

REGULAR ARBITRATION PANEL

C#13342

In the Matter of the Arbitration)

Between  
UNITED STATES POSTAL SERVICE

And  
NATIONAL ASSOCIATION OF LETTER  
CARRIERS, BRANCH 397

) GRIEVANT: Thomas Rynders  
)  
) POST OFFICE: Waukesha, Wisconsin  
)  
) Case No. I90N-4I-C 94047336  
)  
) GRS. NO. 001597  
)

BEFORE: Albert A. Epstein, ARBITRATOR

APPEARANCES:

FOR THE U.S. POSTAL SERVICE: Ms. Lois Coleman  
Labor Relations Specialist

FOR THE UNION: Mr. Barry Weiner  
Regional Assistant

PLACE OF HEARING: Post Office  
Waukesha, Wisconsin

DATE OF HEARING: Wednesday, November 3, 1993

AWARD: The Postal Service was in violation of the Labor Agreement between the parties when it denied the request of Thomas Rynders for advance sick leave during the period from May 25 to May 28, 1993, and charged him with Emergency Annual Leave.

The Postal Service is directed to grant such sick leave to the Grievant for that period and to withdraw the charge against the Grievant for the Emergency Annual Leave for the same period.

DATE OF AWARD: Friday, January 21, 1994

Albert A. Epstein  
Albert A. Epstein, Arbitrator

AAE:lm

UNITED STATES POSTAL SERVICE

ARBITRATION AWARD

In the Matter of the Arbitration)

Between	)	CASE NO. I90N-4I-C - 93047336
UNITED STATES POSTAL SERVICE	)	GTS. NO. 001597
Waukesha, Wisconsin	)	
And	)	ALBERT A. EPSTEIN
	)	Arbitrator
NATIONAL ASSOCIATION OF LETTER	)	
CARRIERS, BRANCH 397	)	

GRIEVANCE OF THOMAS RYNDERS RE SICK LEAVE REQUEST

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THE PROCEEDINGS

The above parties, unable to resolve a grievance filed by employee Thomas Rynders when he was denied a request for sick leave during the period from May 25 through May 28, 1993, submitted the matter to the undersigned for arbitration under the terms of their Labor Agreement.

A hearing on the matter was held at the Post Office in Waukesha, Wisconsin, on November 3, 1993. Both parties were represented and fully heard, testimony and evidence were received and both parties made oral closing arguments.

### APPEARANCES

#### For the Postal Service:

Ms. Lois Coleman	Labor Relations Specialist
Mr. Joseph Musolf	Manager, Customer Service Operation
Mr. Richard Cellino	Postmaster, Waukesha, Wisconsin

#### For the Union:

Mr. Barry Weiner	Regional Assistant
Mr. Thomas Rynders	Grievant

### THE ISSUE

Was the Postal Service in violation of the Labor Agreement between the parties when it denied the request of Thomas Rynders for advance sick leave during the period from May 25 to May 28, 1993, and charged him with Emergency Annual Leave? If so, what should the remedy be?

### PERTINENT LABOR AGREEMENT PROVISIONS

#### **ARTICLE 10**

#### **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.

C. Employee becoming ill while on annual leave may have leave charged to sick leave upon request.

D. 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.

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#### PERTINENT EMPLOYEE BENEFITS REGULATIONS

##### **513.36 Documentation Requirements.**

**513.361 3 Days or Less.** For periods of absence of 3 days or less, supervisors may accept the employees' 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 513.37) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

##### **513.5 Advance Sick Leave**

**513.512 Medical Document Required.** Every application for advance sick leave must be supported by medical documentation of the illness.

### 513.6 Leave Charge Adjustments

513.61 Insufficient Sick Leave. If sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

513.63 Disapproved Sick Leave. If sick leave is disapproved, but the absence is nevertheless warranted, the supervisor may approve, at the employee's option, a charge to annual leave or a charge to LWOP.

\* \* \* \* \*

### DISCUSSION AND OPINION

The Grievant's father-in-law, with whom the Grievant had a very close family relationship, was confined to a hospital in Milwaukee area because of a heart condition. The patient suffered a set back on May 24, 1993 which continued on May 25. The Grievant reported to work on his tour on May 25 and upon receiving notification that his father-in-law was sinking, he requested leave and did not complete the tour on that day.

In the absence of contractual leave, and unaware of what his record was in so far as sick leave and annual leave were concerned, the Grievant filed a form 3971 asking for advance sick leave but this was denied by the Postal Service. It appears that the Grievant was quite upset and distressed and was unable to concentrate on his job and therefore he was permitted to leave before the end of his tour. The Grievant's father-in-law remained in a critical condition and died on Tuesday July 26, 1993. With respect to the question of

leave, the Union points out that there was no discussion with the Grievant about advance sick leave and no medical documentation was ever requested to support the sick leave request of the Grievant.

