

C#04714

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ARBITRATION CASE NO. JOE Z. ROMERO

NATIONAL BUSINESS AGENT
N. A. L. C.

DALLAS REGION # 10

In the Matter of

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

SIN-3U-C 16417

P. BOX

BRYAN, TEXAS

APPEARANCES

For the Employer: - Holloway Adair, Jr., Labor Relations Executive

For the Union: - Peter A. Goodman, Regional Administrative Assistant

ISSUE

Did management violate the provisions of the National Agreement and any supplements thereto by requiring the Grievant, Phillip Box to submit medical evidence to substantiate his illness and subsequently charging the Grievant with AWOL for eight (8) hours?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution.

Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for June 15, 1984, and the Hearing was held on that date at the Main Post Office, Bryan, Texas.

At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator

had the authority to render the decision in this matter.

After the Hearing, it was agreed that the parties would present oral closing arguments in lieu of the submission of Post-Hearing Briefs.

SUMMARY STATEMENT OF THE CASE

On November 17, 1982, Phillip Box, Full-Time Letter Carrier, (hereinafter sometimes referred to as "Grievant") was informed that his mail would be counted and his route inspected on November 18, 1982. At approximately 6:00 o'clock a.m. on November 18, 1982, the Grievant called in sick. Later on in the day, Supervisor Newland called the Grievant and informed the latter that medical documentation was required to substantiate his sick leave absence that day. The Grievant thereafter went to the office of his family doctor in Bryan, Texas, where he had a mole removed from his arm. At that time, Dr. J. T. L. McNew gave the Grievant a prescription form which stated that "Mr. Box has been treated in this office today." This documentation was not accepted by Supervisor Newland and the Grievant was charged with eight (8) hours AWOL.

A grievance was subsequently filed and denied after a Step 1 meeting held on November 30, 1982. Pursuant to Article XV of the National Agreement, the grievance was appealed to Step 2 alleging a violation of, but not limited to Article 10.5 and stating in relevant part as follows:

Carrier (Box) called in sick 11-18-82 and was told by Supervisor (Newland) to bring doctor's certification (excuse) when returning to work. Box went to the doctor and waited (2) hrs. before being examined. 11-19-82 Box brought doctor's excuse but was given AWOL instead of (8) hrs. sick leave. Box seldom calls in sick and has about 1400 hrs. sick leave. another carrier (Goswick) brought an identical excuse and was paid (8) hrs. sick leave. Union feels this is grossly unjust and unfair.

CORRECTIVE ACTION REQUESTED: That Carrier (Box) be paid (8) hrs. sick leave. In addition that Carrier (Box) be paid (2) hrs. regular pay, doctor's bill \$20.00, and mileage to and from doctor (5 miles).

A Step 2 Meeting was held on December 15, 1982 and C. G. Caffey, Manager, Customer Services, in a memorandum to Donnie Grimes, Steward, Subject: NAIC Grievance #1981-48, stated in relevant part as follows:

Decision: After considering the facts presented by the Union, management can find no new evidence that would alter management's decision to disallow sick leave.

Box was told by Supervisor Newland that it would be necessary for Box to bring medical certification of his incapacitation to perform all or any part of his duties on 11/18/82. The certificate from the doctor merely stated that he had seen Box on that date.

The request for 2 hours regular pay, paying of doctor's bill by the U.S. Postal Service and mileage to and from the doctor is unreasonable. These items were not a part of the original situation that caused Box to feel that he had been grieved and that the U.S. Postal Service had violated the National Agreement.

The grievance is denied.

On December 21, 1982, Donnie Grimes, Steward, Vice President, in a memorandum to the Regional Director, E&LR, appealed the decision of C. G. Caffey to Step 3 of the grievance procedure. On February 10, 1983, Sandra L. Cyr, Labor Relations Division, in a memorandum to Mr. Joe Z. Romero, National Business Agent, Subject: Step 3 Grievance Decision, stated in relevant part as follows:

* * *

Based on information presented and contained in the grievance file, the grievance is denied. Although the grievant presented a doctor's statement to substantiate his absence of 11/18/82, the statement did not indicate that the grievant was incapacitated and therefore, unable to work. The AWOL was justified. It should be noted here that the grievant was informed on 11/17/82 that his route would be counted on 11/18/82.

* * *

On February 18, 1983, the Step 3 decision was appealed to arbitration.

The provisions of the National Agreement effective July 21, 1981, and to remain in full force and effect until and including, 12 midnight July 20, 1984, (hereinafter referred to as 'National Agreement') (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 10

LEAVE

* * *

Section 5. Sick Leave

The Employer agrees to continue the administration of the present sick leave program, which shall include the following:

- A. Credit employees with sick leave as earned.
- B. Charge to annual leave or leave without pay (at employee's option) approved absence for which employee has insufficient sick leave.
- C. Employee becoming ill while on annual leave may have leave charged to sick leave upon request.
- D. Unit Charges for Sick Leave shall be in minimum units of less than one (1) hour.
- E. For periods of absence of three (3) days or less, a supervisor may accept an employee's certification as reason for an absence.

Provisions of the Employee & Labor Relations Manual, Issue 7, 6-15-82 (Joint Exhibit No. 6) considered pertinent to this dispute by the parties are as follows:

513.3 Authorizing Sick Leave

.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 "received 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.

