

REGULAR REGIONAL ARBITRATION PANEL

C #10009

In the Matter of Arbitration)
between) GRIEVANT: B. Marjie
) POST OFFICE: Las Vegas, NV
)
UNITED STATES POSTAL SERVICE) CASE NO. W7N-5F-C 11781
and) GTS - 12878
)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO)

BEFORE: JAMES T. BARKER, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Bette Leavitt

For the Union: Thomas H. Young, Jr.

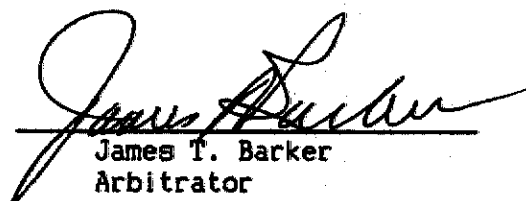
Place of Hearing : 1001 Sunset Road, Las Vegas, NV

Date of Hearing : April 10, 1990

AWARD : The grievance is sustained.

The Postal Service shall credit the grievants
sick leave record for a total of 11.45 hours
of sick leave.

Postal Management in Las Vegas shall cease and
desist from failing to comply with ELM 545.62 c.


James T. Barker
Arbitrator

Date of Award: May 12, 1990

Case No. W7N-5F-C-11781
GTS No. 12878
(Grievant: B. Marjie)

Opinion and Award

The Issues

The parties were unable to agree upon the formulation of the issues.

The Union states the issue as follows:

Did the Postal Service violate Article 21, Section 4 of the National Agreement by requiring the grievant to work in contravention of the existing medical documentation.

The Postal Service would frame the issue:

Did the Postal Service violate Article 21 in scheduling the grievant for limited duty work in compliance with existing regulations.

The Arbitrator finds that the issue framed by the Union is the most appropriate for the resolution of this controversy.

Relevant Contractual/ELM Provisions

Article 21, Section 4 of the National Agreement provides:

Employees covered by this Agreement shall be covered by subchapter 1 of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs and any amendments thereto.

The Injury Compensation Program is embodied in a comprehensive revision of the Employee and Labor Relations Manual, subchapter 540. ELM provisions directly pertinent provide:

543.31 Medical unit or other USPS personnel must not interfere with the medical care prescribed by the employee's attending physician. Contact with a physician or physician's staff should be limited to the medical condition of the employee or the employee's ability to return to full or limited

duty.

543.34 Upon authorization of medical care, the control office/point provides the employee with written notification of his obligation to return to work, either in a regular or limited duty capacity.

545.62 Limited Duty Capability. Form CA-17 is used. This form:

* * *

c. Is used to facilitate an injured employee's return to suitable employment. The control office/point may correspond with the employee's physician, either in writing or by telephone, concerning the employee's work limitations and restrictions imposed by the effects of the injury and possible job assignments that specify the duties and physical requirements. Control office/point personnel must document any change in duty status authorized by the attending physician via telephone. Upon receiving such authorization, control office/point personnel must immediately submit a revised Form CA-17 to the treating physician to document the employee's change in duty status. The control office/point concurrently sends a copy of any such correspondence to the OWCP district office and the employee, as well as a copy of the physician's response, once received. * * * *

Pertinent Facts

On October 4, 1988, the grievant sustained an injury to his ankle while engaged in his duties at the Las Vegas postal facility to which he was assigned as a letter carrier. He reported the injury to his supervisor but did not fill out any paperwork. However, that evening after work he experienced swelling in his ankle. The grievant reported this to his supervisor who instructed him to see a doctor.

On October 5, the grievant was examined by a physician who diagnosed a sprain and instructed the grievant to stay off his feet and keep his leg elevated. The attending physician completed a CA-17 indicating the grievant was not able to

perform his regular duties. He specified a period of total disability from October 5 to October 7. Section 8 of the CA-17 which the physician had reviewed indicated the normal duties of the grievant included intermittent sitting for 4 hours per day. An appointment was made for October 7 for a follow-up examination.

The grievant provided the CA-17 to supervision and otherwise commenced complying with the doctor's instructions.