Supervision informed the Grievant that he could only obtain emergency annual leave or leave without pay, since sick leave was not available for situations such as the instant case.

The Postal Service indicated that it was postal policy not to grant sick leave for absences which occur because of death in the family. There was a discussion between the Union and the Company and the Postal Service as to whether the loss of a loved one in the family might leave a person so upset that he is not physically or emotionally fit for duty, but the Postal Service refused to grant sick leave although there was no basis for any suspicion that the sick leave was not justified.

The Postal Service declares that the issue of advance sick leave was first raised at the arbitration hearing and cites Section 513.365 in support of its position. The Union claims that the issue is whether the Grievant was actually sick and whether there was any reason to doubt the Grievant's claim unless there was a charge against the Grievant for abuse of of the sick leave privilege. It is the position of the Union that this case is not one raising an issue as to whether an employee can use sick leave to attend a funeral and argues that the arbitrator should take additional notice, as loss

of a close family member may create justification for medical leave. In fact the Grievant was granted emergency annual leave, but requested a restoration of that leave, and that advance sick leave for the period involved in his absence be allowed. In this regard the Postal Service maintains that this case would add a new basis for sick leave allowance and that the Postal Service should not have the burden of determining whether or not a person in a family situation is sick enough to justify sick leave absence.

The Postal Service stresses it is not required to provide sick leave in cases of this type, but the Union contends that supervisors may accept an employee's statement explaining his absence, and that medical documentation or other acceptable evidence of incapacity for work is required only when the employee is on restricted work leave, or when a supervisor deems documentation desirable for the protection of the interest of the Postal Service under the terms of the ELRM

It is the position of the Postal Service, annual leave may be available for personal and emergency reasons but that additional requirements for personal leave and emergency reasons might have to be charged as LWOP. It is the position of the Postal Service further that it has been its practice to grant emergency annual leave or leave without pay for employees wishing to be absent from duty for circumstances similar to the one in this case. The Union on the other hand relies on the fact that the Grievant has the right to apply

for sick leave in accordance with Section 513 of the ELRM, and the labor agreement between the parties on the basis that the Grievant was so emotionally and mentally distressed that the Grievant could be deemed as incapacitated for duty.

The Union basis its complaint upon its contention that the issue in the instant case was whether the Grievant was actually medically incapacitated because of the situation, and that there was no reason to doubt this condition unless there was a clear charge of abuse against the Grievant.

I have examined the testimony, evidence and arguments of the parties and I find that the core of the issue before me is whether the Grievant was entitled to advance sick leave to cover the situation which occurred when he apparently was incapacitated for duty at a time when his father-in-law, who was in his last illness died as a result of that illness. No one questions the close relationship of the Grievant to his father-in-law both prior to and during the time of the father-in-law's illness. It is, therefore, clear that the Grievant was definitely emotionally upset as well as physically affected by the death of his father-in-law. This information was known to the supervisors of the Grievant at the Post Office.

I find that the situation in the instant case involves such a condition on the part of the Grievant which would justify advance sick leave for the period in question, if current sick leave was not available to him. I find that although under normal conditions an employee who has insufficient sick leave and seeks approval of



absence, the applicant might properly be referred to a charge under Emergency Annual Leave or Leave Without Pay. However, in the instant case the situation was such that the Grievant was clearly ill because of the circumstances involved in the death of his father-in-law and he was, therefore, obviously incapacitated for duty during the period for which he sought advance sick leave.

Furthermore, as indicated above, his superiors were well aware that the Grievant was in this condition, but chose to disapprove his request for advance sick leave on an extremely technical basis. The facts in this case, based upon the circumstances set forth above, clearly justify the granting of advance sick leave which the Grievant requested. It is only in the case of an abuse of a sick leave request that there might be justification for the action of management in the instant case. However, there is no claim by the Postal Service that there was any such abuse by the Grievant. In addition, the facts were known to the Grievant's superiors and provided no basis whatsoever for any suspicion that the Grievant was not requesting justified sick leave.

The facts are that the Grievant was emotionally and physically ill during the period involved in this proceeding and the Grievant was not requested to supply any medical proof of his illness and, furthermore, such proof would obviously not be available at the current time period.

I find that under the circumstances of this case it is clear that the Grievant was definitely incapacitated because of the emergency involved, that the Grievant requested advance sick leave

which was justified under all of the facts and ~~that~~ there is no suspicion of any abuse of the sick leave procedure by the Grievant.

I am, therefore, holding that the grievance should be granted. An award will issue accordingly.

A W A R D

The Postal Service was in violation of the Labor Agreement between the parties when it denied the request of Thomas Rynders for advance sick leave during the period from May 25 to May 28, 1993, and charged him with Emergency Annual Leave.

The Postal Service is directed to grant such sick leave to the Grievant for that period and to withdraw the charge against the Grievant for the Emergency Annual Leave for the same period.

  
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Albert A. Epstein  
Arbitrator

Northbrook, Illinois  
January 21, 1994

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