

CA# 508

BEFORE
ROBERT W. McALLISTER
ARBITRATOR

In The Matter of Arbitration)	Case No. ClC-4F-C 16767
)	1 ClC 2576
Between)	1 CK 602
)	
UNITED STATES POSTAL SERVICE)	Neal Smith, Grievant
CINCINNATI, OHIO)	
)	Lawrence G. Handy
And)	Postal Advocate
)	
AMERICAN POSTAL WORKERS UNION)	Jack J. Panzeca
)	Union Advocate

Hearing: June 8, 1983

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I. FACTS

Neal Smith, the Grievant, is an LSM Clerk at the Cincinnati, Ohio, Post Office with seniority since November 7, 1977. At the time of the incident, the Grievant was scheduled from 1:45 P.M. until 10:15 P.M. with Monday and Tuesday as non-scheduled days. On Friday, February 4, 1983, he asked to be excused from overtime because he was not feeling well. The Grievant was then on the overtime desired list. According to the Grievant, his supervisor said, "If you don't work it, furnish a doctor's statement." Doris Tucker, his supervisor, testified she told the Grievant to bring in documentation, but did not tell him what kind. The Grievant did not work the overtime. Upon leaving work, he went to the University of Cincinnati Medical Center and was admitted to the Emergency Room and treated by Dr. Jaeger for "muscular back pain."

II. ISSUE

Was the Grievant, Neal Smith, properly required to furnish documentation of his incapacity when he asked to be excused from working overtime on February 4, 1983? If not, what shall the remedy be?

III. RELEVANT CONTRACT PROVISIONS

Employee & Labor Relations Manual

513.36 Documentation Requirements

513.361 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.

IV. POSITION OF THE UNION

The Union views the differences between the Grievant and Supervisor Tucker as a matter of credibility. The record, as seen by the Union, undisputedly establishes that prior to signing up for the overtime desired list, the Grievant was unable to do so because of physical problems. The Union points out the Grievant testified he told his supervisor he was not feeling well before the call for overtime. The Grievant's testimony is supported by Steward Fann, and clearly indicates Supervisor Tucker told the Grievant to bring in a doctor's statement. The Union asserts there is no doubt Supervisor Tucker was aware of Grievant's continuing physical problems. Since signing the overtime desired list, the Grievant has worked all overtime offered. The Union views the statement of Supervisor Tucker concerning documentation questionable. If she did not require a doctor's statement and would have accepted any documentation, the Union asks is that reasonable? The Union also points out the Postal Service the Postal Service in its Step 2 and 3 answers indicates the supervisor asked for medical documentation, not simply documentation. This Grievant was not on restrictive sick leave. The supervisor's actions

on February 4, 1983, were an abuse of the discretion given under Chapter 513.361 of the Employee & Labor Relations Manual.

V. POSITION OF THE POSTAL SERVICE

According to the Postal Service, this is a simple case. The Grievant was asked to provide documentation after he requested to be excused from working overtime. The Postal Service has not negotiated away its right to require documentation. The supervisor did not act in an arbitrary or capricious manner. The test is the testimony of the supervisor. The Postal Service argues that her testimony established nothing was said to her prior to 9:30 P.M. about the Grievant not feeling well. The reasons advanced by him pertained to his stomach, not his back. The Postal Service avers the supervisor had a reason to be suspicious because the Grievant had worked the majority of his shift. Supervisor Tucker's experience with this employee must also be taken into consideration. Previously, he had worked overtime as it suited him. The supervisor never mentioned a doctor's statement. She was stuck. She would accept anything offered. The Grievant's visit to the hospital was unnecessary. The Postal Service believes he knew all the supervisor wanted was a statement he was unable to work two hours. The bill presented by the Grievant is an example of over reaction. The Postal Service sees his testimony as highly suspect. It feels no reasonable person would spend five and one-half hours at a hospital.

VI. DISCUSSION

The general principles regarding medical documentation have been repeated in numerous arbitrations. Medical documentation is distinctly outlined in Chapter 513.361 for absences of three days or less. If an employee is on restrictive sick leave, it is required. If the supervisor deems documentation desirable for the protection of the interest of the Postal Service, it may be required. In such cases, the supervisor is called upon to exercise reasonable judgment in the exercise of that right. Herein, that judgment is challenged on the basis the decision to require documentation was arbitrary and capricious. In other words, under the specific facts and circumstances which existed on February 4, 1983, the Union asserts the supervisor's decision was not reasonable.

The testimony of the Grievant and Supervisor Tucker are in agreement to the extent that it is acknowledged the Grievant asked to be excused from overtime because he was not feeling well. The Grievant said he had a conversation with Supervisor Tucker just after hitting the clock. He said that Tucker indicated he was not looking well, and he acknowledged he was not due to stomach and back problems. The Grievant said he approached Supervisor Tucker a second time after lunch and said he still was not feeling well. He also said it was at this time he first said he could not work overtime.

Supervisor Tucker denied speaking to the Grievant about his not feeling well at any time prior to the call to work overtime about 9:00 P.M. She understood his complaint to be about his stomach. Supervisor Tucker said she required documentation because the Grievant had a poor attendance record and worked overtime when he wanted to. She also said she had no reason to believe he was ill. According to Supervisor Tucker, she did not tell the Grievant to bring in a doctor's statement or medical documentation. Her instructions were to bring in documentation. She said acceptable documentation would have been a note from his wife. The Grievant does not have a wife, but the Arbitrator assumes a note from his girl friend would also have been okay because the Postal Service said Supervisor Tucker felt stuck, and she was obligated to accept whatever was offered.

This position is certainly inconsistent with with grievance documents, which, the Union points out, refers to medical documentation in the Postal Service's Step 2 and 3 answers. The concept of documentation established in Chapter 513.361 of ELM is to receive evidence an employee is incapacitated for work. The entire subject deals with health, not plausible excuses. If Supervisor Tucker was suspicious and intended to make it harder or more difficult for the Grievant to get off overtime, she went about it in a singular manner. Her stated willingness and the Postal Service's admission that whatever was offered would suffice is inconsistent with such a belief.

Furthermore, since anything offered is foreign to the concept of documentation, I do not accept the statement the Grievant should have asked if he was not sure. Under the circumstances, what other reasonable conclusion could an employee reach. Documentation in like circumstances means prove to my satisfaction with something in writing you cannot physically work. Likewise, this is not a call-in situation where the supervisor is subsequently willing to accept a note from home stating the employee was ill.

Herein, the supervisor was a witness to the circumstances, and anything a wife, friend, or any other person had to offer would, in effect, be second hand because they were not on the work floor when the Grievant declined to work overtime. The record establishes the Grievant has had a considerable past problem with his back. Supervisor Tucker was also aware of that ongoing problem. It appears his prior physical condition prevented him from signing up for the overtime desired list. However, once getting the medical okay to sign up for the quarter which included February 4, 1983, it was undisputedly established he had not once failed to meet a call for overtime except for February 4.

The Arbitrator's review of the record leads me to believe that despite stated suspicions, substantive, acceptable documentation of physical incapacity was not required by Supervisor Tucker, and she was simply attempting to make it harder on the

Grievant. Without communicating to him that anything offered would be acceptable, I deem the action taken to be arbitrary.

VII. AWARD

The grievance of Neal Smith is sustained. He is to be reimbursed his out of pocket cost for the treatment and statement rendered by the University of Cincinnati Medical Center on Friday, February 4, 1983.

Chicago, Illinois
July 27, 1983


Robert W. McAllister
Arbitrator