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In the Matter of )  
UNITED STATES POSTAL SERVICE )  
AND )  
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO )  
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CH 046 27

ARBITRATION FILE NO:  
SIN-3U-C 23143  
B. SMITH  
HOUSTON, TEXAS

APPEARANCES

For the Employer: - Holloway Adair, Jr., Labor Relations Executive  
For the Union: - Golden Fagan, Shop Steward

ISSUE

Did management violate the National Agreement when it requested medical certification from the Grievant to substantiate her illness of April 22, 1983?

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 agreement between the parties, the undersigned was selected as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for June 14, 1984, and the Hearing was held on that date in the Board Room, University of Houston Downtown Center, Houston, Texas.

At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision 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.

#### SUMMARY STATEMENT OF THE CASE

Brenda Smith (hereinafter sometimes referred to as "Grievant ") is a full-time carrier at the Almeda Station in Houston, Texas. On April 22, 1983, the Grievant completed a Form 3996, requesting assistance in delivering her route or, in the alternative, overtime compensation, because the volume of mail was over the normal standard. Supervisor Cockrell questioned the need for overtime, and thereafter, the Grievant stated that she was ill and needed to go home and take some medication. Supervisor Cockrell required the Grievant to provide medical certification for her illness, and the Grievant did so. A grievance was subsequently filed on May 3, 1983, and a Step 1 meeting held on May 3, 1983. The grievance was denied on May 5, 1983. Pursuant to Article 15 of the National Agreement, the grievance was appealed to Step 2 of the grievance procedure on May 12, 1983, alleging a violation of, but not limited to, Articles 2, 3, 19, and past practice, and stating in relevant part as follows (Joint Exhibit No. 2):

**FACTS: WHAT HAPPENED** On Friday 4/22/83 I turned in a 3996 requesting aux assist. and or O/T for 3-1/2 hrs. in that the mail vol. was excessively heavy and my route is O/S [out of standard]. Reasons for request for O/T was noted on 3396. I was harassed intimidated coerced by 204-B Cockrell to the point that I was unable to function. I had been pushed to the point of nervousness that I had to take off immediately to see Dr. who directed me to take off 2 wks. because of the state I was in from the baggering of 204-B Cockrell.

**UNION CONTENTIONS: REASONS FOR GRIEVANCE** Please note Ms. Smith attendance record for 1983. Ms. Smith has only used 5-1/2 hrs. S/L this year and has worked more O.T. than any employee in this unit this year. In the presence of Mr. G. Fagan, Shop Steward, Ms. Smith was

ordered to bring a written statement from a professional person. On Sat. 4/23/83 R.K. Johnson (white male) had a confrontation with Mr. Cockrell concerning his office performance after which he was taken in the office by Mgr. Kulhanek after stating he was going home sick he was not required to bring proof.

**REQUESTED RESOLUTION:** Ms. Smith be reimbursed for Dr. bill \$48.00, medication \$13.94, and mileage 120 miles. All harrassment of Ms. Smith cease immediately and mgr. take the responsibility of Ms. Smith O/S rt. until such time as the route is ajusted as per written request.

The grievance was denied at Step 2 in a decision rendered on May 31, 1983, which states in relevant part as follows (Joint Exhibit No. 2):

Carrier Smith was not harassed by Supv. Cockrell. When he questioned the need for overtime, the grievant claimed illness, and acceptable documentation to substantiate her illness was properly required. It is noted that the grievant has used more than 5-1/2 hours sick leave, and there was no proof submitted to substantiate that she has performed the most overtime. Notwithstanding, these reasons would not be acceptable for excusing the grievant without requiring proof. It is also noted that she was off more than 3 days and was obligated to provide the acceptable proof.

The grievance was appealed to Step 3 on June 24, 1983, processed through the various steps of the grievance procedure, and ultimately appealed to arbitration on July 25, 1983.

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 2**

### **NON-DISCRIMINATION AND CIVIL RIGHTS**

#### **Section 1. Statement of Principle**

The Employer and the Unions agree that there shall be no discrimination by the Employer or the Unions against employees because of race, color, creed, religion,

national origin, sex, age, or marital status or because of a physical handicap without danger to the health or safety of the physically handicapped person or to others.

\* \* \*

### 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;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary actions against such employees;

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;

E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

\* \* \*

### 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 dated January 22, 1979, (Joint Exhibit No. 3) considered pertinent to this dispute by the parties are as follows:

510 LEAVE

511 GENERAL

511.1 Administration Policy

The U. S. Postal Service policy is to administer the leave program on an equitable basis for all employees, considering (a) the need of the USPS and (b) the welfare of the individual employee.

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.
- d. Record leave in accordance with Handbook F-21, Timekeepers Instructions.
- e. Control unscheduled absences (see 511.4).

.22 Postal Data Centers (PDCs):

- a. Maintain official leave records.
- b. Provide leave data to installations when employees are being separated.

.23 Postal employees:

- a. Request leave by completing Form 3971.
- b. Obtain approval of Form 3971 before taking leave--except in emergencies.
- c. Avoid unnecessary forfeiture of annual leave.

511.3 Eligibility

.31 Employees covered by the leave program are:

- a. Full-time employees.
- b. Part-time regular employees.
- c. Part-time flexible employees.

.32 Employees not covered by the leave program are:

- a. Temporary employees, including leave replacements for postmasters in CAG L post offices.
- b. Casual employees.
- c. Employees who work on a fee or contract basis, such as job cleaners.
- d. Employees appointed off the street who work as officers-in-charge at CAG L post offices.

511.4 Unscheduled Absence

.41 Definition. Unscheduled absences are any absences from work which are not requested and approved in advance.

