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D.J. BERGMAN, CHAIRMAN

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

**CASE CLOSED
LOGGED AND FILED**

MAY 20 1987

RECEIVED APR 30 1987

P-RC Nos. 968, 1018, 1029, 1030, 1031
1050, and 1111

April 29, 1987

KENT H. ANDERSON, Company Member
San Francisco Division
Local Investigating Committee

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The above-subject grievances have been discussed by the Pre-Review Committee prior to their docketing on the agenda of the Review Committee and are being returned, pursuant to Step Five A(V) of the grievance procedure, to the Local Investigating Committees for settlement in accordance with the following:

Subject of the Grievances

These cases all involve issues related to attendance management such as denial of sick leave pay, letters of reprimand for excessive use of sick leave, or what constitutes satisfactory proof of illness. This Decision incorporates eight separate grievances from seven Pre-Review Committee Files into a single settlement. They are incorporated because they are all related in terms of subject matter.

Discussion

The issues raised by these cases are not new to the grievance procedure. In the past, the parties have resolved numerous grievances concerning denial of sick leave pay, proof of illness, discipline for unsatisfactory attendance, discharge for unavailability and abuse of sick leave. Along the way, certain principles and procedures have been established for attendance management. To be cited in this discussion are some of the precedential decisions that have laid the foundation for handling attendance-related problems.

Review Committee Decision Nos. 1205 and 1256 (1973) establishes that Company has the right to require satisfactory evidence of illness before sick leave pay will be granted in cases of suspected abuse. It also establishes that the Sickness Report, a form used in many locations to record the reasons for employee absences, does not constitute satisfactory evidence of illness. The Decision reiterates that the single purpose of the sick leave section is to

provide income when the employee is ill or disabled, and that there is no right to use sick leave for any other purpose except for medical, dental or vision care appointments. It goes on to provide examples of situations that give rise to a suspicion of abuse and concludes that supervisors should review those out of the ordinary circumstances which indicate that an employee may be abusing sick leave as opposed to making proper use of it and that satisfactory evidence of illness should be required only in those individual situations which in the good judgement of supervision indicates that there is a likely abuse of the sick leave.

P-RC 389 (1979) was a case involving a requirement that an employee provide medical evidence before sick leave pay would be granted to an employee whose usage was allegedly excessive as opposed to suspect. In reviewing the grievant's sick leave record, the Pre-Review Committee concluded that his pattern of use did not indicate abuse nor a reasonable suspicion of abuse. In all instances of sick leave use, the reasons for the illness were identified. The Pre-Review Committee concluded, in that case, that requiring the employee to provide a statement from his doctor identifying the nature of his illness when off sick was inappropriate. However, many other cases resolved at Fact Finding and Local Investigating Committee prior to and following P-RC 389 have upheld Company's right to require satisfactory evidence for cases of excessive use. Only rarely, however, has the grievance procedure upheld a requirement that an employee provide medical evidence as the only acceptable form of satisfactory evidence of illness.

Both RC 1205/1256 and P-RC 389 involved instances where supervision established a requirement that an employee provide medical evidence of illness before sick leave would be paid. The parties in other cases have agreed that satisfactory evidence of illness may take other forms, such as a pharmaceutical prescription or a phone call or visit from the supervisor. In some instances or for specific individuals, it may be that the only satisfactory evidence will be medical documentation signed by a medical doctor, but only in the most unusual cases, such as where an employee has been shown to have fraudulently claimed sick leave pay or where an employee already on notice continues to be absent and in the past provided documentation of telephone advice or visitation slips completed by someone other than a doctor. When such requirement is established, the employee should be so informed in writing, and if such a requirement is challenged in the grievance procedure, the Company must demonstrate why medical evidence would be the only acceptable proof.

Most employees are never required to provide satisfactory evidence of illness because their attendance records do not warrant it. But, when the Company determines because of an employee's usage, usage pattern, or because of the specific circumstances surrounding a particular absence that proof is required, Company is seeking confirmation of the employee's disability and/or assurance that the employee is pursuing a prudent course of action to alleviate or eliminate the problem. Consequently, a statement by the employee (such as the Sickness Report) in most cases will not suffice. Further extension of that thought is that Company is seeking objective verification of the employee's condition. Generally, spouses, significant others, or friends do not satisfy the Company's need.

