



RESOLVE



STEP B DECISION

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| Step B Team: | Decision: | RESOLVE |
| USPS: | USPS Number: | G16N-4G-C 1803 5053 |
| Richard W Ketchum | Grievant: | Ricardo Gonzalez |
| NALC: | Branch Grievance Number: | 421-1223-17 |
| Jim Ruetze | Branch: | 421 |
| | Installation: | San Antonio |
| District: | Delivery Unit: | Leon Valley |
| Rio Grande | State: | TX |
| | Incident Date: | 10/23/2017 |
| USPS Formal A: | Informal Step A Meeting: | 11/14/2017 |
| Francisco Cazares | Formal Step A Meeting: | 11/21/2017 |
| NALC Formal A: | Received at Step B: | 12/04/2017 |
| Ricardo Gonzalez | Step B Decision Date: | 12/14/2017 |
| | Issue Code: | 10.5160 |
| | NALC Subject Code: | 507450 |

ISSUE:

Did management violate Article 10 of the National Agreement and/or 513.39 of the ELM when they placed the grievant on restricted sick leave? If so what is the appropriate remedy.

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Management did not follow the procedures outlined in ELM 513.39 to place the grievant on restricted sick leave. The grievant will be removed from restricted sick leave status.

EXPLANATION:

The grievant in this case is Ricardo Gonzalez, a full time regular letter carrier assigned to Leon Valley Station in San Antonio, TX with seniority dating to 2005. The grievant was placed on restricted sick leave and took his child to the doctor to receive medical documentation.

The union filed this grievance to challenge whether it was appropriate to place the grievant on restricted sick leave. Unable to resolve the dispute through the Informal Step A and Formal Step A levels of the grievance procedure, the union appealed to Step B.

The union contends that management did not follow ELM Section 513.391 when they placed the grievant on restricted sick leave. The grievant was not given a discussion about his attendance. There was no evidence of sick leave abuse by the grievant. Management never reviewed subsequent quarterly absences in order to give the grievant an opportunity to find a solution to his call-ins. Management did not wait until the end of the present quarter to place the carrier on restricted sick leave. The grievant had to go to the doctor to provided medical evidence and had an expense of \$25.06. This expense would never have happened if the grievant was not on restricted sick leave. There are extensions in the grievance file.

The union requests the grievant be removed from restricted sick leave, to pay the grievant \$25.06 for having to get medical documentation, cease and desist violating Article 10, and

that the Leon Valley management at all levels be retrained on NALC-USPS agreed-upon procedures.

Management contends the grievant was given a discussion on attendance which was annotated on PS Form 3972. The principle of "Just Cause" was used in the determination for the restricted sick leave. The employee was placed on notice on 10/13/2017. The employee was then absent from 11/18/2017 to 11/24/2017 for 7 days and then from 11/5/2017 to 11/9/2017 for five days. The grievance is untimely.

The **DRT** reviewed the case file and determined that there were extensions in the file and that it was timely.

The ELM 513.39 covers the restricted sick leave process. This process has certain steps that must be followed. There is no evidence in the file to show that all of the appropriate steps were completed before the employee was placed on restricted sick leave.

513.39 Restricted Sick Leave

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.*

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.

The ELM 513.364 covers the documentation that should be submitted. This section does not limit the documentation to strictly documents from a physician or other practitioner. This section allows superior to accept substantiation other than medical documentation. There is

nothing in the file that states the supervisor would not accept other than medical documentation.

513.364 Medical Documentation or Other Acceptable Evidence

When employees are required to submit medical documentation, such documentation should be furnished by the employee's attending physician or other attending practitioner who is performing within the scope of his or her practice. 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 substantiation other than medical documentation if they believe it supports approval of the sick leave request. (Emphasis Added)

Because there was no indication that management would not have accepted other than medical documentation, the DRT could not agree to reimburse the grievant for the \$25.06 payment he made to the doctor on 11/08/2017.

Based on its review of the case file, the DRT mutually agreed to the decision and remedy above.



Richard W Ketchum
USPS Step B Representative



Jim Ruetze
NALC Step B Representative

cc:

LR Manager, SW Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
Management Formal Step A Designee

NALC Branch President
NALC Formal Step A Designee
Manager, Rio Grande District
Postmaster, San Antonio, Texas
DRT File

Grievance File Contents

PS form 8190
Unions contentions
Formal A request
Informal Step a request w/extensions
Receipt dated 11/08/2017

Medical documentations Form 3972
TACS clock rings
Managements contentions
ERMS employee key indicators report