

ARBITRATION OPINION AND AWARD PURSUANT TO ARTICLE 15 OF THE
NATIONAL AGREEMENT BETWEEN THE PARTIES

Case No. W4N-5G-C 11779
Van Nuys, California
April 18 1986

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UNITED STATES POSTAL SERVICE,)
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)
) WILLIAM EATON
and)
) Arbitrator
)
)
NATIONAL ASSOCIATION OF LETTER CARRIERS,)
)
Theodore Dent: Medical Verification)
Grievance)
)

APPEARANCES:

FOR THE POSTAL SERVICE:

RUSS DAVENPORT
Labor Relations Assistant
U. S. Postal Service
15701 Sherman Way
Van Nuys, California 91409-9403

FOR THE UNION:

WILLIAM H. YOUNG
Regional Administrative Assistant
National Association of Letter Carriers
855 Civic Center Drive
Unit 1A
Santa Clara, California 95050

MAY 14 1986

ISSUE AND EVIDENCE

This is an arbitration to determine whether Grievant Theodore Dent was required to produce a doctor's certificate in violation of the National Agreement concerning his absence of October 28 1985, and if so what the remedy shall be. Hearing was held in Van Nuys California on April 18 1986. At that time the Grievant was fully and fairly represented by the Union, was present throughout the hearing, and testified in his own behalf. Following presentation of additional evidence by both parties, the matter was submitted to the Arbitrator for final and binding determination upon presentation of oral argument at the close of the hearing.

The Grievant, who was not on restricted sick leave at the time, was required to provide a medical certificate for his October 28 1985 absence based on the provisions of Section 513.36 of the Employee and Labor Relations Manual, set forth below.

The Union contends that, unless an employee is on restricted sick leave the Postal Service has no right to require medical documentation for an absence, unless it is shown to be necessary for protection of the Postal Service, the Union contending that no such necessity has been demonstrated in the present dispute.

Employee and Labor Relations Manual

513.36 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. . .

Medical Verification Requirement

The Grievant's Supervisor, Yvonne Miller, Supervisor of Deliveries and Collections at Encino, testified that she accepted the call from the Grievant reporting that he was sick on the morning of October 28 1985. While she testified to her belief that the call had been received at approximately 0730, records introduced into evidence indicate that the call was at approximately 0750. As Ms. Miller recalled, the Grievant had simply reported that he was sick, and when asked what the problem was, had simply replied that he was not a doctor and that he did not know exactly what it was. According to the Grievant, he reported that it was a recurrence of a problem for which he had been excused previously, diagnosed as eustachian salpingitis.

Supervisor Miller advised the Grievant that he would need a doctor's slip upon returning to work. The Grievant subsequently visited a doctor, and produced a slip which was accepted and upon the basis of which he was credited with sick leave for the day missed.

The reason for requiring the slip, according to Supervisor Miller, was that the Grievant's 3972 form showed a pattern of absences in conjunction with scheduled days off, showed that he had received discussions concerning his attendance, and because he expressed dissatisfaction, and even anger, at a change in schedule to be effected on the day at issue, and which he had maintained would interfere with classes he was then attending. Ms. Miller disputed a Union suggestion that she had required the slip because the Grievant had called in late, some 10 minutes prior to the scheduled start of his tour, rather than the 30 minutes required.

Supervisor Miller also agreed that she had not considered the Grievant's sick leave balance, the conditions at the office, or the availability of replacements in requiring the slip. She agreed that he had no prior discipline for abuse of sick leave, but reiterated that he had protested vigorously the new schedule, stating that he had told her that there was "no way" the schedule would work, and that it was unfair regarding his classes to impose the schedule on him. It appears that the schedule change had been effected for the reason that the Grievant was then working under an eight hour restriction.

Medical Status

The Grievant testified that he had undergone major surgery in his nose on approximately July 5 1985, that an abscess had occurred in the stitches, and that the result had been a development of the condition diagnosed as eustachian salpingitis.

