

IN THE MATTER OF THE)
 ARBITRATION BETWEEN)
)
 United States Postal Service)
 Kenner, Louisiana)
)
 Employer)
)
 -and-)
)
 National Association of)
 Letter Carriers,)
)
 Union)
)

OPINION AND AWARD
)
)
)
 SLN-3Q-C-11193
 J. Estrade

Before:

Robert W. Foster, Arbitrator

Appearances

For the Employer:

Primo A. Marquez, Regional Labor Relations Specialist

For the Union:

Ben Johnson, National Business Agent

PRELIMINARY STATEMENT

The undersigned was appointed to arbitrate a dispute between the United States Postal Service (Employer) and the National Association of Letter Carriers (Union) arising out of a grievance brought by Carrier J. Estrade (Grievant) and pursued by the Union to this arbitration proceeding according to the National Agreement between the parties. A hearing was held on November 29, 1983, in Kenner, Louisiana, attended by the above-named representatives of the parties who were accorded full and equal opportunity to present evidence and arguments.

ISSUE

Whether the employer violated the National Agreement and the Employee and Labor Relations Manual incorporated therein by reference, by requiring grievant to submit a medical certification in support of his sick leave request for absence on July 17, 1983? If so, what is the appropriate remedy?

PERTINENT PROVISIONS FROM THE EMPLOYEE AND LABOR RELATIONS MANUAL

.342 Approval/Disapproval. The supervisor is responsible for approving or disapproving applications for sick leave by signing the Form 3971, a copy of which is given to the employee. If a supervisor does not approve an application for leave as submitted, the Disapproved block on the Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reason for the disapproval. AWOL determinations must be similarly noted.

.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 "receive 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.

.38--PERFORMANCE ABILITY QUESTIONED

When the reason for an employee's sick leave is of such nature as to raise justifiable doubt concerning the employee's ability to satisfactorily and/or safely perform duties, a fitness for duty medical examination is requested through appropriate authority. A complete report of the facts, medical and otherwise, should support the request.

SUMMARIZED STATEMENT OF THE CASE

This grievance complains of grievant being ordered by his supervisor on July 17, 1982 to provide a doctor's certification before he would be able to return to work on July 19, 1982. The remedy sought is that grievant be paid for the doctor's bill, prescription costs, and for travel expenses and time off the clock going to and from the doctor's office and waiting for medical treatment.

The employer denied the grievance on the ground that Section 513.36 of the E&LR Manual states that the employee may be required to submit medical documentation or other acceptable evidence to support absences from overtime work, and that this was not the first time the grievant had used illness to get off when he did not want to work overtime. The denial letter also states that grievant is not entitled to reimbursement for needed medical treatment.

On Saturday, July 17, 1982, grievant was assigned to work his non-scheduled day on overtime to carry his route. According to the grievant, he was suffering from a cold and sore throat when he worked on the previous day, and his condition worsened while carrying his route on the Saturday in question. After unsuccessful attempts to contact the Post

Office by phone, grievant returned to his station with some of his mail undelivered and told his supervisor that he needed to go home due to his condition. Grievant testified that at the time he was coughing and could hardly talk. The supervisor told grievant that he did not think grievant was ill, and that he could go home only if he provided medical documentation. Grievant then stated that he could not get an appointment with his family doctor because it was Saturday. The supervisor responded that he was aware of this. Grievant then went to the emergency room of a hospital since his personal physician did not maintain Saturday office hours. The doctor diagnosed his condition as bronchitis and prescribed medicine for its treatment which grievant purchased. Grievant reported for his regular work schedule on the following Monday with the medical documentation of his illness. While grievant did not produce a cancelled check at the arbitration hearing, he testified that he paid the hospital bill because his insurer did not consider the situation an emergency.

Grievant's supervisor testified that the first time grievant stated that he was sick is when he came back to the Post Office on Saturday afternoon with mail that could have been delivered in another forty-five minutes. The supervisor further testified that for this reason, and also because grievant had gone home sick without delivering all of his mail about two months previously, he felt it necessary to require grievant to produce medical documentation supporting his alleged illness. This witness agrees that grievant seemed to be hoarse when he reported back to the Post Office on Saturday afternoon.

SUMMARIZED POSITION OF THE PARTIES

The Union

The Union points to the evidence of grievant's illness on the day in question, and the supervisor's acknowledgement that he noticed that grievant was hoarse, as precluding the required medical documentation under E&LR Manual, Section 513.361. The Union suggests that the real reason the supervisor required the medical documentation was his irritation over grievant coming back to the Post Office with undelivered mail.

