

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	GRIEVANT: Class Action
	)	
between	)	POST OFFICE: Columbus, OH P&DC
	)	
UNITED STATES POSTAL SERVICE	)	USPS Case No.: CO6M-1C-C 07209854
	)	NPMHU Case No.: TDB6-20-07
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS	)	
UNION	)	

BEFORE: RONALD F. TALARICO, ESQ., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Mildred M. Johnson  
Labor Relations Specialist  
Columbus, OH

For the Union: William H. McLemore, III  
Arbitration Advocate  
Cincinnati, OH

PLACE OF HEARING: Columbus, OH

DATE OF HEARING: June 19, 2008

DATE OF AWARD: July 15, 2008

**AWARD**

The grievance is sustained. The Employer is to cease and desist creating the "deems desirable/documentation required" status for leaves of 3 days or less as it currently does, and must adhere to the ELM.

Jurisdiction shall be retained in order to ensure compliance with this Award.



Ronald F. Talarico, Esq.  
Arbitrator

## ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held on June 19, 2008 in Columbus, Ohio at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses and to make such arguments that they so desired. The record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

## PERTINENT CONTRACT PROVISIONS

### ARTICLE 19 HANDBOOKS AND MANUALS

#### Section 19.1

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 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.

\* \* \* \* \*

### EMPLOYEE AND LABOR RELATIONS MANUAL

513.36      Sick Leave Documentation Requirements

513.361     Three 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 or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

513.39 Restricted Sick Leave

513.391 Reasons for Restrictions

Supervisors or installation heads who have evidence indicating that an employee is abusing sick leave privileges may place the 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.
- b. Review of the absence file by the immediate supervisor and higher levels of management.
- c. Review of the absences during the past quarter of 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 absences. If the absence logs indicate no

improvement, the supervisor is to discuss the matter with the employee to include advice that if there is no improvement during the next quarter, the employee will be placed on restricted sick leave.

513.392 Notice and Listing

Supervisors provide written notice to employees that their names have been added to the restricted sick leave listing. The notice also explains that, until further notice, the employees must support *all* requests for sick leave by medical documentation or other acceptable evidence (see 513.364).

513.393 Rescission of Restriction

Supervisors review the employee's PS Form 3972 for each quarter. If there has been a substantial decrease in absences charged to sickness, the employee's name is removed from the restricted sick leave list and the employee is notified in writing of the removal.

\* \* \* \* \*

USPS — NPMHU CONTRACT INTERPRETATION MANUAL

Restricted Sick Leave: Management may place an employee in "restricted sick leave" status, requiring medical documentation to support every application for sick leave, if: (a) management has "evidence indicating that an employee is abusing sick leave privileges"; or (b) if management reviews the employee's sick leave usage on an individual basis, first discusses the matter with the employee, and otherwise follows the requirements of ELM, Section 513.39.

Question: May management create a list of employees who are required to provide medical documentation for all unscheduled absences in lieu of utilizing the restricted sick leave procedure found in ELM, Section 513.39?

Answer: No. A "call-in" list of employees that are automatically required to provide medical documentation for all unscheduled absences, even though the employees are not on restricted sick leave, should be abolished.

Source: Pre-arbitration Settlement H1C-3D-C 37622, dated June 3, 1985.

### BACKGROUND

This class action grievance was filed on June 27, 2007 on behalf of Mail Handlers working at the Columbus, Ohio Production & Distribution Center. The grievance alleges that management continues to use the "Deems Desired List" in lieu of restricted sick leave despite two Step III decisions instructing them to follow the ELM. The Union seeks as a remedy that Management be ordered to cease and desist using any system to mandate documentation without the use of the ELM requirements.

