

Exhibit 1 -

List of Employees on the deems
desirable list

Exhibit 2.

Management's written response
to information request.

Exhibit 3 -

written basis from management
for placing carriers on a deemed
desirable list

("x" amount of absences/quarter,
excessive total leave usage, etc.)



513 Sick Leave

513.1 Purpose

513.11 Sick Leave for Employee Incapacitation

Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.

513.12 Sick Leave for Dependent Care

A limited amount of sick leave may also be used to provide for the medical needs of a family member. Nonbargaining unit employees, and bargaining unit employees if provided in their national agreements, are allowed to take up to 80 hours of their accrued sick leave per leave year to give care or otherwise attend to a family member (as defined in 515.2(a), 515.2(b), and 515.2(c)) with an illness, injury, or other condition that, if an employee had such a condition, would justify the use of sick leave. If leave for dependent care is approved, but the employee has already used the maximum 80 hours of sick leave allowable, the difference is charged to annual leave or to LWOP at the employee's option. (See 515 for information about FMLA entitlement to be absent from work.)

513.2 Accrual and Crediting

513.21 Accrual Chart

Time accrued is as follows:

Employee Category	Time Accrued
Full-time employees (except as noted below).	4 hours for each full biweekly pay period — i.e., 13 days (104 hours) per 26-period leave year.
Non-executive, non-bargaining full-time career employees, and non-career employees converted to those positions, with a career appointment date on or after October 6, 2012, who are without any prior federal or USPS service that was creditable at the time of that career appointment toward the leave computation date. This accrual rate never applies to an employee who earned sick leave at the higher accrual rate above.	3 hours for each full biweekly pay period — i.e., 9.75 days (78 hours) per 26-period leave year.
Part-time employees (except as noted below).	1 hour for each unit of 20 hours in pay status up to 104 hours (13 days) per 26-period leave year.
Non-executive, non-bargaining part-time career employees, and non-career employees converted to those positions, with a career appointment date on or after October 6, 2012, who are without any prior federal or USPS service that was creditable at the time of that career appointment toward the leave computation date. This accrual rate never applies to an employee who earned sick leave at the higher accrual rate above.	1 hour for each unit of 26.66 hours in pay status up to 78 hours (9.75 days) per 26-period leave year.

513.22 Crediting

513.221 General

Sick leave is credited at the end of each biweekly pay period in which it is earned. Sick leave (earned and unused) accumulates without limitation.

513.222 Part-Time Employees

Part-time employees are not credited with sick leave in excess of 13 days (104 hours) per 26-period leave year.

513.223 Leave Replacements for Rural Carriers

Substitute rural carriers or RCAs assigned to and serving (a) a vacant route or (b) a route from which the rural carrier is on extended leave, and RCAs assigned to and serving an auxiliary route are credited with sick leave starting with the first pay period following the 90-day qualifying period.

513.224 Auxiliary Rural Carriers

Auxiliary rural carriers are not credited with sick leave in excess of 104 hours per leave year. If they serve in another capacity (e.g., flexible employees) in the Post Office, that service is also used in computing sick leave credit (see 513.21).

513.225 Substitute Rural Carriers in Dual Appointment

Substitute rural carriers in dual appointments earn sick leave only when their service is performed in a position that is subject to the Civil Service Retirement Act. The leave can be used only while they are serving in a leave-earning position.

513.226 Leave Credit Adjustment for LWOP

See 514.24.

513.3 Authorizing Sick Leave

513.31 Policy

513.311 General

Sick leave cannot be granted until it is earned, except as provided in 513.5.

513.312 Restriction

An employee who is in sick leave status may not engage in any gainful employment unless prior approval has been granted by appropriate authority (see 662, Federal Standards of Ethical Conduct).

513.32 Conditions for Authorization

Conditions for authorization are as follows:*

	Conditions
Illness or injury.	If the employee is incapacitated for the performance of official duties.
Pregnancy and confinement.	If absence is required for physical examinations or periods of incapacitation.
Medical, dental, or optical examination or treatment.	If absence is necessary during the employee's regular scheduled tour.
For eligible employees (as indicated in 513.12), care for a family member (as defined in 515.2(a), 515.2(c), and 515.2(e)).	Up to 80 hours of accrued sick leave per leave year if the illness, injury, or other condition is one that, if an employee had such a condition, would justify the use of sick leave.
Contagious disease. A contagious disease is a disease ruled as requiring isolation, quarantine, or restriction of movement of the patient for a particular period by the health authorities having jurisdiction.	If the employee (1) must care for a family member afflicted with a contagious disease, (2) has been exposed to a contagious disease and would jeopardize the health of others, or (3) has evidence supplied by the local health authorities or a certificate signed by a physician certifying the need for the period of isolation or restriction.
Medical treatment for disabled veterans.	If the employee (1) presents a statement from a duly authorized medical authority that treatment is required, and (2) when possible, gives prior notice of the definite number of days and hours of absence. (Such information is needed for work scheduling purposes.)
Bereavement Leave for Non-Bargaining Unit Employees	This type of leave is available for all career non-bargaining unit employees. Employees may use up to 3 workdays of annual leave, sick leave, or leave without pay to make arrangements necessitated by the death of a family member or attend the funeral of a family member. Authorization of leave beyond three workdays is subject to the conditions and requirements of ELM 510.

For employees opting to use available sick leave, the leave will be charged to sick leave for dependent care, if available. Documentation evidencing the death of the employee's family member is required only when the supervisor deems such documentation desirable for the protection of the Postal Service's interests.

Family Member is defined as a:

- a. Son or daughter — biological or adopted child, stepchild, daughter-in-law, or son-in-law;
- b. Spouse;
- c. Parent, mother-in-law, or father-in-law;
- d. Sibling — brother, sister, brother-in-law, or sister-in-law; or
- e. Grandparent.

The applicable provisions regarding bereavement leave for bargaining unit employees are in the respective bargaining unit's applicable national agreement.

* Sick leave, annual leave, or LWOP is granted as may be necessary for any of these conditions in accordance with normal leave policies and collective bargaining agreements. (See also 513.6 and 514.22.)

513.33 Requests for Sick Leave

513.331 General

Except for unexpected illness or injury situations, sick leave must be requested on PS Form 3971 and approved in advance by the appropriate supervisor.

513.332 Unexpected Illness or Injury

An exception to the advance approval requirement is made for unexpected illness or injuries; however, in this situation the employee must notify appropriate postal authorities of his or her illness or injury and expected duration of the absence as soon as possible.

When sufficient information is provided to determine that the absence may be covered by the Family and Medical Leave Act (FMLA), the following Department of Labor forms will be mailed to the employee's address of record along with a return envelope:

- a. WH 381, *FMLA Notice of Eligibility and Rights and Responsibilities*; and
- b. One of the following forms, as appropriate:
 1. WH-380-E, *FMLA Certification of Health Care Provider for Employee's Serious Health Condition*.
 2. WH-380-F, *FMLA Certification of Health Care Provider for Family Member's Serious Health Condition*.
 3. WH-385, *FMLA Certification for Serious Injury or Illness of Covered Servicemember — for Military Family Leave*.

Note: These forms are provided for the employee's convenience, as they solicit all required information; however, employees may use another format as long as it provides complete and sufficient information as required by the FMLA. The information provided should relate only to the specific reason associated with the request for leave protection.

PS Form 3971, *Request for or Notification of Absence*, will be provided to the employee upon his or her return to duty.

When sufficient information to determine that the absence is covered by FMLA is not provided in advance of the absence, the employee must submit a PS Form 3971 and applicable medical or other certification upon returning to duty and explain the reason for the absence. Employees may be required to submit acceptable evidence of incapacity to work as outlined in the provisions of 513.36, *Sick Leave Documentation Requirements*, or noted on the reverse of PS Form 3971 or on Department of Labor Form WH-381, as applicable.

The supervisor approves or disapproves the leave request. When the request is disapproved, the absence may be recorded as annual leave or, if appropriate, as LWOP or AWOL, at the discretion of the supervisor as outlined in 513.342.

