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BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO, DEPARTMENT OF MENTAL HEALTH, MILLCREEK

GRIEVANCE OF JAMES WILLIS

23-11-910703-0122-02-12

and

OHIO HEALTH CARE EMPLOYEES UNION DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, SEIU

DECISION AND AWARD

This arbitration results from a two-day disciplinary suspension of James Willis for violating the sick leave policy and procedures of Millcreek Psychiatric Center for Children in Cincinnati, Ohio. James Willis is a social worker at the Psychiatric Center. Prior to April 22, 1991, grievant had received counseling regarding the sick leave procedures and also had been given a verbal and written reprimand for same in accordance with the standard guidelines for disciplinary action of the Center.

The facts giving rise to this grievance are not materially in dispute. On April 22, 1991, grievant called in sick. However, his sick leave balance (the number of hours of sick leave earned less the number of hours used) was not sufficient to cover his absence that day. At that time grievant, however, was aware of the fact that he had very little sick leave based upon a conversation grievant's supervisor had had with him on April 1, 1991 concerning his apparent pattern of abuse and continuous low balance of sick leave. To have obtained leave under these

circumstances, grievant would have had to request time off in advance from his supervisor, Beth Detrich, for use of vacation or other alternate time.

As a result of this absence, Ms. Detrich contacted her supervisor, advising him of the situation. Ms. Detrich was directed by her supervisor to give Willis a Notice of Pattern of Abuse and a physician's verification slip, requiring him to obtain a verification signed by a doctor for his absence on April 22. The verification was to be returned on April 24. However, grievant was also absent on the next day, April 23, and it was not until April 24 that he received the notice to verify his illness of April 22 (and also April 23) or the Notification of Pattern of Abuse. Since it was impossible for the grievant to comply with the return of the verification on the 24th, a meeting was set for April 26 with Mr. Willis' supervisor. At that meeting, the grievant informed his supervisor that he was unable to see his doctor until that day. He was therefore granted time to present the doctor's certification. It was not until Wednesday, May 1 that the grievant presented a "verification."

This "verification" was not signed by the doctor as specifically required and stated that grievant was seen on April 26 for "medical evaluation" and that grievant was to be off "April 22 and 23 and return to work on April 24." There is no mention of why Willis was off or what illness he had on those days that required his absence.

The grievant testified, also without contradiction, that he

felt poorly on April 22 and 23 and on each day called in to the appropriate person reporting his illness and received an identification number. Grievant does not deny that he was frequently absent on Mondays and does not deny that he was aware of the policy or that he had insufficient remaining sick leave hours; however, he maintains that he followed the correct procedure by calling in advance.

POSITION OF THE EMPLOYER

The Psychiatric Center contends that the grievant was aware of the sick leave policy, was or should have been aware of the fact that he had insufficient sick leave hours remaining, had previously been disciplined for the same offense in accordance with the progressive discipline policy, and that he was, therefore, justifiably suspended for two days.

POSITION OF THE UNION

The Union contends that the sick leave absentee policy of the Psychiatric Center was not agreed to by Local 1199, that it is, in effect a duplication of the AFSME contract language regarding sick leave, and that 1199 has voiced its objection to the policy and never agreed to same. It is the Union's contention, therefore, that the policy cannot be applicable to the Local 1199 bargaining unit.

The Union further argues that the grievant properly called in compliance with the policy procedure and was not in violation of same.

DISCUSSION

The Union strongly argues that the policy issued by the Center came directly from the AFSME agreement and was not intended to be applicable to the Local 1199 bargaining unit and that 1199 has consistently objected to the policy. The Arbitrator can understand that what appears to be an application of sick leave language contained in the AFSME agreement to all other employees may be somewhat disturbing to Local 1199. However, it does not appear to the arbitrator that this is the ultimate question to be answered. The Agency, with or without reference to any labor agreement, has inherent management rights to establish reasonable rules and regulations not inconsistent with the provisions of the 1199 contract. Article 13 of the current 1199 agreement provides for sick leave. Article 13.06 is entitled "Sick Leave Uses, Evidence of Use, and Abuse," and while it does not contain in detail the language of the AFSME agreement regarding misuse or pattern of abuse, it does permit management to establish rules and regulations governing same.

The fact that in establishing this policy the Agency saw fit to use some of the language in the AFSME agreement is immaterial. The real issue which 1199 can raise is whether the policy is unreasonable or contrary to specific 1199 language. In this regard, I find that nothing in the policy as applied here to be contrary to the language of the 1199 agreement and nothing has been raised which establishes that the policy as herein applied to the grievant was unreasonable, arbitrary or capricious.

The record herein establishes that the absentee policy was known to the grievant, that he had been previously reprimanded in August, 1990 and in November, 1990 made particularly aware of his sick leave hours and the procedure for obtaining leave when sick leave hours were exhausted. He was also aware of the policy regarding verification of illness when sick leave is exhausted. In fact, the time to provide verification was extended to him until after grievant had an opportunity to see his doctor. The document provided, however, by the grievant for "verification" of his illness on April 22 and 23 was not only not signed by the doctor as clearly required, it was in fact no verification at all. It is dated April 26, 1991, the date the grievant saw the doctor for "medical evaluation." This is followed by a statement after the fact that grievant was to be off April 22 and 23 and would return to work on the 24th. There is no medical reason given for grievant's absences and no explanation of why he should have been excused on April 22 and 23. It can hardly be argued that "medical evaluation" on April 26 standing alone is sufficient excuse for absences three and four days before. In other words, the verification is no verification at all. It's merely a pro forma statement made by the doctor at the request of the grievant without any medical justification.[1]

[1]There has been evidence that the grievant was in the Employee Assistance Program. However, there is nothing to establish that the Center agreed that the discipline herein was to be withheld by reason of the EAP.

DECISION AND AWARD

In view of the entire record, it is apparent that the grievant did have a pattern of abuse of the sick leave policy, that he did not comply with the sick leave policy by obtaining permission in advance to be off April 22 and 23, and that he did not, even when requested, supply a satisfactory verification signed by a doctor, all in violation of the policy. For all the foregoing reasons, I find that the grievant's two day suspension was in accordance with the Agency's progressive discipline policy and must be sustained.

JONAS B. KATZ, Arbitrator

Issued at Cincinnati, Ohio
this 26th day of February, 1992