.365 **Failure to Furnish Required Documentation.** If acceptable proof of incapacitation is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

POSITION OF THE PARTIES

The Position of the Union:

It is the position of the Union that the request for medical documentation in this instance was arbitrary, capricious and discriminatory and in violation of Section 513.361 of the Employee & Labor Relations Manual. By way of remedy, the Union requests six (6) hours sick leave for the day in question plus two (2) hours of administrative leave for the time the Grievant spent at the doctor's office, and, in addition, that the AWOL charge be removed from his record. The Union further requests that the Grievant be paid two hours regular pay for the time spent in going to the doctor's office and that the statement of his physician in the amount of \$20.00 be paid.

The Position of the Employer:

The Employer takes the position that the Grievant's request for sick

leave on the day that his route was to be counted created a doubt in the mind of the supervisor about the illness of the Grievant and therefore justified making a request to the Grievant that he provide medical certification for his alleged illness.

OPINION

Basically, in the resolution of this matter, the Arbitrator is called upon to determine whether the request for medical documentation, under the circumstances here presented, was reasonable and justified under Part 513.361 of the Employee & Labor Relations Manual. In the event of an affirmative finding in this regard, the Arbitrator is further required to address the additional question of whether the medical certificate furnished by the Grievant met the requirements of Part 513.364 of the Employee & Labor Relations Manual (Joint Exhibit No. 8).

In support of its position that management acted arbitrarily, capriciously and discriminatorily in requesting medical documentation from the Grievant in this instance, the Union points out that the Grievant was not on restricted sick leave and that he did not use excessive sick leave in the past. Specifically, in this connection, the Union notes that the Grievant had fourteen hundred hours of sick leave and had not called in sick for approximately fifteen months prior to the date in question. It is additionally urged by the Union that the unrebutted testimony establishes the Grievant had been notified on several occasions that his route would be counted and that he had not previously called in sick to avoid the route count or the inspection. The mere requirement that the mail of a carrier be counted cannot, the Union maintains, create a doubt that the Grievant suffered a valid illness so as to require that he provide medical certification of illness. In

short, the Union contends that in view of the Grievant's past record, the supervisor had no valid reason to doubt the Grievant and require medical certification.

It is fundamental that the request by a supervisor for medical documentation can be neither arbitrary, capricious nor discriminatory, but rather must have as its basis the protection of the needs and interests of the Postal Service. Here, the Grievant was informed on November 17, 1982, that his mail volume would be counted on November 18. Whatever the reason for this decision, the significant factors are that the Grievant was notified and he called in sick on the day his mail was to be counted. This, in the considered judgment of the Arbitrator, was sufficient to create a reasonable doubt in the mind of the supervisor as to the illness of the Grievant and to afford the former a legitimate reason for his request for medical proof. While the Grievant, as asserted by the Union, may not have been on restricted sick leave, and while he may have had some 1400 hours of such leave, and not called in sick for approximately fifteen (15) months, this, it seems to the Arbitrator, whether viewed singly or collectively, cannot properly be found to have any material bearing on whether, at the time here in question, the decision of the supervisor to request acceptable documentation, was unreasonable, arbitrary, or discriminatory. Indeed, in light of the Grievant's sick leave record, as here described, an inference of at least equal persuasive force may reasonably be drawn therefrom that he called in sick for the primary purpose of avoiding the mail count. This appears to be further buttressed by the admission of the Grievant that his illness was evanescent in nature and the symptoms thereof had disappeared completely by the time he saw his doctor.

It is acknowledged by the Union that the medical certificate provided by the Grievant (Joint Exhibit No. 4) did not state that he was incapacitated. In this connection, however, the Union asks that the Arbitrator consider that the doctor could only state in the medical documentation that the Grievant was treated in his office. With respect to the Grievant, the Union maintains that there was nothing else he could do and not be guilty of submitting a false medical confirmation. If the Grievant attempted to change the documentation himself, the Union argues he would be guilty of falsifying medical evidence.

The Arbitrator, however, can find little persuasive merit in the foregoing assertions of the Union. Clearly, the medical documentation submitted by the Grievant does not meet the criterion of Part 513.364 of the Employee & Labor Relations Manual. None of the documentation furnished by the Grievant reflects that he was incapacitated for duty. The Attending Physicians Statement dated November 18, 1982 (Joint Exhibit No. 5) only reflects that the Grievant was treated for a mole that was excised from his arm. This is not shown to have had any relationship whatsoever to the alleged illness of the Grievant.

Part 531.365 of the Employee & Labor Relations Manual expressly provides that if no acceptable proof of incapacitation is furnished, the absence may be charged to AWOL. Inasmuch as the Grievant failed to comply with this provision, and as the Employer, as found herein, is not shown to have acted arbitrarily or discriminatorily in requiring this documentation, the Arbitrator has no choice other than to conclude that management properly determined the Grievant should be charged with AWOL rather than, as the Union now requests, granting him six (6) hours of sick leave and two (2) hours of

administrative leave for the time he spent at the doctor's office.

AWARD

For the reasons given, the grievance is denied.

DATE:

February 21, 1985

Original Signed
RAYMOND L. BRITTON

Raymond L. Britton, Arbitrator