

GERALD COHEN

10/18/82

Won

Art. 10 Approved Annual Leave Changed

to Approved Sick Leave

Art. 19 - E&LR Manual

19575 (CSC-4C-C)

C# 000242

IN ARBITRATION

UNITED STATES POSTAL SERVICE,) Case No. CSC-4C-C 19575;
)
)
and) Arbitrator's File 82-42-762;
)
)
AMERICAN POSTAL WORKERS UNION,) Date of Hearing:
CLASS ACTION on behalf of) April 13, 1982.
RICHARD A. JOHNSON, Grievant.) St. Cloud, Minnesota.

APPEARANCES

For the Postal Service:

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For the Union:

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O P I N I O N

Issue

Did the Postal Service violate the National Agreement and/or Handbooks and Manuals when it refused Grievant's request to change his approved annual leave to approved sick leave for the week of July 14 through July 18, 1980? If so, what shall the remedy be?

Facts

The evidence introduced by Grievant indicated that, early

in 1980, Grievant chose July 14 through July 25 for his vacation period. This choice was made during the routine vacation selection period. At that time, he had no idea, of course, that he might be ill at any time during July.

On July 7, 1980, Grievant filed a Form 3971 requesting sick leave for July 9 through July 11. The reason given was that Grievant was to have surgery for the removal of a ganglion from his right thumb. Grievant thereafter submitted a medical report dated July 11, 1980, in which it was stated that he had had a ganglion cyst removed, and that "he will be unable to work for several weeks".

When Grievant returned to work on July 28, 1980, he filed another Form 3971, requesting that his annual leave for the period of July 14 through July 18 (the first week of his annual leave) be changed to sick leave. Under "Remarks" he had inserted, "Surgery on right hand". On August 1, 1980, Grievant submitted a medical report in support of his request which stated:

"Richard A. Johnson had a large ganglion cyst excised from his right hypothenar eminence on 7/9/80. He was released to work on 7/21/80. This is a painful convalescence and in my opinion, people who undergo surgery are entitled to a normal healing period without harrassment from his superiors. In my opinion, a one-handed postal clerk is not a valuable asset and I don't think one should be splitting hairs trying to find some other type of work for this kind of patient to do."

Grievant's request to change annual leave to sick leave for this week of July 14 through July 18 was disapproved. The

reason given was: "Work available - limited capacity".

A Postal Service witness testified that he was Director of Support at the time that Grievant first requested sick leave on July 9th. He read the doctor's statement of July 11th, and advised Grievant at that time that there would be some type of light-duty work available for him that would enable him to work despite his surgery. When Grievant said that he could not throw mail, the witness said that he told Grievant that he might answer the phone, help the supply clerk, or even work in central mark-up. He also told Grievant that Grievant might throw the mail left-handed. When Grievant replied that he would have to handle trays or pull mail, the witness stated that he told Grievant that a clerk would be assigned to assist him with these tasks.

The witness stated that he had read Grievant's medical report dated August 1, 1980. He said that he had actually sought this statement from the doctor to determine whether Grievant should be given sick leave or not.

Discussion and Opinion

The position of the Union is that Grievant properly applied to convert part of his annual leave to sick leave, and the Postal Service's refusal to do so is unreasonable. The Union contends that for an employee to be entitled to sick leave, it is not required that he be incapacitated from all work, but only

that he not be able to perform his normal duties.

The Union also argues that the testimony of the Postal Service that light-duty work was available for Grievant is an acknowledgment that Grievant was unable to perform his normal duties.

The Union further argues that for Grievant to have accepted work under the conditions offered by the Postal Service, he would have been required to act contrary to his doctor's instructions. One medical report stated that "he will be unable to work for several weeks". Another reported said that "this is a painful convalescence and in my opinion, people who undergo surgery are entitled to a normal healing period". The Union urges that this clearly shows that Grievant's physician advised that he abstain from work of any sort for a period of time.

The Postal Service argues that Grievant was, in fact, seeking advanced sick leave, and that, under Section 513 of the Employee and Labor Relations Manual, the Postal Service has discretion as to whether to give advanced sick leave.

In support of this position, the Postal Service cites Case No. C8N-4J-C 18429, in which the arbitrator stated that the Postal Service has discretion to advance sick leave, although such discretion should not be applied in an arbitrary or discriminatory manner. The arbitrator found that the denial of advanced sick leave in that case was not either arbitrary or discriminatory.

The Postal Service also contends that, under Section 513.365, it has a right to require medical documentation, and if such documentation is not acceptable, the employee's absence may be charged to some type of leave other than sick leave. That is what was done here. The Postal Service points out that there has been a practice of long standing of assigning sick or injured employees to light duty compatible with their medical limitations. That practice was followed here.

The Postal Service also cites Section 353.323 of the Employee and Labor Relations Manual which states "employees recuperating from a serious injury or illness who are unable to perform their regularly assigned duties, may ... be temporarily assigned to such duties as they can perform for a short period of time pending their recovery". The Postal Service states that Grievant was so temporarily assigned, and therefore, its action was in keeping with the Employee and Labor Relations Manual.

The Postal Service' argument relative to advanced sick leave is inapplicable here. Grievant was not seeking advance sick leave, but sick leave in advance. These are two different concepts.

Sections 513.3 and 513.5 deal with advanced sick leave. Advanced sick leave is sick leave which is allowed in excess of that which has been previously earned by an employee. For example, it can arise in a situation where the employee seeks 40 hours of sick leave but only has 10 hours left to his credit. Such allowance

is discretionary. Obviously, the Postal Service should have a greater right of discretion in such a situation because the employee is, in effect, seeking to "borrow" from the Postal Service. That is a much more serious matter than seeking to use what has already been earned by the employee.

In this case, Grievant was not seeking more sick leave than he had to his credit, but sick leave to which he was entitled.

I also find that Section 353.323 of the Employee and Labor Relations Manual, which the Postal Service cites as justification for its assignment of Grievant here, is likewise inapplicable. That section covers situations in which employees seek work which illness or injury might not permit them to perform. That section empowers the Postal Service to give such employees temporary assignments. But that is not the situation here. Grievant was not seeking to work, but was seeking not to work.

In effect, the Postal Service is contending that Grievant is not entitled to sick leave unless he is totally disabled; that if work can be found for him of any type, he is not entitled to sick leave.

Someone can be totally disabled, yet not be "sick". A quadriplegic is totally disabled, but is not referred to as being "sick", because sickness is a temporary condition from which one can recover.

Grievant had a temporary condition from which he would

recover, and clearly, he was ailing. His doctor's reports attested to this. While the doctor's second report contains some gratuitous comments which are beyond the professional competency of a physician, nonetheless, it does show that Grievant's convalescence was painful, and that he did need a healing period. He was therefore qualified for sick leave.

If the Postal Service believed that Grievant had abused his sick leave privileges, it was within its discretion to prevent such abuse. However, because Grievant has shown that he had a legitimate illness - and a ganglion cyst is such - and he had not exhausted all of his available sick leave, to deny him the use of his sick leave would be arbitrary.

The grievance is sustained. Grievant is entitled to have his approved annual leave changed to approved sick leave for the week of July 14 through July 18, 1980.

The costs are assessed equally.

Dated this 18th day of October, 1982.

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