

C# 04163



IN THE MATTER OF THE ARBITRATION

BETWEEN

UNITED STATES POSTAL SERVICE
BROOKFIELD, WISCONSIN

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO; BRANCH 4811

CLN-4J-D 10873

GRIEVANCE

LETTER OF WARNING
ISSUED TO
BRUCE ROBINSON

OPINION AND AWARD

The hearing in the above-captioned matter was held on January 25, 1983, at the Post Office located at 17345 Ybur Road, Brookfield, Wisconsin, before George E. Larney, serving as sole impartial Arbitrator pursuant to Article 15, Grievance - Arbitration Procedure, Section 15.4B, Regional Level Arbitration - Regular, of the National Collective Bargaining Agreement entered into by and between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, and the American Postal Workers Union, AFL-CIO (hereinafter referred to as the Agreement and designated as Joint Exhibit 1), effective July 21, 1981 through July 20, 1984. The Arbitrator acknowledges the instant issue is properly before him for resolution on the merits.

The case for the Postal Service (hereinafter referred to variously as the Service and Employer) was presented by Felix J. Jackson, Labor Relations Representative, located in offices at 345 West St. Paul Avenue, Milwaukee, Wisconsin. Others present on behalf of the Employer were: David R. Gramins, Supervisor Mails and Delivery; and Robert D. Medley, Officer-in-Charge, Brookfield.

The case for Branch 4811, National Association of Letter Carriers (hereinafter referred to as the Union) was presented by Barry Weiner, Regional Administrative Assistant, located in offices at 312 Central Avenue, S.E., Minneapolis, Minnesota. Others present on behalf of the Union were: William Goff, President, Branch 4811; Daniel Schaning, Union Steward; and Bruce M. Robinson, Grievant.

At the hearing the parties were afforded full opportunity to present oral and written evidence and argument, including

examination and cross-examination of the following witnesses who were sworn and who are listed in the order of their respective appearances:

FOR THE EMPLOYER

David Gramins

FOR THE UNION

Bruce Robinson
William Goff

No formal transcript of the hearing was made. Both parties elected to make closing oral argument in place of filing post-hearing briefs. Accordingly, the Arbitrator considered the record in this case to be officially closed as of the conclusion of the hearing on date of January 25, 1983.

THE ISSUE

As stipulated to by the parties at the hearing, the issue before the Arbitrator is as follows:

Whether or not the Letter of Warning dated September 15, 1982, issued to the Grievant, Bruce Robinson, for unsatisfactory attendance was for just cause, in accordance with Article 16 of the Agreement (Jt. Ex. 1)?

If not, what shall be the proper remedy?

The following provisions of the Agreement (Jt. Ex. 1) are herein deemed to be relevant to the instant issue:

ARTICLE 15

GRIEVANCE - ARBITRATION PROCEDURE

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement, or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not

limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

Section 2. Grievance Procedure - Steps

* * *

Step 3: (d) The Union may appeal an adverse decision directly to arbitration at the Regional level within twenty-one (21) days after the receipt of the Employer's Step 3 decision in accordance with the procedure hereinafter set forth; provided the Employer's Step 3 decision states that no interpretive issue under the National Agreement or some supplement thereto which may be of general application is involved in the case.

* * *

Section 4. Arbitration

A. General Provisions ...

* * *

... No grievance may be appealed to arbitration at the Regional level except when timely notice of appeal is given in writing to the appropriate Regional official of the Employer by the certified representative of the Union in the particular region.

B. Regional Level Arbitration - Regular

... Separate panels will be established for scheduling (a) removal cases and cases involving suspensions for more than 14 days, (b) for all cases referred to Expedited Arbitration, and (c) for all other cases appealed to arbitration at the Regional Level.

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:

* * *

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees.

C. To maintain the efficiency of the operations entrusted to it;

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 terms:

A. Credit employees with sick leave as earned.

B. Charge to annual leave or leave without pay (at employee's option) approved absence for which employee has insufficient sick leave.

C. Employee becoming ill while on annual leave may have leave charged to sick leave upon request.

D. Unit Charges for Sick Leave shall be minimum units of less than one (1) per hour.

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 16

DISCIPLINE PROCEDURE

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation of other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

Section 3. Letter of Warning

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

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.