In years past when an employee would call-in a Supervisor would actually take the call, review the employee's 3971's and make a determination right then and there if the employee would need to produce medical verification upon their return to work from that particular sick leave. This process would be repeated each time the employee would call-in. However, with the advent of the ERMS system employees no longer talk to an individual when calling in to request leave of any kind. An automated answering and speech recognition system is utilized. A supervisor now has the ability to automatically require an employee to provide documentation for absences of three days or less by simply checking the "Documentation Required" box under "Deems Desirable" in the ERMS system. If a supervisor checks this box whenever the employee calls in to request leave they will automatically be advised that medical documentation will be required upon their return to work. The

supervisor also has the ability of entering a beginning and ending date into the ERMS system which will then continue to automatically advise the employee of the requirement to produce documentation for each short-term absence during the stated period of time.

A service talk was recently given to supervisors during which Management maintains the speaker mistakenly used the term "Deem Desirable List". The Plant Manager followed the service talk up with a message to all supervisors and managers advising them that this was a misleading term and should read, "when supervisor deems documentation desirable for the protection of the interest of the Postal Service in accordance with ELM 513.61". The Plant Manager further reminded supervisors that there should be no "list" of employees and if there was any supervisor who had one, they were to destroy it.

#### ISSUE

Whether the ERMS "Deems Desirable" process the Employer currently utilizes to automatically advise employees to provide medical documentation for unscheduled absences of 3 days or less violates the collective bargaining agreement?

#### POSITION OF THE UNION

Once we presented our evidence and documentation to you the Postal Service said "Yes, we did this and this is the reason why". We require documentation for less than three days because we wanted to protect the interests of the Postal Service. We think it's their obligation at that time to prove what that was. If they did do this to protect the interests of the Postal Service what was that interest. Mr. Arbitrator we submit that they did not do that today. They said they sent it to these

employees who had bad attendance records, but we contend that a bad attendance record does not qualify as a reason to ask for documentation for sick leave to protect the interests of the Postal Service. They never provided any documentation showing that they can request documentation for less than three days without showing what that interest was. From the beginning of the grievance until today they never showed us anything.

Mr. Arbitrator even if we do not use Union 1 through Union 5 which are, in our opinion, they are lists that show these people on the list but never used that. To say we disagree in terms. The fact of the matter is these employees are categorized somewhere and now it's in the ERMS system. And you can bet whether they are on the list or not, a person can go into that system and say get me all the people on the Deems Desired list and you can bet it can be pulled out. We are saying that these employees are categorized by list, status, category, whatever and they all have something similar in common. They are being required to bring in documentation for less than three days. You cannot just say to protect the interests and not say what interest at all. They never, never, ever identified a reason. So we are saying that is not good enough. They have done nothing but created a way to get rid of the safeguards for the employees and take a lazy way around the restricted sick leave list.

Mr. Arbitrator if we look at Joint 3, the Step 3 decision, no where does it say all that it's doing is quoting the ELM. No where does it say we have a right. These employees were abusing sick leave. They were calling in after their off day or before their off day. Getting a three day weekend. Nowhere in the Step 3 decision did it address what interests were involved. Here today at the hearing nobody said their interests were protected. Protection of the Postal Service must be made on a case-by-case bases. And may not be arbitrary, capricious or unreasonable. They said the same thing in Step 2 --case-by-case. If you have some attendance problems a supervisor looks at

your 3972 and decides -- OK we are going to put you on this list. Mr. Arbitrator that is not protecting the interests of the Postal Service. This is trying to slide something through the cracks. When we have an abuser of sick leave we are in a grievance procedure and we are dealing with discipline. They are trying to slide in a new vehicle other than the vehicles that they have available to them but they are trying to slide in a new vehicle and Mr. Arbitrator we cannot allow that. Restricted sick leave has guidelines and checks and balances from both sides. It makes sure the employee is being treated fairly, makes sure the Postal Service is monitoring what they require of him so they can deal with abusers. If the Postal Service should decide not to use restricted sick leave they will be taking the easy way out without having to do the work.

