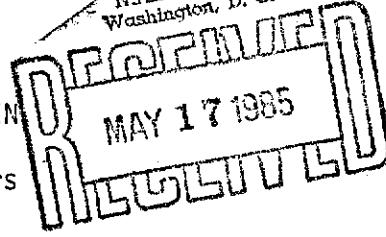


C# 04909

NALC A.R.B.
Washington, D.C.



IN THE MATTER OF AN ARBITRATION BETWEEN

National Association of Letter Carriers
Branch Number 421

AND

United States Postal Service
San Antonio, Texas

Case No. SIN-3U-C 25463
Grievant: R. Sifuentes
Hearing date: April 25, 1985
Arbitrator: Elvis C. Stephens

APPEARANCES

For the Union: Alex Alcorta

For the Service: Martin I. Rothbaum, Director, E&LR, Dayton, Ohio

ISSUES

1. Was there a resolution of the grievance at Step 2?
2. Did Management violate Article 10.5.D of the National Agreement and Section 513.36 of the E&LRM when it required the grievant to furnish medical documentation in support of his sick leave request? If so, what is the proper remedy?

INTRODUCTION AND BACKGROUND

On April 25, 1985 there was an arbitration hearing on the above referenced grievance in San Antonio, Texas. The case had been assigned to the arbitrator by the Southern Regional Office through the procedures agreed upon by the parties. During the hearing the parties had opportunity to introduce documents and present and cross examine witnesses. Closing arguments were made at the end of the hearing. It was agreed that arbitration awards supporting management's position would be mailed later. These were received by the arbitrator by May 13, 1985.

At the start of the hearing management's advocate raised the question of whether the grievance had been resolved at Step 2. There was a grievance disposition in the file which had been signed by a management representative, but not a union official.

Mr. Joe Flores testified that the management representative often states at Step 2 that he will draft some language for consideration, and will send a letter with this language. If Mr. Flores agrees with the

proposed resolution, he signs the letter. If not, then he appeals the grievance to Step 3. Mr. Trevino, the steward who handled Step 2, testified that he and the management advocate had not reached any resolution of the grievance. Mr. Rothbaum, management's advocate at the hearing, telephoned Mr. Solis, the management representative who had sent the letter. After this conversation, Mr. Rothbaum agreed to proceed with the hearing on the merits of the grievance.

The grievance arose out of the request of the grievant for sick leave on July 7, 1983. On the previous day the grievant was informed that he was to have a route check on July 7, 1983. He came to work and found that his mail volume was light. He complained to his supervisor of having a headache. He requested the route check be postponed, but his supervisor would not do so, since he had already arranged for another supervisor to take his position while he accompanied the grievant on the route.

The grievant called the Union President and requested help in postponing the route check. This was not successful. The grievant told his supervisor, although not in these specific words, that if he had to have a route check, he would go home sick. If the route check could be postponed, then he would carry his route. The supervisor would not postpone the route check and when the grievant requested sick leave, he was told to furnish medical documentation when he returned to work.

POSITION OF THE UNION

The union contends that the testimony and exhibits prove that management has violated Article 10.5.D and Section 513.361 of the E&LRM. Medical documentation was not required for the protection of the interests of the Service.

The grievant came to work with a headache. He had requested a route check, but when he came to work with a headache he felt that he could not perform 100%, so he wanted the route check postponed. After asking for this postponement, the grievant was harassed by the supervisor. This harassment made his headache worse. He finally had to request sick leave. When he did the supervisor was more concerned with the scheduled route check than the health of the grievant.

The grievant had had several route checks before, and had never had a problem as a result of a check. The supervisor had a personality conflict with the grievant. The supervisor allowed other employees to take sick leave without requiring medical documentation. Also, the grievant was not on restricted sick leave. Arbitrator Britton, in case No. S1N-3A-C 8327, ruled that medical documentation is to be required only when the supervisor has a reasonable belief that such documentation is necessary to protect the interests of the Employer. Britton mentioned the situation where the employee has had a problem with taking too much sick leave. Without some reason such as this, a request for medical documentation becomes arbitrary and capricious. Also, where the demand is made of some employees and not others, this may be evidence of arbitrary or capricious action on the part of the supervisor. This was the case here.

