

C# 06652

IN THE MATTER OF ARBITRATION BETWEEN

United States Postal Service,
Mount Clemens Michigan

Employer

Case No. C4N-4B-C15886

and

National Association of Letter
Carriers AFL-CIO,
Mount Clemens Michigan

Union

APPEARANCES:

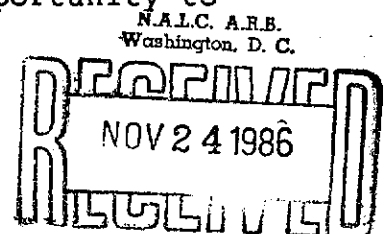
For the Employer: Mr. Leonard L. Brown
Labor Relations Assistant
200 W. Second Street
Royal Oak, MI 48068-94000

For the Union: Mr. Ronald Brown
Regional Administrative Assistant
2722 E. Michigan
Lansing, MI 48912

DECISION AND AWARD

The issue before me for resolution stems from the Employer's refusal to grant the Union's request for medical records information concerning letter carrier Denise Kazmerzak. The Union claiming the Employer's action violative of the 1984-87 National Agreement (Agreement) between the parties invoked the Agreement grievance procedure and submitted it's grievance on or about March 3, 1986¹ which culminated in this arbitration. The Employer justifies its action as being in full conformity with the Agreement. At the hearing of this dispute in Mount Clemens, Michigan on July 30 the parties were afforded full opportunity to

¹All dates are in 1986 unless otherwise indicated.



present evidence, examine and cross-examine witnesses and present argument in support of their respective positions. Post-hearing briefs received from the Union August 30 and from the Employer September 4 were duly considered. The parties are in disagreement on the precise language of the issue. On the basis of the record I believe it may best be stated as follows:

The Issue

Is the Employer's refusal of the Union's request for medical records information concerning letter carrier Denise Kazmierczak violative of the 1984-87 Agreement?

Summary of Evidence

The Step 2 grievance states, "Denise Kazmerzak, a full-time letter carrier has been on light duty for approximately 5 years. For the majority of this time she has been placed in an assistant Voma position and more recently, a secretary position. Both positions hold a day time shift with Saturdays off. She has done little, if any, carrier-craft assignments. The Union has twice requested management for permission to review Denise's medical file for an update on any weight restrictions. There is a good possibility that after 5 years of light duty status that Denise could return to her full time letter carrier duties. It is the Union's understanding that her medical conditions have not been periodically reviewed. There has been many light duty personnel performing various duties, with dramatic changes in their starting times, such as 1:00 a.m. and 4:00 a.m. This is a gross discrepancy in treatment of light duty personnel. Corrective Action Requested: That Denise's medical statements be brought

forward and reviewed to determine her current light duty status. If she is able, that she be returned to her full time letter carrier duties and in any case she be assigned only letter carrier craft light duty assignments such as casing mail, special delivery, express mail, according to her restrictions."

The Employer's Step 2 decision dated March 21 denied the grievance and states in part, "Denise Kazmierczak is being treated for cancer. There are medical records on file substantiating this fact. The Employee & Labor Relations Manual Section 314.3 states that these records are confidential. The only way these records can be reviewed by the NALC is if Ms. Kazmierczak is willing to release them and she refuses to release information to the NALC. At the Step 2 meeting with Union Representative Eric Green stated to me that Ms. Kazmierczak was not going to a medical doctor. Attached is a copy of the letterhead of the latest medical condition report we received on Ms. Kazmierczak. As you can see it is from a licensed M.D. She did agree to the copy of the letterhead. As for the corrective action the NALC requests we have been using Ms. Kazmierczak to case mail on letter route and to deliver Special Delivery and Express Mail. At the present time she is assisting our Voma until our request is approved for an additional Voma Position."

The Employer's Step 3 decision dated April 27 again denied the grievance and states, "The Evidence does not demonstrate any violation of the National Agreement. The installation head has reviewed the grievant's medical records/documentation and found

them to be satisfactory for continuation for light duty. The medical records will not be released without the employee's signed release. Accordingly, this grievance is denied."