The following provisions of the Employee & Labor Relations Manual (Jt. Ex. 3) are also deemed to have relevance to the instant issue:

513.2 Accrual and Crediting

.21 Accrual Chart

a. Full-Time Employees	4 hours for each full biweekly pay period- i.e., 13 days (104 hours) per 26-period leave year.
*	* *

.22 Crediting

.221 General. Sick leave is credited at the end of each biweekly pay period in which it is earned. Sick leave (earned and unused) accumulates without limitation.

* * *

513.3 Authorizing Sick Leave

* * *

.32 Conditions for Authorization

a. Illness or Injury.	If employees are incapacitated for the performance of official duties.
*	*
*	*

.33 Application for Sick Leave

.331 General

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

.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.

.34 Form 3971, Request for, or Notification of, Absence

.341 General. Application for sick leave is made in writing, in duplicate, on Form 3971, Request for, or Notification of, Absence.

.342 Approval/Disapproval. The supervisor is responsible for approving or disapproving applications for sick leave by signing the Form 3971, a copy of which is given to the employee. If a supervisor does not approve an application for leave as submitted, the Disapproved block on the Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reason for the disapproval. AWOL determinations must be similarly noted.

* * *

.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 513.37) 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.

* * *

.37 Restricted Sick Leave

.371 Reasons for Restriction. Supervisors (or the official in charge of the installation) who have evidence indicating that an employee is abusing sick leave privileges may place an employee on the restricted sick leave list. In addition, employees may be placed on the restricted sick leave list after their sick leave use has been reviewed on an individual basis and the following actions have been taken:

a. Establishment of an absence file as outlined in Handbook F-21, Time and Attendance (part 973).

b. Review of the absence file by the immediate supervisor and by higher levels of management.

c. Review of the quarterly listings, furnished by the PDC, or LWOP and sick leave used by employees (No minimum sick leave balance is established below which the employee's sick leave record is automatically considered unsatisfactory.)

d. Supervisor's discussion of absence record with the employee.

e. Review of the subsequent quarterly listing. If listing indicates no improvement, the supervisor is to discuss the matter with the employee to include advice that if next listing shows no improvement, employee will be placed on restricted sick leave.

In addition, the following relevant portions of the local policy governing an Attendance Control Program is also deemed applicable to the instant issue:

The following are the procedures which will be used in administering the Attendance Control Program. Unscheduled leave, whether due to illness or emergency, severely impairs the efficiency of Postal operations. Arbitrators have consistently held that no Employer is required to allow an employee to remain on the rolls who cannot maintain regular attendance, regardless of the reason for the absences from work.

Your Attendance Control Supervisor will approve or disapprove all requests for leave. He will analyze your attendance record using the "frequency" system. A frequency is any absence from scheduled work and could include an absence of several days due to illness, an absence of several hours due to emergency, or an absence of several units due to disapproved tardiness. An accumulation of several frequencies in a limited time will cause your Supervisor to consider recommending appropriate disciplinary action, up to and including discharge.

PS Form 3971 must be prepared for all deviations from normal work schedules, such as annual leave, sick leave, leave without pay, court leave, military leave, all types of other leave and for tardiness of more than eight (8) units (5 minutes).

Form 3971 must be completed in its entirety, including number of hours requested, type of leave, Social Security number, starting and ending time of leave, and must, of course, be signed and dated by the Supervisor whether approved or disapproved.

* * *

SICK LEAVE

An employee must give notice of illness as soon as practicable so that the cause of his absence may be known at the earliest possible time. These sick calls should be made not later than thirty (30) minutes before scheduled reporting time, if possible, so that schedules can be adjusted as necessary.

The initial call for sick leave will cover one day only, except in the event the employee has been to a doctor or is hospitalized. Normally, employees must call in on each day of absence. He should give date of visit, nature of illness, and anticipated period of absence estimated by the doctor or date of next visit to the doctor. This information should be recorded, but not on Form 3971.

Application for sick leave on Form 3971 must be signed by an employee promptly upon return to duty. In the case of an extended absence, a medical certificate must be received by the Supervisor by the Friday of the week in which the leave was taken. Any absence properly chargeable to sick leave but which exceeds the amount accumulated and accrued to his credit at the time his application is submitted shall be charged against annual leave unless the employee asks to have it charged to leave without pay. If the employee has no annual to his credit, the excess may be charged to leave without pay. Leave without pay so charged cannot thereafter be converted into either sick or annual leave.

