



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G16N-4G-C 1902 7822
Robin Gutman	Grievant:	Kenneth Ross II
NALC:	Branch Grievance Number:	421-1408-18
Louise K. Jordan	Branch:	421
	Installation:	Universal City
District:	Delivery Unit:	Main Post Office
Rio Grande	State:	Texas
	Incident Date:	11/05/2018
	Informal Step A Meeting:	11/15/2018
	Formal Step A Meeting:	11/24/2018
USPS Formal A:	Received at Step B:	11/30/2018
Edmundo Mata	Step B Decision Date:	12/06/2018
NALC Formal A:	Issue Code:	600207
Adam Reyna	NALC Subject Code:	19.0000

ISSUE:

Did management violate Articles 15 and 19 of the National Agreement by requiring Carrier Ross II to 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 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the Rehabilitation Act and do not require the employee to provide a diagnosis, it would follow that the form must be withdrawn.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 Kenneth Ross II, a full-time regular city carrier working at the Main Post Office in Universal City, Texas with a seniority date of 10/10/2009. The grievant had referenced an FMLA (Family Medical Leave Act) protected condition during an investigative interview prompting management to request documentation. Universal City Station Manager Edmundo Mata provided the grievant with a Rio Grande-Work Restriction Evaluation form. The grievant returned the form, dated 10/29/2018, completed and signed by his medical provider. On 11/02/2018, the Rio Grande District Occupational Health Nurse Administrator sent an email to Mr. Mata stating it was obvious the grievant had a condition that could be identified with an ICD (International Classification of Diseases) codes and the information provided was unacceptable and contradictory. On 11/03/2018, Mr. Mata instructed the grievant to fill out the "Rio Grande-Work Restriction Evaluation" form in full. The grievant was instructed to return the form completely filled out when he returned from his annual leave on 11/20/2018. The form contains a section requiring ICD (International

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Classification of Diseases) codes which the medical provider had marked "N/A" on the original form submitted.

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

The union contends management violated Article 19 of the National Agreement when they used inaccurate ELM references (365.1) and misinterpretations of the ELM (513.363). The union also contends that management violated the National Agreement 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" form at the Universal City Main Post Office and for the form the grievant turned in be removed from all files and databases at the local station and the district office. The union asks for the grievant to receive a lump sum payment of \$125.00. This payment is cover co-pay for the doctor visit for an ICD-10 request by management, mileage from his house to the doctor's office and a monetary remedy for him having to disclose medical information management had no right to.

Management contends they are within the provisions of the Employee and Labor Relations Manual (ELM) section 865 and that the form was given as a convenience and never required. Management contends the grievant could have used any type of documentation as long as it met the elements of the ELM. Management contends the reference to the incorrect section of the ELM on the form is a typo and he made the union aware of that. Management contend the form is not on file at the local office but they do not control what the medical unit keeps.

The DRT reviewed the documents in the case file and agreed that management was 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. Further, the form provided by Mr. Mata had been altered. The form Mr. Mata ordered the grievant to have filled out contained a large space at the bottom. The DRT obtained a blank version of the form to determine if the space was intentional or if something was missing. The blank form does not have a space at the bottom; rather, the following paragraph appears in that space:

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
<i>Forms that affect wages, hours, and other terms and conditions of employment, or that</i>	<i>PS: Through the vice president of Labor Relations using the clearance option 3 memo (see MI AS-</i>

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<i>concern any work and/or time standards or studies relating to any bargaining unit employees.</i>	310–96–3, Management of Policy and Procedure Information — Paper and On–Line). <i>Local: Through the appropriate area Human Resources manager.</i>
<i>PS and local forms that:</i> a. <i>Collect personally identifiable information about a customer, employee, or other individual (such as name or Social Security number) directly from those individuals.</i> b. <i>Are completed by a customer, employee, or other individuals.</i>	<i>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).</i>
<i>PS forms that are stocked in the material distribution centers.</i>	<i>Through Inventory Management, Purchasing and Materials, Head-quarters, on Form 189, Stocking Plan for Directives and Forms.</i>

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. 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,

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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:

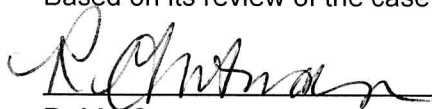
This is in response to your July 23 correspondence concerning Section 513.362 and 513.364 of the Employee and Labor Relations Manual (ELM). You questioned whether the Postal Service takes the position that ELM 513.362 or 513.364 allow the Postal Service to require employees to provide a diagnosis.

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.

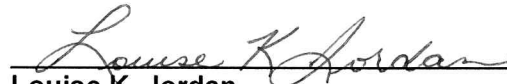
If you have any questions regarding this matter, please contact Anthony Thuro at (202) 268-6091.

The union asked for the form to be removed from all files because of the ICD-10 codes but the DRT find no such codes on the form in the file. The union also asked for a lump sum payment to cover costs and hardship. The DRT agreed-there is no documentation in the file to indicate the grievant had incurred such costs. The file does not have receipts for the co-pay or fee for completing the form and no mileage count for the travel. In addition the ICD-10 codes were not provided; therefore the DRT could not agree a monetary remedy is not appropriate.

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



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
Issue Statement and Undisputed Facts
Union's Contentions (8 pages)
Requested Remedy
Management's Contentions (2 pages)
Rio Grande-Work Restriction Evaluation Form
Request for Information
Request for Steward Time
Request for Informal Step A Meeting
Informal Step A Resolution Form
Request for Formal Step A
Time Limit Extension

Interview – Kenneth Ross II
Interview – Josue Bermea (3 pages)
Interview – Edmundo Mata (3 pages)
Interview – Mary Lindsey, RN (4 pages)
Rio Grande-Work Restriction Evaluation Form
ELM Excerpt (2 pages)
M-01629
Copies of Emails (3 pages)
Steward Designation
Step B Decisions (9 pages)
Rio Grande-Work Restriction Evaluation Form