

C# 66123

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
NATIONAL ASSOCIATION OF LETTER
CARRIERS

Grievant: ANTONIO MAGNO

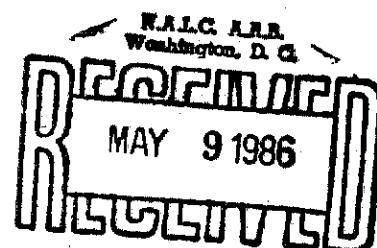
Post Office: HARTFORD, CT

Case No. N4N-1J-C-1954

Before Eva Robins , Arbitrator

Appearances:

For U.S. Postal Service
F. D. Nesman, Labor Relns. Rep.



For Union: Edward Halloran, Local Business Agent, NALC

Date of Hearing: March 10, 1986

Place of Hearing: Hartford, CT

Award: The Service did not violate Article 19 of the National Agreement insofar as the action taken by Management allegedly was inconsistent with the provisions of the Employee and Labor Relations Manual. For the reasons explained in the Opinion herein, the grievance is denied.

Date of Award: April 30, 1986

Case No. N4N - 1J - C - 1954

In the Matter of the Arbitration between

UNITED STATES POSTAL SERVICE

: OPINION AND AWARD

- and -

: OF ARBITRATOR.

NATIONAL ASSOCIATION OF
LETTER CARRIERS.

Grievant: Antonio Magno.

Before: Eva Robins, Arbitrator

Appearances:

For the Service

F. D. Nesman, Labor Relations Representative.

For the Union

Edward Halloran, Local Business Agent, NALC
Antonio Magno, Grievant.

The issue presented to the undersigned, as the
Arbitrator duly designated by the parties in accordance with
their agreement, is described as follows:

Whether the Service violated Article 19
of the National Agreement insofar as the
action taken by Management was inconsistent
with the provisions of the Employee and Labor
Relations Manual. If so, what shall be the
remedy?

A hearing was held before me on March 10, 1986, at the Postal Service offices in Hartford, Connecticut, at which the parties were afforded opportunity to present evidence, testimony and argument in support of their respective contentions.

Antonio Magno has been a carrier in the employ of the Service since September 22, 1980. The incident of February 16, 1985, which resulted in the grievance, is described by the Grievant as follows:

On February 16, 1985, Magno reported for work on time. He had a severe headache, but thought it would improve as the day progressed, so he went to work. After working for some time, he submitted a request for auxiliary help, and was told that none was available. He continued to work.

Magno claims he was not feeling any better, when management came to him, telling him he would have to work overtime to cover his route. He told the supervisor he was not feeling well and did not believe he could work overtime. He believes they were preparing to give him an order, and he asked to see the doctor or nurse. He quotes the supervisor as saying she "couldn't send him to Medical now --- who would cover the route?" He was told to wait a minute, and some 5 to 10 minutes later the Supervisor told him to pick up the phone. The person on the other end was the Shop Steward. Magno claims he told him what was occurring, and that he needed to go home.

The Supervisor told Magno that if he went home he would have to furnish medical "documentation." When he left, he went to the Medical Center and saw a doctor there. He incurred expense which he claims he would not have incurred if he had not been ordered to provide medical certification.

Grievant claims he has an equilibrium problem and gets a severe headache. If it is extraordinarily severe, he goes to a doctor; if not, he works when he can, and otherwise goes home.

No records were offered by the Grievant or by the Service as to the incidence of his going home, or as to the knowledge the Service might have had of his problems. Magno worked approximately 2½ hours on that day. He left work after that, and eventually was paid for the balance of the day, as sick leave. The claim before me is not a claim for sick leave or any other leave. Grievant is claiming reimbursement for medical expense of \$31.00, which he claims he had no need to incur. He points out that he has over two hundred hours of sick leave credit upon which he can draw. He has not been charged with sick leave abuse, nor was he on any kind of medical restriction at the time of the incident. Nor had he been counseled for sick leave use.

Grievant uses the NALC medical plan. It was stipulated at the hearing that the deductible on that plan is \$250.00, and he had not reached the deductible as of the date of this incident.

Grievant acknowledges that on Saturdays, he does a radio broadcast in the Italian language. He was due to have a broadcast on that day, which was a Saturday.

Magno had asked for one hour auxiliary assistance. It was denied him. He then requested to go home, claiming that he had a headache, and the supervisor said she did not believe him. She ordered him to get medical documentation if he went home because of claimed illness. When he went to the Medical Center the doctor gave him a medication which he took. He claims he then felt better, and was able to go to the radio station for his broadcast.