Since grievant would not have gone to the hospital had his supervisor not required the medical documentation, the Union asks that the grievant be reimbursed for his expenses incurred in doing so.

The Employer

The employer contends that the supervisor acted reasonably in promoting the interest of the Postal Service by requiring medical documentation as authorized under E&LR Manual, Section 513.364. The employer sees the failure on the part of the grievant to advise of his illness prior to Saturday afternoon, and a similar, previous incident when grievant went home allegedly sick without completing his delivery, as justifying the supervisor's actions.

Alternatively, the employer argues that the grievant failed to meet his burden of proving that his hospital bill was not paid by his insurer, and, in any event, grievant was under no obligation by the supervisor's order to purchase the prescription drugs.

DISCUSSION AND OPINION

Before coming to the factual question of whether E&LR Manual, Part 513 was properly applied under the circumstances of this grievance, it is necessary to identify the meaning of the critical language that triggers the authority to require medical documentation from an employee, "when the supervisor deems documentation desirable for the protection of the interest of the Postal Service." The starting point is to recognize that E&LR Manual, Paragraph 513 is the mechanism for management to exercise its right to protect the interest of the Postal Service to control the abuse of employee sick leave. When an absence is not over three days, and the employee is not on restricted sick leave, Section 513.361, and the last sentence of Section 513.364, has the effect of granting supervision considerable discretion in determining what is needed to support approval of a sick leave request. This is not an unfettered discretion, however, but may be exercised on a case-by-case basis only when there is some reasonable and objectively identified indication of a factual basis to be concerned about the validity of the claimed illness. Thus, the controlling question of this case is whether the supervisor had reasonable cause for suspicion that the grievant was physically able to complete his route when he required grievant to produce medical documentation to support his alleged illness.

The single, isolated incident of grievant leaving work due to illness on a prior occasion, with no indication other-

wise in grievant's work record that he was a malingerer likely to abuse sick leave, is not sufficient to produce substantial doubt in the mind of a reasonable person that grievant left his route on the day in question simply because he did not want to complete the overtime assignment. Moreover, even if it is assumed that grievant failed to inform his supervisor that he was not well when he reported to work on Saturday morning, there was no basis to doubt the more logical explanation provided by the grievant that his condition had worsened during the day. And most significant is the supervisor's concession that grievant had the outward appearance of being sick by the hoarseness in his voice. Accordingly, the supervisor abused his discretion by placing the unreasonable and unwarranted burden upon grievant to incur the cost in time and money involved in procuring medical documentation.

Having found that the supervisor exceeded the bounds of his authority as impliedly constrained by the language and purpose of the E&LR Manual, it is for the arbitrator to now fashion an appropriate remedy to make grievant whole. But for the supervisor's order, it is most improbable that grievant would have sought medical treatment for his medical condition, and most certainly would not have gone to the emergency room of a hospital. And while grievant did not supply documentary proof that he paid the medical bill, his testimony that he did so is convincing, especially in light of the normal practice of insurers not to cover such a non-emergency visit to a hospital. Accordingly, the grievant shall be reimbursed for the amount he was required to pay

for the doctor's fee and hospital charges in procuring the medical documentation. In addition to this amount, grievant shall be paid reasonable travel expenses incurred in going to and from the hospital, plus one hours regular pay as a reasonable estimate of the time he was required to expend.

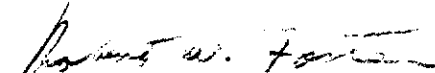
The cost of the prescription drugs is another matter, however. Since this was not part of what was required by the supervisor, the purchase was a personal choice and benefit which grievant may not charge to the Postal Service.

AWARD

After careful consideration of the evidence and arguments of the parties, and based on the reasons set out above, the award is that the employer violated the National Agreement, and the Employee Labor and Relations Manual incorporated therein by reference, by requiring grievant to submit a medical certification in support of his sick leave request for absence on July 17, 1982.

The remedy is that the employer shall reimburse grievant for the amount he was required to pay for the doctor's fee and hospital charges, reasonable travel expenses incurred in going to and from the hospital, and one hours regular pay that he would have received for working.

Accordingly, as so modified by the exclusion of reimbursement for the purchase of prescription drugs, the grievance is sustained.



Robert W. Foster
Arbitrator

January 5, 1984

Columbia, South Carolina