Once the employee has reached the point where Company may legitimately place him on notice of the requirement to provide satisfactory evidence of illness before sick leave will be paid, the supervisor should hold a formal

counselling session. The supervisor should explain whether the requirement is being established because of excessive use and/or a suspected abuse pattern. Such notice should be reduced to writing and given to the employee so that the instructions and expectations are clear to the employee. If proof is being required because of a particular suspicious absence, the supervisor should make the request for proof at the earliest opportune time.

P-RC 174 (1975) states:

"The Section 112.8 provision providing for satisfactory evidence means that it is incumbent upon the employee to provide acceptable substantiation of his claimed illness or disability. In this case the employee did not provide satisfactory evidence, and, therefore, is not entitled to paid sick leave for the days in question."

The employee in this case (P-RC 174) submitted a note written by his fiancée.

Supervisors are to decide on a case-by-case basis whether what is provided by the employee is satisfactory evidence of illness. However, the Committee agrees that supervisors must exercise care and reason in this determination. When an employee is put on notice to provide satisfactory evidence of illness, the supervisor should give the employee examples of what could be considered satisfactory evidence for future absences. The supervisor should not wait until after the fact and then demand some form of evidence that the employee could not provide. Additionally, the Committee agrees that employees are obligated to provide proof of illness immediately upon return to work. However, if an employee does not, he may be allowed two to three days to comply. This grace period does not have to be extended more than once, except in cases where evidence of illness is presented by the employee but is rejected by the supervisor. If evidence is presented but rejected, the Committee agrees that an employee may come forward with other evidence within a two to three-day period. See Arbitration Case No. 143 for more discussion of this issue.

There may be instances where an employee who is on notice to provide satisfactory evidence of illness need not provide any form of documentation when absent. If a supervisor observes an employee and recognizes that the employee is sick or disabled, further evidence is not necessary. Such a circumstance could occur when an employee reports for work, becomes ill while at work, and must leave. Where the employee's supervisor observes the illness or disability, it is unnecessary to require further evidence of illness. Additionally, such an observation could occur during a supervisor's visit to an absent employee's home. Similarly, there may be instances during which a supervisor may determine the legitimacy of an employee's illness or disability during a phone conversation. Again, in such instances no further evidence of illness should be required. In each of these instances, the supervisor should inform the employee that sufficient verification of illness or disability is present and nothing further is required.

However, if the employee's absence continues longer than the supervisor anticipated, the supervisor may again invoke the proof of illness requirement for that absence and should so notify the employee.

P-RC 846 (1983) and 898 (1984) overturn disciplinary layoffs for an

employee who used sick leave excessively and state that continued use at such a rate can lead to discharge without the employee receiving a disciplinary layoff. It further states that a disciplinary layoff may be appropriate for certain rule violations or repeated instances of abuse of sick leave but not for excessive use. A repeat of abuse of sick leave or repeat falsification of records for payment of sick leave is a dischargeable offense that may be mitigated (Arb. 84, 1981) to discipline less than discharge and/or cancellation of current and/or accumulated sick leave.

Facts of the Cases and Decisions

P-RC 968

This case concerns a denial of two days of sick leave pay for Monday and Tuesday, January 9 and 10, 1984. Upon his return to work on January 11, 1984, the grievant provided a note from his wife which stated his absence was due to stomach flu. The grievant's supervisor would not accept the note as satisfactory evidence of illness, and the two-day absence was accounted for as personal business, without permission and without pay. The grievant had initially been placed on notice of the requirement to provide satisfactory evidence of illness in a letter dated July 30, 1981. The grievant's attendance/sick leave usage/counselling background is as follows:

On December 4, 1979, grievant was issued a counselling letter, reviewing sick leave usage between 1974 and 1979. This letter stated that the grievant had used all of his paid sick leave in each of the preceding six years and that many of the sick leave dates were taken in conjunction with non-workdays. The letter advised the grievant that if his attendance did not improve, he would in the future be required to provide satisfactory evidence of illness.

