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In the Matter of)
)
UNITED STATES POSTAL SERVICE) CASE NO. SIN-3U-C 4356
)
AND) CLASS ACTION
)
NATIONAL ASSOCIATION OF LETTER CARRIERS,) HUMBLE, TEXAS
AFL-CIO)

C#04396

APPEARANCES

For the Employer: - Peter C. Marcoux, Labor Relations Representative
For the Union: - Leslie Lewis, Union Representative

ISSUE

Did management violate the National Agreement by instructing employees to personally call in for use of sick leave?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution.

Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for July 12, 1983, and the Hearing was held on that date at the Marriott Hotel, 1750 West Loop South, Houston, Texas.

At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter.

After the Hearing, it was agreed that the parties would submit Post-Hearing Cross-Briefs to the Arbitrator. The Post-Hearing Cross-Brief filed by the United States Postal Service (hereinafter referred to as "Employer") was received by the Arbitrator on August 29, 1983. A Post-Hearing Cross-Brief was not submitted by the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union").

SUMMARY STATEMENT OF THE CASE

On December 16, 1981, Mr. Ceaser Moore, Postmaster at Humble, Texas, issued a memorandum on the subject of absenteeism that required employees who were ill to personally call their immediate supervisor, or the supervisor on duty, to report their absence from duty. The Union, alleging that this policy was a change from past practice and in violation of the National Agreement, filed the instant grievance on behalf of all employees of the Humble, Texas, Post Office.

On January 28, 1982, after a Step 1 meeting was held, a decision denying the grievance was rendered. Pursuant to Article 15 of the National Agreement, the Union appealed the grievance to Step 2 of the grievance procedure alleging a violation of, but not limited to, Articles 10, 19, and 30 of the National Agreement and stating in relevant part as follows (Joint Exhibit No. 2):

FACTS AND UNION CONTENTIONS: WHAT HAPPENED On 12-16-81 management announced a new sick leave policy. (Time limits for filing mutually extended) The policy requires the employee to personally notify supervision of an absence due to illness (unless the employee cannot verbalize). The past practice has been that supervision would be notified (but not necessarily by the employee). The ELR manual only states that the employee is responsible for notifying the Postal Service. It does not state the notice must be from the employee.

CORRECTIVE ACTION REQUESTED: The part of policy requiring the employee to personally call-in be removed and employees be allowed to have someone else 'call-in' for them as has been the past practice.

The grievance was thereafter processed through the various steps of the grievance procedure and ultimately appealed to arbitration on March 25, 1982.

Provisions of the National Agreement effective July 21, 1981, to remain in full force and effect to and including 12 midnight July 20, 1984, (hereinafter referred to as 'National Agreement') (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

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;

* * *

ARTICLE 10

LEAVE

* * *

Section 2. Leave Regulations

The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours, and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

* * *

Section 5. Sick Leave

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

* * *

E. For periods of absence of three (3) days or less, a supervisor may accept an employee's certification as reason for an absence.

ARTICLE 19

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.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article, they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

* * *

Provisions of the Employee & Labor Relations Manual, Issue 3, 1-22-79

(Joint Exhibit No. 4) considered pertinent to this dispute are as follows:

511.2 Responsibilities

.21 Postal Officials:

- a. Administer the leave program.
- b. Inform employees of their leave balance.
- c. Approve or disapprove requests for leave.

511.4 Unscheduled Absence

.42 Management Responsibilities. To control unscheduled absences, postal officials:

- a. Inform employees of leave regulations;

.43 Employee Responsibilities. Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.

Provisions of the Employee & Labor Relations Manual, Issue 7, 6-15-82

(Joint Exhibit No. 3) considered pertinent to this dispute are as follows:

513.3 Authorizing Sick Leave

.332 Unexpected Illness/Injury

An exception to the advance approval requirement is made for unexpected illness/injuries; however, in these situations the employee must notify appropriate postal authorities as soon as possible as to their illness/injury and expected duration of absence. As soon as possible after return to duty, employees must submit a request for sick leave on Form 3971. Employees may be required to submit acceptable evidence of incapacity to work as outlined in the provisions of 513.36, Documentation Requirements. The superior approves or disapproves the leave request. When the request is disapproved, the absence may be recorded as annual leave, if appropriate, as LWOP, or AWOL, at the discretion of the supervisor as outlined in 513.342.

* * *

.342 Approval/Disapproval. The supervisor is responsible for approving or disapproving applications for sick leave by signing the Form 3971, a copy of which is given to the employee. If a supervisor does not approve an application for leave as submitted, the Disapproved block on the Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the granting of any alternative type of leave, if any, must be noted along with the reason for the disapproval. AWOL determinations must be similarly noted.

* * *

.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.

Provisions of the Employee & Labor Relations Manual, Issue 6, 5-20-81

(Joint Exhibit No. 5) considered pertinent to this dispute by the parties are as follows:

666.8 Attendance

.82 Absence Without Permission

Employees failing to report for duty on scheduled days, including Saturdays, Sundays, and holidays, will be considered absent without leave except in actual emergencies which prevent obtaining permission in advance. In emergencies, the supervisor or proper official will be notified as soon as the inability to report for duty becomes apparent. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or fails to provide satisfactory evidence that an emergency existed will be placed in a nonpay status for the period of such absence. The absence will be reported to the appropriate authority.

