklin
-and- : Heard: April 22, 1983
AMERICAN POSTAL WORKERS UNION :

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APPEARANCES

For the Employer:

Thomas B. Newman, Labor Relations Executive
Kenneth L. Nelms, Labor Relations Representative
Annie R. Johnson, Supervisor of Mails

For the Union:

Wayne Bertram, National Vice President
Bert Franklin, Grievant

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ISSUE

Did the Postal Service violate the National Agreement by requiring the grievant to provide medical documentation for an illness?

EMPLOYEE AND LABOR RELATIONS MANUAL

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.

FACTS AND CONTENTIONS

The grievant was scheduled to report for work at 10:30 p.m. on September 15, 1982. This would have been the scheduled workday of September 16, 1982. However, at approximately 9:50 p.m. on September 15, 1982, he called in to say that he was ill and would not be at work for his September 16 tour of duty. The grievant spoke to an acting Supervisor at this time and was told to call back at 10:30 p.m. when his immediate Supervisor would be available. When the grievant telephoned the installation at 10:30 p.m., he again spoke with the acting Supervisor who informed the grievant that his immediate Supervisor was requesting documentation for his absence.

On the basis of a prior experience regarding documentation,

the grievant interpreted this to mean medical evidence; therefore, on September 16, 1982, he made an appointment with his personal physician and obtained the required statement. The grievant was off work due to illness on September 16, 17, and 18, 1982; his scheduled off days were September 19 and 20. When he returned to work on September 21, 1982, his Supervisor approved his request for sick leave based on said medical documentation. Shortly thereafter, the instant grievance was initiated to protest the Supervisor's abuse of managerial discretion in her demand for medical evidence, as well as to request that the grievant be reimbursed for the \$25 of medical expenses.

The Union contends that there was no basis for the Supervisor's request for medical documentation. The Union further contends that, in this case, medical evidence was not necessary to protect the interests of the Postal Service. The Union requests that its position be upheld and that the grievant be reimbursed for the \$25 medical expense incurred on the basis of the Supervisor's unreasonable and capricious demand for documentation.

The Postal Service claims that the Supervisor's request for substantiation of the grievant's illness was reasonable and justified. The Postal Service claims further that the request was made to protect the interests of the Employer. Management maintains that the grievant had previously asked for Annual Leave for September 17, 1982 and that said request had been denied due to the needs and commitments of the Service. Management

submits that the Supervisor became suspicious of the grievant's intentions when he called to report his illness and inability to work his tour of duty on September 16, 1982. In order to be certain that he was not abusing his sick leave privilege, the Supervisor properly demanded documentation, says Management; under the circumstances of this case, the Supervisor acted in the best interests of the Service and she acted to protect the integrity of the work schedule established for Friday, September 17, 1982. The Employer asserts that there was no abuse of managerial discretion by this Supervisor; she had a valid reason for her request, and said reason is sufficient basis for the actions of Management to be upheld.

OPINION

The evidence establishes that the sole reason for the Supervisor's demand that the grievant document his illness was the previous request and subsequent denial of annual leave for September 17, 1982. The grievant's past record did not enter into this case; however, the Arbitrator takes notice of the fact that the grievant's attendance record shows no indication of any prior abuse of sick leave.

The Postal Service has the right to request medical documentation if it is deemed desirable to protect the interests of the Service. However, the Arbitrator finds that in the matter at hand, the interests of the Postal Service were not in jeopardy when the documentation was demanded.

When the grievant called in to report that he would not work his tour of duty on September 16, 1982 due to illness, he gave no indication that he would also be absent on September 17, 1982 or at any other time. To become suspicious of his motives and intentions for September 17, 1982 at this point in time was premature, and the request for medical evidence from an employee who has no history of frequent sick leave usage was unjust and clearly an abuse of managerial discretion.

This abuse of authority becomes even more evident in the absence of any proof other than the Supervisor's testimony that the grievant had, in fact, requested annual leave for September 17, 1982. The Supervisor testified that the annual leave request had been made and then denied. Therefore, she assumed that his phone call about his absence due to illness for September 16 would lead to a request for sick leave on September 17, as well. She then became suspicious that he was not ill, but merely setting the stage for an absence on a day that he had previously wanted to be off work. The grievant, however, could not recall requesting annual leave as alleged by the Supervisor. The burden at this point was on Management to prove that the alleged request for annual leave had been made, but this was not done.

Even assuming that the grievant and the Supervisor had a conversation about annual leave for September 17, 1982, the Supervisor still abused her managerial discretion by making unfounded assumptions about the grievant's intentions regarding September 17, 1982.

There was no justification under the facts of this case for the Supervisor's demand for medical documentation.

When the grievant called in on September 15, 1982, the best interests of the Postal Service were not in jeopardy and, in the absence of a need to protect said interests, the request for medical certification was arbitrary and capricious. The fact that the grievant was absent due to legitimate illness for three days is not the controlling factor; the significant aspect in this case is that when the grievant called in, the Supervisor had no cause to suspect that his absence would extend beyond September 16, 1982.

In reviewing the decisions of various Arbitrators, it is clear that the cost of medical certification has been awarded in cases where a Supervisor has abused the discretionary authority granted under Section 513.361 of the Employee and Labor Relations Manual. Accordingly, this Arbitrator finds that the grievant is entitled to be reimbursed for the medical expenses incurred as a result of the Supervisor's abuse of discretionary authority.

AWARD

It is the award of the Arbitrator that the grievant is entitled to be reimbursed in the amount of \$25 for his medical expenses of September 16, 1982.


LINDA DILEONE KLEIN

Dated this 13 day of May, 1983
at Cleveland, Cuyahoga County, Ohio.