



**STEP B DECISION**

**Step B Team:**  
USPS:  
**Rene Benavidez**  
NALC:  
**Karrie Blough**

Decision: **RESOLVE**  
USPS Number: **G06N-4G-C 1221 2112**  
Grievant: **M. Palafox**  
Branch Grievance Number: **421-393-12**  
Branch: **421**  
Installation: **San Antonio**  
Delivery Unit: **Lockhill**  
State: **TX**  
Incident Date: **05/23/12**  
Date Informal Step A Initiated: **05/31/12**  
Formal Step A Meeting Date: **06/07/12**  
Date Received at Step B: **06/11/12**  
Step B Decision Date: **06/25/12**  
Issue Code: **19.2000**  
NALC Subject Code: **502105**

District:  
**Rio Grande**

Formal A Representatives:  
USPS  
**A. Alderete**  
NALC  
**J. Perez**

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**ISSUE:**

Was there a violation of Article 19 of the National Agreement specifically section 513.361 of the ELM, when they require the grievant to provide medical documentation to support his absence on 05/21/2012? If so, what is the appropriate remedy?

**DECISION:**

The Dispute Resolution Team, (DRT), agree to **RESOLVE** this grievance. The use of "deems desirable" in this case in effect puts the grievant on restricted sick leave in circumvention of the requirements for such contained in ELM 513.391. Management will remove the "deems desirable" request in the eRMS requiring the grievant to provide medical documentation or other acceptable documentation to substantiate all further unscheduled absences. This decision is based on the fact circumstances presented in this case file and is in no way intended to prohibit management from exercising their right to request documentation *properly* for an unscheduled absence for any employees. See the DRT Explanation.

**EXPLANATION:**

The union contends that on 05/21/2012, the grievant called in sick and upon his return to work, the manager (Alderete) requested the grievant provide medical documentation to substantiate his absence. The grievant complied with the request and provided documentation. The union argues that the grievant is not on restricted sick leave, has been regular in attendance, and management has not given the grievant not one discussion about his attendance. Article 10 and the ELM state specifically that for absences of three days or less management may accept the employees' reason for absence.

The union contends that management violated Article 10 and Article 19 of the National Agreement by requiring the grievant to furnish medical documentation after calling in sick for less than three days. The grievant should not have been required to provide medical documentation when the grievant's record shows no pattern of irregular or unreliable attendance, is not on restricted sick leave, and called in for less than three days. Management failed to give him proper due diligence and by requesting documentation has created a locally determined unscheduled occurrence threshold that targets employees who call in sick two or more times in 90 days.

The union submitted additions and corrections and stated that after the grievant was asked by the manager to provide medical documentation, he asked management if he could go to his medical provider and was told that he could but must do so after work. The grievant consulted with the union and upon explanation by the grievant the union informed the grievant that the medical return to work notice which he had received was considered documentation and the grievant submitted the doctor's excuse and management accepted it.

The union reiterated that it was unreasonable and unnecessary for management to arbitrarily request documentation after the grievant called in for just one day. The union contends management does not have the right to arbitrarily "tag" an employee based upon a specific time frame and that there must be justifiable reasoning to do so; otherwise they could just "tag" every employee whenever they felt like it. The union also contends that management is completely abusing the intent of ELM section 513.361 and using that section to imply that they have the right to ask for medical documentation anytime because it is for the protection of the Postal Service.

The union cited arbitration case H94N-4H- C 9603 3490, which states in part, *"The right to require medical documentation in section 513.361, while broad, is not without its limitations, for absences of three days or less a supervisor may exercise some discretion in requiring medical documentation. But documentation may only be required; (1) when an absent employee is on restricted sick leave, or (2) when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. The first limitation is clear, but the first limitation gives meaning to the second."*

The union also states that as recent as this week, Station Manager Alderete stated in a standup talk that she understood what the contract said, however she had a right to protect the interest of the Postal Service and she would require medical documentation if she deemed it desirable. The union states that she went on to say that if employees failed to bring in proper medical documentation, employees would not be paid for the day(s) they called in for. The union argues that management is completely overstepping their own authority on this issue. The union contends that management stated that Palafox had previously called in conjunction with a previous holiday.

