

RA-6915D-75  
Leroy Ragland  
Fort Worth, TX  
NCS 14,205D

C#02818

An Arbitration in the Matter of: )  
THE UNITED STATES POSTAL SERVICE )  
and ) GRIEVANCE NO. NC-S-14,205-D  
NATIONAL ASSOCIATION OF LETTER ) L. RAGLAND  
CARRIERS ) FORT WORTH, TEXAS  
)

ISSUED: December 8, 1978

THE GRIEVANCE

In this grievance the Union protests, as without just cause, the removal of the Grievant for excessive use of sick leave and absenteeism.

BACKGROUND

The Grievant, Leroy Ragland, is a Full-Time City Letter Carrier at the Glencrest Station of the Fort Worth, Texas Post Office. He was first employed in the Fort Worth installation on March 24, 1973, and transferred to the Glencrest Station on April 9, 1977.

On April 12, 1978, the Grievant was given the following  
Notice of Charges - Removal:

" DATE: April 12, 1978  
SUBJECT: Notice of Charges - Removal

Leroy Ragland  
SSN 467-70-1017  
Letter Carrier, Full-Time  
Glencrest Station  
U. S. Postal Service  
Fort Worth, TX 76119

This is notice that it is proposed to remove you from the Postal Service no earlier than 30 days from the date you receive this notice.

The reasons for this proposed action are:

Charge 1.

You are charged with failure to meet the attendance requirements of your position. Part 442.18 (181) of the Postal Service Manual requires that all employees be regular in attendance.

Your undependability in reporting and not being available for duty when needed and as scheduled indicates that you are unable to meet the requirements of your position.

Specifically, you have been absent during the period September 6, 1977, through January 13, 1978, as follows:

09/24/77	8 hours	sick leave
10/07/77	8 hours	sick leave
10/14/77	1 hour	tardy
10/20/77 (thru)		
10/21/77	16 hours	sick leave
10/27/77	2 hours	tardy
10/28/77	8 hours	sick leave
11/11/77	8 hours	sick leave
12/06/77	8 hours	sick leave
12/15/77 (thru)		
01/06/78	16 hours	emergency annual leave
01/06/78	8 hours	sick leave

On January 13, 1978, you were counseled for unsatisfactory attendance, tardiness, and not calling in when absent. In spite of the counseling, you continued your trend of absences as follows:

01/20/78	3 hours	sick leave
02/13/78 (thru)		
02/14/78	16 hours	sick leave
03/09/78 (thru)		
03/15/78	48 hours	sick leave

Charge 2.

You are charged with failure to report as scheduled.

Specifically, on September 16, 1977, you failed to call or report at your regularly scheduled reporting time. At approximately 1310, your sister called in for you stating that you had left for work, but developed a headache and returned home. As a result, you were charged with being absent without approved leave for eight (8) hours.

On January 12, 1978, you failed to call or report at your regularly scheduled reporting time or anytime that day. When you returned the following day, you stated that you had car trouble in the snow. As a result, you were charged with being absent without approved leave for one (1) hour and approved seven (7) hours of annual leave.

On March 8, 1978, you were scheduled to work overtime on your off day. You failed to call or report at your regularly scheduled reporting time or anytime that day. On March 9, 1978, a woman called and stated that you were sick. You remained on sick leave for the next four days. During this time, you talked with the Station Manager and told him you had been in the hospital. You were told that you would have to be cleared through the Medical Unit when you returned. On March 15, 1978, you returned to the station at 0830 with a slip from the Medical Unit stating you were able to return to work. You were told that there

was no work available at that time of day and to report for work the next day on your regular route. On March 16, 1978, you failed to call or report at your regularly scheduled reporting time or anytime that day. As a result, you were charged with being absent without permission for eight (8) hours on March 8, 1978, and charged with being absent without approved leave for eight (8) hours on March 16, 1978.

The following elements of your past record were considered in taking this action:

On August 25, 1977, you were issued a Letter of Suspension for failure to meet the attendance requirements of your position, being absent without approved leave, use of sick leave, emergency annual leave, and tardiness.

