

EXPEDITED ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION
BETWEEN

EMPLOYER

-and-

Grievant: Dee Rose

UNION

BEFORE:

KAREN BUSH SCHNEIDER,
ARBITRATOR

CONTRACT YEAR:

1998-2000

TYPE OF GRIEVANCE:

Discipline

AWARD SUMMARY

The grievance is denied.



Karen Bush Schneider, Arbitrator

ISSUE PRESENTED

Did the Employer have just cause to issue Grievant, Dee Rose, a notice of suspension on or about June 7, 2001?

The Employer responds, "Yes." The Grievant and

Union respond, "No."

The Employer has the burden of proof in this case.

EMPLOYER'S CASE

Grievant was hired by the Employer on or about December 19, 1998. She suffered an on-the-job injury on or about May 17, 1999. The Service accepted her occupational disease claim on or about November 29, 1999 (see Joint Exhibit "10"), as well as its recurrence by correspondence dated April 14, 2000. (See Joint Exhibit "11.")

Grievant was issued a Letter of Warning dated February 28, 2001, by the Employer citing irregular attendance. Prior to the issuance of the Letter of Warning, Grievant's Supervisor, Pat Tulip, had a discussion(s) with Grievant regarding irregular attendance. The Letter of Warning dated February 28, 2001 (see Union Exhibit "2"), cited Grievant for 11 occasions of sick leave, LWOP, or annual leave in lieu of sick leave totaling approximately 522 hours during the period August 23, 2000 through January 27, 2001.

Following the issuance of the Letter of Warning, Grievant had five occasions of sick leave, LWOP, or annual leave in lieu of sick leave totaling approximately 40 hours, covering the dates March 14, 2001 through May 15, 2001. (10.) Ms. Tulip conducted a pre-disciplinary interview with Grievant on or about May 29, 2001, the purpose of which

was to review Grievant's attendance record, as well as to obtain her response to the cited absences. During that disciplinary interview, Grievant stated that most of the absences were due to her work-related injury (carpal tunnel). However, Grievant had previously been offered and had accepted a limited duty assignment on or about March 8, 2001. (See Union's Exhibit "3.") In accepting that limited duty assignment offer, Grievant agreed that if she were unable to perform the duties for medical reasons related to her injury, she would provide written medical evidence to that effect from her attending physician no later than April 8, 2001. (Id.)

For absences on April 1, 2001 through April 3, 2001 (although not cited in the Notice of Suspension), Grievant advised the Employer attendance officer that her injury was work-related. Further, she submitted a doctor's certificate dated April 3, 2001 (see Union Exhibit "1"). While it confirmed that her carpal tunnel syndrome was unchanged, it also stated that Grievant was suffering from de quervain's tendinitis caused by her lifting a seven month old child who was in her care.

Subsequent to the issuance of the Notice of Suspension, Grievant and her Union were given multiple opportunities to provide medical verification that any of her cited absences were due to her work-related injury. They did not do so.

The Employer maintains that it had just cause to issue the Notice of Suspension and requests that the grievance be denied.

THE UNION'S AND GRIEVANT'S CASE

It is undisputed that Grievant suffered a work-related injury on or about May 17, 1999, which the Employer accepted and compensated as identified in correspondence from the U.S. Department of Labor to Grievant, dated November 29, 1999

and April 14, 2000. Grievant testified that all but two of the absences cited in the Notice of Suspension were related to work-related carpal tunnel syndrome. Despite the fact that Grievant submitted medical evidence attesting to her condition (Union Exhibit "1"), the Employer suspended her for seven days. The discipline was tantamount to the Employer disciplining Grievant for absences occasioned by a compensable work-related injury. Therefore, the Employer did not have just cause to issue the discipline, the discipline should be rescinded and Grievant should be made whole.

OPINION

The Arbitrator has carefully considered the testimony of the witnesses and the exhibits submitted in this matter, along with the arbitration award cited by the parties. In the opinion of the Arbitrator, the Employer had just cause to issue the Notice of Suspension, dated June 7, 2001, to Grievant.

The Employee and Labor Relations Manual addresses the Employer's expectations regarding regular attendance. Section 511.43 requires employees to maintain their assigned schedules and to make every effort to avoid unscheduled absences. Section 666.81 requires employees to be regular in attendance. Unscheduled absences negatively impact the delivery of service to Employer customers, as well as lower the morale of Employer employees who are required to carry heavier loads, or work overtime.

Although Grievant suffered a work-related injury on May 17, 1999, she had recuperated sufficiently from that injury to accept a light duty work assignment in March of 2001. Further, even prior to her acceptance of the light duty assignment, she had received a Letter of Warning citing irregular attendance for absences in excess of 500 hours. There

was no contention that the absences cited in that Letter of Warning were work-related or otherwise improperly characterized.

Thus, at the point at which the Employer issued the Notice of Suspension to Grievant, she was already on notice that her attendance was irregular and that improvement in her attendance was necessary in order to avoid further, corrective but progressive, discipline. Further, she acknowledged through her acceptance of the light duty assignment that she was able to work within certain restrictions. Her acceptance of the light duty assignment gave rise to a legitimate expectation on the part of the Employer that she would work as scheduled. The five instances of unscheduled absence cited in the June 7, 2001 Notice of Suspension occurred within a two month period. That two month period followed close on the heels of Grievant's February 28, 2001 Letter of Warning.

In light of the foregoing, the Employer established that Grievant's attendance record was irregular. Consistent with the concepts of just cause, Grievant was on notice that irregular attendance could result in discipline. The discipline assessed her was progressive in degree. Although Grievant and her Union were provided with additional opportunities to submit medical documentation to support the work-relatedness of Grievant's absences, they did not do so. While they did submit a report of a doctor's office visit on April 3, 2001 (see Union's Exhibit "1"), that report does not pertain to any absences which were cited in the Notice of Suspension. There was no other medical documentation submitted which specifically addressed the absences cited in the Notice of Suspension.

In light of the foregoing, the Arbitrator concludes that the Employer has established just cause for the Notice of Suspension dated June 7, 2001, issued to Grievant.

AWARD

The grievance is denied.

Dated: January 28, 2002

Respectfully submitted,

Karen Bush Schneider, Arbitrator