The Contentions of Parties

The Union contends. (1) "The Union in its investigation to file a grievance or determine whether or not a grievance existed in areas such as Article 7 and Article 13, found it necessary to request documentation in order to complete its investigation. The documentation was the medical statement of Ms. Kazmierczak periodically supplies the Postal Service in her continuing request for temporary light duty. The position of the Postal Service has been, and still it, that they cannot release the medical information without the consent of Ms. Kazmierczak.

(2) The position of the Postal Service is improper on 2 points:

(a) The medical statement supplied by Ms. Kazmierczak in support of her request for light duty under Article 13 cannot now be considered restrictive information.) (b) Health and Medical Service Handbook (EL-806) provides for the information, even if it is classified 'restricted' to the Union: 'Health and Medical Service Handbook Part 223.31. In certain cases employee medical records may be provided without an employee's authorization to a postal union official under the collective bargaining Agreement to which the U.S.P.S. is a party.' (3) "This information, even though protected under the Privacy Act, must be released in order to comply with the National Labor Relations Act as stated in

Appendix B of the Administrative Support Manual, 'Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses.

Purpose: To provide employees with necessary health care and to determine fitness for duty.

Use-

5. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit'. (4) Health and Medical Service Handbook EL-806 enumerates a list of authorized requestors for medical information including 'authorized Union representatives, acting in that capacity, who have demonstrated that the information sought is relevant and material to collective bargaining.'

The Employer contends (1) "The contention by the Postal Service throughout the procedure has been as follows: The Employee & Labor Relations Manual Section 314.3 states that these records are confidential. The only way these records can be reviewed by the NALC is if Ms. Kazmierczak is willing to release them which she refused to do. The medical records will not be released without the employee's permission. Management consistently has held this position. That has been the position of the Postal Service throughout this procedure that based on the rules and regulations that govern the Postal Service and Employees thereof, we are not of authority to release such

information without the employee's written or verbal consent to do so". In support of this the Employer cites Health etc. Handbook Section 214.13 'That administrative medical records may be made available to Postal Managers and other authorized officials when required for official business'; Section 215 'The medical professional on duty in charge of the medical facility is a custodian of the medical records maintained within that facility. As such, the custodian is legally responsible for the retention, maintenance, protection, disposition and disclosure of these records'; Section 313.31 'That the privacy provides criminal penalties including fines up to \$5,000 for any officer or employee of the federal agency including the Postal Service who knowing that the disclosure of the specific material is prohibited willfully disclosing information about an individual to a person or agency not entitled to receive it'; (2) The Union is not entitled to relief here because it does not appear "that the Union's request is relevant or material. Simply the Union has requested the medical documents, not information relevant to their grievances, but medical documents in of itself and those documents cannot be disclosed. However, when the Union has proven their need to know for certain items from that document that will be determined based on Health Medical Services Handbook Section 223.331". (3) The Employer proposes that the Arbitrator "request that parties to go through the procedures of Section 223.3 - 223.333 "This section in essence states that the Union does not have access to the actual documents, however, may request certain information from that document whereby the

Union's right to investigate and file that grievance and represent the employee in an efficient manner. The Postal Service is not contending that the Union does not have the right to information so that they can process the grievance, we have not got to that point. The Postal Service agrees with the NALC in that the case before the Arbitrator is very simple. The Union requested the documentation and the Employer states that they can not release the information without the written consent of Ms. Kazmierczak. That reason and that reason alone is based on the Privacy Act. Based on that Act Management has no alternative but not to allow the Union to review the actual document."

Relevant Provisions of National Agreement

"Article 13

ASSIGNMENT OF ILL OR INJURED REGULAR
WORK FORCE EMPLOYEES

Section 2. Employee's Request for Reassignment

A. Temporary Reassignment. Any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment. The request shall be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor stating, when possible, the anticipated duration of the convalescence period. Such employee agrees to submit to a further examination by a Public Health Service doctor or physician designed by the installation head, if that official so requests.