• • •

/s/

J. R. Cammel  
Superintendent, Station Operations  
Glencrest Station  
U. S. Postal Service  
Fort Worth, TX 76119"

The Grievant was placed in Administrative Leave<sup>1/</sup> status and terminated thirty days later.

The incident that triggered the Removal of the Grievant began on March 8, 1978, when he failed to report to work overtime on his off day. He did not work on March 9, 10, 11, 13 or 14, but supplied evidence that he was under a doctor's care for that period. On March 14, the Grievant's wife went to the Glencrest Station with a medical certificate. She reported that the Grievant would be

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<sup>1/</sup>Administrative Leave is leave with pay.

available to work the next day. She was told that the Grievant would be required to report to the medical unit for approval to return to work. At 8:00 A.M. the next day (March 15), the Grievant reported to the medical unit and was released for duty at 8:30 A.M. When he reported to his Supervisor, he was told that there was no work for him and he was sent home. On the following day (March 16), the Grievant failed to report for work. However, sometime in the afternoon, the Grievant's doctor called the Glencrest Station to report that the Grievant was ill with a migraine headache and would not be at work that day.

Ragland reported for work on his next scheduled day and worked regularly from March 17 until April 13 when he was placed on Administrative Leave.

#### CONTENTIONS

Management says that Ragland is an unreliable employee. It cites Section 442.181 of the Postal Service Manual which reads:

"Employees are required to be regular in attendance."

It says, further, that the Grievant has made excessive use of his sick leave and, in addition, failed to work an overtime day, was tardy twice for a total of three hours in the preceding six months and was charged one hour "Absent Without Leave" when his automobile slid off the road on the way to work.

The Service says that, in 1977, the Grievant was disciplined for absenteeism without protest. This is an element, it says, of his removal. Furthermore, the Service argues in its Brief that, since the Grievant made excessive use of sick leave, there is no need to comply with the requirements of Article XVI of the National Agreement that states in pertinent part:

"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature rather than punitive . . . ."

To support this contention, the Postal Service cites several USPS and non-USPS Arbitrations. Other than the citations contained in the Service's Post Hearing Brief, details surrounding the USPS Arbitrations were not made available to this Arbitrator.

The Union says that the Grievant had professional medical documentation of his illnesses. It says that he suffered from migraine headaches. In addition, it maintains that each episode of illness was supported by an approved Form 3971<sup>2/</sup>.

In regard to March 8, 1978, when the Grievant was off but assigned to work on an overtime basis<sup>3/</sup>, the Union says that employees at the Glencrest Station are told in advance by their Supervisor that they would be assigned the overtime work. It says that the Grievant was not so notified.

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<sup>2/</sup> Request for, or Notification of, Absence.

<sup>3/</sup> The Grievant was on the overtime desired list.

In regard to March 15, when the Grievant reported for work at 8:30, the Grievant says that he assumed that the medical unit opened at 8:00 A.M. and he reported at that time. He said that, once he was cleared by the medical unit, he went immediately to his work station.

On March 16, the Grievant said that his headache returned and he went to see his doctor who called the Glencrest Station to report him off.

The Union denies that the Grievant made excessive use of sick leave and argues further that sick leave is earned and available to an employee when he is ill. It says each of the absences due to illness was approved by the Grievant's Supervisor and that it is improper to penalize him because he was ill.

The Union produced a letter in which the Grievant's Supervisor initially recommended a 30-day suspension. A later letter in evidence showed that he changed that recommendation to discharge.

Finally, the Union argues that the Service violated Article XVI of the National Agreement when it failed to apply progressive and corrective discipline in this instance.

#### FINDINGS

There is adequate professional medical documentation to demonstrate that the Grievant suffered from migraine headaches. In all of the Forms 3971 that were completed, the Grievant's requests for sick leave were approved by his Supervisor.

The Notice of Charges - Removal, dated April 12, 1978, is broken into two sets of charges. There is no need to review each of the dates set out in "Charge 1." All of the sick leave days were within the sick leave time earned by the Grievant. In fact, the Grievant said, without contradiction, that he had a surplus of earned sick leave when he was terminated. In addition to receiving supervisory approval for his sick leave, he had professional medical documentation for most of the episodes. Five sick leave days used by the Grievant were in the period March 9 through March 14. These sick days were approved by Management and supported by a doctor's statement.

