

C#04195

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS

RE: SLN-3A-C-3163
R. Mosley - Dallas, Texas
March 13, 1984

APPEARANCES:

FOR THE UNION	Peter Goodman, Union Representative
FOR THE POSTAL SERVICE	Delward G. Stracner, Manager Employee and Labor Relations Dallas, Texas
ARBITRATOR	John F. Caraway, selected by mutual agreement of the parties.

Following the Thanksgiving holiday on November 26, 1981 Mr. Mosley, a Regular Carrier at the Joe Pool Station, worked an hour and a half and left the station sick. The balance of the day of six and a half hours was used as sick leave. On Saturday, November 28 he was out sick and used eight hours sick leave. On Sunday, November 29 he was scheduled off, on Monday, November 30 he worked eight hours and on Tuesday, December 1 he was scheduled off. The instant grievance arose when the Supervisor required Mr. Mosley to produce a doctor's certificate to cover his sickness on Friday, November 27 and Saturday, November 28. The amount of this expense was \$30.00. In its grievance the Union asked for reimbursement to Mr. Mosley of this amount.

Mr. Mosley testified that on Friday, November 27 he became sick at work being dizzy, having nausea and vomiting. He told his immediate Supervisor Mr. Carter he was sick and he could not work. Mr. Carter told him if he had to go home he must bring a doctor's

statement on his return. Mr. Mosley went to the doctor on Friday, November 27, was given a shot and placed on medication. Mr. Mosley testified in November 1981 he was not on restricted sick leave but had been, in the past, been taken off restricted sick leave in July 1981. Mr. Mosley stated that he would not have gone to a doctor on Friday, November 27 but would have attempted to overcome his sickness by rest and by medication that he had at home.

Mr. Nat Harris, was the Manager of the Joe Pool Station at the time, stated that the reason the medical document was required was because of Mr. Mosley's pattern of being sick on days before and days after holidays and scheduled days off. Further, he had information that Mr. Mosley received a phone call on the morning of Friday, November 27. Up to that time he was working without any medical complaint. After the phone call Mr. Mosley got sick and wanted to go home. Mr. Mosley told Mr. Harris that he was going to go to the doctor anyway for his illness.

ISSUE

Did the Postal Service violate the National Agreement by requiring Mr. Mosley to produce medical documentation to cover his sick leave absences on November 27 and November 28, 1981?

ARGUMENT

The Union maintains that the Postal Service was arbitrary and capricious by requiring this medical document. There is no record of abuse of sick leave by Mr. Mosley. He was not on the restricted sick leave in November 1981. Mr. Mosley's testimony was that he was, in fact, sick having nausea and vomiting and simply could not work. It was arbitrary to require him to produce

a medical certificate when he was obviously sick.

The Postal Service contends that there is a pattern with Mr. Mosley of taking sick leave after holidays and before or after scheduled days off. Not only did he do this in November, but he took sick leave on September 8 following the Labor Day holiday in 1981.

The Postal Service maintains that Section 513.361 of the Employee and Labor Relations Manual gives a Supervisor a broad discretion as to whether to require documentation or not. In this case, it was deemed necessary for the protection and the interest of the Postal Service because there was a sufficient doubt as to whether Mr. Mosley was, in fact, sick.

DECISION

Section 513.361 of the Employee and Labor Relations Manual gives the Supervisor a broad discretion as to whether he should require documentation where the employee will be out sick for a period of three days or less. This is the situation when the employee is not on the restricted sick leave. But this right of the Supervisor cannot be exercised in an arbitrary and capacious manner. The Arbitrator believes that the Supervisor was arbitrary in the instant case.

Review of Mr. Mosley's record for 1981 does not show a regular pattern of being sick on days before or after holidays or before or after scheduled days off. Of the nine contractual holidays Mr. Mosley only requested sick leave in connection with two of those holidays, one being the Thanksgiving Holiday which is the subject of the instant grievance. Further, of the total of 104 sick leave days earned by an employee Mr. Mosley had used

48½. This certainly demonstrates the employee was not abusing his sick leave.

There was no evidence by the Postal Service that Mr. Mosley was not, in fact, sick. Mr. Mosely described his symptoms and the reason why he requested to go home and use sick leave. There was no evidence refuting his being sick. Mr. Mosley testified that he did not intend to go to a doctor but intended to rest and use medication at home. This is a normal procedure and understandable on the part of an employee who desires to avoid incurring unnecessary medical expense. Mr. Mosley denied that he made the statement that he was going to the doctor anyway.

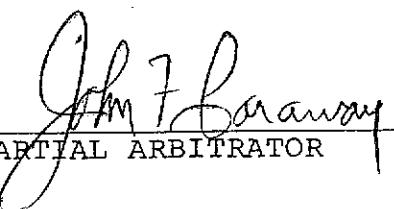
Regarding the alleged phone call received by Mr. Mosley, Mr. Mosley does not recall having receiving such a phone call. In any event the evidence does convince the Arbitrator that Mr. Mosley was, in fact, sick and was justified in leaving the station. He simply could not work in his sick condition.

Most persuasive that Mr. Mosley was not abusing his sick leave was the fact that after being out sick on Friday, November 27, and Saturday, November 28, he was scheduled off on Sunday, November 29. He then came to work on Monday, November 30 which was between his Sunday scheduled day off and Tuesday when he had another day scheduled off. If Mr. Mosley intended to abuse his sick leave he would have called in sick on Monday, November 30, 1981.

AWARD

The Union grievance is sustained. The Postal Service violated the National Agreement by requiring Mr. Mosley to produce medical documentation to cover his absence due to sickness on

Friday, November 27 and Saturday, November 28. The Postal Service
shall reimburse Mr. Mosley \$30.00 for his medical expense.



IMPARTIAL ARBITRATOR

New Orleans, Louisiana

March 22, 1984