

C# 05015

In the Matter of Arbitration) Western Region - Regular Panel
Between) Grievance No: WIN-5F-C-13243
UNITED STATES POSTAL SERVICE)
And) Hearing: April 11, 1985
NATIONAL ASSOCIATION OF LETTER) Aurora, Colorado
CARRIERS, AFL-CIO)
Arbitrator: George E. Bowles
File No: W575-71

APPEARANCES

EMPLOYER

Mario A. Gonzalez
Labor Relations Asst.

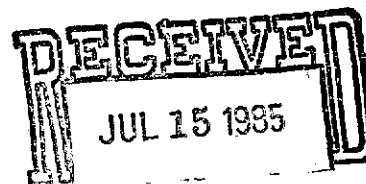
UNION

Timothy J. Arntz
NALC Representative

Michelle MacLeod
NALC TA

Sharon Rose
Involved Supervisor

Dan Ward
Grievant



Issues

Helpfully the parties have entered into the following stipulations:

- 1) Grievance WIN-5F-C-13243 has met the time provisions of Article 15 of the National Agreement and is properly before Arbitrator George E. Bowles this date.
- 2) The 1981 National Agreements between the parties shall serve as joint exhibit 1.
- 3) The moving papers presented have been agreed upon and will serve as joint exhibit 2.
- 4) The Grievant Dan Ward, USPS seniority date of May 1979, was not on restricted sick leave at the time in question
- 5) The Grievant was allowed sick leave for the dates in question. (May 4 & 5, 1983)

It was agreed that the Arbitrator will state the issue, and that issue is expressed as follows: Did the Postal Service violate the provisions of the National Agreement by requiring the Grievant, Dan Ward, to provide medical verification for his absence on March 5, 1983.

ESSENTIAL FACTS

On March 4, 1983, the Grievant called the Gateway Post Office before his reporting time, in accordance with local policy, speaking with acting Supervisor Howard Quinn. The Grievant told Quinn he was ill and would not be in that day, and Quinn accepted the request and granted him sick leave status. On Saturday, March 5, 1983, the Grievant again called in, before his reporting

time, and told Bengie Oliver, a clerk, that he was still ill. The Grievant further called back later in the day to report the same to Ms. Sharon Rose, who told him to go to a doctor and bring in a doctor's excuse. He complied and presented two notes to Ms. Rose on Tuesday, March 8, 1983, for his illness of Saturday, March 5, 1983. He was not on sick leave restriction. The Grievant incurred an expense of \$53.62 for medical verification.

This came about because the documentation he provided on March 6 was unacceptable to Ms. Rose, and she instructed him to provide additional documentation so he went to the doctor on March 7, 1983, and then provided further documentation, which showed medical restrictions from March 5, 1983, through March 9, 1983. He worked about five hours on Monday, March 6, 1983, and was placed on approved leave status for the balance of the day.

In his testimony before the Arbitrator, the Grievant admitted that he did go home on sick leave on Monday, March 7, 1983, and said, "As long as they are paying me I'd rather be home." The medical documentation showed he should confine his activities to indoor work only, and did not say he was unavailable. He was not placed on medication.

The Grievant had used approximately 5/8 of his total sick leave hours, and another Supervisor, Bill Lee, had placed him on sick leave restriction because of excessive sick leave usage. The request of Supervisor Rose for documentation was to avoid

placing the Grievant on sick leave again, and as a reminder of the true purpose of the sick leave benefits.

Supervisor Rose testified that she had become aware of the Grievant's sick leave status on Friday, March 4, and reviewed his sick leave records before his return time, Saturday, March 5. She determined that a pattern had been established by him of calling in Fridays. The records show only two prior usages of leave for Friday prior to March 4, one of which was LWOP on January 7, 1983, and one sick leave, January 28, 1983. Supervisor Rose said that she did consider the LWOP for January 7, 1983. She did not know the reason for the LWOP request, but later learned that the Grievant had requested leave because of his wife's pregnancy. Ms. Rose also testified that she felt that the sick leave may have been precipitated by the bad weather conditions existing on March 5, 1983, since she had recalled that the last Friday the Grievant called in sick there was bad weather. She was not positive as to the weather on March 4, 1983, and did not know what impact, if any, the weather would have had on the Grievant's illness. She did not know the nature of his illness. The Grievant testified that he did not intend to go to the doctor and was not asked by Ms. Rose if he intended to go to the doctor.

