ABSENTEEISM

ABSENTEEISM

The Postal Service began issuing discipline for absenteeism around 1972. It has been, and continues to be the leading cause of all disciplinary action taken in the Postal Service.

Whether the Service has the right to issue discipline for excessive absenteeism must be determined on a case-by-case basis taking into consideration the particular facts and circumstances of each case.

It has been well established during these past years that the Postal Service has the right to expect a reasonable degree of regular job attendance and may issue discipline for poor attendance – even where absences are caused by legitimate, documented, illness.

Enclosed are copies of National level arbitration opinions rendered by Arbitrators Sylvester Garrett and Howard Gamser which address the issue of discipline for attendance irregularity in conjunction with approved leave. These awards clearly establish management's right to discipline, subject to the "just cause" principle outlined in Article 16.

Also enclosed are some standards by which Arbitrators judge absenteeism as well as those used to defend against discipline for absenteeism.

It is our job as officers and stewards to defend our members against unwarranted discipline for the legitimate use of the negotiated sick leave benefits to which they are contractually entitled.

It is the Arbitrator's job to balance the employer's rights to expect regular attendance against the employee's right to exercise the legitimate use of those benefits.

The purpose of this program is to assist you in tipping that balance in favor of the employee, and to help you in formulating successful arguments in attendance related discipline.

Yours for a stronger UNION,

Robert D. Kessler
National Business Agent

Keeping the faith,

Dennis Taff
National Business Agent

ARTICLE 10
LEAVE

Section 1. Funding

The Employer shall continue funding the leave program so as to continue the current leave earning level for the duration of this Agreement.

Section 2. Leave Regulations

A. The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

B. Career employees will be given preference over noncareer employees when scheduling annual leave. This preference will take into consideration that scheduling is done on a tour-by-tour basis and that employee skills are a determining factor in this decision.

(The preceding paragraph, Article 10.2B, applies to Transitional Employees.)

[see Memos, pages 307 thru 314]

Section 3. Choice of Vacation Period

A. It is agreed to establish a nationwide program for vacation planning for employees in the regular work force with emphasis upon the choice vacation period(s) or variations thereof.

B. Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.

5 Employee Benefits

510 Leave

Revision Note:
Subchapter 510 is currently under revision. When it is completed and appropriate advance notice obligations are fulfilled with the management associations and/or the unions, changes will be published in the *Postal Bulletin,* incorporated in the ELM on the Postal Service Corporate Intranet, and included in the next hard copy issue of the ELM.

511 General

511.1 Administration Policy

The U.S. Postal Service policy is to administer the leave program on an equitable basis for all employees, considering (a) the needs of the Postal Service and (b) the welfare of the individual employee.

511.2 Responsibilities

511.21 Postal Officials

Postal officials:

a. Administer the leave program.

b. Inform employees of their leave balance.

c. Approve or disapprove requests for leave.

d. Record leave in accordance with Handbook F-21, *Time and Attendance*, or Handbook F-22, *PSDS Time and Attendance.*

e. Control unscheduled absences (see 511.4).

511.22 Minneapolis Information Service Center

The Minneapolis Information Service Center (ISC):

a. Maintains official leave records.

b. Provides leave data to installation *when employees are being separated.*

511.23 Postal Employees

Postal employees:

a. Request leave by completing Form 3971, *Request for or Notification of Absence*.

b. Obtain approval of Form 3971 before taking leave — except in cases of emergencies.

c. Avoid unnecessary forfeiture of annual leave.

511.3 Eligibility

511.31 Covered

Covered by the leave program are:

a. Full-time career employees.

b. Part-time regular career employees.

c. Part-time flexible career employees.

d. To the extent provided in the NRLCA Agreement, temporary employees assigned to rural carrier duties.

Note: Transitional employees are not covered by the leave program, but do earn leave as specified in their union's national agreement.

511.32 Not Covered

Not covered by the leave program are:

a. Postmaster relief/leave replacements, noncareer officers-in-charge, and other temporary employees except as described in 511.31d above.

b. Casual employees.

c. Individuals who work on a fee or contract basis, such as job cleaners.

511.4 Unscheduled Absence

511.41 Definition

Unscheduled absences are any absences from work that are not requested and approved in advance.

511.42 Management Responsibilities

To control unscheduled absences, postal officials:

a. Inform employees of leave regulations.

b. Discuss attendance records with individual employees when warranted.

c. Maintain and review Forms 3972, *Absence Analysis*, and Forms 3971.

511.43 Employee Responsibilities

Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.

UNITED STATES POSTAL SERVICE

Washington DC 20260

DATE June 26, 1984

OUR REF. LR100:FJacquette:ab:4110

SUBJECT: Attendance Control

TO. Regional General Managers
Labor Relations Division

Following the issuance of Management Instruction, EL-510-83-9, Attendance Control, a number of discussions were held with representatives of the APWU. Those discussions centered on procedures instituted by that management instruction and the revised PS Form 3971, Request For, Or Notification of, Absence. Essentially, the parties agreed to the following terms:

1. Changes to PS Form 3971 published in Postal Bulletin 21453 (4-12-84) were made for administrative purposes only and, as such, do not constitute a change in hours, wages or working conditions; and

2. A grievance challenging a supervisor's determination that an absence is unscheduled may be filed at the time the PS Form 3971 is completed or when that absence is included in a disciplinary action. In cases where a grievance is filed after a disciplinary action has been issued, the Postal Service will not raise a question of timeliness in regard to the disputed absence(s).

We believe that this understanding with the APWU should reduce the likelihood of employees filing "precautionary" grievances in every instance where a supervisor determines that an absence is unscheduled. In most instances, such decisions will not culminate in disciplinary action. However, if an employee elects to file a grievance at the time the PS Form 3971 is completed; and, that grievance is not sustained, we will not allow that issue to be

challenged a second time if the absence is included in a future disciplinary action.

If you have any questions regarding this matter, contact Frank Jacquette at 245-4731.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

666.8 Attendance

666.81 Requirement for Attendance

Employees are required to be regular in attendance.

666.82 Absence Without Permission

Employees failing to report for duty on scheduled days, including Saturdays, Sundays, and holidays, will be considered absent without leave except in actual emergencies which prevent obtaining permission in advance. In emergencies, the supervisor or proper official will be notified as soon as the inability to report for duty becomes apparent. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or fails to provide satisfactory evidence that an emergency existed will be placed in a nonpay status for the period of such absence. The absence will be reported to the appropriate authority.

666.83 Tardiness

Any employee failing to report by the scheduled time when time recorders are not used is considered tardy. Tardiness in units or installations equipped with time recorders is defined as being any deviation from schedule.

666.84 Falsification in Recording Time

Recording the time for another employee constitutes falsification of a report. Any employee knowingly involved in such a procedure is subject to removal or other discipline. Failure of a supervisor to report known late arrivals is regarded as condoning falsification.

666.85 Incomplete Mail Disposition

It is a criminal act for anyone who has taken charge of any mail to quit voluntarily or desert the mail before making proper disposition.

666.86 Disciplinary Action

Postal officials will take appropriate disciplinary measures to correct violations of these requirements.

667 Legal Assistance Provided by the Postal Service

667.1 Defense of Civil Suits Against Postal Service Employees Arising Out of Their Operation of Motor Vehicles

667.11 Coverage

This section contains the procedure to be followed by Postal Service employees (hereby defined to include present and former employees or their estates) against whom a civil action for damage to property or for personal injury or death is brought, arising out of the employee's operation of a motor vehicle in the scope of that person's employment. Under the Federal Drivers Act (28 U.S.C. 2679(b)-(d)), employees who are found to have acted in the

NATIONAL LEVEL ARBITRATION

INTERPRETIVE DECISIONS

ARBITRATION

NATIONAL LEVEL

Interest

Determines Contract Language/provisions
(wages-hours, working conditions)
After negotiating to Impasse -
binding for life of Contract

Interpretive

Interprets Existing Language
Precedent setting
Citable and binding on parties at all levels
(Unless parties agree to change or Language changes)

REGIONAL LEVEL

Regular Panel

Applies existing language to facts of case.
Not precedent setting; but **citable for persuasive value in similar fact cases**.

Expedited Panel

Applies existing language to facts of case.
Not precedent; **Not citable for any purpose other than enforcement of award.**

Local Impasse

Determines Contract Language/provisions
of LMOU after negotiating to Impasse.
Binding for life of LMOU

ARBITRAL STANDARDS IN DENYING ABSENTEEISM GRIEVANCES

File Under: X.2.
III
XVI
ELRM,Subchapter 5

UNITED STATES POSTAL SERVICE	:	Case No. NC-NAT-16,285
and	:	ISSUED:
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	:	November 19, 1979

BACKGROUND

In this National Level grievance the NALC seeks a ruling on the following stated issues: 1

> "Whether, under the 1975 or 1978 National Agreements, USPS may properly impose discipline upon employees for 'excessive absenteeism' or ' failure to maintain a regular schedule' even though the absences upon which those charges are based, are instances where
> (1) the employee was granted approved sick leave;
> (2) the employee was on continuation of pay due to a traumatic on-the-job injury; or
> (3) the employee was on OWCP approved workmen's compensation."

This case represents the culmination of a basic disagreement between the parties which initially took form in an April 5, 1977 letter of the then NALC President, Joseph Vacca, to the then Senior Assistant Postmaster General - Employee and Labor Relations, James Conway. The letter read— 2

> "It has come to my attention that Postal Service Management in the Central Region, Northeast Region and Southern Region has embarked upon a shocklingly disgraceful program of 'absenteeism control' whereby they have taken the position that it is, under our National Agreement, permissible to discipline and even discharge employees for legitimate use of annually earned or accrued sick leave on the grounds that an employee who uses all such leave is not 'maintaining a regular work schedule.'

Examples of this program are attached to this letter for your information and review.

"NALC stringently disagrees that such programs are permissible under Articles III, X and XVI of our National Agreement and Federal Statutes guaranteeing postal employees the right to earned and accumulated sick leave. Therefore, I hereby request that you inform me whether or not Postal Service Management at the National level agrees with the interpretation of the National Agreement evidenced by the Central, Northeast, and Southern Region directives attached hereto.

"Should you inform me that National Postal Management agrees with that interpretation of our contract, I shall be forced to conclude that there exists 'a dispute between the Union and the Employer as to the interpretation of (the National) Agreement' within the meaning of Article XV, Section 2, last paragraph, and initiate, hereby, a grievance at the National level over that dispute and request an immediate Step 4 discussion to attempt to resolve the same."

Vacca's letter enclosed copies of three USPS internal Management directives which had come to the attention of the NALC. Two were of limited application only, being signed respectively by the Postmaster at Marblehead, Massachusetts and the Sectional Center Manager/Postmaster at Jacksonville, Florida. The third directive, however, applied throughout the Central Region, having been issued by the Regional Director for Employee and Labor Relations, David Charters, in a major effort to reduce excessive absenteeism in that Region. 3

An attempt to summarize the Charters memorandum here might be misleading in depicting its essential nature. Its full text was: 4

"POLICY ON ABSENTEEISM CONTROL

"1.) In all cases of discipline regarding the absentee problem the charges to use is 'failure to maintain a regular work schedule.' This can be modified by adding terminology such as, absenteeism, tardiness, failure to report off and AWOL. This basis of this discipline is that an employee has a basic responsibility to the Postal Service to be at work. The failure to be at work for whatever reason may result in disciplinary action against an employee.

"'I wish to stress that the fact that an employee is sick and receives sick leave benefits, does not relieve that employee from this basic responsibility. If an employee is absent with such frequency, as to interfere with scheduling, productivity etc., then that employee may be disciplined.'

"2.) It will be necessary for you to meet with your union representatives to make sure that the policy is understood by them. You should point out, for example, that we do not treat an employee who has been a good employee for 19 years then has a heart attack, the same way we treat an employee who has been trouble for a term of employment of three or four years. You should stress to the Unions that we will be fair and reasonable, but that we will enforce the proper discipline in absentee cases.

"3.) Establish a system wherein the employee may be warned and counseled, then a letter of warning, five or seven day suspension, ten or fourteen day suspension, discharged. While there is no nationally specified progression of discipline, it is my determination that the above meets the minimum requirement of the concept of progressive discipline. This shows an impartial person, such as an arbitrator, that we have taken certain steps to correct deficiencies, none of the lower steps have done their job and that we have had to take increasingly severe action in an effort to correct the problem.

"The concept of progressive discipline is a necessary and essential element in winning cases in arbitration.

"4.) While the Central Region, has set goals, the following are the objectives that you should keep in mind.

"First of all, an employee earns 13 days of sick leave a year. If an employee uses all his sick leave (13 days) that means he is off at least 5% of the time is wholly unsatisfactory to us nor does it allow the employee to build up any protection for himself in the future. Therefore, you should examine very closely any employee presently absent 5% or more of the time. I would imagine that these employees in all probability need immediate attention.

"The next category you should look at are those employees absent 3% or more of the time. If we can get our rate down to 3% with the problem employees, then our total employee rates will be very satisfactory and well under the goals set for you.

"5.) LWOP should be used sparingly. It appears to me that many times we grant LWOP that may be more properly charged to AWOL. Also, there is no requirement for the Postal Service to give LWOP for prime time vacation. If an employee uses all his annual leave prior to his vacation period, it is up to the Postmaster to look at the facts of the situation to determine whether or not to give the employee time off. You should notify the unions of this also.

"The use of LWOP by itself generally indicates some failure of an employee to maintain his work schedule. You should have your managers look at all employees using LWOP and determine why they are using it and if they are into the progressive disciplinary procedure as yet.

"In order to accomplish the necessary analysis and required control required by the Central Region, I will need a report on an Accounting Period basis consisting of the following:

'Total number of hours sick leave used in the MSC office and MSC by bargaining unit and by non-bargaining unit employees and number of employees using leave. I will need the same information in regard to LWOP. Further, include number of counselings, letters of warning, suspensions given for failure to maintain work schedule offenses within your MSC.'"

The Senior Assistant Postmaster General made no formal reply to the Vacca letter, but informal discussions between the parties took place over ensuing months. Late in 1977 the USPS gave all four of the Postal Worker Unions copies of revised leave provisions to be included in a proposed new Employee and Labor Relations Manual, as required under Article XIX of the 1975 National Agreement. The revised provisions were made effective early in 1978, pursuant to Article XIX, after the parties had been unable to agree upon a date when they might be discussed. Then the new leave provisions ultimately were considered in detail during the 1978 negotiations, and in the end the Unions apparently had no disagreement

with the language appearing in the new Manual, as revised, on the subject of 'Leave," commencing with Part 510 in Chapter 5.

These provisions are silent, however, in respect to the issues stated in the April 5, 1977 Vacca letter. It also was clear throughout the negotiations that the parties remained in disagreement on these matters, with the Union free to press them into arbitration if desired. On October 19, 1978 Vacca finally wrote Assistant Postmaster General, Labor Relations, James Gildea noting that there had been no formal reply to his April 5, 1977 letter and certifying the resultant dispute for hearing by the Impartial Chairman. On October 27, 1978 William Henry, of the Labor Relations Department, replied to the Vacca letter on behalf of Gildea. The concluding paragraph of Henry's letter read— 6

> "Employees reporting for duty as scheduled is critical to an effective and efficient operation. The responsibility for maintaining an acceptable attendance record rests with each and every employee. Regular attendance and entitlement to paid leave are two separate and distinct things. When an employee submits a request to use paid leave to cover an absence, the individual is simply claiming a benefit granted by the contract. While granting such a request may excuse the absence for pay purposes, it does not negate the fact of the absence or the fact that excessive absences impinge upon the effective and efficient operation of the Postal Service. In such circumstances, the employer can rightfully be expected to take the necessary corrective measures to assure that the efficiency of the Service is properly maintained."

Since the NALC found this statement of the USPS position to be unsatisfactory, the matter ultimately proceeded to arbitration on January 9, 1979. Briefs thereafter were filed as of March 22, 1979. 7

The Presentations

1. NALC

Basically, the NALC holds that, under Article XVI of the National Agreement, there can be no "just cause" for any discipline based on an employee absence from work on some form of approved leave--whether it be sick leave, annual leave, leave without pay, or leave while recuperating from on-the-job injury. The imposition of discipline in any such situation would deprive employees of their right to enjoy leave benefits protected by Article X of the National Agreement, as well as under applicable Federal law. 8

Once sick leave has been approved, therefore, the USPS cannot thereafter complain that efficiency was impaired because of the employee's absence on such leave. In this respect, the NALC greatly stresses that, in early 1978, the Bureau of Policies and Standards of the U.S. Civil Service Commision issued a policy directive to the FEAA stating— 9

> "Given an agency's authority to deny leave under many circumstances when it must have the services of an employee, an adverse action based on a record of approved leave is not for such cause as will promote the efficiency of the service."

The Civil Service Commission Policy, as thus stated, is controlling in respect to all USPS preference eligible veterans who elect to appeal the imposition of discipline under Civil Service procedures rather than under the grievance procedure established in the National Agreement. In the NALC view, it is absurd to have two different disciplinary policies appliable to USPS employees working under the same Agreement, depending on whether or not an employee happens to be a preference eligible veteran. In its judgment, therefore, the USPS now should be required to embrace the CSC policy. 10

The NALC also emphasizes the obvious incongruity of trying to apply "corrective" discipline to discourage an employee from being injured or becoming ill. Under Article XVI all discipline must be corrective in nature, not punitive. In the case of employees on OWCP approved workmen's compensation (or continuation of pay status because of on-the-job injury), these are benefits to which employees are entitled by Federal law. The NALC concludes that the disputed USPS policies thus ignore the fact that, under Article III of the National Agreement, the USPS is obliged to honor all applicable laws. 11

2. The USPS

The Service denies at the outset that it ever seeks to discipline an employee for the "use of leave benefits provided by the Office of Workers Compensation Program." It also asserts that the NALC has failed to provide any example of discipline because an employee "was on continuation of pay due to a traumatic on-the-job injury." Thus in its view the only issue before the Impartial Chairman is— 12

> "Does the Postal Service's discipline or discharge of employees for failing to maintain a regular work schedule in instances where the use of sick leave has been approved for such absences constitute a violation of the National Agreement?"

As to this stated issue, the Service relies on the proposition that: 13
"It is a well established principal of arbitral labor law that excessive absenteeism, even though due to illness beyond the control of the employee, may result in disciplinary action, including termination of employment." Numerous quotations from arbitrator's opinions are provided in support of this basic USPS position. Of the greatest significance, for present purposes, are several dozen opinions by various USPS arbitrators including Gamser, Holly, Casselman, Cushman, Cohen, Di Leone, Larson, Epstein, Jensen, Moberly, Krimsley, Fasser, Myers, Rubin, Scearce, Seitz, Warns, and Willingham.

All of these opinions, in the USPS view, support the broad proposition— 14
as stated by the Elkouri's, in "How Arbitration Works" (3rd Ed., 1973) at pages 545-546—to the effect that—

> "The right to terminate the employees for excessive absences, even where they are due to illness, is generally recognized by arbitrators."

More pertinent language, for USPS purposes, appears is an Opinion by Arbitrator Cushman in Case AC-S-9936-D, involving the APWU (decided June 6, 1977). Cushman wrote:

> "The Union contends that it is improper for the employer to discharge an employee for absences caused by illness and which have been approved by management. The contention is without merit. This Arbitrator agrees with Arbitrator Warns and many other arbitrators that an employer has the right to expect acceptable levels of attendance from its employees and that when such attendance is not had, discharge is appropriate despite the fact that the absence may be for valid and legitimate medical reasons.
>
> * * * * * *
>
> "This Arbitrator is sympathetic to employees whose absenteeism is due to illness, and, therefore, to no fault of their own. Where however, absenteeism due to illness results over a period of time in unacceptable levels of work attendance, an employer, under generally accepted principles recognized by many arbitrators, has a right to remove such an employee from employment. (USPS, /Vera D. Bugg/ AB-S-6-102-D.) The realities of economic survival and the demands of efficiency require that an employer be able to depend upon reasonable regularity of employee attendance in order to plan and perform his work schedule. Where reasonable standards of attendance cannot be met due to

> physical inability of the employee to meet such standards, termination by the employer is warranted. In such a case the employee is not being 'punished' because he is ill. He is simply being terminated for irregularity and undependability of attendance. Such situations are really not disciplinary in nature..."
>
> (Underscoring added.)