513.34 PS Form 3971, Request for or Notification of Absence

513.341 General

Request for sick leave is made in writing, in duplicate, on PS Form 3971. If the absence is to care for a family member, this fact is to be noted in the Remarks section.

513.342 Approval or Disapproval

The supervisor is responsible for approving or disapproving requests for sick leave by signing PS Form 3971, a copy of which is given to the employee. If a supervisor does not approve a request for leave as submitted, the Disapproved block on the PS Form 3971 is checked and the reason(s) given, in writing, in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reason for the disapproval. AWOL determinations must be similarly noted.

513.35 Postmaster Absences

There are special requirements for postmaster absences:

- a. *Leave Replacement.* A postmaster whose absence requires the hiring of a leave replacement must notify the appropriate official.
- b. *Absence Over 3 Days.* A postmaster who is absent in excess of 3 days must submit PS Form 3971 within 2 days of returning to duty or, for an extended illness, at the end of each accounting period.

513.36 Sick Leave Documentation Requirements

513.361 Three Days or Less

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

513.362 Over Three Days

For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work or of need to care for a family member and, if requested, substantiation of the family relationship.

513.363 Extended Periods

Employees who are on sick leave for extended periods are required to submit at appropriate intervals, *but not more frequently than once every 30 days*, satisfactory evidence of continued incapacity for work or need to care for a family member unless some responsible supervisor has knowledge of the employee's continuing situation.

513.364 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.

513.365 Failure to Furnish Required Documentation

If acceptable substantiation of incapacitation is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

513.37 Return to Duty

An employee returning from an FMLA-covered absence because of his or her own incapacitation must provide documentation from his or her health care provider that he or she is able to perform the functions of the position with or without limitation. Limitations described are accommodated when practical. Bargaining unit employees must also comply with requirements in 865.

513.38 Performance Ability Questioned

When the reason for an employee's sick leave is of such a nature as to raise justifiable doubt concerning the employee's ability to satisfactorily and/or safely perform duties, a *fitness-for-duty medical examination* is requested through appropriate authority. A complete report of the facts, medical and otherwise, should support the request.

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.

513.392 Notice and Listing

Supervisors provide written notice to employees that their names have been added to the restricted sick leave listing. The notice also explains that, until further notice, the employees must support all requests for sick leave by medical documentation or other acceptable evidence (see [513.364](#)).

513.393 Reversion of Restriction

Supervisors review the employee's PS Form 3972 for each quarter. If there has been a substantial decrease in absences charged to sickness, the employee's name is removed from the restricted sick leave list and the employee is notified in writing of the removal.

513.4 Charging Sick Leave

513.41 Full-Time Employees

513.411 General

General provisions are as follows:

- a. Sick leave is not charged for legal holidays or for nonworkdays established by Executive Order.
Exception: If employees shown to be eligible in [434.422](#) elect to receive annual leave credit in lieu of holiday leave pay (see [512.65](#)) and then become ill during their scheduled tour, sick leave may be charged to supplement work hours, up to the limit of their regular work schedule, on the holiday worked, provided the requirements of section [513.32](#) are met.
- b. Sick leave may be charged on any scheduled workday of an employee's basic workweek.

513.412 Minimum Unit Charge

Minimum unit charges are as follows:

Employee Category	Minimum Unit Charge
All full-time nonexempt employees.	One-hundredth of an hour (0.01 hour).
Full-time exempt.	(See 519.7).
Regular rural carriers.	1 day (8 hours).
Substitute rural carriers and RCAs when in a leave-earning status and serving:	
1. Vacant routes.	1 day (8 hours).
2. Routes from which rural carriers are on extended leave.	1 day (8 hours).
RCAs when in a leave-earning status and servicing auxiliary routes.	1 hour.
Auxiliary rural carriers.	1 hour.
Triweekly rural carriers.	(See 512.54).

513.413 Special Situations

The following provisions concern special situations:

- a. **A-E Postmasters.** A-E postmasters are charged sick leave the same as annual leave (see [512.524](#)).
- b. **Rural Carriers.** Rural carriers who are absent because of illness on Saturdays are charged sick leave based on the computations used for their annual leave charges (see [512.53](#)).
- c. **Replacement Rural Carriers.** Substitute rural carriers and RCAs in a leave earning status and serving (a) vacant routes and (b) routes from which rural carriers are on extended leave are charged sick leave in the same manner as rural carriers. RCAs in a leave earning status and serving auxiliary routes are charged sick leave in the same manner as auxiliary rural carriers.
- d. **Triweekly Rural Carriers.** Triweekly rural carriers are charged sick leave the same as for annual leave (see [512.54](#)).

513.42 Part-Time Employees

513.421 General

General provisions are as follows:

- a. Absences due to illness are charged as sick leave on any day that an hourly rate employee is scheduled to work except national holidays.
Exception: If employees shown to be eligible in [434.422](#) elect to receive annual leave credit in lieu of holiday leave pay (see [512.65](#)), sick leave may be charged to supplement work hours, up to the limit of their regular work schedule, on the holiday worked, provided the requirements of section [513.32](#) are met.
- b. Except as provided in [513.82](#), paid sick leave may not exceed the number of hours that the employee would have been scheduled to work, up to:
 1. A maximum of 8 hours in any one day.
 2. 40 hours in any one week.
 3. 80 hours in any one pay period. If a dispute arises as to the number of hours a part-time flexible employee would have been scheduled to work, the schedule is considered to have been equal to the average hours worked by other part-time flexible employees in the same work location on the day in question.
- c. Limitations in [513.421b](#) apply to paid sick leave only and not to a combination of sick leave and workhours. However, part-time flexible employees who have been credited with 40 hours or more of paid service (work, leave, or a combination of work and leave) in a service week are not granted sick leave during the remainder of that service week. Absences, in such cases, are treated as nonduty time that is not chargeable to paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

513.422 Minimum Unit Charge

Minimum unit charges are as follows:

Employee Category	Minimum Unit Charge
All part-time nonexempt employees.	One-hundredth of an hour (0.01 hour).
Part-time exempt employees.	(See 519.7).

513.5 Advanced Sick Leave

513.51 Policy

513.511 May Not Exceed Thirty Days

Sick leave not to exceed 30 days (240 hours) may be advanced in cases of an employee's serious disability or illness if there is reason to believe the employee will return to duty. Sick leave may be advanced whether or not the employee has an annual leave or donated leave balance.

513.512 Medical Document Required

Every request for advanced sick leave must be supported by medical documentation of the illness.

513.52 Administration

513.521 Installation Heads' Approval

Officials in charge of installations are authorized to approve these advances without reference to higher authority.

513.522 Forms Forwarded

PS Form 1221, *Advanced Sick Leave Authorization*, is completed and forwarded to the Eagan ASC when advanced sick leave is authorized.

513.53 Additional Sick Leave

513.531 Thirty-Day Maximum

Additional sick leave may be advanced even though liquidation of a previous advance has not been completed provided the advance at no time exceeds 30 days. Any advanced sick leave authorized is in addition to the sick leave that has been earned by the employee at the time the advance is authorized.

513.532 Liquidating Advanced Sick Leave

The liquidation of advanced sick leave is not to be confused with the substitution of annual leave for sick leave to avoid forfeiture of the annual leave. Advanced sick leave may be liquidated in the following manner:

- a. Charging the sick leave against the sick leave earned by the employee as it is earned upon return to duty.
- b. Charging the sick leave against an equivalent amount of annual leave at the employee's request provided the annual leave charge is made prior to the time such leave is forfeited because of the leave carryover limit.

513.6 Leave Charge Adjustments

513.61 Insufficient Sick Leave

If sick leave is approved but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

513.62 Insufficient Sick and Annual Leave

If sick leave is approved for employees who have no annual or sick leave to their credit, the absence may be charged as LWOP unless sick leave is advanced as outlined in 513.5. LWOP so charged cannot thereafter be converted to sick or annual leave.

