

## eRMS and "Deems Desirable"

**E**nterprise Resource Management System (eRMS) is a web-based application that management uses to track numerous employee attendance-related records. "Deems Desirable" is a function within eRMS. The term Deems Desirable is derived from the *Employee Labor Management Manual (ELM)* Section 513.36, Medical documentation for absences of three days or less, "...when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

eRMS and the Deems Desirable function are available only to installations that utilize Interactive Voice Response (IVR) Call Agent or Attendance Control Supervisors (ACS) to record employee absences. A supervisor is able to place an employee in the Deems Desirable category by selecting a range of dates for which it would be applicable. As an example, a supervisor may select a range of April 1 through October 31, indicating that the employee will be required to provide medical documentation for all requests for unscheduled leave made through IVR or ACS during the selected time period.

In addition to a range of dates, a supervisor may also select specific dates to categorize an employee as Deems Desirable. For example, a supervisor may select June 1 and/or July 5. If the employee calls in on one of these days, the Deems Desirable function will be activated and the employee will be instructed to provide medical documentation for the absence.

Despite this new eRMS function, Deems Desirable does not supercede nor supplant the National Agreement—specifically Article 19, and through it, *ELM* Section 513.361, which states, in part, that medical documentation or other acceptable evidence of incapacity for work is not required for absences of three days or fewer unless:

...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... [and/or when] substantiation of the family relationship...[s]...requested.

The two most common disputes arise over the "restricted sick leave" and "desirable for the protection of the Postal Service" portions of Section 513.361. The *JCAM* provides the following overviews on these two issues:

**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.

Requests for medical documentation for "protection of the interests of the Postal Service":

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.

If an employee believes he or she has been incorrectly required to provide medical documentation as a result of being categorized as Deems Desirable, he or she should discuss the issue with a steward as soon as possible. Stewards will have to delve into this electronic world and review the various logs, records and other files associated with eRMS and Deems Desirable. Any information request should include all records, files and/or documentation used in association with eRMS/Deems Desirable as applicable to the employee. These reports include, but are not limited to, the Leave Usage Log List, the Removed Leave Log List and the Denied Leave Log List.

Additional references regarding whether requests for medical documentation were proper are: 1) Step IV—M-00704, 2) MRS—Medical Certification Section, and 3) *JCAM*—Article 10, Leave-Medical Certification, pages 10-12.

Stewards should be aware of this: Just because management has come up with a new computer system for handling unscheduled absences, it in no way alters the provisions of the National Agreement. ☐

AUG 31 1977

Mr. Thomas D. Riley  
Assistant Secretary-Treasurer  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, N. W.  
Washington, D. C. 20001

Re: W. Cischke  
Troy, MI  
NC-C-7450/5DET-2385

Dear Mr. Riley:

On August 23, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

Based on the evidence presented in this grievance, we find that there was sufficient cause for placing the employee on sick leave restriction. Therefore, it is our conclusion that no violation of the National Agreement occurred and the grievance is denied. However, Management should inform employees prior to placing them on restricted sick leave that their usage of sick leave demonstrates a pattern of abusing the use of sick leave.

Sincerely,

(signed)

Michael J. Harrison  
Labor Relations Department



M-00664

EMPLOYEE AND LABOR RELATIONS GROUP  
Washington, DC 20260  
October 19, 1976

Mr. Alfred K. May  
Assistant Secretary-Treasurer  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington, DC 20001

Re: J. Custer  
Johnstown, PA  
NC-E-3042(NC-81)E3-ALL-543

Dear Mr. May:

On September 30, 1976, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

This grievance was partially sustained at Step 3 due to a procedural deficiency. The only issue remaining at Step 4 concerns the grievant's retention on the restricted sick leave list.

The grievant's overall attendance record tends to justify placement on the restricted list. To this extent the grievance is denied. However, management should take into account absences which are attributable to the employee's disability and as soon as a substantial improvement is shown in the employee's attendance record, consideration will be given to removing his name from the restricted list.

Sincerely,



Robert B. Hubbell  
Labor Relations Department

AUG 31 1977

Mr. Thomas D. Riley  
Assistant Secretary-Treasurer  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, N. W.  
Washington, D. C. 20001

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Sincerely,

(signed)

Michael J. Harrison  
Labor Relations Department

LABOR RELATIONS



December 19, 2006

Mr. Gary H. Mullins  
Vice President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington, DC 20001-2144

Dear Gary:

This is in further reference to our conversation regarding your December 1 correspondence concerning supervisory activation of the "Deems Desirable" option in eRMS and the Restricted Sick Leave List (RSL List) provisions of ELM Section 513.39.

As noted in our June 20 response to a previous NALC inquiry that included this issue, 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 this 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.

Please contact John Cavallo at (202) 268-3804 if you have additional questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "A.J. Johnson".

A.J. Johnson  
Manager  
Labor Relations Policy and Programs

RECEIVED

DEC 20 2006

VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

00.2264



August 3, 2007

Ms. Myra Warren  
Director, Life Insurance  
National Association of  
Letter Carriers, AFL-CIO  
100 Indiana Avenue  
Washington, DC 20001-2144

Dear Myra:

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan S. Moore".

Alan S. Moore  
A/Manager  
Labor Relations Policy and Programs

C# 18452

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION(	GRIEVANT: MANGANELLO
BETWEEN (	CASE NO. C94N-4C-C 98022262
UNITED STATES POSTAL SERVICE (	GTS NO: 18812
- AND - (	
NATIONAL ASSOCIATION OF LETTER (	POST OFFICE: LANCASTER, PA.
CARRIERS (	

HEARING HELD AT: LANCASTER, PA. JUNE 17.1998

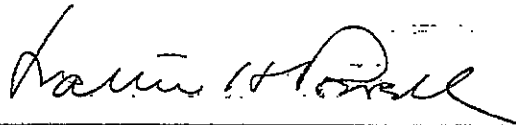
ARBITRATOR WALTER H. POWELL, Esq.

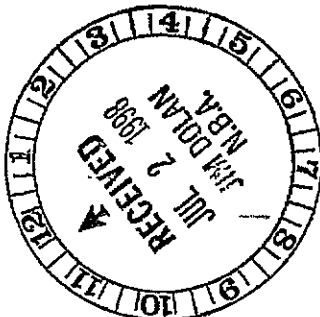
APPEARANCES: U. S. P. S: JOHN A. HOFFMAN, Sr. Labor Rel. Specialist

N.A.L.C. : ALLEN STUART, Advocate

AWARD: GRIEVANCE IS GRANTED. GRIEVANT SHALL BE PAID \$ 40  
FOR MEDICAL EXPENSES.

JUNE 30, 1998

  
WALTER H. POWELL, Arbitrator



The above numbered case was rescheduled in lieu of prior designated cases.

## ISSUE

**DID THE POSTAL SERVICE VIOLATE THE NATIONAL AGREEMENT IN DENYING THE GRIEVANT APPROPRIATE LEAVE AND DEMANDING MEDICAL DOCUMENTATION ? IF SO WHAT SHALL THE REMEDY BE? BE?**

## FACTS AND BACKGROUND

The grievant, John Manganello requested dependent leave because of his son's illness. This occurred on Wednesday June 4, 1997, he called in and requested Dependent Leave. His supervisor reminded him that he must bring in documentation to support the illness of his son. The following day when the grievant reported into work, he gave his supervisor a note signed by himself stating that his son had been ill the previous day and that it was necessary for him to stay home with the child. The supervisor insisted that he needed proper medical documentation from a medical doctor,

The grievant cased his mail and took sick leave for the remainder of the day while he took his son to the doctor for a medical excuse. It is the contention of the grievant and the union, that such medical documentation was not required



and that the grievant should not have been required to furnish this type of documentation.

**POSITION OF THE UNION:** Under the provisions of the Family Leave Act, the employee is permitted up to eighty (80) hours a year for dependent care. Grievant has the responsibility for assuring management that he was legitimately caring for a family member. The same type of proof is necessary for family leave as for personal sick leave. Requiring a medical document from a licensed physician is not necessary. The request for such documentation is punitive and is not required by any particular sections of the labor agreement nor the ELM.

Grievant should be reimbursed for medical expenses, mileage and have the additional sick leave time converted to administrative leave.

**POSITION OF THE POSTAL SERVICE:** Sick leave for dependents is handled the same as requests for other sick leave for an employee. Medical documentation may be required of an employee when seeking sick leave, and the same may be required of the employee who seeks sick leave for one of his dependents. Approval will be based on the same criteria that is used for the granting of sick leave or other types of leave.

There is no contractual requirement that would support the relief requested for the grievant by his Union. Management's request for documentation is consistent with its policing of leaves for sickness or other types of annual leave. Grievance should be denied.

## DISCUSSION AND OPINION

Pertinent and applicable sections of the National Agreement and other Manuals read as follows:

**MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S.P.S. AND THE N.A.L.C.** (page 162 of the National Agreement) reads as follows:

**Re: Sick Leave**

The parties agree that during the term of the 1994 National Agreement,

sick leave may be used by an employee to give care or otherwise attend to a family member with illness, injury or other condition, which, if an employee had such condition would justify the use of sick leave by that employee. Family members shall include son, or daughter, parent and spouse as defined in ELM Section 515.2. Up to 80 hours of sick leave may be used for dependent care in any leave year. Approval of sick leave for dependent care will be subject to normal procedures for leave approval.

### **ELM 513.36 Documentation Requirements**

**513.361 3 days or less.** For periods of absence of 3 days or less, supervision may accept the employees' statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work is required only when the employee is on restricted sick leave (see 513.37) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

A reading of the aforementioned **rules and regulations** clearly states that **care or attending a family member** is to be **considered the same** as the **employee's personal illness**. The only caveat is that it cannot exceed eighty (80) hours in a given work year. The other condition that might be applicable is if the absence caused by a family member is three days or more then ELM 513.362 would come into effect. That is not the factual situation before us. The family member was sick for a day, and the documentation proffered by the grievant

should have been acceptable and the matter finished at that point.

There are two exceptions when medical documentation might be required. the first is if the employee seeking the leave for taking care of a family member is on restricted sick leave, then the requirements might be applied to his case. The other condition is if the supervisor deems documentation desirable for the protection of the Postal Service. If the supervisor believes that it is necessary for the best interests of the Postal Service, then the burden of proof shifts to that supervisor and he or she is required to affirmatively prove why it is necessary. No such proof was offered in this case, and it must be assumed and presumed that the supervisor was over zealous in seeking medical documentation. There was no indication that there was any personal animus, nevertheless the supervisor's action must be considered as either arbitrary or capricious.

What is even more serious is that the reviewing authorities at the second and third step of the grievance procedure merely rubber stamped their denial of the grievance. Unfortunately this failure to read the appropriate paragraphs not only adds to the excessive amount of back arbitrations but it also adds to the cost of the grievance process for both parties. More important it has an adverse effect on employee morale. Supervisors and reviewing authorities must be encouraged to settle grievances at the lowest level of command that is possible.

There is nothing in the record that would suggest that the grievant has an abused the sick leave provisions of the agreement. There is nothing to suggest that his son was not ill. The actions of his supervisor were perhaps over zealous.

However, reviewing authorities are charged with reviewing the facts as well as the appropriate and applicable provisions of the National Agreement and other manuals.

My findings are that this was mistake in judgment and the grievant should be reimbursed for out of pocket expenses in having to take his son to a doctor after the fact and incur the inconvenience of the trip plus the cost in paying the doctor. I am ordering the payment of forty (\$40) dollars to the aggrieved for his out of pocket expenses.

### AWARD

GRIEVANCE IS GRANTED. GRIEVANT SHALL BE AWARDED  
FORTY (\$40) FOR DOCTOR'S EXPENSE.

June 30, 1998



WALTER H. POWELL, Arbitrator

C-19250

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER  
CARRIERS, AFL-CIO, BRANCH 2689

GRIEVANT: A. Powers

POST OFFICE: Melbourne, FL

CASE NOS: H94N-4H-C 96033490

GTS NO. 027804

BEFORE: Hutton S. Brandon, Arbitrator

APPEARANCES:

For the U. S. Postal Service: William G. Roberts, Jr.  
Labor Relations Specialist

For the Union: John W. Bourlon  
Union Advocate, NALC

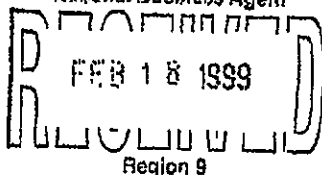
Place of Hearing: Melbourne, FL

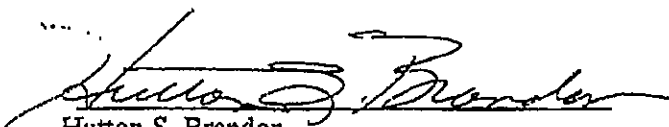
Date of Hearing: February 2, 1999

AWARD: The Postal Service violated the National Agreement, Article 19, and its handbooks and manuals by unreasonably requiring the grievant, A. Powers, to provide medical certification of incapacity for work on December 29, 1995. Accordingly, the grievance is sustained. The appropriate remedy is to reimburse the grievant for the cost of his visit to a doctor for such medical certification on that date, to include the cost of all medical tests ordered by the doctor on that date for use in determining the extent of the grievant's ailment and its effect on his capacity for work.

Date of Award: February 16, 1999

Matthew Rose, NALC  
National Business Agent



  
Hutton S. Brandon  
Arbitrator

## I. The Issue

The parties stipulated to the following issues: "Did the Postal Service violate the Agreement [Article 19] and its associated manuals and handbooks, and specifically Section 513.361 of the ELM [Employee and Labor Relations Manual] when it required the grievant to provide medical documentation to support an absence for December 29, 1995, and, if so, what would the appropriate remedy be?"

## II. Pertinent Provisions of the Agreements Between the Parties and Background

The National Agreement, herein referred to as the Agreement, provides in pertinent part at Article 19 that:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working condition, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable.

\* \* \* \*

That portion of the ELM pertinent to this case is Section 513.361 relating to documentation requirements of employee absences of three days or less. It states:

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 is required only when the employee is on restricted sick leave (see 5213.37) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

And Section 513.364 provides in relevant part:

When employees are required to submit medical documentation pursuant to these regulations, such documentation should be furnished by the employee's attending physician or other attending practitioner. 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.