In those instances where medical certification is required for sick leave approval, the Data Site or the Station will not transmit leave until medical certification is received. If necessary, an adjustment will be made in the following pay period.

It should be remembered that excessive absenteeism due to illness could result in disciplinary action up to and including discharge. Approval of sick leave requests is for pay purposes only.

* * *

RESTRICTED SICK LEAVE

When it becomes apparent to an employee's Supervisor that abuse of the sick leave benefit is occurring, medical documentation may be required for each absence.

Your Supervisor will carefully consider each individual case before recommending disciplinary action, but the program will be administered fairly and consistently.

(Emp. Ex. 1B)

BACKGROUND

The Grievant, Bruce Robinson, commenced employment with the Service on date of November 3, 1979. On date of September 15, 1982, the Grievant was issued the subject Letter of Warning by his Supervisor, David Gramins. This Warning Letter reads in whole as follows:

UNITED STATES POST OFFICE

Our Ref: 200: E&LR: mz

Date: September 15, 1982

Subject: Letter of Warning

TO: Bruce M. Robinson
Name

388-60-7421
Social Security Number

Carrier Technician
Position

Brookfield, Wisconsin
Post Office

CHARGE: This letter of warning is being issued for unsatisfactory attendance during the last five (5) months. You have been absent claiming illness on four (4) occasions during that time. They are: May 14 & 15, June 29, August 17, & September 9, 1982.

You must realize that such actions cannot be condoned. This official Letter of Warning is being issued in an attempt to correct your deficiency and a copy will be placed in your Official Personnel Folder. Any further deficiencies of a similar nature will result in more severe disciplinary action, including suspension or removal from the Postal Service.

In addition, be advised that this disciplinary action, which is being issued for unsatisfactory performance, will be considered in the evaluation for your next step increase.

If I may be of any assistance, please call on me; or you may consult with other supervisors and you will be assisted where possible.

Under the provisions of Article XV of the National Agreement, you have the right to file a grievance within 14 days of your receipt of this letter.

I acknowledge receipt of this
Letter of Warning.

/s/ David R. Gramins
Supervisor

/s/ Bruce M. Robinson
Name

9-15-82
Date

cc: OPF
Supervisor
Labor Relations
File

(Jt. Ex. 2)

Gramins testified he has been the Grievant's supervisor for more than two (2) years. Gramins noted that on all four (4) occasions in question, the Grievant called in to notify of his absence prior to reporting for work. The Grievant testified that on date of September 2, 1982, just one week prior to incurring the fourth occurrence and fifth day of absence due to sickness, Gramins held a discussion with him regarding his attendance, wherein, Gramins apprised him that since May of 1982 to the present, the number of absences due to sickness was unsatisfactory and warned that any further occurrences would result in disciplinary action. Gramins related that this discussion was occasioned by his understanding from higher level management that there exists a standard, whereby, unscheduled absences in excess of three (3) occurrences in a six (6) month period is unacceptable and constitutes grounds for disciplinary action. 1/ Gramins testified that as a supervisor it is his

1/

Gramins explained his understanding derived from oral instructions received from officials at the Milwaukee Mail Service Center.

responsibility to audit absences for purposes of determining whether or not there have been any abuses. Gramins stated that as a rule he does not review an employee's personnel file in conjunction with his review of their absence analysis. In the instant case, Gramins asserted in making the determination as to whether or not to issue the subject Letter of Warning, he did take into account that between January 23, 1982 and May 13, 1982, the Grievant had not incurred any unscheduled absences due to illness. Gramins further acknowledged the fact that between January 23, 1982 and September 17, 1982, the last day of Pay Period 19, the Pay Period within which the Grievant incurred his fifth day of absence, there was a total of 165 working days. 2/ Gramins also acknowledged that he did not recall asking the Grievant what his reasons were for reporting off sick at the time he (Gramins) approved the leave on the 3971 Form. Gramins further stated that at the time he issued the subject Letter of Warning he did not know what the Grievant's sick leave balance was that he had accrued. 3/ Gramins also acknowledged that in reviewing the Grievant's Absence Analysis Form (Form 3972), there was no evidence to indicate the Grievant was not sick on the five (5) days in question.

