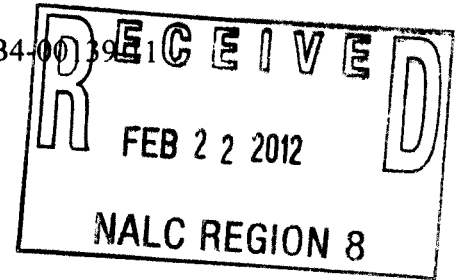


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Regular Arbitration Panel

 In the Matter of the Arbitration)
)
 between)
)
 United States Postal Service)
)
 and)
)
 National Association of Letter Carriers,)
 AFL-CIO)

Grievant: Bowen
 Post Office: Nashville, TN
 USPS Case No: C06N-4C-C 11339881
 NALC Case No. B4-003951



Before: Roberta J. Bahakel, Arbitrator

Appearances:

For the U.S. Postal Service: Ms. Dorthea Chatman

For the Union: Mr. Pete Moss

Place of Hearing: Nashville, TN

Date of Hearing: January 5, 2012

Date of Award: February 21, 2012

Relevant Contract Provision: Articles 10, 19

Contract Year: 2006 - 2011

Type of Grievance: Contract


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VICE PRESIDENT'S OFFICE NALC HEADQUARTERS

Award Summary:

The Grievant was denied her request for advanced sick leave. After considering the testimony and evidence presented, the grievance is sustained.



 Roberta J. Bahakel

BACKGROUND

The Grievant, Ms. Bowen, has been employed by the Postal Service for approximately 30 years. On April 16, 2011 the Grievant fell and broke her hip and was subsequently off work for two months. She submitted a request for 208 hours of advanced sick leave, which was denied by Management. ELM Section 513.511 provides for the advancing of sick leave for serious disability. That section states in part:

Sick leave not to exceed 30 days (240 hours) may be advanced in cases of an employee's serious disability or illness if there is reason to believe the employee will return to duty.

The evidence presented showed that the Grievant contacted her manager of customer services, Ms. McDonough-Maize, after her injury in April of 2011 and was told by McDonough-Maize to call a phone number about getting advanced sick leave. On April 25, 2011 the Grievant wrote McDonough-Maize stating that she had called the number and requested McDonough-Maize to give her a form PS 1221 so she could apply for advanced sick leave. On April 26, 2011 the Grievant sent a letter to the Nashville Postmaster, Mr. Vail, explaining what had occurred and requesting advanced sick leave. On April 27, 2011 McDonough-Maize filled out the Form 1221 for the Grievant, requesting advanced sick leave for the period of May 1 through May 22, 2011. McDonough-Maize testified that once the Grievant had signed and returned the form that she forwarded the form and the accompanying medical documentation to the Postmaster's office.

There was no response to the Grievant's request so a grievance was filed on May 10, 2011. On May 31, 2011 the Grievant submitted a Form 3971 for 184 hours of leave and noted on the form that she needed advanced sick leave. The Grievant testified that McDonough-Maize called the postmaster on that date and was told that the Grievant's advanced sick leave request was not approved. On June 2, 2011 the Grievant submitted another 3971 requesting an additional 24 hours of sick leave, making her total request for 208 hours of advanced sick leave.

At Formal Step A Management's response to the grievance set out that the Grievant's request for advanced sick leave was denied due to the fact that the Grievant had made previous statements that she wanted to retire and that Management did not feel that the Grievant

would return to work or stay long enough to earn back the requested 208 hours of advanced sick leave. The matter then proceeded to arbitration.

ISSUE

Did Management violate Articles 10 and 19 of the National Agreement via 513.6 of the ELM when they denied the grievant's request for advanced sick leave? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

EMPLOYEE AND LABOR RELATIONS MANUAL

513.5 Advanced Sick Leave

531.511 May not exceed Thirty Days

Sick leave not to exceed 30 days (240 hours) may be advanced in cases of an employee's serious disability or illness if there is reason to believe the employee will return to duty. Sick leave may be advanced whether or not the employee has an annual leave or donated sick leave balance.

DISCUSSION

I have reviewed the testimony and evidence presented at the hearing and considered the closing briefs submitted by the parties, the last of which was received by me on February 8, 2012. No issue was raised as to the arbitrability of this matter, therefore it is properly before me for decision.

The Union contends that Management violated the National Agreement when it did not approve the Grievant's request for advanced sick leave. The Union argues that the Grievant met the requirements of ELM Section 513.511 and submitted medical documentation supporting her request. It further contends that there was no evidence that the Grievant was not

going to return to work after her hip healed, so she would be able to repay the sick leave advanced to her, therefore the advanced leave request should have been granted.