\* \* \* \*

In addition, the locality involved in this proceeding utilizes in connection with the administration of the foregoing ELM provisions the following "sick leave challenge" which may be read or verbally related to employees calling in for unscheduled sick leave:

Produce upon your return to duty medical certification that you were unable to perform the duties to which you were assigned for the period of your absence or you will be considered AWOL [Absent Without Leave]. Medical certification must be provided by the attending practitioner. It must provide sufficient information to show you were incapacitated for the period of absence. It must be signed by the medical practitioner. Do you understand these instructions?

### III. Material Facts

The facts in this case are not in significant dispute. Albert Powers, herein called the grievant, was at all material times a carrier in the Service's Satellite Beach, Florida facility. The grievant, a 24 year old at the time of the events herein, first achieved seniority status in May, 1995. On December 29, 1995 he awoke suffering from back pain and decided he would remain at home and undergo bed rest rather than report for work as previously scheduled. Accordingly, he timely telephoned his supervisor, Christy Philo, to report that he was ill and would not be reporting for work. Although it was clear that the grievant was not on sick leave restriction and did not otherwise have an attendance problem, Supervisor Philo at the time of the grievant's telephone call either read or otherwise communicated to the grievant the Service's "sick leave challenge."

As a result of the challenge of his illness, the grievant who had no personal physician and no medical insurance, and apparently little past experience with physicians, removed himself from bed on December 29 and went to a family medical care center. There he advised the doctor who examined him that he needed a medical certification that he was incapacitated for work. The doctor completed a form addressed "To Whom It May Concern" containing the recommendation that the grievant remain home from work, and requesting that the grievant be excused from work beginning on 12/29/95 and adding that the employee would be released to resume work "to be determined at office reevaluation on 1/2/96." This form was duly delivered by the grievant's friend and fellow employee to the grievant's supervisor the following day.

In the meantime, on December 29 the grievant's doctor referred the grievant to another medical center to undergo X-ray and MRI examinations. On January 2, 1996 the grievant

returned to the doctor who executed another form reflecting that the grievant should still be excused for work and would be "released to return to work on 1-5-95[6] after office follow-up."

On January 5, 1996 the grievant returned to the doctor who apparently at this time had the results of the x-rays and MRIs. This time the doctor completed the form stating the grievant was released to work on January 5 and explained the grievant's medical problem as, "Back pain, etiology undetermined. Probable viral syndrome. Mr. Powers had a thorough work-up to include cat scan. He is now recovered and may return to work."

The grievant's medical bills including his doctor bills resulting from his initial visit to the doctor totaled \$2334. Through the grievance in this case the grievant seeks reimbursement for these bills which, in his view and that of the Union, resulted from the unnecessary and unreasonable challenge of his sick leave.

#### IV. Arguments of the Parties

The parties argued orally. The Union argued that the grievant acted in complete good faith at all times appropriately notifying his supervisor as far in advance as he could that he was ill and would not be in. That medical certification was to show that the grievant was incapacitated for work. The grievant was not on sick leave restriction, and the record shows he had only used approximately thirteen hours of sick leave in the preceding several months. Therefore, there was no reason under ELM Section 513.361 to require medical documentation from him at that time. The supervisor did not inquire of the grievant the nature of his illness and made no attempt to evaluate the grievant's claim and the necessity for a medical evaluation. There was no evidence which would show that the supervisor had a reasonable basis for suspecting that the grievant was not physically incapacitated and was instead malingering. Accordingly, the supervisor was not sincere and acted unreasonably in requiring documentation and causing the grievant to incur a great expense. In acting unreasonably the Service breached the ELM and the Agreement. The grievance should be sustained. The grievant should be reimbursed for his doctor's bill to include the charges for X-rays and MRIs which the doctor obviously deemed necessary for his diagnosis of the grievant's condition and to provide the certification of the grievant's incapacity for work as required by the "sick leave challenge."



In support of its argument the Union submitted four citations of prior postal arbitral awards, Case No. WIN-5B-C 9854 (Arbitrator James Suskind, 1982), Case No. C1C-4B-C 2960, (Arbitrator Neil H. Bernstein, 1982), Case No. NIN-II-C 12917 (Arbitrator Robert L. Stutz, 1986), and Case No. C4N-4B-C 15559 (Arbitrator J. I. Mikrut, Jr. 1986).

The Service argued that the relevant ELM sections allow the supervisor to require documentation where it is in the best interests of the Postal Service. Here the supervisor in requiring medical certification was acting to protect the interests of the Service by insuring against malingering employees. She also had a real concern about the health of the employee. With these reasons in mind she did not act arbitrarily.

In requiring documentation or medical certification, the Service does not require the employee undergo treatment. That "is up to the doctor." All the Service needs is a statement saying the employee was incapacitated for duty. The doctor in this case fulfilled his obligation by filling out the first medical certification which was based essentially on the patient's description of his back pain. That first documentation (12/29/95) was adequate and acceptable for the Postal Service's purposes. The further medical documentation or certification and the subsequent tests, in the Service's view were unnecessary for compliance with the sick leave challenge, because the Service does not require a medical diagnosis or prognosis. The Service concedes that it was prudent of grievant's doctor to order the examinations conducted in this case, but insofar as the Service is concerned they were unnecessary. The Service should not be held responsible for the expense of the examinations.

The Service argued that even if it was not reasonable for the supervisor to require medical certification of the grievant in this case, the arbitrator can only provide a remedy which is limited to the cost of the visit to the doctor's office and his examination, not to include the expensive tests undertaken in this case. In this regard, the Service pointed to the same arbitration cases cited by the Union showing this limitation on remedies. While the Service cares about the health of its employees, medical treatment can not be at the expense of the Service. That is the responsibility of the grievant even if, as was the case here, the employee does not have appropriate medical insurance.

The Service accordingly maintained that the grievance should be denied.

## V. Conclusions

It is undisputed that under Section 513.36 the Service retains to itself the right to require medical documentation of incapacitation for those employees claiming illness. The purpose of such documentation is clearly to make more difficult if not preclude employees making false claims of injuries or illness to excuse absences for which they receive paid sick leave. The retention and exercise of the right to require documentation is obviously in the best interests of the Service to prevent to the extent possible fraudulent absences which not only are an expense on its budget but also an interference with efficient operations.

The right to require medical documentation, while broad, is not without its limitations. Those limitations are stated in Section 513.361. For absences of three days or less a supervisor may exercise some discretion in requiring medical documentation, but documentation may only be required: (1) when the absent employee is on restricted sick leave, or (2) when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. The first limitation is clear. The last one is less so. But the first limitation gives meaning to the second.

Obviously, it is within the Service's best interests to prevent all absences based upon fraudulent claims of illness or injury. Thus, carried to its logical extension the full effectuation of this policy would require medical documentation for all absences of whatever duration and particularly where the illness or injury is not manifested by a measurable or observable symptom. But medical documentation in every instance is neither reasonable nor practical, and Section 513.361 implicitly recognizes this by setting the limitations already noted. Accordingly, in context, limiting the requirement of medical documentation to employees on restricted sick leave, clearly suggests that the second limitation is intended to apply to circumstances where there is a reasonable basis for suspicion on the part of the supervisor or management personnel that an absence is not based upon a bona fide illness or injury. This view is in keeping with the award of Arbitrator Mikrut, supra, and an award of Arbitrator Dobranski, Case No. C1C-4B-C 1655, cited therein.

It is undisputed that the grievant was not on restricted sick leave. He therefore did not meet the first condition for requirement of documentation under Section 513.361. The record contains allusions by the grievant's supervisor to the heavy work load experienced at the time of the grievant's absence and to the fact that December 29 was a Friday before a Monday holiday.

Reference to these considerations provides no defense, however. The existence of a heavy work load without more has no bearing on the validity of a claimed illness which the medical documentation would address. (See the award of Arbitrator Bernstein, supra) The same may be said of an absence before a scheduled holiday, unless there is some history or prior experience with the absent employee indicating a prior absence or absences before a scheduled holiday. That was not shown to be the case here.

The grievant's supervisor testified that she could not recall whether she specifically inquired of the grievant the nature of his illness. Nor could she specifically describe any factor or consideration not already mentioned above which caused her to suspect that the grievant's claim of illness was not genuine. Under these circumstances, it is difficult to understand what reasonable purpose the requirement of medical documentation served.

The reasonableness of the Service's actions in this case constitutes an affirmative defense. No reasonable, logical, much less compelling, reason has been shown by the Service reflecting how its interests were served by forcing the grievant to provide medical documentation establishing his incapacitation for work on December 29, 1995. Accordingly, the Service's actions in requiring medical documentation of the grievant was unreasonable and unwarranted. Such actions must be considered as inconsistent with the provisions of Section 513.361, and the grievance must be sustained.

Having sustained the grievance, the issue of the remedy must be addressed. In three of the cases cited by the Union, supra, where an arbitrary and unreasonable request for medical documentation was found, the Postal Service was required to pay the employee for the cost of doctor examination. In the fourth case cited, Case No. C1C-4B-C 2960, it appeared that the arbitrator would have required the Service to pay for the doctor's examination but for the admission of the employee in that case, unlike the grievant in the instant case, that she would have gone to the doctor even absent the Service's request for medical documentation, because she needed treatment anyway. Only the expense of the \$4.00 fee for the completion of the medical certification itself was granted there.

The results reached in the cited cases are reasonable, equitable, and, in my view, appropriate. As Arbitrator Stutz stated in his award, supra, "While the [Service] is not ordinarily expected to bear the expense of the medical documentation referred to in 513.361, where, as here,

an employee experiences unnecessary expense to satisfy an unreasonable requirement, it is only fair to reimburse the employee." It is accordingly concluded that the grievant is entitled to have his grievance sustained and to receive reimbursement for the cost of his doctor examination of December 29, 1995. The greater difficulty in this case is deciding whether he is entitled to reimbursement for all the testing that flowed from the doctor's examination.

It is ironic that the Service relies upon Arbitrator Stutz's award cited by the Union to argue that it was not responsible for the expensive tests ordered by the grievant's doctor. Arbitrator Stutz ruled without further explanation that "[A]ll the supervisor required was certification of incapacity to work, not a series of expensive testing procedures, which may or may not have been related to DeNicola's illness . . . ." The absence of explanation is unfortunate, for logic suggests that if the Service is financially responsible for the doctor's examination in such a case, it would also be responsible for any expense incidental to the examination that did not constitute treatment. It would appear only fair to reimburse the employee for any expense he would not have incurred except in satisfying the unreasonable requirement of the Service.

The Service here has claimed it needed nothing more than a brief certification of the grievant's incapacity. The Service further claimed, and as the supervisor testified, that the first medical certification submitted to it for the grievant's December 29 absence was adequate for its purposes, since it contained the doctor's recommendation that the grievant remain home from work. No further testing was required.

I find these claims troubling, because they appear to be in clear conflict with the Service's own regulations. Specifically, ELM Section 513.364 states that "The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee is unable to perform his normal duties. Further, "[M]edical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation . . . ." Moreover, the wording of the "sick leave challenge" related to the grievant, and presumably communicated to the grievant's doctor by the grievant, states that the medical certification "must provide sufficient information to show [the employee was] incapacitated for the period of absence." Obviously, these regulations mandate not only a medical examination but a specific medical explanation and judgment of incapacity. Yet the "acceptable" documentation submitted for the grievant's December 29 contained neither a diagnosis or a statement of

incapacity. It simply recommended he stay at home and deferred a determination of the grievant's status pending reevaluation after the results of the ordered tests were known.

The record contains little to explain the doctor's actions. The Union did not call the grievant's doctor to testify in this case regarding the basis of his determination to order the expensive X-rays and MRIs. And the Postal Service called no medical professional to testify regarding standard medical examinations for the existence of back pain and the determination of incapacity to work as a result of such back pain. MRIs and X-rays are normally regarded as diagnostic tools rather than treatment tools, although each might have certain usage in treatment.

There was no evidence that any portion of the charges related to the grievant's treatment, and, in fact there is no evidence that any particular treatment was undertaken as a result of the examination. Absent a job related injury not claimed in this case, the Service clearly would not be responsible for any expenses for treatment of the grievant's ailment. Any such treatment would inure to the sole benefit of the grievant. On the state of the record before me, however, I must conclude that the grievant's physician was relying upon the ordered tests to help him diagnose the extent of the grievant's work incapacity. Indeed, it was not until he had reviewed the results of these tests that the doctor submitted his January 5 conclusion concerning the etiology of the grievant's back problem and released him for return to work.

One may quarrel with the judgment of the grievant's physician in ordering expensive tests for a young uninsured patient complaining of back pain but without specific claim of back injury. One suspects that simpler and less expensive office tests and examinations could have been conducted and would have been sufficient. Indeed, one further suspects that had the grievant as an uninsured patient walked into the doctor's office with his back pain complaint, but without seeking a medical certification for work incapacity, the expensive tests would not have been ordered. However, in considering the doctor's actions, one must recall that he had never before seen the grievant, was not aware of his medical history, and was unsure of the grievant's background and reliability. He was being asked to certify job incapacity due to back pain, a malady which has been the notorious excuse of malingering employees in numerous industries. Caution may have been the doctor's concern.

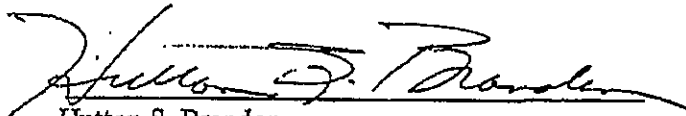
To find under these circumstances that the doctor ordered unnecessary tests would require me to reach a medical conclusion without the benefit on this record of competent medical opinion

or medical evidence. It was the Postal Service which unreasonably required the grievant to undergo the medical examination. It was its contention that the expensive tests utilized were not necessary, and that it was therefore not responsible for them. It was therefore the burden of the Service to show that the expenses attendant to that examination were unnecessary. This burden was never met.

Considering all the above, I am unable to conclude on this record that the tests ordered by the grievant's doctor were not reasonably related to the determination of the grievant's incapacity for work on December 29, 1995. I have already noted above my concurrence in the principle that the Service must reimburse an employee for expenses incurred in satisfying an unreasonable requirement inconsistent with its regulations. There is no logical reason for not extending that principle to all the grievant's expenses related to his doctor's diagnostic examination, for there was no evidence that the grievant would have incurred these expenses but for the Service's unreasonable request for medical certification. An appropriate award reflecting this result is entered below.

