FMLA ARBITRATION AWARDS

CLERK CRAFT CONVENTION 2007

PAUL HERN & MORLINE GUILLORY

NATIONAL BUSINESS AGENTS

EMPLOYER/EMPLOYEE NOTICE REQUIREMENTS

AIRS #31526
ARBITRATOR: DILEONE KLEIN
LOCATION: CAROL STREAM, IL
YEAR: 1999

Grievant was not discharged for just cause for AWOL. Management was clearly on notice of the exact nature of the illness.

AIRS #34988
ARBITRATOR: MCALLISTER
LOCATION: ROYAL OAK, MI
YEAR: 2000

The arbitrator held that a LCA is not self-executing. The Postal Service must establish it had just cause to issue a removal. The Postal Service compounded the effects of silence by failing to apprise the Grievant that she had requalified for FMLA.

AIRS #36251
ARBITRATOR: DILEONE KLEIN
LOCATION: COLUMBUS, OH
YEAR: 2001

No consideration was given to the employee's explanation of her absences and management had not discussed the possibility that Grievant's breathing problems and back problems might be FMLA qualifying conditions. No effort was made to provide the employee with FMLA forms. The arbitrator held that the Postal Service failed to meet its obligations under FMLA.

AIRS #30366
ARBITRATOR: PARKINSON
LOCATION: CLEVELAND, OH
YEAR: 1998

Just cause existed for discharge of employee for failure to maintain a regular work schedule. Emrloyee failed in his obligation to communicate to the Postal Service information that would indicate a possible FMLA situation.

AIRS #27415
ARBITRATOR: DILEONE KLEIN
LOCATION: GAITHERSBURG, MD
YEAR: 1997

Charging the grievant with AWOL was appropriate under the circumstances. Employee denied protection since it was clear that her need was foreseeable and she did not notify the employer in advance.

AIRS #27005
ARBITRATOR: GRAHAM
LOCATION: SOUTHEASTERN, PA
YEAR: 1997

Removal of grievant for violation of LCA for poor attendance was not proper. The grievant communicated with her supervisor both verbally and in writing about her medical condition. Employee provided more than adequate notice that she was ill with a condition that required surgery.

AIRS #31574
ARBITRATOR: STALLWORTH
LOCATION: VANCOUVER, WA
YEAR: 1999

Notice of Proposed Removal was improper under the facts and circumstances. Condition affected the employee's ability to be regular in attendance and to provide medical documentation on a regular basis. (Arbitrator ordered a fitness for duty exam.)

AIRS #38985
ARBITRATOR: PARKINSON
LOCATION: CLEVELAND, OH
YEAR: 2003

Employees can be responsible for knowing about their FMLA balances and entitlements.

AIRS #39242
ARBITRATOR: WOOTERS
LOCATION: BROCTON, MA
YEAR: 2003

Mgt. failed to give timely notice of the employee's rights under FMLA. Mgt. was entitled to require a fitness for duty exam before permitting the employee to return to work.

AIRS #36112
ARBITRATOR: ZOBRAK
LOCATION: CINCINNATI, OH
YEAR: 2001

Absences should have been considered FMLA due to management's failure to notify the grievant within 2 business days that she was not eligible for FMLA.

AIRS #36316
ARBITRATOR: MARGO NEWMAN
LOCATION: COLUMBUS, OH
YEAR: 2001

"The touchstone of the regulations and the Employer's requirements of providing Pub. 71 on each occasion they request FMLA leave, is to assure that an employee is aware of her responsibilities concerning FMLA documentation and her rights thereunder."

AIRS #36663
ARBITRATOR: ROBERTS
LOCATION: MIDLOTHIAN, VA
YEAR: 2001

FMLA regulations state that if the employer fails to provide notification within 2 days, the employee is deemed to be eligible.

AIRS #44403
ARBITRATOR: GUDENBERG
LOCATION: QUEENS, NY
YEAR: 2006

PS Form 2492 was not filled out by the USPS stating the reason for the fitness for duty exam. Mgt. did not comply with the USPS letter to APWU dated March 12, 2000.

Return to Duty

AIRS #32724
ARBITRATOR: DISSEN
LOCATION: WARRENDALE, PA
YEAR: 2000

Management could not condition the grievant's return to work from an eight day absence on the production of a certification of fitness for duty and a detailed medical report from grievant's physician. Management did not question the legitimacy of the absence, but had assumed that the absence related to a psychiatric condition. The grievant was to be reimbursed the cost of obtaining the private physician's certification of fitness for duty, to the extent that the same could be documented, including travel expenses, as well as travel expenses to the medical unit.