In other testimony, Gramins stated that while he distributes a copy of the Attendance Control Program Policy (Jt. Ex. 3) to all

2/

In his closing argument, Union Representative Barry Weiner explained the derivation of 165 working days within this period. Weiner noted there are 34 working weeks from the beginning of Pay Period 3 to the end of Pay Period 19 and that within this time span there are a total of five (5) holidays. Thus, multiplying 34 weeks times 5, the number of normal work days in the normal work week, yields a total of 170 work days. Next, subtracting out the five (5) holidays leaves a total of 165 working days (See Un. Ex. 1).

3/

According to Section 513.21 of the Employee & Labor Relations Manual reproduced elsewhere above, it is noted that Full-Time Employees accrue 4 hours of sick leave for each pay period.

employees he supervises, he had no direct knowledge whether the Grievant had been given a copy nor whether he has seen this document. 4/ Gramins noted however, that this Policy is permanently posted on the Facility's Bulletin Board now located in the area of the Postal Inspector Box Section. Gramins further noted the Bulletin Board has been in this location for about four (4) months, having been moved from the area by the time clock on the south wall of the main office where it had been since 1971. According to Gramins, the Bulletin Board had been moved because of relocation of Carrier cases. Gramins further acknowledged that whereas the Bulletin Board was unobstructed in its former location, carts have always been positioned in front of the Bulletin Board in its new location, thus impeding employees from getting near the board. 5/ Nevertheless, Gramins asserted, employees have the ability to read the Policy from the Bulletin Board and have the right to ask for a copy. Gramins testified that the Attendance Control Program Policy is a local policy of the Milwaukee Mail Service Center but that he is unaware this Policy cannot supercede provisions of the National Agreement (Jt. Ex. 1). However, Gramins acknowledged, even if he knew this to be the case, he would still follow the local Policy. Gramins testified he has no knowledge of restricted sick leave provisions and that at Brookfield, at least in the four (4) years he has been a supervisor, restricted sick leave has never been imposed. Finally, Gramins testified, that a document showing how to properly prepare and fill out a Form 3971 (Arb. Ex. 1), is also permanently posted on the Bulletin Board. 6/

The Grievant corroborated Gramins testimony on the point that Gramins never inquired of him the reasons for his absences. But as to these reasons, the Grievant related that on May 14 and 15, he had a bad

4/ The Grievant testified that in his first year of employment his supervisor was Kenneth Plummer.

5/ The Arbitrator toured this location and observed first hand the Bulletin Board was indeed obstructed by the carts.

6/ This testimony was in connection with a sub-issue, wherein the Employer alleged the Grievant had not properly filled out Form 3971 for any of the absences in question.

cold, that on June 29, he had diarrhea, that on August 17, he had the flu, and that on September 9, he had a cold. The Grievant related that at the time he received the Letter of Warning, he had an accrued sick leave balance of 205 hours. The Grievant testified that he was never given a copy of the Attendance Control Program Policy (Emp. Ex. 1B) and although he glances at the Bulletin Board on occasion it is possible that he missed seeing this document. As to properly filling out Form 3971, the Grievant testified that in his three (3) years of employment with the Service, he has executed about seven (7) Form 3971s, and that he has never made an entry under the section titled "Remarks". The Grievant asserted in his testimony that none of his supervisors ever instructed him to fill in the "Remarks" section and that in all instances of submitting Form 3971, his supervisors approved the sick leave taken. The Grievant stated he was not aware of any regulations requiring him to fill in the "Remarks" section of Form 3971 when seeking approval for sick leave purposes. The Grievant also testified he has submitted Form 3971 for other than purposes of sick leave and that on these occasions as well he has never filled in any information under the "Remarks" section.

William Goff, President of Branch 4811, and employed as a Letter Carrier for seven (7) years, testified that when he first filed a Form 3971 for sick leave purposes, he did indicate the medical reasons for the leave under the "Remarks" section, but was instructed by Gramins not to enter this information as it was a violation of the Privacy Act as well as Postal Regulation to do so. Goff testified no one in management ever gave him a copy of the Attendance Control Program Policy (Emp. Ex. 1B), and while he has seen this document, no one ever apprised him that three (3) occurrences of unscheduled absences falling within a six (6) month period was considered to constitute unsatisfactory attendance. Goff related he has no knowledge of any other employee at the Facility having been disciplined for incurring in excess of three unscheduled absences within a period of six (6) months. In other testimony, Goff acknowledged it has been a practice at the Brookfield Facility to post such documents as the Attendance Control Program Policy.

