

STEP B DECISION

Step B Team:

Northern New Jersey District

Decision: RESOLVED
USPS Number: A01N-4A-C 07341478
Grievant: Class
Branch Grievance Number:
Branch: 38
Installation:
Delivery Unit: Main
State: New Jersey
Date Step A Initiated: 9-20-2007
Step A Meeting Date: 11-26-2007
Date Received at Step B: 11-27-2007
Step B Decision Date: 12-11-2007
Issue Code: 10.5180; 19.0000

ISSUE: (As framed at Step A)

Did Management violate Articles 10 and 19 of the National Agreement, specifically the ELM Section 513, when they failed to outline for their employees exactly what "acceptable documentation" means? If so, what shall be the remedy?

DECISION:

The DRT has **RESOLVED** this grievance. The Step B team has agreed ELM Section 513.364 specifically addresses the issue in dispute and employees will be directed to provide documentation consistent with that language. In addition, management will "cease and desist" circumventing ELM Section 513.391 when determining who and for how long someone will be marked "deems desirable".

EXPLANATION:

The Union contends that employees who are not on the "restricted Sick leave" list are directed to provide "acceptable documentation" by eRMS when they call in sick. When they ask their supervisor if that term means medical documentation a direct answer is never received. This type of situation leaves the employees not knowing whether they will be paid or not. In addition, employees are being "tagged" as "deems desirable" without receiving prior notification and essentially Management is circumventing their responsibilities under the ELM regarding "Restricted Sick Leave". The Union requests a clear definition of the term "acceptable documentation".

Management contends the grievance is untimely because eRMS has been in use since 2004 and anyone since that time that was marked as "deems desirable" has had to provide "acceptable documentation". Management further states their practice in Cedar Grove is to hold attendance reviews once per quarter and if an employee shows a pattern of sick leave abuse they are notified they will be marked "deems desirable" for a specific period of time.

This is notated in the eRMS program. Management maintains there is no specific list of what is and what isn't considered "acceptable" documentation. They state if an employee calls in sick then medical evidence would be necessary, if they call for car trouble then a tow bill or mechanic documentation would be necessary. They argue that no employee has ever had sick leave withheld because their documentation was not accepted only when no documentation was presented. The grievance was denied at Formal Step A of the DRP.

The Step B team has reviewed the contents of the case file prior to achieving a resolution on this grievance. The specifications on what are acceptable documentation and what isn't acceptable is clearly delineated in the ELM under Section 513.364, it states the following:

Medical Documentation or Other Acceptable Evidence

When employees are required to submit medical documentation, such documentation should be furnished by the employee's attending physician or other attending practitioner who is performing within the scope of his or her practice. 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 substantiation other than medical documentation if they believe it supports approval of the sick leave request.

A recent Step 4 (M-01629) received from USPS Headquarters on August 3, 2007 clarifies the issue even further, it states:

This is in response to your July 23 correspondence concerning Section 513.362 and 513.364 of the Employee and Labor Relation Manual (ELM). You questioned whether the Postal Service takes the position that ELM 513.362 or 513.364 allow the Postal Service to require employees to provide a diagnosis.

The Postal Service's position is that ELM 513.362 and 513.364 are consistent with the Rehabilitation Act and do not require the employee to provide a diagnosis.

The above language should leave little room for doubt as to what an employee is required to furnish when calling in sick and documentation is required. However, in question is Management's methods for marking employees "deemed desirable". In Management's narrative a process is explained in which they determine how to mark someone "deemed desirable" and for how long they are "deemed desirable". Management is creating a de facto "Restricted Sick Leave" list and in this process circumventing the provisions of ELM Section 513.39, which states the following:

513.39 Restricted Sick Leave

513.391 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 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.

The above language does not preclude Management from requesting documentation in specific instances where they believe it necessary to protect the interests of the Postal Service as provided in ELM Section 513.361. But the procedure described in this grievance by Management places employees on "Restricted Sick Leave" for an entire quarter without following the procedures outlined in the ELM.

Therefore, the Step B team has agreed ELM Section 513.364 specifically addresses the issue in dispute and employees will be directed to provide documentation consistent with that language. In addition, management will "cease and desist" circumventing ELM Section 513.391 when determining who and for how long someone will be marked "deems desirable".

USPS Step B Representative

NALC Step B Representative

cc: Postmaster
USPS Step A Representative
NALC Step A Representative
NALC President, Branch 38
National Business Agent, Region 15
Manager Human Resources, USPS
Labor Relations Specialist, USPS

File

Listing of documentation in compliance with J-Cam Article 15.2(c):

1. PS Form 8190 GATS # A01N-4A-C 07341478
2. Attachment to item 17
3. Handbook M-39 Section 115
4. ELM Section 513.364
5. Attachment to item 18
6. eRMS Speech Application Script