In addition to relying on the cited opinions of numerous USPS arbitrators, the USPS suggests that the NALC now seeks to obtain, through arbitration, a concession which it failed to secure in the 1978 negotiations, when the parties had full opportunity to discuss the leave provisions in Chapter 5 of the new Employee and Labor Relations Manual. During the 1978 negotiations, indeed, the NALC specifically, but unsuccessfully, sought to prohibit the use of approved sick leave for disciplinary purposes. 15

Finally the Service deems the contrary Civil Service Commission policy on the issue to be irrelevant, stressing that the CSC "has no authority over adverse actions taken against postal employees who are not preference eligibles....." On this score, it quotes the following from a decision by Arbitrator Moberly: 16

> "Of course, this Arbitrator is bound by the collective bargaining agreement rather than the holdings of the Civil Service Commission. Under this agreement, as it has been interpreted in the past, the Postal Service is justified in removing employees under the circumstances here. No comment is made herein with respect to the rights of similarly-situated employees under other laws, rules or regulations. The Arbitrator is interpreting the collective bargaining agreement, and nothing more."

Finally, the Service urges that the policy announced by the CSC's Bureau of Policies and Standards is not necessarily the CSC's "final decision" on the matter, since not as yet been considered by the CSC Appeals Review Board.

FINDINGS

1. Scope of the Issue

The USPS brief sees no real issue here in respect to the imposition of discipline where an employee is absent (1) on continuation of pay due to a traumatic on-the-job injury, or (2) on OWCP - approved Workers Compensation. The USPS, says the brief, does not discipline employees for use of leave benefits provided by the Office of Workers Compensation Program (OWCP). The NALC has presented no evidence to the contrary. Nothing in the memoranda from the Central Region, Marblehead, or Jacksonville specifically states that discipline should be imposed on employees for absences on OWCP approved Workmen's Compensation or on continuation of pay due to traumatic on-the-job injury. 17

Given the assurances embodied in the USPS brief, therefore, the present analysis is limited to considering whether the imposition of discipline because of absences on approved sick leave may involve violation of the National Agreement.

According to the NALC an employee's absence from work on approved sick 18
leave never may provide a proper basis for discipline or termination of an employee's services. It believes this position to be supported fully by the Civil Service Commission policy, as quoted earlier.

The USPS apparently does not claim that all sick leave absences may pro- 19
vide a basis for discipline. It does hold, however, that where such absences result in failure to be "regular in attendance" this may subject the employee to disciplinary action. For this purpose, it holds the CSC policy statement to be irrelevant.

While it is difficult to deal meaningfully with such broad interpretive 20
questions, in the absence of detailed facts in specific grievances to define an issue, this is not unusual in national level grievances. There are clear areas of disagreement and confusion in the present case, moreover, which seem susceptible to clarification through this Opinion.

2. Earlier Opinions by USPS Regional Arbitrators

It is instructive at the outset to analyze some of the major earlier 21
decisions by Regional Arbitrators. The record includes two dozen Regional decisions as well as an advisory Opinion by National Level Arbitrator Howard Gamser. All but one of the Regional decisions are cited by the USPS to support the view that an employee may be disciplined for failure to maintain a regular work schedule because of absences on approved sick leave.

The most significant Regional case, for present purposes, was decided in 22
the Southern Region December 17, 1975 by Fred Holly, a highly respected and eminently qualified arbitrator, in Case AB-S-6102-D (herein called the Bugg Case). There the grievant had a little over 3 years of service when discharged in late 1974. Within two months of being hired she had established an unsatisfactory attendance record, which was called to her attention by two separate supervisors. After five months of employment, she again was told to improve her attendance record. About a month later she was warned by letter that her attendance was unsatisfactory and was placed on restricted sick leave. Ultimately, she was sent to a USPS designated physician for an examination to determine her fitness for duty because of a continued poor attendance record. On February 18, 1974 the physician reported that she was able to perform her job from the medical standpoint. Three months later she again was warned about continuing absenteeism. In September of 1974 an analysis of her attendance record over recent months was prepared. This resulted in the decision to discharge. During her last 7½ months of employment she had been absent more than one third of her scheduled hours. There is no suggestion in Holly's Opinion that the grievant was suffering from any single, identifiable illness which might have been responsible for all, or most, of her repeated absences from work.

A key paragraph in the Opinion in the Bugg Case reads-- 23

> "Such an excessive rate of absenteeism has been consistently held to be unacceptable and a proper cause for termination. Employers have a right to expect acceptable levels of attendance from their employees, and when such attendance is not forthcoming termination is approved even though the absences may be for valid medical reasons. This principle is so well established in arbitration that it does not demand documentation here."
>
> (Underscoring added.)

On April 28, 1976 Arbitrator Howard Myers sustained a discharge in Case NB-S-6079-D where an employee had been absent repetitively over a period starting at least as far back as 1972 and running into June of 1975. During the last 18 months of his employment he missed 15% of his scheduled shifts and frequently failed to provide any documentation or medical certificate to explain his absence. This Opinion concluded with the following dicta-- 24

> "It has been well established by arbitration decisions that when an employee becomes undependable as to adequate attendance, so as to impede operations, the employer may finally discharge, regardless of what reasons cause the undependability or unfitness.
>
> The employer has no contractual obligation to retain an employee whose services are irregular or where absences are due to disability over a long period....Regardless of causes of continuing absences, a just cause for removal exists where reasonable corrective steps have not changed a deficient performance so as to meet the established standards."
>
> (Underscoring added.)

The next significant Opinion was issued by Arbitrator Harry Casselman on April 7, 1977 in Case AC-C-C-10,295-D. There the grievant was reinstated without back pay. The Arbitrator's Opinion, included the following pertinent passage-- 25

> "...there is nothing in Article X, Section 4, which states, or...implies, that absences due to sick leave, whether covered by sick leave, or beyond such coverage, cannot be

used as a basis of discipline when combined with other absences, or as a basis of discharge for disability without fault standing by itself, where such disability to perform on an acceptable basis is fully established by medical evidence.

* * * * * *

"It should be obvious that Management is powerless to go behind a doctor's certification of illness, unless it has independant medical or other evidence to the contrary; even if the Union were correct, which I find they are not, that the approval of each instance of sick leave is not just an approval for pay purposes, which I find it is, but also an approval of the underlying leave, this does not mean that when an employee's overall absences based on sick leave and other leave makes his continued service untenable because of its effect on the organization...discipline cannot be assessed."

(Underscoring added.)

The Bugg case was cited by Arbitrator Bernard Cushman in a May 9, 1977 decision in Case AC-S-12,796-D. There Cushman sustained a discharge where the employee had an extremely poor attendance record. His Opinion included the following-- 26

"Under all the circumstances, the Arbitrator finds that some absences attributed by the grievant to other causes were due to the grievant's own internal problems rather than the lack of management affirmative action and that her absentee record could fairly be considered by management as it stood without any substantial discount for alleged causation somehow attributable to management. This Arbitrator holds that the absentee record of the grievant was excessive and was a proper cause for removal.

"The Union contends that it is improper for the employer to discharge an employee for absences caused by illness and which have been approved by management. The conten-

tion is without merit. This Arbitrator agrees with Arbitrator Warns and many other arbitrators that an employer has a right to expect acceptable levels of attendance from their employees and that when such attendance is not had, discharge is appropriate despite the fact that the absences may be for valid and legitimate medical reasons. Vera D. Bugg, AB-S-6102-D.

The Union also contends that in this case discipline was not corrective but punitive on the ground that it is not progressive discipline to proceed from a five-day suspension to a discharge. In a case of excessive absenteeism progressive discipline in the form of disciplinary suspensions is inappropriate if the absenteeism genuinely arises from a physical or medical problem."

(Underscoring added.)

On June 6, 1977 Arbitrator Cushman also decided Case AC-S-9,936-D, finding just cause for a "termination." The grievant there was a ZMT Operator who had only about two years of service when discharged in August 1976. Within only 8 months of his hire he had been counselled for excessive absenteeism, and 2 months later was placed on restricted sick leave. Thereafter he received a letter of warning, a 5-day suspension, and a 14-day suspension because of his continuing absenteeism. He did not reply to the June 25, 1976 notice of proposed removal. Between March 27 and July 2, 1976 he was absent on 68.57% of his scheduled work days. All of his absences either were on approved sick leave or approved leave without pay. After again citing the Bugg Opinion, Cushman wrote-- 27

"This Arbitrator is sympathetic to employees whose absenteeism is due to illness and, therefore, to no fault of their own. Where, however, absenteeism due to illness results over a period of time in unacceptable levels of work attendance, an employer, under generally accepted principles recognized by many arbitrators, has a right to remove such an employee from employment. The realities of economic survival and the demands of efficiency require that an employer be able to depend upon reasonable regularity of employee attendance in order to plan and perform his work schedule. Where reasonable standards of attendance cannot be met due to physical inability of the employee to meet such standards, termination by the employer is warranted. In such case the employee is not being 'punished' because he

> is ill. He simply is being terminated for irregularity and undependability of attendance. Such situations are not really disciplinary in nature. And that is why this Arbitrator has stated in Case AC-S-12,796-D that in a case of excessive absenteeism if the absenteeism genuinely arises from a physical or medical problem discipline in the form of disciplinary suspensions is inappropriate."
>
> (Underscoring added.)

On September 27, 1977 Regional Arbitrator Peter Seitz decided Case AC-N-16,605-D where a ZMT Operator with less than 4 years of service was discharged because of an attendance record found by the Arbitrator to be "deplorable and unfortunate," since she had worked only about 20% of her scheduled hours. The Seitz Opinion reflects a somewhat different approach from that developed in the Bugg Case and its progeny. It includes two particularly significant paragraphs: 28

> "The Service does not question the genuineness of the reasons given for all of these absences. It states that it has no information on which to do so. Under such circumstances, it must be assumed that the grievant was not 'at fault.' Accordingly, this is not a case in which discipline or discharge are appropriate for any wrongful conduct or behavior which breached her employment duties or the requirements of the collective agreement.
>
> Under such circumstances the case, necessarily, turns on the question whether the Service had grounds to terminate (not 'discharge') the grievant because it had reason to apprehend that, on the basis of the attendance record referred to, the grievant would not maintain a reasonable attendance record in the future. In other words, and in effect, the Service's position is that the absence record demonstrates that the grievant does not possess the physical qualifications to maintain a satisfactory attendance record in the future."
>
> (Underscoring added.)

A number of other Regional decisions were issued between September of 1977 and the hearing in the present case. All but one of these opinions included statements tending to support the present USPS position. Two of these opinions, however, dealt directly with the question of whether the CSC policy was relevant. They reached opposite conclusions. These decisions will be noted in more detail later. 29

There is, among the more recent cases, perhaps one other which merits specific mention here since it was presented by the NALC. Case NC-S-8197-D was decided by Arbitrator Cushman on February 4, 1978. Discharged for frequent and repetitive absenteeism was found proper. The Arbitrator commented— 30

> "The Union argues, however, that all of the absences during the October 5, 1976 to April 22, 1977 period, the Charge 1 period, were stipulated to have been for approved sick leave, and therefore, may not properly be considered as a basis for removal. That argument is without merit. As stated above, this Arbitrator, in common with many other arbitrators, has held that an employer has a right to expect acceptable levels of attendance from employees and that where such attendance is not had, discharge is appropriate despite the fact that the absences may be for valid and legitimate medical reasons. As stated by Arbitrator Meyers in a recent case, USPS and APWU (Pamela Allen), approval of a sick leave slip means only that an employee's absence will be processed for pay purposes. A satisfactorily documented sick leave request affords no basis for supervisory disapproval, but the absences remain on the record."

(Underscoring added.)

3. Significance of the Earlier Regional Opinions

The problem faced by the USPS in seeking to reduce absenteeism is not unique. A Central Region memorandum which accompanied the Charters Memorandum, quoted under Background above, nonetheless suggests that in recent years the USPS has faced a particularly serious problem of this sort. 31

Management properly may assume that most USPS employees are conscientious and not prone to abuse the sick leave program. Medical certificates understandably are not generally required to support every one or two day absence because of claimed illness. Even where medical certificates are required they may not be difficult to obtain, even by a malingerer. There is no practical way for the USPS 32

to question their validity, moreover, except as other evidence may surface to reveal that a given employee has been malingering.

No doubt in light of these considerations National Level Arbitrator Gamser observed in Case AC-N-14,034 that excused sick leave cannot "be considered a grant of immunity." If USPS Management is to be able to hold absenteeism within reasonable limits over the long run, it may be important in individual cases to cite an employee's entire record of absences, including those on sick leave, in establishing proper cause for discipline. 33

Some of the problem envisioned by the NALC in the present case, moreover, may arise from unnecessarily broad generalizations embraced in some of the Regional opinions which imply that the application of discipline always will be proper when the USPS can show "excessive absences" from work. Indeed, the USPS brief quotes from the Elkouri text, "How Arbitration Works" (3rd Ed. 1973) at p.545, a sentence to the effect that an employer has a "right" to terminate an employee for excessive absences even when due to illness. Reliance on such broad and misleading generalizations may obscure the fundamental consideration that the true issue, under Article XVI of the National Agreement, is whether the employer has established "just cause" for the given discipline in the specific case. The presence or absence of "just cause" is a fact question which properly may be determined only after all relevant factors in a case have been weighed carefully. The length of the employee's service, the type of job involved, the origin and nature of the claimed illness or illnesses, the types and frequency of all of the employee's absences, the nature of the diagnosis, the medical history and prognosis, the type of medical documentation, the possible availability of other suitable USPS jobs or a disability pension, the employee's personal characteristics and overall record, the presence or absence of supervisory bias, the treatment of similarly situated employees, and many other factors all may be relevant in any given case. 34

In short, an arbitrator cannot properly uphold the imposition of discipline under Article XVI, except after conscientious analysis of all relevant evidence in the specific case. This basic consideration seems to be reflected in the advisory Opinion of National Level Arbitrator Howard Gamser in Case AC-N-14,034, decided February 2, 1978. After quoting from a Regional Arbitrator's Opinion in Case AC-S-9,936-D, (and noting that other Regional opinions had included similar language) Gamser wrote these cautionary comments— 35

> "In addition, the undersigned is constrained to add the following comments. Of course properly documented and approved sick leave should not be used, in and of itself, in a manner adverse to an employee's interest. However, neither can excused sick leave be considered as a grant of immunity to an employee against the employer's right to receive regular and dependable attendance and to take steps necessary to insure the existence of a reliable workforce to do the work at hand.

> When management states that an employee's attendance record provides just cause for disciplinary action, management must be prepared to substantiate the fact that this employee's attendance record supports the conclusion that the employee is incapable of providing regular and dependable attendance without corrective action being taken. Management cannot inhibit an employee in the exercise of his contractual right to employ sick leave in the manner contemplated to cover legitimate periods of absence due to illness of other physical incapacity. Management must give every consideration to the fact that there is a sick leave program and that an employee's absence has been covered by accrued and earned sick leave or projected sick leave. Having given this consideration appropriate weight, the employer may still decide that an attendance record so erratic and undependable due to physical incapacity to do the assigned work requires that action be taken to insure that the work is covered in an efficient and reliable manner."

Given the specific facts in most of the cases before them, it occasions no surprise that many Regional Arbitrators have indicated that repetitive, excessive absenteeism--even including absences on approved sick leave--may provide "just cause" for discipline or discharge. Such extreme situations are not hard to find. The facts in the original Bugg case, as well as those before Arbitrators Cushman in Case AC-S-9,936-D and Seitz in Case AC-N-16,605-D serve to illustrate this point 36

It follows that there is no basis in this record for an award which would bar the Service from seeking to apply discipline to combat serious, repetitive absenteeism by individual employees, even though absences on sick leave or approved leave without pay may be involved. The Marblehead, Jacksonville, and Central Region memoranda all seem to embody instructions in furtherance of such a basic policy. Even if such memoranda include statements or implications which appear unnecessarily broad or inaccurate, it is not the function of an Arbitrator to rewrite such internal Management instructions. Should an apparent abuse arise in any future instance, the issue of "just cause" in the given case may be determined through the filing of an individual grievance. 37

4. Relevance of Civil Service Commission Policy

Article XVI, Section 3 of the National Agreement recognizes that any USPS employee who is "preference eligible" may elect to appeal the imposition of discharge, or a suspension of more than 30 days, to the Civil Service Commission instead of filing a grievance claiming violation of Article XVI. This alternative, 38

of course, is available only to those bargaining unit employees who happen to be preference eligible. All other employees covered by the National Agreement may seek redress for discharge, or suspension of more than 30 days, only through the grievance procedure.

Article XVI states that discipline must be corrective in nature, not punitive, and that it may be imposed only for "just cause." The basic Civil Service policy, in contrast, apparently is that discipline may be upheld whenever it is found to be "for such cause as will promote the efficiency of the service." 39

As already indicated, the Bureau of Policies and Standards of the Civil Service Commission recently issued a policy directive to the FEAA which would apply in any case where a USPS preference eligible employee had elected to appeal a discharge or suspension of more than 30 days to the CSC. While the full text of the policy statement is not in evidence, one joint exhibit reveals, that a principal sentence reads— 40

> "Given an agency's authority to deny leave under many circumstances when it must have the services of an employee, an adverse action based on a record of approved leave is not for such cause as will promote the efficiency of the service."
>
> (Underscoring added.)

Another joint exhibit embodies a paragraph of the CSC policy statement reading— 41

> "When an agency exercises its authority to approve leave the employee is released from his obligation to report for duty and his absence does not constitute a breach of the employer-employee relationship. As a result, an adverse action based on approved leave in any amount is not normally a cause that will promote the efficiency of the service. Such an adverse action, then, should be reversed on appeal for failure to state a cause of action."
>
> (Underscoring added.)

Following implementation of this CSC pronouncement, the USPS advised all of its Regional Directors—Employee and Labor Relations: 42

> "In light of this new Commission policy, 'failure to meet position requirements' or 'undependability' based upon excessive approved absences should not be used as grounds for taking adverse actions against preference eligible employees, unless and

> until we are successful in reversing Commission policy through the vehicle of a motion for reopening on a 'test' case."
>
> (Underscoring added.)

The NALC reads the CSC policy statement to mean that the USPS is not entitled, under any circumstances, to impose discharge or a suspension of more than 30 days because of a preference eligible employee's absence on approved leave. In view of the above quoted portions of the policy statement this interpretation may be accepted as correct, for present purposes, in the absence of any evidence to the contrary. 43

The result is obviously incongruous. One policy applies in respect to preference eligible employees who appeal to the CSC and another governs all other bargaining unit employees and those preference eligible employees who file a grievance. The NALC argument that the new CSC policy should be applied to all employees thus has the superficial appeal of seeming to assure uniformity in the administration of discipline among all potentially involved employees. The fact is, however, that the special treatment accorded preference eligible employees is required under Section 1005-(a)-(2) of the Postal Reorganization Act and cannot be changed by the parties in collective bargaining. 44

Two Regional Arbitrators already have had an opportunity to consider whether the CSC policy statement should be embraced for purposes of applying the "just cause" test under Article XVI to employees who file grievances under Article XV rather than appealing to the CSC. The NALC was involved in both of these cases and both involved preference eligible employees. 45

In NC-S-14,301-D, decided September 25, 1978, Arbitrator Robert Moberly sustained a discharge where the employee had been absent from work frequently on approved sick leave, or on leave without pay. Moberly's Opinion noted the conflict between the CSC policy statement and the earlier rulings by Regional USPS arbitrators. He concluded that he was "bound by the collective bargaining agreement rather than the holdings of the Civil Service Commission," since-- "The Arbitrator is interpreting the collective bargaining agreements, and nothing more." 46

A different view emerged in NC-C-5949-D, decided in December of 1978. There Arbitrator Peter Di Leone indicated that, but for the CSC policy directive, he would have sustained the discharged under review. He then wrote-- 47

> "Pursuant to Article III of the 1975 National Agreement this Arbitrator must view the action of the Employer in the light of applicable law and regulations. The Federal Ruling issued in accordance with the responsibilities Congress has imposed upon the Employer by law is such an applicable regulation governing the Employer's action here.

Therefore, since Biggs' discharge was based on a record of approved leaves of absences from February 1, 1975, when he injured his knee, to December 7, 1975, when he was discharged, the action of the Employer must be set aside."