513.63 Disapproved Sick Leave

If sick leave is disapproved, but the absence is nevertheless warranted, the supervisor may approve, at the employee's option, a charge to annual leave or a charge to LWOP.

513.64 Absence Without Leave

An absence that is disapproved is charged as LWOP and may be administratively considered as AWOL.

513.65 Annual Leave Changed to Sick Leave

If an employee becomes ill while on annual leave and the employee has a sick leave balance, the absence may be charged to sick leave.

513.7 Transfer or Reemployment

513.71 Transfer

513.711 Crediting

Individuals who are transferring from a federal agency to the Postal Service are credited with their sick leave balance provided there is not a break in service in excess of 3 years.

513.712 Recrediting

The following provisions concern recrediting:

- a. If a Postal Service employee transfers to a position under a different leave system to which only a part of the employee's sick leave can be transferred, the sick leave is recredited if the individual returns to the Postal Service provided there is not a break in service in excess of 3 years.
- b. If a Postal Service employee transfers to a position to which sick leave cannot be transferred, the sick leave is recredited if the individual returns to the Postal Service provided there is not a break in service in excess of 3 years.

513.72 Reemployment

Sick leave may be recredited upon reemployment provided there is not a break in service in excess of 3 years.

Note: For sick leave to be recredited, the employee must be reemployed in a position where sick leave may be earned and used.

513.73 Reemployment — OWCP

All individuals who were originally separated and who are subsequently reemployed from a continuous period on OWCP rolls have any previously unused sick leave recredited to their account, regardless of the length of time these employees were on OWCP and off postal rolls.

Exception: Sick leave may not be recredited if an employee applied and was approved for disability retirement regardless of whether the employee actually collected the annuity.

513.8 Retirements or Separations

513.81 General

No payment is made for accumulated sick leave when an employee retires or separates from Postal Service employment.

513.82 Retirement

513.821 Credit for Sick Leave

Provisions of the Civil Service Retirement Act provide for the granting of credit for unused sick leave in calculating retirement or survivor annuity at the time of an employee's retirement or death (see 562.4). Each 8 hours of sick leave represents 1 day of retirement credit. Unused sick leave days are converted to calendar time retirement credit, based on a 260-day work year (260 days x 8 hours = 2,080 hours).

Previously, there were no provisions for credit of sick leave upon retirement for employees under the Federal Employees Retirement System (FERS), except for those who were in the Civil Service Retirement System (CSRS) and transferred to FERS. See 580, Federal Employee Retirement System, for details for credit of sick leave upon retirement for FERS employees who formerly were covered by CSRS.

Enacted in 2009, the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84) changed this. FERS employees will receive credit for unused sick leave in the same manner as CSRS employees. The change will be phased in, as follows: (a) 50 percent of accrued sick leave hours will be credited for all FERS retirements commencing October 28, 2009, through December 31, 2013; and (b) 100 percent of the accrued sick leave hours will be credited for all FERS retirements that begin on or after January 1, 2014.

513.822 Disability Retirement

If the OPM has approved an application for disability retirement effective on expiration of accumulated and accrued leave, or if the employee is being otherwise separated for physical or mental disability resulting in inability to perform the work, sick leave is granted at the rate of 8 hours per day, 40 hours per week, or 80 hours per pay period until the employee's sick leave is exhausted. Payments may not be made, however, for any hours for which the employee received salary or leave payments from another federal agency.

513.83 Separation by Death

If an ill employee dies without returning to duty and without making application for sick leave, the postal official who is in charge of the installation grants sick leave for the period of illness or disability immediately prior to death. If the employee was in pay status on the day of death or immediately prior to death, the employee's beneficiary is entitled to receive compensation without charge to leave for the date of death. The latter applies whether or not employees have leave to their credit.

513.9 Collection for Unearned Sick Leave

Collection for used but unearned sick leave at the time of separation is made in the same manner as for unearned annual leave (see 512.72).

LEGAL
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REGIONAL ARBITRATION PANEL

)
 In the Matter of Arbitration)
)
)
 Between:)
)
 United States Postal Service)
)
)
 And)
)
 National Association of Letter Carriers,)

Grievant: Morris
 Post Office: Toledo, OH 43601
 USPS No.: C16N-4C-C 18125740
 Union No.: 163C18

BEFORE: Glenda M. August, Arbitrator

APPEARANCES:

For the U.S. Postal Service

Barbara Cook

For the National Association of Letter Carriers

Andy Adkinson

Place of Hearing: 435 S. St. Clair St. Toledo, OH 43601

Date of Hearing: September 5, 2018

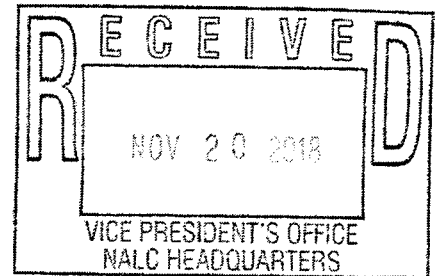
Briefs Received: October 9, 2018

Date of Award: November 6, 2018

Relevant Contract Provision: Articles 3, 15, & 19

Contract Year: 2016 - 2019

Type of Grievance: Contract



AWARD: The grievance is sustained. Management violated the National Agreement when they failed to comply with prior DRT decisions. Management shall cease and desist failing to comply with DRT resolutions for the Toledo Installation.

RECEIVED
 NOV 19 2018
DANIEL E. TOTH

Glenda M. August
 Glenda M. August
 Arbitrator

I. ISSUE (s)

Did the Postal Service violate the National Agreement including, but not limited to, Articles 3, 15, and 19, when it failed to comply with past decisions and placed the grievant on the "Deems Desirable" list? If so, what is the proper remedy?

II. RELEVANT CONTRACT PROVISIONS

ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A

grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

III. FACTS

Management formally notified the Grievant in a letter dated January 10, 2018, that he was being placed on the Deems Desirable list effective immediately. The letter stated that the Grievant would be required to submit acceptable documentation for any unscheduled absence or tardy. On January 19, 2018, the Grievant notified Management that he needed to leave work prior to the end of his shift and then called in sick the following day. The Union filed the instant grievance contending that the Service violated the National Agreement and prior DRT decisions for the Toledo Installation when they improperly placed the Grievant on the Deems Desirable list on January 10, 2018.

IV. UNION'S CONTENTIONS

The Union contended that the instant case is a Contractual Case and the Union is seeking a remedy for the contractual violation. According to the Union, the Service has violated at least one or more citable precedent setting grievance resolutions. They noted that this case centers on the Grievant being placed on the "deems desirable" list effective January 10, 2018 until March 31, 2018 (JX-2 Page 15). The Union argued that this was not done in conjunction with an absence or at the time of a call in. It was a "blanket" covering all future unscheduled absences for a long period of time.

The Union asserted that the grievance is about non-compliance. They contended that the

issue of how “deems desirable” is to be used and its’ purpose has already been settled by prior agreements between the parties (JX-2 Pages 17-19). It was argued by the Union that the parties jointly agreed in the DRT grievance resolution for case number C11N-4C-C 13318335, as to the difference between “deems desirable” and “restricted sick leave”. The Union further argued that the DRT Decision in that case (Page 17 of the Joint Exhibit 2) states that “*Management shall no longer use the “Deems Desirable” option in eRMS as a blanket policy*”.

It was the position of the Union that the DRT Decision in the aforementioned case provided an overview for the Use of Restricted Sick Leave versus “Deems Desirable”. According to the Union, ELM Section 513.39 details the Restricted Sick Leave process which is based on a review of the employee’s attendance record and then placed on the restricted list for a quarter; if the employee’s attendance record substantially corrects he/she will be removed after the quarter.” However, according to the Union, “*Deems Desirable” is used for one, single, current absence, of three days or less where the Service needs documentation to protect their interest. Supervisors must have reasonable fact based belief the leave is not being taken because the employee is sick. It is to be used for one absence, not for a week, month, or quarter*”. The Union noted that the DRT explained that “*The case file provides that management has improperly placed carriers on “Deems Desirable”*”. The Union contended that the exact thing occurred in the instant case.