Management contends that the language of ELM Section 513.511 is permissive in nature and that it may, but is not required to, grant advanced sick leave. Management argues that the Grievant had been overheard saying that she wanted to retire and that Management made a business decision based on those remarks and the fact that the Grievant was eligible for retirement to deny the leave.

Advanced sick leave under Section 513.511 may be advanced in cases of an employee's serious disability or illness if there is reason to believe the employee may return to duty. In this situation there appears to be no dispute that the Grievant's broken hip met the requirement in ELM Section 513.511 for a serious disability. The testimony showed that the Grievant submitted medical documentation with her advanced leave request and that these documents were forwarded to the Postmaster's office by the station manager. The Grievant received no reply in regard to her request and on May 31, 2011 submitted a Form 3971 for 184 hours of sick leave. On that date station manager McDonough-Maize called the postmaster's office and was told that the Grievant's request had been denied. No reason was ever given to the Grievant as to why her request was turned down. An additional 3971 was submitted on June 2, 2011 for 24 hours of sick leave. When the matter progressed through the grievance process the only reason ever given for the denial was set out by the Formal Step A Management representative in his Step A answer. That reason was that the Grievant had made previous statements that she wanted to retire, therefore Management did not feel that the Grievant would return to work long enough to repay the advanced leave. The testimony at the hearing showed that McDonough-Maize overheard the Grievant make statements to other employees about retirement, but she still assisted the Grievant when she submitted her request for advanced sick leave. The testimony also showed that it was not the station manager's decision as to whether the advanced leave would be granted, that in Nashville that decision is made in the Postmaster's office. The Grievant testified that she had made statements to other employees that she was eligible for retirement, and that her family wanted her to retire, but the Grievant denied ever

stating that she had any current plans to retire. The Grievant testified that she cannot really afford to retire right now and that she loves her job and plans on continuing to work.

The language of the ELM clearly is discretionary in that it states that advanced sick leave may be advanced (as opposed to will be advanced) if there is a reason to believe the employee will return to duty. The question is then whether the Union can show that Management exercised its discretion in an arbitrary manner in its denial of the Grievant's request. While the Grievant had no available sick leave at the time of her request for advanced leave, Management never contended that the Grievant had abused her sick leave over the years as a basis for the denial of her request. The testimony showed that the Grievant had several medical situations arise over the years where she had taken sick leave for large blocks of time, including two months in 2010 when she had a severe lung infection and several weeks for family related issues during that same year. Up until she broke her hip in 2011 the Grievant had always had sufficient sick leave to cover her absences.

That leaves the question of whether it was reasonable for Management to believe that the Grievant would not return to duty and would not be able to repay the advanced leave. The Grievant's letter of April 26, 2011 requesting advanced sick leave, which was sent to Postmaster Vail, stated that the Grievant was looking forward to coming back to work. The Grievant had not approached Management about retiring or the steps involved in such a move. There are many factors that go into the decision to retire and each employee must carefully weigh those factors before making a decision. The Grievant testified that she enjoys her job and cannot afford to retire at this time, nor does she have any current plans to retire. The fact that the Grievant was eligible for retirement does not mean that she would actually take retirement. There are many employees within the Postal Service with more years of service than the Grievant who are still active and involved employees. Here the evidence indicated that Management based its decision to deny the request for advanced leave solely on general conversations overheard by McDonough-Maize where the Grievant and other employees were discussing retirement. It is my determination that overheard conversations of a general nature without other, more direct, supporting evidence indicating the Grievant's intent to retire do not constitute a sound reason for denying the Grievant's request.

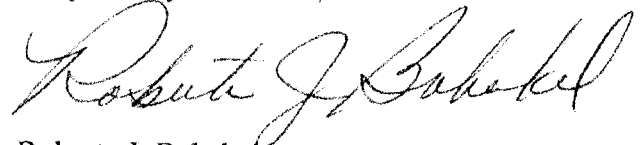
After considering the testimony and evidence presented at the hearing, it is my determination that the Union has carried its burden and that there was not a rational or legitimate reason for Management to determine that the Grievant would not return to duty and repay her advanced leave. Therefore the grievance is due to be sustained.

DECISION

The grievance is sustained. Management is directed to effect the Grievant's advanced sick leave request retroactively for 208 hours of sick leave and to reconstruct the Grievant's time and attendance records accordingly. If this reconstruction entitles the Grievant to be reimbursed for any annual leave or LWOP taken during that time then she is to have any annual leave restored and/or receive back pay for any LWOP hours. I will retain jurisdiction over the calculation and application of the awarded remedy only for a period of 120 days.

Done this 21st day of February, 2012.

Respectfully submitted,



Roberta J. Bahakel
Arbitrator