D. The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon light duty temporary or permanent or other assignment within the office, such as type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.

F. The installation head shall review each light duty reassignment at least once each year, or at any time the installation head has reason to believe the incumbent is able to perform satisfactorily in other than the light duty assignment the employee occupies. The review is to determine the need for continuation of the employee in the light duty assignment. Such employee may be requested to submit to a medical review by the United States Public Health Service or by a physician designated by the installation head if the installation head believes such examination to be necessary.

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 change 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.

ARTICLE 31 UNION-MANAGEMENT COOPERATION

Section 2. Information

The Employer will make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee.

Relevant Provisions of Health & Medical Service Handbook

"Section 214.13

.13 Availability. Administrative medical records may be made available to postal managers and other authorized officials when required for official business. However, legitimate need-to-know must be established before records will be released.

.31 Content. These records are limited to medical personnel/facilities only. They contain detailed medical information and are, for the most part, maintained in official employee medical folders (case files). Restricted medical records include such information as:

- a. Forms 2485. Both pre-employment and fitness-for-duty examination, all editions of the form. (See Comparison Chart at 214.12.)

215 Responsibility

The medical professional (medical officer, contract physician or nurse) on duty and in charge of the medical facility (Postal Service health or medical unit or the office of a contract physician) is the custodian of medical records maintained within that facility. As such, the custodian is legally responsible for the retention, maintenance, protection, disposition, and disclosure of these records.

221.1 Privacy Act

Medical records are maintained in four Privacy Act Systems of records (See ASM, Appendix B.):

- b. USPS 120.090, Personnel Records--Medical Records.

221.3 Files Maintenance

.31 All correspondence and other records containing restricted medical information must be marked RESTRICTED-MEDICAL (rather than confidential) and filed in locked cabinets. Keys must be kept by medical personnel only. Only medical personnel may have access to these files.

223.3 Union Representative Requirement.

In certain cases, employee medical records may be provided without an employee's authorization to a postal union official under the collective bargaining agreement to which the USPS is a party.

.32 Restriction

Requests from postal union representatives without an employee's authorization must be carefully reviewed. Information that is relevant and material to collective bargaining is available to an authorized representative only when acting officially.

.33 Determination

.331 Required Documentation. When a union representative submits a request to inspect an employee's restricted medical records without the

employee's authorization, the installation head instructs the appropriate labor relations official to obtain specific answers from the union representatives to the following questions (if not provided in the request letter):

- a. What is the precise bargaining issue, grievance, or contemplated grievance involved?
- b. Why does the union claim that the information being sought is relevant and material to resolving the issue or dispute?

.332 Information Refused. If the union representative provides a response to the above questions that the labor relations official believes to be inadequate, the installation head should be advised to deny the request.

.333 Information Provided. If the union representative provides sufficient response and the labor relations official agrees that the medical information is relevant and material, the official will forward the union request to the medical facility where the record is maintained for a disclosure decision.

.34 Action

.341 Medical personnel may ask the labor relations official to assist in a joint decision of relevancy and give the union representative a summary of the necessary information.

.342 If the union representative reviews the summary and determines that it is insufficient for his purpose, he may submit justification to the labor relations specialist and the medical personnel for more explicit disclosure. If they determine that more explicit disclosure is warranted, the medical professional may extract the specific portion of the medical record in question and provide a copy to the union representative. All such requests must be expedited."

"Exhibit 2-1 DISCLOSURE OF RESTRICTED MEDICAL RECORDS

CAUTION: Requesters in this list never automatically receive restricted medical information. In all cases, no more information may be disclosed than is required to satisfy the need.

Authorized Requester Categories

I

- C. Collective Bargaining Representatives:
Authorized union representatives, acting in that capacity, who have demonstrated that the information sought is relevant and material to collective bargaining.