"Charge 1" also contains two days for which emergency annual leave was approved by the Grievant's Supervisor. There was no explanation forthcoming as to why this approved annual leave was reason for discipline.

Finally, in regard to "Charge 1," there are two dates listed on which the Grievant was tardy. On October 14, 1977, he was late one hour and, on October 27, 1977, he was late two hours. These instances of tardiness seem to be the only non-approved absences for which discipline could be levied in "Charge 1."

"Charge 2" of the Notice of Charges - Removal deals specifically with four dates on which the Grievant failed to report as scheduled.

On September 16, 1977, the Grievant was scheduled to report for work at 6:45 A.M. He did not report, but, at 1:10 P.M., his sister called to say that he stopped at her house for breakfast,

had developed a migraine headache and rested on the sofa. She did not know that he was required to report off. While it was commonly known to Management that the Grievant suffered migraine headaches, it could properly expect the Grievant to notify his Supervisor when he was not going to report for work.

On January 12, 1978, the Grievant's car slid off the road on the way to work. His explanation was accepted by his Supervisor to the extent that he was charged with only one hour Absent Without Leave and seven hours Annual Leave.

On March 8, 1978, the Grievant was scheduled for his off day. However, it is clear that Management expected him to work overtime that date by virtue of his position on the overtime desired list. The Union's argument that the Grievant was not aware of the assignment is not persuasive and Management appropriately charged the Grievant with eight hours Absent Without Leave.

On March 16, 1978, Ragland failed to report off. However, his doctor reported him off some time in the afternoon. There was nothing to show why the Grievant could not have called the station to report off prior to the start of his tour. The fact that the doctor called in supports his contention that he was ill but there was nothing to show that he was so disabled as to prevent his calling in as required.

An additional element relied upon by the Service to justify its action in removing the Grievant was his suspension in August, 1977, for absenteeism.

The Service has not shown that excessive use of sick leave exists here. The Grievant's use of sick leave was less than he earned. It was approved and, in general, it was documented by professional medical practitioners.

The argument raised by the Service in its Brief that excessive use of sick leave transcends the requirements of Article XVI is not a valid issue here and will not be considered.

The substantive elements of the removal action, then, come down to (a) the three hours that the Grievant was tardy on October 10 and October 14, 1977, (b) failure to report off on time on September 16, 1977, (c) one hour AWOL when his car slid off the road on January 12, 1978, (d) failure to report for overtime duty on his off day, March 8, 1978, (e) failure to report off on time on March 16, 1978, and, (f) his seven-day suspension in August, 1977.

Without support for its charge of excessive use of sick leave, the removal of the Grievant cannot be substantiated for reasons of (a) through (f) above under the terms of Article XVI. While discipline appears to be in order, it must be "corrective in nature rather than punitive."

Whatever the reason for his Supervisor to change his recommendation from a 30-day suspension to a removal, he was in error. An appropriate discipline in this situation would have been a 30-day suspension.

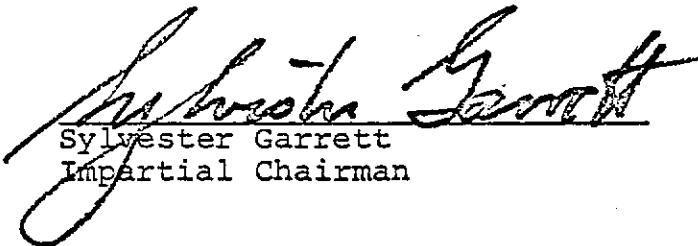
AWARD

The grievance is sustained to the extent that the removal shall be reduced to a 30-day suspension. Accordingly, the Grievant shall be reinstated and made whole save the thirty days following May 13, 1978.



Paul J. Fasser, Jr.  
Associate Impartial Chairman

APPROVED:



Sylvester Garrett  
Impartial Chairman