

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
)
 between) Grievant: Class Action
)
 United States Postal Service) Post Office: Des Moines, Iowa
)
 and)
) Case No: I90C-II-C 95039549
 American Postal Workers Union)

Before: John C. FLETCHER, Arbitrator

Appearances:

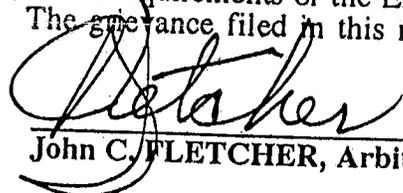
For the Postal Service: Marcia G. Grant
Labor Relations Specialist - Hawkeye District
Post Office Box 189994
Des Moines, Iowa 50318-9401

For the Union: Robert D. Kessler
National Business Agent - Clerk Division
1001 East 101st Terrace, Room 390
Kansas City, Missouri 64131

Place of Hearing: Des Moines, Iowa
Date of Hearing: September 6, 1996
Date of Award: September 28, 1996
Relevant Contract Provisions: Article 19
Contract Year: 1990 - 1994
Type of Grievance: Contract

Award Summary

The January 17, 1995 letter from the Des Moines, Iowa Lead Plant Manager to all Processing and Distribution Employees, on the subject of Employee Attendance Requirements, is not at odds with the Agreement, or the requirements of the ELM, and need not be rescinded, as requested by APWU. The grievance filed in this matter is denied.


John C. FLETCHER, Arbitrator

OPINION AND AWARD

I90C-II-C 95039549 - Class Action
Des Moines, Iowa

Background:

On January 17, 1995, the Des Moines, Iowa, Lead Plant Manager issued the following letter to Processing and Distribution Employees, on the subject of employee attendance requirements:

At the start of this New Year I would like to take this opportunity to recognize and express my appreciation to the Des Moines Processing & Distribution employees who maintained regular work schedules throughout the previous calendar year and to inform all employees of the requirements and importance of the maintenance of a regular work schedule.

An employee's maintenance of a regular work schedule ensures the most efficient and cost effective service to our customers. Additionally, when employees maintain regular attendance, it provides the maximum opportunity to allow for proper leave consideration to all employees. Consistent adherence to your scheduled work hours is not only critical to the organizational goals but also a fundamental responsibility for all employees.

For purpose of definition, maintain a "regular work schedule" means to report to work at the scheduled reporting time with no deviation, and to work the assigned hours which provide for authorized breaks. Employee absences other than bid annual leave may have a negative impact on fellow employees and the success of the operation and are to be avoided as much as practicable. These absences, including scheduled and unscheduled sick leave (or leave without pay in lieu of sick leave), emergency annual leave (or leave without pay in lieu of emergency annual leave) will be considered when your supervisor reviews your attendance. Any corrective action necessary will be based on your supervisor's attendance review.

Employees are also responsible for proper reporting of any necessary deviation from their regular work schedule due to illness or emergency situations. Employees are required to contact their supervisor in advance whenever possible if unable to report to work as scheduled and provide their supervisor with the duration of the absence to allow for proper replacement scheduling. For example; if an employee calls in requesting sick leave for today only, it would be necessary to call in again the next day if they were still sick. However, if an employee is made aware by their physician of the need to be off work in excess of one day and advises his supervisor of the duration of the time he will be off at the time of the call-in, it would not be necessary for the employee to call the next day.

Both excessive use and abuse of leave are in conflict with the goals of our organization and must be avoided. I am soliciting all employees assistance in being responsible for regularity in attendance. Enforcement of our attendance regulations will be a primary goal for this upcoming year. Again, than you for your assistance.

[Italics as in the original. Underlining added by APWU.]

