



STEP B DECISION

Step B Team:
USPS:
Rene Benavidez
NALC:
Emre Edwards

Decision: RESOLVE
USPS Number: **G06N-4G-C 1022 6792**
Grievant: **Joseph Blancarte**
Branch Grievance Number: **421-420-10**
Branch: **421**
Installation: **San Antonio**
Delivery Unit: **Laurel Heights**
State: **Texas**
Incident Date: **05/12/10**
Date Informal Step A Initiated: **05/26/10**
Formal Step A Meeting Date: **06/07/10**
Date Received at Step B: **06/16/10**
Step B Decision Date: **06/30/10**
Issue Code: **31.0000, 17.3000**
NALC Subject Code: **505006; 505011**

District:
Rio Grande

COPY

Formal A Designees:
USPS: **B. Rodriguez**
NALC: **J. Blancarte**

ISSUE:

Did management violate Article 3, 10, 15, 17, 19, and 31 of the Joint Contract Administration Manual (JCAM) and/or the National Agreement when they failed to comply with a DRT decision by not providing requested documentation within 72 hours and/or when management denied FMLA coverage and/or when they denied the veteran grievant the right to attend a medical appointment? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT), Step B, mutually agreed to **RESOLVE** this grievance. Absent extenuating circumstances, management will provide requested documentation within three working days in accordance with previous DRT decision(s). Additionally, all parties must comply with federal law and USPS policy regarding absences covered under the Family and Medical Leave Act and/or the Hoover Memorandum. Requests for leave submitted on Forms 3971 must be addressed in a timely manner. See DRT Explanation.

EXPLANATION:

The Union contends that management failed to comply with a previous DRT decision by not providing documentation within 72 hours. The Union contended they were crippled on many grievances due to management's purposely delaying or not supplying documentation.

The Union contends that the grievant was harmed when he was not allowed to attend a VA medical appointment for an FMLA approved condition. Further contentions are that the grievant verbally notified both his supervisor and station manager that less than eight hours was actually needed for the appointment, that the medical documentation

RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel, Room 1059
San Antonio, TX 78284-8430
PHONE 210-368-1760, FAX 210-368-8525

requested by management was provided and available to management on May 11, not May 12. The Union further contends that management was notified of the appointment when the Form 3971 was submitted on April 26 for an appointment on May 12 and that previous such requests have been honored.

The Union requests as a remedy that management notify carriers submitting Forms 3971 as to the status of their request(s) by the posting of the schedule for the week the leave is requested. Additional requested remedy is that all sick leave requested before the posting of the schedule be approved, an apology in a stand-up talk forum two Saturdays in a row, and/or that the grievant otherwise be made whole.

Management contends that the grievant's request for eight hours annual leave was denied because two carriers were already on FMLA leave and three carriers (the maximum) were scheduled off for choice vacation leave. Management further contended that the grievant was informed that he would need to furnish documentation to show that he was incapacitated for eight hours in order to have his request for eight hours for a medical appointment approved and that management was within their rights to do so.

Management explains that the medical documentation was not received until the morning of May 12 (day of appointment) and that it only certified that the appointment was at 2:30 pm, not demonstrating an eight hour incapacitation.

The DRT noted that the Form 3971 submitted by the grievant requested eight hours of annual leave for "FMLA (and the case #)" on May 12. A prior Form 3971 provided by the grievant was submitted on May 18 for an appointment on May 26. The remark written across the bottom of the page reads "This appointment was allowed – it was identical to the one submitted on April 26, 2010 except for the time." The DRT mutually agreed that the time (two hours leave versus eight hours leave for an appointment) was the determining factor that differentiated the two requests. The issue of whether or not an employer may request medical documentation for an FMLA covered absence has been addressed by language in the federal law as well as the courts and the arbitration arena. Where *paid* leave is requested (as opposed to leave without pay) management is not barred from requesting medical documentation consistent with Postal Service policy and pertinent language found in handbooks and manuals, apart from the fact that the leave is designated as FMLA qualifying.

On the issue of compliance with the Hoover Memorandum (Executive Order 5396), upon "presentation of an official statement from duly constituted medical authority that medical treatment is required" leave "shall be granted . . . in order that the veteran may receive such treatment." To paraphrase, management may not deny leave necessary to secure the treatment but is not obligated to approve leave over and above that needed for treatment. It is understood that the phrase "medical treatment" may include time when the veteran is not directly under a physician's care but is incapacitated in connection with treatment.

The DRT reviewed the Informal Step A Request for Documentation and Steward Time. The USPS Formal A designee wrote "Refused to sign for documents until interviews are complete." Someone, presumably the USPS designee, wrote the numeral "7" in the space for Documentation numbers and placed the date and time that some documents

RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel, Room 1059
San Antonio, TX 78284-8430
PHONE 210-368-1760, FAX 210-368-8525

were provided in the spaces next to the USPS designee's initials. Only items numbered 1-6 are listed, there is no item #7. Proper completion of this form provides information regarding the items requested (by number) and provided (by number), not the total number of pages provided. Similarly, if documentation is provided in part, by confirming by number those items provided, the reader is advised which items *have not* been provided as of the date listed. Just as the Union has the reasonable expectation that management representatives will sign or place their initials verifying receipt or denial of steward time, or notification of the Union's request to meet, management has the reasonable expectation that a steward will place his initials confirming the receipt of requested documentation. In the event that the Request has not been completely fulfilled and certain requested items are provided later, another form may be completed to confirm their acceptance by the Union.

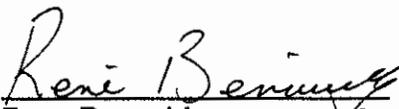
The DRT mutually agreed that the contents of the case file demonstrated that management supplied some documentation. The case file was devoid of any contentions or evidence to show how the Union's ability to process the grievance for which the documents or interviews were requested was hampered.

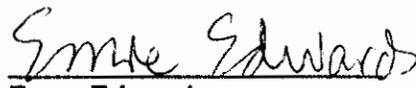
Absent extenuating circumstances, the Edwards/Benavidez Team mutually agrees that readily available relevant documentation and/or information should be supplied to the Union within three working days.

Grievance File Contents:

Additions and Corrections, 5 pp
PS Form 8190
WH-382
PS Form 3996
Fax transmittals, 4 pp
e-CFR Data
Handwritten questions, 2 pp
Grievance Interview Request, 2 pp
Request for Formal Meeting, 2 pp
Management's contentions, 10 pp

Union's Contentions, 2 pp
PS Form 3971
Employee Everything, 3 pp
Notebook page
Blancarte statement
Carrier Schedule
Informal Request Form, 2 pp
Possible Remedy


Rene Benavidez
USPS Step B Representative


Emre Edwards
NALC Step B Representative

cc: **Manager, Labor Relations, Southwest Area**
Manny Arguello, District Manager, Rio Grande District
Kathy Baldwin, 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 (B. Rodriguez)
NALC Formal A Representative (J. Blancarte)
DRT File