

C# 18501

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

GRIEVANT: Class Action

between

POST OFFICE: Loveland, CO

UNITED STATES POSTAL SERVICE

CASE NO: E94N-4E-C97019847

NALC CASE NO: 1010-96 MF

and

**NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO**

BEFORE: Donald E. Olson, Jr.

APPEARANCES:

For the U.S. Postal Service: Ms. Judith G. Ford

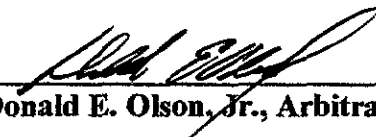
For the NALC: Mr. Andrew T. Petersen

Place of Hearing: Loveland, Colorado

Date of Hearing: July 10, 1998

AWARD: The grievance is sustained in its entirety. The Employer is directed to honor and comply with Section 513.332 of the ELRM and cease having supervisors ask the questions listed on the document titled, UNSCHEDULED LEAVE REQUEST, which was incorporated in the Denver District Manager's Memorandum dated September 22, 1996, at all postal facilities within the jurisdiction of the Denver District.

Dated of Award: July 13, 1998



Donald E. Olson, Jr., Arbitrator

THE OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

This proceeding was conducted in accordance with the terms outlined in Article 15 of the parties 1994-1998 National Agreement. A hearing was held before the undersigned at the postal facility located in Loveland, Colorado on July 10, 1998. The hearing commenced at 10:35 a.m. and concluded at 2:20 p.m. The parties were given an opportunity to examine, and cross-examine witnesses, to introduce evidence and make oral closing arguments in support of their respective positions. All witnesses testified under oath as administered by the Arbitrator. The hearing proceeded in an orderly manner. The parties represented their respective clients fairly. There were no issues raised regarding substantive or procedural arbitrability. The parties stipulated the issue to be determined. The Case Number assigned this matter was **E94N-4E-C97019847**. Mr. Andrew T. Petersen, Regional Administrative Assistant, represented the National Association of Letter Carriers, AFL-CIO, hereinafter referred to as "the Union". Ms. Judith G. Ford, Labor Relations Specialist, represented the United States Postal Service, hereinafter referred to as "the Employer". The parties introduced five (5) Joint Exhibits, all of which were received and made a part of the record. The Employer introduced one (1) Exhibit, which was made part of the record. The Union offered no Exhibits. The Arbitrator promised to render a written opinion and award within thirty (30) calendar days after the hearing record was closed. This opinion and award will serve as this Arbitrator's final and binding decision regarding this matter.

ISSUE(S)

The stipulated issue is:

"Whether the Postal Service violated Article 19 and Article 5 of the National Agreement when it issued instructions to supervisors on September 22, 1996, relative to monitoring of unscheduled absences?"

RELEVANT PROVISIONS OF THE 1994-1998 NATIONAL AGREEMENT

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- C. To *maintain the efficiency of the operations entrusted to it*;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;

ARTICLE 5

PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8 (d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

RELEVANT PROVISIONS OF ELM, ISSUE 12, 5-1-89

Chapter 5

Employee Benefits

510 Leave

511 General

511.1 Administration Policy

The U.S. Postal Service policy is to administer the leave program on an equitable basis for all employees, considering (a) the needs of the USPS and (b) the welfare of the individual employee.

511.2 Responsibilities

511.21 Postal Officials:

- a. Administer the leave program.
- b. Inform employee of their leave balance.
- c. Approve or disapprove requests for leave.
- d. Record leave in accordance with Handbook F-21, Time and Attendance, or Handbook F-22, PSDS Time and Attendance.
- e. Control unscheduled absences (see 511.4).

511.23 Postal employees:

- a. Request leave by completing Form 3971, Request For a Notification of absence.
- b. obtain approval of Form 3971 before taking leave--except in cases of emergencies.
- c. Avoid unnecessary forfeiture of annual leave.

511.4 Unscheduled Absence

511.41 Definition. *Unscheduled absences* are any absences from work that are not requested and approved in advance.

511.42 Management Responsibilities. To control unscheduled absences, postal officials:

- a. Inform employees of leave regulations.
- b. Discuss attendance records with individual employees when warranted.
- c. Maintain and review Forms 3972, Absence Analysis, and Forms 3971.

511.43 Employee Responsibilities. Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.

513.33 Application for Sick Leave

513.331 General. Except for unexpected illness/injury situations, sick leave must be requested on Form 3971 and approved in advance by the appropriate supervisor.

