



## STEP B DECISION

**Step B Team:**

USPS:  
**Rene Benavidez**  
NALC:  
**Karrie Blough**

Decision: **RESOLVE**

USPS Number: **G06N-4G-C 1225 4376**  
Grievant: **C. Camacho**  
Branch Grievance Number: **421-494-12**  
Branch: **421**

Installation: **San Antonio**

Delivery Unit: **Lockhill**

State: **TX**

Incident Date: **07/02/12**

Date Informal Step A Initiated: **07/12/12**

Formal Step A Meeting Date: **07/18/12**

Date Received at Step B: **07/30/12**

Step B Decision Date: **08/21/12**

Issue Code: **10.2000, 19.2000**

NALC Subject Code: **507450**

District:

**Rio Grande**

Formal A Representatives:

USPS  
**A. Alderete**  
NALC  
**J. Perez**



### **Time Limits at Step B Mutually Extended**

**ISSUE:**

Did management violate Article 3, 10, and or 19 (ELM) Restricted sick leave/Deems desirable when management required the grievant to provide documentation when she called in sick for less than three days? If so, what is the appropriate remedy?

**DECISION:**

The Dispute Resolution Team, (DRT), agree to **RESOLVE** this grievance. The use of "deems desirable" in this case in effect puts the grievant on restricted sick leave in circumvention of the requirements for such contained in ELM 513.391. Management will remove the "deems desirable" request in the eRMS requiring the grievant to provide medical documentation or other acceptable documentation to substantiate all further unscheduled absences. This decision is based on the fact circumstances presented in this case file and is in no way intended to prohibit management from exercising their right to request documentation *properly* for an unscheduled absence for any employees. See the DRT Explanation.

**EXPLANATION:**

The union contends that when Ms. Camacho called in sick from 06/25 through 06/26, management had already put her on the deems desirable list. The union states that when the grievant called in sick, she discovered that she was required to bring in medical documentation to explain her absence. The grievant then had to make an appointment to comply with management's request for documentation, and the next available appointment was on 06/27.

The practice of placing an employee on the deems desirable list is a violation when management does so based on no documented evidence of the requirements outlined in the ELM. During the Formal A meeting, Ms. Alderete stated that Ms. Camacho had been removed from the deems desired only to retract her statement later after the union requested that Ms. Camacho be reimbursed for the expenses incurred as a result of management's request for documentation.

The union argues that several Step 4 decisions as well as previous DRT decisions have specified that management must reimburse the employee for the expenses incurred as a result of management unjustly requesting medical documentation; expenditures such as Doctor's visit Co-pay, travel expense, etc. Ms. Camacho is a good employee and is regular in attendance. She should be reimbursed the sum of \$52.12 for having to incur expenses as a result of management's request.

The union submitted additions and corrections and contended that management bases their need to place an employee on the deems desirable list based on fiction not facts. Management stated that the grievant had been placed on the deems desirable list because she called in sick after her last vacation back in 12/2011. The union argues that Ms. Camacho did not call in sick; rather she was protected under FMLA case # 109000311731 dated 12/19/2011 through 01/19/2012 and CA-17 dated 12/19 through 01/19/2012 as a result of an on the job injury. This was the cause of her absence and it was not an unscheduled absence as management claims.

The union requests as a remedy that management cease and desist from violating Articles 3, 10, and 19 (ELM) Restricted sick leave/Deems desirable list. The union also requests that a monetary remedy in the amount of \$52.12 be paid to the grievant and to remove the employee from the deems desirable list or otherwise make whole.

**Management** contends that they (management) did not violate Article 3, 10, or 19 as per the ELM. Management contends that the grievant had choice annual leave from 06/18 through 06/24, and during the review of her 3972, her records indicated that she had called in in January 2012 when she went on annual leave and stayed out an additional week in conjunction with her SDO and a holiday. Management also contends that while on leave in June, she called in once again in conjunction with her leave and SDO. Management states that the employee was out over a three day period and was therefore required to provide medical documentation.

The employee did provide the requested documentation and she was paid her leave status as requested. Management also states that she received a vaccine and a prescription and this shows that she did require medical attention. Management disagrees with the union's contention that management should pay for her expenses as a result of being required to provide medical documentation. Management states that employees who extend their annual leave not once but twice in the same year require documentation.

During the week that she didn't come to work, her absence was a huge impact on the operation and Article 8 violations. Management states that the grievant was sick and did seek medical attention. The grievant missed work and management should not have to pay for her medical services. Management stated, "*I wonder why this employee gets ill*

*after taking vacation?"* Management contends that during the Formal A, management informed the union that I (Ayda Alderete) wasn't sure if Ms. Camacho was on the Deems Desirable or not, but that she had met the three days or more.