The Union asserted that the DRT decision (JX-2 Pages 17-19) was not complied with. In that case, the Union argued that Management was putting individual employees under the “deems desirable” blanket for long periods of time. The Union noted that in the DRT Decision, the parties provided an explanation regarding the difference between Restricted Sick Leave and “Deems Desirable” that was provided by Headquarters Manager Strategic Complement Reassignment Labor Relations, where he provided clarification between the two options. The Union argued that local Management at Toledo, OH disagreed with Headquarters Management and instead chose to accept their own interpretation regarding the provisions.

In support of their position, the Union further cited the DRT Decision in case number C11N-4C-C 17326170, in which the DRT decided “*Management violated the National Agreement when they placed the grievant on “Deems Desirable” for a period of 30 days after she informed management she was unavailable to work her regular scheduled day off on a*

holiday schedule.” In that same decision, the DRT provided information for “educational purposes” to Management and listed the award from Arbitrator Holden which cited a Management exhibit that stated:

In order to ensure that the “Deems Desirable” option in ERMS is appropriately utilized by Management the following agreed upon provisions shall apply:

The “Deems Desirable” option should not be activated for any extended period of time, but should normally remain active for each specific absence...”

Activation of the “Deems Desirable” Option in ERMS should not be made in lieu of placement on the Restricted Sick Leave List.

Deems Desirable does not allow a policy to request documentation for all instances of intermittent leave; Deems desirable is for specific absences on a case-by-case basis.

(The above **guidelines** (bold) can be found in “Guidance and Instruction” issued by the Postal Service in July 2010, a copy of which was introduced as Management Exhibit #1 at the hearing.)

The Union cited yet another DRT Decision on the same issue where in case number C11N-4C-C 17340610, the DRT decided that “*Management had improperly placed the grievant in a “Deems Desirable” status. Management is highly recommended to review the JCAM and the ELM prior to requesting medical certification and placing employees on Deems Desirable*”. The Union contended that all the aforementioned DRT Decisions are consistent in instructing management of the distinction between “Deems Desirable” and “Restricted Sick Leave”, and are in line with Postal Service Headquarters’ position as well as the USPS July 2010 “Guidance and Instruction”. However, the Union contended that new local management at Toledo is arguing against the USPS Headquarters position on the matter.

It was the position of the Union that “Deems Desirable” has been decided by the parties and is not the issue before the Arbitrator. According to the Union, the issue is whether or not Management complied with these previous DRT decisions; and they contend that answer is NO. The Union argued that the DRT decisions cited are binding and precedent setting, yet Management ignored the decisions and continued to violate the National Agreement. They further argued that Management is attempting to make this grievance about the ELM and

whether they can place an employee on deems desirable as a blanket for long periods of time rather than for a single current absence; the Union noted again that this is not the issue in this case.

Finally, the Union contended that the letter the grievant received from Management (JX-2 Page 15), placing him under a “blanket” instruction to provide acceptable documentation between January 10, 2018 and March 31, 2018 is clearly in violation of the prior DRT instructions and precedent setting educational DRT decisions. The Union requested that this Arbitrator sustain the grievance, find the Service in violation of non-compliance with previous DRT resolutions and Order Management to “cease and desist” failing to comply with grievance resolutions.

IV. MANAGEMENT’S CONTENTIONS

Management in the instant case contended that they did not violate the National Agreement when they placed the Grievant on the “Deems Desirable” list. According to Management the Grievant in his extremely short career with the Postal Service has shown that he did not show any care or consideration to come to work on a regular basis, therefore his Supervisor informed him in writing that he was being placed on Deems Desirable (JX-2 Page 15). The Service disputed the Union’s claim that Management violated past decisions and argued that none of the DRT decisions cited by the Union have anything to do with the instant case. Management asserted that the Union bears the burden of proof in this Contract case.

It was Management’s position that the JCAM at page 10-14 provided the requirements for Medical Certification and states:

Medical certification. ELM Section 513.361 and .362 establish three rules:

- a. For absences of more than three days, an employee must submit “medical documentation or other acceptable evidence” in support of an application for sick leave (“three days” means three scheduled workdays; Step 4, H1N-5B-C 3428, November 3, 1983, M-00489); and
- b. For absences of three days or less a supervisor may accept an employee’s application for sick leave without requiring verification of the employee’s illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however,

- c. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

Numerous disputes have arisen over situations in which a supervisor has required an employee not in restricted sick leave status to provide medical documentation for an illness of three days or less. Generally, to challenge such a decision successfully the union should demonstrate that the supervisor acted arbitrarily, capriciously or unreasonably in requiring the employee to obtain medical documentation. The union should be prepared to show that the grievant has a good overall sick leave record and no record of abuse.

Consistent with the Rehabilitation Act, the parties agree that the ELM Sections 513.362 and 513.364 do not require the employee to provide a diagnosis (USPS correspondence, August 3, 2007, M-01629). Employees who are on extended periods of sick leave must submit at regular intervals, but not more frequently than once every 30 days, satisfactory evidence of their continued inability to perform their regular duties, unless "a responsible supervisor has knowledge of the employee's continuing incapacity for work" (ELM Section 513.363).

Management also provided the requirements for Sick Leave Documentation from the ELM Section 513.36 which states the requirements for employees who are absent 3 days or less or over 3 days. The Service offered the opinion of Arbitrator Tobie Braverman in Case Number 14092440 out of Buffalo, New York, where she opined:

The burden of proof to demonstrate that management has been arbitrary, capricious or unreasonable in identifying letter carriers as "deems desirable" for purposes of sick leave verification is on the Union. That burden was not met where the evidence established that the manager made decisions based upon legitimate considerations, and the attendance records of the affected employees appeared to justify the action. One employee for whom the action appears to have been unreasonable was not actually required to submit documentation, and there is therefore no basis for a remedy."

Management argued that likewise in the instant case, they did not act arbitrarily, capriciously or unreasonably in notifying the Grievant that he was placed on Deems Desirable.

It was Management's position that in the case at bar, the key word is "may place the employee, not must or shall place the employee" on the Restricted Sick Leave List. They argued that there is no mandate in the ELM stating this must be done; but rather it is an option to

Management as is notifying an employee that they are being placed on Deems Desirable then placing them on "Deems Desirable" in ERMS. According to Management, the Grievant's Supervisor reviewed both Restricted Sick Leave in the ELM and Deems Desirable and decided that based on the specific leave used by the Grievant, Restricted Sick Leave was not the proper path.

Management asserted that the Grievant had no sick leave and Restricted Sick Leave only covers the use of sick leave and leave without pay. In fact, according to hearing testimony by Management, the average hours worked by an employee annually is 2080 but the Grievant over the past year had only worked 862.45 hours. Management also testified that over the past 90 days, the Grievant had 38 incidents of unscheduled leave, 71 over the past 180 days and 151 in the past year. Management further asserted that Deems Desirable was the best option in this particular case.

Regarding the opinion of Headquarters Strategic Complement Reassignment Labor Relations Manager in the DRT case number C11N-4C-C 13318335 cited by the Union, Management argued that this employee is now retired from the Postal Service so the Service could not obtain clarification on his statement and the Step B Management Representative stated that he received the comment via email and he no longer has the email available to him. Management argued that in regards to the Statement from Headquarters, if an employee does not have sick leave, and used annual leave or is AWOL, how does Management correct their leave usage? Additionally, according to Management, the case cited was in regards to multiple carriers at Wernerts Station where there was a blanket policy at that specific station if employees exceeded 3 unscheduled absences. Management asserted that the instant case in no way reflects that issue.