Neither of these Regional Cases represents a precedent for purposes of a National Level interpretive case. Indeed, it would be unfair to suggest that either arbitrator--in the absence of the detailed presentations in the present record--was in any position to develop an authoritative opinion on the subject. 48

In the absence of any helpful precedent it is pertinent to note that under Article XVI two fundamental considerations must control in every discipline case-- 49

(1) No discipline may be upheld unless shown to have been imposed for "just cause," and 50

(2) Whether "just cause" exists requires a fact determination on the basis of all relevant evidence in each individual case. 51

It follows that neither a Regional nor National Level Arbitrator may presume to enunciate or establish any broad general rule contemplating that the imposition of discipline always will either be upheld, or be set aside, in any given category of case. Nor can the pronouncement of the CSC Bureau of Policies and Standards now be accorded such a status by this Arbitrator. To do so would be, in effect, to amend Article XVI. 52

On the other hand, it is not uncommon for arbitrators, when faced with difficult "just cause" cases, to consider how other arbitrators or authorities have dealt with like problems. Many of the various Regional Arbitrators cited by the USPS in the present case have relied upon opinions expressed by arbitrators in other relationships. Some of the Regional Arbitrators also have relied upon the Elkouri generalization which has been quoted in the USPS brief. 53

In these circumstances there is no way that this Arbitrator now could characterize the CSC policy statement as "irrelevant" in respect to a just cause issue under Article XVI. In view of its applicability, in respect to preference eligible USPS employees, it obviously must be accorded at least the kind of consideration as has been accorded to generalizations of other arbitrators, or writers, outside of this bargaining relationship. Beyond that the precise weight or significance to be accorded the new CSC policy, in light of all of the evidence in any given case, should remain a matter of judgment on the part of the arbitrator to whom the case has been entrusted for decision. 54

Finally, perhaps, it should be observed that any attempt to enunicate an inflexible rule for dealing with every "just cause" issue in a given type of case is a risky business, at best, in view of the multitude of variables which may be present in individual cases. Thus there can be no clear certainty that the present CSC policy statement will remain forever in its present form without any refinement, clarification, or modification. 55

Conclusions

The following conclusions may be stated on the basis of the presentations in this National Level grievance: 56

1. Whether the USPS properly may impose discipline upon an employee for "excessive absenteeism," or "failure to maintain a regular schedule," when the absences on which the charges are based include absences on approved sick leave, must be determined on a case-by-case basis under the provisionsof Article XVI; 57

2. Whether or not the USPS can establish just cause for the imposition of discipline, based wholly or in part upon absenteeism arising from absences on approved leave, is a question of fact to be determined in light of all relevant evidence in the given case; 58

3. The CSC policy statement is not of controlling significance in deciding a "just cause" issue under Article XVI, even though the grievant may be preference eligible; 59

4. The CSC policy statement is relevant in respect to a "just cause" issue under Article XVI, in a case involving absences on approved leave; 60

5. The weight to be given the CSC policy statement, in evaluating a just cause issue under all of the evidence in any such case, lies in the discretion of the arbitrator. 61

AWARD

No formal Award is required in view of the nature of this case. It may be deemed to be closed on the basis of the foregoing opinion. 62

Sylvester Garrett,
Arbitrator

Re: Case No. AC-N-14034
John R. Napurano, Grievant

In the Matter of the Arbitration between

AMERICAN POSTAL WORKERS UNION, AFL-CIO
(New Jersey Eastern Area Local)

-and-

UNITED STATES POSTAL SERVICE
(Newark, New Jersey Post Office)

OPINION AND AWARD

BEFORE:

Howard G. Gamser, Impartial Arbitrator

APPEARANCES:

For the Union - Schneider, Cohen & Solomon
by: Edward A. Cohen, Esq.

For the USPS - Mason D. Harrell, Jr., Esq.
Office of Labor Law

BACKGROUND:

In December of 1975, in Step 2 of the grievance procedure provided for in Article XV of the collective bargaining agreement between the above-captioned parties, a charge was advanced by John R. Napurano, 1st Vice-President of the North Jersey Area Local, wherein he alleged that the Postal Service at the Newark Post Office was violating Article 10, Section 3d of the Local Memorandum of Understanding. Mr. Napurano contended that local management was violating that provision of the Local Memorandum by charging certain employees with "Irregularity of Attendance" despite the fact that the terms of that sub-section of the Local Agreement do not permit disciplinary action as a result of an employee taking

"...any leave that has been documented and approved."

Mr. Napurano stated that there were twenty five or more cases which would be scheduled for arbitration in which this was the issue in contention.

Although the Postal Service contended that the grievance advanced by Mr. Napurano was filed untimely, under the provisions of Article XV of the Master Agreement, the Postal Service did agree that the letter submitting the case to arbitration was filed within the contemplated time limits. The Postal Service also agreed at the arbitration hearing, to address the merits of the case and to seek a determination of the issue raised by the Union.

This case is unique in that it was not brought to arbitration for the purpose of securing a determination of whether, in a specific case, and based upon a specific set of facts, the USPS had just cause to discipline or take any action adverse to the tenure of employment of any individual employee. The Parties apparently agreed that, because of the nature of the issue raised and the controlling agreements involved, an Award in the nature of the declaratory judgment would be sought. Without indicating in any manner that such a procedure takes any color of right from the grievance provisions of the Master Agreement, or that entertaining a case brought before the arbitrator under these circumstances should have any precedential value as to the appropriateness of proceeding in this fashion, the undersigned agreed to hear and decide the case as presented.

The hearing was held at the General Post Office in Newark, New Jersey on July 19, 1977. At that hearing, both Parties were given full opportunity to present testimony, other evidence and argument in

support of their respective contentions. By agreement, post-hearing briefs were filed. These were received in timely fashion and the contents of same were duly considered in the Opinion below.

THE ISSUE:

The Parties did not agree upon a definition of the matter placed in issue before the Arbitrator. However, from the contentions raised and the arguments advanced, during the course of the hearing, it was apparent that two questions were posed by this grievance. The first of these is whether the Local Union and Local Management, in their Memorandum of Understanding, were granted jurisdiction to limit the action which management could take where an employee's attendance was regarded as "irregular" although that employee's absences were all covered by documented and approved sick leave. The second question is whether, assuming managerial action were not limited by the terms of the Local Memorandum, the USPS could establish just cause to discipline an employee, up to discharging such an employee, under the principles enunciated in Article XVI of the Master Agreement for irregular and erratic attendance covered by documented and approved sick leave.

CONTENTIONS OF THE PARTIES:

In a very well reasoned and lengthy brief, which supplemented the testimony which it had adduced during the course of the hearing, the Union argued that in negotiating the 1973 and 1975 Local Memoranda of Understanding, the Parties to that Memoranda had agreed that employees who receive documented and approved leave of any kind, and more specifically sick leave, would not have absences so covered used as the basis for disciplinary action.

The Union claimed that the testimony of the witnesses at the hearing, who were active participants in the negotiation of the Local Agreements, clearly established that the Parties had agreed that sick leave which was approved, either earned or projected, could not be the basis for taking disciplinary action. The Union also claimed that there was never any question that the words "any leave" as used in Subsection 3d of Article 10 of the Local Agreement referred to sick leave as well as other forms of leave customarily afforded to Postal employees. The Union called attention to the entire wording of Section 3, Subsections a through i, inclusive, as well as the testimony of the negotiators regarding the positions taken by the parties and proposals exchanged on this provision to substantiate this claim.

The Union also argued that management could not now equitably argue that the local negotiators did not have authority to negotiate such a restriction on managerial rights in 1973 and 1975 as well. The Union contended that management was estopped from taking such a position when the contents of the Local Agreement were known to higher management in 1973 and 1975, and no action was taken to disown or to remove from the Local Agreement this language after the Union had successfully resisted efforts made during negotiations to modify the language ostensibly for the purpose of conforming to the requirements of the Master Agreement. The Union asserted that management could have challenged the Union's right to secure such a provision in the Local Agreement in the impasse procedures provided to resolve local issues, but that the Postal negotiators failed to do so. Thus, the right to contest the validity and viability of such a provision could not be raised in the instant proceeding which was not designed to

resolve local bargaining impasses which were not raised in a timely fashion.

The Union also argued that, in any event, the restrictions placed upon management's right to discipline contained in Section 3d of Article 10 of the Local Supplementary Agreement did not conflict with the provisions of the Master Agreement. The Union pointed to the fact that Article XVI of the Master Agreement requires that discipline be corrective in nature rather than punitive. The Union contended that the most creditable arbitral opinion has held that absences due to physical inacapacity have nothing to do with discipline and should not be the basis for disciplinary action. In addition, the Union made reference to several arbitration awards in which it was also held that where there was an approved sick leave program, and the employee's absences were covered by leave provisions under such a program, there could be no disciplinary action taken against such an employee. In other words, just cause for discipline could not be found under such circumstances since management agreed under the terms of the sick leave program to excuse absences approved under that program.

Management argued that Article XIX of the 1975 Agreement, which is the Agreement under which this grievance was raised, provides, as did previous agreements, , .. . inter alia that provisions of Postal Manuals not inconsistent with the terms of the National Agreement shall remain in full force and effect. By virtue of that provision, Section 442.181 of the Postal Service Manual, which provides, "Employees are required to be regular in attendance.", was incorporated as a provision of the 1975 Agreement.

The Postal Service pointed out that Article XXX of the Master Agreement specifically provides that in local negotiations no agreements could be made that were inconsistent with or in conflict with the terms of the Master Agreement. These provisions, the USPS pointed out also appeared in exactly the same language in the 1973 Agreement. For these reasons, the Postal Service argued that the Local Union and Local Management in Newark could not have agreed upon and put into effect a provision in the Local Memorandum which restricted management's right to require employees attend to their duties with regularity, and the approval of sick leave could not inhibit management from enforcing this requirement incorporated by reference into the Master Agreement.

The Postal Service also argued that excessive absenteeism due to illness is proper grounds for disciplinary action. The USPS cited several arbitration awards which so held and argued that this was the prevailing arbitral opinion. The Postal Service also contended that the existence of a sick leave program and accrued sick leave days could not protect an employee from being counseled, warned, suspended and even discharged for a failure to maintain regular attendance although the absences were excused and possibly paid for under the existing sick leave program.

OPINION OF THE ARBITRATOR:

The threshhold issue which confronts the Arbitrator in this case is whether there was a clear and enforceable agreement between the parties to the Local Memorandum in Newark which would prevent Local Management from taking disciplinary action against

an employee with an irregular attendance record when the cause of that employee's absences has been sickness covered by documented and approved sick leave.

The undersigned believes that the Union did present credible evidence to substantiate its contention that Section 3d of Article 10, as it appeared in both the 1973 and 1975 Local Agreements, referred to sick leave as well as annual leave and other leaves of absence for which management could excuse and pay an employee who did not appear for work. Having said that, it is necessary to add, however, that neither local management or the local union negotiators had authority and the power, under the terms of the provisions of Article XXX of the Master Agreement, as those provisions appeared in the 1973 and 1975 Agreements, to restrict management's right to discipline in this fashion. Article XXX clearly provided that local memoranda provisions inconsistent with the terms of the 1973 or 1975 Master Agreements cannot be negotiated on a local level. Paragraph B of Article XXX provided in pertinent part that, "...no local memorandum of understanding may be inconsistent with or vary the terms of the 1973 National Agreement." That same provision appeared in the 1973 Master Agreement.

Article XXX also most specifically limits local negotiations to twenty two enumerated items. A careful reading of these items does not reveal that the subjects of discipline and sick leave as well were left to be negotiated out at the local post office or area level. A principle which must be followed when the parties do enumerate and limit subjects with such particularity is to conclude that they meant to include no other subjects for local implementation.

This list of twenty-two specific items on which local negotiations can be had was hammered out laboriously by the negotiators of the Master Agreement. They understood that the basic provisions concerning wages, hours and other terms and conditions of employment would have to be uniform throughout the postal system for all employees concerned and uniformly administered as well. That is why they repeated in 1975 that terms of any earlier local memoranda not inconsistent with the provisions of the 1975 Master Agreement could remain in effect, and new provisions negotiated on the twenty-two items in 1975 would also have to be consistent with the terms of the Master Agreement made in 1975 and could not vary the terms of that Agreement.

Clearly the local postal representatives and union representatives had no authority to negotiate a provision which the Union alleges restricts management's rights to discipline an employee for a failure to maintain regular attendance, as provided for in Section 442.181 of the Postal Manual, as incorporated by reference into the Master Agreement pursuant to the provisions of Article XIX discussed above. Nor can management be required to apply such a provision at the Newark Post Office because it failed to protest its existence and challenge its validity in an impasse proceeding. Neither party to the local negotiations had the authority to negotiate the provision that the Union urges, in this proceeding, be given validity. Management cannot be estopped from asserting its invalidity at this time. To so provide would expose the Parties to the Master Agreement to the chaotic situation under which the terms concerning discipline and its relation to approved sick leave, as in this instance, and other terms covered by the Master Agreement, in other instances, would not be uni-

applied and administered because of the existence of a provision in a local memorandum inconsistent with or in conflict with the provisions of the Master Agreement.

Having concluded, for the reasons set forth above, that Subsection 3d of Article 10 of the Local Memorandum at the Newark, New Jersey Post Office could not be so implemented, the subsequent question posed in this proceeding is whether, under the provisions of Article XVI of the Master Agreement, irregular attendance can provide just cause for discipline. More particularly, the question is whether irregular attendance, even when absences are covered by documented and approved sick leave under a negotiated sick leave program, can provide just cause for actions taken by management against the absentee.

The undersigned has carefully considered the well reasoned arbitration awards submitted by both sides in support of their respective contentions regarding this latter issue. After due deliberation, and for the reasons set forth below, the undersigned is of the opinion that irregular attendance and unreliable attendance, regardless of the legitimacy of the reasons for the absences, may provide management with just cause for taking disciplinary action.

As Arbitrator Cushman held in Case No. AC-S-9, 938-D, decided on June 6, 1977:

> "This Arbitrator agrees with Arbitrator Warns and many other arbitrators that an employer has a right to expect acceptable levels of attendance from its employees and that when such attendance is not had, discharge is appropriate despite the fact that the absence may be for valid and legitimate medical reasons. Vera B. Bugg, AB-S-6, 102-D.... 36

> "This Arbitrator is sympathetic to employees

> "whose absenteeism is due to illness, and, therefore, to no fault of their own. Where, however, absenteeism due to illness results over a period of time in unacceptable levels of work attendance, an employer, under generally accepted principles recognized by many arbitrators, has a right to remove such an employee from employment. (USPS, (Vera D. Bugg) AB-S-6-102-D) The realities of economic survival and the demands of efficiency require that an employer be able to depend upon reasonable regularity of employee attendance in order to plan and perform his work schedule. Where reasonable standards of attendance cannot be met due to physical inability of the employee to meet such standards, termination by the employer is warranted. In such a case the employee is not being 'punished' because he is ill. He is simply being terminated for irregularity and undependability of attendance. Such situations are really not disciplinary in nature..."

This same line of reasoning was advanced in several other cases which arose in the Postal Service and which were cited by Management in this proceeding. Those cases were decided in the same manner in face of the existence of the Postal Service negotiated sick leave plan with which those Postal Service Arbitrators were certainly familiar. None of the cases relied upon by the Union to contest this view arose in the Postal Service. Although recognizing the limitations upon the application of the principle of stare decisis in an arbitration proceeding, the undersigned must give some persuasive weight to awards rendered interpreting the same language of Article XVI of this Agreement.

In addition, the undersigned is constrained to add the following comments. Of course properly documented and approved sick leave should not be used, in and of itself, in a manner adverse to an employee's interest. However, neither can excused sick leave be

considered as a grant of immunity to an employee against the employer's right to receive regular and dependable attendance and to take steps necessary to insure the existence of a reliable workforce to do the work at hand.

When management states that an employee's attendance record provides just cause for disciplinary action, management must be prepared to substantiate the fact that this employee's attendance record supports the conclusion that the employee is incapable of providing regular and dependable attendance without corrective action being taken. Management cannot inhibit an employee in the exercise of his contractual right to employ sick leave in the manner contemplated to cover legitimate periods of absence due to illness of other physical incapacity. Management must give every consideration to the fact that there is a sick leave program and that an employee's absence has been covered by accrued and earned sick leave or projected sick leave. Having given this consideration appropriate weight, the employer may still decide that an attendance record so erratic and undependable due to physical incapacity to do the assigned work requires that action be taken to insure that the work is covered in an efficient and reliable manner. An employer cannot be required to employ two people to do the work of one because the one cannot be relied upon to report for work regularly and meet an assigned work schedule. An employer likewise cannot be required to cover with costly overtime work assignments because an employee does not have the physical ability to get to work regularly and meet his schedule.

As stated above, local management and local union negotiators did not have any right to modify, amend or alter management's right to

discipline for just cause. Just cause is provided where, as stated above, irregular and unreliable attendance requires that steps be taken to provide for a reliable and dependable work force. The local parties to the Newark Post Office Local Memorandum attempted to place restrictions on what constitutes just cause for disciplinary action in such cases. This they lacked authority to accomplish through local negotiations , and this grievance must therefore be

AWARD

The grievance filed by Local Vice-President John R. Kapurano is hereby denied.

HOWARD G. GAISER, IMPARTIAL ARBITRATOR

Washington, DC
February 9, 1978

ARBITRAL STANDARDS IN DENYING ABSENTEEISM GRIEVANCES

It has been held consistently that chronic or excessive absenteeism is just cause for discharge. The real problem has been to determine whether absenteeism is excessive. In making this determination arbitrators consider many factors. The following quotes from arbitration decisions represent the general reasoning of most arbitrators in sustaining discipline for absenteeism:

Arbitrator Edwin H. Benn, C4C-4Q-D 21595

"First, Grievant's record does not only involve the extended absence resulting from the accident. Grievant showed periods of absences in other pay periods during the measuring period.

Second, there is no question that Grievant missed a substantial period of time - approximately 25% of his scheduled days.

Third, Grievant was specifically counselled by Keys that he had to improve his attendance. Notwithstanding the counselling, Grievant missed three days at a point approximately four weeks after the counselling.

Fourth, although Grievant worked four weeks after the counselling without missing until he was again absent for three days in June 1986, in light of extensive time missed prior to that time,I cannot say that Grievant showed any kind of measurable improvement to defeat a decision to issue discipline.

As in all the attendance regularity cases, each case is examined on its own facts to determine whether the line demarcating regular from irregular attendance has been crossed. The key, in major part, is to

determine whether or not a pattern has been exhibited showing a wild card or sporadic use of sick leave. No single factor listed above is sufficient to justify the Service's action herein. However, when viewing these factors in their totality and considering the ordinary definition of the word "regular", I am satisfied that the Service has met its burden of demonstrating that Grievant was not regular in his attendance as required by section 666.81 of the ELM."

Arbitrator John P. McGury, C4C-4A-D 16915

"The grievant was hired on November 13, 1982. On February 22, 1983, she incurred a back injury which subsequently resulted in management issuing her a Letter of Removal on April 16, 1984. The arbitrator in that case set the removal aside but refused to award back pay. It was clear to Arbitrator Roumell that the grievant had contributed to the situation by being dilatory and making false representations and, therefore, was not entitled to back pay.

On this instant case, the grievant was notified on March 7, 1986 that she would be terminated effective April 11, 1986. The Employer based their action on 22 incidents between September 1, 1985 and February 24, 1986. Included were nine cases of tardiness and two AWOL's after the grievant had volunteered to work a holiday. 104 total hours of absences were involved. Only two of the absences subsequent to Roumell's earlier award were attributed, by the grievant, to her back condition. There was no evidence presented which linked the grievant's record in this case with her back condition. Therefore, the arbitrator stated that the grievant's back condition played only a minor role, if any, in this instant case. "

Arbitrator James P. Martin, C4C-4B-D 15632

"The Service had just cause to remove the grievant for his unsatisfactory attendance. The progressive discipline imposed upon the grievant was impressive, and thorough, running from oral warnings through seven, fourteen, twenty-one and approximately a forty day suspensions, with two of these as reductions from removals. It, therefore, would be hard to conceive how an employee can be given more notice that his conduct was unacceptable. The grievant received every possible opportunity to reform his attendance, and he did not do so. The Postal Service, therefore, had more than adequate just cause to remove the grievant and the grievance was denied."

Arbitrator Thomas J. Erbs, C4C-4D-D 29023

"The arbitrator found that the removal of the grievant was for just-cause under the provisions of the National Agreement. He further stipulated that there was no evidence that the grievant was subjected to unjust, discriminatory or disparate treatment. The grievant was given every opportunity to correct any problem causing his absenteeism; he was warned, counseled, disciplined, and cojoled, but no correction was forthcoming despite the repeated warnings that corrective action was necessary for this continued employment."

