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ARBITRATION PROCEEDINGS

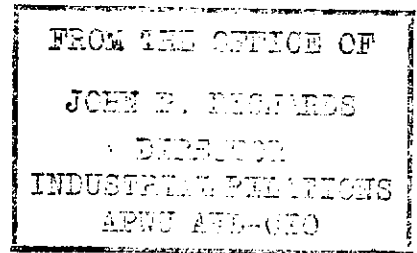
INDUSTRIAL
RELATIONS

Before

Peter DiLeone

16130 (C8C-4G-C)

C#00070



.....
In the Matter Between:

UNITED STATES POSTAL SERVICE
Indianapolis, Indiana

-and-

AMERICAN POSTAL WORKERS UNION
.....

OPINION AND AWARD

Case No. C8C-4G-C-16130

C. Reed, Grievant

APPEARANCES

For the Postal Service:

Beverly J. Jones--Regional Labor Relations Specialist
Ernie J. Williams--Management Trainee
John A. Swisher--Manager
J. W. Logan--Labor Relations

For the Union:

Jerry W. Collins--National Representative, Clerk Craft
C. Reed--Grievant

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NATURE OF THE CASE

This case brings into focus the application of the restricted sick leave provision embodied in the Labor Relations Manual which is incorporated by reference in the National Agreement.

THE ISSUE

Whether or not the Postal Service violated the terms of the National Agreement by placing the grievant, C. Reed, on restricted sick leave effective April 1, 1980.

PERTINENT CONTRACT PROVISIONS

ARTICLE III MANAGEMENT RIGHTS

The Employer shall have the exclusive right . . .

A. To direct employees of the Employer in the performance of official duties;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

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ARTICLE X LEAVE

Section 5. Sick Leave. The Employer agrees to continue the administration of the present sick leave program, which shall include the following specific items:

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.

. . .

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ARTICLE XIX HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours of 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.

. . .

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Employee and Labor Relations Manual

513 Sick Leave

513.1 Purpose. Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.

. . . .

513.361. 3 Days or Less.

. . . Medical documentation or other acceptable evidence of incapacity for work is required only when the employee is on restricted sick leave or when the Supervisor deems documentation desirable

. . . .

513.37 Restricted Sick Leave

.371 Reasons for Restriction. Supervisors (or the official in charge of the installation) who have evidence indicating that an employee is abusing sick leave privileges may place an employee on the restricted sick leave list. In addition, employees may be placed on the restricted sick leave list after their sick leave use had been reviewed on an individual basis and the following actions have been taken:

(a) Establishment of an absence file as outlined in Handbook F-21, Time and Attendance (part 973).

(b) Review of the absence file by the immediate supervisor and by higher levels of management.

(c) Review of the quarterly listings, furnished by the PDC, of LWOP and sick leave used by employees. (No minimum sick leave balance is established below which the employee's sick leave record is automatically considered unsatisfactory.)

(d) Supervisor's discussion of absence record with the employee.

(e) Review of the subsequent quarterly listing. If listing indicates no improvement, the supervisor is to discuss the matter with the employee to include advice that if next listing shows no improvement, employee will be placed on restricted sick leave.

. . . .

666.8 Attendance

.81 Requirement for Attendance

Employees are required to be regular in attendance.

OPINION

The grievance in this case was filed protesting the action of the Postal Service in placing the grievant, Carolyn Reed, on restricted sick leave April 1, 1980 "when there was insufficient evidence before the Supervisor to conclude that there was an abuse of the sick leave privilege."

The Postal Service maintains that from June 25, 1979 to April 1, 1980, the grievant took six separate and distinct sick leaves, amounting to approximately 120 hours. Those sick leaves, says the Postal Service, were taken in some instances either before or after her "scheduled off days," which by itself constituted an abuse of the sick leave privilege.

The Postal Service maintains that the sick leave just prior to the imposition of the restriction was an "unproved off-the-job injury." It further contends that twice during the early part of the year 1979, discussions were held with the grievant concerning her unscheduled absences, and that even though there was some improvement thereafter, the grievant's absences due to sick leaves during 1980 were of such a nature as to cause suspicion about her conduct, and it was determined that she was abusing the sick leave privilege.

Because of this suspicion, the grievant was required to support each absence, after April 1, 1980, with medical documentation otherwise the absences would be charged as AWOL, and that was when the grievance was filed.

There is no argument between the parties here that sick leave is a guaranteed right under the National Agreement. Article X, Section 5 specifically authorizes the establishment and the continuance of a sick leave program.

Over the years, the parties developed certain procedures which were embodied in the Labor Relations Manual concerning this subject matter. Other related items were incorporated in the Manual such as the need to procure medical documentation whenever an employee is suspected of abusing the sick leave privilege. For example, Section 513.371 of the Manual is very specific about the authority of Management when there is evidence before it concerning abuse of this privilege..

When there is evidence indicating that an employee is abusing the sick leave privilege, the Manual sets out certain procedures for the supervisor to follow when confronted with such a problem. Among other things, he is required to discuss the sick leave absences with the employee involved.

The supervisor who made the determination here that there was abuse testified that he talked to the grievant in 1979 about her "absentee record." Besides discussing a different topic with the grievant, the supervisor talked to the grievant many months before the occasions of sick leave which precipitated the

imposition of the sick leave restriction.

What is more interesting, however, is that never since the first of the six sick leaves was there any discussion with the grievant about any of her sick leaves. The record reveals that there was some discussion about other absences in 1979, but none concerning her "status on sick leave, her abuse of sick leave, or that she was in jeopardy of being placed on restricted sick leave."

The Supervisor who placed the grievant on restricted sick leave testified that he "believed in my mind that the grievant's attendance pattern was abusing the sick leave privilege." He also testified that he did not discuss the recent record of sick leaves with the grievant or make any attempt to review her past record of attendance before placing the grievant on restricted sick leave on April 1, 1980.

It must be said that if the employees are expected to abide by the guidelines set forth in the Employee and Labor Relations Manual, it is also expected that supervisors will exercise their duties as prescribed in said Manual.

This Arbitrator must conclude from the evidence in this case that no abuse was shown to exist.

The Postal Service advances one further argument. It maintains that no matter what value is placed on the charges made, the issue here is moot.

The Postal Service maintains that since the corrective action set forth in the grievance is the removal of the sick leave restriction, and further since such removal did in fact

take place on July 24, 1980, "there is nothing before the Arbitrator." This Arbitrator must respectfully disagree.

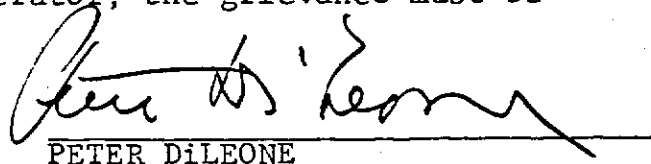
The essence of this grievance goes directly to the manner in which the supervisor conducted his functions as it relates to placing the grievant on restricted sick leave.

First of all, at the time this grievance was filed, the restriction had not as yet been removed and second, the relief was a proper request as part of the corrective action. Furthermore, a careful reading of the grievance reveals that the gist of the Union action here, besides the removal of the sick leave restriction, was the cavalier manner used by supervision in reaching its conclusions about the grievant and in placing the grievant on restricted leave in the first place.

No, the issue here did not become moot when the Postal Service removed the restriction. The cause of action is the charge regarding the manner in which supervision reached its conclusion regarding the placing of the grievant on restricted sick leave.

AWARD

Based upon the evidence in this case and based also upon the analysis made by this Arbitrator, the grievance must be granted.



PETER DILEONE

Decision Issued:
Sept. 16, 1981