Finally, Management argued that the Grievant's Supervisor did not act arbitrarily, as she testified that she just wanted the Grievant to correct his behavior, and she carefully reviewed which path she should take to do so; and even spoke with the Union Steward. Management further argued that the Union seeks non-compliance to vague settlements which are not precedent setting when the reality is the Grievant did not come to work. The Service contended that after the Supervisor exhausted all attempts to correct the Grievant's behavior, she placed him on Deems Desirable because the specific stipulations attached to Restricted Sick Leave would not have worked for this specific employee. The Service used the only recourse available

to them, stated Management and in this Contract case, where the Union bears the burden of proof, they have failed to prove that Management was non-compliant to the decisions in the case file. Therefore, Management requested this Arbitrator to deny the instant grievance in its entirety.

VI. DISCUSSION AND OPINION

NALC-USPS **JOINT CONTRACT ADMINISTRATION MANUAL**

Medical certification. ELM Section 513.361 and .362 establish three rules:

- a. For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave ("three days" means three scheduled workdays; Step 4, H1N-5B-C 3428, November 3, 1983, M-00489); and
- b. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however,
- c. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

The instant case involves the alleged non-compliance by Management with prior Dispute Resolution Team (DRT) resolutions regarding Deems Desirable notations in eRMS. According to the Union, there have been several grievances filed and resolved by the DRT regarding the appropriate use of Deems Desirable, and Management at Toledo refuses to abide by those decisions which are precedent setting for the Toledo Installation. Management on the other hand disputes that they failed to comply with any decisions and contend that the use of "deems desirable" is appropriate in the instant case and in compliance with the National Agreement and the ELM.

In case number C11N-4C-C 13318335, which was cited by the Union, the Issue Statement read:

Did the Postal Service violate the National Agreement, including Articles 3, 10 and 19 when they implemented a blanket policy placing employees on the “deems desirable” list, requiring employees to submit medical documentation for absences and if so, what is the appropriate remedy?

The DRT agreed to resolve the grievance and ordered that Management shall **no longer use the “Deems Desirable” option in eRMS as a blanket policy.** The parties advised that Management should provide the reasonable fact that lead to the individual being placed on “deems desirable” upon request.

In the second case cited by the Union, C11N-4C-C 17326170, the Issue Statement read:

Did management violate the National Agreement, including but not limited to, Articles 3, 10, 15, and 19, when it placed the grievant on the “deems desirable” list? If so, what is the appropriate remedy?

The DRT resolved that grievance as well and found that *“Management violated the national Agreement when they placed the grievant on “Deems Desirable” for a period of 30 days after she informed management she was unavailable to work her regularly scheduled day off on a holiday schedule.”* In that case, the DRT cited Arbitrator Sarah Cannon Holden in case # B10C-1B-C 15197604 where she opined:

In order to ensure the “Deems Desirable” option in ERMS is appropriately utilized by Management the following agreed upon provisions shall apply:

Implementation Cannot conflict with leave regulations contained in ELM 510

Governs management of a present, single absence 3 days or less
Must be on a case-by-case basis

May not be arbitrary and capricious Supervisor must have a reasonable, fact-specific basis for the request

The “Deems Desirable” option should not be activated for any extended period of time, but should normally remain active only for each specific absence for which we can fulfill our burden that the Interests of the Service need to be protected. It should be deactivated immediately thereafter. Activation of the “Deems Desirable Option” in ERMS should not be made in lieu of placement on the Restricted Sick Leave List.

Deems Desirable does not allow a policy to request documentation for all instances of intermittent leave; Deems Desirable is for specific absences on a case-by-case basis.

The above guidelines (bold) can be found in "Guidance and Instruction" issued by the Postal Service in July 2010, a copy of which was introduced as Management Exhibit # 1 at the hearing.

Arbitrator Holden cited a Management Exhibit which was produced by the Postal Service in 2010. In that Exhibit the Postal Service reviewed the proper and appropriate use of the Deems Desirable option in ERMS. Those guidelines were no doubt developed from the ELM in association with the National Agreement and JCAM.

A review of the ELM at Section 513.36 provides the following information regarding documentation requirements for postal employees:

513.36 Sick Leave Documentation Requirements

513.361 Three Days or Less

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

The Joint Contract Administration Manual provides the following regarding Medical Certification for absences:

Medical certification. ELM Section 513.361 and .362 establish three rules:

- a. For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave ("three days" means three scheduled workdays; Step 4, H1N-5B-C 3428, November 3, 1983, M-00489); and
- b. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved); however,
- d. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

Both the ELM and the JCAM describe those situations where documentation may be required for absences of three days or less and that is when, based on that particular absence, the Supervisor

deems documentation desirable for the protection of the interests of the Postal Service. The language used by both the JCAM and the ELM describe a “deems desirable” situation based on a particular absence...; neither the ELM or the JCAM describes a “Deems Desirable” list or “Deems Desirable” Option to identify a particular employee and then require them to submit documentation for every absence during a particular period. The language speaks more to identifying a particular absence which might prompt a Supervisor to request documentation based on their belief that Postal Service interests may need to be protected.

The language of the ELM and JCAM would be in line with the interpretation of the Postal Headquarters Representative who provided clarification to the DRT in case number C11N-4C-C 13318335, cited in the instant case, as well as in line with the “Guidance and Instruction” issued by the Postal Service in the July 2010 document cited by Management in Arbitrator Holden’s aforementioned case. As a result of the clarification by Postal Service Headquarters, and Arbitrator Holden’s inclusion of the “Guidance and Instruction from the Postal Service, the DRT concluded that Management at the Toledo Post Office was inappropriately using the “Deems Desirable” option in ERMs to place a blanket restriction on employees, including the Grievant, for extended periods of time. The DRT found this was a violation of the National Agreement and ordered Management to cease the use of the “Deems Desirable” option in eRMS as a blanket policy.

Management argued that the DRT resolutions had little to do with the issue in the instant case and was based on issues at Wernerts Station. Regarding DRT decisions, the JCAM provides that:

JCAM

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Step B Decision. The Dispute Resolution Team must make a decision within fourteen calendar days after receipt of the appeal from Formal Step A, unless this time limit is mutually extended. The written Step B decision must state the reasons for the decision in detail and include a statement of any additional facts or contentions not set forth in the grievance as appealed from Formal Step A. The Step B team must attach to the decision a list of all documents included in the file.

A Step B decision establishes precedent only in the installation from which the grievance arose. For this purpose, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on

similar issues that have been previously decided in that installation.

Although the grievance in the cited case was initiated at the Wernerts Station, the decision of the DRT establishes precedent on the Installation at Toledo. Thus, Management in this case had a responsibility to comply with the DRT's decision in the aforementioned grievances.

While it is certainly Management's right, specifically the employee's supervisor, to request documentation for absences of less than 3 days, Management must assign that "deems desirable" on a case by case basis, based on a specific absence and not use the Deems Desirable option in ERMS to place a blanket restriction on an employee for an extended period.

Based on the evidence of record and the arguments and contentions of the parties, the grievance is sustained. Management violated the National Agreement when they failed to comply with prior DRT decisions. Management shall cease and desist failing to comply with DRT resolutions for the Toledo Installation.

AWARD

The grievance is sustained. Management violated the National Agreement when they failed to comply with prior DRT decisions. Management shall cease and desist failing to comply with DRT resolutions for the Toledo Installation.

Glenda M. August

GLENDAM. AUGUST
Arbitrator

November 6, 2018

New Iberia, LA

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE Grievant: **Class Action**

and

AMERICAN POSTAL WORKERS UNION, AFL-CIO

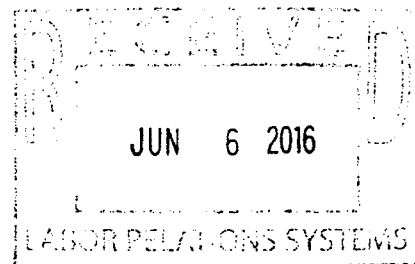
Case Nos.
Postal Service B10C-1B-C 15197604
Union 15-0816

BEFORE: Sarah Cannon Holden, Arbitrator

APPEARANCES:

For the Postal Service: Connie Marvin
For the Union: Scott Hoffman

PLACE OF HEARING: Boston, Massachusetts
TYPE OF GRIEVANCE: Deems Desirable Option
DATE OF HEARING: May 24, 2016
DATE OF AWARD: June 3, 2016



ISSUE.

