

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) Grievant: LEWIS
(
between) Post Office: Rockville, MD
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UNITED STATES POSTAL SERVICE) USPS Case NO.: K98N-4K-C02045543
(
(
and)
(
NATIONAL ASSOCIATION OF) NALC Case No.: 532001DL99
(
LETTER CARRIERS, AFL-CIO) NALC DRT NO. 13-038761

BEFORE: Michael Fischetti

APPEARANCES:

For the Postal Service: Cheryl Keith
For the Union: Dominick J. Lignelli

Place of Hearing: Rockville, MD

Dates of Hearings: May 8, 2002

Date of Award: May 28, 2002

Relevant Contract Provisions: Articles 5, 10 & 19; ELM 512.43

Contract Year: 1998-2001

Type of Grievance: Contract

Award Summary:

Based on the testimony and evidence, the Union has met its burden of proof. Management had administrative discretion to approve or deny LWOP under ELM 514.22, but the grievant did not request LWOP. She had an approval for annual leave, and her deficit leave balance would have turned to LWOP under ELM 512.43. Given the circumstances in this case, the grievance is sustained.

Michael Fischetti

Michael Fischetti, Arbitrator

BACKGROUND

This arbitration is pursuant to the procedures set forth under the National Agreement between the UNITED STATES POSTAL SERVICE (the Service) and THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO (the Union). The undersigned was appointed Arbitrator to hear and decide the grievance herein and to render a final and binding Award. The case involves a protest by the grievant, Shanelle Lewis, an employee at the Rockville, MD Post Office, that the Service violated Section 512.43 of the ELM when it refused to let her take previously approved annual leave because of an insufficient annual leave balance.

A hearing was scheduled before the undersigned Arbitrator at the Rockville, MD postal facility on May 8, 2002. After opening statements, all parties at interest were afforded full and fair opportunity to present any and all evidence; to present and examine or to confront and cross-examine any and all witnesses; and to present any and all arguments in support thereon as each desired and deemed appropriate. All witnesses were sworn and sequestered. At the end of the presentations the parties made their final oral arguments, and the record was closed pending the entry of this Decision and Award.

ISSUE

Did Management violate Article 10.4.D of the National Agreement and Section 512.43 of the ELM when it told the grievant that she could not take previously approved annual leave because of an insufficient annual leave balance, and if so, what is the proper remedy?

POSITIONS OF THE PARTIES

The Union asserts that Management violated Articles 10 and 19 of the National Agreement, and Section 512.43 of the Employee Labor Relations Manual. Moreover, the Union

contends that the grievant had the annual leave, but not at the time of the actual leave. In addition, the Union maintains that there is no policy that gives Management the authority to deny leave without pay (LWOP).

Management asserts that it has not violated the ELM. Management contends that Section 514.22 of the ELM gives it the right to approve or disapprove such requests. Moreover, Management maintains that since the grievant has not applied for LWOP, her request does not automatically convert over. In addition, Management contends that it has the right to review each request for LWOP.

FINDINGS

The following witnesses presented testimony.

Testimony of Ken Lerch:

Ken Lerch testified that he has worked for the Service for twenty-three years, and that he is the President of the local Union. Mr. Lerch referenced the Step A Grievance Form (J-2, p. 5, item #14), which maintained that Management violated Article 19; the ELM Section 512.43; Article 10; and Article 5, Section 1 of the National Agreement when it told the grievant that “she could not take off from an approved annual leave slip with insufficient balance” of annual leave. He stated that the PS Form 3971 (U-1) clearly showed a statement: “I understand that the annual leave authorized in excess of amount to me during the leave year will be charged to LWOP.” In addition, he stated that LWOP was regarded as a pay category.

Under cross examination, Mr. Lerch stated that the 3971 was used for a request or notification of absence. Moreover, he stated that he believed that the 3971 was used for pay purposes.

Testimony of Shanelle Lewis:

Shanelle Lewis testified that she has worked as a letter carrier at the Twinbrook station since 1998. Ms. Lewis stated that she filled out a 3971 (J-2, p.7), and that she applied for annual leave from 11/19-11/24/01. She also noted that she had applied for and received FMLA leave for three weeks. According to Ms. Lewis, she never requested LWOP. Moreover, she noted that although she did not have a sufficient annual leave balance, she believed that the ELM 512.43 would dictate that any insufficient leave balance that she had would automatically convert to LWOP.

Under cross examination, Ms. Lewis stated that she did not apply for LWOP. Moreover, she noted that it was not the first time she ran out of annual leave. She stated that her supervisor, Ms. Jackson, told her that the Post Master was not approving any LWOP.

