



RESOLVE



STEP B DECISION

Step B Team:
USPS:
Robin Gutman
NALC:
Ernest Rosas

District:
Rio Grande

USPS Formal A:
Richard Ketchum
NALC Formal A:
Joseph Blancarte

Decision:
USPS Number:
Grievant:
Branch Grievance Number:
Branch:
Installation:
Delivery Unit:
State:
Incident Date:
Informal Step A Meeting:
Formal Step A Meeting:
Received at Step B:
Step B Decision Date:
Issue Code:
NALC Subject Code:

RESOLVE
G16N-4G-C 1906 3766
Richard Rivera
421-1326-18
421
San Antonio
Laurel Heights
Texas
10/09/2018
10/27/2018
12/18/2018
12/27/2018
01/08/2019
600207
19.0000

ISSUE:

Did management violate Articles 3 and 19 of the National Agreement by requesting Carrier Rivera fill out a locally developed form? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Local management was in violation of the Administrative Support Manual via Article 19 of the National Agreement when mandating the grievant to complete and submit the locally developed "Rio Grande-Work Restriction Evaluation" form. Consistent with (National Arbitrator Aaron, H1N-NAC-C-3, February 27, 1984, C-04162) locally developed forms must be approved consistent with the Administrative Support Manual (ASM). Since the form was not been approved by the Postal Service and requires ICD (International Classification of Diseases) codes in conflict with the Employee and Labor Relations Manual (ELM) 513.362 and 513.364 which are consistent with the Rehabilitation Act and do not require the employee to provide a diagnosis, it would follow that the form must be withdrawn. See the DRT Explanation below.

EXPLANATION:

The grievant in this case is Richard Rivera a regular carrier working at the Laurel Heights Station in San Antonio and with a seniority date of 06/07/1986. The grievant presented management with a note from his doctor dated 10/10/2018 after being questioned about his attendance and continued late arrival at work. The grievant had stated at that time his attendance issues were due to a medical condition and he was asked to bring documentation. Once the documentation was presented, management felt the need for more information then what was provided and on 10/13/2018 management gave a locally developed "Rio Grande-Work Restriction Evaluation" form to the grievant. The form presented to DRT in the file states clearly on the form, "This form is not mandatory" It does not appear, by review of the file, the grievant ever returned to the doctor or had the form filled out.

The union filed this grievance to protest management's requirement for the grievant to complete the locally developed form and provide ICD codes. Unable to achieve a resolution

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through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends that management violated the National Agreement specifically the ELM section 513.363 and 513.364 when they gave a locally developed form to the grievant asking that his doctor complete all portions and for the grievant to return the form to local management. The union contends that the local form asked for ICD codes and the grievant does not have to provide that information.

The union requests management cease and desist using the locally developed form "Rio Grande-Work Restriction Evaluation" with in the San Antonio Instillation.

Management contends there is no violation as the grievant never filled out or returned the form. Management contends the grievant is continually late. When they asked the grievant about it he stated medical reasons. Management states the form was given as a guide and never mandated. The employee was told he could use the form or not but his documentation needed to cover the information in Section B and Section C. Management contends they have taken no action against the grievant for failure to return the form.

The DRT reviewed the documents in the case file and agreed that management appears to have been in violation of Article 19 of the National Agreement via the Administrative Support Manual (ASM). The locally developed form had no indication it was an authorized form that had the required clearance in accordance with ASM 324.2 and Article 19, Local Policies. Although management states the form was not mandated by them, the grievant and the union representative who were in the room felt differently. The form in the file does contain the following paragraph at the bottom of the page.

THIS FORM IS NOT MANDATORY. It does meet all of the required elements of the ELM 513.363 and ELM 513.364 which is mandatory information required prior to returning to work after an absence of more than three (3) consecutive days.

The Administrative Support Manual (ASM) includes the following relevant language:

324.2 Coordination and Clearance

The originating office obtains the necessary clearances from other affected organizational units before a new or revised form is approved. Required clearances include:

Type of Form	Required Clearance
Forms that affect wages, hours, and other terms and conditions of employment, or that concern any work and/or time standards or studies relating to any bargaining unit employees.	PS: Through the vice president of Labor Relations using the clearance option 3 memo (see MI AS-310-96-3, Management of Policy and Procedure Information — Paper and On-Line). Local: Through the appropriate area Human Resources manager.
PS and local forms that: a. Collect personally identifiable information about a customer, employee, or other individual (such as name or Social Security number) directly from those individuals. b. Are completed by a customer, employee, or other individuals.	Through the manager, Records Office, using the clearance option 3 memo (see MI AS-310-96-3) for Privacy Act considerations (for details see Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management).

