

C# 04782

 In the Matter of)
 UNITED STATES POSTAL SERVICE) CASE NO: SLN-3A-C 30741
 AND) GENE LEMMONS
 NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO) SAN ANGELO, TEXAS

APPEARANCES

For the Employer: - John A. Hyatt, Labor Relations Representative
For the Union: - William G. Licea, Local Business Agent

ISSUES

1. Is the grievance arbitrable, and if so
2. Did the Postal Service violate the National Agreement when it requested the Grievant to furnish certification for sick leave requested on November 17, 1983?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution.

Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for October 25, 1984, and the Hearing was held on that date in the Main Post Office, San Angelo, Texas, commencing at 9:00 o'clock a.m.

At the close of the Hearing, the National Association of Letter Carriers, AFL-CIO, (hereinafter referred to as "Union") and the United States Postal Service, (hereinafter referred to as "Employer") agreed to present oral

closing arguments in lieu of the submission of Post-Hearing briefs.

SUMMARY STATEMENT OF THE CASE

On December 5, 1983, the Union filed a grievance on behalf of Gene Lemmons (hereinafter sometimes referred to as "Grievant"), a carrier technician at the Main Post Office, San Angelo, Texas. On December 5, 1983, a Step 1 meeting was held, and on December 10, 1983, the grievance was denied. Pursuant to Article 15 of the National Agreement, the grievance was appealed on December 14, 1983, to Step 2 of the grievance procedure alleging a violation of but not limited to Article 10.4.E of the National Agreement, and Part 513.36 of the Employee & Labor Relations Manual, and past practice, and stating in relevant part as follows (Joint Exhibit No. 2):

FACTS: WHAT HAPPENED On 11/21/83, grievant was required to furnish a doctor's statement for sick leave of less than 3 days.

UNION CONTENTIONS: REASONS FOR GRIEVANCE This has not been a practice in this office as shown in APWU grievance # F-12-83. Art. 10 of Natl. Agree. does not require this. No evidence was given to support the need for medical documentation. This requirement was an act of harrassment of a previous situation with his supervisor. Arbitration case # C8N-4-F-C-22278 states that a supervisor does not have a right to require medical documentation for less than three days without evidence to support his actions.

CORRECTIVE ACTION REQUESTED: Grievant be reimbursed in the amount of \$39.00 for doctor charges, 2 hours pay at level 5 step 10, T-6 pay, and 20 cents per mile for 4 miles to and from doctors office.

On December 22, 1982, a Step 2 meeting was held, and on December 29, 1982, a letter denying the grievance was sent from J. B. Love, SPO, to Bob Boling, Union Steward, which stated in relevant part as follows (Joint Exhibit No. 2):

Article 10.5E states that "for period of absence of 3 days or less, a supervisor may (underlining added)

accept an employee's certification as reason for absence." This in no way intended that the supervisor must accept. This interpretation is further supported by ELR 513.361, "medical documentation or other acceptable evidence is required only when the employee is on restricted or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

Mr. Lemmons' supervisor had held a discussion in the morning relating to his street performance. During this discussion Mr. Lemmons was both uncooperative and completely mute, not acknowledging an awareness of the discussion or his supervisor's presence. This attitude and muteness was continued with another supervisor on his return to the office. Both supervisors are Hispanic which seems to be a problem with the grievant.

The street supervision was a follow-up to the morning discussion and the circumstances of which Mr. Lemmons' left his route was questionable enough for his supervisor to require documentation for the protection of Postal Service interests.

Pursuant to Article 15 of the National Agreement, the grievance was appealed on January 18, 1984 to Step 3 of the grievance procedure, with the following reason given for the appeal (Joint Exhibit No. 2):

This action was taken by an egotistical 204-B from the clerk craft. This 204-B has problems with someone every time he is assigned to the carrier craft. Mr Lemmons has a history of Sinusitis, which was his problem at this time, and was required to go to the doctor because he had had a problem [earlier] in the day with this supervisor. The doctor supported this illness at this time, and the USPS had no reason to question this.

On February 14, 1984, a letter denying the grievance was sent from John A. Hyatt, Labor Relations Division, to Mr. Joseph Z. Romero, the Union's National Business Agent, which stated in relevant part as follows (Joint Exhibit No. 2):

This grievance is procedurally defective in that it was untimely appealed to Step 3 and the union failed to submit a copy of the Step 2 answer along with the step 3 appeal per Article 15, Section 2, Step 2(H).

Notwithstanding, the supervisor properly requested the grievant to submit acceptable documentation for the alleged illness.

On February 21, 1984, the grievance was appealed to arbitration.

Provisions of the National Agreement effective July 21, 1981, to remain in full force and effect to and including 12 midnight July 20, 1984, (hereinafter referred to as "National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 10

LEAVE

* * *

Section 5. Sick Leave

The Employer agrees to continue the administration of the present sick leave program, which shall include the following specific items:

* * *

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

* * *

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

* * *

Section 2. Grievance Procedure—Steps

* * *

Step 2 (h) The Union may appeal an adverse Step 2 decision to Step 3. Any such appeal must be made within fifteen (15) days after receipt of the Employer's decision unless the parties' representatives agree to extend the time for appeal. Any appeal must include copies of (1) the standard grievance form, (2) the Employer's written Step 2 decision, and, if filed, (3) the Union corrections or additions to the Step 2 decision.

