

**CORE ISSUES: ARTICLE 16, ATTENDANCE, FMLA**

**DECISION:**

The Dispute Resolution Team has **RESOLVED** this grievance. The grievance does have merit. Management failed to meet the “just cause” requirement. The seven (7) day suspension is be immediately rescinded and all record of it removed form Carrier Johnson’s file.

**EXPLANATION:**

The Step B Team in reviewing this case took into consideration the contentions presented by both parties, pertinent articles of the National Agreement and the Family Medical Leave Act of 1993 (FMLA). The issue in this case is “ was management proper in issuing a seven day suspension due to absences taken by Carrier Johnson.” The main facts are not in dispute, the carrier did take sick leave on six (6) occasions and that she charged them to FMLA. Also not in dispute were the properly filled out and management approved PS Form 3971. Per the USPS/NALC Joint Contract Administration Manual (JCAM) page 10-15 and 10-16:

Employee Responsibilities: The following are the employee’s responsibilities when a request for FMLA leave is submitted:

When the need for leave is foreseeable (e.g., pregnancy) notify management of the need for leave and provide appropriate supporting documentation at least 30 days before the absence is to begin.

When the need for leave is not foreseeable, notify management as soon as practicable, i.e., within two business days, after learning of the need for leave.

Provide the documentation required for FMLA-covered absences within a reasonable period of time, i.e., 15 days from the time the employer requests documentation

For medical emergencies, the employee or his spokesperson may give oral notice of the need for leave, or notice may be given by phone, telegraph, fax, or other means.

Although an employee is only required by FMLA to give oral notice of the need for leave, FMLA allows the Postal Service to require employees to comply with its usual and customary notice requirements for leave, i.e., PS Form 3971, Request for Notification of Absence. However, if an employee fails to give written notice, the Postal Service may not deny or delay leave if an employee gives timely verbal or other notice, but may take appropriate disciplinary action.

There is no evidence provided that Carrier Johnson did not comply with any of the above requirements. The carrier made management aware of her need to request leave under the FMLA. She properly filled out Form 3971. This Form was then signed and approved by management. Management did not make any

additional requests for more information or more importantly request any documentation. We must now address management's responsibilities per the JCAM page 10-15:

Employer Responsibilities: The employer is prohibited from interfering with, restraining, or denying the exercise of any rights provided by the Act. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions. Likewise, FMLA-covered absences may not be used towards any disciplinary actions. Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA.

Employers must post and keep posted Wage and Hour Publication 1420, Your Rights under the Family and Medical Leave Act of 1993. The employer is also required to notify the employee within 2 business days of learning of the employee's need for leave, that the absence is designated as FMLA leave, the type of leave charged (annual, sick, LWOP), and/or any additional documentation the employee needs to furnish. In the Postal Service, this notification notice is met by providing the employee a copy of the PS Form 3971 accompanied by a copy Publication 71, Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act.

Management at no point disputed the need for FMLA leave. It is management's responsibility to determine whether the employee is eligible to take leave for FMLA purposes and additionally whether the absence is covered by FMLA or any other type of leave and if documentation is required. Per the JCAM page 10-16:

When an employee requests leave the manager or supervisor must determine whether the employee is an eligible employee for FMLA purposes; the absence is covered under FMLA; or whether additional documentation is required in order to designate the leave as FMLA.

The employee may, but need not, ask for the absence to be covered by FMLA, rather, it is the supervisor's responsibility to designate the leave based on information provided by the employee.

The supervisor should provide the employee a copy of the employee's PS Form 3971 designating the leave and indicating whether additional documentation is necessary along with Publication 71. Documentation to substantiate FMLA is acceptable in any format, including a form created by the union, as long as it provides the information indicated in Publication 71.

Carrier Johnson properly filled out Form 3971 requesting the FMLA leave per the outlined requirements. Management did not at any time contest any of the information provided by the carrier nor did they request any additional information or documentation. We will now cover the "just cause" requirements per the JCAM page 16-1 and 16-2:

## Just Cause Principle:

The principle that any discipline must be for “just cause” establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the “just cause” provision requires a fair and provable justification for discipline.

“Just cause” is a “term of art” created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action.

...Was a thorough investigation completed? Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must insure that its investigation is thorough and objective. This is the employee’s *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated...

There is no evidence given of a violation of any specific rule or regulation regarding the actions of Carrier Johnson. Furthermore, there is no evidence of a pre-disciplinary hearing whereby management took into consideration Carrier Johnson’s side of the story. The use of properly requested and approved FMLA leave cannot be used toward any disciplinary actions and as such management has failed to meet the requirements of “just cause.”

For these reasons the seven-day suspension is to be rescinded and all record of it removed from the carrier’s file.