#### VI. The Award

The Postal Service violated the National Agreement, Article 19, and its handbooks and manuals by unreasonably requiring the grievant, A. Powers, to provide medical certification of incapacity for work on December 29, 1995. Accordingly, the grievance is sustained. The appropriate remedy is to reimburse the grievant for the cost of his visit to a doctor for such medical certification on that date, to include the cost of all medical tests ordered by the doctor on that date for use in determining the extent of the grievant's ailment and its effect on his capacity for work.

  
Hutton S. Brandon  
Arbitrator

Dated: February 16, 1999

## REGIONAL ARBITRATION PANEL

In the Matter of Arbitration

Between:

United States Postal Service

And

National Association of Letter Carriers,

Grievant: Morris

Post Office: Toledo, OH 43601

USPS No.: C16N-4C-C 18125740

Union No.: 163C18

BEFORE: Glenda M. August, Arbitrator

## APPEARANCES:

For the U.S. Postal Service

Barbara Cook

For the National Association of Letter Carriers

Andy Adkinson

Place of Hearing: 435 S. St. Clair St. Toledo, OH 43601

Date of Hearing: September 5, 2018

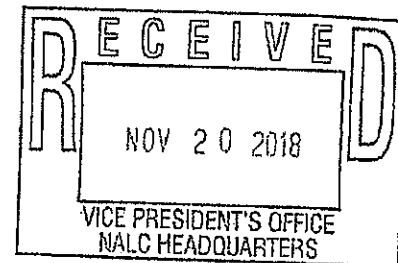
Briefs Received: October 9, 2018

Date of Award: November 6, 2018

Relevant Contract Provision: Articles 3, 15, &amp; 19

Contract Year: 2016 - 2019

Type of Grievance: Contract



AWARD: The grievance is sustained. Management violated the National Agreement when they failed to comply with prior DRT decisions. Management shall cease and desist failing to comply with DRT resolutions for the Toledo Installation.

RECEIVED

NOV 13 2018

DANIEL E. TOTH

Glenda M. August  
Glenda M. August  
Arbitrator

## I. ISSUE (s)

Did the Postal Service violate the National Agreement including, but not limited to, Articles 3, 15, and 19, when it failed to comply with past decisions and placed the grievant on the "Deems Desirable" list? If so, what is the proper remedy?

## II. RELEVANT CONTRACT PROVISIONS

### **ARTICLE 3 MANAGEMENT RIGHTS**

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

### **ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE**

#### **Section 1. Definition**

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A



grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

## **ARTICLE 19 HANDBOOKS AND MANUALS**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

### **III. FACTS**

Management formally notified the Grievant in a letter dated January 10, 2018, that he was being placed on the Deems Desirable list effective immediately. The letter stated that the Grievant would be required to submit acceptable documentation for any unscheduled absence or tardy. On January 19, 2018, the Grievant notified Management that he needed to leave work prior to the end of his shift and then called in sick the following day. The Union filed the instant grievance contending that the Service violated the National Agreement and prior DRT decisions for the Toledo Installation when they improperly placed the Grievant on the Deems Desirable list on January 10, 2018.

### **IV. UNION'S CONTENTIONS**

The Union contended that the instant case is a Contractual Case and the Union is seeking a remedy for the contractual violation. According to the Union, the Service has violated at least one or more citable precedent setting grievance resolutions. They noted that this case centers on the Grievant being placed on the "deems desirable" list effective January 10, 2018 until March 31, 2018 (JX-2 Page 15). The Union argued that this was not done in conjunction with an absence or at the time of a call in. It was a "blanket" covering all future unscheduled absences for a long period of time.

The Union asserted that the grievance is about non-compliance. They contended that the

issue of how "deems desirable" is to be used and its' purpose has already been settled by prior agreements between the parties (JX-2 Pages 17-19). It was argued by the Union that the parties jointly agreed in the DRT grievance resolution for case number C11N-4C-C 13318335, as to the difference between "deems desirable" and "restricted sick leave". The Union further argued that the DRT Decision in that case (Page 17 of the Joint Exhibit 2) states that *"Management shall no longer use the "Deems Desirable" option in eRMS as a blanket policy"*.

It was the position of the Union that the DRT Decision in the aforementioned case provided an overview for the Use of Restricted Sick Leave versus "Deems Desirable". According to the Union, ELM Section 513.39 details the Restricted Sick Leave process which is based on a review of the employee's attendance record and then placed on the restricted list for a quarter; if the employee's attendance record substantially corrects he/she will be removed after the quarter." However, according to the Union, *"Deems Desirable" is used for one, single, current absence, of three days or less where the Service needs documentation to protect their interest. Supervisors must have reasonable fact based belief the leave is not being taken because the employee is sick. It is to be used for one absence, not for a week, month, or quarter"*. The Union noted that the DRT explained that *"The case file provides that management has improperly placed carriers on "Deems Desirable"*. The Union contended that the exact thing occurred in the instant case.

The Union asserted that the DRT decision (JX-2 Pages 17-19) was not complied with. In that case, the Union argued that Management was putting individual employees under the "deems desirable" blanket for long periods of time. The Union noted that in the DRT Decision, the parties provided an explanation regarding the difference between Restricted Sick Leave and "Deems Desirable" that was provided by Headquarters Manager Strategic Complement Reassignment Labor Relations, where he provided clarification between the two options. The Union argued that local Management at Toledo, OH disagreed with Headquarters Management and instead chose to accept their own interpretation regarding the provisions.

In support of their position, the Union further cited the DRT Decision in case number C11N-4C-C 17326170, in which the DRT decided *"Management violated the National Agreement when they placed the grievant on "Deems Desirable" for a period of 30 days after she informed management she was unavailable to work her regular scheduled day off on a*

*holiday schedule.*" In that same decision, the DRT provided information for "educational purposes" to Management, and listed the award from Arbitrator Holden which cited a Management exhibit that stated:

In order to ensure that the "Deems Desirable" option in ERMS is appropriately utilized by Management the following agreed upon provisions shall apply:

The "Deems Desirable" option should not be activated for any extended period of time, but should normally remain active for each specific absence..."

Activation of the "Deems Desirable" Option in ERMS should not be made in lieu of placement on the Restricted Sick Leave List.

Deems Desirable does not allow a policy to request documentation for all instances of intermittent leave; Deems desirable is for specific absences on a case-by-case basis.

(The above **guidelines** (bold) can be found in "Guidance and Instruction" issued by the Postal Service in July 2010, a copy of which was introduced as Management Exhibit #1 at the hearing.)

The Union cited yet another DRT Decision on the same issue where in case number C11N-4C-C 17340610, the DRT decided that "*Management had improperly placed the grievant in a "Deems Desirable" status. Management is highly recommended to review the JCAM and the ELM prior to requesting medical certification and placing employees on Deems Desirable*". The Union contended that all the aforementioned DRT Decisions are consistent in instructing management of the distinction between "Deems Desirable" and "Restricted Sick Leave", and are in line with Postal Service Headquarters' position as well as the USPS July 2010 "Guidance and Instruction". However, the Union contended that new local management at Toledo is arguing against the USPS Headquarters position on the matter.

It was the position of the Union that "Deems Desirable" has been decided by the parties and is not the issue before the Arbitrator. According to the Union, the issue is whether or not Management complied with these previous DRT decisions; and they contend that answer is NO. The Union argued that the DRT decisions cited are binding and precedent setting, yet Management ignored the decisions and continued to violate the National Agreement. They further argued that Management is attempting to make this grievance about the ELM and

whether they can place an employee on deems desirable as a blanket for long periods of time rather than for a single current absence; the Union noted again that this is not the issue in this case.

Finally, the Union contended that the letter the grievant received from Management (JX-2 Page 15), placing him under a "blanket" instruction to provide acceptable documentation between January 10, 2018 and March 31, 2018 is clearly in violation of the prior DRT instructions and precedent setting educational DRT decisions. The Union requested that this Arbitrator sustain the grievance, find the Service in violation of non-compliance with previous DRT resolutions and Order Management to "cease and desist" failing to comply with grievance resolutions.

#### **IV. MANAGEMENT'S CONTENTIONS**

Management in the instant case contended that they did not violate the National Agreement when they placed the Grievant on the "Deems Desirable" list. According to Management the Grievant in his extremely short career with the Postal Service has shown that he did not show any care or consideration to come to work on a regular basis, therefore his Supervisor informed him in writing that he was being placed on Deems Desirable (JX-2 Page 15). The Service disputed the Union's claim that Management violated past decisions and argued that none of the DRT decisions cited by the Union have anything to do with the instant case. Management asserted that the Union bears the burden of proof in this Contract case.

It was Management's position that the JCAM at page 10-14 provided the requirements for Medical Certification and states:

**Medical certification. ELM Section 513.361 and .362 establish three rules:**

- a. For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave ("three days" means three scheduled workdays; Step 4, H1N-5B-C 3428, November 3, 1983, M-00489); and
- b. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however,

- c. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

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.

Consistent with the Rehabilitation Act, the parties agree that the ELM Sections 513.362 and 513.364 do not require the employee to provide a diagnosis (USPS correspondence, August 3, 2007, M-01629). Employees who are on extended periods of sick leave must submit at regular intervals, but not more frequently than once every 30 days, satisfactory evidence of their continued inability to perform their regular duties, unless "a responsible supervisor has knowledge of the employee's continuing incapacity for work" (ELM Section 513.363).

Management also provided the requirements for Sick Leave Documentation from the ELM Section 513.36 which states the requirements for employees who are absent 3 days or less or over 3 days. The Service offered the opinion of Arbitrator Tobie Braverman in Case Number 14092440 out of Buffalo, New York, where she opined:

The burden of proof to demonstrate that management has been arbitrary, capricious or unreasonable in identifying letter carriers as "deems desirable" for purposes of sick leave verification is on the Union. That burden was not met where the evidence established that the manager made decisions based upon legitimate considerations, and the attendance records of the affected employees appeared to justify the action. One employee for whom the action appears to have been unreasonable was not actually required to submit documentation, and there is therefore no basis for a remedy."

Management argued that likewise in the instant case, they did not act arbitrarily, capriciously or unreasonably in notifying the Grievant that he was placed on Deems Desirable.

It was Management's position that in the case at bar, the key word is "may place the employee, not must or shall place the employee" on the Restricted Sick Leave List. They argued that there is no mandate in the ELM stating this must be done; but rather it is an option to

Management as is notifying an employee that they are being placed on Deems Desirable then placing them on "Deems Desirable" in ERMS. According to Management, the Grievant's Supervisor reviewed both Restricted Sick Leave in the ELM and Deems Desirable and decided that based on the specific leave used by the Grievant, Restricted Sick Leave was not the proper path.

Management asserted that the Grievant had no sick leave and Restricted Sick Leave only covers the use of sick leave and leave without pay. In fact, according to hearing testimony by Management, the average hours worked by an employee annually is 2080 but the Grievant over the past year had only worked 862.45 hours. Management also testified that over the past 90 days, the Grievant had 38 incidents of unscheduled leave, 71 over the past 180 days and 151 in the past year. Management further asserted that Deems Desirable was the best option in this particular case.

Regarding the opinion of Headquarters Strategic Complement Reassignment Labor Relations Manager in the DRT case number C11N-4C-C 13318335 cited by the Union, Management argued that this employee is now retired from the Postal Service so the Service could not obtain clarification on his statement and the Step B Management Representative stated that he received the comment via email and he no longer has the email available to him. Management argued that in regards to the Statement from Headquarters, if an employee does not have sick leave, and used annual leave or is AWOL, how does Management correct their leave usage? Additionally, according to Management, the case cited was in regards to multiple carriers at Wernerts Station where there was a blanket policy at that specific station if employees exceeded 3 unscheduled absences. Management asserted that the instant case in no way reflects that issue.

Finally, Management argued that the Grievant's Supervisor did not act arbitrarily, as she testified that she just wanted the Grievant to correct his behavior, and she carefully reviewed which path she should take to do so; and even spoke with the Union Steward. Management further argued that the Union seeks non-compliance to vague settlements which are not precedent setting when the reality is the Grievant did not come to work. The Service contended that after the Supervisor exhausted all attempts to correct the Grievant's behavior, she placed him on Deems Desirable because the specific stipulations attached to Restricted Sick Leave would not have worked for this specific employee. The Service used the only recourse available

to them, stated Management and in this Contract case, where the Union bears the burden of proof, they have failed to prove that Management was non-compliant to the decisions in the case file. Therefore, Management requested this Arbitrator to deny the instant grievance in its entirety.

## **VI. DISCUSSION AND OPINION**

### **NALC-USPS** **JOINT CONTRACT ADMINISTRATION MANUAL**

**Medical certification.** ELM Section 513.361 and .362 establish three rules:

- a. For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave ("three days" means three scheduled workdays; Step 4, H1N-5B-C 3428, November 3, 1983, M-00489); and
- b. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however,
- c. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

The instant case involves the alleged non-compliance by Management with prior Dispute Resolution Team (DRT) resolutions regarding Deems Desirable notations in eRMS. According to the Union, there have been several grievances filed and resolved by the DRT regarding the appropriate use of Deems Desirable, and Management at Toledo refuses to abide by those decisions which are precedent setting for the Toledo Installation. Management on the other hand disputes that they failed to comply with any decisions and contend that the use of "deems desirable" is appropriate in the instant case and in compliance with the National Agreement and the ELM.

In case number C11N-4C-C 13318335, which was cited by the Union, the Issue Statement read:

Did the Postal Service violate the National Agreement, including Articles 3, 10 and 19 when they implemented a blanket policy placing employees on the "deems desirable" list, requiring employees to submit medical documentation for absences and if so, what is the appropriate remedy?

The DRT agreed to resolve the grievance and ordered that Management shall no longer use the "Deems Desirable" option in eRMS as a blanket policy. The parties advised that Management should provide the reasonable fact that lead to the individual being placed on "deems desirable" upon request.

In the second case cited by the Union, C11N-4C-C 17326170, the Issue Statement read:

Did management violate the National Agreement, including but not limited to, Articles 3, 10, 15, and 19, when it placed the grievant on the "deems desirable" list? If so, what is the appropriate remedy?