513.332 Unexpected Illness/Injury. An exception to the advance approval requirement is made for unexpected illness/injuries; however, in these situations the employee must notify appropriate postal authorities as soon as possible as to their illness/injury and expected duration of absence. As soon as possible after return to duty, employees must submit a request for sick leave on Form 3971. Employees may be required to submit acceptable evidence of incapacity to work as outlined in the provisions of 513.36, Documentation Requirements. The supervisor approves or disapproves the leave request. When the request is disapproved, the absence may be recorded as annual leave, if appropriate, as LWOP or AWOL, at the discretion of the supervisor as outlined in 513.342.

513.36 Documentation Requirements.

513.361 3 Days or Less. For periods of absence of 3 days or less, supervisors may accept the employees' 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 513.37) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

513.364 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. The 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 or her 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.

BACKGROUND

This case arose shortly after employees at the Employer's Loveland, Colorado postal facility were notified during a stand-up on October 8, 1996, about new procedures issued by Denver District Manager, Customer Service and Sales, Mr. George A. Boettger, dated September 22, 1996. The procedures were set forth in a memorandum form, and were directed to key management personnel, including Postmasters. The District Manager's memo contained a guideline sheet for supervisor's use to request information from employees calling in for unscheduled absences. Thereafter, on or about October 10, 1996, the Union filed a Class Action grievance, claiming the new procedures were a violation of National Agreement in that they set a blanket policy for dealing with all types of unscheduled leaves. The parties were unable to resolve the matter.

POSITION OF THE PARTIES

POSITION OF THE EMPLOYER

First, the Employer maintains it did not violate Articles 5 and 19 of the National Agreement when it issued instructions to supervisors on September 22, 1996, relative to monitoring of unscheduled absences. Moreover, the Employer contends the District Manager's memo was correspondence intended only for supervisors and managers and, as such, is not subject to the grievance procedure. Further, the Employer argues the memo did not constitute a policy statement or directive issued to employees and no handbook or manual was changed as a result. Additionally, the Employer asserts the memo only contained a guideline sheet for supervisors to request information from employees calling in for unscheduled absences. Also, the Employer claims the information sought is essential for supervisors to efficiently and effectively schedule their operations on a daily basis. Likewise, the Employer contends nothing in the memo to supervisors from the District Manger violates any provision of the Employee and Labor Relations Manual. In addition, the Employer insists that nothing in the memo mandates that any written documentation must be provided for absences.

Furthermore, the Employer claims the practice at its Loveland Post Office is that any requirement by supervision for documentation from employees is at the discretion of the supervisor and rarely, if ever, is not deemed to be acceptable. In conclusion, the Employer avows the Union has failed to establish any violation of the National Agreement or Employee and Labor Relations Manual when instructions were issued to supervisors on September 22, 1996, relative to monitoring of unscheduled absences.

POSITION OF THE UNION

The Union asserts the Employer violated Article 19 and Article 5 of the National Agreement when it issued instructions to supervisors on September 22, 1996, relative to the monitoring of unscheduled absences. Furthermore, the Union claims the District Manager's instructions to supervision is a blanket policy for dealing with all types of unscheduled leave, as well as, it leaves no room for supervisor discretion in individual cases. Moreover, the Union contends some of the procedures constitute harassment of employees. Additionally, the Union alleges the questions asked by supervision when an employee requests unscheduled sick leave or emergency annual leave, are an expansion of the requirements set forth in the Employee and Labor Relations Manual. The Union maintains the Employer's actions in this case amount to a unilateral change affecting "terms and conditions of employment". Besides further, the Union argues the information sought by the Employer can be obtained by reviewing the completed Form 3971 after the employee returns to work. In conclusion, the Union requests that the grievance be sustained in its entirety.

DISCUSSION

This Arbitrator has carefully reviewed all exhibits, pertinent testimony, the parties respective oral arguments, and cited arbitration awards.

As a threshold matter, this Arbitrator is of the opinion that Article 3 bestows upon the Employer the exclusive right, subject to the provisions of the National Agreement and consistent with applicable laws and regulations to direct its employees in the

performance of official duties, and to maintain the efficiency of the operations entrusted to it. Likewise, the Employer is entitled to make changes to handbooks, manuals and published regulations that directly relate to wages, hours or working conditions, pursuant to Article 19. However, Article 3, Management Rights, does not cloak management with absolute authority. Rather, the authority granted is subject to the provisions of the National Agreement. The parties at the national level have frozen the leave regulations of Subchapter 510 of the Employee and Labor Relations Manual. This Arbitrator notes the National Agreement at Article 10, Section 2, which pertains to Leave Regulations, states, "the leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wage, hours and working conditions shall remain in effect for the life of this Agreement." Furthermore, the provisions set forth in Subchapter 510 of the ELM are incorporated by reference into the National Agreement at Article 19, and are covered by the phrase, "other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act," in Article 5.

