

GUIDELINES (for Union use)

Grievances re: Notices of Restriction

ISSUE STATEMENT: Did the Employer violate Contractual provisions, including but not limited to, Articles 3, 10,15, and 19 of the Collective Bargaining Agreement; and the ELM 513.391, by issuing the grievant a notice of being placed on restricted sick leave?

FACTS TO CONSIDER: (provide evidence as necessary)

- Why did management place the grievant on restriction?
- Does management have valid evidence of abuse, or evidence they otherwise followed the procedures of ELM 513.391 (See Below)?
- We will need evidence of the grievant's subsequent out-of-pocket expenses for the requested remedy.

ARGUMENTS/CITATIONS:

- Remember, the union has the burden of proving the Contract was violated.
- From page 10-12 of the Joint Contract Administration Manual:
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 ELM Section 513.391.
- ELM 513.391:
Reasons for Restriction
Supervisors or installation heads who have evidence indicating that an employee is abusing sick leave privileges may place an 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 by 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.
- "Evidence of abuse" is not the grievant's attendance record itself. A questionable attendance record should trigger the detailed ELM 513.391 process of review and discussion.

REMEDY:

Rescind the notice of restriction; compensate the grievant for all out-of-pocket expenses incurred while under the improper notice of restriction; and/or other appropriate remedy.

Definition: An employee may be placed on restricted sick leave in one of two ways.

If evidence exists that an employee is abusing sick leave privileges, a supervisor may place them on the list.

Additionally, employees may be placed on restricted sick leave after their sick leave use has been reviewed on an individual basis and the following actions have been taken.

- (1) An absence file has been established.
- (2) A review of the absence file has been made by the immediate supervisor and higher levels of management.
- (3) Quarterly listings of LWOP and sick leave usage have been reviewed.
- (4) Supervisors have discussed the absence record with the employee.
- (5) The absence record of the employee has been discussed and the employee failed to show improvement in the subsequent quarter.

2. Contractual and Handbook cites:

- A. National Agreement, Article 10.
- B. ELM, Section 513.39.
- C. JCAM pgs. 10-12.

3. Documents which the parties may jointly develop and review to establish all relevant facts:

- A. The subject restricted sick leave letter.
- B. 3972 of the carrier (Absence Analysis).
- C. Relevant 3971's (Request for Leave).
- D. Any medical certificates explaining absences which led to the issuance of the restricted sick leave letter.
- E. Carrier's statement explaining absence(s) causing restricted sick leave letter.
- F. Supervisor's notes relevant to the placing of the carrier on restricted sick leave.
- G. Doctor's records which would explain the carrier's use of sick leave (i.e., chart notes, prescriptions, appointment records, etc.).

4. Factors which must be considered when evaluating the case:

- A. Was the carrier treated disparately?
- B. Was the placement of the carrier on restricted sick leave done in a timely manner?
- C. Did the fact circumstances support a conclusion that the carrier abused their sick leave privileges?
- D. Was a past practice established in the office as to acceptable levels of sick leave usage?
- E. Was there any proof of sick leave abuse?
- F. Was a quarterly review done as required by the ELM, Section 513.39?
- G. Did the review of the subsequent quarter of sick leave and LWOP usage show improvement?