The DRT resolved that grievance as well and found that *"Management violated the national Agreement when they placed the grievant on "Deems Desirable" for a period of 30 days after she informed management she was unavailable to work her regularly scheduled day off on a holiday schedule."* In that case, the DRT cited Arbitrator Sarah Cannon Holden in case # B10C-1B-C 15197604 where she opined:

In order to ensure the "Deems Desirable" option in ERMS is appropriately utilized by Management the following agreed upon provisions shall apply:

Implementation Cannot conflict with leave regulations contained in ELM 510

Governs management of a present, single absence 3 days or less  
Must be on a case-by-case basis

May not be arbitrary and capricious Supervisor must have a reasonable, fact-specific basis for the request

The "Deems Desirable" option should not be activated for any extended period of time, but should normally remain active only for each specific absence for which we can fulfill our burden that the Interests of the Service need to be protected. It should be deactivated immediately thereafter. Activation of the "Deems Desirable Option" in ERMS should not be made in lieu of placement on the Restricted Sick Leave List.



Deems Desirable does not allow a policy to request documentation for all instances of intermittent leave; **Deems Desirable is for specific absences on a case-by-case basis.**

**The above guidelines (bold) can be found in "Guidance and Instruction" issued by the Postal Service in July 2010, a copy of which was introduced as Management Exhibit # 1 at the hearing.**

Arbitrator Holden cited a Management Exhibit which was produced by the Postal Service in 2010. In that Exhibit the Postal Service reviewed the proper and appropriate use of the Deems Desirable option in ERMS. **Those guidelines were no doubt developed from the ELM in association with the National Agreement and JCAM.**

A review of the ELM at Section 513.36 provides the following information regarding documentation requirements for postal employees:

**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.

The Joint Contract Administration Manual provides the following regarding Medical Certification for absences:

**Medical certification. ELM Section 513.361 and .362 establish three rules:**

- a. For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave ("three days" means three scheduled workdays; Step 4, H1N-5B-C 3428, November 3, 1983, M-00489); and
- b. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however,
- d. **For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."**

Both the ELM and the JCAM describe those situations where documentation may be required for absences of three days or less and that is when, based on that particular absence, the Supervisor

*deems documentation desirable for the protection of the interests of the Postal Service.* The language used by both the JCAM and the ELM describe a “deems desirable” situation based on a particular absence...; neither the ELM or the JCAM describes a “Deems Desirable” list or “Deems Desirable” Option to identify a particular employee and then require them to submit documentation for every absence during a particular period. The language speaks more to identifying a particular absence which might prompt a Supervisor to request documentation based on their belief that Postal Service interests may need to be protected.

The language of the ELM and JCAM would be in line with the interpretation of the Postal Headquarters Representative who provided clarification to the DRT in case number C11N-4C-C 13318335, cited in the instant case, as well as in line with the “Guidance and Instruction” issued by the Postal Service in the July 2010 document cited by Management in Arbitrator Holden’s aforementioned case. As a result of the clarification by Postal Service Headquarters, and Arbitrator Holden’s inclusion of the “Guidance and Instruction from the Postal Service, the DRT concluded that Management at the Toledo Post Office was inappropriately using the “Deems Desirable” option in ERMs to place a blanket restriction on employees, including the Grievant, for extended periods of time. The DRT found this was a violation of the National Agreement and ordered Management to cease the use of the “Deems Desirable” option in eRMS as a blanket policy.

Management argued that the DRT resolutions had little to do with the issue in the instant case and was based on issues at Wernerts Station. Regarding DRT decisions, the JCAM provides that:

JCAM

#### ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

**Step B Decision.** The Dispute Resolution Team must make a decision within fourteen calendar days after receipt of the appeal from Formal Step A, unless this time limit is mutually extended. The written Step B decision must state the reasons for the decision in detail and include a statement of any additional facts or contentions not set forth in the grievance as appealed from Formal Step A. The Step B team must attach to the decision a list of all documents included in the file.

A Step B decision establishes precedent only in the installation from which the grievance arose. For this purpose, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on

similar issues that have been previously decided in that installation.

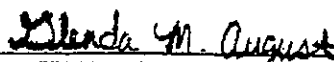
Although the grievance in the cited case was initiated at the Wernerts Station, the decision of the DRT establishes precedent on the Installation at Toledo. Thus, Management in this case had a responsibility to comply with the DRT's decision in the aforementioned grievances.

While it is certainly Management's right, specifically the employee's supervisor, to request documentation for absences of less than 3 days, Management must assign that "deems desirable" on a case by case basis, based on a specific absence and not use the Deems Desirable option in ERMS to place a blanket restriction on an employee for an extended period.

Based on the evidence of record and the arguments and contentions of the parties, the grievance is sustained. Management violated the National Agreement when they failed to comply with prior DRT decisions. Management shall cease and desist failing to comply with DRT resolutions for the Toledo Installation.

**AWARD**

The grievance is sustained. Management violated the National Agreement when they failed to comply with prior DRT decisions. Management shall cease and desist failing to comply with DRT resolutions for the Toledo Installation.

  
\_\_\_\_\_  
GLENDA M. AUGUST  
Arbitrator

November 6, 2018

New Iberia, LA

**REGULAR ARBITRATION PANEL**  
**Long Island District**

<p>In the Matter of an Arbitration</p> <p style="text-align: center;">Between</p> <p>UNITED STATES POSTAL SERVICE</p> <p style="text-align: center;">And</p> <p>NATIONAL POSTAL MAIL HANDLERS UNION</p>	<p>Grievant: Robert Cappuccio</p> <p>Post Office: Mid Island P&amp;DC</p> <p>USPS Case No.: <b>B06M-1B-C-09095810</b></p> <p>NPMHU Case No. <b>09049</b></p> <p>Before: Robert Tim Brown, Esq., ARBITRATOR</p>
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Appearances:

For the Postal Service: Robert Cossaro, Labor Relations Specialist

For the Union: Robert Lussos, Branch President, Advocate

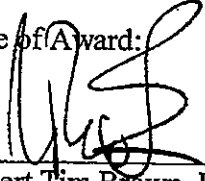
Place of Hearing: Mid Island P&DC

Date of Hearing: September 24, 2010

**AWARD:** Grievance sustained in part. **The Service violated the National Agreement when it notified Grievant that it deemed documentation desirable (required) if he called in to be absent on the January 16-20, 2009 weekend, and based that decision solely on his record of having taken unscheduled FMLA leave adjacent to four holidays in the prior year. Grievant suffered no monetary harm, so only an order that the Service comply with the agreement in the future is appropriate. Arbitrator retains jurisdiction.**

Date of Award:

December 2, 2010

  
Robert Tim Brown, Esq., Arbitrator

cc: Robert Lussos, Robert Cossaro, Grievance and Arbitration Processing Center, Area Labor Relations Specialist (Windsor), Kevin B. Rachel, Raymond-Sokolowski.

## AWARD

This case was heard under the auspices of the Regular Arbitration Panel established to hear disputes between the National Postal Mail Handlers Union, Local 300, and The United States Postal Service (Long Island District), pursuant to the collective bargaining agreement in effect between them. Hearing in this case was held on September 24, 2010, at the Mid-Island Processing and Distribution Center, in Melville, NY. Postal Service Labor Relations Specialist Robert Cossaro represented the Service at the hearing, and Union Branch President Robert Lussos represented the Union and the Grievant. At the conclusion of the hearing the parties requested the opportunity to file post hearing briefs. The briefs arrived and the record was then closed. The Parties granted an extension of time for the issuance of this award.

**ISSUE:** Did management place Grievant on a “deems desirable” list requiring documentation for certain absences, and by doing so, violate the National Agreement, and, if so, what shall the remedy be?

### **FACTUAL BACKGROUND:**

The ELM requires that employees who are absent for more than 3 work days consecutively provide acceptable documentation for absences, and also provides, as will be detailed below, that where a supervisor “deems desirable” for the protection of the Service, he/she may require such documentation for absences of 1, 2, or 3 days as well. The latter discretionary power is limited in that it may not be used capriciously, unreasonably or arbitrarily. In the real terms of the work place and this case, the Service has a database called “eRMS,” that tracks employee attendance, and provides a means for management to be aware of absences that occur frequently or in patterns, and the Service uses that system to impose on certain employees those more restrictive requirements.

As to the “list” alleged to have been used in this case, the Service denied that such a list existed, and the Union produced no evidence that it did exist. Rather, it became clear that the Union was asserting that the Service, in this case, was using the more restrictive “deems desirable” language improperly; the service denied that it had done so.

## TESTIMONY:

Grievant Robert Cappuccio testified that on January 15, 2009, he was told by Supervisor Paredes that for the upcoming holiday weekend (January 16-20, 2009) he was being placed on the "deems desirable list", meaning that he would have to provide documentation if he reported absent that weekend. He said that when he asked why this was being done, Paredes told him it was because he had reported out on the previous Martin Luther King ("MLK") holiday. At step 1, Cappuccio said, management responded more expansively, saying he was categorized as he was because of call-ins around holidays.

Cappuccio testified that he had on file an FMLA dependent care certification. He reviewed attendance records in the course of his testimony, and from them he testified that he had had taken the following leave blocks in conjunction with holidays during the prior year (The unscheduled absences are underlined for clarity):

January 21, 2008 (MLK holiday)	8 hours scheduled annual leave
February 18, 2008 (Presidents day)	8 hours scheduled annual leave
May 26, 2008 (Memorial Day)	8 hours scheduled annual leave
June 30-July 2, 2008 (prior to July 4)	<u>8 hrs each day unscheduled (FMLA) leave</u>
July 3, 2010 (day prior to July 4 holiday)	8 hours scheduled annual leave
September 1, 2008	<u>8 hours unscheduled leave</u>
October 13, 2008	8 hours scheduled annual leave
November 11, 2008	<u>8 hours unscheduled FMLA leave</u>
November 27, 2008	8 hours scheduled annual leave
December 25, 2008	8 hours scheduled annual leave
December 31, 2008	<u>8 hours unscheduled FMLA leave</u>
January 1, 2009	8 hours scheduled annual leave

The result, Grievant testified, was that of 10 paid holidays and several adjacent days also considered sensitive, he took unscheduled leave, all FMLA protected, on only 4 occasions totaling 6 days, of a total of approximating 15 (some holidays were adjacent to his rest days on one side).

Neither Paredes nor any other local supervisor testified as to the rationale for management's action. Instead, Area Labor Relations Specialist Sandra Peets, who has developed an expertise with the eRMS system and is the Labor Relations liaison with the operating areas for administration of eRMS, testified regarding the use of the system and its relationship with the "deems desirable" action that can be taken by management.

Peets testified that restricted sick leave (see ELM §513.361, 362) is no longer used, and has not been used for several years. She testified that the Service had several years ago instituted the eRMS system to track attendance throughout the Postal Service, and that the database is available to managers and supervisors. She said that when employees are absent, their absences are recorded and coded in the system and the system can identify employees who have patterns of unscheduled absences, such as those taken on and adjacent to rest days and/or holidays.

Peets testified that a supervisor will review the records of the employees within their span of supervision and, on a case-by-case basis, identify those whose absence patterns present issues. With particular relevance to this case, employees who frequently call in sick or use unscheduled FMLA leave on or around holidays and rest days are flagged by the system. If the supervisor "deems desirable" to tag that employee's computer file with a requirement that he/she produce documentation for particular sick calls, the supervisor may do so by making an entry in the computer. That entry will cause the automatic telephone response system to tell the employee, when he/she calls in, that documentation is required.

Peets said there was no "deems desirable list," although to the extent that any database is really a large list, a subset of that list will be employees for whom one of the various Postal Service supervisors has made a "deems desirable" entry in the computer. She asserted that a separate list of such employees cannot be generated (at least by a line supervisor) from the eRMS system.

Peets did not specify any of the numerical thresholds used by or in conjunction with the eRMS system to flag absence patterns, saying this was a matter of supervisory discretion.

She testified that the protection accorded by the Family and Medical Leave Act assures only that an employee will be granted leave without penalty, but not leave with



pay, when he or she takes leave consistent with an approved FMLA certification. She said that an employee for whom documentation is deemed desirable but is lacking will be denied paid leave for an absence of three days or less even it is FMLA-approved, but the absence will not be counted as an unscheduled absence. (If FMLA, it would have to be a certification for intermittent, unscheduled absences).

The Union submitted a request for information seeking to know the reason for the "deems desirable" action, the documentation that would be acceptable, and the actual eRMS entry. The Service responded, as to the reason, "call in either before a holiday, or after," and as to the documentation, "medical or administrative documentation." It supplied a print-out of the eRMS entry, showing, under "deems desirable", a check mark, and the dates January 16-20, 2009.

#### **POSITIONS OF THE PARTIES:**

**Union:** The Union argued that the eRMS system is being used to circumvent the restricted sick leave procedure set for in the ELM, and any such "deems desirable" classification must not be arbitrary, capricious or unreasonable. This issue has been confronted by the parties in the past, and the maintenance of a list of employees (even if part of the larger eRMS database) has been found to be impermissible.

The parties have agreed in writing that the eRMS system is not a new rule or regulation, and the collective bargaining agreement still rules as it did in the past. The new system cannot be inconsistent with the agreement or the ELM, and, if changed, the ELM must pass muster as being consistent with the agreement. The only acceptable way to impose this kind of restriction is through the proper use of restricted sick leave.

On the facts, Grievant called in for FMLA leave around only four holidays in the prior year, and did not call in for sick leave around any holidays. He also called in for unscheduled FMLA leave on many other occasions during the year. Given these numbers, the Service abused its authority because there was no pattern of leave around holidays.

The Union also argued that FMLA leave is protected under federal law, and the employee should not be punished or penalized for using that leave.

**Postal Service:** In a contract case, the Union has the burden to prove that a contract violation has occurred, and has not done so here. Restricted sick leave has not been used

for many years, and the use of the eRMS system has been accepted by the Union at the national level. It has been in use for many years. It was intended to be, and is, used to automate leave management, in this case to allow a supervisor to use system statistics and still exercise discretion on a case-by-case basis to correct attendance abuse that occurs when employees frequently call in sick around holidays.

By asking the arbitrator to make a determination that absences of three days or less do not require documentation, the Union is asking the arbitrator to change the Employee Relations Manual section 513.361 and the Collective Bargaining Agreement and manuals. These sections allow a request for documentation for the protection of the service to be made so long as it is not made in an arbitrary, capricious or unreasonable manner.

The Union asserted there was a "deems desirable list," but has produced no list and there is none. Management testimony established that no list of "deems desirable" employees can even be generated by the eRMS system.

Finally, Grievant has suffered no harm by management's action, as he did not take unscheduled time off on the weekend in question, and did not have to produce any documentation. There is therefore no appropriate remedy.