POSITION OF THE PARTIES

The Position of the Union:

It is the position of the Union that the Employer violated the terms of the National Agreement by issuing a memorandum entitled "Absenteeism Policy Procedure," which requires that employees personally call in prior to the start of their assigned tour to report their absence from duty at their scheduled starting time. The Union maintains that this is a change from a past practice common at this station as well as throughout the Postal Service, namely, that such a call could be placed by someone other than the employee. To remedy this violation, the Union requests that the Employer rescind this new directive and return to the policy of allowing such calls to be made by a designee of the employee.

The Position of the Employer:

The Employer takes the position that no violation of the National Agreement occurred. The Employer contends that the "Absenteeism Policy Procedure" is merely a reiteration of language already found in the Employee and Labor Relations Manual, which requires that employees notify appropriate authorities of their inability to report for work. The Employer further contends that the new directive is neither an alteration nor a modification of the Agreements, but rather is a means by which postal authorities can administer the managerial responsibilities delineated in the National Agreement.

OPINION

Resolution of this matter, in the judgment of this Arbitrator, turns primarily on the question of what constitutes acceptable notice by an employee that the employee will be unable to report for duty as scheduled. Although

the policy directive that is the subject of this dispute covers procedures to be utilized for any absence, whether it be due to illness, emergency, vacation, or any other reason, the disagreement of the parties in the instant case centers upon the requirement that an employee who is ill personally call his supervisor. Therefore, the discussion that follows will be confined to this particular area of the dispute between the parties.

In support of its position herein, the Employer maintains that the issuance of the directive in question is supported by the language in Chapter 5 of the Employee and Labor Relations Manual, and in particular by the provision at 513.332, wherein it is stated that ". . . the employee must notify appropriate postal authorities" If others were allowed to notify the Employer of an employee's absence, an employee, according to the Employer, could be harmed, since it is the employee who should control the utilization of time off that he has accrued. Further, inasmuch as it is the responsibility of management to administer the leave program, the Employer argues that the policy directive under consideration herein provides a method whereby management can effectively carry out its responsibilities while at the same time maintain control over unscheduled absences.

A careful reading of the language of Part 513.332 of the Employee & Labor Relations Manual (Joint Exhibit No. 3), however, convinces the Arbitrator that it was not the intent of the parties that employees personally be required to call to report the reason for their absence. As stated therein, employees are only required to notify appropriate postal authorities of their illness as soon as possible. Thus, under the referenced language of the Employee and Labor Relations Manual, the employee is only responsible for ensuring that notice is provided to the Employer. Seemingly, there are a number of circumstances, in addition to those delineated in the "Absenteeism

"Policy Procedure" issued by the Employer, under which it would seem more than adequate for an employee's agent or surrogate, such as a family member, to provide the required notification. In short, it appears to the Arbitrator that the language in question reasonably supports the interpretation that notice is properly provided when supplied by another who is acting in behalf of an employee. Since the employee continues to control the utilization of time off that he has accrued, the Arbitrator cannot agree with the contention of the Employer that harm might result to the employee if others were allowed to notify the Employer of his absence. Moreover, it seems to the Arbitrator that the Employer continues to retain the right to exercise its judgment upon the propriety of a request for sick leave and can apply other provisions of the National Agreement in order to discipline employees who abuse their right to sick leave. In this connection, it is observed by the Arbitrator that the provisions of the National Agreement and the Employee and Labor Relations Manual contain adequate safeguards that will allow the Employer to properly administer the various leave programs. Similarly, if the Employer desires to give instructions to an employee concerning the providing of proof of an employee's inability to work, that can certainly be accomplished either through the employee's agent or through such a request when the employee returns to work, as outlined in Part 513.332 of the Employee & Labor Relations Manual.

Supportive of the foregoing, it seems to the Arbitrator, is evidence of a long existing practice that someone other than the affected employee could give notice of that employee's inability to report for work. The Employer's stated reason for issuing the new directive, i.e., that it may desire to give instructions to an employee concerning the providing of proof of an employee's inability to work, cannot reasonably be viewed as a basis for overriding or

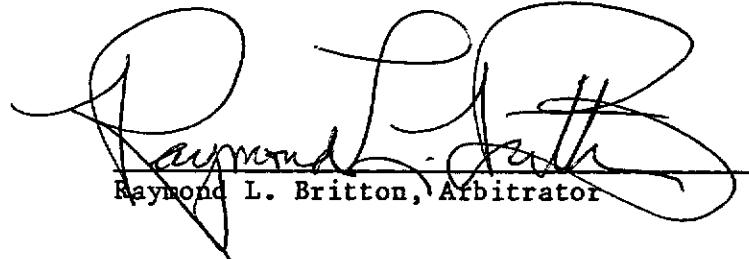
changing this mutually agreed upon past practice. Moreover, it would appear that any necessary instructions may easily be relayed to the employee by the agent he designates to call in on his behalf.

AWARD

For the reasons given, the grievance is sustained.

DATE:

July 10, 1984



Raymond L. Britton

Raymond L. Britton, Arbitrator