The Union introduced evidence indicating that on a prior day, September 27 1985, the Grievant had also visited his doctor, had been credited with sick leave for the visit, and had been diagnosed then as well as suffering from eustachian salphingitis. According to the Grievant, a total of approximately four visits to his doctor were required before that condition was relieved later in the Fall of 1985.

The Grievant testified that he had discussed this condition with another Encino Letter Carrier Supervisor, Barry Seltzer, whom he described as a personal friend. He stated that he believed Seltzer to have been aware of the surgery, and the resulting complications, as well as the diagnosis which followed. Seltzer testified, however, that he had not been aware of any ear problem from which the Grievant suffered prior to October 28. He agreed, nevertheless, that it "could be" that the Grievant had talked about his surgery in July, and that it was "very possible" that he had seen the documentation relating to the September 27 1985 sick leave of the Grievant indicating the same condition as did the documentation for the sick leave day at issue. Supervisor Miller maintained that she had not seen the September 27 report previously, and was not aware of the diagnosis which he had indicated.

The Grievant described his condition on October 28 as dizziness, congested sinus, and pain in the inner ear. He agreed that he had gone to see his family physician on each of the approximately four occasions on which he had suffered these symptoms following the July surgery. Asked whether he had told

Supervisor Miller when she advised him that he would need a doctor's slip that he was going to see a doctor anyway, he replied that he did not recall making that statement. He testified that it took approximately 1.5 hours of his sick leave time in order to see the doctor, which he wishes restored to his sick leave bank. The cost of the visit was \$35.00 although it may be that a significant portion of that cost has been reimbursed through the Grievant's medical insurance.

Prior Record

The Grievant's 3972 form for the year 1985 does indicate approximately eight instances in which sick leave was taken in conjunction with a scheduled day off, although several of these instances involved absence of less than eight hours.

Supervisor Seltzer testified that after evaluating the Grievant's attendance he had a discussion with him concerning the matter on approximately October 5 1985. According to Seltzer, he pointed to excessive use of sick leave, and to the pattern of its use in conjunction with scheduled days off.

As noted, the Grievant has received no discipline for excessive use of sick leave, and he testified without contradiction that, prior to October 28 1985, he had never been placed on restricted sick leave.

DISCUSSION

Union Argument

The Postal Service has no right to require medical documentation unless an employee has been placed on restricted

sick leave, except for the protection of the Postal Service. In Arbitration Case No. C8N-4-B-C 22840, dated September 8 1981, Arbitrator Marshall J. Seidman addressed the question of when medical documentation may be required.

Analyzing cases presented to him, Seidman found that some, if not all, of five considerations had been recognized: first, the employee's leave balance; second, the employee's prior record of sick leave abuse; third, the immediate state of absenteeism at the facility; fourth, the immediate exigencies in the facility with regard to mail flow; and, fifth, the Supervisor's reason for requiring medical documentation.

In the present dispute, Supervisor Miller agreed that she did not consider sick leave balance, absenteeism at the time, or the exigencies in the facility. The Postal Service has presented no evidence to support its contention that the protections of the interests of the Postal Service required the documentation at issue.

Here the Grievant's condition which required his absence was known to the Postal Service and had been the basis for an approved absence approximately one month before. The Grievant testified that he informed Supervisor Miller that it was a recurrence of his ear problem, and yet documentation was still required.

Whether the Grievant's medical bill was paid by his insurance has no bearing on the case. The question is whether the Postal Service has acted without authority, and the Union

contends that it has.

For these reasons the Union respectfully submits that the grievance should be granted, that the Grievant should be reimbursed the \$35.00 which he was charged for his visit to the doctor, and that the 1.5 hours sick leave time required for the visit be recrated to his sick leave bank.

Postal Service Argument

Section 513.36 of the Employee and Labor Relations Manual provides that the Postal Service can require medical documentation for the protection of the Service. The local Union is aware of the Van Nuys Sectional Center policy in this regard, and the evidence of abuse of sick leave is clear.