AIRS #35108
ARBITRATOR: HOFFMAN
LOCATION: WEST PALM BEACH, FL
YEAR: 2001

Management's delay in returning the grievant to work after an extended illness by requiring information it already had was inappropriate. The grievant complied with the applicable Service rule and FMLA requirements.

AIRS #32667
ARBITRATOR: NEWMAN
LOCATION: PITTSBURGH, PA
YEAR: 2000

The Service improperly delayed the grievant's return to duty after an FMLA absence.

AIRS #32074
ARBITRATOR: GOLDSTEIN
LOCATION: CHICAGO, IL
YEAR: 1999

There was no just cause to remove the grievant. Employee had FMLA documentation on record that was ignored by management. However the fact that employee ignored request for fitness for duty exam because she believed she was not obligated to submit to the exam. The arbitrator found that the "obey now, grieve later" principle was applicable in this case. Therefore, he ordered her reinstated but without back pay.

AIRS #34727
ARBITRATOR: HOFFMAN
LOCATION: WEST PALM BEACH, FL
YEAR: 2000

A request for another updated certification only five days before the Grievant's return to duty was redundant and caused a delay in grievant's return to work.

AIRS #35426
ARBITRATOR: RIMMEL
LOCATION: EASTON, MD
YEAR: 2000

The employee was denied the right to return to work upon release by his attending physician. Management failed to provide timely and adequate notice to employee of rights and obligations. Additionally management failed to provide grievant "specific reason" why he had been scheduled for a FFD exam as called for under the ELM regulations.

AIRS #31268
ARBITRATOR: GOLDSTEIN
LOCATION: TOPEKA, KS
YEAR: 1999

Once management allowed the grievant to return to work and accepted the initial FMLA certification without question, it was unreasonable to ask the grievant to obtain light duty forms 6 days later on her own time.

AIRS #31238
ARBITRATOR: WOLF
LOCATION: CHARLESTON, WV
YEAR: 1999

Postal Service violated FMLA by asking for return to duty certification after a one day absence. The arbitrator ordered that the grievant be restored 8 hours of sick leave.

AIRS #33642
ARBITRATOR: ZOBRAK
LOCATION: YOUNGSTOWN, OH
YEAR: 2000

The grievant's OWCP claim was denied and he was given an offer to return to work. The grievant obtained the necessary medical certification and hand carried the documentation to the Youngstown Post Office. The two-week delay in returning the employee to duty was excessive and unjustified. The arbitrator ordered the grievant to be made whole for lost wages, shift differential, premium pay and holiday pay for the period between August 30, 1997 and the actual date of return to employment.

Citing FMLA Protected Days in Discipline

AIRS #36663
ARBITRATOR: ROBERTS
LOCATION: MIDLOTHIAN, VA
YEAR: 2001

The notice of removal was held to be improper in this case. The arbitrator found that the grievant should have been on FMLA and the discipline was therefore inappropriate.

AIRS #30333
ARBITRATOR: FULLMER
LOCATION: PHILADELPHIA BMC
YEAR: 1998

The removal of the grievant for failing to maintain regular attendance and violation of a last chance settlement was not for just cause. One portion of cited absences was covered by claim for FMLA leave and therefore protected against use in discipline.

AIRS #28159
ARBITRATOR: FRITSCH
LOCATION: LONG ISLAND, NY
YEAR: 1997

Removal for continuously being absent and irregular in attendance was reduced to 30-day suspension. The reduction in penalty was due in part to the inclusion of sick leave that should have been covered by the FMLA.

AIRS #26039
ARBITRATOR: BALDOVIN
LOCATION: FORT SMITH, AK
YEAR: 1996

The arbitrator held the grievant's absence from work from 11-2 through 11-17-95 as certified by a health care provider was protected under the FMLA and therefore the absence could not be used in establishing just cause for removal.

AIRS #26460
ARBITRATOR: FULLMER
LOCATION: CLEVELAND, OH
YEAR: 1996

Grievant was removed for AWOL, failure to maintain regular attendance and violation of a last chance agreement. The grievant had been given 14 days of protected Family Medical leave. Thereafter the protection was refused either for lack of the employee meeting the 1250 eligibility requirement or lack of documentation and therefore the dates were counted on as the AWOL. However the arbitrator held that the employee was never given proper written notice of the refusal and basis for the denial of protection. Therefore the use of AWOL dates rendered the removal without just cause.