The record evidence reveals the subject grievance was timely filed (September 28, 1982) and that the parties were unable to reach a mutually acceptable resolution of the matter in dispute. The grievance is therefore now before this Arbitrator for a final and binding determination.

CONTENTIONS

EMPLOYER'S POSITION:

The Employer submits there exists an established practice at the Brookfield Postal Facility wherein the occurrence of three (3) unscheduled absences within a six (6) month period warrants a job discussion and that any unscheduled absences in excess of this frequency within the same six (6) month period occasions the commencement of progressive discipline. In view of this established practice, the Employer argues the instant case before the Arbitrator is a clear cut one, in that the Grievant was given a job discussion after having incurred three (3) unscheduled absences over a three (3) month period, specifically between May 14, 1982 and August 17, 1982, and then given the subject Letter of Warning when he incurred a fourth unscheduled absence less than one month after the third occurrence and only one week following the job discussion. In that job discussion the Employer asserts, the Grievant was put on notice of his deficiency in attendance and was specifically warned that disciplinary measures would be imposed if he incurred any further unscheduled absences. The Employer argues that under the established practice at Brookfield, it is not constrained to wait the full six (6) months before imposing discipline where the frequency of unscheduled absences exceeding the standard occurs over a shorter span of time. The Employer argues that the subject Letter of Warning was corrective in nature and not punitive, in that the action alerted the Grievant his attendance was deficient and in turn that his job performance was unsatisfactory per the relevant provisions of the Agreement (Jt. Ex. 1).

The Employer asserts it does not contest its employees' right to sick leave, but maintains that where its use interferes with attendance, it becomes a problem. The Employer argues that under the Management Rights Clause of the Agreement (Jt. Ex. 1), it has the unrestricted right to impose discipline where warranted and that this right is also embodied in its policies, procedures and practices, and has been upheld in many previous arbitration awards. The Employer argues that, with respect to utilizing Restricted Sick Leave as a means of correcting attendance problems such as the one had by the Grievant, it is under no obligation to resort to the procedure of Restricted Sick Leave, but instead has the option to impose progressive discipline pursuant to Article 16 of the Agreement (Jt. Ex. 1), as a means of handling such a problem in a reasonable manner. The Employer asserts that since it guarantees its full-time employees forty (40) hours of employment

per week, it has a right to expect said employees to report to work when scheduled and to be regular in attendance. The Employer maintains that notwithstanding the absenteeism rates cited by the Union, the Union failed to specify what constitutes an unacceptable rate.

With regard to properly filling out Form 3971, the Employer argues that notwithstanding the Union's contention the proper procedure was unknown to the Grievant, the fact of the matter is the procedure is permanently posted on the Bulletin Board and therefore, ignorance of the procedure by the Grievant cannot be grounds for exempting him from his responsibilities.

In sum, the Employer maintains the Grievant was properly warned of his attendance deficiency prior to issuance of the Letter of Warning and that under all the prevailing circumstances, the Letter of Warning was warranted and constituted a proper quantum of discipline. Accordingly, the Employer requests the grievance be denied.

UNION'S POSITION:

The Union notes the Employer's heavy reliance on its Attendance Control Program Policy (Emp. Ex. 1B), as support for the disciplinary action imposed on the Grievant, yet, the Union asserts, this Policy does not explicitly set forth any attendance standard such as the one used by Gramins, specifically, that any occurrence of unscheduled leave in excess of three (3) within a six (6) month period is unacceptable and warrants the invocation of progressive discipline. In fact, the Union submits, there exists no documentary evidence in support of such a standard anywhere and in addition notes that Gramins himself could not recall the source from which he secured such a standard. Furthermore, even assuming arguendo an explicitly stated standard did exist, the Union argues application of such a standard cannot be utilized solely by itself but must be utilized taking into account many considerations such as those set forth by Arbitrator, Sylvester Garrett in Case No. NC-NAT-16, 285, (issued November 19, 1979). On this latter point, the Union argues that when Gramins issued the Grievant the subject Letter of Warning utilizing the alleged standard in question, Gramins did not take into consideration the Grievant's sick leave balance at the time, the reasons for his absences, his previous usage of sick leave, nor utilizing the option of Restricted Sick Leave to correct the alleged attendance deficiency. In fact, notes the Union, Gramins admitted in his testimony that he was not familiar

with Restricted Sick Leave provisions and that such provisions, according to his knowledge, had never been utilized at Brookfield. The Union asserts that the sole purpose of the Restricted Sick Leave procedure is to control and correct attendance problems.