Management states that they considered all the data and documentation and management did not violate ELM sections 513.364 or 665.42. Management has a right to protect the interest of the Postal Service, therefore the grievance is denied.

The DRT reviewed the entire case file and based on the documentation and the contentions provided, the DRT mutually agreed that there was no evidence in the case file that the employee had any previous attendance reviews or corrective action for any attendance related deficiencies prior to July 02, 2012.

The case file did not contain a copy of the documentation provided to management as a result of the documentation request generated by the automated system for the absence which covered 06/25-26/2012. The employee was then placed off duty for additional days as a result of the doctor's visit on 06/27/2012; however, the 3972 does not indicate that unscheduled absences were recorded for 06/28/2012 through 06/30/2012. The 3971 in the case file does demonstrate these were dates in which she was absent from work.

The following is a guide for this very issue concerning requests for documentation otherwise known as "deems desirable", "tag", or "flagged" in the protection of the interests of the Postal Service:

**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; see 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 ELM 513.362 and 513.364 do not require the employee to provide a diagnosis. (August 3, 2007 USPS correspondence M-01629).*

The threshold for successfully challenging management's requirement to provide documentation for absences of three days has been established as cited above. The case file demonstrates that the employee had an unscheduled occurrence in June the week of the 25<sup>th</sup> through the 29<sup>th</sup> to include June 30<sup>th</sup>. However, the case file did not contain any documentation on how or when the employee was placed on notice regarding any attendance related deficiencies prior to this date.

The DRT mutually agreed that while management may have the right to request medical documentation in cases of absences of three days or less, management must also be prepared to defend their reasons with documented evidence and proof of sick leave abuse and patterns of irregular and unreliable attendance. The case file did not establish either; one unscheduled absence prior to the July 02, 2012 attendance review incident did not in and of itself establish this obligation by management.

The Step B Team mutually agreed that management did not have valid cause to request medical documentation for the absence on June 25-26. The Team mutually agreed that the case file *did not* indicate that management made an effort to review each case on a case by case basis and to review the PS Forms 3972 with those employees who had attendance related issues and place those similarly situated employees on proper notice regarding their attendance related deficiencies.

The DRT mutually agreed that the reimbursement of employee expenses were not proper in this instant case based upon the particular fact circumstances. The employee was absent from work for the dates of June 25-26 and returned to work on June 27<sup>th</sup>. The employee made an appointment to see the doctor on the 27<sup>th</sup> to fulfill management's request for documentation and was then placed off duty through June 30<sup>th</sup>.

The DRT mutually agreed that management may not arbitrarily place employees on a deems desirable list without fulfilling the requirements of the ELM regarding proper placement of a "restricted leave status" or other "tag" in e-RMS. Attendance reviews are a requirement when:

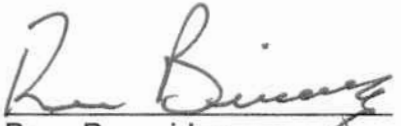
#### 513.391 Reasons for Restriction


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.

Restricted sick leave is another option for management but is not mandatory. However, the guidelines found within the ELM section 513.391 serve as a guide to management to demonstrate what actions should be taken prior to placing an employee on restricted sick leave. It is these steps which were not evident in this case file to establish good cause for requiring the employee to provide medical documentation.

  
Rene Benavidez  
USPS Step B Representative

  
Karrie Blough  
NALC Step B Representative

**Grievance File Contents:**

Union's Additions & Corrections  
Copy Doctor's Note  
CA-17 No Duty, 12/19/11-01/09/2012  
Copy WH-382  
Copy 3971, 3pp  
Copy Page 2 of 3972 with annotations,  
(No Leave Year)  
Copy Employee Expectation Document,  
2pp

Mgmt. Copy of Union Alleged Article 8  
Violations for week of 06/23-29/12  
Copy Patient Bill, duplicate  
Copy Driving Directions to Doctor  
Copy 3972, Camacho, 8pp  
Formal A Request  
Informal A Request  
PS Form 8190, duplicate  
Management Contentions

cc: **Manager, Labor Relations, Southwest Area**  
**District Manager, Rio Grande District**  
**NALC NBA, Region 10**  
**Manager, Human Resources, Rio Grande District**  
**Manager, Labor Relations, Rio Grande District**  
**Postmaster, San Antonio**  
**NALC Branch President**  
**USPS Formal A Representative**  
**NALC Formal A Representative**  
**DRT File**