Can Management create a list of employees? No they can't. The call-in list has to be abolished. Even though the employees are not under a restricted sick leave it should be abolished. So what Management is doing here is they are saying -- OK, no it's not a list. You know this doesn't apply because it's not a list. Mr. Arbitrator in actuality it is a list. It is employees who have the same thing in common. And they are put in a certain category and they are being required to document an absence for less than three days which is contrary to what the ELM says.

#### POSITION OF THE POSTAL SERVICE

The issue according to the Union's standard grievance form is whether the Postal Service violated Article 5, 10, 15 and 19 of the National Agreement by continuing to use deems desirable in lieu of restricted sick leave. We don't believe that is what we are doing. The Union at the national level has agreed to the use of the ERMS system. We are using a small portion of that system in accordance with our rules, policies and procedures. Management has been utilizing the

deems desirable in the system for well over 4 years now and the Union has no objection to it until now. It is not new. The Union appears to be attempting to mandate that the Columbus district utilize restricted sick leave. The Union's Exhibit "8" deals with a computer program. It does not constitute a new rule or regulation. We agree with that. We also agreed it does not take away our right to request documentation for 3 days or less. Management has testified credibly that for at least the last 20 years it has been a practice here in this District to review an employee's attendance record when they call-in, look at their attendance record and make a determination to request documentation based on those attendance records.

Prior to the implementation of IBI a supervisor taking that call could make that determination at the time of the call. With the implementation of the IBI the only way to accomplish that is for the supervisor to make the notation in the computer. Supervisors have been trained. Laurie Gorman testified that they are supposed to sit down -- the proper procedure is to sit down with the employee, review their attendance, get the employee's feedback, make a determination whether they are going to require documentation, let that employee know, let them know for how long and why. Do we have to provide a follow-up to that? Yes we do. Gorman testified she has been made aware of at least 3 that did not. Unfortunately, 2 of those 3 were the 2 that are involved in this grievance. And Laurie had to retrain them and they are no longer doing what they weren't suppose to be doing in the first place. They are now following the proper procedures. There is no way to pull a list from the computer system as far as who marked "documentation required" because it is on a case-by-case basis. Maybe not every case-by-case basis but it is on an employee to supervisor one-on-one basis. Only that supervisor can make that designation. And that supervisor should not be making that designation without talking to the employee. Lori testified on her training that she did give

supervisors in particular some examples of why they might want to use the documentation desired. For example, maybe things such as always calling in conjunction with off days, always calling in conjunction with their holidays, you know issues like that. That is what we mean by for the protection of the Postal Service.

Mr. Arbitrator I honestly feel that the Union has failed in its burden of proving that we violated any of the Articles of the National Agreement and we respectfully request that this grievance be denied and dismissed in it's entirety.

### FINDINGS AND DISCUSSION

The essential underlying facts in the within matter are not in dispute and the issue is a straight-forward matter of contract interpretation. The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can possibly be read into the language.

The obligation of employees to report for work as scheduled, except as allowed by contract or permission of the employer, is fundamental to the employer/employee relationship. An employee's illness may constitute a permissible reason for being absent to the extent the illness is incapacitating to the performance of the employee's duties, to the extent sick leave is available to the employee, and to the extent proper procedures are followed. However, every request for sick leave should not automatically be subjected to a demand for medical documentation and proof of the

legitimacy of the absence. Perhaps in recognition of the practical difficulties in obtaining medical verification for short-term illnesses and absences ELM Section 513.361 generally exempts absences of three days or less from such requirement. To that end, ELM Section 513.361 creates two exceptions to the general exemption of short-term absences which should be strictly adhered to. One exception is an employee who is placed on restricted sick leave which, I would note, entails many rights and obligations. The other exception is a more generalized condition where a supervisor deems such documentation to be desirable for the protection of the interests of the Postal Service.