On July 30, 1981, the grievant was issued a second counselling letter, reviewing sick leave usage between the December 4, 1979 counselling letter and the present time. The letter points out that the grievant was orally counselled about sick leave usage on August 7, 1980. It cites usage of 176 hours sick leave on seven separate occasions during 1980, four of which were single days in conjunction with non-workdays. It also cites usage of 50 hours sick leave on five separate occasions during the first half of 1981, all of which were either single days or two consecutive day periods, and all of which were in conjunction with non-workdays. In this letter, the grievant was formally advised that he must provide satisfactory evidence of illness each time he was off sick in the future.

On July 28, 1982, the grievant was again counselled concerning the satisfactory evidence of illness requirement. The confirming memo states, among other things, what information is required if a doctor's excuse is provided - "If a doctor's excuse is used for verification of proof of illness or disability it MUST (a) state the specific nature of the illness or disability and (b) it must be dated immediately prior to, or on the date of absence from work." Between the counselling letter of July 30, 1981 and July 28, 1982, the grievant was absent due to illness for a total of 64 hours, on four separate occasions, three of which were in conjunction with non-workdays.

On October 29, 1982, grievant was absent; when he returned to work, he provided a receipt from a drug store along with a handwritten note which he

wrote that stated the receipt was for Pepto Bismol. Sick leave was denied on the basis that the receipt and note did not constitute satisfactory proof. This action was grieved and settled by the Local Investigating Committee without adjustment except that the Local Investigating Committee agreed that a review of the grievant's attendance record would be conducted in December, 1983 to determine the need to continue the proof requirement. This review took place and based on the 1983 usage (approximately 101 hours), the requirement was continued.

Virtually on the heels of the December, 1983 review, the grievant was again absent and presented a note from his wife. Sick leave pay for the days in question is denied as the grievant did not provide satisfactory evidence of illness. Case closed without adjustment.

P-RC 1018

The grievant in this case was denied sick leave pay for Tuesday and Wednesday, June 12 and 13, 1984. The record indicates the grievant was counseled on March 28, 1984 and informed that proof of illness was required when absent. The grievant was first employed on October 29, 1980. During 1982, the grievant used 80 hours sick leave on nine separate occasions; during 1983, the grievant used 110 hours sick leave on 12 separate occasions.

The March 28, 1984 counselling memo states that the proof of illness required would be as stated in a letter dated February 21, 1984, issued by the Gas Distribution Superintendent. The relevant portion of that letter is as follows:

"Please counsel those employees requiring proof of illness. Diagnosis of illness, date seen by the doctor, and when the employee can return to regular duty must be on the slip. The counseling session should be held in the presence of a Shop Steward, and should be documented and placed in the employee's file."

The grievant submitted a Kaiser Visit Verification slip which was issued for telephone advice given on June 12, 1984. It confirms that the grievant stated he was ill and unable to work from June 11-13, 1984 inclusive. No diagnosis is contained, and the slip is signed by a registered nurse.

June 12 and 13, 1984 was the first absence by the grievant following the March 28, 1984 counselling.

The Committee agrees that denial of sick leave in this case was inappropriate. Additionally, the Committee agrees that, for this grievant, defining satisfactory evidence of illness as a note from a doctor is also inappropriate. The Committee agrees that the grievant is entitled to pay for the days in question provided he had enough paid sick leave at the end of 1984 and currently has enough to cover the two days.

P-RC 1029

This case concerns a letter of reprimand dated January 25, 1985 issued to the grievant for "continued excessive use of sick leave." In part, the letter states "future absences from work will require a medical proof of illness." The letter references a pattern of sick leave usage in conjunction

with scheduled days off or non-workdays. The letter indicates that in 1983, the grievant used 56 hours of sick leave on seven separate occasions, of which 16 hours were in conjunction with days off; 74 hours on seven separate occasions in 1984, of which 40 hours were in conjunction with days off; and through the date of the letter in 1985, 32 hours on two occasions, of which 16 hours were in conjunction with days off. The letter concludes with a warning that failure to improve his attendance could result in further disciplinary action up to and including discharge.

