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Art. X, XIX Sick Leave

Won

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INDUSTRIAL  
RELATIONS

IN ARBITRATION

22983 (CSC-46-C)  
C# 00006

UNITED STATES POSTAL SERVICE,	)	Case No. CSC-46-C 22983;
	)	Arbitrator's File #1-112-682;
and	)	
	)	Date of Hearing:
AMERICAN POSTAL WORKERS UNION,	)	October 15, 1981,
CLASS ACTION.	)	Indianapolis, Indiana.

APPEARANCES

For the Postal Service:

D. JAMES SHIFFAN  
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FROM THE OFFICE OF JOHN P. RICHARDS DIRECTOR INDUSTRIAL RELATIONS APWU AEL-810
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For the Union:

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OPINION

Issue

Did the Postal Service violate the National Agreement and/or the Handbooks and Manuals by its requirements for absence call-ins, issued in conjunction with an attendance control program?

Facts

On September 25, 1980, the Postal Service issued a

notice to all employees in the Indianapolis, Indiana, Post Office. The subject of the notice was "Attendance Control Program Policy and Procedures", and the notice stated in part as follows:

"IN CASES OF UNEXPECTED ILLNESS/INJURY, EMPLOYEES MUST GIVE NOTICE AS SOON AS POSSIBLE AS TO THEIR ILLNESS/INJURY AND EXPECTED DURATION OF ABSENCE. These sick leave calls should normally be made no later than one (1) hour before scheduled reporting time, so that work schedules can be adjusted as necessary to prevent delays in mail processing and delivery.

The initial call requesting sick leave will cover one (1) day only, UNLESS the employee is under THE CARE OF A DOCTOR AND DOCUMENTATION IS PROVIDED ON RETURN TO DUTY CERTIFYING THE EMPLOYEE WAS INCAPACITATED FOR WORK DURING THE PERIOD.

THOSE EMPLOYEES WITH A MINOR ILLNESS AND NOT UNDER THE CARE OF A PHYSICIAN OR HOSPITALIZED MUST CALL IN ON EACH DAY OF ABSENCE THE FIRST THREE (3) DAYS. AN EMPLOYEE IF NOT UNDER THE CARE OF A PHYSICIAN MUST MAKE A SELF-DETERMINATION PRIOR TO EACH SCHEDULED WORK DAY AS TO WHETHER OR NOT HE/SHE IS STILL INCAPACITATED FOR WORK. THE EMPLOYEE THEREFORE IS REQUIRED TO CALL EACH DAY PRIOR TO THE REGULAR REPORTING TIME. FOR ABSENCES IN EXCESS OF THREE DAYS, ALL EMPLOYEES ARE REQUIRED TO SUBMIT MEDICAL DOCUMENTATION OR OTHER ACCEPTABLE EVIDENCE OF INCAPACITY FOR WORK FOR THE ENTIRE PERIOD. IF ACCEPTABLE PROOF OF INCAPACITATION IS NOT FURNISHED, THE SICK LEAVE MAY BE DISAPPROVED. SUCH DOCUMENTATION MUST PROVIDE AN EXPLANATION OF THE NATURE OF THE EMPLOYEE'S ILLNESS/INJURY SUFFICIENT TO INDICATE THAT THE EMPLOYEE WAS UNABLE TO PERFORM HIS/HER NORMAL DUTIES FOR THE PERIOD OF ABSENCE."

The Union filed a class-action grievance within the proper time, protesting the requirements set forth by Management in its attendance control program.

### Discussion and Opinion

The Union has alleged that the procedure set out by Management in its attendance control program with regard to absence call-ins violates Article XIX (Handbooks and Manuals), and Article X (Leave). The Union has also alleged that this Post Office directive violated the ELLR Manual, specifically Section 510, in that this section does not require persons seeking sick leave to call in to work on each of the first three days of illness.

The Union further argues that there is no requirement in Chapter 513.1 (Sick Leave) for a "call in" of any type. There are requirements for medical documentation, and there is also a section pertaining to restricted sick leave and the like, but none of these impose any requirement on an employee to call in on any of his absences, as set out in the case being grieved here.

The Postal Service urges that, under Article III (Management Rights), it has the right to maintain the efficiency of the postal operation. One of the things which contribute to inefficiency is absences by employees, and the Postal Service has a legitimate interest in keeping absence to a minimum. While it has no desire to curtail legitimate use of sick leave, it does seek to curtail promiscuous use of sick leave. Requiring a call in, as set out in the notice, would discourage the promiscuous use of sick leave.

The Postal Service also points out that both Chapter 5 and Section 511.42 of the SCLR Manual require Management to "control unscheduled absences". That is what it is seeking to do.