Without doubt, this Arbitrator is convinced that the Denver District Manager's Memorandum dated September 22, 1996, titled, "Unscheduled Absence Procedure", is nothing more than a piece of correspondence directed to key managers and supervisors, setting forth his concerns regarding unscheduled absences and control of same. Certainly, this memorandum is not a published regulation. It appears to this Arbitrator that the District Manager was attempting to provide consistency at all postal facilities under his jurisdiction, regarding unscheduled leave requests by employees, as well as, to provide necessary documentation needed to support any disciplinary action that may have to be taken in the future. To this end, he instructed supervisors to ask a series of questions of employees calling in for "unscheduled sick leave", or "emergency annual leave". The questions are listed on a document titled, "UNSCHEDULED LEAVE REQUEST". Furthermore, this Arbitrator notes the District Manager

informed supervision that these procedures were not "optional", and that they must "comply" with the requirements he set forth in his memorandum, including the questions to be asked of employees calling in for USL/EAL.

On the other hand, the evidence adduced at the hearing indicated that prior to September 22, 1996, employees who had an unexpected illness/injury complied with the terms set forth in the ELM at 513.332, that is, they notified appropriate authorities as soon as possible as to their illness/injury and expected duration of absence. Upon return to work they submitted a request for sick leave on Form 3971. The proposition under challenge in this case, enunciated in the Denver District Manager's memorandum dated September 22, 1996, is flatly inconsistent with Section 513.332 of Subchapter 510. Obviously, all of the information the District Manager desires his supervisor's to obtain from an employee requesting unscheduled sick leave, or emergency annual leave when they report their inability to come to work, can be ascertained when the employee returns to work and has completed filling out a Form 3971. Moreover, under Section 513.332, it suffices if an employee involved notifies the appropriate authority "as soon as possible" as to the illness or injury and the expected duration of absence. The Denver District policy memorandum clearly expounds on the requirements set forth in Section 513.332. There is no requirement in Section 513.332 that mandates an employee must be subjected to an extensive list of questions when he or she notifies appropriate supervision of an unexpected leave request. The mere reading of the questions in dispute in the Denver District Manager's memorandum questionnaire as compared to the requirements set forth in Section 513.332 of the ELM easily show that these requirements are more restrictive than the bargained for clauses in the National Agreement and the ELM provisions incorporated into the contract. Specifically, questions number 9 and 11, which read as follows: "Are you able to perform any of your duties?", and "When will you return to work?" are not

incorporated on Form 3971. Of equal importance, this Arbitrator notes the following information is also not found on Form 3971:

[Circle one which applies]

You (will/may) be called back. If no phone, you must call back at: (time/date)

You (will/will not) have to call in tomorrow.

If hospitalized, name of hospital.

These additional questions and instructions are plainly beyond the power of the District Manager to implement, and especially by unilateral action. That is violative of Article 5, since it affects terms and conditions of employment set forth in the ELM at 513.332. When management attempts as in this case to promote greater scheduling effectiveness by monitoring unscheduled absences, management and supervision must act within the strictures and requirements of pertinent provisions of the National Agreement, as well as regulations set forth in the Employee and Labor Relations Manual issued in accord and dealing with the subject of leave. In this case the District Manager's memorandum guidelines appeared to be well intended, but obviously were more restrictive than the regulations requirements set forth in 513.332. The memorandum guidelines, that is, the questions are inconsistent with the terms of the National Agreement.

Subchapter 510 of the Employee and Labor Relations Manual cannot be changed by District management edict. Even if the dispute involved a manual, handbook or regulation which could be changed, according to the provisions of Article 19 of the National Agreement, such changes can only and properly be implemented at the national level.

Thus, this Arbitrator concludes the Union's basic contention is correct and that, therefore, it appears the Employer's Denver District Manager did not have the right to promulgate extra obligations locally on bargaining unit employees, in addition to the bargained-for terms relating to leave regulations at the national level.

Therefore, having said that, this Arbitrator concludes the Employer violated Article 19 and Article 5 of the National Agreement when it issued instructions to supervisors on September 22, 1996, relative to monitoring of unscheduled absences.

AWARD

The grievance is sustained in its entirety. The Employer is directed to honor and comply with Section 513.332 of the ELRM and cease having supervisors ask the questions listed on the document titled, UNSCHEDULED LEAVE REQUEST, which was incorporated in the Denver District Manager's Memorandum dated September 22, 1996, at all postal facilities within the jurisdiction of the Denver District.

Dated this 13th day of July 1998.
Tacoma, Washington


Donald E. Olson, Jr., Arbitrator