

RESOLVE



STEP B DECISION

USPS Step B:
Rose Barner
NALC Step B:
Jim Ruetze

District:
Rio Grande

Decision:	RESOLVE
USPS Number:	G19N-4G-C 2125 2644
Grievant:	Class Action
Branch Grievance Number:	421-1920-21
Branch:	421
Installation:	San Antonio
Delivery Unit:	NECA
State:	TX
Incident Date:	04/30/2021
Informal Step A Initiated:	05/12/2021
Formal Step A Meeting:	06/04/2021
Received at Step B:	06/08/2021
Step B Decision Date:	06/30/2021
Issue Code:	10.5100
NALC Subject Code:	100025

ISSUE: Did management violate Articles 19, specifically Section 513.361 of the Employee and Labor Relations Manual (ELM) when thirteen carriers were placed on "Deems Desirable" list for three months? If so, what is the appropriate remedy?

DECISION: The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation of Articles 10 and 19 of the National Agreement (via ELM Section 513). There is no contractual basis for a "Deems Desirable" listing; accordingly, upon receipt of this decision management will remove the thirteen carriers from the deems desirable list management used as a substitute for Restricted Sick Leave. See the DRT Explanation below.

EXPLANATION: This class action grievance was filed on behalf of thirteen (13) letter carriers at the Northeast Carrier Annex (NECA) in San Antonio, Texas. All thirteen employees have been placed on a "Deems Desirable" list for three months.

The union filed this grievance to protest management's use of the "Deems Desirable" list as a substitute for the Restricted Sick Leave provisions in the ELM. Unable to achieve a resolution through the Informal or Formal Step A levels of the grievance process the union appealed the grievance to Step B.

The union at Formal Step A contended management violated Article 19 specifically section 513.361 of the ELM when they placed 13 carriers on a locally developed list named "Deems Desirable for three months. The DRT resolved through their decision that the use of deems desirable contained in the ELM 513.361 that management must remove the deems desirable list requiring employees to provide medical documentation or other acceptable documents to substantiate all further unscheduled absence.

The union requested management remove all employees from the deems desirable list and follow the contract under Section 513.361 of the ELM.

Management contended there was a disagreement with the union on the way deems desirable is structured. Management stated the carriers are given every opportunity to correct their attendance by reviews of the employees' 3971s and 3972s, offer EAP and conduct investigative interviews to determine the cause of the repeated absence occurrences. Depending on the severity, a Letter of Warning is issued or a more progressive charge if necessary. Management contended during this process the carrier is placed on deems necessary. Even though the union requested that ELM 513.15 be followed, which is not deems desirable or deems necessary, management asserted they will not change their process.

The DRT reviewed the case file and determined a violation occurred. Normally, management may accept the employee's statement explaining the absence or may deem documentation desirable in accordance with ELM 513.361; however, requiring an employee to provide documentation for any absence for a period of three months would mean that employee was on restricted sick leave and the case file did not indicate management placed the grievant in that status according to the requirements in ELM 513.391.

The JCAM, on page 10-15, provides the following relevant language:

Restricted Sick Leave. Management may place an employee in "restricted sick leave" status, requiring medical documentation to support every application for sick leave, if: (a) management has "evidence indicating that an employee is abusing sick leave privileges"; or (b) if management reviews the employee's sick leave usage on an individual basis, first discusses the matter with the employee and otherwise follows the requirements of the ELM Section 513.391.

Additionally, the ELM includes the following concerning documentation for incapacitation:

513.36 Sick Leave Documentation Requirements
513.361 Three Days or Less

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member **is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.** Substantiation of the family relationship must be provided if requested.

Management may accept the employee's statement explaining the absence for up to three days; therefore, for management to require medical documentation or other acceptable evidence of incapacitation for a specific absence by an employee not on Restricted Sick Leave, the supervisor must have a factual basis for doubting the reported illness. This determination would be grievable and must be evaluated under circumstances existing **at the time.** The union would have to show the supervisor's rationale for requiring documentation for that absence was unfounded. The JCAM Page 10-14 states:

Numerous disputes have arisen over situations in which a **supervisor has required an employee not in restricted sick leave status to provide medical documentation for an illness of three days or less.** Generally, to challenge such a decision successfully the union should demonstrate that the supervisor acted arbitrarily, capriciously or unreasonably in requiring the employee to obtain medical documentation. **The union should be prepared to show that the grievant has a good overall sick leave record and no record of abuse.**

In a Step 4 decision (M-01597) the national parties agreed to the following:

. . . a supervisor's determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interest of the Postal Service **must be made on a case by case basis**, must be consistent with the provisions of ELM 513.361 and may not be arbitrary, capricious, or unreasonable.

Availability of [the "Deems Desirable"] eRMS option does not expand or diminish supervisory authority, or change policy concerning medical documentation in any way. We are developing an eRMS enhancement to ensure system users are advised of this.

Section 513.39 of the ELM provides:

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).

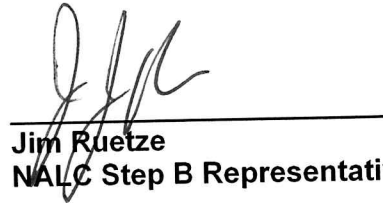
513.393 Rescission of Restriction

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.

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



Rose Barner
USPS Step B Representative



Jim Ruetze
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 A Monèe Davis

Manager, Rio Grande District
Postmaster
NALC Branch President
NALC Formal A Jose Perez
DRT File

Grievance File Contents:

PS Form 8190
Union Contentions – 2 pgs
Management Contentions
Deems Desirable List
Excerpt from Elkouri & Elkouri
Step B Decisions – 9 pgs

Formal Step A Meeting Request
Request for Information
Time Limit Extension
Informal Step A Meeting Request
Request for Steward Time