Arbitrator Robert W. McAllister, C1C-4H-D 26873

"On December 8, 1983, the grievant was issued a Letter of Warning for unsatisfactory attendance.

The arbitrator denied the grievance due to the fact that the grievant had been forewarned about her absenteeism in a previous discussion

and because he felt the issuance of discipline in this case was to correct a perceived slide into excessive absenteeism."

Arbitrator Ernest E. Marlatt, S4C-3U-D 32671

"The Union suggests that the Grievant has learned his lesson and should be given a last chance. The record does not bear out this argument. The Grievant offered no explanation for his deplorable attendance record, nor could he show any mitigating or extenuating circumstances whatsoever. He was given two previous opportunities to save his job with the Postal Service by making the effort to come to work regularly and on time. The Grievant's continued failure to improve his attendance leads to the conclusion that he would not do so if given still another chance. No employer need keep any person on the payroll indefinitely, month after month, year after year, if that employee cannot be depended upon to report for work regularly. There was ample just cause to remove the Grievant from his employment with the Postal Service."

Arbitrator Patrick Hardin, S8C-3D-D 31497

"With a minor exception, the facts concerning the grievant's attendance are not disputed. Her record was described as the worst by far at the Mobile Post Office, apart from a few instances involving periods of pregnancy. It is enough to say that the record would fully justify the discipline, apart from its relationship to the serious illness of drug and alcohol addiction. The determinative question in this case is whether the Postal Service has discharged its obligation under the contract to assist the grievant in the solution of the personal problem

that has so impaired her work record. I conclude that it has done so and, thus, the removal was for just cause within the meaning of Article XVI.

Article XXXV imposes rather limited duties on management with respect to employees whose unsatisfactory work record is related to chemical substance abuse. Under the contract, the Postal Service must maintain PAR, and other agreed programs, refer employees who need and seek referral, and see that the PAR counsellor has 'a reasonable period of time to evaluate the employee's progress in the program.' It is apparent that management went well beyond those limited responses in this case. A removal was rescinded. Thrity days' sick leave was advanced for detoxification and stabilization. A second hospital program was found when the first effort did not succeed. The four month period ending in April 1981 was, according to the testimony of the PAR counsellor, adequate time to 'evaluate' the grievant's 'progress'."

Arbitrator Patrick Hardin, S8C-3D-D 31497

"I am hardly immune from the temptation to use the arbitration process as a device to give a troubled employee a full, fair chance, as the Union here has urged me to do. See, U.S.Postal Service and Mail Handlers Union (Harris), No. S8M-3D-D 27987 (Hardin, 1981), directing the limited reinstatement of the grievant where I concluded that the full fair chance had not been accorded. It must be remembered, however, that the contract obligation is precisely the limited one described above. In this case, that obligation has been more than amply

discharged.

If, as the grievant testified,she is now free of drug and alcohol use, and able to return to work, she can readily become qualified for a preference in re-employment, see Employee & Labor Relations Manual §873.1 et seq. I am confident that the Union leaders and Postal Service managers will give her every assistance in that respect."

Arbitrator Gerald Cohen, 8 NID-BP 4

"It has been said many times by many arbitrators that part of the employment agreement between an employer and an employee embodies an agreement on the part of the employee to be regular in attendance. As a matter of fact, Postal handbooks and manuals specifically state that employees have an obligation to be regular in attendance. The reasons for such behavior are numerous and obvious.

The employer's facilities must be staffed to function. The absence of one employee must be filled by another. This can lead to excessive overtime charges, or, if not that, at least to disgruntled fellow employees upon whom an extra burden is placed.

The situation can evolve where the extended illness of a family member is no longer acceptable as an excuse for an employee's work absence any more than an extended illness of the employee himself will be accepted indefinitely as an excuse for continual absence from work. Of course, illness will generally be given greater toleration as an absence excuse than many other reasons, since illness is beyond one's control and therefore something that, to some extent, must be endured. However,

the Postal Service now finds itself in a position where it can no longer accept such an excuse for absence from work."

Arbitrator John P. McGury, C4C-4B-D 9270

"The grievant was issued a Notice of Removal on August 20, 1985 for being absent without leave from July 22, 1985 through August 20, 1985. The arbitrator, upon reviewing the evidence, found the Employer had just cause for removal. He stated that the only real defense offered by the Union was that the Employer did not follow the principal of progressive or corrective discipline. He stated that although he agrees that progressive discipline usually applies to a case of this type and that failure of the Employer to follow it would preclude discharge, however, in this case, progressive discipline was not applicable because the grievant abondoned her job. Under the circumstances, the Employer was justified in formalizing a result created by the grievant herself."

DEFENDING ABSENTEEISM

DISCIPLINE

DEFENDING ABSENTEEISM DISCIPLINE

Arbitrators generally hold that there comes a time when, regardless of the reasons for absences, the usefulness of the employee has ended and the employer cannot be expected to continue the employee on the employment rolls. There are several arbitral standards to look for in defending discipline for absenteeism. If the majority of those standards are not present, any grievance challenging the discipline is severely weakened.

1) Has the employee shown an improvement since the last discipline?

This is a major consideration of many arbitrators. If no improvement can be shown, absent any mitigating or extenuating circumstances, the grievance is lost before you begin. If improvement is present, your chances are more favorable.

ARBITRATOR, JOHN F. CARAWAY - S8C-3A-D 12279

"Based upon the validity of the grievant's absences and some evidence, even though it is not substantial, of improvement in her work attendance, the Arbitrator believes that it would be unduly harsh and severe to remove the grievant."

ARBITRATOR, ALLAN DASH - E1C-2D-D 8735

"Grievant's attendance record subsequent to the July 1981, 'Grievance Resolution' was far better than his preceding record that led to his July 12, 1982, Notice of Removal."

ARBITRATOR, J. FRED HOLLY - S8C-3D-D 27885

"The data supports the Grievant's contentions that his attendance improved. In fact, over his last 14.5 months of work his average monthly absences were only one-half of what they had been in the 10.6 month period prior to the stipulations of September 24, 1979." (Settlement date of a previous discharge.)

"The Grievant's demonstrated improvement in his attendance record destroys any justification for his removal. Not only did he achieve the level of improvement required by the September 24, 1979, stipulation, he also achieved a sick leave balance and retained such a balance at the time of his removal."

ARBITRATOR, JAMES M. O'REILLY - C4C-4K-D 21011

"The warning was based upon a four month review period, while the suspension was based upon a nine month review period. During the four month period preceding the Letter of Warning he had approximately 181.5 absent hours, while during the next nine

months he had approximately 59.69 absent hours, which is a substantial improvement in his attendance record. Therefore, the arbitrator felt that further counseling and encouragement would seem to be the appropriate level to follow, in lieu of issuing a 7-day suspension.

ARBITRATOR, GEORGE E. LARNEY - C4C-4P-D 35983

"The arbitrator concurred with the Union's position in that if the employer attempts to justify imposing progressive discipline for attendance deficiencies based mainly on a comparative basis of performance improvement from one period of time to another, it can not ignore an interim period of perfect or near perfect attendance that occurred between the last date cited in one disciplinary action and the first date cited in the next disciplinary action, as it did in this instant case. The comparative figures demonstrated that the grievant did improve her attendance performance in the period subsequent to her receiving the Letter of Warning." Therefore, based upon the record, the arbitrator sustained the grievance.

2) MEDICAL EVIDENCE / EXTENUATING - MITIGATING CIRCUMSTANCES

ARBITRATOR, J. FRED HOLLY - S8C-3D-D 27885

"The record shows that the vast majority of his absences were documented by statements from physicians, and there is no claim or indication that he abused the sick leave program."

ARBITRATOR, JOHN F. CARAWAY - S8C-3A-D 16717

"There are mitigating circumstances in this case which the Arbitrator cannot ignore. This is an employee with seven years tenure. Up to approximately three years prior to her removal, the grievant was a dependable and reliable employee. A series of accidents and physical problems deteriorated her work attendance."

ARBITRATOR, PETER DILEONE - C8C-4M-D 5535

"In the judgement of this Arbitrator the grievant's absences and tardiness were for valid reasons in most cases. In most of the incidents, medical statements supported his absence; ear infection in one instance, teeth extractions in another instance, car break downs with garage receipts to support his absences in several other instances. With regard to the appropriateness of punishment for such absences, it would seem unduly harsh to hold that absences for such reasons deserve the severest penalty when in all these cases a proper report-off occurred."

ARBITRATOR, PATRICK HARDIN - S8C-3F-D 32241

"There is particularly strong justification for part of the absence for which he was discharged. He was hospitalized for treatment of alcoholism, the disease that has been causing his poor attendance. The National Agreement gives the Postal Service only a limited responsibility to aid employees who are suffering from alcoholism or other drug-related problems. Still, it seems inconsistent with the spirit of that responsibility -- however limited it may be -- to discharge an alcoholic employee based in part on his absence due to hospitalization for the treatment of his illness."

ARBITRATOR, GERALD COHEN - C4T-4M-D 19629

"While Grievant's supervisor was aware that he suffered from diabetes, he seemed to have been unconcerned with Grievant's resulting problems. Grievant was entitled to consideration on account of his diabetes. He did not receive the consideration that he should have been given."

ARBITRATOR, ROBERT FOSTER - S7C-3B-D 29170

"As bad as grievant's attendance record has been, the just cause standard as a condition to final removal action requires management to consider mitigating and extenuating circumstances before arriving at the prediction that grievant's unacceptable pattern is not likely to alter if she remains in the employment of the Postal Service. Arbitrator Alsher had it right in Case No. S7C-3D-D 27984 when he chastised the Employer who "rigidly and mechanistically relies on numbers, not reason(s) behind the numbers."

3) <u>FAILURE TO CONSIDER REASONS FOR ABSENCES</u>

ARBITRATOR, ERNEST E. MARLATT - S4C-3E-D 52589

"If mere attendance statistics were sufficient to justify the removal of a Postal employee, then management could save handsomely on manpower costs simply by programming a computer to issue a removal notice whenever an employee accrues a certain number of unscheduled absences. But that is precisely what Arbitrator Garrett said it cannot do. A Postal employee is not a statistic. He or she is a human being, with strengths and weaknesses like the rest of us. Indeed, Postal employees may have more weaknesses than the rest of us because it is the commendable policy of the Postal Service to provide employment to partially disabled veterans and other handicapped persons. It puts a very small burden on the Postal Service to expect it to determine why an employee has an attendance problem and what if anything can be done to correct the problem. It puts a very large burden on the employee to find other employment once having been removed for absenteeism. Just Cause requires the employer to lay out on the table before the arbitrator the applicable Garrett Factors, not simply a list of dates on

which the employee allegedly accrued unscheduled absences."

ARBITRATOR, ROBERT W. MCALLISTER - C1C-4H-D 26648

"The grievant was issued a Letter of Warning for attendance irregularities. In sustaining the grievance, the arbitrator stated that the establishment of proof in irregular attendance cases requires more than a statistical count of absences. The USPS failed to take into consideration or to make any allowance for the absences directly attributable to an on-the-job injury, which constituted a substantial number of the occurrences in the charge. Therefore, in view of the Service's basic misunderstanding of the facts involved, the arbitrator expunge the Letter of Warning."

ARBITRATOR, EDWIN H. BENN - C4C-4P-D 30829

"The arbitrator found that the Service had not met it's burden of proof in demonstrating just cause for the disciplinary action taken against the grievant.

First, the Form 3971 for the January 9, 1987 absence shows that the absence was scheduled and was approved by the supervisor for a previously arranged doctor's appointment at least two weeks in advance, therefore, the January 9th date was erroneously charged as an unscheduled absence. Secondly, the supervisor admitted on the stand that he did not consider the reasons for the grievant's absence, although he usually considers that factor in determining whether or not disciplinary action of this type should be issued. Third, an examination of the Form 3972 showed that the grievant's record did not justify the action taken against her. And, fourth, contrary to the assertion of postal management, the grievant did make significant improvement from the date she had previously been issued a warning letter."

ARBITRATOR, ROBERT W. MCALLISTER - C4T-4M-D 38412

"I am left with management's straight statistical determination that the grievant had missed "too many days." This statistical tabulation to the exclusion of all other factors associated with the analysis of an employee's attendance record is subjective and arbitrary."

4) <u>WAS THE EMPLOYEE FOREWARNED?</u>

ARBITRATOR, ALBERT A. EPSTEIN - C4C-4D-D 14481

"The arbitrator, upon reviewing the testimony, evidence and arguments of the parties, found that the grievant was never warned or disciplined in any way about the use of approved sick leave and apparently was never warned that continued use of approved sick leave might lead to an absent record which would justify termination, even where the sick leave was approved. The arbitrator was impressed by this particular fact which,

in his opinion, justified the Union's position that termination was too severe a penalty under the circumstances of the instant case. Although the grievant did not have a good record and deserved some form of disciplinary action, her record, under the circumstances, does not call for or justify discharge."

The arbitrator then reinstated the grievant but without back pay.

ARBITRATOR, HARRY N. CASSELMAN - AC-C-9603D

"Even if Butwin's testimony is credited that Grievant did not report to him on April 1, 1976, or inform him in March that he was going to a Veteran's Hospital, I still find no evidence that Grievant was warned after his two week penalty that any further failure to attend as scheduled would result in discharge. Such a warning is part and parcel of corrective discipline.

If the purpose is to correct, warning of impending jeopardy is essential; if the purpose is simply to get rid of offenders, there is no way better calculated to do so than to fail to warn them. But such a course of conduct is the opposite of corrective discipline, and amounts to a calculated method of effectuating termination."

5) PROGRESSIVE DISCIPLINE

ARBITRATOR, MATTHEW W. JEWETT - ADS-772-D

"I cannot imagine Postal management being a party to a "Mexican Standoff." Either management is in control of the situation or it is not. In this case, it appears to have lost some control. Furthermore, it acted improperly in the extent of its suspension of the Grievant because part of that suspension was predicated on consideration of a letter of warning on March 14, 1978, which was subsequently reduced to an official counseling. As to its overall action, it acted properly."

ARBITRATOR, G. ALLAN DASH - AC-E-28, 291-D

"The Arbitrator would be quite disposed to sustain the Postal Service's discharge action in this case were it not for that portion of Agreement Article XVI which reads, "...a basic principle shall be that discipline should be corrective in nature, rather than punitive." The parties to the present Agreement have regularly utilized a corrective discipline system, in absentee cases, that is progressive in nature, advancing (with some variations) from counseling through written warnings, short-term and long-term layoffs and, finally, to discharge if all else fails."

6) LENGTH OF SERVICE

ARBITRATOR, WILLIAM HABER - AC-C-24-902 D

"An employee of three and a half decades ought to have some credit for a long term of tenure. The Arbitrator does not disagree with the Postal Service when it states in its brief that seniority does not provide immunity from discipline. Nevertheless, he is of the view that the mere fact of having worked for 34 years, of having been recognized as a competent person with supervisory skills, of having been used as a supervisor on a temporary basis, of not having used up all of his sick bank - all of these factors on the favorable side should simply not be set aside. Whether the grievant is eligible for the retirement benefits which are vested and whether he has, in fact, applied for retirement, as was reported, is not of special importance."

ARBITRATOR, A. HOWARD MEYERS - S4C-3W-D 24090

"Here there is agreement that Mrs. Williams was a good employee until the recent development of attendance problems. With eighteen years service her record shows, as the supervision concluded, she had provided acceptable performance; her unscheduled absences included only one AWOL. I have stated above that the testimony of Supervisor Crews is contradicted by his notation in the removal letter that grievant had informed him of family problems and related car problems. In my opinion she is a responsible person whose long seniority standing should have received more consideration and weight in these circumstances."

ARBITRATOR, ALLAN WEISENFELD - AC-N-19,355D

"Given the grievant's length of employment with the Service and the fact that she has regained her health, I believe she is entitled to another opportunity."

7) EXTENDED ABSENCE CONSIDERED "ONE INSTANCE"

ARBITRATOR, GERALD COHEN - C8C-4H-D 11676

"Many industrial absence-control programs, with which this arbitrator is familiar, would hold that Grievant's absences from April 21 to October 9 constituted only two absences, even though they totaled 81 days during that period of time. These absence-control programs define an absence as an absence occurring for one reason, regardless of the number of days involved, so long as the days of absence are consecutive. The theory behind this definition is that the person is only absent once because he or she had not returned to work to start a new work period."

8) ERRONEOUS CHARGES

ARBITRATOR, JOHN E. CLONEY - C1C-4H-D 32741

"In view of the lack of a discussion and in view of the fact that the grievant was charged with unscheduled absence for periods in which she had previously been granted leave, and charged with absence for period during which she had, in fact, not been absent. The grievance was sustained."

9) SICK LEAVE NOT EXHAUSTED

ARBITRATOR, ALAN WALT - C8C-4K-D 13252

"In those cases where an employee has not exhausted earned sick leave, however, it is necessary to carefully examine the particular facts of his or her case in determining whether there is a reasonable probability of regularity in attendance for the future. It must be remembered that accumulated sick leave is an "earned" benefit... . In view of the employer's right to require verification of employee illnesses, there must be a strong showing in support of removal establishing that an employee wh has not yet exhausted all earned sick leave offers little prospect of regular attendance in the future."

10) AUTOMATIC DISCIPLINE AT SET NUMBER OR %'s.

ARBITRATOR, ROBERT W. MCALLISTER - C0C-4D-D 139

"There is, however, a substantial distinction between chronic, excessive absenteeism and situations involving occasional and infrequent illness. Nelson explained to the Arbitrator that he had no responsibility to look at underlying reasons(s) for an absence 'if it is unscheduled.' According to Nelson, once an employee is deemed unscheduled, it will be used against the employee. It is evidence Nelson has described a "no fault" absenteeism policy which mandates discipline at set numbers of absences regardless of legitimacy. This is not the system promulgated by the United States Postal Service."

STEP 4

CASE BY CASE

NO FIXED AMOUNT OR PERCENTAGE

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

January 5, 1981

Daniel B. Jordan, Esq.
Attorney at Law
American Postal Workers Union,
AFL-CIO
817 14th Street, NW
Washington, DC 20005

Re: E. Andrews
Washington, D. C.
A8NA-0840

Dear Mr. Jordan:

On November 14, 1980, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure with regard to disputes between the parties at the national level.

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

At issue in this case is whether the Cleveland, Ohio post office has adopted and enforced a policy whereby employees using sick leave in excess of three percent of their scheduled hours will be disciplined.

During our discussion, several points of agreement were reached. They are:

1. The USPS and the APWU agree that discipline for failure to maintain a satisfactory attendance record or "excessive absenteeism" must be determined on a case-by-case basis in light of all the relevant evidence and circumstances.

2. The USPS and the APWU agree that any rule setting a fixed amount or percentage of sick leave usage after which an employee will be, as a matter of course, automatically disciplined is inconsistent with the National Agreement and applicable handbooks and manuals.

3. The USPS will introduce no new rules and policies regarding discipline for failure to maintain a satisfactory attendance record or "excessive absenteeism" that are inconsistent with the National Agreement and applicable handbooks and manuals.

The above constitutes our national position on such matters. We do not agree that a three percent policy as stated in your grievance has been implemented in the Cleveland, Ohio post office.

The Union bases its argument on several factors. First, they feel that the content of several internal management memos clearly indicates that a three percent rule was implemented. In my review of the said documents, I do not find such clarity. Further, the authors of the documents say they had no intention of establishing a three percent rule for individual attendance. Their concern was a three percent reduction in the sick leave usage for the entire office.

Second, the Union has presented affidavits from several employees who attest that they were told by their supervisors and/or in step one grievance proceedings that if they used more than three percent sick leave they would be disciplined. The supervisors referred to have all submitted statements stating that they did not tell employees that there was a three percent rule.

Third, the Union states that the number of disciplinary actions taken with regard to excessive sick leave usage substantially increased after the memos were written. Though numbers were quoted, no documentation was submitted. The Cleveland office has submitted substantial documentation that certainly indicates that if a three percent rule was the policy, it was not being enforced. The Cleveland staff surveyed the attendance records of over seventeen hundred employees. Over 559 employees in that number had used more than three percent of their sick leave during the period January 1980 to July 1980, but were not disciplined. These statistics certainly belie the extence of a three percent rule. Management acknowledges that there has been increased emphasis on attendance, but not based on a three percent rule.

