



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G16N-4G-C 1840 0762
Robin Gutman	Grievant:	Ricardo Perez
NALC:	Branch Grievance Number:	421-913-18
Louise K. Jordan	Branch:	421
	Installation:	Eagle Pass
District:	Delivery Unit:	MPO
Rio Grande	State:	Texas
	Incident Date:	08/09/2018
	Informal Step A Meeting:	08/22/2018
	Formal Step A Meeting:	09/12/2018
USPS Formal A:	Received at Step B:	09/13/2018
Hector Ledesma	Step B Decision Date:	09/17/2018
NALC Formal A:	Issue Code:	10.5130
Gilberto Martinez	NALC Subject Code:	507450

ISSUE:

Did management violate Article 19 (via and the ELM (Employee and Labor Relations Manual) Section 513.39) of the National Agreement when the placed the grievant on Restricted Sick Leave? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The grievant will be removed from Restricted Sick Leave (RSL) immediately upon receipt of this decision in accordance with ELM 513.393. See the DRT Explanation below.

EXPLANATION:

The grievant, in this case is Ricardo Perez, a full time letter carrier with 18 years of service assigned to the Main Post Office in Eagle Pass, Texas. On 08/09/2018 the grievant was issued a letter notifying him he was being placed on RSL.

The union filed this grievance to protest this administrative action. Unable to achieve a resolution through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends that management failed to follow the ELM, specifically section 513.391 when placing this employee on RSL. The Union contends that management failed to properly document any attendance discussions with the employee. The union further contends the employee's PS Form 3972 (Absence Analysis) shows the employee is not abusing his sick leave.

The union requests the grievant be removed from RSL immediately.

Management contends they have an issue with this employee asking for eight hours of sick leave for a doctor's appointment. Management contends there have been two other instances when the grievant asked for eight hours of sick leave for doctors' appointments but was just at home for one of them and actually returned to the Post Office for a luncheon on

the other date. Management contends when they asked the employee about it he stated: "I have the hours to use and I want and need eight hours."

The DRT reviewed the case file and determined the file does not show the proper procedure was followed for placing the employee on RSL.

The ELM, Section 513.39 covers the necessary steps required to place an employee on RSL:

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.*

The ELM, Section 513.39 covers the necessary steps to remove employee from RSL:

513.393 Recision 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 DRT observes the only annotations on the PS Form 3972 concerning attendance related actions are for 08/01/2018 and 08/08/2018 and both dates reference Absent Without Leave charges and not sick leave. Further issuing a RSL letter one day after a review or discussion contradicts the requirements outlined above and fails to allow the employee time to improve.

The DRT notes the letter of RSL dated 08/09/2018 indicated the action is being taken in accordance with the ELM Section 513.37.

Section 513.37 of the ELM is below and does not apply to this case.

513.37 Return to Duty

An employee returning from an FMLA-covered absence because of his or her own incapacitation must provide documentation from his or her health care provider that he or she is able to perform the functions of the position with or without limitation. Limitations described are accommodated when practical.

RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel Road, Rm 1059
San Antonio, TX 78284-9608
PHONE 210-368-5547, 210-368-5547, FAX 210-368-8525

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



Robin Gutman
USPS Step B Representative



Louise K. Jordan
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

PS Form 8190
Union's Contentions (2 pages)
Request to see steward
Request for Documentation
Request for Formal A Meeting
RSL Letter
Copies from JCAM (4 pages)

Copy from ELM (2 pages)
3972 (2 pages)
Information Request Response
Management's Contentions (2 pages)
RSL Letter
Time Limit Extension