Testimony of Jenny Jackson:

Jenny Jackson testified that she has worked for the Service for twenty-one years, and that she was a letter carrier for sixteen of those years. Ms. Jackson has been a supervisor for six years, and she was the Supervisor of Customer Service at Twinbrook at the time in question. She stated that she told Ms. Lewis that she had an insufficient leave balance for approval. She also stated that a 3971 was needed to approve leave.

Under cross examination, Ms. Jackson stated that employees were not allowed to take leave unless they had a sufficient balance. She noted that the TAC's system did not allow for her to see if an employee had a sufficient leave balance.

Testimony of Eugene Frye:

Eugene Frye testified that he has been the Post Master of the Rockville Post Office since

April 2000, and that he has been with the Service for thirty-eight years. Post Master Frye stated the Union misinterpreted section 512.423 of the ELM. He referred to his denial of the instant grievance (J-2, pp. 14-15), and reiterated that LWOP was a separate and distinct category of leave that must be requested and approved by a supervisor. He maintained the ELM 514 was unambiguous, and that it clearly provided that the granting of LWOP was a matter of administrative discretion. He stated that he believed section 514.22 of the ELM (J-2, pp. 17-18) gave Management the administrative discretion to approve or disapprove LWOP.

Under cross examination, Post Master Frye stated that he did believe that a written policy letter was needed because the ELM provided the policy. Post Master Frye reiterated that the Union had misinterpreted the annual leave policy as set forth in the ELM 512 (U-2). He also referenced the ELM 514, and the specific conditions which he believed controlled granting of LWOP.

DISCUSSION

The Service has argued that Management did not violate the National Agreement. The Service maintains that under Section 514.22 of the ELM, it has the right to approve and disapprove for LWOP. In support of its contention the Service presented one regular arbitration case, G94C-1G-C99068270 (M-1). In that case, Arbitrator King upheld the Service. At page 12, she stated as follows: "The National Agreement between the parties, including provisions of the ELM, authorized by Article 19 of the CBA, are unambiguous and speak with clarity to the discretion of management to approve or deny each employee request for LWOP." This is clearly consistent with ELM 514.22. Moreover, the Service argues that case number, K98C-4K-C99301179 (J-2, pp. 9-13) is not on point and does not apply to this instant case. In reviewing

that case, however, it does appear that the issue is relevant to the instant case. In upholding the Union, Arbitrator Trosch stated at page 5, as follows: "The Postal Service assertion that the granting of a request for LWOP is discretionary may be true, but the regulations in the record do not require such a request in these circumstances." The Service asserts that the granting of LWOP is a matter of administrative discretion. It is not granted on the employee's demand except as provided in certain circumstances, and the Service contends that this is not one of those circumstances.

The Union maintains that Management violated Article 10.4.D, and the ELM 512.43. The Union noted the findings of Arbitrator Trosch in the case cited above, and the fact that the case involved the same Union local. The Union also notes that there is no local policy in Rockville to cancel approved annual leave when Management discovers that an employee lacks sufficient annual leave hours for a requested vacation. Moreover, the Union maintains that Management in Rockville has regularly allowed carriers with insufficient balances to take LWOP for a portion of the week for approved annual leave in advance. In addition, Management's witness conceded that because of inadequacies with the TAC's system, there was no way of knowing precisely what the leave balance might have been. In support of its contentions the Union also cited one other case, F90N-4F-C-95034603. In that case, Arbitrator Hales upheld the Union, and at page 7, he stated as follows: "Although the Service claims that a local policy exists at East Station to cancel approved annual leave when it discovers that an employee lacks sufficient hours for a requested vacation, it would also appear to be contrary to Article 10, section 4(D) of the Agreement and section 512.43 of the ELM." The conclusion that Arbitrator Hales drew, at page 7, was: "Therefore, any local policy must not be permitted to

operate contrary to the Agreement and the applicable sections of the ELM.”

Post Master Frye was correct when he stated that Management has the discretion to approve or deny requests for LWOP in accordance with ELM 514.22. In this case, however, the grievant never requested LWOP. Moreover, Management did not know if she had a sufficient leave balance because of inadequacies with the computerized system. Post Master Frye’s policy has been not to approve requests for LWOP, and he rightfully has the administrative discretion to do that. Given the circumstances operative in this instant case, the grievant had an approved leave, and the regulations would have permitted her deficit annual leave balance to automatically become LWOP. In the absence of any of the conditions specified in the regulations, she was entitled to LWOP.

AWARD

For the reasons cited above, the grievance is sustained.

May 28, 2002

Date

Michael Fischetti

Michael Fischetti