The union contends that the validity of management's claim regarding Palafox and their reason for requiring him to provide medical documentation must be challenged since the grievant did not call in conjunction with a previous holiday. Management is now claiming that if an employee calls in sick the week prior to or the week of a holiday, that they now have the right to tag that employee the week of the next holiday. This is unreasonable and unrealistic at best, and this issue has been an ongoing problem at Lockhill.

Management will tag every employee during a specific time frame because a holiday is involved.

The union contends that management's actions are considered as a slippery slope with no way to stop the slide. If management can arbitrarily request medical documentation of employees who call in the week prior and the week of a holiday, what is to stop them from tagging employees who happen to get sick and call in conjunction with an SDO. The union states that they are in agreement on a case by case basis that after management has taken the proper steps to include putting an employee on notice, and the employee shows a clear pattern of abuse, then the employer may take the proper steps to protect the interest of the Postal Service. However, in this instant case, management has failed to show how their actions fall within the limitations of the ELM.

The union also contends that they understand what is considered restricted sick leave, but to "tag" an employee as "deems desirable" requires an employee to provide medical regardless of the number of days the employee used. The union states that regardless of what it is called, this clearly falls within the definition of restricted sick leave. Management never gave the employee any discussion or one on one because simply put, the employee does not have a problem with sick leave usage, therefore should never have been tagged as deems desirable.

The union requests as a remedy that management cease and desist from placing employees on the deems desirable list when it is unwarranted and without following the procedures outlined in the handbooks and manuals. The union also requests that management immediately stop placing all employees on the deems desirable for specific blocks of time that fall within *"the week of the holiday."*

**Management** contends that they (management) did not violate Article 10 or 19 with reference to unscheduled sick leave for carrier Palafox on 05/21/2012. Management contends that the grievant was SDO Sunday 05/20/2012, called in 05/21/2012, and was SDO on 05/22/2012. Management states that his call in did trigger that documentation be provided and when management asked him for documentation, he stated he did not have any and asked to speak to the union. Management states that after he spoke with the union, carrier Palafox pulled out his medical documentation and gave it to management.

Management states that the union's argument that Mr. Palafox should not be on restricted sick leave is not valid, since no employee at Lockhill is on restricted sick leave. Management argues that they have a right to protect the interest of the Postal Service and can ask for supporting documentation for absences of three days or less per the ELM section 513.361. The grievant had been tagged the week of the holiday that was forthcoming due to him having called in from the previous holiday.

Management contends that the supervisor has to control unscheduled absences as per the ELM 511.42, and during the review of the grievant's 3971, the history showed that he had called in right before a Holiday, so the supervisor tagged the employee. Management reiterates that this is not a restricted sick leave issue and management was simply reviewing previous activity and taking a proactive step to protect the interest of the Postal Service.

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Management provided a final rebuttal to the union's additions and corrections and stated that when the employee returned to work, I (Alderete) was at the standup desk and witnessed the grievant signing his 3971. I (Alderete) asked him for documentation, because the 3971 stated "documentation required". The grievant asked if he could get one, I (Alderete) told him no, that he had reported to work and that he could supply it before the end of the service week for pay purposes. He (Palafox) requested to see the union and then gave us his documentation that he already had in his pocket.

Management contends that they are not overstepping their boundaries; if documentation is required for the absence and if the employee wants to be in a pay status, then they must submit the proper documentation in order to get paid leave. Management states that this leave was not scheduled and under the ELM management can request it for three days or less. Management closes by stating that not all employees are tagged, just those that deem documentation desirable due to their past history or pattern with SDO's and Holidays, as was this case.

Management responded to the requested remedy by the union and offered to review everyone's attendance on a case by case basis and have discussions as well as one on one's with those employee's who call in. Management also offered to review all 3972's with those employee's, however, if an employee "deems" action that requires documentation, management will address it accordingly. Management states that the union declined the offer; therefore management had no other recourse but to deny the grievance.

**The DRT** reviewed the entire case file and, based on the documentation and the contention provided, determined that the grievant had a previous unscheduled absence for February 16 and 17 worked the day prior to the holiday and was SDO on the 21<sup>st</sup> of February, then began his scheduled leave. There was no previous holiday schedule for the February Holiday included in the case file and given the employees' SDO he would have not been polled for that particular holiday. Management argued that after review of his 3972 he was tagged because he had previously called in right before a holiday. At the very least the employees absence in February was during the same week as the designated holiday for those employees who where either SDO Saturday or Monday, Palafox was neither.