PS forms that are stocked in the material distribution centers.

Through Inventory Management, Purchasing and Materials, Head-quarters, on Form 189, Stocking Plan for Directives and Forms.

From the National Agreement (JCAM) Page 19-2:

Local Policies. *Locally developed policies may not vary from nationally established handbook and manual provisions (National Arbitrator Aaron, H1N-NAC-C-3, February 27, 1984, C-04162). Additionally, locally developed forms must be approved consistent with the Administrative Support Manual (ASM) and may not conflict with nationally developed forms found in handbooks and manuals.*

National Arbitrator Garrett held in MB-NAT-562, January 19, 1977 (C-00427), that "the development of a new form locally to deal with stewards' absences from assigned duties on union business—as a substitute for a national form embodied in an existing manual (and thus in conflict with that manual)—thus falls within the second paragraph of Article 19. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the form must be withdrawn.

The team agreed it is within the rights of the service to require employees to comply with the ELM sections below and that all medical information required is in accordance with those provisions. It is within the right of the employee to only share sensitive information with the medical unit or the Family Medical Leave Act (FMLA) office. Management should request assistance from the FMLA office when an update may be required for an approved FMLA case. In all other cases guidance from the medical unit, and the involvement of the postal physician may be required.

The ELM states in relevant part:

513.363 Extended Periods

Employees who are on sick leave for extended periods are required to submit at appropriate intervals, but not more frequently than once every 30 days, satisfactory evidence of continued incapacity for work or need to care for a family member unless some responsible supervisor has knowledge of the employee's continuing situation.

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.

A USPS Policy letter (dated 08/03/2007) to Myra Warren (NALC Director of Life Insurance) from Alan S. Moore (USPS A/Manager Labor Relations Policy and Programs) clearly stated the ELM 513.362 and 513.364 did not require the employee to provide a diagnosis. See relevant part below:

This is in response to your July 23 correspondence concerning Section 513.362 and 513.364 of the Employee and Labor Relations Manual (ELM). You questioned whether the Postal Service takes the position that ELM 513.362 or 513.364 allow the Postal Service to require employees to provide a diagnosis.

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The Postal Service's position is that ELM 513.362 and 513.364 are consistent with the Rehabilitation Act and do not require the employee to provide a diagnosis.

If you have any questions regarding this matter, please contact Anthony Thuro at (202) 268-6091.

The DRT would also like to remind the parties of proper procedures when meeting at the Formal A level.

Page 15-5 of the JCAM states in relevant part:

The Formal Step A meeting must be held between the installation head or designee and the branch president or designee as soon as possible but no later than seven calendar days after the installation head receives the Joint Step A Grievance Form (unless the parties agree to an extension). The parties' representatives at Formal Step A shall have the authority to settle or withdraw grievances in whole or in part. Both parties must work together to ensure that each grievance is fully developed.

The union representative at the Formal Step A meeting shall discuss fully the union's position, violation alleged, and corrective action requested. Moreover, the union is entitled to furnish written statements from witnesses or other individuals who have information pertaining to the grievance. Both parties are required to state in detail the facts and contract provisions relied upon to support their positions. The Postal Service is also required to furnish to the union, if requested, any documents or statements of witnesses as provided for in Article 17.3 and Article 31.3.

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



Robin Gutman
USPS Step B Representative



Ernest Rosas
NALC Step B Representative

cc:

LR Manager, Southern 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
DRT File

Grievance File Contents

Additions and corrections
PS form 8190
Step B for Universal City (4 pages)
E-mail pages (2 pages)
Grievant receipt from Dr. (non-specific)
Management contentions (2 pages)
Grievant Dr. note
Employee everything report (21 pages)
M-00851 (2 pages)
Union contentions (9 pages)
Investigative interview of manager (3 pages)
Employee statement

PS Form 8190
Step B Portland, OR (3 pages)
Grievant Dr. note
M-01629
Rio Grande Form
M-1302
M-00851 (2 pages)
Grievant request to attend informal A
Request for steward time (2 pages)
Request for information (3 pages)
Extensions (8 pages)
Request for Formal A