

26022 (CSC-4J-C)

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VOLUNTARY ARBITRATION PROCEEDINGS

INDUSTRIAL
RELATIONS

CSC-4J-C 26022, Brogan, C.
Milwaukee, Wisconsin

THE UNITED STATES POSTAL SERVICE, :

The Employer :

-and-

: OPINION AND AWARD

AMERICAN POSTAL WORKERS UNION, :

The Union. :

APPEARANCES

For the Employer:

James K. Hellquist, Manager, Arbitration Branch,
Central Region

For the Union:

Larry Gervais, National Vice President
Catherine Brogan, Grievant

GEORGE E. BOWLES
ARBITRATOR
906 South Main
Plymouth, Michigan 48170

Dated: December 17, 1981

FROM THE OFFICE OF
JOHN P. REYNOLDS
DIRECTOR
INDUSTRIAL RELATIONS
AMU AND-CIO

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SUBMISSION

The hearing in this case was scheduled and conducted in a conference room at the United States Post Office, 345 West St. Paul, Milwaukee, Wisconsin, on November 17, 1981, beginning at 11:00 a.m. The parties presented both evidence in the form of exhibits and testimony. Arguments were presented at the close of the taking of evidence, and post-hearing briefs were not filed.

ISSUE

Was Catherine Brogan properly required to furnish medical verification as requested by Supervisor Don Plautz in order to be excused from overtime on January 3, 1981?

DETAILED STATEMENT OF FACTS/ CONTENTIONS OF THE GRIEVANT

"Catherine Brogan requested to be excused from overtime on Jan. 3, 1981. She is a volunteer but had been ill with a cold and flu for several days. Jan. 3rd was her off day and she wanted to stay home in bed so as to be well on her normal work days. Supervisor Don Plautz refused to approve her 3971 at this time. He ordered her to go to an emergency hospital as he wanted proof that she needed medical attention on that day. The flu has been going around at the P. O. and its being spread to everyone as Mr. Plautz knows this. Catherine Brogan has a good record on attendance as her 3972 will show she had one frequency of sick leave in 1980 in February. She was excused from overtime during 1980 but they weren't all due to sick leave. Now Supervisor Plautz has stated that before she can be excused from anymore illnesses for overtime that she will have to bring in medical verification. The grievant did finally get a doctor's appointment on 1-7-81 and a copy is in file. The doctor did excuse her from 1-3-81 through 1-7-81 due to her infection, so Mr. Plautz had to approve her 3971."

CORRECTIVE ACTION REQUESTED

"Postal Service reimburse grievant for her doctor bill of 1-7-81."

EMPLOYER STEP TWO ANSWER

"The union contends that the grievant should be reimbursed for expenses incurred in providing medical certification for her absence of January 3, 1981. The union alleges that the supervisor told the grievant to go to an emergency hospital and to provide him with medical certification. This instruction violates Articles X and XIX of the National Agreement, as well as Chapter 510 of the ELM."

Management contends that the grievant was properly required to verify her sick absence of January 3, 1981. The grievant subsequently verified her absence on January 7, 1981, and her absence was approved, excusing her from overtime on January 3rd. The supervisor requested such verification in accordance with provisions of Articles X and XIX of the National Agreement, as well as Chapter 531.31 of the ELM. The corrective action requested by the union is inappropriate.

Accordingly, this grievance is denied."

THE TESTIMONY

The Grievant testified that she was an employee with eight years seniority come January, 1982. About midnight, on January 2, 1981, she asked Supervisor Plautz to be excused for working overtime January 3, 1981, and he disapproved her formal request; when she questioned him as to the reason why, he told her that she had "tried to pull this on him last year". She asked for an answer and he didn't give any. She had had a bad cold all week and had sought medical assistance, having seen the nurse twice. The nurse told her to go home, but she chose to stay. Supervisor Plautz told her, "Thank you, I appreciate it". She further testified that her sick leave record was good, and she was not on restricted sick leave. As to external symptoms, she used kleenex, and it was necessary for her to stop her machine on occasions. She testified she had talked to Supervisor Plautz during the week and that he knew her condition.

On cross-examination, she responded that she had had a cold that week and had worked her 40 hours, with Sunday being her normal off day. When asked why January 3rd was any different, she said she needed a day off to recover, since she had been hanging out all week. When asked on cross-examination why she signed up for overtime, she responded that she did not expect to work 10 hours a day. She conceded that she had given a number of reasons for refusal of overtime, including her bronchitis or sore throat, and other reasons such as car trouble and moving.