## PERTINENT CONTRACT PROVISIONS

### ARTICLE 19 HANDBOOKS AND MANUALS

#### Section 19.1

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

EMPLOYEE AND LABOR RELATIONS MANUAL  
513.36 Sick Leave Documentation Requirements

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.

513.39      Restricted Sick Leave

513.391      Reasons for Restrictions

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.

USPS — NPMHU CONTRACT INTERPRETATION 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 513.39.

Question: May management create a list of employees who are required to provide medical documentation for all unscheduled absences in lieu of utilizing the restricted sick leave procedure found in ELM, Section 513.39?

Answer: No. A "call-in" list of employees that are automatically required to provide

medical documentation for all unscheduled absences, even though the employees are not on restricted sick leave, should be abolished.

Source: Pre-arbitration Settlement H1C-3D-C 37622, dated June 3, 1985.

JCIM Art. 10.6 A number of disputes have occurred when a supervisor required an employee who was not on restricted sick leave to provide medical documentation for an illness or injury of three days or less. It is understood that the supervisor's request for medical documentation cannot be arbitrary, capricious or unreasonable.

**DISCUSSION:** First, it is appropriate to take note of the fact that Grievant, after being told he was placed in the "deems desirable" category, did not actually take FMLA leave time off on the ensuing holiday weekend, and was thus not actually deprived of pay or benefits for any such absence, but was on notice that documentation would be required and was thus in a restricted status, temporarily. (The Service acknowledged in its post-hearing brief that Grievant's restriction has ended.)

What remains is the question whether, pursuant to the procedures established with relation to the eRMS system and the "deems desirable" classification, the Service violated the agreement when it placed an employee in that category for an upcoming period, outside of the formerly used restrictive sick leave provisions (once the supervisor makes the computer entry, the telephone system will automatically request documentation for the applicable period if the employee calls in). The Service's Advocate argued that the use of the eRMS database has been sanctioned by agreement of the parties on a national level, and this was undisputed. The Advocate also asserted, however, that the parties agreed that that database may not be used in contravention of the National Agreement.

It may be that restricted sick leave is no longer used, but the procedure is still in the agreement, along with the specific process that must be used in implementing it,

including reviewing the employee's record, consulting with higher management, giving the employee advance notice, and, eventually upon the employee's improvement, rescinding it with respect to that employee. The ELM provision provides, except where there is evidence of abuse, that restriction must follow several preliminary steps:

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. 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.

This provision would make no sense if its meaning was to define and regulate a means to restrict the use of sick leave by errant employees (and, of course, a means to clear that employee's restriction when improvement was shown), while at the same time conferring on a supervisor the right to act completely outside that structure, with the most loosely

defined and uncodified discretion. This is especially so in view of the fact that the Service acknowledges that it has moved completely away from the use of restricted sick leave, and has taken up the eRMS database in conjunction with the “deems desirable” device as its main method of controlling unscheduled absences.

One cannot fault the Service for the use of the database within permissible limits, especially because it provides a resource not only to automate attendance records but also to place those records in overall context, so they can be used by the Service (and the Unions) to investigate whether employees are being treated equitably. The system also provides a means to avoid guessing at whether an employee’s record is outside existing norms, and for alerting supervisors to the need for enhanced oversight. What must go hand in hand with such a system, however, is the transparency that will permit scrutiny against the “arbitrary, capricious or unreasonable” bar set out in the JCIM.

This case, unlike an ordinary unscheduled sick leave situation, involved FMLA *dependent care* leave, in which, so far as we know, the employee had been approved to use that leave in small blocks to care for a dependent. The average employee does not, it is fair to say, experience *bona fide* short term illness coincident with holiday periods more frequently than during periods not associated with holidays, save perhaps from overindulgence, and so it is not irrational for an employer who observes frequent one, two, or three day absences around those holiday periods to suspect abuse. Under the restricted sick leave provisions the employee must be warned that restriction may occur, absent improvement, and the employee must be removed from that category upon improvement.

FMLA dependent care leave is a federally sanctioned program that accords the right to employees to request such leave for care of a dependent requiring care, first providing proof of the need for that care, and obtaining the approval of management. One form of FMLA leave is intermittent leave, where the employee is spared the need to seek out medical or special need documentation for short-term episodes falling under their certification. This recognizes the fact that, for example, a person experiencing episodic asthma or migraine headaches may follow a care protocol at home and not need

to go to a health care provider for medical treatment, based on medical certification that these episodes are likely to occur.

The record in this case did not establish the reason for Grievant's dependant care certification. What was clear, however, was that no inquiry was made as to why the need episodes occurred when they did, adjacent to 4 holidays in 12 months. It is easy to see how the need for dependent care might be more pressing around a holiday when a regular caregiver is not available. It is equally easy to see how an employee might abuse such a certification. The difference between sick leave and dependent care leave is that the latter is for care of another person, and may be related not only to that person's health difficulties, but also to the absence of some other mode of care.

The Family Medical Leave Act, and its associated regulations both within and without the Postal Service, provide procedures for pursuing suspicions of abuse, and limitations as to how this may be accomplished. The Service took the position at this hearing that the leave is granted even if the employee has been placed in "deems desirable" status but the right to take paid leave might be restricted. There was no indication that such a detailed conversation took place with Grievant, and the supervisor did not testify. Grievant testified that he was just told he was on a "deems desirable list" and needed documentation if he took unscheduled time off.

It appeared from Peets' testimony that the eRMS attendance control program is administered in such a way as to permit a supervisor, based on data in the eRMS system, to classify an employee certified to take intermittent FMLA leave as being required to submit medical documentation for an unscheduled FMLA leave absence on an upcoming holiday, without a substantive inquiry as to the reasons for the particular leave requested (such an inquiry would have to be made with due respect, of course, to the FMLA regulations not in issue here).

Such conduct is directly contrary to the language of §513.361 for absences of 3



days or less,<sup>1</sup> and defeats the intent of the FMLA intermittent leave certification. It is contrary to the §513.361 language, that is, unless the second part of the sentence in that section is intended to mean that the “deems desirable” language confers on management a superseding right to exercise discretion, measured against no disclosed standard, without a full inquiry into circumstances, to require documentation anyway. Such a reading of the language defies logic. The language suggests that the “deems desirable” decision arises out of special circumstances, and the JCIM specified that such a decision must not be arbitrary, capricious or unreasonable. Those three words imply that the decision will be made based on known, well explored circumstances, because without that, the decision is likely to be seen as arbitrary or capricious.

That language does confer a right to exercise such discretion providing that it is not arbitrary, capricious or unreasonable, but what is being done here, as the Union urges, is placing the employee on a sort of restricted FMLA leave, analogous to restricted sick leave but outside of the agreement, so that the employee will be told that if he takes FMLA dependent care leave on an upcoming holiday, documentation will automatically be required, without regard to the circumstances of that leave. There will inevitably be circumstances in which neither the employee nor the Service can know in advance whether or why that need will arise, and such an advance classification violates the National Agreement.

The FMLA’s requirements for the methods used to scrutinize the legitimacy of such leave requests were not placed before me, and this was not a sick leave case. Additionally, the distinction drawn by Peets between paid and unpaid FMLA leave was not in issue here, because there it was undisputed that Grievant was simply told that if he took unscheduled leave during the upcoming holiday period, documentation would be required. That directive was not, so far as can be told from this record, limited to FMLA dependent care leave, but Grievant had not taken any other kind of leave on the four occasions in issue here.

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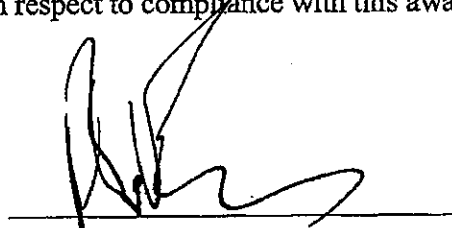
<sup>1</sup> Four instances of unscheduled FMLA dependent care leave adjacent to holidays over a 12-month period cannot, given the variables involved, be viewed as evidence that the employee is “abusing sick leave privileges” pursuant to the first part of that section.

It is well known that discipline can result from frequent unexcused (undocumented) absences.

I have reviewed several awards that have broadly held the Service's use of the "deems desirable" device in violation of the agreement. I limit my holding in this award to the circumstances presented to me, in a narrower framework than is presented in those awards.

**CONCLUSION:** In the case of an employee with a valid FMLA dependent care intermittent leave certification, the imposition of a blanket advance requirement embedded in a computer database, based on a supervisor's review of eRMS attendance records alone, that that supervisor "deems documentation desirable for the protection of the interests of the Postal Service," for unscheduled FMLA dependent care absences for a particular future period, violated the National Agreement. I do not hold that such a violation would occur if the supervisor made an informed, non-arbitrary decision based on a full and proper inquiry as to a particular absence, because that appears to be the intent of the language in the agreement. I make no holding with regard to non-FMLA unscheduled sick leave, nor with regard to a distinction that might be drawn with regard to whether an FMLA-protected leave may be restricted to unpaid leave based on a "deems desirable classification."

**REMEDY:** As already stated herein, Grievant suffered no harm other than the formal, temporary imposition of the requirement, as he took no unscheduled leave on the weekend in question. The Service is directed to comply with the applicable requirements of the National Agreement and the ELM in the future, and I retain jurisdiction to hear any dispute with respect to compliance with this award.



Robert Tim Brown, Esq., Arbitrator

Dated December 2, 2010.

**REGULAR ARBITRATION PANEL**

In the Matter of the Arbitration Between

**UNITED STATES POSTAL SERVICE**      Grievant: **Class Action**

and

**AMERICAN POSTAL WORKERS UNION, AFL-CIO**

Case Nos.

**Postal Service B10C-1B-C 15197604**

**Union 15-0816**

**BEFORE: Sarah Cannon Holden, Arbitrator**

**APPEARANCES:**

**For the Postal Service:      Connie Marvin**

**For the Union:              Scott Hoffman**

**PLACE OF HEARING: Boston, Massachusetts**

**TYPE OF GRIEVANCE: Deems Desirable Option**

**DATE OF HEARING: May 24, 2016**

**DATE OF AWARD: June 3, 2016**

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**ISSUE.**

The parties agreed to the following issue:

**"Did the Postal Service violate Article 5 and 19 of the Collective Bargaining Agreement when it improperly used the Deems Desirable Option? If so, what shall be the remedy?"**

**BACKGROUND.**

This grievance originated in the Braintree, Massachusetts postal facility and ultimately gave rise to a Class Action grievance for the entire Boston Installation. The case involves circumstances under which there are documentation requirements for absences of three days or less. In 2010 the parties implemented the so-called "Deems Desirable Option" which is an

option available to Management under **ELM 513.36 Sick Leave Documentation**

**Requirements/Three Days or Less.** The relevant language follows:

**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. (Further documentation) 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."**

The Union filed the grievance alleging that Management is improperly using the "Deems Desirable" option in TACS/ERMS to require unjustified documentation of absences of three day or less. Management's actions are arbitrary and capricious.

The parties were unable to resolve the matter. An arbitration hearing was held in Boston, Massachusetts on May 24, 2016.

**POSITIONS OF THE PARTIES.**

The Union.

It is the Union's position that Management has perverted this provision by retaining an employee in the "Deems Desirable" category once it has exercised the option the first time. The employee becomes subject to the category and the documentation requirements for all future absences of three days or less. This is not the intent of the language. Management, it argues, may not "cast doubt on an unknown, not requested absence." The "Deems Desirable" option should be exercised only on a one-time basis when "the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

The Union asks for a cease and desist order for the improper use of the "Deems Desirable" option in TACS/ERMS and that the Service comply with ELM 513 regarding absences of three days or less.

### The Postal Service

The Postal Service, on the other hand, takes the position that the utilization of the "Deems" option in Enterprise Resource Management System (ERMS) does not violate any of the terms of the Collective Bargaining Agreement. The proper terms of its implementation have been clearly spelled out in documents that were created by the Postal Service and signed by it and the Union. The document was provided to supervisory personnel in July 2010.

Since no violation of the CBA could be demonstrated by the implementation of the guidelines the Service asks that the grievance be denied.

### **DISCUSSION**

The language of the "Deems Desirable Option", to which both parties agreed, is very succinct and clear. After considering the arguments of the parties I find that the solution to this grievance is to reiterate the provisions of the Agreement as a reminder of their purpose and their proper use.

In order to ensure that the "Deems Desirable" option in the ERMS is appropriately utilized by Management the following agreed upon provisions shall apply:

#### **Implementation**

- Cannot conflict with leave regulations contained in ELM 510
- Governs management of a present, single absence 3 days or less
- Must be on a case-by-case basis
- May not be arbitrary and capricious
- Supervisor must have a reasonable, fact-specific basis for the request

The "Deems Desirable" option should not be activated for any extended period of time, but should normally remain active only for each specific absence for which we can fulfill our burden that the interests of the Service need to be protected. It should be deactivated immediately thereafter. Activation of the "Deems Desirable Option" in ERMS should not be made in lieu of placement on the Restricted Sick Leave List.

Deems Desirable does not allow a policy to request documentation for all instances of intermittent leave; Deems Desirable is for specific absences on a case-by-case basis.

The above guidelines (**bold**) can be found in "**Guidance and Instruction**" issued by the Postal Service in July 2010 a copy of which was introduced as Management Exhibit #1 at the hearing.

The guidelines and limitations on the use of the "Deems Desirable" option as outlined in the original documentation are very clear. A simple refresher for supervisors should remedy the Union's grievance.

THEREFORE, I award as follows:

1. **I find that the Postal Service did violate Articles 5 and 19 of the Collective Bargaining Agreement when it improperly used the "Deems Desirable" option.**
2. **The Postal Service is ordered to cease and desist from such improper use and follow the established guidelines set forth in the DISCUSSION section above.**
3. **The grievance is sustained.**



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Sarah Cannon Holden

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	GRIEVANT: Class Action
	)	
between	)	POST OFFICE: Columbus, OH P&DC
	)	
UNITED STATES POSTAL SERVICE	)	USPS Case No.: CO6M-1C-C 07209854
	)	NPMHU Case No.: TDB6-20-07
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS	)	
UNION	)	

BEFORE: RONALD F. TALARICO, ESQ., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Mildred M. Johnson  
Labor Relations Specialist  
Columbus, OH

For the Union: William H. McLemore, III  
Arbitration Advocate  
Cincinnati, OH

PLACE OF HEARING: Columbus, OH

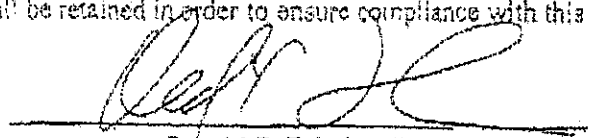
DATE OF HEARING: June 19, 2008

DATE OF AWARD: July 15, 2008

AWARD

The grievance is sustained. The Employer is to cease and desist creating the "deems desirable/documentation required" status for leaves of 3 days or less as it currently does, and must adhere to the ELM.