Relevant Provisions of Employee & Labor Relations Manual

"313.3 Penalties

.31 The Privacy Act provides criminal penalties, including fines up to \$5,000, for any officer or employee of a federal agency, including the Postal Service, who:

- a. Knowing that disclosure of specific material is prohibited, willfully discloses information about an individual to any person or agency not entitled to receive it.

- b. Willfully maintains a system of records containing information about individuals without giving appropriate notice in the Federal Register

.32 The Privacy Act also provides criminal penalties, including fines up to \$5,000, for any person who knowingly and willfully request or obtains any record concerning another individual under false pretenses.

Section 314.3 Medical Records

.32 Confidentiality. All medical records and information are to be considered confidential. Such records must be kept under lock when left unattended.

.33 Maintenance. Medical records are not to be maintained in the OPF. They must be maintained separate from all other employee records."

Relevant Provisions of Administrative Support Manual

"Categories of Records in the System:

Name, address, and pertinent medical information, i.e. history, findings, diagnosis, and treatment.

Purpose - To provide employees with necessary health care and to determine fitness for duty.

Use -

5. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that

organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit."

Analysis and Conclusions

The parties are essentially in agreement on the operative facts. Their differences lie in the interpretation of the relevant parts of the National Agreement and the Employer's Manual/Handbook. The core of the Employer's position appears to be that the medical documentation concerning letter carrier Denise Kazmierczak requested by the Union is confidential and the Employer is without authority to release it to the Union without the employee's consent and therefore refused the Union's request. I believe the Employer is mistaken in this position. Article 31 of the National Agreement Section 2 which is the basis of the Union's request and the Employer's obligation to furnish the requested information does not condition the Union's entitlement to the information upon the consent of the Employee involved. Article 31 states, "... Upon the request of the Union, the Employer will (emphasis supplied) furnish such information ...". Also, Health and Medical Handbook Section 223.31-.342 is expressly designed to cover situations where there is no authorization of the employee for the requested information. This Handbook provision states, "In certain cases, employee medical records may be provided without an employee's authorization to a postal union official under the collective bargaining agreement to which the USPS is a party." Administrative support manual Appendix page 44 item 5 provides, "Pursuant to the National Labor Relations Act records from this

system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as a collective bargaining representative of postal employees in an appropriate bargaining unit". Under Article 19 of the National Agreement the Employer's Handbook and Manual referred to above have the force and effect as parts of the National Agreement. Upon the entire record I conclude that the Employer's refusal to grant the Union's request in this case is contrary to the National Agreement Articles 31, 19, Handbook Section 223.3-.342 and Administrative Support Manual Appendix B page 44 item 5.

The Employer's brief cites arbitration Case No. 5STL1651b/MC-C-2651-D (1978) where the grieving Union was National Post Office Mail Handlers etc; the Arbitrator denied the grievance which protested the Employer's refusal of the Union's request for an employee's medical records. I find that case distinguishable. The Union's request in that case was submitted to the employee's foreman who informed the Union that he had no authority to produce the records and that "the Union would have to file a formal request with the Postmaster." The Union failed to file a formal request with the Post Master and instead fled its grievance. The Arbitrator found "the procedures and requests it (the Postal Service) asked the Union to follow are fair and reasonable ...". In the case before us as stated above, the essence of the Employer's defense is the employee did not consent to disclose the information. This defense I concluded is not applicable here for reason stated above. In view of the

conclusions reached above it is unnecessary to rule on the Employer's proposal that the Arbitrator request the parties to utilize the procedures of Handbook Section 223.332.

The Award

- (1) The grievance is sustained.
- (2) The Employer shall in accordance with National Agreement Article 31 Section 2 make available for inspection by the Union the most current medical record information concerning employee Denise Kazmierczak.
- (3) The Arbitrator is reserving jurisdiction of this matter for 30 days from the date of the decision to assist the parties in compliance with the Award if such assistance becomes necessary.

Dated November 16, 1986
Minneapolis, Minnesota


Max Rotenberg
Central Regional Arbitrator