The parties agreed to the following issue:

"Did the Postal Service violate Article 5 and 19 of the Collective Bargaining Agreement when it improperly used the Deems Desirable Option? If so, what shall be the remedy?"

BACKGROUND.

This grievance originated in the Braintree, Massachusetts postal facility and ultimately gave rise to a Class Action grievance for the entire Boston Installation. The case involves circumstances under which there are documentation requirements for absences of three days or less. In 2010 the parties implemented the so-called "Deems Desirable Option" which is an

option available to Management under **ELM 513.36 Sick Leave Documentation Requirements/Three Days or Less**. The relevant language follows:

513.361 Three Days or Less

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. (Further documentation) is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

The Union filed the grievance alleging that Management is improperly using the "Deems Desirable" option in TACS/ERMS to require unjustified documentation of absences of three day or less. Management's actions are arbitrary and capricious.

The parties were unable to resolve the matter. An arbitration hearing was held in Boston, Massachusetts on May 24, 2016.

POSITIONS OF THE PARTIES.

The Union.

It is the Union's position that Management has perverted this provision by retaining an employee in the "Deems Desirable" category once it has exercised the option the first time. The employee becomes subject to the category and the documentation requirements for all future absences of three days or less. This is not the intent of the language. Management, it argues, may not "cast doubt on an unknown, not requested absence." The "Deems Desirable" option should be exercised only on a one-time basis when "the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

The Union asks for a cease and desist order for the improper use of the "Deems Desirable" option in TACS/ERMS and that the Service comply with ELM 513 regarding absences of three days or less.

The Postal Service

The Postal Service, on the other hand, takes the position that the utilization of the "Deems" option in Enterprise Resource Management System (ERMS) does not violate any of the terms of the Collective Bargaining Agreement. The proper terms of its implementation have been clearly spelled out in documents that were created by the Postal Service and signed by it and the Union. The document was provided to supervisory personnel in July 2010.

Since no violation of the CBA could be demonstrated by the implementation of the guidelines the Service asks that the grievance be denied.

DISCUSSION

The language of the "Deems Desirable Option", to which both parties agreed, is very succinct and clear. After considering the arguments of the parties I find that the solution to this grievance is to reiterate the provisions of the Agreement as a reminder of their purpose and their proper use.

In order to ensure that the "Deems Desirable" option in the ERMS is appropriately utilized by Management the following agreed upon provisions shall apply:

Implementation

- **Cannot conflict with leave regulations contained in ELM 510**
- **Governs management of a present, single absence 3 days or less**
- **Must be on a case-by-case basis**
- **May not be arbitrary and capricious**
- **Supervisor must have a reasonable, fact-specific basis for the request**

The "Deems Desirable" option should not be activated for any extended period of time, but should normally remain active only for each specific absence for which we can fulfill our burden that the interests of the Service need to be protected. It should be deactivated immediately thereafter. Activation of the "Deems Desirable Option" in ERMS should not be made in lieu of placement on the Restricted Sick Leave List.


Deems Desirable does not allow a policy to request documentation for all instances of intermittent leave; Deems Desirable is for specific absences on a case-by-case basis.

The above guidelines (**bold**) can be found in "Guidance and Instruction" issued by the Postal Service in July 2010 a copy of which was introduced as Management Exhibit #1 at the hearing.

The guidelines and limitations on the use of the "Deems Desirable" option as outlined in the original documentation are very clear. A simple refresher for supervisors should remedy the Union's grievance.

THEREFORE, I award as follows:

- 1. I find that the Postal Service did violate Articles 5 and 19 of the Collective Bargaining Agreement when it improperly used the "Deems Desirable" option.**
- 2. The Postal Service is ordered to cease and desist from such improper use and follow the established guidelines set forth in the DISCUSSION section above.**
- 3. The grievance is sustained.**



Sarah Cannon Holden

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	GRIEVANT: Class Action
)	
between)	POST OFFICE: Columbus, OH P&DC
)	
UNITED STATES POSTAL SERVICE)	USPS Case No.: CO6M-1G-C 07209854
)	NPMHU Case No.: TDB6-20-07
and)	
)	
NATIONAL POSTAL MAIL HANDLERS)	
UNION)	

BEFORE: RONALD F. TALARICO, ESQ., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Mildred M. Johnson
Labor Relations Specialist
Columbus, OH

For the Union: William H. McLemore, III
Arbitration Advocate
Cincinnati, OH

PLACE OF HEARING: Columbus, OH

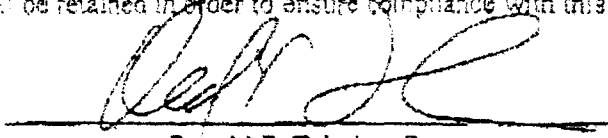
DATE OF HEARING: June 19, 2008

DATE OF AWARD: July 15, 2008

AWARD

The grievance is sustained. The Employer is to cease and desist creating the "deems desirable/documentation required" status for leaves of 3 days or less as it currently does, and must adhere to the ELM.

Jurisdiction shall be retained in order to ensure compliance with this Award.



Ronald F. Talarico, Esq
Arbitrator

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held on June 19, 2008 in Columbus, Ohio at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses and to make such arguments that they so desired. The record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

ARTICLE 19
HANDBOOKS AND MANUALS

Section 19.1

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

* * * * *

EMPLOYEE AND LABOR RELATIONS MANUAL

513.36 Sick Leave Documentation Requirements

513.361 Three Days or Less

For periods of absence of 3 days or less, supervisors may accept the employee's statement

explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

....
513.39

Restricted Sick Leave

513.391

Reasons for Restrictions

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.

513.392 Notice and Listing

Supervisors provide written notice to employees that their names have been added to the restricted sick leave listing. The notice also explains that, until further notice, the employees must support all requests for sick leave by medical documentation or other acceptable evidence (see 513.364).

513.393 Reversion of Restriction

Supervisors review the employee's PS Form 3972 for each quarter. If there has been a substantial decrease in absences charged to sickness, the employee's name is removed from the restricted sick leave list and the employee is notified in writing of the removal.

* * * * *

USPS — NPMHU CONTRACT INTERPRETATION MANUAL

Restricted Sick Leave: Management may place an employee in "restricted sick leave" status, requiring medical documentation to support every application for sick leave, if: (a) management has "evidence indicating that an employee is abusing sick leave privileges"; or (b) if management reviews the employee's sick leave usage on an individual basis, first discusses the matter with the employee, and otherwise follows the requirements of ELM, Section 513.39.

Question: May management create a list of employees who are required to provide medical documentation for all unscheduled absences in lieu of utilizing the restricted sick leave procedure found in ELM, Section 513.39?

Answer: No. A "call-in" list of employees that are automatically required to provide medical documentation for all unscheduled absences, even though the employees are not on restricted sick leave, should be abolished.

Source: Pre-arbitration Settlement H1C-3D-C 37622, dated June 3, 1985.

BACKGROUND

This class action grievance was filed on June 27, 2007 on behalf of Mail Handlers working at the Columbus, Ohio Production & Distribution Center. The grievance alleges that management continues to use the "Deems Desired List" in lieu of restricted sick leave despite two Step III decisions instructing them to follow the ELM. The Union seeks as a remedy that Management be ordered to cease and desist using any system to mandate documentation without the use of the ELM requirements.

In years past when an employee would call-in a Supervisor would actually take the call, review the employee's 3971's and make a determination right then and there if the employee would need to produce medical verification upon their return to work from that particular sick leave. This process would be repeated each time the employee would call-in. However, with the advent of the ERMS system employees no longer talk to an individual when calling in to request leave of any kind. An automated answering and speech recognition system is utilized. A supervisor now has the ability to automatically require an employee to provide documentation for absences of three days or less by simply checking the "Documentation Required" box under "Deems Desirable" in the ERMS system. If a supervisor checks this box whenever the employee calls in to request leave they will automatically be advised that medical documentation will be required upon their return to work. The

supervisor also has the ability of entering a beginning and ending date into the ERMS system which will then continue to automatically advise the employee of the requirement to produce documentation for each short-term absence during the stated period of time.