In any event, neither restricted sick leave nor discipline was applicable here, argues the Union, because there was no discernible serious attendance problem that needed correction. The Union notes there was no evidence the Grievant was abusing his sick leave benefits and Gramins so testified he had no cause to suspect any such abuse was taking place. Further, the Union notes, there was no extant unusual pattern of absence incurred by the Grievant anytime prior to the unscheduled absences in question. Additionally, the Union submits, the Grievant's rate of absenteeism due to these unscheduled absences is very low. If the absenteeism rate were to be computed over the time period of five (5) months cited by the Employer, the rate, asserts the Union amounts to four (4) percent. However, if the unscheduled absences are considered over the greater time period between February and September, the rate then amounts to less than two and one-half (2-1/2) percent. Neither of these absenteeism rates, asserts the Union, is any cause for concern especially when compared against rates at other postal facilities as well as the national average.

In addition, argues the Union, employees of the Service earn as an entitlement, a total of thirteen (13) days of sick leave per year and any usage below this amount on an annual basis cannot be construed as excessive. In support of this argument the Union cites the arbitration case, Case AC-S-23, 404 D, rendered by Arbitrator, J. Fred Holly, wherein Holly stated the following:

"A reasonable conclusion is that the Employer cannot discipline an employee for absences which are legitimately caused by the physical incapacity of an employee up to at least the point where that employee exhausts his/her accumulated Sick Leave benefits, other things being equal. To hold otherwise would make it possible for the Employer to say to an incapacitated employee, 'although you have accumulated Sick Leave available, you cannot use it because to do so would make your attendance unsatisfactory.' Certainly, such a conclusion is not in accord with either the intent or spirit of the negotiated Sick Leave benefits."

The Union notes that at the time the Grievant received the subject Letter of Warning he had accrued sick leave in the amount of 205 hours. This accumulation, the Union notes, was accrued by the Grievant in his brief period of employment of a little less than three (3) years. The Union notes that the very nature of a Letter Carrier's job exposes and subjects the Carrier to the various whims of the weather, ranging from very cold to very hot. Given this exposure, the Union asserts, it is understandable how a Carrier can fall victim to maladies directly related to the elements of nature such as colds and influenza. Thus, the reasons given by the Grievant for his unscheduled absences, left as uncontroverted by the Employer, submits the Union, should be viewed as credible ones, supporting the argument they were legitimate and cannot be construed to be abusive of his sick leave benefits.

Finally, the Union argues, the example posted on the Bulletin Board (Arb. Ex. 1), as to how to properly execute Form 3971, reflects there is no requirement for the employee to fill out any information under the section titled "Remarks". In noting the Grievant left this section blank, the Union asserts, it cannot be maintained by the Employer, the Grievant improperly executed the corresponding Form 3971s associated with the absences in question.

Based on the foregoing arguments, coupled with the Employer's own recognition the Grievant has been a good employee, that is, he does his job and has no previous record of discipline, the Union argues the subject Letter of Warning was not issued for just cause and thus requests the instant grievance be upheld and the Letter to be expunged from the Grievant's record.

OPINION

From the record evidence, the Arbitrator arrives at the following findings: (1) there is no evidentiary support for the Employer's espoused standard that in excess of three (3) occurrences of unscheduled absences within a six (6) month period is sanctioned by any construction of the language set forth in the Attendance Control Program Policy (Emp. Ex. 1B), nor that it is specifically sanctioned by any other policy, procedure or provision contained in handbooks or manuals or in the National Agreement (Jt. Ex. 1); (2) that if such a standard did exist, it cannot be blindly applied to every case uniformly as this would result in an uneven administration of justice; (3) that the reasons for the Grievant's absences must be accepted as legitimate as they were left uncontroverted by the Employer; (4) that absent any previous pattern of abuse, the subject number of absences cannot be construed as excessive; and (5) that according to the permanent posting delineating the proper way in which to fill out Form 3971, the Grievant cannot be found to have improperly executed this document on any of the subject occurrences of unscheduled absences.