Notwithstanding those listed items to which we can agree, it is our position that in light of the fact circumstances of this case, no policy to discipline employees who used more than three percent of their sick leave existed in the Cleveland post office.

It is further our opinion, that no definitive dispute exists between the parties concerning the contractual provisions for the administration of discipline with regard to failure to maintain satisfactory attendance.

Sincerely,

Robert L. Eugene
Labor Relations Department

DOCUMENTATION

REQUIREMENTS

513.35 Postmaster Absences

There are special requirements for postmaster absences:

a. *Leave Replacement.* A postmaster whose absence requires the hiring of a leave replacement must notify the appropriate official.

b. *Absence Over 3 Days.* A postmaster who is absent in excess of 3 days must submit Form 3971 within 2 days of returning to duty or, for an extended illness, at the end of each accounting period.

513.36 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 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.

513.362 Over Three Days

For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work.

513.363 Extended Periods

Employees who are on sick leave for extended periods are required to submit at appropriate intervals, *but not more frequently than once every 30 days*, satisfactory evidence of continued incapacity for work unless some responsible supervisor has knowledge of the employee's continuing incapacity for work.

513.364 Medical Documentation or Other Acceptable Evidence

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. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.

513.365 Failure to Furnish Required Documentation

If acceptable proof of incapacitation is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

513.37 Restricted Sick Leave

513.371 Reasons for Restriction

Supervisors or installation heads who have evidence indicating that an employee is abusing sick leave privileges may place the employee on the restricted sick leave list. In addition, employees may be placed on the

restricted sick leave list after their sick leave use has been reviewed on an individual basis and the following actions have been taken:

a. Establishment of an absence file.

b. Review of the absence file by the immediate supervisor and by higher levels of management.

c. Review of the absences during the past quarter of LWOP and sick leave used by employees. (No minimum sick leave balance is established below which the employee's sick leave record is automatically considered unsatisfactory.)

d. Supervisor's discussion of absence record with the employee.

e. Review of the subsequent quarterly absences. If the absence logs indicate no improvement, the supervisor is to discuss the matter with the employee to include advice that if there is no improvement during the next quarter, the employee will be placed on restricted sick leave.

513.372 **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* applications for sick leave by medical documentation or other acceptable evidence (see 513.364).

513.373 **Recision of Restriction**

Supervisors review the employee's Form 3972, *Absence Analysis*, 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.

513.38 Performance Ability Questioned

When the reason for an employee's sick leave is of such a nature as to raise justifiable doubt concerning the employee's ability to satisfactorily and/or safely perform duties, a *fitness-for-duty medical examination* is requested through appropriate authority. A complete report of the facts, medical and otherwise, should support the request.

513.4 Charging Sick Leave

513.41 Full-Time Employees

513.411 **General**

General provisions are as follows:

a. Sick leave is not charged for legal holidays or for nonworkdays established by Executive Order.

b. Sick leave may be charged on any scheduled workday of an employee's basic workweek including Saturdays and Sundays.

UNITED STATES
POSTAL SERVICE

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in further response to your correspondence of February 7 concerning the nature of medical documentation needed by supervisors to approve leave.

The enclosed memorandum from Dr. David H. Reid, III, National Medical Director for the Postal Service, serves to distinguish between a diagnosis or medical prognosis, and medical facts, as they relate to Section 513.36 of the Employee and Labor Relations Manual (ELM). It is intended to clear up any confusion which may exist in the field.

As noted by Dr. Reid, medical information which contains a diagnosis and a medical prognosis constitutes a restricted medical record as defined in Section 214.3 of Handbook EL-806.

Dr. Reid observes that restricted medical records are not necessary to support a request for approved leave when required by Section 513.36 of the (ELM): "A health care provider can provide an explanation of medical facts sufficient to indicate that an employee is, or will be, incapacitated for duty without giving a specific diagnosis or medical prognosis."

It is additionally the Postal Service's position that this application is consistent with the documentation requirements attendant to a request for leave under the Family and Medical Leave Act (FMLA).

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

If you have any questions on the foregoing, please contact Charles Baker of my staff at (202) 268-3842.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

Enclosure

UNITED STATES
POSTAL SERVICE

June 22, 1995

MANAGERS, HUMAN RESOURCES (ALL AREAS)
MANAGERS, HUMAN RESOURCES (ALL DISTRICTS)
SENIOR AREA MEDICAL DIRECTORS

SUBJECT: Documentation Requirements

It has recently come to my attention that there is some confusion in the field concerning the substance of medical information needed by a supervisor to approve leave pursuant to Section 513.36 of the Employee and Labor Relations Manual. The following restates the Postal Service's position.

When employees are required to submit medical documentation to support a request for approved leave, such documentation should be furnished by the employee's attending physician or other attending practitioner, with an explanation of the nature of the employee's illness or injury sufficient to indicate that the employee was or will be unable to perform his or her normal duties during the period of absence. Normally, statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation.

In order to return to duty when medical documentation is required, an employee must submit to the supervisor information from the appropriate medical source which includes:

1. Evidence of incapacitation for the period of absence.

2. Evidence of the ability to return to duty with or without limitations.

Medical information which includes a diagnosis and a medical prognosis is not necessary to approve leave. A health care provider can provide an explanation of medical facts sufficient to indicate that an employee is, or will be, incapacitated for duty without giving a specific diagnosis or medical prognosis. If medical documentation is received by an employee's supervisor that provides a diagnosis and a medical prognosis, it must be forwarded to the health unit or office of the contract medical provider and treated as a "restricted medical record" under Section 214.3 of Handbook EL-806.

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Washington DC 20260

In order to facilitate operational scheduling and planning, supervisors may request medical information relative to the duration of an absence, future absences, or an employee's future ability to perform the full duties of a position or duty assignment. Such information may be given to a supervisor by an employee or health care provider without divulging restricted medical information.

David H. Reid, III MD
National Medical Director
Office of Employee Health and Services

EL 921

PRE-DISCIPLINARY REQUIREMENT

(PRE-D)

SUPERVISOR'S GUIDE TO HANDLING GRIEVANCES

HANDBOOK EL-921
AUGUST 1990

◆ Was a thorough investigation completed?

Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective.

This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

◆ **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?**

The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues 5-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a 30-day suspension for the same offense.

There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be

RMD SIGN-OFF
AND
ISSUES STILL PENDING

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

April 2, 2003

TO: Local Presidents
National Business Agents
National Advocates
Regional Coordinators
Resident Officers

FO: Greg Bell, Director
Industrial Relations

RE: RMD Settlement

Enclosed is a copy of a pre-arbitration settlement agreement in case number Q98C-4Q-C 01005505 concerning the Postal Service's Resource Management Database (RMD) and its web-based enterprise Resource Management System (eRMS).

This settlement resolves many of the issues related to management's implementation of these systems, including Privacy Act issues, multiple call-in requirements, medical documentation to protect the interests of the Postal Service, and fixed numbers of absences for triggering discipline.

Several issues in this dispute remain outstanding, specifically: management requesting the nature of the illness when an employee calls in, FMLA second/third opinion procedures, and medical documentation requirements to substitute paid leave for unpaid intermittent FMLA leave. We have agreed to continue discussions related to these unresolved issues. However, if no agreement is reached within fifteen (15) days from the date of this settlement, the parties have agreed that these issues will be given priority scheduling for national arbitration.

It is requested that locals forward to my office any information (policies, past practice, class action grievances, settlements or agreement, etc.) that you may have regarding management requesting the nature of illness when an employee calls in due to an illness or injury. Such information may be helpful in our attempt to resolve this issue.

Please note that on Feb. 21, 2003, in national-level arbitration, we heard the case involving whether the Postal Service violates the FMLA by requiring a detailed medical report from bargaining unit employees seeking to return to work from FMLA leave after certain illnesses or ailments, or after absence of more than 21 days. This case is pending a decision upon the submission of briefs.

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afl-cio

UNITED STATES
POSTAL SERVICE

Mr. Greg Bell
Director, Industrial Relations
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: Q98C-4Q-C 01005505
APWU #HQTG200015
Class Action
Washington, DC 20260-4100

Dear Mr. Bell:

On several occasions, we met to discuss the above-captioned case which is currently pending national arbitration.

This dispute involves the implementation of the Postal Service Resource Management Database (RMD), its web-based enterprise Resource Management System (eRMS), and the application of current leave-related rules and policies, including the Family and Medical Leave Act.

After discussing this matter, the parties agreed to the following mutual understanding and settlement of this case:

- Pursuant to Article 10 of the National Agreement, leave regulations in Subchapter 510 of the Employee Labor Relations Manual (ELM), which establish wages, hours and working conditions of covered employees, shall remain in effect for the life of the National Agreement. The formulation of local leave programs are subject to local implementation procedures, in accordance with Article 30 of the National Agreement.

- The purpose of RMD/eRMS is to provide a uniform automated process for recording data relative to existing leave rules and regulations. RMD/eRMS (or similar system of records) may not alter or change existing rules, regulations, the National Agreement, law, local memorandums of understanding and agreements, or grievance-arbitration settlements and awards.

- RMD/eRMS enables local management to establish a set number of absences used to ensure that employee attendance records are being reviewed by their supervisor. However, it is the supervisor's review of the attendance record and the supervisor's determination on a case-by-case basis in light of all relevant evidence and circumstances, not any set number of absences, that determine whether corrective action is warranted. Any rule setting a fixed amount or percentage of sick leave usage after which an employee will be, as a matter of course, automatically disciplined is inconsistent with the National Agreement and applicable handbooks and manuals. Any corrective action that results from the attendance reviews must be in accordance with Article 16 of the National Agreement.

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WASHINGTON DC 20260-4100
WWW.USPS.COM

- In accordance with the notice in the Federal Register in June 2000, the storage of RMD/eRMS documentation is covered by the Postal Service's Privacy Act System of Records, 170.020. Information maintained in the RMD/eRMS, including, but not limited to, social security numbers, must be in accordance with the rules and regulations regarding Privacy Act System of records. RMD/eRMS users must be authorized to have access to records covered by the Privacy Act System of Records and must comply with the Privacy Act, as well as handbooks, manuals and published regulations relating to leave and attendance.

- Supervisor's notes or records of Article 16.2 discussions are not to be entered in the RMD/eRMS.

- All records of overturned disciplinary actions must be removed from the employee's personnel records kept by the supervisor, the employee's official personnel folder, as well as from RMD/eRMS. Management may cite only "live" disciplinary action as elements of past record in disciplinary action pursuant to Article 16.10, and if a disciplinary action has been modified, the disciplinary records must reflect the final disposition of an action. The RMD/eRMS is programmed to delete records of disciplinary action two years from the time issued if there has been no disciplinary action initiated against the employee, in accordance with Article 16.10 of the National Agreement. However, employees are still responsible for making a written request to have such disciplinary action removed from their official personnel folder.

- Supervisors may maintain copies, summaries or excerpts from other Postal Service personnel records, or records originated by the supervisor, in a system of records defined in ASM 120.190 as "*Supervisors' Personnel Records*." However, information about individuals in the form of uncirculated personal notes and documents kept by Postal Service employees, supervisors, counselors, investigators, etc., which are not circulated to other persons, are not to be entered into RMD/eRMS. (If they are circulated, they become official records in a system of records and must be shown on request to the employee to whom they pertain). The copies, summaries, and excerpts kept in accordance with the ASM 120.190 system of records are destroyed (with the exception of disciplinary records) when the supervisor/employee relationship is terminated. All disciplinary records are transferred to the new supervisor, provided their retention period has not expired.

- Pursuant to part 513.332 of the ELM, employees must notify appropriate postal authorities of their illness or injury and expected duration of absence as soon as possible. Once an employee provides the expected duration of his or her absence, such employee is not required to call in again for the same absence. However, if the expected duration changes, the employee should notify management.

- Pursuant to part 513.361 of the ELM, when an employee requests sick leave for absences of 3 days or less, "medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is only required when an 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." 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 and may not be arbitrary, capricious, or unreasonable.

- Pursuant to part 513.362 of the ELM, when an employee requests sick leave for absences in excess of 3 days (scheduled work days), employees are required to submit medical documentation or other acceptable evidence of incapacity for work for themselves or of need to care for a family member, and if requested, substantiation of the family relationship. Medical documentation from the employee's attending physician or other attending practitioner 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. Supervisors may accept substantiation other than medical documentation if they believe it supports approval of the sick leave request.

- Pursuant to Article 10 of the National Agreement and applicable leave rules, for an approved absence for which the employee has insufficient sick leave, at the employee's option, such employees must be granted annual leave or leave without pay. When an employee's absence is approved, the employee may use annual and sick leave in conjunction with LWOP, consistent with the applicable leave regulations. In addition, an employee need not exhaust annual or sick leave prior to requesting LWOP.

- Optional FMLA Forms: There is no required form or format for information submitted by an employee in support of an absence for a condition which may be protected under the Family and Medical Leave Act. Although the Postal Service sends employees the Department of Labor Form, WH-380, the APWU forms or any form or format which contains the required information (i.e. information such as that required on a current WH-380) is acceptable.

The parties agreed to continue discussions related to management requesting the nature of the illness when an employee calls in; FMLA second/third opinion procedures; medical documentation requirements to substitute paid leave for unpaid intermittent FMLA leave. In the event no agreement is reached within fifteen (15) days from the date of this settlement, the Union may initiate a dispute at the national level, in accordance with Article 15.4.D. of the National Agreement. If the dispute is not resolved, and the Union appeals the dispute to national level arbitration, the parties agree that the case will be given priority scheduling.

Please sign and return the decision as your acknowledgement of your agreement to settle this case, removing it from the pending national arbitration listing.

Doug A. Tulino
Manager
Labor Relations Policies and Programs
U. S. Postal Service

Mr. Greg Bell
Director, Industrial Relations
American Postal Workers
Union, AFL-CIO

Date: 3-28-03

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

April 23, 2003

TO: Local Presidents
National Business Agents
Regional Coordinators
Resident Officers

FR: Greg Bell, Director
Industrial Relations

RE: RMD National Dispute

This is a follow-up to my memo of April 2, 2003 regarding the pre-arbitration settlement in case number Q98C-4Q-C 01005505 concerning the Postal Service's Resource Management Database (RMD) and its web-based enterprise Resource Management System (eRMS).

That settlement resolved many of the issues related to management's implementation of the RMD/eRMS systems. However, several issues remained in dispute and the parties agreed to continue discussions related to those unresolved issues. The parties further agreed that if no agreement was reached within fifteen (15) days from the date of that settlement, these issues will be given priority scheduling for national arbitration. Unfortunately, we were unable to reach a settlement on those remaining issues.

Attached, for your information, is the national dispute that was initiated on those remaining issues. Briefly, this dispute involves, but is not limited to, management requesting the nature of the illness when an employee calls in sick; FMLA second/third opinion procedures; and management's requirement that medical documentation be provided when substituting paid leave for unpaid FMLA leave. The attached national dispute letter explains what those remaining issues are in greater detail.

Article 15 of the national agreement provides that within 30 days of the initiation of a national dispute, the parties shall meet in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. Accordingly, we will be meeting with the Postal Service again to discuss this case further. If no agreement is reached as a result of those discussions, this dispute will be appealed to arbitration and these issues will be given priority scheduling for national arbitration in accordance with our settlement in case number Q98C-4Q-C 01005505.

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American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell
Industrial Relations Director
1300 L Street, NW
Washington, DC 20005
(202) 842-4273 (Office)
(202) 371-0992 (Fax)

Initiate National Dispute

April 23, 2003

Mr. Anthony J. Vegliante
Vice President, Labor Relations
U.S. Postal Service, Room 9100
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No. HQTG20033, Cert. No. 70022410000224006448

Dear Mr. Vegliante:

In accordance with the provisions of Article 15, Section 2 and 4 of the Collective Bargaining Agreement, the APWU is initiating a Step 4 dispute concerning the Postal Service's unilateral implementation of the Resource Management Database (RMD), its web-based enterprise Resource Management System (eRMS), and related leave policies and practices affecting wages, hours and other terms and conditions of employment. More specifically, this dispute involves, but is not limited to, management requesting the nature of illness when an employee calls in sick; FLMA second/third opinion procedures; and the requirement for medical documentation when substituting paid leave for unpaid FMLA leave. The Postal Service actions in dispute are in conflict and inconsistent with leave rules and regulations

The purpose of RMD/eRMS is to provide a uniform automated process for recording data relative to existing leave rules and regulations that were in effect prior to its implementation. The APWU contends that the implementation and/or application of RMD/eRMS (or any similar system of records) may not conflict with, alter or change, or violate existing rules, regulations, the National Agreement, law, local memorandums of understanding and agreements, past practices or grievance-arbitration settlements and awards.

1. Under existing rules, regulations and past practice consistent with the collective bargaining agreement, when an employee requests leave, such employee has to fill out *Form 3971 – Request for or Notification of Absence,* subject to the approval of his or her immediate supervisor at the work location and/or postal facility where the employee is employed.

For unexpected absences (emergencies, illness or injury), an employee has to notify appropriate postal authorities at his or her work location and/or facility, and upon returning to duty submit a request for leave on Form 3971,

along with medical or other evidence if required (subject to the approval of the employee's immediate supervisor). Notification or calls in for leave are recorded on Form 3971 by an APWU bargaining unit employee (for example an office clerk) or by management (the practice varies from facility to facility depending on local past practices or agreements).

In addition, pursuant to 513.332 of the ELM, in situations such as unexpected illness or injury, employees have to notify appropriate postal officials of their illness or injury and of the expected duration of the absence. Consistent with 513.332, existing leave rules and past practice, an employee has to notify the Postal Service that he or she will be absent due to illness or injury at the time of notification, but is not required to provide the specific nature of the illness. The individual taking the call or notification of absence records, on Form 3971, the employee's name, pay location, type of leave requested, and expected duration of the absence. The employee completes and submits Form 3971 upon returning to duty. The Postal Service has implemented a new leave policy of requiring employees to provide the specific nature of their illness or injury when they call in. The APWU contends that the new leave rule of requesting and/or requiring employees to provide the specific nature of their illness or injury when they call in is inconsistent with existing rules/regulations and violates past practice, the collective bargaining agreement and law.

However, pursuant to 513.364 of the ELM, when an employee is required to submit medical documentation, such 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. Although an explanation of the nature of illness is provided when medical documentation is submitted, a diagnosis and/or prognosis is not required.

2. Pursuant to Sec. 825.307 of the FMLA, if the Postal Service has reason to doubt the validity of a medical certification, management may require the employee to obtain a second opinion at the Employer's expense. If the opinion of the employee's and the Employer's designated health care providers differ, the Employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. However, the third health care provider must be designated or approved jointly by the employer and the employee. If the Employer elects not to require a third opinion, the Employer will be bound by the first certification. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the Act. If the Employer requires the employee to obtain certification from a third health care provider, the third opinion ifs final and binding.

However, the Postal service has implemented a rule that if the opinion of the employee's and Employers' designated health care providers differ, and the employee fails to request a third opinion, the Employer's second opinion is final and binding. The APWU contends that the Postal Service new rule is inconsistent with and violates the collective bargaining agreement and applicable law.

3. Pursuant to Sec. 825.306(c) of the FMLA, "If the employer's sick or medical leave plan requires less information to be furnished in medical certification than the certification requirements of these regulations, and the employee or employer elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized, only the employer's

lesser sick leave certification requirements may be imposed." Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. Once an employee provides certification for intermittent FMLA leave, no further medical certification may be required for absences due to the already-certified condition to be protected under the Act, regardless whether an employee elects to substitute paid leave for unpaid FMLA leave. Moreover, medical certification constitutes documentation for a period or periods of "incapacity" including "recurring episodes of a single underlying condition."

However, if such employees wish to substitute paid leave for unpaid FMLA leave, it is the Postal Service's policy that when an employee requests sick leave for absences in excess of three days, employees are required to submit additional medical certification (pursuant to part 513.362 of the ELM), regardless of whether they already have medical certification on file. The APWU contends that the Postal Service policy is inconsistent with and violates the collective bargaining agreement and applicable law.

Article 15 provides that within thirty (30) days of the initiation of a dispute the parties shall meet in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. It is requested that you or your designee contact my office to discuss this dispute at a mutually agreed upon date and time.

