

IN THE MATTER OF THE)
 ARBITRATION BETWEEN)
)
 United States Postal Service)
 Austin, Texas)
)
 Employer)
)
 -and-)
)
 National Association of)
 Letter Carriers)
)
 Union)
)

OPINION AND AWARD

SIN-3U-C-5736
G. Meneses

Before:

Robert W. Foster, Arbitrator

APPEARANCES

For the Employer:

Phillip A. Pelch, S.C. Director, E&LR

For the Union:

William G. Licea, Local Business Agent

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JO Z...ERO
NATIONAL BUSINESS AGENT
N. A. L. C.
DALLAS REGION # 10

PRELIMINARY STATEMENT

The undersigned was appointed to arbitrate a dispute between the United States Postal Service (Employer) and the American Postal Workers Union (Union) arising out of a grievance pursued by the Union on behalf of Letter Carrier G. Meneses (Grievant) to this arbitration proceeding according to the National Agreement between the parties. A hearing was held on July 12, 1984 in Austin, Texas attended by the Grievant and the above-named representatives of the parties who were accorded full and equal opportunity to present evidence and arguments. This matter is now properly before the arbitrator to render a final decision according to the terms of the National Agreement.

ISSUE

Whether the Employer violated the National Agreement and the Employee and Labor Relations Manual incorporated therein by reference, by requiring Grievant to submit a medical certification supporting his absence? If so, what is the appropriate remedy?

PERTINENT PROVISIONS FROM THE EMPLOYEE
AND LABOR RELATIONS MANUAL

513 SICK LEAVE

513.1 Purpose. Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.

.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.

.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.

.365 Failure to Furnish Required Documentation. If acceptable proof of incapacitation is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

BACKGROUND

This Grievance complains of Grievant's supervisor requiring him to provide medical documentation for his absence on February 20, 1982, and asks that Grievant be reimbursed for the resulting doctor bills and prescription drugs purchased totalling \$24.29.

Grievant, who has a good attendance record and is not on the restricted sick leave list, testified that on Friday, February 19, 1982 he had requested assistance in completing his route due to sickness, but was refused. He further stated that he did not recall whether he had made a request on that day to be off on the following day. Grievant further stated that on Saturday, February 20, 1982, he attempted to call the station by dialing the listed number several times between 6:30 a.m. and 10:00 a.m. to advise supervision of his inability to report to work at his scheduled time of 7:00 a.m. due to illness. When Grievant reported to work on the following Monday, he was told by his supervisor that he would be charged with AWOL if he did not produce medical documentation of his illness on the previous Saturday. Grievant went to his doctor that day who diagnosed Grievant's illness as the flu and advised Grievant not to work for several days. Grievant followed this advice and when he again reported to work he produced the Doctor's statement and was granted sick leave for the absences. Grievant paid \$18.00 to his doctor for the office visit and \$6.29 for the purchase of prescription drugs.

The president of the Local Union testified that the phone system at the station was connected to an alarm system

and that when the alarm was on, the telephone does not ring at the station, the situation he believed to have existed on the morning when Grievant tried to call in. This witness sponsored into evidence the minutes of a Union-management meeting reflecting management's recognition of this problem and a commitment to correct the situation. Another telephone line has been installed at the station since February 20, 1982.

Grievant's supervisor testified that when he realized Grievant had not reported to work on the morning of February 20, he tried to reach Grievant at home but was unable to do so because Grievant had an unlisted number. He agreed that employees are not required to have home telephones. He testified several calls came into the station on the Saturday morning of Grievant's absence on the other line that was not connected to the alarm system. This witness further testified that Grievant stated on Friday, February 19, 1982 that he was sick and had requested assistance and leave for the following day which was refused, although Grievant did appear to this witness to be sick at the time. There is no written record of Grievant's leave request for Saturday, which this witness stated would normally have been returned to Grievant when the request is denied.

The supervisor further stated that Grievant had a good attendance record with no prior indication of abusing sick leave. The supervisor further stated that the reason he requested the medical documentation for Grievant's absence was because he believed Grievant did not like the route he was assigned for that day, and because Grievant's request

for annual leave had been denied. This witness further stated that it was now unclear as to why he thinks Grievant asked for leave for the Saturday in question, and that Grievant's failure to call in on that Saturday was not related to his decision to require Grievant to produce medical documentation.