A service talk was recently given to supervisors during which Management maintains the speaker mistakenly used the term "Deem Desirable List". The Plant Manager followed the service talk up with a message to all supervisors and managers advising them that this was a misleading term and should read, "when supervisor deems documentation desirable for the protection of the interest of the Postal Service in accordance with ELM 513.61". The Plant Manager further reminded supervisors that there should be no "list" of employees and if there was any supervisor who had one, they were to destroy it.

ISSUE

Whether the ERMS "Deems Desirable" process the Employer currently utilizes to automatically advise employees to provide medical documentation for unscheduled absences of 3 days or less violates the collective bargaining agreement?

POSITION OF THE UNION

Once we presented our evidence and documentation to you the Postal Service said "Yes, we did this and this is the reason why". We require documentation for less than three days because we wanted to protect the interests of the Postal Service. We think it's their obligation at that time to prove what that was. If they did do this to protect the interests of the Postal Service what was that interest. Mr. Arbitrator we submit that they did not do that today. They said they sent it to these

employees who had bad attendance records, but we contend that a bad attendance record does not qualify as a reason to ask for documentation for sick leave to protect the interests of the Postal Service. They never provided any documentation showing that they can request documentation for less than three days without showing what that interest was. From the beginning of the grievance until today they never showed us anything.

Mr. Arbitrator even if we do not use Union 1 through Union 5 which are, in our opinion, they are lists that show these people on the list but never used that. To say we disagree in terms. The fact of the matter is these employees are categorized somewhere and now it's in the ERMS system. And you can bet whether they are on the list or not, a person can go into that system and say get me all the people on the Deems Desired list and you can bet it can be pulled out. We are saying that these employees are categorized by list, status, category, whatever and they all have something similar in common. They are being required to bring in documentation for less than three days. You cannot just say to protect the interests and not say what interest at all. They never, never, ever identified a reason. So we are saying that is not good enough. They have done nothing but created a way to get rid of the safeguards for the employees and take a lazy way around the restricted sick leave list.

Mr. Arbitrator if we look at Joint 3, the Step 3 decision, no where does it say all that it's doing is quoting the ELM. No where does it say we have a right. These employees were abusing sick leave. They were calling in after their off day or before their off day. Getting a three day weekend. Nowhere in the Step 3 decision did it address what interests were involved. Here today at the hearing nobody said their interests were protected. Protection of the Postal Service must be made on a case-by-case bases. And may not be arbitrary, capricious or unreasonable. They said the same thing in Step 2 --case-by-case. If you have some attendance problems a supervisor looks at

your 3972 and decides -- OK we are going to put you on this list. Mr. Arbitrator that is not protecting the interests of the Postal Service. This is trying to slide something through the cracks. When we have an abuser of sick leave we are in a grievance procedure and we are dealing with discipline. They are trying to slide in a new vehicle other than the vehicles that they have available to them but they are trying to slide in a new vehicle and Mr. Arbitrator we cannot allow that. Restricted sick leave has guidelines and checks and balances from both sides. It makes sure the employoc is being treated fairly, makes sure the Postal Service is monitoring what they require of him so they can deal with abusers. If the Postal Service should decide not to use restricted sick leave they will be taking the easy way out without having to do the work.

Can Management create a list of employees? No they can't. The call-in list has to be abolished. Even though the employees are not under a restricted sick leave it should be abolished. So what Management is doing here is they are saying -- OK, no it's not a list. You know this doesn't apply because it's not a list. Mr. Arbitrator in actuality it is a list. It is employees who have the same thing in common. And they are put in a certain category and they are being required to document an absence for less than three days which is contrary to what the ELM says.

POSITION OF THE POSTAL SERVICE

The issue according to the Union's standard grievance form is whether the Postal Service violated Article 5, 10, 15 and 19 of the National Agreement by continuing to use deems desirable in lieu of restricted sick leave. We don't believe that is what we are doing. The Union at the national level has agreed to the use of the ERMS system. We are using a small portion of that system in accordance with our rules, policies and procedurts. Management has been utilizing the

deems desirable in the system for well over 4 years now and the Union has no objection to it until now. It is not new. The Union appears to be attempting to mandate that the Columbus district utilize restricted sick leave. The Union's Exhibit "8" deals with a computer program. It does not constitute a new rule or regulation. We agree with that. We also agreed it does not take away our right to request documentation for 3 days or less. Management has testified credibly that for at least the last 20 years it has been a practice here in this District to review an employee's attendance record when they call-in, look at their attendance record and make a determination to request documentation based on those attendance records.

Prior to the implementation of IBI a supervisor taking that call could make that determination at the time of the call. With the implementation of the IBI the only way to accomplish that is for the supervisor to make the notation in the computer. Supervisors have been trained. Laurie Gorman testified that they are supposed to sit down -- the proper procedure is to sit down with the employee, review their attendance, get the employee's feedback, make a determination whether they are going to require documentation, let that employee know, let them know for how long and why. Do we have to provide a follow-up to that? Yes we do. Gorman testified she has been made aware of at least 3 that did not. Unfortunately, 2 of those 3 were the 2 that are involved in this grievance. And Laurie had to retrain them and they are no longer doing what they weren't suppose to be doing in the first place. They are now following the proper procedures. There is no way to pull a list from the computer system as far as who marked "documentation required" because it is on a case-by-case basis. Maybe not every case-by-case basis but it is on an employee to supervisor one-on-one basis. Only that supervisor can make that designation. And that supervisor should not be making that designation without talking to the employee. Lori testified on her training that she did give

supervisors in particular some examples of why they might want to use the documentation desired. For example, maybe things such as always calling in conjunction with off days, always calling in conjunction with their holidays, you know issues like that. That is what we mean by for the protection of the Postal Service.

Mr. Arbitrator I honestly feel that the Union has failed in its burden of proving that we violated any of the Articles of the National Agreement and we respectfully request that this grievance be denied and dismissed in it's entirety.

FINDINGS AND DISCUSSION

The essential underlying facts in the within matter are not in dispute and the issue is a straight-forward matter of contract interpretation. The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can possibly be read into the language.

The obligation of employees to report for work as scheduled, except as allowed by contract or permission of the employer, is fundamental to the employer/employee relationship. An employee's illness may constitute a permissible reason for being absent to the extent the illness is incapacitating to the performance of the employee's duties, to the extent sick leave is available to the employee, and to the extent proper procedures are followed. However, every request for sick leave should not automatically be subjected to a demand for medical documentation and proof of the

legitimacy of the absence. Perhaps in recognition of the practical difficulties in obtaining medical verification for short-term illnesses and absences ELM Section 513.361 generally exempts absences of three days or less from such requirement. To that end, ELM Section 513.361 creates two exceptions to the general exemption of short-term absences which should be strictly adhered to. One exception is an employee who is placed on restricted sick leave which, I would note, entails many rights and obligations. The other exception is a more generalized condition where a supervisor deems such documentation to be desirable for the protection of the interests of the Postal Service.

Management has stipulated that it does not use "restricted sick leave" as set forth in ELM 513.39 at the Columbus P&DC. Accordingly, for periods of absence of three days or less supervisors may require medical documentation only when it is deemed desirable for the protection of the interests of the Postal Service. Neither the collective bargaining agreement nor any other document that I am aware of provides any guidelines or parameters on the identification of those interests, nor how they may be protected. However, a supervisor's determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interests of the Postal Service must be made on a case-by-case basis, and may not be arbitrary, capricious or unreasonable.