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

- a. Inform employees of leave regulations;
- b. Discuss attendance records with individual employees when warranted;
- c. Maintain and review Forms 3972, Absence Analysis, and Forms 3971, Request For, or Notification of, Absence.

.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.

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### 513.3 Authorizing Sick Leave

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#### .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.

\* \* \*

#### .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.

.362 Over 3 Days. For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work.

.363 Extended Periods. Employees on sick leave for extended periods are required to submit, at appropriate intervals, but not more frequently than one (1) time per pay period, satisfactory evidence of continued incapacity for work unless some responsible supervisor has knowledge of the continuing incapacity for work.

.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. Such documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his normal duties for the period of absence. Normally, medical statements such as 'under my care' or 'received treatment' are not acceptable evidence of incapacitation to perform duties. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.

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#### POSITION OF THE PARTIES

##### The Position of the Union:

The Union takes the position that the Employer has acted inconsistently in requiring that the Grievant supply medical documentation of her absence. The Union maintains that management does not apply its policies equally and that management is therefore abusing its discretionary authority in requiring documentation from some employees and not others. The Union contends that in the present case, management's action constitutes discrimination against the Grievant in violation of the National Agreement.

##### The Position of the Employer:

It is the position of the Employer that no abuse of discretion took place in requiring that the Grievant supply medical documentation for her absence on the day in question. The Employer contends that management has the discretion to determine when documentation will be required for unsubstantiated absences, and the determination of whether such discretion has been abused is based upon the factual circumstances existing at the time of the incident. Thus, the Employer maintains that it was within the right of management to require documentation from the Grievant and that no violation of the National Agreement occurred.



### OPINION

Determinative of this matter is whether the Employer acted within its contractual rights in requiring documentation of the Grievant's need for medical attention or whether, in so doing, the Employer engaged in a discriminatory practice by treating the Grievant differently from other employees.

The record submitted indicates that the Grievant had requested overtime compensation or assistance in delivering her route on the day in question as the volume of mail was excessive. When this request was denied, the Grievant seemingly had a confrontation with her supervisor and shortly thereafter completed a request for sick leave. The supervisor is shown to have told the Grievant that documentation for her absence would be required. The Union maintains that this request discriminated against the Grievant inasmuch as the supervisor permitted another employee to go home on sick leave without being required to document his illness. Under the terms of the Employee and Labor Relations Manual, Part 511.2, (Joint Exhibit No. 3) employees have a duty to work as scheduled or provide an adequate reason for not doing so. For those employees not on restricted sick leave, Part 512.361 of the Employee & Labor Relations Manual gives the Employer the discretion to accept an employee's stated reason for absence, or, in instances where a supervisor deems it appropriate, to require adequately documented justification, whether it be a physician's statement or some other form of documentation. It appears to the Arbitrator, however, that this is not an unlimited right of the Employer, for in those instances where it can be persuasively demonstrated that the Employer has abused its discretion, it is appropriate that the aggrieved employee be provided with a remedy.

In the present case, it is claimed by the Union that the supervisor

acted in a discriminatory manner in requiring documentation for the Grievant's illness. With this, the Arbitrator cannot reasonably agree as no materially probative evidence can be found in the record submitted to justify such a finding. Rather, the testimony presented indicates that the Grievant had complained of illness on April 21, 1983, the day prior to the incident made the basis of this grievance. Supervisor Cockrell is shown to have stated that the Grievant's illness on April 21, 1983, together with the Grievant's claimed illness on April 22, 1983, suggested to him that documentation of the Grievant's inability to work was necessary. Although it is urged by the Union that the Grievant was harassed, intimidated, and coerced by the failure of the supervisor to adjust her route so as to allow for auxiliary assistance, and that as a result of badgering by Supervisor Cockrell, the Grievant was pushed to the point of nervousness and required to see a doctor, it seems to the Arbitrator that the supervisor's determination may nevertheless be viewed as having been proper under the circumstances described and then known to him. It is uncontroverted that at the time of the incident, the Grievant had used illness as the reason for leaving work on April 21, 1983. When the Grievant again claimed illness after being denied auxiliary assistance on the following day, it was, in the judgment of the Arbitrator, reasonable for the supervisor to consider the possibility that the Grievant was not truly ill and to require acceptable documentation to ensure that the Grievant was indeed unable to work. While as pointed out by the Union, another employee of a different race than the Grievant was allowed by Supervisor Cockrell to go on sick leave the following day, this, standing alone, is not sufficient to support a finding of discrimination or abuse of discretion on the part of the Employer.

In light of the above findings, it is deemed by the Arbitrator to be unnecessary to this opinion that he further consider the propriety of the

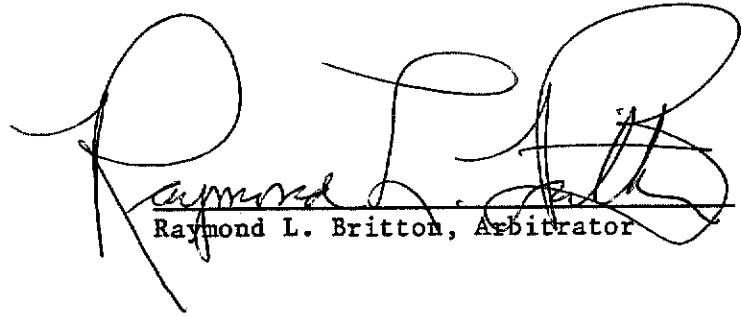
remedy sought by the Union, namely, whether the Grievant, Ms. Smith is entitled to reimbursement for medical expenses.

AWARD

For the reasons given, the grievance is denied.

DATE:

January 3, 1985



Raymond L. Britton, Arbitrator