In the meantime, the Safety Specialist, Mary Ann Frann was advised by the grievant's supervisor of the grievant's injury. Frann was told that he had presented a CA-17 to supervision completed by the physician whom he had consulted.

Frann contacted the office of the attending physician and spoke to a woman. She did not converse directly with the attending physician, although Frann was of the impression that the woman to whom she spoke was a physician or assistant to the attending doctor. Frann inquired whether or not the grievant could do limited duty within his restrictions. Frann was told that he could perform a sit down or desk job so long as his leg was elevated.

Frann conveyed this information to the grievant's supervisor who contacted the grievant by telephone. The grievant was informed that Frann had contacted the doctor's office and had been told that he, the grievant, could perform limited duty work so long as the leg was kept elevated. The grievant was instructed to report to duty. He did so at 7:00 a.m. on October 6. He had not received a revised CA-17 from the doctor. No written release or certificate had been received from or issued by the attending physician.

The grievant attempted to perform the work assigned to him but found that he could not keep his leg elevated. He experienced pain and told his supervisor that he could not continue to work.

The grievant's supervisor told him that he would have to take sick leave. He did not protest. He left and went home on sick leave. He did not call or consult the doctor concerning this pain at this time.

The grievant saw his attending physician on October 7, in accordance with the previously scheduled appointment. He recount the pain and difficulty he had experienced in returning to duty the previous day. The doctor instructed him to return to duty the following work day. In issuing this directive the doctor and the grievant were aware that because of an intervening scheduled day off, a Sunday and a holiday, the reporting date would be October 11. The grievant reported for duty as instructed on October 11.

The grievant was not aware of the requirement that the attending physician be informed of the availability of limited duty, and the grievant testified, in substance, that he had not informed the doctor of this option.

He did not protest the limited duty at the time the assignment was made.

Frann testified that no CA-17 was sent to the treating physician after she received the oral determination by telephone from the doctor's office. She explained that the grievant had an appointment to see the doctor on October 7. The only written documentation from the attending physician was the CA-17 issued by the doctor on the occasion of the grievant's first visit and that provided by the doctor following the grievant's visit on October 7 releasing him to full duty.

The Contentions of the Parties

1. The Position of the Union

The Union contends the Postal Service violated Article 21, Section 4 and pertinent elements of the ELM relating to compensation of injured employees by exceeding the bounds of permissible contact with the grievant's attending physician, and coupling this with a directive from supervision to the grievant to

return to duty in a limited duty capacity performing work in contravention of the existing medical limitations.

The Union does not challenge the right of the Postal Service to contact an attending physician, but asserts that the contact must be in accordance with the scope and limitations defined in ELM 543.31. Moreover the Union concedes the propriety of dispatching a CA-17 to the treating physician to serve the purposes specified in ELM 543.32.

However, the Union asserts that postal management may not ignore the requirements and plain wording of the ELM which mandate written documentation of any change in duty status authorized by the attending physician via telephone, coupled with immediate submission of a revised Form CA-17 to the treating physician to serve as documentation of the grievant's change in duty status. Nothing in the regulations allows for an exception based on the short-term nature of the limitation or anticipated duration of the limited duty.

The Union notes that the only documentation of record at the time of the grievant's return to duty on October 6 was the initial CA-17 signed by the treating physician on October 5, 1988.

It is the Union's position that by requiring the grievant to return to duty in the manner and circumstances alleged, the Postal Service not only jeopardized the grievant's health but caused him to use 11.45 hours of leave.

The Union requests the grievance be sustained and an order be issued directing the Postal Service to recredit the grievant's records for 11.45 hours of sick leave. Moreover, the Union seeks a cease and desist order directed to management of the Las Vegas postal facility.

The Union submitted for consideration an opinion and award issued at the regular regional arbitration level. Further a Step 4 Decision dated February 10,

1989 was offered which, in salient part, held that by accepting a limited duty assignment a letter carrier does not waive the opportunity to contest the propriety of that assignment through the grievance system.

2. The Position of the Postal Service

The Postal Service contends that it acted appropriately in making inquiry into the grievant's medical limitations imposed by reason of his partially disabling injury on the job on October 5.