With respect to point 1 above, it is clear from a thorough reading of the pertinent sections of the Attendance Control Program dated December 26, 1978 (Emp. Ex. 1B) that while Management has discretion to invoke disciplinary measures to correct for problems of excessive absenteeism, nonetheless, there is nothing in the language of this policy either establishing or setting forth a specific standard such as the one utilized by Supervisor Gramins. This policy merely states that, "excessive absenteeism due to illness could result in disciplinary action up to and including discharge." The Arbitrator construes this language as providing Management a great deal of flexibility in the application of the program in terms of its permitting an option to pursue or not to pursue disciplinary measures and allowing discretion in its judgment as to what constitutes excessive absenteeism. It appears to the Arbitrator that a rigid standard applied uniformly without consideration to unique facts and circumstances on a case by case basis, such as that invoked by Gramins, is the exact antithesis of what was intended by the Employer when it framed the above cited language.

However, absence of an explicit standard, the Arbitrator wishes to emphasize, does not, in any way diminish the Employer's right to impose discipline where warranted or its right to expect its employees to be regular in attendance. In elaboration of this latter point, the Arbitrator deems the key concepts to be, where discipline is warranted and regularity of attendance. The Arbitrator is persuaded from the evidence before him that in the instant case, no discipline was warranted as the evidence supports the Union's position there was no record of excessive absenteeism incurred by the Grievant. This finding is premised and underscored by the fact that the Grievant had accumulated 205 hours of sick leave in his nearly three (3) years of employment, indicating that over this period of time he had used approximately 100 hours of sick leave, or on average, about 4 days per year. The Arbitrator notes this usage rate is only one-third (1/3) of the total number of sick days earned in one year. The Arbitrator further notes that at the time the Grievant had received the subject Letter of Warning, he had been absent a total of five (5) days due to sickness but in that same period of time had earned 9-1/2 days of sick leave for the year. Additionally, any in-depth review of the Grievant's Absence Analysis Form 3972 (Un. Ex. 1), indicates no discernible pattern of sick leave usage which can, in any way, support an allegation the Grievant was abusing his sick leave entitlement. The Arbitrator is well familiar with Form 3972 having reviewed many of them in connection with attendance and attendance-related grievances and based on his familiarity with other cases, the Arbitrator is persuaded Management's concern over the Grievant's record was at best premature. This supports finding number 2 above that blind administration of a standard can result in an uneven administration of justice, for in the Grievant's particular case he had a history of satisfactory attendance and was by Management's own assessment, a good employee. With no past history of attendance problems, the unsanctioned standard was applied in a vacuum, that is, without considering other pertinent factors heretofore identified, thus resulting in the Grievant receiving discipline to correct a problem which was virtually nonexistent.

As to the Union's argument the Employer in the instant case had an option to place the Grievant on Restricted Sick Leave rather than discipline him, the Arbitrator believes this action would have been inappropriate as Management according to its contentions, did not suspect the Grievant was abusing his sick leave benefits but rather was concerned with his regularity in attendance. With regard to the allegation the Grievant improperly


filled out Form 3971, the Arbitrator is persuaded by the record evidence that this issue is a red herring. The evidence, in particular Arbitrator Exhibit 1, specifically supports and verifies the Union's contention that employees are not required to provide information under the "Remarks" section of Form 3971 for it to be properly executed. In his review of copies of the Form 3971s submitted by the Grievant in connection with the subject absences (Emp. Ex. 2), the Arbitrator determines the Grievant complied with requirements set forth in Arbitrator Exhibit 1, and therefore, he properly executed said forms.

Based on the foregoing discussion, the Arbitrator finds the Employer did not have just cause under all the prevailing facts and circumstances to discipline the Grievant for his perceived deficiencies in attendance. Accordingly, the Arbitrator rules to sustain the instant grievance.

A W A R D

The Arbitrator rules that the Employer did not have just cause to issue the Letter of Warning dated September 15, 1982, to the Grievant, Bruce Robinson, for unsatisfactory attendance. Accordingly, the Arbitrator directs the Employer to rescind and expunge the Letter of Warning from the Grievant's personnel file.

Grievance Sustained.



GEORGE EDWARD LARNEY
Arbitrator

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December 28, 1983