Jurisdiction shall be retained in order to ensure compliance with this Award.

  
\_\_\_\_\_  
Ronald F. Talarico, Esq.  
Arbitrator

## ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held on June 19, 2008 in Columbus, Ohio at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses and to make such arguments that they so desired. The record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

## PERTINENT CONTRACT PROVISIONS

### ARTICLE 19 HANDBOOKS AND MANUALS

#### Section 19.1

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

\* \* \* \* \*

### EMPLOYEE AND LABOR RELATIONS MANUAL

#### 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.

513.39 Restricted Sick Leave

513.391 Reasons for Restrictions

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      Reversion 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.

\* \* \* \* \*

USPS — NPMHU CONTRACT INTERPRETATION 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 513.39.

Question: May management create a list of employees who are required to provide medical documentation for all unscheduled absences in lieu of utilizing the restricted sick leave procedure found in ELM, Section 513.39?

Answer: No. A "call-in" list of employees that are automatically required to provide medical documentation for all unscheduled absences, even though the employees are not on restricted sick leave, should be abolished.

Source: Pre-arbitration Settlement H1C-3D-C 37622, dated June 3, 1985.

### BACKGROUND

This class action grievance was filed on June 27, 2007 on behalf of Mail Handlers working at the Columbus, Ohio Production & Distribution Center. The grievance alleges that management continues to use the "Deems Desired List" in lieu of restricted sick leave despite two Step III decisions instructing them to follow the ELM. The Union seeks as a remedy that Management be ordered to cease and desist using any system to mandate documentation without the use of the ELM requirements.

In years past when an employee would call-in a Supervisor would actually take the call, review the employee's 3971's and make a determination right then and there if the employee would need to produce medical verification upon their return to work from that particular sick leave. This process would be repeated each time the employee would call-in. However, with the advent of the ERMS system employees no longer talk to an individual when calling in to request leave of any kind. An automated answering and speech-recognition system is utilized. A supervisor now has the ability to automatically require an employee to provide documentation for absences of three days or less by simply checking the "Documentation Required" box under "Deems Desirable" in the ERMS system. If a supervisor checks this box whenever the employee calls in to request leave they will automatically be advised that medical documentation will be required upon their return to work. The

supervisor also has the ability of entering a beginning and ending date into the ERMS system which will then continue to automatically advise the employee of the requirement to produce documentation for each short-term absence during the stated period of time.

A service talk was recently given to supervisors during which Management maintains the speaker mistakenly used the term "Deem Desirable List". The Plant Manager followed the service talk up with a message to all supervisors and managers advising them that this was a misleading term and should read, "when supervisor deems documentation desirable for the protection of the interest of the Postal Service in accordance with ELM 513.61". The Plant Manager further reminded supervisors that there should be no "list" of employees and if there was any supervisor who had one, they were to destroy it.

#### ISSUE

Whether the ERMS "Deems Desirable" process the Employer currently utilizes to automatically advise employees to provide medical documentation for unscheduled absences of 3 days or less violates the collective bargaining agreement?

#### POSITION OF THE UNION

Once we presented our evidence and documentation to you the Postal Service said "Yes, we did this and this is the reason why". We require documentation for less than three days because we wanted to protect the interests of the Postal Service. We think it's their obligation at that time to prove what that was. If they did do this to protect the interests of the Postal Service what was that interest. Mr. Arbitrator we submit that they did not do that today. They said they sent it to these

employees who had bad attendance records, but we contend that a bad attendance record does not qualify as a reason to ask for documentation for sick leave to protect the interests of the Postal Service. They never provided any documentation showing that they can request documentation for less than three days without showing what that interest was. From the beginning of the grievance until today they never showed us anything.

Mr. Arbitrator even if we do not use Union 1 through Union 5 which are, in our opinion, they are lists that show these people on the list but never used that. To say we disagree in terms. The fact of the matter is these employees are categorized somewhere and now it's in the ERMS system. And you can bet whether they are on the list or not, a person can go into that system and say get me all the people on the Deems Desired list and you can bet it can be pulled out. We are saying that these employees are categorized by list, status, category, whatever and they all have something similar in common. They are being required to bring in documentation for less than three days. You cannot just say to protect the interests and not say what interest at all. They never, never, ever identified a reason. So we are saying that is not good enough. They have done nothing but created a way to get rid of the safeguards for the employees and take a lazy way around the restricted sick leave list.

Mr. Arbitrator if we look at Joint 3, the Step 3 decision, no where does it say all that it's doing is quoting the ELM. No where does it say we have a right. These employees were abusing sick leave. They were calling in after their off day or before their off day. Getting a three day weekend. Nowhere in the Step 3 decision did it address what interests were involved. Here today at the hearing nobody said their interests were protected. Protection of the Postal Service must be made on a case-by-case bases. And may not be arbitrary, capricious or unreasonable. They said the same thing in Step 2 --case-by-case. If you have some attendance problems a supervisor looks at

your 3972 and decides -- OK we are going to put you on this list. Mr. Arbitrator that is not protecting the interests of the Postal Service. This is trying to slide something through the cracks. When we have an abuser of sick leave we are in a grievance procedure and we are dealing with discipline. They are trying to slide in a new vehicle other than the vehicles that they have available to them but they are trying to slide in a new vehicle and Mr. Arbitrator we cannot allow that. Restricted sick leave has guidelines and checks and balances from both sides. It makes sure the employee is being treated fairly, makes sure the Postal Service is monitoring what they require of him so they can deal with abusers. If the Postal Service should decide not to use restricted sick leave they will be taking the easy way out without having to do the work.

Can Management create a list of employees? No they can't. The call-in list has to be abolished. Even though the employees are not under a restricted sick leave it should be abolished. So what Management is doing here is they are saying -- OK, no it's not a list. You know this doesn't apply because it's not a list. Mr. Arbitrator in actuality it is a list. It is employees who have the same thing in common. And they are put in a certain category and they are being required to document an absence for less than three days which is contrary to what the ELM says.

#### POSITION OF THE POSTAL SERVICE

The issue according to the Union's standard grievance form is whether the Postal Service violated Article 5, 10, 15 and 19 of the National Agreement by continuing to use deems desirable in lieu of restricted sick leave. We don't believe that is what we are doing. The Union at the national level has agreed to the use of the ERMS system. We are using a small portion of that system in accordance with our rules, policies and procedures. Management has been utilizing the

deems desirable in the system for well over 4 years now and the Union has no objection to it until now. It is not new. The Union appears to be attempting to mandate that the Columbus district utilize restricted sick leave. The Union's Exhibit "8" deals with a computer program. It does not constitute a new rule or regulation. We agree with that. We also agreed it does not take away our right to request documentation for 3 days or less. Management has testified credibly that for at least the last 20 years it has been a practice here in this District to review an employee's attendance record when they call-in, look at their attendance record and make a determination to request documentation based on those attendance records.

Prior to the implementation of IBI a supervisor taking that call could make that determination at the time of the call. With the implementation of the IBI the only way to accomplish that is for the supervisor to make the notation in the computer. Supervisors have been trained. Laurie Gorman testified that they are supposed to sit down -- the proper procedure is to sit down with the employee, review their attendance, get the employee's feedback, make a determination whether they are going to require documentation, let that employee know, let them know for how long and why. Do we have to provide a follow-up to that? Yes we do. Gorman testified she has been made aware of at least 3 that did not. Unfortunately, 2 of those 3 were the 2 that are involved in this grievance. And Laurie had to retrain them and they are no longer doing what they weren't suppose to be doing in the first place. They are now following the proper procedures. There is no way to pull a list from the computer system as far as who marked "documentation required" because it is on a case-by-case basis. Maybe not every case-by-case basis but it is on an employee to supervisor one-on-one basis. Only that supervisor can make that designation. And that supervisor should not be making that designation without talking to the employee. Lori testified on her training that she did give

supervisors in particular some examples of why they might want to use the documentation desired. For example, maybe things such as always calling in conjunction with off days, always calling in conjunction with their holidays, you know issues like that. That is what we mean by for the protection of the Postal Service.

Mr. Arbitrator I honestly feel that the Union has failed in its burden of proving that we violated any of the Articles of the National Agreement and we respectfully request that this grievance be denied and dismissed in it's entirety.

### FINDINGS AND DISCUSSION

The essential underlying facts in the within matter are not in dispute and the issue is a straight-forward matter of contract interpretation. The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can possibly be read into the language.

The obligation of employees to report for work as scheduled, except as allowed by contract or permission of the employer, is fundamental to the employer/employee relationship. An employee's illness may constitute a permissible reason for being absent to the extent the illness is incapacitating to the performance of the employee's duties, to the extent sick leave is available to the employee, and to the extent proper procedures are followed. However, every request for sick leave should not automatically be subjected to a demand for medical documentation and proof of the



legitimacy of the absence. Perhaps in recognition of the practical difficulties in obtaining medical verification for short-term illnesses and absences ELM Section 513.361 generally exempts absences of three days or less from such requirement. To that end, ELM Section 513.361 creates two exceptions to the general exemption of short-term absences which should be strictly adhered to. One exception is an employee who is placed on restricted sick leave which, I would note, entails many rights and obligations. The other exception is a more generalized condition where a supervisor deems such documentation to be desirable for the protection of the interests of the Postal Service.

Management has stipulated that it does not use "restricted sick leave" as set forth in ELM 513.39 at the Columbus P&DC. Accordingly, for periods of absence of three days or less supervisors may require medical documentation only when it is deemed desirable for the protection of the interests of the Postal Service. Neither the collective bargaining agreement nor any other document that I am aware of provides any guidelines or parameters on the identification of those interests, nor how they may be protected. However, a supervisor's determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interests of the Postal Service must be made on a case-by-case basis, and may not be arbitrary, capricious or unreasonable.

Even though management does not use "restricted sick leave" I believe it would still be instructive for purposes of this analysis to review some of the conditions pertaining to its use. For example, employees may be placed on restricted sick leave only after their sick leave use has been reviewed on an individual basis and the following actions have been taken: establishment of an absence file; a review of the absence file by the immediate supervisor and higher levels of management; a review of subsequent absences on a quarterly basis; written notice to employees that

their names have been added to the restricted sick leave listing; and notice that all further requests for sick leave must be supported by medical documentation until further notice. Clearly the use of restricted sick leave places considerable obligations upon the Employer and offers important protections to the employee.

The Postal Service utilizes a resource management data base (ERMS) to provide a uniform automated process for recording data relative to existing leave rules and regulations. However, management may not alter or change existing rules, regulations, the National Agreement, local understandings, arbitration awards, etc., through the use of its ERMS.

The parties' Contract Interpretation Manual addresses the situation where management does not utilize "restricted sick leave" for employees and the remaining options that are available for requesting documentation for absences of 3 days or less. Under such circumstances management may not create a list of employees who are automatically required to provide medical documentation for all such unscheduled absences.

When a supervisor checks the data box on the ERMS form indicating that documentation is required for short-term leaves of absence each time that employee calls in to request sick leave the ERMS system will automatically advise him/her that they must provide documentation for the requested sick leave upon return to work. This is done automatically by the system, without the employee ever speaking directly with the supervisor, and without any further input from or consultation with the supervisor for each successive call-in.

If an employee is going to lose the valuable right of being able to utilize sick leave for absences of 3 days or less without the need to provide medical verification the Employer has the obligation to ensure that the employee is apprised of and understands the reasons why this valuable

right is being lost (i.e. what are the interests being protected), as well as the parameters under which the loss of this right will remain in existence. While all of these obligations are satisfied when management uses restricted sick leave that is not the case under management's current computerized system of responding to call-ins of 3 days or less. The evidence presented does not indicate any requirement or adhered to practice of supervisors initially meeting with the employee and providing them with the reasons why the "deems desirable" box is being checked and, more importantly, how long and under what conditions the employee will remain in that "status". Nor is there any opportunity for an exchange of information and for the supervisor to take into consideration any change in the employee's circumstances over time.

Essentially what is occurring is that instead of a physical "list" being developed and utilized whenever an employee calls-in (which has been prohibited by the parties' CMA) the computerized ERMS system now performs that same function. The ERMS system electronically creates the equivalent of a "list" that automatically requires an employee to document an unscheduled absence without the type of protections offered by restricted sick leave. The ERMS system essentially creates a deemed desirable "status" which is the functional equivalent of the prohibited "call-in" list of employees which automatically requires them to document every unscheduled absence instead of utilizing the restricted sick leave method found in Section 513.39 of the ELM. The significant import of this electronic equivalent is to allow management to require documentation for all absences of 3 days or less while avoiding providing all of the rights and safeguards afforded employees under the restricted sick leave provisions ELM Section 513.39. That simply is not permissible and constitutes a contract violation.

For all of the above reasons, the grievance must therefore be sustained.


AWARD

The grievance is sustained. The Employer is to cease and desist creating the "deems desirable/documentation required" status for leaves of 3 days or less as it currently does, and must adhere to the ELM.

Jurisdiction shall be retained in order to ensure compliance with this Award.

Date:

July 15, 2008  
Pittsburgh, PA

  
\_\_\_\_\_  
Ronald F. Talarico, Esq.  
Arbitrator



## STEP B DECISION

Step B Team:  
USPS:  
Rene Benavidez  
NALC:  
Karrie Blough

District:  
Rio Grande

Formal A Representatives:  
USPS  
A. Alderete  
NALC  
J. Perez

Decision: **RESOLVE**  
USPS Number: G06N-4G-C 1221 2112  
Grievant: M. Palafox  
Branch Grievance Number: 421-393-12  
Branch: 421  
Installation: San Antonio  
Delivery Unit: Lockhill  
State: TX  
Incident Date: 05/23/12  
Date Informal Step A Initiated: 05/31/12  
Formal Step A Meeting Date: 06/07/12  
Date Received at Step B: 06/11/12  
Step B Decision Date: 06/25/12  
Issue Code: 19.2000  
NALC Subject Code: 502105

### ISSUE:

Was there a violation of Article 19 of the National Agreement specifically section 513.361 of the ELM, when they require the grievant to provide medical documentation to support his absence on 05/21/2012? If so, what is the appropriate remedy?