Sincerely,

Greg Bell

Greg Bell, Director
Industrial Relations

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RMD

TAB- 1

RMD
ACRONYMS, TERMS AND DEFINITIONS

RMD ACRONYMS, TERMS AND DEFINITIONS

ACO-	Attendance Control Office
ACS-	Attendance Control Supervisor
ADL-	Administrative Leave
AL-	Annual Leave
AOT-	Absent from Scheduled OT
ARN-	Attendance Review Notice
AWOL-	Absent without Leave
CL-	Court Leave
COP-	Continuation of Pay
EAL-	Emergency Annual Leave
F-	FMLA
H-	Holiday
IOD-	Injured On Duty
IRM-	Integrated Resource Management
L-	Late
LWOP-	Leave Without Pay
ML-	Military Leave
RMD-	Resource Management DATA
SAL-	Annual Leave in lieu of sick leave
SL-	Sick Leave
SLDC-	Sick Leave Dependent Care
SOP-	Standard Operating Procedures
SWOP-	Leave without Pay in lieu of sick leave
TACS-	Time and Attendance Control System
UAL-	Unscheduled Annual Leave
USWP-	Unscheduled sick without pay

TAB- 3

TIME AND ATTENDANCE / RMD DOCUMENTATION

CASE DOCUMENTATION

Stewards must fully document each and every RMD grievance. A Steward must know what he/she is asking for and why. You must be careful not to check off boxes willy nilly. If you do the request may be rejected. [NOTE: RMD is being upgraded. Information indicates that the RMD Reports will be consolidated, some will be eliminated. When that occurs the Local's Forms will be revised to comport to the changes.]

DOCUMENT REQUEST FORM– The new *Time & Attendance* Official Document Request Form (ODRF printed on canary paper) is the ONLY Document Request Form to be used for investigating/documenting ATTENDANCE issues to determine if a grievance exists and to prove that the documents were requested.

IN THE MATTER OF: *GRIEVANT/UNION print the grievant's last name first, then complete first name NO INITIALS. If you are filing a Class Action or Union Grievance write APWU on the line. ISSUE/NATURE OF ALLEGATION: Time & Attendance has already been pre-printed . However, on the line below you are to state the issue = AWOL, LW, Suspension, Removal, RSL, Privacy Violation, Leave Denial, etc. FACILITY: place the name of the facility of the grievant. P/L: place the pay location of the grievant. (or the one you are investigating).*
ISSUED TO: *Print the name of the manager you are issuing the ODRF to. VIA: check off one of the boxes. If FAXED attach the Fax Transmission Report, If Mailed Certified attach the Certified Receipt or Tag, If Hand Delivered secure a round date to confirm delivery. DATE: Print the date you issued the document. CERT.NO. If mailed certified print the certified number. FROM: Print & Sign your name.*

NOTE: If you thought securing documentation was difficult before be prepared for major battle. Management is going to be reluctant , even resentful, that you are requesting these documents. But, you have a right to them. It is more important than ever that you provide proof of delivery of this form and that you attach that proof to your case file. If the documents are not provided to you within 5 business days YOU MUST FILE A GRIEVANCE ON THE DENIAL. If we can prove that denial is a routine practice of management we can proceed to the NLRB and/or seek restitution from management. THIS IS A SEPARATE GRIEVANCE!

DOCUMENTS & THEIR USE RATIONALE

- **RMD 3971(s) for:** THE SYSTEM WILL GENERATE A PS 3971 ON 8 1/2 X 10 SHEET PRE-MARKED. USE IT TO DOCUMENT VIOLATIONS OF THE ELM CHAP 510, LOCAL LEAVE POLICY WHEREIN THE SUPERVISOR IS TO MAKE LEAVE DETERMINATIONS. NOT THE ACS. { FOR: IS THE DATES OF THE ABSENCES.}
- **HARD COPY/REVISED 3971** THE SUPERVISOR MAY REVISE THE 3971 IF SO YOU WANT A COPY TO ENSURE COMPLIANCE WITH OFFICIAL LEAVE POLICY OR TO ANNOTATE IMPROPER REVISION OR TO SHOW THAT RMD DICTATED THE DETERMINATION NOT THE SUPERVISOR BASED ON AN INDIVIDUAL BASIS, EQUITABLE & IN CONSIDERATION OF EMPLOYEE WELFARE.
- **RMD 3972 for:** THE SYSTEM GENERATES A VIRTUAL 3972 THRU CURRENT PAY PERIOD. ASK THRU: { WHAT EVER PP WE ARE IN } . THIS DOCUMENT WILL SHOW YOU WHAT THE SYSTEM RECORDS ON THE EMPLOYEE. IT WILL ALSO SHOW YOU THE TOTAL HOURS OF FMLA USED, FMLA BALANCE, TOTAL DEPENDENT CARE S/L USED AND BALANCE, LEAVE YPES AND HOURS USED BY REFERENCE TO SCHEDULED AND UNSCHEDULED. ALSO USE TO COMPARE WITH HARD COPY.
- **SUPV. HARD COPY OF CURRENT PS 3972:** THE SUPERVISOR IS STILL REQUIRED TO KEEP A HARD COPY OF THE PS 3972 FOR EACH EMPLOYEE AND RECONCILE DIFFERENCE TO THE ACO. USE THIS TO CHALLENGE INACCURATE REPORTING.
- **1260 FOR: / 1261 FOR:** TACS WILL EVENTUALLY REPLACE THE FORM AS WE KNOW THEM NOW. HOWEVER, FOR DAYS IN WHICH THE GRIEVANT CLAIMS HE/SHE DID NOT HAVE A TIME CARE OR CLOCK RINGS ASK FOR THE FORMS. MANAGEMENT MUST PROPERLY RECORD TIME { ELM 666.84 }
- **CALL-IN LOG :** THE SYSTEM GENERATES A LOG OF ALL CALL INS. IT WILL SHOW THE NAMES OF EMPLOYEES CALLING IN { FOR: A PARTICULAR DAY } , TYPE OF LEAVE GRANTED AND IF RMD IS REQUIRING DOCUMENTATION. USE THIS TO DETERMINE IF THE SUPERVISOR'S DETERMINATION ON THE REQUEST IS BEING DICTATED BY THE ACO/RMD.
- **MESSAGE SENT TO FMLA COORDINATOR :** THIS IS A SO CALLED "ACTION MESSAGE" WHERE THE ACS ENTERS FMLA INTO RMD AND THERE IS SUPPOSEDLY NO FMLA DOCUMENTATION ON FILE. THE FMLA COORDINATOR (OR SOMEONE IN MANAGEMENT) IS TO SEND NOTIFICATION TO GRIEVANT ON FMLA. THIS MESSAGE WILL MOST LIKELY BE DECLARED PERSONAL . HOWEVER, ALTHOUGH MOST OF RMD DATA IS RESTRICTED INFORMATION THE COLLECTIVE BARGAINING AGENT HAS ACCESS TO THE INFORMATION FOR THE PURPOSE OF ENFORCING THE CONTRACT. ARTICLE 3 REQUIRES MANAGEMENT TO COMPLY WITH FEDERAL LAWS (FMLA) AND ITS OWN REGULATIONS ON FMLA { ELM 515 }.
- **COPY OF FORM 71 SENT TO THE EMPLOYEE :** IF THE GRIEVANT IS CLAIMING HIS/HER ABSENCE IS FMLA RELATED THE ACS IS TO SEE IF THERE ARE FMLA HOURS AVAILABLE, IF SO, SEE IF CERTIFICATION IS ON FILE. IF NOT SEND MESSAGE TO FMLA COORDINATOR WHO THEN IS SUPPOSE TO SEND OUT A FORM 71. *NOTE:* FORM 71 HAS BEEN MODIFIED BY MGT, IT IS BEING CHALLENGED AT THE HQ LEVEL. WE NEED A COPY OF THE FORM AND PROOF IT WAS DELIVERED. THIS CAN ASSIST US IN ABSENCES OF 3 OR MORE DAYS WHEREIN THE EMPLOYEE HAD/HAS A CHRONIC ILLNESS AND MANAGEMENT DID NOT GRANT FMLA PROPERLY.
- **FMLA MESSAGE/DATA REPORT :** MGT MAY PLAY GAMES WITH THIS ONE. WHAT YOU ARE AFTER IS THE FMLA DATA WINDOW REPORT THAT SHOWS WHEN FMLA BEGINS, DATE CONDITION IDENTIFIED, FMLA CONDITION, AND OTHER INFORMATION OF USE TO THE UNION TO ENSURE COMPLIANCE WITH FMLA , AS WELL AS TO DETERMINE IF THE COORDINATOR HAS OR DOES NOT HAVE HARD COPY NOTES. IF SO, REQUEST THEM! {FOR: THE ABSENCE PERIOD }

DOCUMENTS & THEIR USE RATIONALE

- **FMLA RE-CERTIFICATION REPORT:** BASICALLY INFORMS WHEN MANAGEMENT OR RMD HAS DETERMINED AN EMPLOYEE MUST RECERTIFY FMLA CONDITION. THIS CAN BE A LEAVE YEAR OR SOME OTHER MANAGERIAL RULE. IT WILL SHOW YOU WHAT THEY HAVE DETERMINED ON A CASE BY CASE BASIS. USE IF THE GRIEVANCE INVOLVES FMLA RELATED ISSUES.
- **SECOND OPINION LOG SHEET:** HERE IS ANOTHER DOCUMENT THEY WILL CLAIM YOU ARE NOT ENTITILED TO. THEY MAY CLAIM IT IS DUE TO PRIVACY ISSUES. HOWEVER, THE ASM ALLOWS FOR UNION OFFICIALS TO BE PREVY TO CERTAIN INFORMATION ON A NEED TO KNOW BASIS. THIS LOG WILL SHOW THE DATE OF FMLA REQUEST, ORIGINAL FMLA GUILDLINES { e.g., 1-2 DAYS PER MONTH OFF WORK, 4-5 DAYS PER YEAR OFFICE VISITS ...} MANAGEMENT WILL REQUEST A SECOND OPINION MEDICAL REVIEW { SEE FMLA SECTION OF THIS BOOKLET } AND WILL LIST ON THE LOG WHAT THE OUTCOME OF THAT REVIEW WAS. AN EMPLOYEE CAN REQUEST A 3RD OPINION AND IF THE EMPLOYEE DOES IT TOO IS LOGGED ON THIS REPORT. IF MANAGEMENT CLAIMS THEY CAN NOT GIVE THE LIST ASK FOR THE SPECIFIC EMPLOYEE'S 2ND OPINION LOG SHEET AND FOR THEM TO BLOCK OUT OTHER EMPLOYEES IF NOT PERTINENT TO YOUR CASE.
- **EMPLOYEE'S ATTENDING PHYSICIAN/MEDICAL REPORT:** AGAIN MANAGEMENT MAY CLAIM YOU ARE NOT ENTITLED TO THIS INFORMATION SINCE IT IS OF A PRIVATE SENSITIVE NATURE. THIS IS NOT TRUE. IF YOU CAN NOT GET IT FROM THE GRIEVANT YOU ARE ENTITLED TO GET IT FROM MANAGEMENT. { SEE MEDICAL HANDBOOK } . THIS WILL SHOW THE PERIOD OF INCAPACITATION, IF IT IS AN FMLA CONDITION, IF MANAGEMENT IS VIOLATION OF THE GRIEVANT'S PRIVACY AND THE APWU/USPS UNDERSTANDING ON MEDICAL DOCUMENTATION, AS WELL AS COMPLIANCE WITH THE ELM. ALSO, IT WILL SHOW THAT THE EMPLOYEE COVERED THE ABSENCE.
- **FITNESS FOR DUTY AND SUPPORTING REPORT:** MANAGEMENT CAN NOT JUST ORDER A FITNESS FOR DUTY EXAM AT WHIM FOR SICK LEAVE USAGE. ELM 513.8 REQUIRES A COMPLETE REPORT OF THE FACTS , MEDICAL AND OTHERWISE TO ACCOMPANY A REQUEST FOR FITNESS FOR DUTY MEDICAL EXAMINATION. THIS REPORT WILL ALLOW YOU TO DETERMINE IF SUCH AN EXAMINATION IS NEEDED BASED ON THE EMPLOYEE'S RECORD AND CHALLENGE IT.
- **ON-THE-CLOCK ANALYSIS :** THE ACRONYNOM FOR THIS REPORT IS OTC. IT GIVES A DETAILED REPORT ON WORK HOURS, OPERATIONS, AND LEAVE HOURS FOR AN EMPLOYEE. FROM: {IS A DATE}TO:{ A DATE } FOR:{ WHAT EMPLOYEE}
- **VIRTUAL ETC FOR:** THIS REPORT IS VIRTUALLY THE SAME AS OTC. IT GIVES A REPORT FOR A SELECTED DATE RANGE, SHOWS ETC CODE, TYPE AND NUMBER OF HOURS. USEFUL FOR ALL ATTENDANCE CASE AND EVEN ABSENT FROM ASSIGNMENT OR NO CHECK OUT CASES.
- **EIA DATA WINDOW PAGE/ REPORT FOR:** MANAGEMENT MAY CLAIM THERE IS NO SUCH REPORT. HOWEVER, THE EMPLOYEE INFORMATION ADMINISTRATOR { EIA} WINDOW IS ACCESSED BY THE ACS, AND SUPERVISOR AND IT HAS ALL THE CURRENT INFORMATION ON THE GRIEVANT, NAME, SSN, SENIORITY DATE, OTDL STATUS, HOLIDAY INFO, ADDRESS, PHONE NO., OCCUPATION, LABOR DISTRIBUTION CODE, SALARY RATE, DESIGATION CODE AND SCHEDULE. { EVENTUALLY RMD WILL HAVE A SCHEDULER. CURRENTLY BECAUSE OF VARIED LMOUS THROUGHOUT THE NATION RMD DOES NOT DO VACATION AND HOLIDAY PLANNING }. THIS REPORT WILL HELP US WITH PROPER RECORDING OF THE STANDARD GRIEVANCE FORM AND ALSO VERIFY DELIVERY OF MAIL INFO OR DISCIPLINE TO THE ADDRESS OF RECORD.
- **RESTRICTED SICK LEAVE NOTICE :** MANAGEMENT IS STILL REQURIED TO GIVE WRITTEN NOTICE TO EMPLOYEES WHOSE NAME IS PLACED ON RSL. THIS LETTER WILL HELP DETERMINE IF RSL IS PROPER.
- **OTHER:** THERE ARE OTHER REPORTS SUCH AS HOURS COMPARISON GRAPHS ETC. THAT PRESENTLY MAY NOT BE NECESSARY FOR GRIEVANCE PROCESSING. ALSO- THIS SPACE IS PROVIDED FOR ANY SPECIFIC INFORMATION YOU MAY NEED ON A CASE BY CASE BASIS OR IN THE EVENT A NEW CRITERION DEVELOPS BEFORE THERE IS AN OPPORTUNITY FOR ME TO REVISE THIS DOCUMENT REQUEST FORM.
- **LEAVE WINDOW DATA/PAGE FOR GRIEVANT:** THIS RECORD SHOWS EVERYTHING ON AN EMPLOYEE FROM A LEAVE PERSPECTIVE. MANAGEMENT MAY CLAIM THAT SUCH A REPORT DOES NOT EXIST. IT GIVES S/L BALANCE, S/L HOURS EARNED DURING CAREER, % OF SICK LEAVE USED WHICH IS TOTAL HOURS USED DIVIDED BY S/L HOURS EARNED, DEPEDENT CARE SICK LEAVE USAGE, FMLA HOURS USED DURING THE CALENDAR YEAR, NUMBER OF HOURS WORKED IN THE LAST 26 PAY PERIODS, NUMBER OF DAYS SINCE THE GRIEVANT'S LAST UNSCHEDULED ABSENCE, THE NUMBER OF UNSCHEDULED ABSENCES IN THE LAST 90, 180, 365 DAYS. *THIS IS A CRITICAL DOCUMENT TO SHOW THAT AN EMPLOYEE WITH A REGULAR ATTENANCE PROFILE IS BEING TREATED THE SAME AS ONE WITH AN IRREGULAR RECORD WITH NO CONSIDERATION TO INDIVIDUAL LEAVE RECORDS AND WELFARE OF THE INDIVIDUAL.*
- **COLOR CODES FOR LEAVE WINDOW PAGE (ABOVE):** THE REPORT IS COLOR CODED TO SHOW TYPE OF LEAVE , SCHEDULED VS UNSCHEDULED, SCHEDULE DAY OFF, HOLIDAY, FMLA ENTERED INTO A CALENDAR.
- **ABSENCE RECORD FOR: THRU:** THE SYSTEM CAN PRINT OUT A 12 MONTH CALENDAR SHOWING THE EMPLOYEE'S ABSENCE RECORD, IT CAN PRINT ONE FOR JUST ONE DAY, IT CAN SHOW TWO LEAVE TYPES IN ONE DAY,IT CAN SHOW A CHANGE OF REST DAY, A SCHEDULED OFF DAY, A MULTI DAY LEAVE, AND IT CAN PRINT A PS 3972. { FOR: IS WHAT DATE THRU: WHAT DATE PERIOD DO YOU WANT THIS REPORT }
- **T/A RECONCILIATION REPORT FROM:** THIS REPORT COMPARES LEAVE ENTERED ON THE FORM 3972 WITH PAYROLL RECORDS AND IS SUPPOSE TO REPORT ANY DIFFERENCES . THIS REPORT CAN ASSIST IN SHORT PAY SITUATIONS, OR TO ENFORCE COMPLIANCE WITH THE 3972 ACCURACY REQUIREMENTS OF ELM 510 AND LOCAL POLICIES. { FROM: WHAT DATE TO WHAT DATE , USUALLY PAY PERIODS [e.g. PP 20-01] . ALSO CAN DO IT FOR PAY LOCATION/EMPLOYEE