Supervisor Plautz testified on cross-examination that he asked for medical verification "in the interest of the Postal Service" - that he decided he "needed additional testimony to make a proper decision". He further testified that it "seemed, though, she wasn't really sure what she was saying". On cross-examination he conceded that he knew that she had gone to the nurse, but he

couldn't recall whether she appeared sick. He also testified he didn't recall whether he doubted she was sick on January 2nd. He said she didn't appear to be sick, when questioned further.

When questioned on re-cross-examination as to whether it was reasonable for Supervisor Plautz to ask for medical certification, the Grievant said, "Yes".

THE EXHIBITS

The Arbitrator has studied carefully a number of times the exhibits received. On April 27, 1981, James D. Oster, MSC Manager/Postmaster, wrote the Grievant a Letter of Commendation in which he stated, among other things:

"Congratulations on your fine attendance record during the past year. An excellent record such as this is principally due to your personal efforts as we all catch colds, feel sick, etc. and sometimes would prefer to stay at home.

Your record of not using sick leave for a one-year period has significantly helped the Milwaukee Post Office maintain a high level of service to the community and is to be commended."

The Letter of Commendation was placed in her official personnel folder.

Introduced into evidence at the request of the Employer were some 3971 forms, A Request For or Notification of Absence. Overtime was involved on 5 occasions: January 6, 1980, January 18, 1980, January 30, 1980, March 8, 1980, and October 24, 1980. January 6th involved the seventh day, and under remarks were the words, "personal problems". On January 8th, the 3971 form contained the remarks, "request to be excused from O.T. - female problems". The 3971-for January 30th, as to type of absence, listed "O.T.", and an approval, but no remarks or explanation of official action. The March 8th 3971 listed as the type of absence "O.T. day". As to the week in question, the nurse's notes show that on 12/30/80, the Grievant had a cough and temperature of 99°, and medication was prescribed. On 12/31/80, a sore throat is noted, with a temperature again of 99°, and with medication prescribed, including Cepacol, Chloroseptic, and nasal spray. There was a second visit to the nurse on 12/31/81, with a note, "feeling worse temperature 99.8°, Tylenol tablets - refuses to go home". The entry for 1/2/81 shows, "cold and cough persist - temperature 99° with medication prescribed.

The 3971 form for January 2, 1981, under remarks, shows "To be excused from O.T. 1/3/81 - ill - upper respiratory infection and fever". Official action was "disapproved pending medical" under the signature of Don Plautz.

CONTENTIONS OF THE PARTIES

The Union claims violation of Articles X and XIV of the National Agreement when the medical documentation was required, and asked that the Grievant be reimbursed for the cost to her, namely, Twenty-Four Dollars (\$24.00). It is argued that the Supervisor was aware of her illness; that the Postal Service nurse had urged the Grievant to go home, so that the Supervisor's request for medical verification was unreasonable. The Grievant is an exemplary employee, and stayed on an overwhelming majority of the time. She received official commendation for attendance, and was not on restricted sick leave. It is reasoned that the test is whether a reasonable person knowing all of the facts would require medical verification.

The Employer urges that the Grievant chose to be on the overtime desired list, and had a responsibility to work overtime. She is trying to get the best of two worlds - to be on the overtime desired list and then to pick and choose her days. So far as a request for reimbursement, the Contract does not say that medical statements are paid for by the Employer. The Supervisor's determination was made in good faith, and the Union is trying a "back door" assault on the Employer's absenteeism policy. It is pointed out that the Employer is not obligated to accept the information supplied by an employee - it is permissive on his part, and he has discretion to request verification. It was argued that the Grievant has used the whole gamut of reasons for being excused for working overtime. Emphasized was that the Grievant on cross-examination said she didn't feel the Supervisor was incorrect in seeking medical certification. The action of the Supervisor was for the protection of the Postal Service, and an employee should not be permitted double recovery, insurance reimbursement and payment by the Employer.

DISCUSSION

Article VIII, Hours of Work, provides under Section 5 as to overtime assignments:

"When needed, overtime work for regular full time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

- a. Two weeks prior to the start of each calendar quarter, full time regular employees desiring to work overtime during that quarter shall place their names on an overtime desired list. The list will be established by craft, section or tour in accordance with Article XXX, Local Implementation, C.I., except in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis. Those absent on leave or on light duty shall be passed over...
- f. Excluding December, only in an emergency situation will a full time regular employee be required to work over 10 hours in a day or 6 days in a week."

Article X, Leave, Section 5, Sick Leave, provides under

(e):

"For periods of absence of 3 days or less, a supervisor may accept an employee's certification as reason for an absence."