The reasons for the requirement were given to the Grievant by Supervisor Miller when he called in on October 28. He had become angry at his change of schedule, he had received a discussion on his poor attendance, and that discussion had included not only abuse of sick leave but the pattern of taking sick leave in conjunction with a non-scheduled day.

The absence at issue occurred on a Monday, immediately after the Grievant was rescheduled, and after he had complained bitterly about the change of schedule. That schedule was brought about because of the eight hour work restriction under which the Grievant was then working.

Moreover, the Grievant in his own testimony concerning the continuing problem brought about following his surgery indicated that he would have gone to the doctor anyway, as he did

on the other occasions when the same symptoms occurred.

In these circumstances Management was correct to be suspicious, no violation has occurred, and no compensation should be required. Should any compensation be awarded, the Postal Service submits that the Grievant should be required to show that the cost of his doctor's visit was not covered by insurance.

Conclusions

Section 513.361 of the Employee and Labor Relations Manual provides that medical documentation of incapacity for work may be required, not only when the employee is on restricted sick leave, but "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service." Section 513.364 makes it clear that the parties contemplated that the documentation would be furnished by the employee's attending physician.

The Union is correct in arguing, in effect, that even though Management is granted this right, the right must be exercised in a manner which is not arbitrary, capricious or unreasonable. In this regard the opinion of Arbitrator Seidman, cited by the Union, is instructive. In that case, which was a class action filed by the NALC, Arbitrator Seidman was presented with numerous Postal Service arbitration awards, indicating the considerations which, if taken by the employee's supervisor, would justify requiring medical documentation. It is agreed that of the five listed, leave balance, absenteeism at the facility, and immediate exigencies regarding mail flow were not considered

by Supervisor Miller. However, Arbitrator Seidman himself made it clear that the cases he had analyzed required a supervisor "to at least consider some, if not all" of the criteria listed. The two criteria which were considered were the employee's prior record of sick leave abuse, and the Supervisor's reason for requiring the documentation.

While the Grievant had not received prior discipline regarding sick leave, and while he had not been placed on restricted sick leave, his pattern of sick leave use had been discussed with him. The evidence is clear that he had been apprised by his Supervisors that his sick leave use was considered excessive, and in particular that they were concerned about the pattern of its use in conjunction with non-scheduled days. The 3972 introduced into evidence supports the Supervisors' concern in this regard.

Postal Service testimony was that the Grievant had protested vigorously, and even angrily, at the change of schedule which took effect on or about the day in issue. He had complained that it would interfere with classes he was taking, and had left no doubt that he resented the change, even though it was required by his own eight hour work restriction.

The Grievant contends that, nevertheless, his Supervisors had full knowledge of the condition which caused his absenteeism on October 28, so that their action was unjustified. In support of this contention he maintained that Supervisor Seltzer was a personal friend, and that he had advised Seltzer in detail of his inner ear problems following the July surgery. Seltzer,

however, testified that he was not aware of any ear problem prior to October 28th.

While the diagnosis eustachian salpingitis was included on a medical form concerning a similar prior absence on September 27 1985, that diagnosis is listed along with an additional diagnosis on the September 27 record, and there is no clear evidence that the Grievant's Supervisors would have been aware of that particular condition. Nor is it sufficiently shown that the Grievant informed Supervisor Miller as to precisely what was his symptoms were when he called in on October 28th.

In these circumstances the requirement to produce medical documentation was not arbitrary or unreasonable, and was justified for the reasons testified to by Postal Service witnesses.

AWARD

The Postal Service did not violate the National Agreement, or the relevant provisions of the Employee and Labor Relations Manual incorporated in that Agreement by Article 19, in requiring the Grievant to obtain medical documentation for the absence of October 28 1985. The grievance must therefore be denied.



WILLIAM EATON
Arbitrator

May 12 1986