SUMMARIZED POSITION OF THE PARTIES

The Union

In support of its position that it was improper for management to require medical documentation of Grievant's absence on February 20, the Union points to Grievant's good attendance record, the fact that he was not on the restricted sick leave list and that the supervisor knew Grievant was ill on the day before.

The Employer

The Employer counters with the argument that the supervisor's best recollection was that Grievant had requested and been refused leave for November 20 and this was a proper basis for doubting whether Grievant was actually sick. The Employer explains the absence of a record of Grievant's request for leave on the ground that it would have been returned to him when disapproved.

DISCUSSION AND OPINION

In view of the fact that Grievant was not on the Restricted Sick Leave List and the absence for which he was required to support by medical documentation was less than three days, the only applicable provision of the Employee and Labor Relations Manual that would justify the documentation request is the last phrase appearing in Paragraph 513.36: "When the supervisor

deems documentation desirable for the protection of the interest of the Postal Service." This and other arbitrators have consistently interpreted that quoted language as vesting in management a range of discretionary authority to decide when the documentation shall be required that may not be abused by its exercise when there is no objective factual basis for believing that the alleged illness is not genuine. Each case must be judged on its particular facts.

Before the circumstances that are truly relevant to this question are considered, it should be noted that the evidence relating to Grievant's attempt to call in to report his illness on the morning in question has no bearing on the issue involved here. In the first place, it is probable that Grievant did make an effort to call that was frustrated by the alarm system connected to the phone line on which calls are expected to be made had not been turned off. In any event, the supervisor, whose state of mind is critical, testified that Grievant's failure to report his absence was not a factor in his decision to require the documentation. Moreover, the fact that Grievant could not be reached at home by phone is equally irrelevant because employees are not required to have home telephones.

This leaves for consideration whether the factors expressly stated by the supervisor as the reason for his decision to require the documentation were sufficient to engender in the mind of a reasonable person a substantial doubt or suspicion that Grievant's reason for his absence was other than his alleged sickness. While the supervisor stated that his suspicion was aroused by Grievant's denied request to be off on

the day of his absence, upon reflection the supervisor testified that he was not clear as to why he thought Grievant had asked for leave. While the absence of a leave request form could be explained on the basis that it had been returned to Grievant upon its denial, the supervisor's recollection that Grievant appeared to be sick on the day before his absence strongly suggests that if a request was made it was for sick leave based on Grievant's genuine belief that he would not be able to work the next day. This observation by the supervisor of Grievant's apparent physical condition should have at least militated against any suspicion that Grievant was faking illness when he did not report to work the next day.

The only other factor expressed by the supervisor was his thought that Grievant did not like the route to which he was assigned on the day of his absence. But this subjective thought on the part of the supervisor is not supported by any concrete, objective evidence, either at the time or by Grievant's past conduct, that would indicate that Grievant was so motivated to stay away from work.

When Grievant's past record of good attendance, with no indication that he was the type of employee who abused sick leave, is considered along with the indication of his sickness on the day before his absence, there was no justifiable circumstances for the supervisor to doubt Grievant's assertion that his absence was due to illness. Accordingly, it must be concluded that the supervisor abused his discretion in requiring Grievant to produce medical documentation as a con-

dition to approving sick leave.

While it is true that Grievant received an apparent benefit by going to the doctor who then prescribed needed medical treatment, and as it turned out Grievant was absent for more than three days thereafter that would have given Management the right to require the documentation, the appropriate remedy must be based on the circumstances at the time of the grieved event that occurred on the Monday when Grievant returned to work. Grievant must therefore be made whole by reimbursement for the cost of his involuntary visit to the doctor. The purchase of the prescription drugs, however, was not required of Grievant by management and therefore compensation for this expenditure is not an appropriate remedy.

AWARD

After careful consideration of the evidence and arguments of the parties, and based on the reasons set out above, the award is that the Employer violated the National Agreement and the Employee and Labor Relations Manual incorporated therein by reference, by requiring Grievant to submit a medical certification supporting his absence.

The remedy is that Grievant shall be reimbursed by the Postal Service in the amount of \$18.00 that he was required to spend for the visit to the doctor.

Accordingly, the Grievant is sustained.



Robert W. Foster

August 29, 1984

Columbia, South Carolina