### DECISION:

The Dispute Resolution Team, (DRT), agree to **RESOLVE** this grievance. The use of "deems desirable" in this case in effect puts the grievant on restricted sick leave in circumvention of the requirements for such contained in ELM 513.391. Management will remove the "deems desirable" request in the eRMS requiring the grievant to provide medical documentation or other acceptable documentation to substantiate all further unscheduled absences. This decision is based on the fact circumstances presented in this case file and is in no way intended to prohibit management from exercising their right to request documentation *properly* for an unscheduled absence for any employees. See the DRT Explanation.

### EXPLANATION:

The union contends that on 05/21/2012, the grievant called in sick and upon his return to work, the manager (Alderete) requested the grievant provide medical documentation to substantiate his absence. The grievant complied with the request and provided documentation. The union argues that the grievant is not on restricted sick leave, has been regular in attendance, and management has not given the grievant not one discussion about his attendance. Article 10 and the ELM state specifically that for absences of three days or less management may accept the employees' reason for absence.

RIO GRANDE DISPUTE RESOLUTION TEAM  
10410 Perrin Beitel Rd, # 1059  
San Antonio, TX 78284-8430  
PHONE 210-368-1784, 210-368-1760, FAX 210-368-8525

The union contends that management violated Article 10 and Article 19 of the National Agreement by requiring the grievant to furnish medical documentation after calling in sick for less than three days. The grievant should not have been required to provide medical documentation when the grievant's record shows no pattern of irregular or unreliable attendance, is not on restricted sick leave, and called in for less than three days. Management failed to give him proper due diligence and by requesting documentation has created a locally determined unscheduled occurrence threshold that targets employees who call in sick two or more times in 90 days.

The union submitted additions and corrections and stated that after the grievant was asked by the manager to provide medical documentation, he asked management if he could go to his medical provider and was told that he could but must do so after work. The grievant consulted with the union and upon explanation by the grievant the union informed the grievant that the medical return to work notice which he had received was considered documentation and the grievant submitted the doctor's excuse and management accepted it.

The union reiterated that it was unreasonable and unnecessary for management to arbitrarily request documentation after the grievant called in for just one day. The union contends management does not have the right to arbitrarily "tag" an employee based upon a specific time frame and that there must be justifiable reasoning to do so; otherwise they could just "tag" every employee whenever they felt like it. The union also contends that management is completely abusing the intent of ELM section 513.361 and using that section to imply that they have the right to ask for medical documentation anytime because it is for the protection of the Postal Service.

The union cited arbitration case H94N-4H- C 9603 3490, which states in part, *"The right to require medical documentation in section 513.361, while broad, is not without its limitations, for absences of three days or less a supervisor may exercise some discretion in requiring medical documentation. But documentation may only be required; (1) when an absent employee is on restricted sick leave, or (2) when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. The first limitation is clear, but the first limitation gives meaning to the second."*

The union also states that as recent as this week, Station Manager Alderete stated in a standup talk that she understood what the contract said, however she had a right to protect the interest of the Postal Service and she would require medical documentation if she deemed it desirable. The union states that she went on to say that if employees failed to bring in proper medical documentation, employees would not be paid for the day(s) they called in for. The union argues that management is completely overstepping their own authority on this issue. The union contends that management stated that Palafox had previously called in conjunction with a previous holiday.

The union contends that the validity of management's claim regarding Palafox and their reason for requiring him to provide medical documentation must be challenged since the grievant did not call in conjunction with a previous holiday. Management is now claiming that if an employee calls in sick the week prior to or the week of a holiday, that they now have the right to tag that employee the week of the next holiday. This is unreasonable and unrealistic at best, and this issue has been an ongoing problem at Lockhill.

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10410 Perrin Beitel Rd, # 1059  
San Antonio, TX 78284-8430  
PHONE 210-368-1784, 210-368-1760, FAX 210-368-8525

Management will tag every employee during a specific time frame because a holiday is involved.

The union contends that management's actions are considered as a slippery slope with no way to stop the slide. If management can arbitrarily request medical documentation of employees who call in the week prior and the week of a holiday, what is to stop them from tagging employees who happen to get sick and call in conjunction with an SDO. The union states that they are in agreement on a case by case basis that after management has taken the proper steps to include putting an employee on notice, and the employee shows a clear pattern of abuse, then the employer may take the proper steps to protect the interest of the Postal Service. However, in this instant case, management has failed to show how their actions fall within the limitations of the ELM.

The union also contends that they understand what is considered restricted sick leave, but to "tag" an employee as "deems desirable" requires an employee to provide medical regardless of the number of days the employee used. The union states that regardless of what it is called, this clearly falls within the definition of restricted sick leave. Management never gave the employee any discussion or one on one because simply put, the employee does not have a problem with sick leave usage, therefore should never have been tagged as deems desirable.

The union requests as a remedy that management cease and desist from placing employees on the deems desirable list when it is unwarranted and without following the procedures outlined in the handbooks and manuals. The union also requests that management immediately stop placing all employees on the deems desirable for specific blocks of time that fall within *"the week of the holiday."*

**Management** contends that they (management) did not violate Article 10 or 19 with reference to unscheduled sick leave for carrier Palafox on 05/21/2012. Management contends that the grievant was SDO Sunday 05/20/2012, called in 05/21/2012, and was SDO on 05/22/2012. Management states that his call in did trigger that documentation be provided and when management asked him for documentation, he stated he did not have any and asked to speak to the union. Management states that after he spoke with the union, carrier Palafox pulled out his medical documentation and gave it to management.

Management states that the union's argument that Mr. Palafox should not be on restricted sick leave is not valid, since no employee at Lockhill is on restricted sick leave. Management argues that they have a right to protect the interest of the Postal Service and can ask for supporting documentation for absences of three days or less per the ELM section 513.361. The grievant had been tagged the week of the holiday that was forthcoming due to him having called in from the previous holiday.

Management contends that the supervisor has to control unscheduled absences as per the ELM 511.42, and during the review of the grievant's 3971, the history showed that he had called in right before a Holiday, so the supervisor tagged the employee. Management reiterates that this is not a restricted sick leave issue and management was simply reviewing previous activity and taking a proactive step to protect the interest of the Postal Service.

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10410 Perrin Beitel Rd, # 1059  
San Antonio, TX 78284-8430  
PHONE 210-368-1784, 210-368-1760, FAX 210-368-8525

Management provided a final rebuttal to the union's additions and corrections and stated that when the employee returned to work, I (Alderete) was at the standup desk and witnessed the grievant signing his 3971. I (Alderete) asked him for documentation, because the 3971 stated "documentation required". The grievant asked if he could get one, I (Alderete) told him no, that he had reported to work and that he could supply it before the end of the service week for pay purposes. He (Palafox) requested to see the union and then gave us his documentation that he already had in his pocket.

Management contends that they are not overstepping their boundaries; if documentation is required for the absence and if the employee wants to be in a pay status, then they must submit the proper documentation in order to get paid leave. Management states that this leave was not scheduled and under the ELM management can request it for three days or less. Management closes by stating that not all employees are tagged, just those that deem documentation desirable due to their past history or pattern with SDO's and Holidays, as was this case.

Management responded to the requested remedy by the union and offered to review everyone's attendance on a case by case basis and have discussions as well as one on one's with those employee's who call in. Management also offered to review all 3972's with those employee's, however, if an employee "deems" action that requires documentation, management will address it accordingly. Management states that the union declined the offer; therefore management had no other recourse but to deny the grievance.

The DRT reviewed the entire case file and, based on the documentation and the contention provided, determined that the grievant had a previous unscheduled absence for February 16 and 17 worked the day prior to the holiday and was SDO on the 21<sup>st</sup> of February, then began his scheduled leave. There was no previous holiday schedule for the February Holiday included in the case file and given the employees' SDO he would have not been polled for that particular holiday. Management argued that after review of his 3972 he was tagged because he had previously called in right before a holiday. At the very least the employees absence in February was during the same week as the designated holiday for those employees who where either SDO Saturday or Monday, Palafox was neither.

The following is a guide for this very issue concerning requests for documentation as "deems desirable" "tag" or "flagged" protection of the interests of the Postal Service:

**Medical Certification.** ELM Section 513.361 and 362 establish three rules: a. For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave ("three days" means three scheduled workdays; see Step 4 H1N-5B-C 3428, November 3, 1983, M-00489); and

b. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however



*c. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."*

*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. Consistent with the Rehabilitation Act, the parties agree that ELM 513.362 and 513.364 do not require the employee to provide a diagnosis. (August 3, 2007 USPS correspondence M-01629).*

The threshold for successfully challenging management's requirement to provide documentation for absences of three days has been established as cited above. The case file demonstrates that the employee had an unscheduled occurrence in February the week of the designated holiday and then had an unscheduled absence on 05/21/2012 the week prior to the designated holiday in May. However, the case file did not contain any documentation on how or when the employee was placed on notice regarding any attendance related deficiencies.

The DRT mutually agreed that while management may have the right to request medical documentation in cases of absences of three days or less, management must also be prepared to defend their reasons with documented evidence and proof of sick leave abuse and patterns of irregular and unreliable attendance. The case file did not establish either; one unscheduled absence prior to the May 21<sup>st</sup> incident did not in and of itself establish this obligation by management.

The Step B Team mutually agreed that management did not have valid cause to request medical documentation for the absence on May 21<sup>st</sup>. The Team mutually agreed that the case file did indicate that management made an offer to review each case on a case by case basis and to review the 3972's with those employees who had attendance related issues and place those similarly situated employees on proper notice regarding their attendance related deficiencies.

The DRT mutually agreed that management may not arbitrarily place employees on a deems desirable list without fulfilling the requirements of the ELM regarding proper placement of a "restricted leave status" or other "tag" in e-RMS. Attendance reviews are a requirement when:

#### 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:

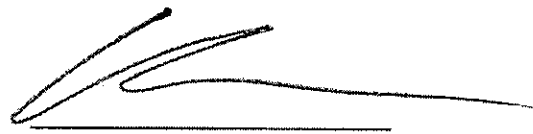
a. Establishment of an absence file.

RIO GRANDE DISPUTE RESOLUTION TEAM  
10410 Perrin Beitel Rd, # 1059  
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- 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.

Restricted sick leave is another option for management but is not mandatory. However the guidelines found within the ELM section 513.391 serve as a guide to management to demonstrate what actions should be taken prior to placing an employee on restricted sick leave. It is these steps which were not evident in this case file to establish good cause for requiring the employee to provide medical documentation.

  
Rene Benavidez  
USPS Step B Representative

  
Karrie Blough  
NALC Step B Representative

**Grievance File Contents:**

Union's Additions & Corrections, 2pp  
Esparza Statement  
Copy Email e-RMS Message  
Copy Doctor's Note  
ELM Excerpts, 2pp  
Copy 3972, Palafox  
Generic Statement, 2pp  
Steward Notes, 2pp  
Form 0-13

Palafox Statement  
Copy Arbitration 9603 3490, 10pp  
Union Contentions  
PS Form 3971, 7pp  
Formal A Request  
Informal A Request  
PS Form 8190  
Management's Final Rebuttal  
Management Contentions

cc: Manager, Labor Relations, Southwest Area  
District Manager, Rio Grande District  
NALC NBA, Region 10  
Manager, Human Resources, Rio Grande District  
Manager, Labor Relations, Rio Grande District  
Postmaster, San Antonio  
NALC Branch President  
USPS Formal A Representative  
NALC Formal A Representative  
DRT File

**Local Grievance #: \_\_\_\_\_**

**Issue Statements (Block 15 of PS Form 8190):**

1. Did management violate National Settlement M-01597 via Article 15 and the Employee Labor Relations (ELM) Handbook via article 19 of the National Agreement by placing **[Name]** on the "deems desirable" option in ERMs and if so, what should be the remedy?

**Union Facts and Contentions (Block 17 of PS Form 8190):**

**Facts: (many of these items could be placed in Block 16, if management agrees)**

1. Management in the **[installation name and Station]** placed City Carrier **[name]** on the "deems desirable" option in ERMs.
2. The grievant notified management of his/her inability to work on **[date(s)]** per a phone call to the call in number (877-477-3273) on **[date]**.

3. M-01597 states in part:

*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 this eRMS option does not expand or diminish supervisory authority, or change policy concerning medical documentation in any way.*

4. Post Office Leave Management for Labor Relations Professionals, eRMS Technology Principles of Leave Management dated October 2008 states in part:

*Supervisors will be required to make a comment as to why the Deems Desirable option has been active.*

5. In eRMS, management has the ability to set a date range for the "Deems Desirable" option.
6. In eRMS, management has the ability to set the next review date for the employee.
7. "Deems Desirable" is an option in eRMS that automatically requires documentation upon call-in.

8. M-00704 states in part:

*However, management should inform employees prior to placing them on restricted sick leave that their usage of sick leave demonstrates a pattern of abusing the use of sick leave.*

9. Employee Labor Relations Manual (ELM) section 513.11 **Purpose- Sick Leave for Employee Incapacitation** states in part:

*Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.*

10. Employee Labor Relations Manual (ELM) section 513.331 **Requests for Sick Leave-General** states in part:

*Except for unexpected illness or injury situations, sick leave must be requested on PS Form 3971 and approved in advance by the appropriate supervisor.*

11. Employee Labor Relations Manual (ELM) section 513.332 **Unexpected Illness or Injury** states in part:

*An exception to the advance approval requirement is made for unexpected illness or injuries; however, in this situation the employee must notify appropriate postal authorities of his or her illness or injury and expected duration of the absence as soon as possible.*

*When sufficient information is provided to determine that the absence may be covered by the Family and Medical Leave Act (FMLA), the following Department of Labor forms will be mailed to the employee's address of record along with a return envelope:*

12. Employee Labor Relations Manual (ELM) section 513.361 **Sick Leave Documentation Requirements- Three Days or Less** states in part:

*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.*

13. Employee Labor Relations Manual (ELM) section 513.362 **Over Three Days** states in part:

*For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work or of need to care for a family member and, if requested, substantiation of the family relationship.*

**14. Employee Labor Relations Manual (ELM) section 513.364 Medical Documentation or Other Acceptable Evidence** states in part:

*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.*

**15. Employee Labor Relations Manual (ELM) section 513.91 Restricted Sick Leave-Reasons for Restriction** states in part:

*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.*

**16. Employee Labor Relations Manual (ELM) section 513.92 Restricted Sick Leave-Notice and Listing** states in part:

*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).*

**17. Employee Labor Relations Manual (ELM) section 513.93 Restricted Sick Leave-  
Recision of Restriction** states in part:

*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.*

**Contentions:**

1. Management in the **[installation name and Station]** placed City Carrier **[name]** on the "deems desirable" option in ERMs. (see interview/ reports)
2. The grievant notified management of his/her inability to work on **[date(s)]** per a phone call to the call in number (844-477-3273). (See interview/ statements)
3. In eRMS, management set a date range of **[date to date]** for the "Deems Desirable" option for City Letter carrier **[name]**. (see interview/ reports)
4. Management has required documentation from City Letter Carrier **[name]** when returning to work after his/ her absence.
5. Management required Medical documentation from City Letter Carrier **[name]**.
6. Management gave **[reason(s)]** to place City Letter carrier **[name]** on the "Deems desirable" option in eRMS.
7. Management never told or gave written notice to City Letter carrier **[name]** PRIOR to placing them on the "Deems Desirable" option in eRMS.
8. Management has not taken the necessary steps, outlined in ELM Section 513.391, to place City Letter carrier **[name]** on Restricted Sick Leave. (See interview).
9. When management marked City Letter carrier **[name]** as "Deems Desirable" for an extended period of time, they essentially placed him/her on Restricted Sick Leave without following the required steps outlined in ELM 513.391.
10. When management "deems" documentation required under ELM Section 513.361, it must be done under the following guidelines:
  - It cannot conflict with leave regulations contained in ELM 510.
  - It governs management of a present, single absence of 3 days or less.