AIRS #35270
ARBITRATOR: DUNCAN
LOCATION: CHATTANOOGA, TN
YEAR: 2001

The arbitrator held the grievant's absences were protected by FMLA and could not be used in a removal action as set forth in the parties Joint Q and A and section 825.220 of the FMLA.

AIRS #33809
ARBITRATOR: RICHMAN
LOCATION: LOS ANGELES, CA
YEAR: 2000

Absences could not be used against the employee although unclear as to whether absence was covered. Yet arbitrator concluded that the absence to take a child to a doctor was covered in this case. The arbitrator found that if the absences for grievant's chronic condition, for his delivery of his daughter to the doctor, and the 8 hours AWOL which was stipulated to be stricken, the grievant would have had precisely 40 hours of unscheduled absence under the last chance agreement. However the supervisor admifted that two other days were not used therefore the letter of removal would not have issued.

AIRS #32743
ARBITRATOR: DAVIS
LOCATION: SAN JOSE, CA
YEAR: 2000

Majority of charged absences and tardies were FMLA protected. The arbitrator found the grievant's removal to be unreasonable and also legally improper. The grievant was to be reinstated and made whole.

AIRS #31960

ARBITRATOR: KAHN

LOCATION: CHICAGO O'HARE AMC

YEAR: 1999

The arbitrator held that the employer's failure to provide the grievant with a predisciplinary interview meant that just cause for the grievant's proposed notice of removal did not exist. The pre-disciplinary interview may have led to constructive medical efforts and without it there was not justification for action. The grievant was to be reinstated with full seniority and other employee rights and made whole for the period between his discharge and reinstatement.

AIRS #36450

ARBITRATOR: WINSTON

LOCATION: DENVER, CO

YEAR: 2001

While there may have been the most minimal of patterns, there was no evidence of SL abuse. Furthermore unless (the grievant) exceeds his maximum FMLA leave allowance of 5 days per month" the pattern by itself is meaningless. To hold otherwise would ignore, and permit management to ignore, the FMLA certification. Management must cease and desist from asking the grievant for medical documentation for absences authorized under FMLA.

AIRS #37457

ARBITRATOR: ANDERSON

LOCATION: MANASOTA, FL

YEAR: 2002

The employee exceeded the estimated frequency of absences for his FMLA condition. This provided management the right to request new certification. However management must also reimburse the employee for the lost workday and travel expenses.

1250 Hour Eligibility Requirement

AIRS #33171 AND 35352
ARBITRATOR: ANDERSON
LOCATION: TAMPA, FL
YEAR: 2000

The arbitrator held that an employee who is eligible for Family and Medical leave at the time medical leave commences, but due to intermittent leaves for the same condition, falls below the 1250 hour minimum requirement in the previous 12 month period, is nevertheless eligible for family medical leave protection.

AIRS #26827
ARBITRATOR: ROUMELL
LOCATION: CHICAGO BMC
YEAR: 1997

Employee did not meet the 1250-hour eligibility requirement. Arbitrator also found that even if the employee was eligible the employee failed to verify the reasons for his absences. He also found that the employee's claim that he was never given any information concerning FMLA was not credible.

AIRS #34369
ARBITRATOR: GOLDSTEIN
LOCATION: BEDORD PARK, IL
YEAR: 2000

Evidence failed to show that management properly notified the grievant of the lack of 1250 hours. Arbitrator also held that some of the employee's absences may have been FMLA protected. The Arbitrator found that even if the Postal Service was correct on the merits as to the proper calculations for the 1250-hour eligibility requirement there were serious procedural deficiencies.

Documentation Requirements

AIRS #29060
ARBITRATOR: DILEONE KLEIN
LOCATION: FORT WAYNE, IN
YEAR: 1998

The arbitrator found that the employee did not provide the requested supporting medical evidence to substantiate her need for leave under the FMLA or under the provisions of 513 of the ELM. Despite the grievant's failure to provide the documentation for the absence the arbitrator found that he could not ignore her twelve years of discipline free service. The arbitrator ruled that a long-term suspension was sufficient to correct the deficiency.

AIRS #25414
ARBITRATOR: PARKINSON
LOCATION: CHAGRIN FALLS, OH
YEAR: 1996

The arbitrator found that removal of the grievant on the basis of her failure to maintain a regular work schedule during the course of her employment was justified. Employee failed to provide documentation when requested by management.