The Postal Service submitted a number of arbitrators' decisions relative to various aspects of procedure concerning absences. In all of these cases, the Postal Service's procedures were upheld. The Postal Service argues that the procedure instituted here is simply another "bird of this feather".

A case of this sort is most difficult to determine because it becomes necessary to draw a line between the maintenance of the sick leave program, which the Postal Service is contractually obligated to maintain under Article X, and the actual management of the program, which the Postal Service has the responsibility to undertake under Chapter 511.42.

In short, a determination must be made as to whether the Postal Service has instituted a mere change of procedure in the sick leave program, or a change in substance. A change of procedure falls within administration of the program. A change in substance is an alteration of the program and constitutes a change in the continuation of it. According to Article X, the Postal Service has agreed to continue funding of the current leave program, so that a change of substance would be a violation of Article X.

A reading of the cases submitted by the Postal Service in support of its position shows very clearly that what has been

done here by the Postal Service is not a change in procedure, but a change in substance. The contrast between the requirements instituted here and those instituted in the cases cited by the Postal Service show that the Postal Service is not continuing the previous leave program, but is changing it.

Case No. CSC-4E-C 19498, decided by this arbitrator, held that the Postal Service could require an employee to file his Form 3971 requesting sick leave with the Postmaster, rather than leaving it with a supervisor or foreman. No basic change was being made in the program because the employee was always required to leave his 3971 with someone in Management for approval. Therefore, the employee was not being required to do anything more than was previously required.

Such is not the case here. In this situation, employees had not been required previously to call in daily. Now they are. This is a departure from previous practice.

Again, in Case No. C8V-4A-C 26863 and 26864, the Postal Service inserted an absence analysis form No. 3972 and an attendance transcript in the employee's personnel folder. The arbitrator in that case held that this was permissible. In that situation, the employee was not required to do anything different, nor did the inclusion of these forms in the grievants' personnel folders have any effect on them that would not otherwise have existed.

In Case No. C8N-4D-C 18543, the Postal Service sent a

"Letter of Information" warning an employee that his attendance was becoming a problem. This "Letter of Information" was accompanied by a transcript of the employee's attendance record. The arbitrator held that this was permissible. Again, the grievant in that case was not required to do anything differently. The "Letter of Information" and the attendance transcript did not, in themselves, require the employee to undertake any additional effort to obtain his sick leave. An employee in that situation was free to ignore the "Letter of Information" and the attendance transcript. These were merely informational items. The fact that this information might have made the employee more cautious in the use of sick leave did not detract from the fact that no burden was placed on the employee in claiming sick leave that he did not already have.

In Case No. CSC-4D-C 4403, the arbitrator approved the Postal Service's use of a form 3972 (Leave Analysis form) and an absenteeism policy. The arbitrator held that these documents "merely make the employee aware that Management will be policing the agreement and that employees are expected to be at their scheduled work place at the time they are scheduled." That is nothing that the employees did not know before. Therefore, the Postal Service in that instance merely made explicit what was previously implicit. Again, bargaining unit employees were not required to do anything that they had not been previously required to do.

That is not true here. The employees in this case are being required to do something affirmative that they had not been previously required to do, and at the risk of having their sick leave disapproved should they fail to shoulder the additional burden. That is more than a procedural change - that is a substantive change.

Such an added burden placed upon the employees violates Article X in that it does not just continue the leave program as it was in effect before the notice. It makes the program more burdensome and onerous for an employee to obtain his negotiated leave benefits.

No support is given to the Postal Service's actions in Chapter 5 of the EALR Manual. Section 511.42 permits the Postal Service to "control unscheduled absences", and lists three considerations: (a) to inform employees of leave regulations; (b) to discuss attendance records, and (c) to maintain and review forms 3972 and 3971. This section does not in any degree speak of requiring employees to call in.

Section 511.43 states that employees are expected to maintain their assigned schedules and thus provide acceptable evidence for absences. Once again, nothing is said of call-ins.

Sick leave is covered in Section 513, and section 513.36 concerns absences of three days or less, but nothing is mentioned concerning call-ins.

Section 513.362 deals with absences in excess of three days and requires medical documentation. Once again, nothing is said about call-ins.

In short, the applicable sections of Chapter 5 do not deal with call-ins of this nature. The Postal Service does have a right to promulgate changes in the Handbooks and Manuals under Article XIX, and, in effect, that is what has been done here, but it has not been done in accordance with the other terms of Article XIX.

The grievance is sustained, and the costs are assessed equally.

Dated this 11<sup>th</sup> day of January, 1982.



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