POSITION OF THE EMPLOYER

The article and section of the E&LRM cited by the union allow the requirement of medical documentation if an employee is on restricted sick leave, or if the supervisor deems it necessary to protect the interests of the employer. In the instant case, the supervisor had made arrangements for some other manager to cover his position while he accompanied the grievant on his route. This was additional cost to the employer, as was the actual sick leave. In addition, when a substitute carries a route, he or she cannot do so with the same efficiency as the regular carrier. These factors are sufficient to warrant medical documentation.

The grievant came to work and saw that the volume of mail for his route was light. He did not want the route check for that reason. He called the Union President, not his steward, and requested that the president get the check postponed. When it appeared that this could not be done, he then told his supervisor that if the route check was going to be made, he would take sick leave, but if the check could be postponed, he would carry his route.

The doctor's diagnosis was cephalgia, which is a mild headache. The certificate did not state that the grievant was incapacitated for work.

The grievant and the union steward, Mr. Trevino, both testified that the supervisor treated the grievant different when he held a discussion with the grievant on the workroom floor instead of in an office. However, later the steward testified that the supervisor commonly talked to employees on the floor.

The supervisor had a good faith doubt that the grievant was actually sick enough to request sick leave. This is especially true when the grievant offered to carry the route if the route check was postponed. Therefore, the requirement for medical documentation was not a violation of the contract or the E&LRM.

The employer cites two arbitration cases in support of its position. In case No. C8N-4D-C 28202 Arbitrator Seidman ruled that the Service had cause to require documentation from a carrier who decided to go home sick when he was given additional mail to carry. In case No. C8C-4J-C 15600, Arbitrator Cohen ruled that the supervisor did not abuse his discretion when he required documentation of a clerk who complained about his bad knee. He had filed some 59 requests for leave, mostly sick leave, in a period of sixty weeks. Cohen stated that since the supervisor had requested documentation for only one of these requests, this was not unreasonable. The employer had the right to require, from time to time, proof of the grievant's current condition with respect to his injury.

DISCUSSION AND OPINION

The relevant part of the E&LRM is Section 513.361, which states in part: "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 it desirable for the protection of the interests of the Postal Service."

The crucial element in this case is whether or not the supervisor had reasonable cause for requiring medical documentation to support the grievant's request for sick leave. Based on all the factors brought out in the hearing and the documents introduced, the arbitrator concludes the supervisor did have sufficient reasons to require documentation.

The grievant came to work knowing there would be a route check. He had not called in before his reporting time complaining about his headache. However, when he discovered that his mail volume was light, he tried to get the route check postponed. A request to the supervisor was not sufficient to cause the postponement, therefore the grievant called the union president and enlisted his aid. However, the route check was not postponed.

The next action on the part of the grievant was to inform his supervisor that his headache was worse and he did not think that he could carry his route if a check was going to be made. He agreed on cross examination that although he did not say it in the same words, he let his supervisor know that if the route check was not postponed that he would take sick leave, but if the check was postponed, he would carry his route. Under these conditions, and considering the arrangement made by the supervisor in preparation for the check, it was reasonable for the supervisor to require medical documentation. Such action under the circumstances in this case does not violate the provisions of the E&LRM.

The union had alleged that the supervisor discriminated against the grievant by talking to him on the workroom floor, but there was testimony later by the steward that this is not uncommon. In addition, the fact that only about 15 cases of medical documentation being required had occurred in the past five years lends support to management's claim that it is not arbitrary and capricious in making such requirement.

AWARD

1. There was no resolution reached at Step 2.
2. The requirement for medical documentation did not violate the National Agreement or the E&LRM. Grievance dismissed.

Date: May 14, 1985

Denton, Texas

Elvis C. Stephens

Elvis C. Stephens, Arbitrator