Even though management does not use "restricted sick leave" I believe it would still be instructive for purposes of this analysis to review some of the conditions pertaining to its use. For example, employees may be placed on restricted sick leave only after their sick leave use has been reviewed on an individual basis and the following actions have been taken: establishment of an absence file; a review of the absence file by the immediate supervisor and higher levels of management; a review of subsequent absences on a quarterly basis; written notice to employees that

their names have been added to the restricted sick leave listing; and notice that all further requests for sick leave must be supported by medical documentation until further notice. Clearly the use of restricted sick leave places considerable obligations upon the Employer and offers important protections to the employee.

The Postal Service utilizes a resource management data base (ERMS) to provide a uniform automated process for recording data relative to existing leave rules and regulations. However, management may not alter or change existing rules, regulations, the National Agreement, local understandings, arbitration awards, etc., through the use of its ERMS.

The parties' Contract Interpretation Manual addresses the situation where management does not utilize "restricted sick leave" for employees and the remaining options that are available for requesting documentation for absences of 3 days or less. Under such circumstances management may not create a list of employees who are automatically required to provide medical documentation for all such unscheduled absences.

When a supervisor checks the data box on the ERMS form indicating that documentation is required for short-term leaves of absence each time that employee calls in to request sick leave the ERMS system will automatically advise him/her that they must provide documentation for the requested sick leave upon return to work. This is done automatically by the system, without the employee ever speaking directly with the supervisor, and without any further input from or consultation with the supervisor for each successive call-in.

If an employee is going to lose the valuable right of being able to utilize sick leave for absences of 3 days or less without the need to provide medical verification the Employer has the obligation to ensure that the employee is apprised of and understands the reasons why this valuable

right is being lost (i.e. what are the interests being protected), as well as the parameters under which the loss of this right will remain in existence. While all of these obligations are satisfied when management uses restricted sick leave that is not the case under management's current computerized system of responding to call-ins of 3 days or less. The evidence presented does not indicate any requirement or adhered to practice of supervisors initially meeting with the employee and providing them with the reasons why the "deems desirable" box is being checked and, more importantly, how long and under what conditions the employee will remain in that "status". Nor is there any opportunity for an exchange of information and for the supervisor to take into consideration any change in the employee's circumstances over time.

Essentially what is occurring is that instead of a physical "list" being developed and utilized whenever an employee calls-in (which has been prohibited by the parties' CBA) the computerized ERMS system now performs that same function. The ERMS system electronically creates the equivalent of a "list" that automatically requires an employee to document an unscheduled absence without the type of protections offered by restricted sick leave. The ERMS system essentially creates a "deems desirable" "status" which is the functional equivalent of the prohibited "call-in" list of employees which automatically requires them to document every unscheduled absence instead of utilizing the restricted sick leave method found in Section 513.39 of the ELM. The significant import of this electronic equivalent is to allow management to require documentation for all absences of 3 days or less while avoiding providing all of the rights and safeguards afforded employees under the restricted sick leave provisions ELM Section 513.39. That simply is not permissible and constitutes a contract violation.

For all of the above reasons, the grievance must therefore be sustained.

AWARD

The grievance is sustained. The Employer is to cease and desist creating the "deems desirable/documentation required" status for leaves of 3 days or less as it currently does, and must adhere to the ELM.

Jurisdiction shall be retained in order to ensure compliance with this Award.

Date:

July 15, 2008
Pittsburgh, PA



Ronald F. Talarico, Esq.
Arbitrator

LABOR RELATIONS



December 19, 2006

Mr. Gary H. Mullins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001-2144

Dear Gary:

This is in further reference to our conversation regarding your December 1 correspondence concerning supervisory activation of the "Deems Desirable" option in eRMS and the Restricted Sick Leave List (RSL List) provisions of ELM Section 513.39.

As noted in our June 20 response to a previous NALC inquiry that included this issue, a supervisor's determination that *medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interest of the Postal Service* must be made on a case by case basis, must be consistent with the provisions of ELM 513.361 and may not be arbitrary, capricious, or unreasonable.

Availability of this eRMS option does not expand or diminish supervisory authority, or change policy concerning medical documentation in any way. We are developing an eRMS enhancement to ensure system users are advised of this.

Please contact John Cavallo at (202) 268-3804 if you have additional questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "A.J. Johnson".

A.J. Johnson
Manager
Labor Relations Policy and Programs

RECEIVED

DEC 20 2006

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

cc: 2264

Exhibits 9, 10, 11, etc

Key Indicator Reports
for carriers placed on
"deems desirable"

Exhibit _____

M-01468

LABOR RELATIONS

RECEIVED



AUG 30 2002

CONTRACT ADMINISTRATION UNIT
N.A.L.C. WASHINGTON, D.C.

Mr. Vincent R. Sombrotto
President
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2144

RE: Q98N-4Q-C 01051141
Class Action
Washington, DC 20260-4100

Dear Mr. Sombrotto:

On several occasions I met with your representative to discuss the Resource Management Database (RMD) at the interpretive step of the grievance procedure.

The interpretive issue is whether or not the RMD or its web-based counterpart, enterprise Resource Management System (eRMS), violates the National Agreement.

It is mutually agreed that no national interpretive issue is fairly presented. The parties agreed to settle this case based on the following understandings:


- The eRMS will be the web-based version of RMD, located on the Postal Service intranet. The eRMS will have the same functional characteristics as RMD.
- The RMD/eRMS is a computer program. It does not constitute a newrule, regulation or policy, nor does it change or modify existing leave and attendance rules and regulations. When requested in accordance with Articles 17.3 and 31.3, relevant RMD/eRMS records will be provided to local shop stewards
- The RMD/eRMS was developed to automate leave management, provide a centralized database for leave-related data and ensure compliance with various leave rules and regulations, including the FMLA and Sick Leave for Dependent Care Memorandum of Understanding. The RMD/eRMS records may be used by both parties to support/dispute contentions raised in attendance-related actions.
- When requested, the locally set business rule, which triggers a supervisor's review of an employee's leave record, will be shared with the NALC branch.

Q98N-4Q-C 01051141

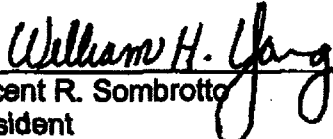
- Just as with the current process, it is management's responsibility to consider only those elements of past record in disciplinary action that comply with Article 16.10 of the National Agreement. The RMD/eRMS may track all current discipline, and must reflect the final settlement/decision reached in the grievance-arbitration procedure.
- An employee's written request to have discipline removed from their record, pursuant to Article 16.10 of the collective bargaining agreement, shall also serve as the request to remove the record of discipline from RMD/eRMS.
- Supervisor's notes of discussions pursuant to Article 16.2 are not to be entered in the "supervisor's notes" section of RMD/eRMS.
- RMD/eRMS users must comply with the privacy act, as well as handbooks, manuals and published regulations relating to leave and attendance.
- RMD/eRMS security meets or exceeds security requirements mandated by AS-818.
- It is understood that no function performed by RMD/eRMS now or in the future may violate the National Agreement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.



Sandra J. Savore
Labor Relations Specialist
Labor Relations Policies and
Programs



Vincent R. Sombrotto
President
National Association of Letter Carriers,
AFL-CIO

Date: 9-09-02

ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to CCA employees pursuant to the same standards and procedures found in Article 19 of the National Agreement.

[see Memo, page 214]

This Memo is located on JCAM pages 19-2 and 19-3.

Handbooks and Manuals. Article 19 provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they were part of the National Agreement. Changes to handbook and manual provisions directly relating to wages, hours, or working conditions may be made by management at the national level and may not be inconsistent with the National Agreement. A challenge that such changes are inconsistent with the National Agreement or are not fair, reasonable, or equitable may be made only by the NALC at the national level.

A memorandum included in the 2019 National Agreement establishes a process for the parties to communicate with each other at the national level regarding changes to handbooks, manuals, and published regulations that directly relate to wages, hours, or working conditions. The purpose of the memorandum is to provide the national parties with a better understanding of their respective positions in an effort to eliminate