

C# 09903

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION)

between)

UNITED STATES POSTAL SERVICE)

and)

NATIONAL ASSOCIATION OF LETTER
CARRIERS)

VICTOR TAYLOR

NORTHVILLE, MICHIGAN

C7N-4B-D 18499

GTS 0005172

BEFORE:

James P. Martin

APPEARANCES:

For the U.S. POSTAL SERVICE:

Richard Karlowski

For the UNION

Paul Diebolt
Timothy Manning
Lavonia, Michigan

Place of Hearing:

Date of Hearing:

January 23, 1990

AWARD:

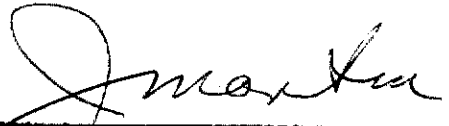
That Management did not violate the Agreement when it placed the grievant in an off-duty (without pay) status; that the grievance is therefore denied.

RECEIVED

MAR 21 1990

Jack R. Sebolt

March 9, 1990


James P. Martin
Impartial Arbitrator

ISSUE

Did Management violate the Agreement when it placed the grievant in an off-duty (without pay) status on September 23, 1988? If so, what is the remedy?

NATURE OF CASE

The grievant, a Letter Carrier since 1980, had an attendance problem which was illness related. He was diagnosed as suffering from Meniere's Syndrome, an ailment causing vertigo, staggering and falling down. A major attack late in June, 1988 caused him to be off work from June 24th through August 15th, at which time he received a return to work authorization from his personal physician. The problem was reportedly under control at that time. However, on September 16, 1988, he suffered a relapse, and was put off work by his Doctor for four days. The Postmaster determined that a fitness for duty examination was called for, and arranged for the examination on September 22nd. The grievant reported for the examination, but during the course of the examination, refused to submit to a urine test. The Doctor returned the Fitness for Duty Report to the Postmaster marked, Not Fit For Duty, and the

grievant was placed in an off-duty status without pay. The grievant, the following day, submitted a return to work authorization from his personal physician, but Management informed him it was necessary for him to have a fitness for duty examination taken and passed prior to his return to duty. Nothing occurred for approximately two weeks, at which time the grievant was given a Notice of Removal. The grievant then reported for a fitness for duty examination, and was found fit. The Notice of Removal was set aside through the grievance process. The instant grievance asks pay for the period when the grievant was in an off-duty without pay status, as a result of his refusal to complete the fitness for duty examination.

The examining Doctor has died since the incident, and the Nurse has retired and left the area. At the Hearing, for the first time in the record, the grievant claimed that he refused to complete the examination because the Nurse mocked his condition, and he therefore refused to see the Doctor. His testimony at the Hearing did not involve any refusal to take a urine test.

According to the Union, the grievant can be sent for a fitness for duty examination, but he must be informed of the reason for the examination. There was no

basis for a urine examination in the case of the grievant, because his problem was well known, and documented by his own physician. The examining Doctor was also not sent the records of the grievant's personal physician. The emergency suspension was improper because no emergency existed. The P-11 Manual, Paragraph 343.34 provides that failure to report for a fitness for duty examination is just cause for disciplinary action, but only when there is not an acceptable reason. The grievant had a valid reason to refuse to finish the test, and the action of Management was therefore without proper cause. The action was punitive, not corrective, and the grievant should be restored to all earnings lost as a result of the improper placement in an off-duty status.

According to Management, the fitness for duty examination was based upon a prior major problem, following which the grievant was returned to duty and had further attacks when it was anticipated the problem was resolved. When the grievant declined to take the necessary exams as part of the fitness for duty examination, the physician could not certify him as fit for duty, and in fact stated on his examination report that the grievant was not fit for duty. The Postmaster could not put the grievant to work

under those circumstances, and placing him in an off-duty status without pay was the appropriate action to take. Management in no way violated the Agreement, and the grievance is without merit and should be denied.

DISCUSSION

The first point to be covered is the right of Management to send the grievant for a fitness for duty examination. That right is clear, and does not require the concurrence of the grievant. Management had a particularly valid reason in this case, since the grievant was absent for almost two months with a condition which made it dangerous for him to carry his route, and after returning purportedly cured, had a relapse within a month. The grievant did report as directed, but, according to the grievance record, refused to take a urine test. The grievant's testimony at the Hearing set out a different and new reason. He testified that he was affronted and insulted by the actions of the Nurse in denegrating his medical condition. The grievant was perfectly safe in making such claims, inasmuch as the Doctor and the Nurse were either dead or gone. It is not strange that the grievant did not make

this claim earlier in the case, because I believe he began to lie about it at the Hearing. When the grievance started, the Doctor was not dead, and the Nurse might have been available to rebut his testimony. I find that there is no merit whatsoever to the grievant's claim that he refused to continue with the tests because he was insulted and offended.

Based upon the record made up to the Hearing, the grievant refused to take a urine test for no established reason, except that he chose not to take it. Since the grievant refused to cooperate in the examination, the Doctor was unable to certify him as fit for duty, and instead certified him as not fit for duty. The Postmaster had no option; he could not put the grievant back on duty when he was found to be not fit. The actions taken by the Postmaster were totally appropriate, and in no way a violation of the Agreement.

The Union has alleged that the action taken by the Postal Service was punitive, not corrective. The facts reveal otherwise. As a result of the grievant's refusal to take the fitness for duty examination, he was informed that he would not be returned to duty until he did. Taking another vacation from work for several weeks, in apparent indifference to his obligation to work, the grievant was

suddenly jolted into action by being issued a Notice of Removal. This got him back to the Doctor, where he took a fitness for duty examination and passed it. This is certainly corrective action, and in fact, seemed to be the minimum that could be done to get the grievant's attention. I find that Management did not act punitively against the grievant, but rather, correctively and successfully.

Based upon the above, I find that the grievance is meritless, and is therefore denied.