- It must be on a case-by-case basis.
- It may not be arbitrary or capricious.
- The "Deems Desirable" option should not be activated for any extended period of time, but should remain active only for each specific absence for which management can fulfill their burden that the interests of the Service needs to be protected. It should be deactivated immediately thereafter. Activation of the "Deems Desirable Option" in eRMS should not be made in lieu of placement on the Restricted Sick Leave List.
- Deems Desirable does not allow a policy to request documentation for all instances of intermittent leave; rather it is for specific absences on a case-by-case basis.

11. In obtaining the medical documentation, improperly required by management, City Letter carrier **[name]** incurred expenses he/she would not have otherwise. He/she had to pay \$**[Copay amount]** for the medical appointment. Additionally, he/she drove **[distance]** round-trip miles to get to the appointment.
12. City Letter carrier **[name]** has a good overall attendance record with no indication of abuse of sick leave. Management acted arbitrarily and capriciously in requiring medical documentation for the absence.
- 13.

#### **Remedy:**

1. Management shall Cease and Desist violating ELM Section 513.361.
2. Management shall Cease and Desist using "Deems Desirable" in lieu of placing carriers on Restricted Sick Leave.
3. City Letter carrier **[name]** shall be made whole for any and **all costs** associated with obtaining the requested documentation, including but not limited to, payment of \$**[mileage reimbursement at GSA Rate]** and \$**[Copay amount]**.

## Add the following issue statement, facts, contentions, and remedy request if we can prove the violation is repetitive:

### Issue Statement:

Did management violate Article 15.3.A of the National Agreement along with policy letter M-01517 by failing to comply with the prior Step B decisions or local grievance settlements in the case file, and if so, what should the remedy be?

### Facts:

1. Article 15.3.A of the National Agreement states in relevant part:

*The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end.*

2. M-01517 states in part:

*Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.*

3. Included in the case file are **[Arbitration Awards/Step B decisions/local grievance settlements, etc.]** in which management was instructed/agreed to cease and desist improperly placing carriers on the "deems desirable" option in ERM's, and/ or requesting documentation for a sick call/ unscheduled absence.

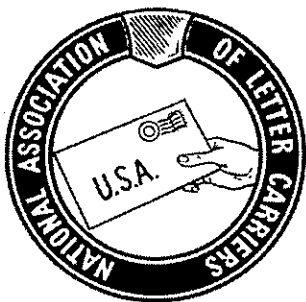
### Contentions:

1. Management violated Article 15.3.A of the National Agreement and M-01517 by failing to abide by the previous Step B decisions/local grievance settlements in the case file. When management violates contractual provisions despite being instructed/agreeing to cease and desist these violations, they have failed to bargain in good faith.
2. The Union contends that Management has had prior cease and desist directives to stop violating Articles 15 and/or 19. The Union also contends that Management's actions are continuous, egregious and deliberate. The Union has included past decisions/settlements in the case file to support their claim.



**Remedy:**

1. That management cease and desist violating Article 15 of the National Agreement.
2. That Letter Carrier(s) **[Name], [Name], and [Name]** each be paid a lump sum of \$100.00 to serve as an incentive for future compliance.



## National Association of Letter Carriers Request for Information

To: \_\_\_\_\_  
(Manager/Supervisor)

Date \_\_\_\_\_

\_\_\_\_\_  
(Station/Post Office)

Manager/Supervisor \_\_\_\_\_,

Pursuant to Articles 17 and 31 of the National Agreement, I am requesting the following information to investigate a grievance concerning a violation of Articles 15 and 19:

1. Copy of PS Form 3971 for **[date(s)]** Letter Carrier **[name]** call-in for.
2. Copy of **[date]** and **[time]** Letter Carrier **[name]** call-in to eRMS
3. Copy of TACs employee everything report for Letter Carrier **[name]** for **[date(s)]**
4. Copy of Letter Carrier **[name's]** FMLA paperwork. (if applicable)
5. Copy of Letter Carrier **[name]** Key Indicator Report.
6. A copy of the Leave Usage Log List.
7. A copy of the Removed Leave Log List.
8. A copy of the Denied Leave Log List.
9. A copy of Letter Carrier **[name]** 3972's for the last two years.
10. Any information, instructions, records, files and/ or documentation used in association with eRMS/ Deems Desirable to place Letter Carrier **[name]** on "Deems Desirable".

I am also requesting a mutually acceptable time to interview the following individuals within the next three (3) days:

1. Supervisor **[Name]**
2. Postmaster **[Name]**
3. Letter Carrier **[Name]**

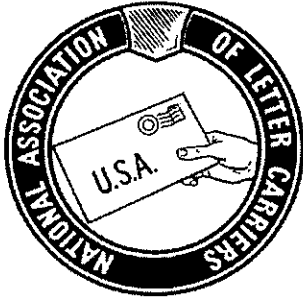
Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please contact me immediately.

Sincerely,

\_\_\_\_\_  
Shop Steward  
NALC

Request received by: \_\_\_\_\_

Date: \_\_\_\_\_



## National Association of Letter Carriers Request for Steward Time

To: \_\_\_\_\_  
(Manager/Supervisor)

Date \_\_\_\_\_

\_\_\_\_\_  
(Station/Post Office)

Manager/Supervisor \_\_\_\_\_,

Pursuant to Article 17 of the National Agreement, I am requesting the following steward time to investigate a grievance. I anticipate needing approximately \_\_\_\_\_ (hours/minutes) of steward time, which needs to be scheduled no later than \_\_\_\_\_ in order to ensure the timelines established in Article 15 are met. In the event more steward time is needed, I will inform you as soon as possible.

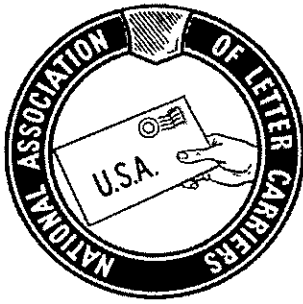
Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please contact me immediately.

Sincerely,

\_\_\_\_\_  
Shop Steward  
NALC

Request received by: \_\_\_\_\_

Date: \_\_\_\_\_



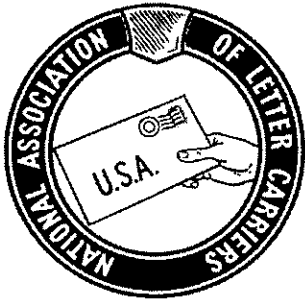
## National Association of Letter Carriers Supervisor/ Postmaster Interview Questions

Steward doing interview \_\_\_\_\_ Date \_\_\_\_\_

1. Please state your name and current job for the record?
2. How long have you worked at the [POST OFFICE] in that job?
3. Do you know Letter Carrier [name]: How long have you worked with him/ her?
4. On what date(s) was Letter Carrier [name] absent from work?
5. On what day(s) did Letter Carrier [name] call in to the eRMS call in number and/ or call the supervisor/ postmaster to report their absence(s)?
6. When did management place Letter Carrier [name] on "Deems Desirable" in eRMS: Who placed Letter Carrier [name] on "Deems Desirable" in eRMS?
7. What reason was put into eRMS for justification to place Letter Carrier [name] on "Deems Desirable":
8. What "Deems Desirable" date range was put into eRMS for City Letter Carrier [name]?
9. Does Letter Carrier [name] have any FMLA approved cases? What are the dates for these approved cases?

10. Does any of the date(s) Letter Carrier [name] was absent qualify under those FMLA cases?
11. Does any the absences of Letter Carrier [name] qualify or potentially qualify for FMLA if he/ she does not have an approved FMLA cases? What did you do to see if this is the case?
12. What discussions did you have with Letter Carrier [name] prior to placing them on "Deems Desirable" option in eRMS? On what dates di you have those discussions?
13. What date did management inform Letter Carrier [name] that he/ she was being placed on "Deems Desirable" in eRMS? Did management give the reason at that time?
14. Do you know what the Employee Labor Relations (ELM) manual is?
15. What part of the ELM was used to place Letter Carrier [name] on "Deems Desirable" in eRMS?
16. What type of documentation was requested from Letter Carrier [name] for the absences?
17. When was Letter Carrier [name] informed that medical documentation or other suitable evidence was needed for the absences?

18. For absences of three (3) days or less, what is the protection you are using to justify placing Letter Carrier [name] on "Deems Desirable"?
19. When did you place Letter Carrier [name] on restricted sick leave per ELM 513.391?
20. What type of leave did Letter Carrier [name] request for [dates]?
21. Where is the copy of the Written Notice provided to the employee explaining that they have been added to Restricted sick leave and all requests for sick leave must be supported by medical documentation or other acceptable evidence?
- 22.



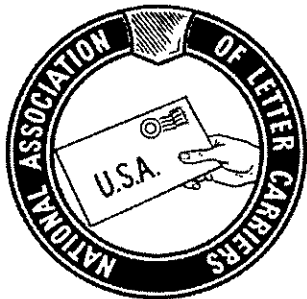
## National Association of Letter Carriers Supervisor/ Postmaster Interview Questions

Steward doing interview \_\_\_\_\_ Date \_\_\_\_\_

1. Please state your name and current job for the record:
2. How long have you worked at the **[POST OFFICE]** in that job:
3. What day(s) were you absent from work:
4. When did you inform management that you would miss those day(s):
5. How did you inform management:
6. What type of leave did you request for those date(s):
7. Do you currently have a FMLA case:                      What date was it approved:
8. Do you think the day(s) you called in would qualify for your approved FMLA case or a new FMLA case:
9. When/ if calling in eRMS, did you get told documentation
  - a. may/ might be necessary
  - b. was necessary
  - c. other
10. Were you contacted by management after calling in to eRMS:      Who:                      What was said:

11. Did management ever tell you that you were being placed on "Deems Desirable" in eRMS?
12. What reason(s) were given to place you on "Deems Desirable"?
13. What type of documentation did management tell you was needed:
14. What type of documentation did you provide:
15. What did management say to you after providing the documentation:
16. Did you have to go to the doctor to get the required documentation:
17. What is your co-pay for doctors' visits:
18. How many miles does it take you to get to and from your doctor office:
19. How many miles does it take you to get to the post office:
- 20.





## National Association of Letter Carriers "Deems Desirable" grievance checklist

Grievance # \_\_\_\_\_ Grievant: \_\_\_\_\_ EIN: \_\_\_\_\_

1. Date and time of call-in to eRMS: \_\_\_\_\_
2. Date(s) the grievant was off work and the type of leave used \_\_\_\_\_
  - a. Clock rings included? Y or N
3. Did the grievant have FMLC protection prior to the call-in to eRMS: Y or N
  - a. If "yes", what was the date of the most recent FMLA documentation: \_\_\_\_\_
  - b. Does the FMLA condition call for "intermittent" absences? Y or N
    - i. If "yes" how often? \_\_\_\_\_
  - c. Is a copy of the FMLA documentation included? Y or N
4. What was the grievant told at the time of call-in to eRMS?
  - a. Medical documentation may/ might be necessary upon returning to work
  - b. Medical documentation was necessary upon returning to work
  - c. Other \_\_\_\_\_
5. Was the grievant contacted by management **AFTER** the call-in to eRMS? Y or N
  - a. If "yes", who contacted them: \_\_\_\_\_ When: \_\_\_\_\_
  - b. How were they contacted? \_\_\_\_\_
  - c. What were they told? \_\_\_\_\_
6. Did the grievant receive discussion(s) **PRIOR** to being placed on "Deems Desirable"? Y or N
  - a. If "yes", when, and who: \_\_\_\_\_
  - b. What was said during the discussion(s) \_\_\_\_\_
  - c. Was a Steward present during discussion(s)? Y or N
7. Did the union submit an Information Request for all material that management used to

determine that the grievant be placed on "Deems Desirable"? Y or N

8. Did the union conduct an Investigative Interview with the Supervisor and / or Postmaster to determine why the grievant was placed on "Deems Desirable"? Y or N

9. What reason did management state for placing the grievant on "Deems Desirable"? \_\_\_\_\_

10. Was a 3972 and/ or 3971's provided by management to support their reason(s)? Y or N

11. Did the absence(s) relate to the reason the grievant was placed on "Deems Desirable"? Y or N

a. If "no", why not, and what was the grievant charged with? \_\_\_\_\_

12. Did the grievant follow instructions and provide medical documentation? Y or N

a. If "no", why not, and was there further action by management? \_\_\_\_\_

b. If "yes", when did the grievant go to the doctor/ hospital/ walk in unit, etc.? \_\_\_\_\_

1. Doctor's name and address: \_\_\_\_\_

2. Mileage to and from the grievant's home to doctor's Office: \_\_\_\_\_

a. Use map quest report and include

3. Time spent for travel to and from, waiting and office visit; \_\_ HR \_\_ MIN

4. Cost/ Co-pay paid by the grievant to obtain documentation, include all testing as a result of visit (include copies): \$ \_\_\_\_\_

13.