Mr. Rose testified that it was her practice to speak to an employee twice about sick leave excesses, and if there is no improvement, to place the employee on restricted sick leave. She had not had an official discussion with the Grievant yet, and

did not know specifically how much sick leave he had left. She did not discuss the matter with other supervisors. On cross-examination, Ms. Rose testified that the two factors most prominent in her mind were that the Grievant had called in the previous day and that it was Friday. She made a mental note to talk to him on Saturday.

The Grievant testified that he had an asthmatic or bronchitis condition which was aggravated by cold weather; he admitted he was not totally incapacitated and that he had not said that he could not perform inside, under the medical verification. The symptom of his illness is congestion in his chest. The medical attention he received was not covered by insurance. He received no medication. He was paid for the two days.

CITATIONS

Article XIX - Handbooks and Manuals

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Section 513.6, of the ELRM, provides simply that medical documentation of incapacity for work is to be provided, 1) when one is on restricted sick leave, or, 2) when the Supervisor deems it desirable for the protection of the interests of the Postal Service.

DISCUSSION

The controlling issue for determination by the Arbitrator is whether or not the documentation was required under Section 513.6, of the ELRM because, "the Supervisor deems it desirable for the protection of the interests of the Postal Service." There is no question that the Supervisor must exercise a reasonable discretion, and he/she is not held to a standard of perfection, or mathematical exactitude. Controlling, then, is whether or not there was a reasonable exercise of discretion by Ms. Rose.

No one could seriously contend that the discretion of the Supervisor, in such instances, is absolute, uncontrolled. The exercise of discretion or judgment must be based upon real not imagined factors; it must rest upon evidence not supposition, surmise, or whim. Nor is it for the Arbitrator to substitute his judgment for that of the Supervisor because he thinks he might have done something else under the same facts. The Arbitrator attempts to learn whether the Supervisor made a conscious, deliberate, or what might be called a studious effort, based upon facts, to reach a reasonable conclusion.

In brief, the Arbitrator does not place himself in the position of the Supervisor in an attempt to second-guess the Supervisor; rather, he attempts to find out, on the basis of all of the evidence, whether the Supervisor, with all the information available to that Supervisor at that time and place, reasonably exercised discretion or judgment.

What evidence or information, then, was before Supervisor Rose when she made the demand for medical verification? She did not know how much sick leave the Grievant had left, but she did know that he was not on restricted sick leave. She did not know what his medical condition was. In ultimate analysis, after searching examination before the Arbitrator, Ms. Rose candidly admitted that there were two factors; 1) the Grievant had called in the previous day, and 2) it was Friday. She had not talked to him about his sick leave record. It was her practice, she testified, to have such consultation directly with an employee, and to delay placing him on restricted sick leave if he showed continued sick leave abuse. Necessarily, I conclude that the idea of a "pattern violation" was in the mind of Ms. Rose at the time she made the request for medical documentation.

There were two prior usages of leave for Fridays before March 4. The one was LWOP on January 7, 1983, and one sick leave on January 28, 1983. LWOP, although this was not known by Ms. Rose at the time, was requested because of his wife's pregnancy. Setting aside the question of whether the LWOP should have been considered, under the facts, a pattern of sick leave usage was not established. Actually, the weather does not seem to have been a factor except that it may have affected the Grievant's bronchitis. It was necessary to prove a pattern of sick leave usage; the pattern theory must be established by the Employer to prove, in result, that the exercise of discretion by Mr. Rose was reasonable. Since a pattern was not established, I find that

there was an absence of a reasonable exercise of discretion. The request for medical documentation was not necessary for the protection of the interests of the Postal Service. Accordingly, the grievance is granted. The Employer shall reimburse the Grievant, Dan Ward, for the money he expended for medical verification, namely, \$53.62.

AWARD

Issue

Did the Postal Service violate the provisions of the National Agreement by requiring the Grievant, Dan Ward, to provide medical verification for his absence on March 5, 1983?

Answer

Yes. The Grievant shall be reimbursed by the Employer for the monies expended for medical documentation, namely, \$53.62.

Santa Barbara, CA.
July 12, 1985



George E. Bowles
Arbitrator