

Denial of Intermittent FMLA Leave Violated NA

The Postal Service's denial of intermittent Family and Medical Leave to an employee in Tampa, Fla. and its issuance of a Letter of Warning to her for absences due to her need to take care of her chronically ill daughter violated the National Agreement, Arbitrator Anderson ruled. He determined that the employee who was eligible for FMLA leave at the time the leave commenced, but due to intermittent leave taken for the same condition, fell below the 1250 hour minimum required in the previous 12 month period was nevertheless eligible for the leave. The arbitrator ordered that the Service cease and desist from disciplining the employee for using FMLA leave and directed that the letter of warning to the grievant be removed.

In January 1999, the grievant was granted leave under the Family and Medical Leave Act to care for her daughter who suffered from a chronic respiratory condition. At that time, she had more than 1250 hours during the previous 12 month period. After taking intermittent absences to care for her daughter, she was notified in March 1999 that she was no longer qualified under the FMLA since she did not have 1250 hours of work in the previous 12 months at that time. In May 1999, she was issued a letter of warning due to her absences and then in September 1999, she was placed on a suspension. Following the filing of a grievance, the suspension was withdrawn but the letter of warning remained on the grievant's record. The issue in the grievance was whether an employee who was eligible for FMLA at the time their leave commenced, but subsequently due to intermittent leave for the same medical condition, falls below the minimum required 1250 hours in the previous 12 month period, is still eligible for leave.

The union argued that once the employee met the requirement of 1250 hours of service during the previous 12 month period at the commencement of taking intermittent leave for a medical condition, she became eligible for 12 work weeks of leave. To support its contention,

it cited provisions of the Family and Medical Leave Act, Department of Labor regulations for the Family and Medical Leave Act, and joint questions and answers of the APWU and USPS regarding the Family and Medical Leave Act. The union also cited language from a federal District Court decision for the Eastern District of Virginia in *Willie Barron v. Runyon*, dated 7/7/98. In that decision, the court held that "an employee who is eligible for intermittent leave need only establish his eligibility on the occasion of the first absence and not on the occasion of each subsequent absence."

The Postal Service countered that an employee must have 1250 hours of work in the previous 12 month period for every time the leave commences. To support its position, it cited two recent arbitration decisions.

Arbitrator Anderson sustained the grievance. He indicated that there was no dispute that the grievant was initially eligible for Family and Medical Leave and that she had to take leave on an intermittent basis to care for a chronic condition of her sick child. He observed that the awards cited by the Postal Service were not on point with the instant case. In addition, the arbitrator stated that proper medical certification was provided in this case. He then concluded that "[a]n employee, who is eligible for Family and Medical Leave at the time the medical leave commences, but due to intermittent leaves for the same condition, falls below the 1250 hour minimum required in the previous 12 month period, is nevertheless, eligible for medical leave." He stressed that "[t]he employee was eligible for Family Medical Leave and continued to be eligible for the FMLA due to the intermittent absences required for the care of her daughter." The arbitrator noted further that the joint questions and answers indicate that an employee may not be disciplined as a result of protected absences under the FMLA. (AIRS #33171 - USPS #H98C-4H-D 99290624; 3/31/2000)

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REGULAR ARBITRATION PANEL

In the Matter of Arbitration	(Grievant Sue Keen
between)	
	(Postal Facility Tampa, Florida
UNITED STATES POSTAL SERVICE)	
	(USPS Case No. H98C-4H-D 99290624
and)	
	(APWU Case No. S-7
AMERICAN POSTAL WORKERS)	
UNION, AFL-CIO)	

BEFORE: Arvid Anderson, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Gerald E. Keegan, Labor Relations Specialist
For the Union:	Randy Sutton, National Arbitration Advocate
Place of Hearing:	Tampa, Florida
Date of Hearing:	March 15, 2000
Date of Award:	March 31, 2000
Relevant Contract Provision:	Article 5, Article 10, Article 16, Section 3
Contract Year:	1998-2000
Type of Grievance:	Discipline

Award Summary:

An employee, who is eligible for Family Medical Leave at the time medical leave commences, but due to intermittent leaves for the same condition, falls below the 1250 hour minimum required in the previous 12 month period, is, nevertheless, eligible for medical leave.