In this regard the Postal Service notes its obligation to reimburse the Department of Labor for such compensable injuries, and emphasises the role of limited duty assignments as an offset against this compensation expense.

The Postal Service's asserts that under the ELM it may contact the attending physician by telephone if it has reason to believe the physician is not aware of the availability of limited duty assignments within the medical limitations.

In this connection, the Postal Service avers it had basis for believing the grievant had not conveyed to his attending physician the availability of limited duty. It contends that, in this context, and when the Injury Compensation Officer learned that the grievant would elevate his leg, she took the appropriate and permissible step of contacting the attending physician to acquaint him with the availability of limited duty within medical limitations allowing for elevation of the injured leg.

The Service notes that the CA-17 called for an appointment in two days and, given the short duration of the limited duty assignment and the proximity in time of the next consultation between the grievant and the attending physician, written documentation/ CA-17 revision contended for by the Union would have necessitated assigning "someone on the staff to go over and get the written documentation."

It is the view of the Postal Service that by its actions it accomplished what the written documentation would have accomplished.

Moreover, the Service notes that it did not seek to jeopardize the grievant's health; that he did not object to the limited duty assignment at the time it was made; that he did not avail himself of the opportunity to decline limited duty consistent with his right to reject such assignments outside of his medical limitations; and took sick leave of his own volition.

In all the circumstances, the Postal Service request the grievance be denied.

Analysis

In the ultimate, this case turns on the narrow issue of whether, for the reasons advanced, management is excused or exempted from complying with the literal instructions set forth in ELM 545.62 c. .

In essential terms, the Postal Service appears to contend that, at least in this case, local management was not precluded by contract or regulation from ordering the grievant to return to duty in a limited duty assignment on the basis of verbal assurances and input from the office of the attending doctor.

Pragmatism, efficiency and economy appears to provide the supporting rationale for management's application of ELM 545.62 c. to the fact of the present case.

Notwithstanding the presence of arguably laudible objectives, it goes without saying that management is not free to ignore the requirements of applicable regulations merely to serve a short-term objective, however meritorious.

The language of ELM Section 545.6 c. is clear and unambiguous. It specifies that, "Upon receiving such authorization [any change in duty status authorized by the attending physician via telephone] control office/point

personnel must immediately submit a revised Form CA-17 to the treating physician to document the employee's change in duty status." No such submission was made and no revised Form CA-17 was in the possession of management when it ordered the grievant to return to duty on the second day of his absence from an on-duty injury, and during the period of declared full disability.

It is sufficient to conclude that nothing in the factual circumstances of the instant case justified the precipitous action taken by management in directing the grievant to return forthwith to duty. This Arbitrator is unable to discern any significant, much less substantial, detriment to the Postal Service that would have resulted from a more deliberate handling of the grievant's situation in full compliance with the dictates of ELM 545.62 c.

A procedure for obtaining the necessary documentation in the form of a revised CA-17 would have visited minimal inconvenience upon the Service, and compliance with the governing regulation would have been achieved.

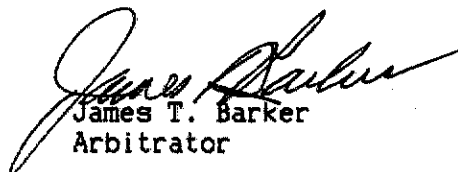
A violation of Article 21 resulted from the actions of the Postal Service. The violation is actual and not de minimis. There is no evidence from which it may be concluded that the Union had condoned such actions in the past so as to give rise to a practice amending the clear language of the provision declaring the intention of the parties that a revised CA-17 be furnished as a condition precedent to returning an employee to duty in the circumstances present herein.

AWARD

The grievance is sustained.

The Postal Service is directed to credit the sick leave record of the grievant for a total of 11.45 hours of sick leave.

Postal Management in Las Vegas is ordered to cease and desist from failing to comply with provisions of ELM 545.62 c., including, the language set forth in the Discussion portion of this Opinion cited above.


James T. Barker
Arbitrator

Coronado, California
May 12, 1990