The following is a guide for this very issue concerning requests for documentation as "deems desirable" "tag" or "flagged" protection of the interests of the Postal Service:

**Medical Certification.** ELM Section 513.361 and 362 establish three rules: a. For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave ("three days" means three scheduled workdays; see Step 4 H1N-5B-C 3428, November 3, 1983, M-00489); and

b. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however

*c. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."*

*Numerous disputes have arisen over situations in which a supervisor has required an employee not in restricted sick leave status to provide medical documentation for an illness of three days or less. Generally, to challenge such a decision successfully the union should demonstrate that the supervisor acted arbitrarily, capriciously or unreasonably in requiring the employee to obtain medical documentation. The union should be prepared to show that the grievant has a good overall sick leave record and no record of abuse. Consistent with the Rehabilitation Act, the parties agree that ELM 513.362 and 513.364 do not require the employee to provide a diagnosis. (August 3, 2007 USPS correspondence M-01629).*

The threshold for successfully challenging management's requirement to provide documentation for absences of three days has been established as cited above. The case file demonstrates that the employee had an unscheduled occurrence in February the week of the designated holiday and then had an unscheduled absence on 05/21/2012 the week prior to the designated holiday in May. However, the case file did not contain any documentation on how or when the employee was placed on notice regarding any attendance related deficiencies.

The DRT mutually agreed that while management may have the right to request medical documentation in cases of absences of three days or less, management must also be prepared to defend their reasons with documented evidence and proof of sick leave abuse and patterns of irregular and unreliable attendance. The case file did not establish either; one unscheduled absence prior to the May 21<sup>st</sup> incident did not in and of itself establish this obligation by management.

The Step B Team mutually agreed that management did not have valid cause to request medical documentation for the absence on May 21<sup>st</sup>. The Team mutually agreed that the case file did indicate that management made an offer to review each case on a case by case basis and to review the 3972's with those employees who had attendance related issues and place those similarly situated employees on proper notice regarding their attendance related deficiencies.

The DRT mutually agreed that management may not arbitrarily place employees on a deems desirable list without fulfilling the requirements of the ELM regarding proper placement of a "restricted leave status" or other "tag" in e-RMS. Attendance reviews are a requirement when:

513.391 Reasons for Restriction

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:

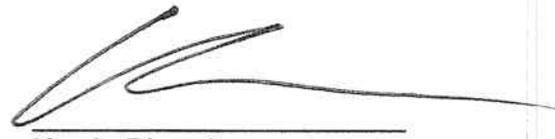
- a. Establishment of an absence file.

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- 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.

Restricted sick leave is another option for management but is not mandatory. However the guidelines found within the ELM section 513.391 serve as a guide to management to demonstrate what actions should be taken prior to placing an employee on restricted sick leave. It is these steps which were not evident in this case file to establish good cause for requiring the employee to provide medical documentation.

  
Rene Benavidez  
USPS Step B Representative

  
Karrie Blough  
NALC Step B Representative

**Grievance File Contents:**

Union's Additions & Corrections, 2pp  
Esparza Statement  
Copy Email e-RMS Message  
Copy Doctor's Note  
ELM Excerpts, 2pp  
Copy 3972, Palafox  
Generic Statement, 2pp  
Steward Notes, 2pp  
Form 0-13

Palafox Statement  
Copy Arbitration 9603 3490, 10pp  
Union Contentions  
PS Form 3971, 7pp  
Formal A Request  
Informal A Request  
PS Form 8190  
Management's Final Rebuttal  
Management Contentions

cc: **Manager, Labor Relations, Southwest Area**  
**District Manager, Rio Grande District**  
**NALC NBA, Region 10**  
**Manager, Human Resources, Rio Grande District**  
**Manager, Labor Relations, Rio Grande District**  
**Postmaster, San Antonio**  
**NALC Branch President**  
**USPS Formal A Representative**  
**NALC Formal A Representative**  
**DRT File**