Six days later, on January 23, 1995, APWU filed the instant grievance, contending that the policy letter changed existing policy, and was at odds with numerous grievance settlements reached at Steps 2 and 3. Specifically, APWU objected to the comments that have been underlined in the letter quoted above. As a remedy the grievance asked that the policy be rescinded and the "previous policy" be followed. The grievance asked that the policy be rescinded and the "previous policy" be followed. The previous policy was contained in two documents dated February 21, 1992 and May 4, 1992, that were issued following a grievance settlement challenging instructions issued on December 9, 1991, on "call-in procedures." The February 21, 1992 letter provided:

Call-In Procedure

All Employees, Des Moines Post Office

(This supersedes all previous instructions regarding call-in procedures and amends the procedures issued on December 9, 1991.)

All employees are expected to personally notify management when they are unable to report as scheduled unless they are physically unable to do so. Such notices should be provided within the hour immediately prior to the scheduled reporting time, or earlier. During the call-in the employee must notify management of the expected duration of the absence. The employee must notify management if the absence extends beyond the expected duration.

In cases where the employee calls in claiming illness, normally the general nature of the illness is provided if requested by the supervisor. If the absence is in excess of three (3) days; or if the employee is on sick leave restriction; or if the supervisor requires it for the protection of the interests of the Postal Service, medical documentation must be submitted upon the employee's return to duty. Failure to comply with this requirement may result in a charge of absence without leave (AWOL).

In cases where an employee calls in claiming an emergency, the nature of the emergency must be provided to the supervisor at the time of the call-in. The supervisor will determine whether or not the employee is excused and whether or not the employee is required to provide evidence verifying that an emergency did, in fact, exist. Failure to provide such evidence when requested may result in the absence being charged to AWOL. (An emergency is considered to be an unforeseen situation of a

non-recurring nature which prevents an employee from reporting to work as scheduled.)

Being regular in attendance is very important to each individual employee, as well as the U. S. Postal Service as an organization. Maintaining regular attendance is also a fundamental requirement. Every employee is encouraged to make every effort to avoid unscheduled absences.

The May 4, 1992 letter provided:

LEAVE REGULATIONS
SCHEDULED AND UNSCHEDULED ABSENCES

Employees of Pay Locations
524, 541, 542, 543 and 544

All employees absences can be disruptive to a work unit. Unscheduled absences generally have a very unsettling effect on day to day operations, much more than scheduled absences. In order to be fair to all employees, the leave program must be administered equitably while taking into account the needs of the Postal Service and the welfare of the individual employee.

By definition, an unscheduled absence is any absence from work that is not requested and approved in advance. Employees are expected to maintain their assigned schedule and make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required. (ELM 511.43.)

Except for unforeseen situations, all sick leave and annual leave must be approved in advance on Form 3971, "Request for or Notification of Absence." In order for sick leave to qualify as a scheduled absence, the employee must bring in medical documentation for the absence at least four (4) hours in advance.¹ Telephone calls or producing documents upon return are not considered meeting the requirements for scheduled sick leave. If your supervisor is unavailable at the time, the documentation will have to be presented to the Tour Superintendent of Mails on duty. Emergency annual leave not approved in advance will be considered unscheduled.

It is in everyone's best interest to avoid unscheduled absences. Each employee's leave usage is reviewed and monitored by a supervisor. Excessive unscheduled absences warrant the supervisor's attention and possible corrective action. If you have any questions with the information provided in this policy statement, please contact your immediate supervisor.

¹ This four hour factor was consistent with a Step 2 grievance settlement made on August 25, 1987, providing that: "When employee's provide acceptable medical documentation meeting the requirements of Employee and Labor Relations Manual 513.364 not later than four (4) hours prior to their begin tour and present it to the Tour Superintendent on duty at the time, the sick leave request will be scheduled for that day. In instances where this requirement is not met, the determination as to whether the absence is scheduled or unscheduled will be made by the employee's immediate supervisor."