Section 3(6), Documentation Requirements of the Employee and Labor Relations Manual provides at .361:

"Three days or less. For periods of absence of three 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 513.16), or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

The general principles respecting the case are not difficult to state. Medical documentation is the exception, not the routine case. Medical documentation, where the absence is to be three days or less, is only required when the employee is on restricted sick leave, which is not the instant case, or when the supervisor "deems documentation desirable for the protection of the interests of the Postal Service". The Employer representative, in this case Supervisor Plautz, has discretion, but it is not an unfettered or unlimited discretion. The exercise of discretion must be reasonable, and each case must be examined on its own particularizing facts. It is not a proper exercise of discretion to consider, or decide, that medical verification will be required simply because of passing whim or bare suspicion. There must be some factual basis for a supervisor to decide that for the protection of the employer, medical documentation is desirable, because that which he has by way of information before him is not sufficient for his decision. The test, then, is the familiar one of abuse of discretion, an absence of that which might be termed

arbitrary, capricious or unreasonable under the facts. Controlling so far as the factual context, is what was before Supervisor Plautz when he decided on January 2, 1981, to disapprove.

The evidence before the Arbitrator showed without any doubt that the Supervisor knew that the Grievant had been having health difficulties during the week; the Postal Service nurse had attended the Grievant, and her notes are explanatory of the conditions she found on each of the several visits. In his testimony, Supervisor Plautz did not state why the information available to him from the nurse in the nurse's notes was unconvincing or insufficient for the exercise of his discretion. The overall attendance record of the Grievant was good as shown by the Letter of Commendation. The daily sheet does show, as examined by the Arbitrator, that the Grievant had been excused 12/19, 12/20, 12/21, and 12/23. The only explanation given to either the Grievant or the Arbitrator by Supervisor Plautz was that she had "tried to pull the same thing last year". Before the Arbitrator, the Supervisor did not explain what he meant.

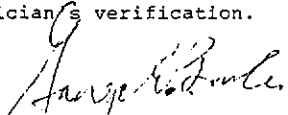
The routine case is to be distinguished from the overtime case, where the employee has voluntarily asked to be placed on the desired overtime list. When an employee makes such a request, it could be reasonably expected that the employee will be cooperative in working overtime. The Employer's position is well taken that no employee should be able to pick and choose the best of both worlds - to work the overtime, but to pick and choose the time it is to be worked. Yet, the Contract is clear beyond any doubt, in Article VIII, Hours of Work, Section 4, Overtime Work, sub-Section (f), that excluding December, only in the emergency situation is a full time regular employee required to work over 10 hours a day in a day or 6 days a week. This case is a January not a December case.

The records admitted in evidence show the Grievant as having recurrent bronchial problems; there is no showing whatever that she was not ill during the week; that she received attention from the nurse on a number of occasions, including the administration of medication; that she elected not to go home when the nurse urged her to do so, and indeed, was commended by supervision for staying. The Grievant's explanation that she did not want to work overtime in order to rest up so that she could work her regular hours the next week is a plausible explanation. On the basis

of all that evidence which was offered before him, the Arbitrator cannot conclude that the Employer made a record showing persuasive factual basis for the exercise of the Supervisor's discretion. The Employer, in short, did not demonstrate "documentation desirable for the protection of the interests of the Postal Service".

THE REMEDY

The Arbitrator in case number CRN-4F-C 13163, a Toledo case, decided in April, 1981, set forth in full his reasoning as to remedy. It is his view that the Arbitrator does have power and jurisdiction to fashion an appropriate remedy, which in this type of case, is reimbursement. However, it is elementary that there cannot and should not be double recovery. No employee should be able to seek payment by the Employer after having already received payment through an insurance carrier. The aim and purpose of the remedy is to make the employee whole, not to enrich the employee or penalize the Employer. Accordingly, the Award will require the parties make a determination as to whether the Grievant has or has not been reimbursed already for her expenditure of Twenty-Four Dollars (\$24.00) for a physician's verification.


GEORGE E. BOWLES, ARBITRATOR

A W A R D

ISSUE:

Was Catherine Brogan properly required to furnish medical verification as requested by Supervisor Don Plautz in order to be excused from overtime on January 3, 1981?

ANSWER:

No. The Grievant is entitled to reimbursement in the amount of Twenty-Four Dollars (\$24.00), the actual cost to her in a payment to her physician for the medical certification, provided, however, that the parties shall determine whether or not the Grievant has already received reimbursement through an insurance carrier, and if that be the case, she shall receive nothing in payment as a consequence of this Award.

Dated: December 17, 1981


GEORGE E. BOWLES, ARBITRATOR