As the Service sees it, the Grievant came to work and made no complaint of illness. After 2½ hours of work, and after he became aware of the work to be done on the route, he sought one hour of auxilliary help, and found that none was available. He then was told he would have to work overtime to cover his route. It was then that he complained of the severe headache, and said he wanted to go to medical. That request was refused, for reasons which were not made known to me at the hearing.

The Service claims that the burden is on the Union to show the grounds and justification for the Grievant's claim. It asserts that no justification has been shown.

The Union argues that carrier work is more taxing than is going to a radio station and participating in a broadcast. It considers that the order to the Grievant to provide medical documentation for the absence for the balance of the day was improper and violated Article 19 and the E. & L.R. Manual. The expense for the documentation for six hours of sick leave was unnecessary, according to the Union.

Article 19 refers to the manuals issued by the Service. Section 513 of the Employee and Labor Relations Manual provides, in part, as follows:

Section 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.

It is the last sentence of Section 513.361 upon which the supervisor relied in requiring documentation.

DISCUSSION AND FINDINGS.

The sufficiency of the documentation furnished by the Grievant has not been made an issue here. The Service accepted the documentation as adequate when it paid the grievant for six hours of sick leave for February 16, 1985. Because of that, I am persuaded that I must accept that Grievant was, in fact, sick on that date.

Grievant appears to be saying that, while he was too ill to work (either his regular 8 hours or the overtime day), he was not sufficiently ill to have required the attention of a doctor. It is his position that he would not have gone to the doctor if he had not been ordered to furnish documentation for his illness.

The supervisor was not called as a witness. The only witness called by either party was the grievant. His testimony confirms the Service's claim that he did not complain of headache or any other problem when he arrived at work. It was only after he was denied auxiliary help of one hour (or more) and recognized that he would have to complete the route himself, with overtime work if necessary, that he decided to go home after about 2½ hours of work. The chronology he describes in his testimony varies somewhat from the chronology described in the grievance papers and responses. The grievance appeal to Step 3 states that the supervisor's action in insisting upon medical documentation cost the grievant \$31.00 "which he would not have to have paid." It also states: "He had a very bad headache and could not work safely. It

was severe enough to go to the doctor." (3/29/85 Grievance Appeal Form).

Elsewhere in the grievance papers the following statement is made:

"The Union Steward told Mr. Magno to comply with a direct order but he could file a grievance to regain the medical cost if he was forced to go to the doctor even though he felt he was not sick enough to go to the doctor. He had a terrible headache and could not safely perform his duties."

In his testimony the Grievant stated unequivocally that he would not have gone to the doctor if not required to produce the documentation, and this is the basis upon which the grievance relies. Although he claims his headache was so "severe" that he could not continue to work "his eight hours, much less overtime," he also claims it was not so "severe" as to require that he see a doctor because he "goes to the doctor" only when a headache is very severe.

The question before me is whether the supervisor had the right to require documentation for the claimed illness under the circumstances here. In their argument, the Union and the Grievant rely on the fact that Magno is not a sick leave abuser, has a sizeable sick leave credit bank, and was not on restriction. It is clear that Section 513.361 of the E & LRManual states 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. Considering the fact that the direction to Magno to obtain documentation came after he had come to work and worked for 2½ hours without complaint, and had

asked for auxiliary help and been denied it, and had been told he would have to complete his route, even though it might entail overtime, it would appear that it was reasonable of the supervisor to insist upon documentation. And it cannot be ignored that he was able to do his work at the radio station. It would have been useful to have had the opportunity to obtain from the supervisor the reason why she did not accede to the Grievant's request to see the Service's doctor or nurse. But neither the grievant nor the Union makes a point of this, and I cannot find that it diminishes the right of the supervisor to insist upon documentation to support the claimed illness.

The decision made here does not ignore the fact that Magno has a good record, is not a sick leave abuser and is not on restriction. The decision made by the supervisor, to insist upon documentation, does not appear to me to violate the contract or the provisions of the Employee and Labor Relations Manual.

Based on the record before me, I make the following

A W A R D

The Service did not violate Article 19 of the National Agreement insofar as the action taken by Management allegedly was inconsistent with the provisions of the Employee and Labor Relations Manual. For the reasons explained in the Opinion herein, the grievance is denied.

New York, N. Y.
April 30, 1986.


Eva Robins
EVA ROBINS, ARBITRATOR.

STATE OF NEW YORK }ss:
COUNTY OF NEW YORK)

On this 30th day of April, 1986, before me personally came and appeared EVA ROBINS, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she acknowledged to me that she executed the same.


ROSE BEAL
NOTARY PUBLIC
Notary Public, State of New York
No. 24-4632246
Qualified In Kings County
Commission Expires 6/30/88.