At Step 2, Management noted that the two main problems that the Union had with the January 19, 1995 letter was (1), Supervisory consideration of both scheduled and nonscheduled leave when reviewing an employee's attendance, and (2), the call in procedures when an employee was unable to report for the scheduled assignment. Management, in its Step 2 denial, noted, with respect to the first objection, that:

In regard to scheduled versus nonscheduled, Arbitrator Arnold M. Zack spoke to this very issue in case # N&M-IT-C 28099. In this award, Arbitrator Zack stated, "A determination that an absence is scheduled or nonscheduled is limited to compliance with the requirements imposed on the Postal Service by the General Accounting Office and is unrelated to the issue of whether absences from work may be used as the basis for subsequent discipline. ... The imposition of discipline for absenteeism may only be based on the employee's attendance record, irrespective of whether any absences were classified as scheduled or nonscheduled."

With regard to APWU's second objection, the Step 2 denial observed:

In regard to the call in procedures, no changes have been put in place that conflict with the National Agreement, or any other handbook or manual. Concerning this issue, one portion of the letter states, "Employees are required to contact their supervisor in advance whenever possible if unable to report to work as scheduled and provide their supervisor with the duration of the absence to allow for proper replacement scheduling." Referring to the Employee & Labor Relations Manual (ELM), Part 513.332, no conflict exists with this statement. An example is given in the letter states, "If an employee calls in requesting sick leave for today only, it would be necessary to call in again the next day if they were still sick." In other words, if an employee calls in and says that they will not be at work today, and requests sick leave for only today, it makes sense that the employee would need to notify management if they were unable to report for work the following day because they had only requested sick leave for that day. The example in the letter goes on to say, "If an employee is made aware by their physician of the need to be off work in excess of one day and advises his supervisor of the duration of the time he will be off at the time of the call-in, it would not be necessary for the employee to call the next day." Again, this example parallels Part 513.332 of the ELM.

Extensive additions and corrections were filed and appeal was taken to Step 3. In the additions and corrections APWU made reference to two arbitration awards involving attendance grievances arising at Des Moines, contending that Arbitrator McAllister in

I-90C-II-D 9401896² and Arbitrator Goldstein in C7C-4K-C 23625³ noted a distinction between, and treated scheduled absences differently from unscheduled absences.

The grievance was denied at Step 3, and timely appealed to this arbitration.

THE ISSUE

The parties advocates are in agreement that the issue before the Arbitrator is:

Did Management violate the National Agreement when it issued a letter on January 17, 1995 regarding employee attendance requirements, and if so, what shall the remedy be?

There are no procedural or jurisdictional impediments to a final and binding award in this matter.

DISCUSSION

In the arbitration hearing, APWU presented testimony from its Local President and submitted several exhibits concerning attendance discipline in Des Moines.

Essentially the testimony of the Local President concerned past practice, earlier grievances that have been submitted and settled and indicated that previously scheduled absences were not considered when attendance was being reviewed by Supervisors.

Further, she indicated that on occasion it would be burdensome for an employee to call-in each day when on an extended absence. Exhibits accepted, *inter alia*, showed how attendance was used in issuing discipline both before and after the January 17, 1995 letter was released. Arbitration awards submitted on behalf of APWU's several arguments

² In I90C-II-D 9401896, Arbitrator McAllister modified a removal because of numerous "shortcomings of Management's case. The award noted that "Management exaggerated ... Grievant's absence record ... by including scheduled absences and short clock rings."

³ In C7C-4K-C 23625, Arbitrator Goldstein denied two grievances that sought to have sick leave call-ins made shortly before scheduled starting times recorded as scheduled rather than unscheduled. Notwithstanding the rejection of APWU's principle argument in the award, APWU notes that Arbitrator Goldstein stated that "scheduled absences are not considered in the same way as unscheduled absences for disciplinary purposes by this Employer."

dealt with issues of using scheduled absences in attendance discipline. Particular note was taken of Arbitrator Stallworth's award in I90C-II-D 95011802, involving a removal of an employee that involved scheduled sick leave that was taken in connection with the grievant's nonscheduled days. In that award, involving a removal action predating the January 17, 1995 letter, several points dealt with in the letter were discussed extensively, the Arbitrator noting, *inter alia*, that:

The memo is not, on its face, clearly an announcement of a new policy or a reinforcement of existing policy.