TIME AND ATTENDANCE RMD GUIDELINES FOR STEWARDS

DOCUMENTS AND THEIR USE RATIONALE

- **RMD ADMINISTRATION ACTION MESSAGE FOR:** THIS IS ANOTHER SO CALLED "TAKE ACTION" MESSAGE THAT IS ISSUED BY RMD. RMD WILL GIVE THE SUPERVISOR A MESSAGE { I CONTEND ITS BASED ON THE DATA INPUT AT THE ACO } THAT GIVES MESSAGES LIKE " *REVIEW ATTENDANCE RECORD*" " *FAILURE TO MAINTAIN REGULAR ATTENDANCE DETECTED.* THE ADMINISTRATIVE ACTION WINDOW WILL HAVE THE EMPLOYEE'S ABSENCE RECORD, AND A DISPLAY FOR ACTION REQUESTED WITH A BOX STATING THE CHARGE, DATE OF INCIDENT, DATE ACTION TAKEN, DATE THE ACTION WILL BE RETAINED FOR, NATURE OF ACTION, AND COMMENTS. MANAGEMENT WILL CLAIM YOU ARE NOT ENTITLED TO THIS. REMEMBER THESE ARE NOT PERSONAL NOTES. THIS MESSAGE IS BEING VIEWED BY AT LEAST TWO MAYBE FOUR ENTITIES { SUPV. , MDO, FMLA /SITE COORDINATOR , LABOR RELATIONS } . YOU ARE ENTITLED TO THIS DATA AND MUST GRIEVE SEPERATELY IF DENIED. [FOR: { NAME OF GRIEVANT }]
- **RMD TAKE ACTION MESSAGE:** THESE MESSAGES CAN COME FROM THE MDO TO A SUPERVISOR WHO FAILS TO TAKE ACTION, OR TO AN FMLA COORDINATOR WHO FAILS TO TAKE ACTION. WE SHOULDN'T BE USING THESE TOO MUCH UNLESS THE FMLA COORDINATOR IS NOT DOING THE PROPER JOB. THEN WE WANT TO SEE WHAT THE MDO OR PLANT MANAGER IS DOING ABOUT IT.
- **MESSAGES SENT TO AND FROM LABOR RELATIONS:** *FOR ATTENDANCE DISCIPLINE CHECK BOTH THESE BOXES.* MANAGEMENT MAY CLAIM THERE ARE NO SUCH MESSAGES OR THEY DELETED THEM. IF THEY DELETED THEM THAT MEANS THEY DID NOT CONCUR AND NO ACTION SHOULD HAVE BEEN TAKEN. IF THEY DO HAVE THEM AND LABOR RELATIONS CONCURRED WITH THE ACTION IT VIOLATES ARTICLE 16. 8 OF THE CBA. [THIS TAKE ACTION MESSAGE MAY BE MODIFIED DUE TO NATIONAL LEVEL DISPUTE ON THE ROLE OF LABOR RELATIONS]. EVEN SO WE WANT THIS DATA TO ENFORCE THE CONTRACT. IF LABOR RELATIONS SELECTS "TAKE ACTION" ON THEIR MESSAGE IT MEANS CONCURRENCE WITH THE PROPOSED ACTION. IF THEY DON'T THEY WILL TYPE IN COMMENTS. WE WANT THE COMMENTS. THESE MESSAGES ARE NOT PROTECTED BY THE PRIVACY ACT, THEY ARE NOT PERSONAL NOTES, IN FACT WHEN A MANAGER LOGS ON TO RMD A MESSAGE IS DISPLAYED THAT THEY *HAVE NO EXPECTATION OF PRIVACY USING THIS SYSTEM. EVEN THE SUPERVISOR NOTES WINDOW ON RMD STATES THE NOTES ARE PUBLIC INFORMATION AND REMINDS THE BOSSES TO BE "PROFESSIONAL."*
- **ATTENDANCE REVIEW LETTERS :** THIS REPORT SHOWS AN EMPLOYEE'S LEAVE AND WORK HISTORY, NUMBER OF UNSCHEDULED ABSENCES IN THE PAST YEAR, INQUIRIES TO THE SUPERVISOR IF ANYTHING WAS DONE ABOUT THE EMPLOYEE, IF NOT IT DEMANDS THE REASON. IF SOMETHING WAS DONE IT DEMANDS TO KNOW WHAT... INFORMAL DISCUSSION? OFFICIAL DISCUSSION? DISCIPLINARY NOTICE 1, NOTICE 2, NOTICE 3, REMOVAL, PLACE EMPLOYEE ON SICK LEAVE RESTRICTION { RSL } , DATE ACTION WAS TAKEN, AND DIRECTED TO RETURN THE LETTER TO THE ACS WITHIN 7 DAYS. THE ACS SIGNS AND DATE IT WHEN THE ARL IS REVIEWED.
- **SUMMARY MESSAGE REPORT:** RMD STORES MESSAGES. MANAGEMENT MAY CLAIM THEY NO LONGER HAVE THE MESSAGES. HOWEVER, THEY MAY BE RETRIEVED AT THE PRESS OF A BUTTON FROM "SAVED" MESSAGES. THIS REPORT CAN SHOW THE TAKE ACTION INFORMATION SENT FROM THE MDO TO THE SUPERVISOR, MDO TO FMLA COORDINATOR, SITE COORINATOR TO THE SUPERVISOR, AND THOSE SENT TO AND FROM LABOR RELATIONS. { FOR: SUPERVISOR'S NAME WHO TOOK THE DISCIPLINARY ACTION }
- **EMPLOYEE'S CORRECTIVE ACTION HISTORY:** THIS LITTLE JEWEL HAS AN EMPLOYEE'S DISCIPLINARY RECORD. IT SHOWS THE DATE , TYPE OF ACTION TAKEN, THE CHARGES OF THOSE ACTION, WHO THE UNION REP. WAS/IS, THE SUPERVISORS WHO TOOK THE ACTIONS, IT HAS A NOTICE THAT IT MUST NOT BE REVIEWED WITH OR GIVEN TO ANY UNION OFFICIAL, NOR REVIEWED WITH ANY OTHER SUPERVISOR, BUT ONLY FOR THE SUPERVISOR OF THE PAY LOCATION ON A NEED TO KNOW BASIS AND IT IS SUPPOSE TO BE DESTROYED AFTER BEING REVIEWED. ASK FOR IT ANYWAY. THINGS HAVE A WAY OF HANGING AROUND AT THE POST OFFICE. ON THE OTHER SIDE OF THE COIN A DOCUMENT LIKE THIS CAN SHOW HOW A GOOD EMPLOYEE IS BEING HARASSED BY RMD.
- **COPIES OF PAST ELEMENTS RELIED ON/CITED:** CHECK THIS BOX ANY TIME DISCIPLINE IS TAKEN. IF MANAGEMENT CLAIMS THERE IS NO CORRECTIVE ACTION HISTORY REPORT THEN WE HAVE PINNED THEM DOWN TO STATE WHAT THEY DID RELY ON. THIS HAS ALWAYS BEEN DOCUMENTATION NEEDED ON DISCIPLINE CASES. DO NOT LET THEM GET AWAY WITH CLAIMING YOU OR THE LOCAL GOT COPIES OF THE ACTIONS LAST TIME THEY WERE ISSUED. INSIST ON COPIES SO THAT WE CAN MAKE IMPROVEMENT COMPARRISONS . IF REFUSED GRIEVE THE REFUSAL.
- **COPY OF THE REVIEW AND CONCURRENCE FORM :** ON SUSPENSIONS AND REMOVALS A HIGHER LEVEL OFFICIAL (INSTALLATION HEAD MUST REVIEW AND CONCUR WITH THE SUPERVISOR'S PROPOSED ACTION. LABOR RELATIONS DOES NOT HAVE THAT UNILATERAL RIGHT. TO IMPOSE DISCIPLINE FROM THE TOP DOWN KILLS DUE PROCESS. { CHECK YOUR DUE PROCESS BOOKLET } USUALLY CONCURRENCES ARE WRITTEN ACTION REQUEST FORMS , FOLLOWED OR ATTACHED TO A PS-13. CHECK THE DATES AND SIGNATURES FOR COMPLIANCE WITH ARTICLE 16.8.
- **DATE OF EL 921 DAY IN COURT:** THE EL 921 DOES NOT SEPARATE ATTENDANCE DISCIPLINE FROM THIS CRITERIA. IN SOME LOCALS THEY HAVE A PRE-D{ISCIPLINARY} FORM. HOWEVER, EVEN A VERBAL DAY IN COURT MUST BE RECORDED. DEMAND TO KNOW WHEN THE EMPLOYEE WAS ALLOWED TO GIVE HIS/HER SIDE OF THE SITUATION AND WHAT CONSIDERATION WAS GIVEN TO THE WELFARE OF THE EMPLOYEE.
- **DATE OF INFORMAL DISCUSSION:** THE ARL MENTIONS INFORMAL DISCUSSION THEREFORE AN UNOFFICIAL DISCUSSION SHOULD HAVE BEEN GIVEN TO THE EMPLOYEE ABOUT HIS/HER ATTENDANCE DEFICIENCY.
- **DATE OF FORMAL DISCUSSION :** WE HAVE A PAST PRACTICE OF PROGRESSIVE DISCIPLINE THAT BEGINS WITH A DISCUSSION. WHEN WAS THE DISCUSSION HELD? WHAT WAS THE ABSENCE PROFILE LIKE AFTER THE DISCUSSION? DID IT IMPROVE? OR IS MANAGEMENT INSITUTING ITS OWN PEREMETERS ON WHAT IS IRREGULAR ATTENDANCE.
- **CARRIER CERTIFICATION/PROOF OF DELIVERY:** IF MANAGEMENT MAILS ANYTHING ON ATTENDANCE CAN THEY PROVE IT WAS DELIVERED TO THE EMPLOYEE'S LAST KNOW ADDRESS? DID EMPLOYEE MOVE AND NOTIFY MANAGEMENT?

AMERICAN POSTAL WORKERS UNION, AFL-CIO

GRIEVANT/UNION	NATURE OF ALLEGATION/VIOLATION [ ] DISCIPLINE [ ] ARTICLE 10 VIOLATION [ ] FMLA [ ] LEAVE POLICY [ ]TIME & ATTENDANCE/PAYROLL RECONCILATION [ ] PAST PRACTICE [ ] *OTHER:*

DATE OF REQUEST:_____

TO:_____ TITLE:_____

FROM:_____ TITLE:_____

Subject: REQUEST FOR INFORMATION & DOCUMENTATION RELATIVE TO PROCESSING A GRIEVANCE

We request the following documents and/or witnesses be made available to the Union in order to properly identify whether or not a grievance does exist, and if so, their relevancy to the grievance:

[ ]eRMS/RMD 3971 (s) for:
[ ]Hard Copy/Revised 3971 (s) for:
[ ] RMD 3972 for thru

[ ] Supv. Hard Copy of current 3972 for employee
[ ] 1260 for [ ] 1261 for

[ ] Call-In Log for

[ ] RMD Message(s) sent to FMLA Coordinator
[ ] Copy of Form 71 sent to employee & proof of delivery
[ ] Copy of FMLA Message/Data Report for:
[ ] Copy of FMLA Re-certification Report

[ ] Second Opinion Log Sheet

[ ] Copy of Employee's Attending Physician/Medical Report for:

[ ] Fitness for Duty Request & Supporting Report

[ ] On the Clock Analysis Report from: to: for:

[ ] Virtual ETC for:

[ ] EIA Window Data Page/Report for:

[ ] Restricted Sick Leave Notice

[ ] OTHER:

[ ] Leave Window Data/Page for grievant
[ ]Attendance Review Letter for:

[ ] Absence Record for: thru:
[ ] TA Reconciliation Report from: to: for:
[ ] RMD Adm. Action Message for:
[ ]RMD Take Action Message
[ ] Message to Labor Relations (Take Action)
[ ] Message from Labor Relations (Concurrence)
[ ] Attendance Review Letter (s) for
[ ]Summary of Message Report for:
[ ] Employee's Corrective Action History
[ ] Copies of Past Elements Relied on/cited
[ ] Copy of Review & Concurrence Form
[ ] Date of EL 921 Day In Court
[ ] Date of Informal Discussion (s)
[ ]Date of Formal Discussion
[ ] Copy of Disciplinary Notice
[ ] Carrier Certification/Proof of Delivery
[ ] Copies of Letter of Inquiry & proof of delivery
[ ] Date employee notified of leave policies
[ ] Clock Ring Errors Report for:
[ ] Missing Time Report [ ]OT Alert Report for:
[ ] Ring Disallowance Report for:
[ ] OT Leave Report for: [ ]Unauthorized OT Report
[ ] Tour Deviations Report for:
[ ] Authorized Higher Level Report for:
[ ] Automatic Higher Level Report for:
[ ]Employee Everything Report for grievant
[ ]Employee Moves Report for grievance
[ ] LTD Duty/Rehab Report
[ ] Pay Week Status Report for:
[ ] Daily Hours Report for:

NOTE: Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Sec. 2 requires the Employer make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration, or interpretation of the Agreement. Under 8a(5) of the National Labor Relations Act it is an Unfair Labor Practice for the Employer to fail to supply relevant information for the purpose of collective bargaining. Grievance processing is an extension of the collective bargaining process.

[ ] REQUEST APPROVED [ ] REQUEST DENIED (Give Reason)

Date:_____ Signed:_____

UNION USE ONLY
Documents Rec'd. ( )Yes( )No
( )Partial receipt of documents
Grievance Filed? ( )Yes
( )No, included in appeal.
Initials: *Date:*

TAB- 4

TIME AND ATTENDANCE / RMD CHECK LIST

RMD DISCIPLINE: TYPE OF ACTION TAKEN?[ ]REMOVAL[ ]14 SUSPENSION [ ] 7 DAY SUSP.[ ] L/W [ ]NA
[* requires explanation on Supplemental I.S.]

A) When was the last supervisory discussion on attendance/absences conducted ? _____
B) Was this official or unofficial? [ ]Official [ ]Unofficial
C) Does the PS 3972 show a pattern?[ ]Yes*[ ]No D) Does PS 3972 reconcile with charge dates? [ ]Yes[ ]No
E) Do the PS 3971(s) coincide with the charge dates? [ ]Yes [ ]No*
F) Are you challenging scheduled vs. unscheduled determination? [ ]Yes* [ ]No* [ ]NA*
G) Did management deviate from past practice? [ ]Yes* [ ]No
H) Did management fill out and issue you a copy of the Just Cause Evaluation Form? [ ]Yes [ ]No (grieve it)
I) Did management comply with the District Discipline Guidelines? [ ]Yes* [ ]No*
J) Did management violate the SOP? [ ]Yes* [ ]No
K) Did management violate the Official Local Leave Policy? [ ]Yes* [ ]No* [ ]NA*
L) Did management violate the District Absence Control Program? [ ]Yes* [ ]No* [ ]NA
M) Did management violate the CBA? [ ]Yes* [ ]No* [ ]NA*
N) Did management violate the LMOU? [ ]Yes* [ ]No* [ ]NA*
O) Did management violate the Handbooks? [ ]Yes* [ ]No* [ ]NA*
P) Did you secure a copy of the *Take Action* Message? [ ]Yes (attach) [ ]NO* why not?
Q) Did you secure a copy of the Message Sent to Labor Relations? [ ]Yes (attach) [ ]No* Why not?
R) Did you secure a copy of the *Administrative Action Window* ? [ ]Yes (attach) [ ]No* Why not?
S1) Did you secure a copy of the Message Reply From Labor Relations? [ ]Yes (attach) No* Why not?
S2) Did you secure a copy of the T/A Reconciliation Report? [ ]Yes (attach) [ ]No* Why not?
S3) Did you secure a copy of the Review & Concurrence Form? [ ]Yes (attach) No* Why not?
T) Did you file separate individual grievances for denials of documentation? [ ]Yes [ ]No [*you must do so*]
U1) Did the supervisor conduct a Day in Court interview prior to taking action? [ ]Yes* [ ]No*
U2) Did you secure copy of employee's Corrective Action History? [ ]Yes (attach) [ ]No (requires grievance)
U3) Did you secure a copy of the past elements cited on the discipline notice?[ ]Yes (attach) [ ]No* why not?
U4) Has a grievance been filed on any of the past elements cited? [ ]Yes* which ones [ ]No* why not?
V) Did you secure a copy of the Call-In Logs for charge dates? [ ]Yes (attach) No* why not
W) Did you secure copies of all PS 3971s cited on charge letter? [ ]Yes (attach) No* You must do so!
X) Was the RMD Site Coordinator involved in any way in the decision to issue action? [ ]Yes* [ ]No
Y) Did the supervisor rely solely on RMD generated data? [ ]Yes* [ ]No*
Z) Have you applied all the other required reviews and protocols on investigating & documenting grievances and secured all relevant documents whether listed here or not? [ ]Yes [ ]No* Why not?

REMEDY: State in clear and concise language what you are requesting as a remedy?

PRE STEP 1 INTERVIEW: Your investigative interview with the supervisor revealed? *
[ ] Supervisor relied solely on ACO data [ ]Supervisor did not make an independent decision
[ ] Supervisor could not explain why decision on leave request was made
[ ] Supervisor refused to discuss the issues [ ] Supervisor could not resolve the issue?

STEP 1 DATA: Date of Step 1 Meeting? _____Time:_____Supv:_____

Was remedy requested at Step 1 the same as above? [ ]Yes [ ]No*

At Step 1 the grievance was : [ ]Sustained (secure it in writing [ ]Resolved (secure in writing [ ]Settled (secure in writing) [ ]Denied (secure initials on grievance form)

SUPERVISOR'S REASON FOR DENIAL:

Your Signature:	Date Completed:	SUBMIT WITHIN TWO DAYS OF SECURING SUPERVISOR'S INITIALS

[ ] Attach Document Request Form [ ]Attach Documents/Discipline [ ]Attach Statement Form

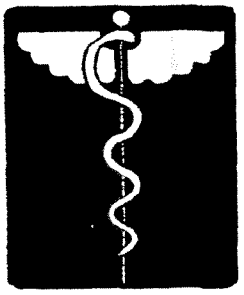
TAB- 5

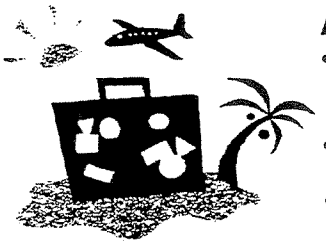
CHEAT SHEET

(ARTICLE 10)
RMD / TIME AND ATTENDANCE
SAMPLE GRIEVANCE LANGUAGE

Article 9 continued.....

- The grievant was not properly paid and the supervisor has not made the adjustment.
- The grievant was short paid and requested an adjustment. The supervisor improperly executed the PS 2243 which has caused the delay and failure to make the grievant whole.
- The grievant was over paid and requested a Waiver of Erroneous Payment.
- Management did not follow (past practice, District, Plant, Installation) policy and grant the grievant a salary advance.
- The deferment of the step increase was improper .
- (The grievant was on the roles of OWCP, The grievant requested leave in smallest possible units but was denied,
- The grievant was unilaterally given LWOP although he(she) had sufficient sick (annual) leave to be in a paid status.)





Article 10

- Management has not properly credited the grievant with sick (annual) leave credit based on (seniority, years of credible service, hours worked.)
- The Employer improperly deducted (sick,annual leave) from the grievant's leave balance.
- The unilateral imposition of LWOP for the time requested was improper.

- Management circumvented the grievant's contractual right to annual leave when the casual (TE) was granted the time off.
- The supervisor has unilaterally changed the grievant's scheduled annual leave as provided for in the CBA(& LMOU).
- Management is failing to comply with the amount of workers permitted to be off as provided for in the LMOU.
- The grievant was unreasonably denied LWOP for vacation purposes (other purposes per ELM 510).
- The grievant's request for emergency annual leave was denied based on the supervisor's position that annual leave must be approved in advance. According to regulations emergencies are the exception for advance requests.
- The AWOL determination is improper the grievant provided substantiation for the absence.
- The grievant's over all attendance profile (record) does not demonstrate an abuse of leave or leave deficiencies.
- The AWOL is unwarranted.
- The supervisor's reasons for denying the leave are unreasonable (are not supported by the record).
- The AWOL appears to be automatic and therefore a violation of the (CBA, LMOU, ELM, Step 4 Decisions).
- The absence was for less than three days (yet the supervisor refused to accept the grievant's verbal certification, supervisor refused to listen to the grievant's verbal certification, the verbal certification was ignored).
- The supervisor refused to allow the grievant to exercise the (10 day, 2 day,5 day etc.) period (per LMOU, past practice, Labor-Mgt Committee, Step 2 decision, etc) to submit the substantiation.
- The supervisor unilaterally and improper refused to accept the grievant's medical documentation which appears within the criteria of the ELM.
- There was no reason stated on the PS 3971 for the superviso's (AWOL determination, denial of leave as requested)
- The grievant was unavoidably late but the supervisor refused to allow him(her) to make up the time.
- There was no basis for the supervisor to simply charge AWOL for the tardy (the grievant's record does not warrant this action, there was no previous discussion, the grievant was only six minutes late,)
- The grievant was charged with Absent Overtime (AOT). The AWOL is improper(was improper) (there are established policies for recording AOT, AOT is not a reason for denying leave, the OT was not properly scheduled, the grievant was unaware of the mandate to work OT, the grievant misunderstood the supervisor).
- The grievant was charged AWOL for short rings. However, the time clocks were not (working, synchronized with the wall clocks, accepting the grievant cards, functioning properly since TACS was introduced, cross footed properly).
- The grievant was sent home by management (by nurse, doctor) and therefore the AWOL determination is improper.
- Management did not properly apply the regulations as provided in ELM 510 , the particulars will be fully developed at the Step 2 meeting.
- The grievant appears to be eligible for administrative leave under the fact circumstances, including .....)