The grievant was hired in 1978 and counselled concerning improving his attendance on October 19, 1981, and September 19, 1984. A memo indicates the grievant was upset about being scheduled to work on Super Bowl Sunday, January 20, 1985 and that he called in sick. The Committee agrees that the pattern of usage and the January 20, 1985 absence raise a reasonable suspicion as to whether sick leave is being put to its intended use. The January 25, 1985 letter of reprimand shall be reduced to a counselling letter, which states that satisfactory (not medical) proof of illness is required for future absences because the pattern of his usage is suspect.

P-RC 1030

This case concerns denial of sick leave pay for January 22 and 23, 1985. A counselling letter dated June 4, 1984 concerning the grievant's excessive use of sick leave required him to provide satisfactory evidence of illness for future absences. The letter indicates that in 1980, the grievant was absent 180 hours due to illness; 121 hours in 1981; 101 hours in 1982; 80 hours on 10 separate occasions in 1983, 40 hours of which were in conjunction with non-workdays; and through May 1984, 38 hours on five separate occasions, of which 24 hours were in conjunction with non-workdays.

The grievant told the Local Investigating Committee that when he was absent, he called Kaiser and was told no doctor was available to see him and he was not told what to do. As a consequence, he brought in a note from his wife which stated he had diarrhea. The note is not included as part of the record inasmuch as it was returned to him when rejected as satisfactory evidence of illness by his supervisor. Between the counselling memo on June 4, 1984 and the absences on January 22 and 23, 1985, the grievant was absent due to illness for 48 hours on five occasions, dates on which he was paid sick leave until such time as paid sick leave was exhausted. Although the record is not clear, the Committee assumes the grievant provided satisfactory evidence of illness for the dates on which sick leave was paid during this period.

Based upon a review of the record available, the Committee is in agreement that denial of sick leave pay is appropriate. The Committee noted that, under the circumstances, the grievant could have obtained verification of the conversation with the nurse at Kaiser.

P-RC 1031

This case concerns denial of sick leave pay for February 25, 1985. The grievant received a counselling letter dated June 4, 1984 for excessive absenteeism which required him to provide satisfactory evidence of illness for future absences. The letter recaps the grievant's absenteeism over the prior four-year period as 126 hours in 1980; 66 hours in 1981; 98 hours in 1982; 122 hours on nine separate occasions in 1983 of which 71 hours were in conjunction

with days off; and through March 16, 1984, 32 hours on two separate occasions with 16 hours in conjunction with days off.

At some point, the grievant submitted a brief undated note from his mother concerning the reason for his absence on February 25, 1985. It is unclear whether he submitted this note immediately upon return to work or some time later. The grievant stated he had not brought in any evidence of illness nor been asked to for other absences after the June 4, 1984 letter but before the January 25, 1985 absence.

The grievant testified to the Local Investigating Committee that he called in on February 25, 1985 stating that he had diarrhea and would not be in. He did not talk to his Foreman at that time. The Foreman called him back about 15 minutes later and, according to the grievant, "said something about going to a doctor." The grievant said he was too sick to go to a doctor. The grievant further testified that about 3:00 p.m., his mother visited him and said the Foreman called her. The record does not include testimony from the Foreman as Company declined to have him interviewed by the Local Investigating Committee in light of the fact that Company was not contesting the grievant's testimony regarding where the note came from.

Upon his return to work, the grievant was informed by his Foreman that sick leave pay was denied based on instructions from the Supervisor of Maintenance. The grievant met with the Maintenance Supervisor and stated that the supervisor initially agreed to pay and then changed his mind during the course of the meeting. The Maintenance supervisor was not interviewed by the Local Investigating Committee.

The grievant stated that two other employees at the headquarters had been allowed to bring in notes from their mother/wife during January, 1985, and that both were paid sick leave for the dates of absence.