And:

Whether the Service has or may change its past policy in regard to its treatment of scheduled leave at the Des Moines facility is not before the Arbitrator at this time, and is apparently the subject of another grievance between the Parties.

Nonetheless, all of this testimony, the exhibits, and the arbitration citations, in the Arbitrators' opinion, are mostly irrelevant to the real issue involved in this grievance, and that is **whether the January 17, 1995 letter is at odds with the Agreement and/or the**

ELM. Subsequent to January 17, 1995, whether or not a Supervisor considered or included scheduled absences in issuing discipline or assessing attendance is not the issue before this Arbitrator. If this occurred, and APWU felt that it was improper to issue discipline or assess attendance on the basis of scheduled absences, then a grievance could be filed on that matter, in the same manner as it did in I90C-II-D 95011802, I90C-II-D 94010896, and C7C-4K-C 23625, all grievances that predated January 17, 1995. The

issue in those cases are not identical to the issue in the grievance filed on January 23, 1995, the issue that has been appealed to this arbitration. In this matter the corrective action requested is a reliable indicator of the actual thrust of the grievance filed and the issue in contention:

That this policy be rescinded immediately and Management abide by present existing policies and past practice agreements.

APWU had two major concerns on the "policy," as noted above. The first, is the mention of scheduled absences in the third paragraph, and the second the requirement on daily call-ins unless at the initial call-in the employee indicates that the absence will be in excess of one day. On the first, it does not, *per se*, appear to the Arbitrator to be inappropriate for Supervisor's to consider scheduled and unscheduled absences when reviewing an employee's overall attendance. If an employee is disciplined on the basis of his scheduled absences, and APWU harbors notions that the discipline assessed is inappropriate (because of past practice) for that reason, then that is something else. That case will have to be decided on the basis of evidence and facts developed in that record.

Accordingly, the Arbitrator must conclude that a policy statement that Management will consider scheduled and unscheduled sick leave absences when attendance is reviewed by a Supervisor is not necessarily at odds with the Agreement or the ELM.

APWU's second major concern with the "policy" concerns the call-in requirements of the fourth paragraph. Like APWU's first objection, the Arbitrator does not find a requirement to call in a second time if one requested sick leave for only one day to be at odds with the Agreement or the ELM. APWU's position on this, as expressed in its additions and corrections, is difficult to fathom:

As far as argument #2 the Union contends that Management's argument is basically hogwash. They state that no conflict exists from ELM 513.332. They make it sound like the employee who calls in today basically is only asking for that day. An employee is sick until the illness or injury is gone *per se*. We agree that if an employee calls in and specifically states, I need to be off today for S. L. purposes, but definitely will be back tomorrow, that definitely could put the employee in the category of probably having to call in the next day. However, Management in the Jan. 17 letter specifically states and leads the employee to believe that he needs to call in every day unless their physician specifically addresses the duration of the period off to their Supervisor. In other words unless the employee goes to the Dr. to be excused for more than one day, they must call in every day.

It simply does not seem unreasonable or inappropriate, or for that matter, a violation of existing policy, the Agreement, or Handbooks and Manuals, to expect that an employee notifying his employer that he is unable to work because of illness or injury to be specific as to the duration of the expected absence, and if the employee did not notify the employer that the absence would specifically extend beyond one day, that an additional call in would be expected the next day and the next, etc. It is true that an "employee is sick until the illness or injury is gone," but it is also true that the employer is entitled to know in advance of the employee's starting time that (s)he will not be at work, and a call in on a day earlier, that one is sick and will not be at work that day, is not adequate notice that the employee will not be at work the next day, or two days later, or three days later, unless the original call was specified to this result.

The grievance is without merit. It will be denied.

A W A R D

The January 17, 1995 letter from the Des Moines, Iowa Lead Plant Manager to all Processing and Distribution Employees, on the subject of Employee Attendance Requirements, is not at odds with the Agreement, or the requirements of the ELM, and need not be rescinded, as requested by APWU. The grievance filed in this matter is denied.



John C. FLETCHER, Arbitrator

Mt. Prospect, Illinois
September 28, 1996