

American Postal Workers Union, AFL-CIO

Memorandum

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From the Office of ROBERT D. KESSLER/JAMES S. ROMINE
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August 25, 1986

TO: President/Officer/Steward/Member

SUBJECT: MSPB Position Change - Approved Leave

I'm sure that most of you are aware that the Merit Systems Protection Board had modified its position in regards to approved leave as a basis for disciplinary actions, especially removals.

Their current position is that in order to avoid the use of approved leave as a basis for discipline the employee must have taken approved leave that was "scheduled".

Please notify (warn) your preference eligible employees of this change in position. I know that information has been published but I'm concerned that the switch in positions has not been emphasized to our veterans. If possible, please inform them on an individual basis. We don't want a veteran to get removed for the use of approved leave thinking they are protected, and then blame the Union for not warning them of the sudden change in position by the MSPB.

I have enclosed a copy of a recent ruling (as an example) rendered in a Kansas City mailhandler case. The case referenced Fleming v. U.S. Postal Service, M.S.P.B. Docket No. AT07528510197 (Feb. 28, 1986).

The Board in the Fleming case (in which the MSPB first modified its position) held that while an employee may not be disciplined on the basis of approved leave, per se, it is permissible to predicate discipline on unscheduled absences when the employee is aware from the outset that unscheduled absences are considered different from scheduled absences and that discipline will result if irregular attendance continues in which unscheduled absences are present.

I have enclosed a document which basically covers scheduled vs unscheduled absences. Please tell your veterans (especially) and other employees to schedule absences where possible, e.g., doctor and dental appointments; surgery; etc.

Since the February Fleming case the service has made a concerted effort to go after those veterans with attendance irregularities. Please do what you can to warn them.

If you have any questions feel free to contact my office.

Yours for a Stronger UNION,

A handwritten signature in cursive script that reads "Bob". The signature is enclosed in quotation marks.

Robert D. Kessler
National Business Agent

RDK/ab

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