In following up on the grievant's testimony regarding the other two employees, Company found no record of a note for one; and the other was paid when he brought in a note from a nurse. It was later discovered that the nurse was also the employee's daughter.

In light of the above, the Pre-Review Committee is in agreement that the grievant is entitled to pay for one day provided he had eight hours of unused sick leave at the end of 1985, and currently does, on the basis that the supervisor initially agreed to pay and based on the undisputed testimony from the grievant that even though he had been on notice to provide proof since June 4, 1984, he had not been required to provide anything for subsequent absences until the date in question.

P-RC 1050

The case concerns a counselling letter issued to the grievant for excessive use of sick leave, stating in part "you will be required to provide us with acceptable medical evidence before sick leave is authorized." The letter indicates that the grievant used an average of 85 hours per year from 1977 through 1984 and 48 hours through January 29, 1985. The letter does not contain a condition precedent. The correction asked for is to rescind the letter. The record provided to the Pre-Review Committee demonstrates that during the three-year period of 1982-1984, when the grievant used 224 hours of

paid sick leave, no single period of absence exceeded three consecutive workdays. It was also noted that in each year, the grievant used more sick leave during the first half of the year than in the second half of the year (176 hours in first half of years, 48 hours in the second half of the same years). Of a total of 17 separate instances of use of sick leave, grievant was absent on 12 occasions in conjunction with days off.

As noted in the details of the case, the grievant has a pattern of usage which raises a reasonable suspicion that sick leave is not being put to its intended use. Therefore, the Pre-Review Committee is in agreement that the counselling letter, which is subject to the grievance procedure for accuracy but not for the establishment of just cause for issuance, is to be revised to require satisfactory evidence of illness rather than "acceptable medical evidence."

P-RC 1111

P-RC 1111 is actually two cases involving the same grievant. The first case, Grievance No. 85-163, concerns the issuance of a disciplinary letter for unavailability and suspected abuse dated September 30, 1985. The letter establishes the requirement to provide satisfactory evidence of illness. The letter indicates that from July 16, 1984 (the date the grievant returned to the active payroll from Compensation Payroll) through the end of the year, the grievant used 43 hours of sick leave on seven occasions, of which 19 hours (44%) on 4 occasions (57%) were in conjunction with non-workdays. Through September 30, 1985, the grievant used 71 hours on 6 occasions of which 34 hours (48%) on 5 occasions (83%) were in conjunction with non-workdays. The grievant had previously been counselled concerning unavailability on December 14, 1984 and May 22, 1985. The grievance alleges just cause did not exist for the issuance of the letter.

The second case Grievance No. 85-174, concerns a final letter for unavailability issued October 21, 1985. This letter was issued because of the grievant's failure to report for work or call in on October 14, 1985. A friend called in for him prior to regular work hours stating he needed the day off personal business. The friend was told that the grievant had to call in; however, the grievant stated he did not return home until 7:15 p.m. Subsequently, the grievant refused to say why he needed the day off. The absence was considered unauthorized, and pay was denied.

The testimony of the supervisor in the second case states that the grievant was informed on August 26, 1985, following dates the grievant was off on personal business with permission, that time off for personal business must be requested in advance. The grievant stated that he did not remember the supervisor talking to him about personal business time off on that date. However, he also states that he was not aware of the procedure for requesting personal business prior to August 26, 1985. The Pre-Review Committee noted that neither the September 30, 1985 or the October 21, 1985 letter makes reference to counselling the grievant on the procedures for requesting personal business time off.

The letter dated September 30, 1985 is for just and sufficient cause based on the grievant's record of absences.

The condition precedent in the October 21, 1985 letter is to be

revised from "will" to "may." While the period between the September 30, 1985 letter and the grievant's unauthorized absence on October 14, 1985 is brief, and discipline is warranted, the grievant should have been given more time to establish an acceptable attendance record before being given a final letter.

These cases are considered closed on the basis of the foregoing and the adjustments contained herein. Such closure should be so noted by the Local Investigating Committee.



DAVID J. BERGMAN, Chairman
Review Committee



ROGER W. STALCUP, Secretary
Review Committee

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