Provisions of the Employee & Labor Relations Manual dated June 15, 1982, considered pertinent to this proceeding are as follows (Joint Exhibit No. 3):

513.3 Authorizing Sick Leave

* * *

.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.

.363 Extended Periods. Employees on sick leave for extended periods are required to submit, at appropriate intervals, but not more frequently than one (1) time per pay period, satisfactory evidence of continued incapacity for work unless some responsible supervisor has knowledge of the continuing 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.

POSITION OF THE PARTIES

The Position of the Union:

It is the position of the Union that the grievance is arbitrable inasmuch as it was appealed to Step 3 within the time limits specified by the National Agreement and included the necessary documentation. The Union contends that the Employer violated the National Agreement in requiring that the Grievant produce medical documentation when he had not been absent for three days and was not on restricted sick leave. The Union maintains that this requirement was an act of harassment on the part of the Employer and that the Grievant should, therefore, be reimbursed for his costs in securing the required medical documentation.

The Position of the Employer:

The Employer takes the position that the grievance is not arbitrable since the appeal to Step 3 was not filed within the time limits specified and did not include a copy of the Step 2 decision as required by the National Agreement. The Employer contends that it has the right to request medical documentation from employees when such is necessary to protect the interests of the Employer, as was the case here. The Employer further maintains that the Union has failed to show that the request in this case was either arbitrary or capricious.

OPINION

While a threshold question of arbitrability is raised by the Employer, the Arbitrator, for the reasons hereinafter given, finds it unnecessary to the resolution of this matter that this issue be addressed. With respect to the merits, the issue primarily for determination by the Arbitrator is whether, under the circumstances here presented, the Employer was justified in

requiring medical documentation of the Grievant's request for sick leave.

The record reflects that on or about November 14, 1983, the Grievant had a meeting with his supervisor, and that he declined to discuss his street performance in the absence of Union representation. As a result of this meeting, an evaluation of the Grievant's street performance was deemed appropriate, and the Employer sent a supervisor to accompany the Grievant on his route. After approximately one hour into the route, the Grievant advised the supervisor that he was ill and requested a replacement carrier. The supervisor denied this request of the Grievant and the Grievant thereupon stated that he would have to go home. The Grievant was thereafter advised that medical documentation for his illness would be required. After supplying the requested documentation, the Grievant filed the grievance now before the Arbitrator maintaining that the request for medical certification was an act of harassment and that he should recover his medical and mileage costs.

Part 513.361 of the Employee and Labor Relations Manual (Joint Exhibit No. 3) provides, in substance, that the Employer may not require medical certification of illness for periods of three (3) days or less unless the employee is on restricted sick leave or the supervisor deems documentation desirable for the protection of the interests of the Postal Service. It appears from the evidence presented that the Grievant, after being called to the meeting by his supervisor to discuss his performance, exhibited an uncooperative attitude throughout the meeting. The manifestation by the Grievant of this type of attitude, it seems to the Arbitrator, reasonably justified the supervisor questioning the illness of the Grievant that developed so shortly after the meeting concerning his performance. In short, when the entire circumstances surrounding this incident are fully considered, it seems to the Arbitrator that some doubt would be created in the mind of any

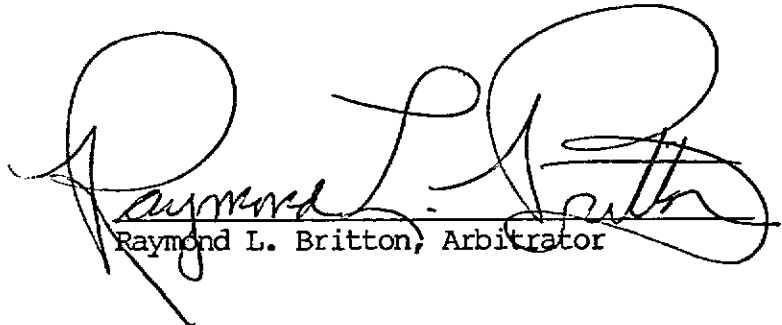
reasonable supervisor as to whether the Grievant was actually ill or his request for sick leave valid. Such doubt under these circumstances, it seems to the Arbitrator, supplied a sufficient reason for the supervisor to request proof of inability to work for protection of the interests of the Postal Service as provided under Part 513.361 of the Employee and Labor Relations Manual. Absent any materially probative evidence that the supervisor acted in an arbitrary or capricious manner when he informed the Grievant that medical documentation for his absence would be required, the Arbitrator has no choice other than to uphold the action of the supervisor in this instance.

AWARD

For the reasons given, the grievance is denied.

DATE:

April 17, 1985



Raymond L. Britton, Arbitrator