AIRS #45067
ARBITRATOR: DISSEN
LOCATION: PITTSBURGH, PA
YEAR: 2007

Letter of demand for sick leave for 2 single-day absences was overturned. Mgt. did not have an articulate basis for requiring documentation.

AIRS #44187
ARBITRATOR: MARTIN
LOCATION: OMAHA, NE
YEAR: 2006

Mgt. was not in violation when it denied FMLA after the third opinion doctor stated that the condition did not incapacitate the grievant.

Birth of a Child

AIRS #35609
ARBITRATOR: ARMENDARIZ
LOCATION: DALLAS, TX
YEAR: 2001

A nursing mother requested more than 12 weeks for childbirth and the arbitrator found that, "as a matter of public policy" management abused its discretion in not allowing more LWOP.

Care for a Family Member

AIRS #30000
ARBITRATOR: PLANT
LOCATION: BIRMINGHAM, AL
YEAR: 1998

The grievant in this case was charged with improper conduct. He requested the FMLA leave while working another job. He requested the leave to take care of his wife. The arbitrator ruled that the employee did not engage in deceitful or fraudulent conduct. Found that the grievant should be commended for upholding family values. The family values were not at the expense of the Postal Service. The grievant was to be made whole for any lost time he served.

AIRS #33860
ARBITRATOR: JACOBS
LOCATION: WALLINGFORD, CT
YEAR: 2000

Employee kept employer fully informed of condition and additionally of outside employment. Management did not meet its burden of proof to show the grievant had falsified his actions. The Postal Service knew of his condition and no discipline was issued until the particular absence occurred.

Recertification

AIRS #33034
ARBITRATOR: DISSEN
LOCATION: GREENSBERG, PA
YEAR: 2000

Request for recertification of medical conditions underlying FMLA leave request may not be made solely on the basis that current supervisor is not in possession of original certification. The employee was to be reimbursed the cost of obtaining the FMLA recertification, including travel expenses, to the extent that such costs can be documented.

AIRS #31979
ARBITRATOR: CANNAVO
LOCATION: QUEENS P&DC
YEAR: 1999

The arbitrator held that it was unreasonable to have the grievant provide documentation for recertification of FMLA for grievant's mother's health condition every thirty days. The arbitrator required that such information be provided once every six months.

ARBITRATOR: HOFFMAN
LOCATION: MANASOTA, FL
YEAR: 2001

Management must provide clear and precise directions for its requests to recertify. To require an employee to return to his doctor for "clarification" under the circumstances, is without any authority under Article 19, ELM 515, Publication 71 or FMLA. Grievant had brought in documentation that was complete.

Miscellaneous

AIRS #25892
ARBITRATOR: HELBURN
LOCATION: WEST PALM BEACH, FL
YEAR: 1996

The grievant was removed for attending a union meeting while on FMLA approved unpaid sick leave. The arbitrator found no violation in grievant's attendance at a union meeting, no intent to submit an untruthful 3971, and mgt. retaliation for earlier steward activities. The grievant was to be reinstated to his former position with back pay, seniority and allowances.

AIRS #24656
ARBITRATOR: SNOW
LOCATION: CHICO, CA
YEAR: 1995

The employee in this case was a transitional employee who requested FMLA protected leave for consultation with fertilization specialist. The arbitrator held that this request was covered by the FMLA. Therefore the Postal Service's removal of the grievant could not be considered retaliation for exercising a contractual right.

AIRS #32690
ARBITRATOR: HERVEY
LOCATION: TAMPA, IL
YEAR: 2000

The Postal Service erred when it failed to grant a clerk's request to be reassigned to the Maintenance Craft because of a poor attendance record. It neglected to consider the fact that all of the LWOP's were for the purpose of conducting Union business and that the vast majority of his other absences were covered by FMLA leave.

Call-in

AIRS #38012
ARBITRATOR: JAVITS
LOCATION: BEDFORD, NH
YEAR: 2002

Had management intended ELM 513.332 to require employees to provide the "nature" of their illness, they could have easily stated this, as they did in 513.364. They did not. 513.332 requires an employee to do nothing more than provide notice of the existence of an illness or injury. Mgt is still able to request this information during a call-in (i.e. the "nature" of the illness), but it is prohibited from compelling this information under threat of discipline.