- The grievant was improperly scheduled in. He(she) was on jury duty.
- The grievant called in for leave during his/jury duty.
- The grievant made reasonable efforts to comply with the jury duty practice(policy). Apparently management improply granted the grievant leave (improperly paid the grievant for time wherein the grievant asked to be excused).
- The grievant applied for military service leave but management misapplied the provisions (ignored the orders, demanded an improper request of the grievant. Deliberately ignored the provisions of the ELM).
- The grievant applied for maternity leave and was denied.
- The grievant informed management of her maternity status and requested leave in units to insure protected status pursuant to Article 6. Management unreasonably denied request.
- The grievant provided substantiation for her maternity status. The denial of such leave was improper.
- The grievant should not have been charged with the leave used for maternity purposes.
- The grievant requested leave for paternity reasons which were unreasonably denied by the supervisor.
- The basis for denial of the paternity leave appears to be prohibited discriminatory action on the part of supervisor.
- The denial of sick leave to care for the grievant's (son, daughter, spouse, parent) was improper and contrary to the intent of the parties as to dependent care.
- The supervisor's definition of serious health condition varied from those agreed to by the parties in the CBA/MOU.
- The time off for stress was related to the grievant's (spouse, parent, etc.) and not the employee therefore he/she does not need clearance.
- The supervisor's definition of health care provider for this instance is improper.
- LWOP may be discretionary , how ever the arbitrary and capricious denial of LWOP violates the spirit and intent of the CBA and ELM.
- Forcing the grievant to use his(her) leave involuntarily only compounded the situation.
- Forcing the grievant to be on a LWOP status for such a long period of time in effect is disciplinary lay off (constructive suspension, tantamount to a removal action).
- The grievant was improperly placed on RSL.
- The grievant is not on RSL and the demand for medical documentation is improper.
- There is no evidence of the Service's need to protect its interests. The supervisor (manager) is using this as an excuse to improperly demand medical certification.
- The absence was for less than three (four) days and therefore the grievant's verbal certification should suffice.
- The manager(Postmaster, MDO, SDO, District Manager) had imposed a blanket AWOL policy which was improper.
- The blanket policy demanding employees to provide medical certifications for call ins (on Saturdays, Holidays, drop day OT etc.) is improper and violates the long standing Step 4 decision executed in 1982.
- The rejection of the medical certificate simply because the word(s) (under my care, seen in my office) was improper all the other necessary elements of the substantiation are on the form.
- The demand for a diagnosis is improper and violates the grievant's privacy.
- The supervisor improperly rejected the medical slip because it(had a stamped signature. It has long been understood by the parties at Step 4 that a rubber stamp signature is acceptable; was faxed. Pursuant to a Step 4 decision reached in 1985 a facsimile signature is acceptable; it was signed by a nurse practitioner , [nurse, other attending practitioner] . Pursuant to the understanding of the parties the medical document is valid.)
- There was no justification for rejecting the medical document because it looked altered. The grievant gave a reasonable explanation for the change. If management questioned the propriety of the document it could have validated it through the normal procedures.
- The grievant's request for advance sick leave was unreasonably denied. There was evidence that the grievant would return to duty as supported by the medical document(s).
- The grievant's pay for leave taken was improperly modified. The grievant should have been paid at the higher rate of pay.
- The denial of military leave for a PTF was improper. ELM Chap 517 allows PTFs to take military leave.
- Management's imposition of a maximum 15 days of military leave was improper since the grievant can also take his (her) own annual leave (or take LWOP).
- The requirement that the grievant call in twice on a given day is improper and was long settled at Step 4 of the grievant-arbitration procedure.
- The grievant submitted a PS 3971 in advance . The unscheduled determination is unwarranted. The supervisor purposely delayed the approval of the leave requested.
- The grievant (mailed, hand delivered) the PS 3971 for the absence and therefore should not have been charged AWOL No Call.
- The supervisor altered the PS 3971.
- The grievant has a right to change the PS 3971 to comport with his(her) true intent.

Time & Attendance Article 10 continued

- The supervisor is making a distinction of the absence code as a separate category of and thereby making an erroneous determination on the leave request.

RSL

- The grievant is not on Restricted Sick Leave List (SLR)
- The grievant was improperly placed on RSL in violation of ELM 513.391.
- The grievant's sick leave balance is being used as a meter for placement on RSL.
- The prerequisite discussion(s) were not given to the grievant prior to placement on RSL.
- The grievant was not placed on RSL as per the Local Leave Policy.
- The PS 3972 is not accurate and therefore not a basis for placing the grievant on RSL.
- There was actually an improvement of the number of hours charged to S/L after the discussion given.
- The grievant's name was not properly placed on RSL in writing with the expectations established.
- There is no evidence, other than the supervisor's hearsay information, that the grievant is actually on RSL.
- There has been a substantial decrease in absences charged to sick leave and the grievant's names should be removed from the Restricted Sick leave Listing.

CALL IN / NO CALL

- The grievant did call but the system apparently failed to make the proper recording.
- The grievant (sent in, faxed, e-mailed) a PS 3971 and therefore did not have to call in.
- The supervisor made an improper assumption when he/she turned the grievant's time card and executed a PS 3971 for no call, no show.
- The supervisor misread the RMD Messages generated and took improper action against the grievant.
- The supervisor did not properly complete action on the early check out request of the grievant but instead waited for the end of tour to turn in the data to the ACO.
- There is no requirement per official policy to call in. The grievant submitted his/her request for leave in writing.
- The PS 3972 (hard copy) is inconsistent with the RMD 3972 and therefore a violation of the SOP and Regulations.
- The ACS violated the SOP and deviated from the RMD dialogue (confusing , agitating, abusing) the grievant.
- **The ACS violated the Coaching For Performance Handbook in that (s)he was sarcastic and disrespectful when taking the grievant's call and was acting in an irresponsible manner.**
- **The ACS did not clarify or properly state expectations and was remiss in the instructions given.**
- **The ACS did not give the grievant a choice nor calmly state the consequences.**
- **The ACS gave too many expectations (more than 5) which confused the grievant.**
- **The grievant did not threat the ACS but was merely attempting to state his/her moral conviction on the issue.**
- **The ACS was intrusive in violation of the SOP and management directive issued to employees.**
- **The ACS did not allow for the proper response of the grievant in regard to (On the job injury, FMLA, sick leave, duration of absence, annual leave, LWOP) thereby creating a situation exposing the grievant to (improper leave denial, improper discipline, improper FMLA determination).**
- **The grievant sustained an on the job injury, however, it has been some time since the supervisor updated the grievant on the procedures for reporting an injury, The grievant called in and reported an injury had occurred, and in effect the inaction of the ACS tried to waive the employee's right to report and/or claim compensation under FECA.**
- **The grievant was not advised by the ACS of his/her right to elect COP.**
- **Although the grievant initially requested leave for an on the job injury the ACS failed to inform him that he could request COP in lieu of previously requested sick (annual) leave as per ELM 543.42.c**
- **The grievant's immediate supervisor did not provide the grievant with a CA-1 (CA-2).**
- **The ACS either did not report the injury related absence to the Control Office or the Control Office was remiss in complying with ELM 544.12 thereby causing the grievant to suffer and be adversely affected.**
- **The absence was related to a recurrence but not properly reported or recorded by the ACS.**
- **The ACS's inaction or the failure of the Control Office to properly act based on RMD information caused an unreasonable delay in medical treatment after it was reported.**
- **The call in to the ACS in effect was a report of the injury by the employee and it was USPS that failed to issue a CA-1 promptly.**

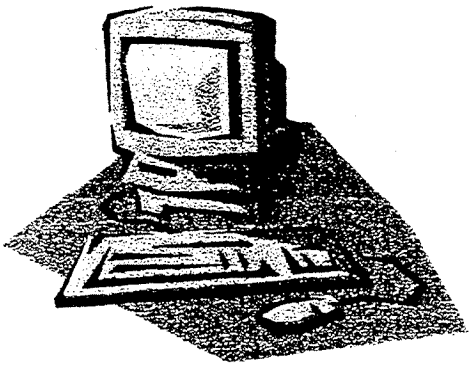
Article 10 Time & Attendance continued

- The grievant was not absent on sick leave over 21 days. There is no criteria for medical clearance.
- The medical certification was sufficiently detailed. Management could have reasonably made a determination the grievant could return to work without hazard to self or others.
- Management violated Chap. 865 by improperly applying the return to duty regulations.
- The medical certification contained information that the grievant was fit for duty without hazard to him(her)self or others.
- The medical certification contained information indicating restrictions that should have been considered for accommodation (but were ignored , but were rejected, but were distorted) by the (manager, nurse, supervisor, medical unit, medical consultant).
- In accordance with ELM 865.4 management should have reassigned the grievant away from the environment and/or situation that had a direct bearing on the condition which caused the inability to work.
- Management insisted that the grievant perform full duties that the employee stated (s)he could not perform in violation of ELM 865.52 and compounded the situation (causing a need to take further leave, creating a situation that exposed the grievant to further injury, ignoring the welfare of the grievant).
- The Employer (supervisor, medical unit, manager) unreasonably delayed the grievant's return to duty although the grievant had submitted proper medical information/documentation within sufficient time for review.

PS 3971

- The supervisor failed to (allow the grievant to correct the PS 3971, sign the PS 3971, give grievant a copy of the PS 3971, make necessary changes on the 3971, allow the employee to change the type of leave (s)he was actually applying for, make a determination of scheduled vs. unscheduled, give a valid reason for the disapproval, give a valid reason for the AWOL, take timely action on the leave application, make a notation on reverse side as indicated for documentation required)
- The grievant was not permitted to make use of the Remarks column of the PS 3971.
- The grievant stated his/her reason on the Remarks column.
- The grievant was not allowed to acknowledge the AWOL as per the LMOU in the remarks column of Ps 3971.
- The date submitted and (the time of call or request, date of person recording absence) thereby indicating an in accurate document (that was not allowed to be corrected, that altered the grievant's(record, leave, status.)
- The PS 3971 indicated that the request was approved in advance therefore the charge date should not be used to the detriment of the grievant.
- The supervisor took no action on the leave request.
- The dates on the PS 3971 clearly show that there were (inconsistencies, errors, managerial manipulation of the record, detrimental determinations made.)
- The reverse side of the PS 3971 is blank.
- The reverse side of the PS 3971 as filled out by the supervisor is (inconsistent with the front data, in error, incomplete, confusing, a violation of the FMLA, improperly annotated, being misread by the (employee, supervisor, ACS, manager).
- The unscheduled determination on the PS 3971 is (incorrect, being challenged as inconsistent with EL-510-83-9 Management Instruction, being challenged as cited on the charge letter now as per the 1984 Gildea Memo.)
- The grievant made his/her request in writing on PS 3971 as per ELM 512.421 (in advance, upon return, as soon as possible, via FAX, via telegram, via e-mail scanned and sent to USPS).
- The PS 3971(s) in question should have been disposed of as per ELM 512.423
- The second (subsequent) day(s) after the initial call in (submission of medical substantiation) should not have been marked as unscheduled. Once valid documentation is received the remainder of the absence should have been recorded as scheduled.
- The grievant spoke directly with the immediate supervisor and the leave was requested in advance wherein the supervisor decided the employee did not have to come to work.
- The PS 3971 for absent for supposed scheduled OT is not an official request for leave and therefore the grievant's signature is not required per EL-510-83-9.

ARTICLE 10-RMD TIME & ATTENDANCE



- Facility management has violated their own SOP on RMD Attendance Control by.....
- ELM 666.81 does not define "regular" the unilateral imposition of local management's criterion without negotiation with Union violates past practice.
- The ELM 666.82 requires only satisfactory evidence be provided later. The grievant rendered evidence (in the form of verbal certification, in the form of a written medical document, in the form of a written memo from his/her spouse[parent, pastor, teacher, social worker etc.] , in the form of a receipt, voucher, tow slip etc).
- There is no official requirement in the ELM that the grievant schedule the medical appointment before or after tour of duty. The grievant is subject to the availability of the practitioner.
- The grievant did not deliberately put him(her)self in a situation knowingly that created the reason for not being able to report for duty.
- The grievant was a victim of circumstance(s) and was therefore unable to be available for duty. He(she) did however, notify management of the absence and request to be absent.
- The grievant's attendance profile does reveal that he/she is regular in attendance.
- The grievant did have an actual emergency and was unable to secure advance permission, but did notify the proper official as soon as able and therefore should not be considered absent without leave.
- The grievant was tardy through no real fault of his/her own.
- The supervisor has in effect falsified a report of absence by making unwarranted alterations to the PS 3971 (after it was signed by the employee, after it was issued to the grievant, after the grievant made corrections to his/her request)
- The disciplinary measure taken against the grievant is not appropriate for the amount of leave used and violates ELM 666.86 and ignores the welfare of the employee undermining the USPS Administrative policy enumerated in 511.1 of the ELM.
- The designated union official is not properly recording leave in accordance with the F-22(F-21) and is using RMD in a counter productive manner altering the local business rules and substituting unknown, (unwarranted, non negotiated) local parameters.
- The imposition of RMD regulations on the TE is prohibited by postal regulations.
- The grievant was not unscheduled and such designation violates regulations since the absence was in deed requested in advance but not acted upon by the supervisor.
- The supervisor did not inform the grievant of the leave regulations but assumed that the employee should know. There is no evidence that the grievant was made aware of the RMD process or for that matter informed of the ELM provisions or local leave policies.
- The supervisor has not discussed the grievant's attendance records but merely relied on the ACS's dialogue as an assurance that the grievant was informed of the alleged attendance irregularities,
- The grievant was unable to physically call and therefore another individual called in.
- There is nothing that states the grievant was be medically unable to call in. Apparently the scope of the emergent condition was not what kept the grievant from personally calling.
- The grievant made written notification by faxing the PS 3971 to the (MDO's Office, Mgrs. Supt.'s ACO, ASC, Supervisor).
- The grievant readily concedes that the call(s) was not made from his(her) home. Nothing in the official leave regulations mandates a call from home.
- The grievant was under no obligation to answer a phone call from management.
- Management can not provide evidence that the grievant knew the return call *69 was from management.

- The grievant became ill out of town and was not required to call from home.
- The grievant's (spouse, child, parent) made the call because the grievant was unable to.
- The grievant gave the duration of the absence clearly.
- The demand to make a second call for the same absence was contrary to the Step 4 grievance decision reached in 1985.
- It is a violation of accepted past practice to force the grievant to call in every day thus exposing him/her to unscheduled determinations.
- Requiring a daily call in if the grievant has not seen a doctor in effects is unilateral RSL.

RMD Step 2 Language continued....

- Nothing in the nature of time and attendance has changed for management to impose a daily call in when past practice has not warranted such a call. RMD was proclaimed as not changing past practice, office policy and local attendance procedures.
- In effect management is forcing the grievant to go to a doctor for an absence wherein verbal certification could have sufficed, especially given the grievant's regular attendance profile.
- Management can not show that the past practice of calling in once with the request and duration have been an economic hardship on the Employer.
- Efficiency is not a concern of the Employer since there is no evidence to show that the past practice of calling in once and stating the duration was inefficient.
- Management claims that RMD did not change the leave regulations of the USPS therefore the unilateral imposition of a second call in is improper and volatile of past practice.
- RMD was not implemented during a negotiation period. Article 10 was still in full force and effect.
- The grievant complied with the requirement that he(she) notify management of the emergency and the expected duration of the absence. He(she) should not have been charged AWOL No Call for_____.
- In effect the grievant gave the ACS sufficient information to determine the absence was FMLA covered, but the failure of the ACS (FMLA Coordinator, Supervisor) to issue a "completed" PS 3971 along with Pub.71 was a direct violation of ELM 513.323 (for S/L) , ELM 512.412(for A/L).
- The oppressive manner in which RMD is applied in the office violates the normal leave policies in violation of ELM 513.32
- The grievant was [ill, due for a physical exam related to her pregnancy, seen for a medical (dental, optical) exam (treatment) during regular scheduled tour of duty, caring for a dependent individual, treated at the VA] but was not fully aware of a demand for medical documentation since the absence was not more than three days.
- The grievant suffered from an unexpected illness (injury) and did request sick leave and signed a PS 3971 which the supervisor acknowledges receiving. However, leave was not granted and no reasonable reason given for the denial.
- The supervisor did not give the employee a copy of the PS 3971(s) as required by postal regulations. The employee assumed the absence would not result in an adverse action.
- The grievant was under the impression that the leave was approved after discussing the issue with the supervisor since the supervisor did not issue the grievant his/her copy of the PS 3971(s).
- The supervisor gave AWOL as a reason for granting AWOL in violation of the ELM.
- The supervisor did not properly note the reason for disapproving the leave but merely determined AWOL.
- The supervisor did not give a reason for the AWOL undermining the intent of official leave regulations on the disapproval of sick leave requested.
- The grievant offered other evidence of incapacity yet the supervisor ignored it in violation of ELM 513.361.
- Simply because the medical document contained the verbiage "Under my care" is no reason for the supervisor to reject the document. All the other essential information is contained in the document.
- The demand for a prognosis in the medical substantiation violates the CBA and the long stated policy that it is not a criterion for the approval of leave.
- The absence was for less than three days and the verbal certification was ignored when in fact the grievant's overall regular attendance record gives credence to the explanation.
- The grievant realized the absence was for more than three days and provided medical substantiation. The imposition of more demand was inappropriate.
- The grievant requested leave properly, informed of a prolonged absence of an extended period and provided medical documentation every thirty days of his(her) incapacity to work.
- The medical document stated the grievant was able to return to duty (work) and there was no limitations listed therefore the rejection of the document violates ELM 513.365.
- There was no apparent need for a Fitness For Duty Exam since a complete report to support the request was not (issued, supplied, established, submitted) by the supervisor.
- The grievant was forced to complete the PS 3971 off the clock.
- The grievant was not allowed to complete the PS 3971 on the clock in violation of (FLSA, Step 4 decision, past practice, ELM 513.332)
- The failure to allow the grievant to complete the PS 3971 on the clock only compounded the matter and made the grievant use up more leave.

DOCUMENTATION / INFORMATION

REQUIRED FOR PROCESSING

ABSENTEEISM GRIEVANCES

DOCUMENTATION / INFORMATION REQUIRED FOR PROCESSING ABSENTEEISM GRIEVANCE

1. A copy of the issuing supervisor's request for disciplinary action.
2. Notice of charges.
3. Copy of any previous discipline charges cited as elements of past record.
4. Copy of grievance settlements and/or current status of any grievances filed in relation to any element of past record cited in disciplinary notice.
5. Absence analysis Form 3972 (including 30 day period following a removal notice).
6. 3971(s) for absences cited in charges.
7. Reasons for each absence.
8. Any medical documentation submitted to support absences.
9. Any existing local attendance guidelines / policies.
10. Copy of document with concurrence signature (if it exists).
11. 3972(s) of other employees under the same issuing supervisor's jurisdiction if disparate treatment argument is used.
12. Supervisors attendance / discipline record if relevant and cited as disparate argument.
13. Supervisor's 2608 (step one grievance summary).
14. Grievant's clock rings for any date a "discussion" took place if grievant denied a discussion was held (for PSDS offices).
15. Copy of your information request form.
16. Any offers of settlement at step 1 or step 2.
17. Memo of interview with supervisor that issued the discipline. Interview is to:

    A. Determine "what actions were taken to improve attendance before requesting discipline."
    B. Ask for dates, times of discussions, where held and what was discussed. (If they reference discussion in 'A' above.)

C. Go over each absence and inquire if supervisor knows why grievant was off.
D. Name of concurring official.

18. A STEWARD SUMMARY - telling us briefly what the case is about and what your arguments are.

19. Development and incorporation into the official grievance of all arguments including mitigating or extenuating circumstances, e.g.;

A. Due Process Arguments:

1. No pre-disciplinary interview (Pre-D) EL-921.
2. No review / concurrence by higher level authority (Art. 16.8).
3. Expunged, expired, or unadjudicated discipline cited as element of past record.
4. No proper 10/30 day notice.
5. Supervisor had no authority to settle.
6. Failed to provide veteran's preference rights.
7. Discipline was not progressive.

B. Delay in issuing discipline, considerable time between last absence and issuance of discipline.
C. No consideration to reasons for absences.
*Also, a set number or % which results in automatic discipline.
D. Invalid or erroneous charges (not just "typo's")
E. Number of absences or % of absenteeism within average for office.
F. Disparate treatment (similar situated employees).
G. Substantial improvement since last discussion / disciplinary action.
H. Absences mostly related to same illness / injury.
*Legitimate/Bonafide illness supported by Med. Doc. which discipline cannot cure.
I. Absences related to specific ailment / injury which is temporary in nature, e.g., broken bones, pregnancy, flu, etc.
* Long period of absences for surgery, etc., vs. short-term sporadic absences.
J. Transportation problems of temporary nature.
K. Absences caused by unusual circumstances beyond grievant's control.
L. Job related injury absences (legitimate, not "alleged").
M. FMLA absences (legitimate, not "alleged").
N. Family problems, e.g., single parent, divorce proceedings, death of family member, sick child.
O. Participation in EAP, AA, or other similar program.
P. Scheduled absences / attempted scheduled absences.
Q. No "pattern" of sick leave use - no evidence of abuse. Absences not connected to N/S days.
R. No AWOL charges - All leave has been approved.
S. Long periods of satisfactory attendance in employment history.
T. Grievant on OTDL and/or volunteers for holidays.
U. Employee has sick leave balance, using S.L. at a rate less than what is

earned.

V. No previous discipline for absenteeism (suspension, removal cases).
W. Part day absences (shows attempting to work even if sick).
X. Long-term employment (removal cases).
Y. Satisfactory / good work history, awards, commendations (removal cases).
Z. Attitude of employee toward job.