



STEP B DECISION

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| Step B Team: | Decision: | RESOLVE |
| USPS: | USPS Number: | G11N-4G-C 1408 5538 |
| Michael Goden | Grievant: | Class Action |
| NALC: | Branch Grievance Number: | 421-068-14 |
| Karrie Blough | Branch: | 421 |
| | Installation: | San Antonio |
| | Delivery Unit: | Lockhill |
| District: | State: | Texas |
| Rio Grande | Incident Date: | 01/23/2014 |
| | Informal Step A Initiated: | 02/01/2014 |
| Formal A Reps: | Formal Step A Meeting: | 02/11/2014 |
| NALC: R. Gould | Date Received at Step B: | 02/18/2014 |
| USPS: J. Wright | Step B Decision Date: | 02/21/2014 |
| | Issue Code: | 10.5100 |
| | NALC Subject Code: | 100025 |

ISSUE:

Did management violate Articles 3, 10, and 19 of the National Agreement by requiring all carriers provide medical documentation for all unscheduled sick leave absences? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. There was a violation of the National Agreement when management issued a blanket statement that all carriers must provide medical documentation for all unscheduled absences in every incidence including if it is approved Family Medical Leave. 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 during a standup talk conducted by the station manager, the unscheduled sick leave procedure was discussed. She informed all the employees that they were required to consult with their Medical Provider and bring in acceptable medical evidence any time they call in sick before or after a Holiday; this was to include approved FMLA absences. Failure to provide acceptable Medical Documentation would result in Leave without Pay (LWOP) for the absence. In addition, any scheduled medical appointments must have evidence of its duration from start to end.

Management was incorrect when they required Medical Documentation before or after the Holiday in every case. This is a blanket instruction that places every carrier on restrictive sick leave absent any circumstances and any "just cause." When management applied this blanket policy, they confused certification with documentation. The two are not the same. There are many Arbitration awards and cites in the Handbook and Manuals that can be

found showing this an improper instruction from management. This practice must cease and desist. Management does not have the right to place a carrier on LWOP when they properly call in an absence. The union orders that management stop requesting proof of a medical appointment prior the appointment.

Management: No contentions or disputes were provided at the Formal A level. The case file and the union contentions indicated management applied *ELM Section 513.361 section c.*

The DRT reviewed all the information in the case file and determined there was a violation.

The following is a guide for this very issue concerning requests for medical documentation for the 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 management applied 513.361 section c of the ELM as justification. Per this section, management required that all unscheduled sick leave absences before or after the Holiday will require acceptable medical documentation. The union in this case demonstrated the application of this section was arbitrarily applied. The case file does not contain any documentation on how or when any of the employees were 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. Management was silent at the Formal A level and presented no explanation or defense for the instruction.

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The Step B Team mutually agreed that management did not demonstrate a valid cause to request medical documentation in the situations as presented.

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.*
- 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.*



Michael Goden
USPS Step B Representative



Karrie Blough
NALC Step B Representative

GRIEVANCE FILE CONTENTS:

PS Form 8190
Informal A Request
Union Contentions (3 pgs.)
Request for Formal A Meeting
Routing Slip from Conrad Gonzales
Letter to Installation Head from Richard Gould
Information response from Richard Gould
Interview/Questioner (7 pgs.)
Carrier Statement, Mark Musson
Carrier Statement, Cindy Musson
Carrier Statement Jose Gallego
PS Form 3972 (6 pgs.)
PS Form 2240 (2 pgs.)
M-01474
M-1271 92 pgs.)

Elm cites (2 pgs.)
Step B Decisions (11 pgs.)
Arbitration Decision H94N-4H-C 96033490 (10 pgs.)

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