Management has stipulated that it does not use "restricted sick leave" as set forth in ELM 513.39 at the Columbus P&DC. Accordingly, for periods of absence of three days or less supervisors may require medical documentation only when it is deemed desirable for the protection of the interests of the Postal Service. Neither the collective bargaining agreement nor any other document that I am aware of provides any guidelines or parameters on the identification of those interests, nor how they may be protected. However, a supervisor's determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interests of the Postal Service must be made on a case-by-case basis, and may not be arbitrary, capricious or unreasonable.

Even though management does not use "restricted sick leave" I believe it would still be instructive for purposes of this analysis to review some of the conditions pertaining to its use. For example, employees may be placed on restricted sick leave only after their sick leave use has been reviewed on an individual basis and the following actions have been taken: establishment of an absence file; a review of the absence file by the immediate supervisor and higher levels of management; a review of subsequent absences on a quarterly basis; written notice to employees that

their names have been added to the restricted sick leave listing; and notice that all further requests for sick leave must be supported by medical documentation until further notice. Clearly the use of restricted sick leave places considerable obligations upon the Employer and offers important protections to the employee.

The Postal Service utilizes a resource management data base (ERMS) to provide a uniform automated process for recording data relative to existing leave rules and regulations. However, management may not alter or change existing rules, regulations, the National Agreement, local understandings, arbitration awards, etc., through the use of its ERMS.

The parties' Contract Interpretation Manual addresses the situation where management does not utilize "restricted sick leave" for employees and the remaining options that are available for requesting documentation for absences of 3 days or less. Under such circumstances management may not create a list of employees who are automatically required to provide medical documentation for all such unscheduled absences.

When a supervisor checks the data box on the ERMS form indicating that documentation is required for short-term leaves of absence each time that employee calls in to request sick leave the ERMS system will automatically advise him/her that they must provide documentation for the requested sick leave upon return to work. This is done automatically by the system, without the employee ever speaking directly with the supervisor, and without any further input from or consultation with the supervisor for each successive call-in.

If an employee is going to lose the valuable right of being able to utilize sick leave for absences of 3 days or less without the need to provide medical verification the Employer has the obligation to ensure that the employee is apprised of and understands the reasons why this valuable

right is being lost (i.e. what are the interests being protected), as well as the parameters under which the loss of this right will remain in existence. While all of these obligations are satisfied when management uses restricted sick leave that is not the case under management's current computerized system of responding to call-ins of 3 days or less. The evidence presented does not indicate any requirement or adhered to practice of supervisors initially meeting with the employee and providing them with the reasons why the "deems desirable" box is being checked and, more importantly, how long and under what conditions the employee will remain in that "status". Nor is there any opportunity for an exchange of information and for the supervisor to take into consideration any change in the employee's circumstances over time.

Essentially what is occurring is that instead of a physical "list" being developed and utilized whenever an employee calls-in (which has been prohibited by the parties' CIM) the computerized ERMS system now performs that same function. The ERMS system electronically creates the equivalent of a "list" that automatically requires an employee to document an unscheduled absence without the type of protections offered by restricted sick leave. The ERMS system essentially creates a deems desirable "status" which is the functional equivalent of the prohibited "call-in" list of employees which automatically requires them to document every unscheduled absence instead of utilizing the restricted sick leave method found in Section 513.39 of the ELM. The significant import of this electronic equivalent is to allow management to require documentation for all absences of 3 days or less while avoiding providing all of the rights and safeguards afforded employees under the restricted sick leave provisions ELM Section 513.39. That simply is not permissible and constitutes a contract violation.

For all of the above reasons, the grievance must therefore be sustained.

AWARD

The grievance is sustained. The Employer is to cease and desist creating the "deems desirable/documentation required" status for leaves of 3 days or less as it currently does, and must adhere to the ELM.

Jurisdiction shall be retained in order to ensure compliance with this Award.

Date:

July 15, 2008  
Pittsburgh, PA



Ronald F. Talarico, Esq.  
Arbitrator