

Frost #2

AMERICAN ARBITRATION ASSOCIATION

VOLUNTARY LABOR ARBITRATION

In the Matter between:

UNION,

-and

EMPLOYER

Arbitrator: Elaine Frost

GR: Employee 1

Award Issued: May 15, 1987

ARBITRATOR'S OPINION AND AWARD

INTRODUCTION

This matter was referred to arbitration pursuant to the 1984-86-Agreement between the Employer ("Employer") and Union ("Union"). A hearing was held on March 12 1987 at the Employer's offices in City A, Michigan. The parties were afforded ample opportunity to examine and cross-examine witnesses, to present documentary evidence and to argue their respective positions. All witnesses testified under oath and post-hearing briefs were filed.

ISSUE

Whether or not the Employer violated the Agreement when it denied Grievant the use of a sick day for June 19, 1986.

STATEMENT OF FACTS

The Grievant, Employee 1, has worked as a Firefighter for two years and at all pertinent times was assigned to Engine 11. Grievant was scheduled to work the 24-hour shift from 7:00 am June 19th to 7:00 am June 20th, this being the last day of a tour of duty. Grievant has two small sons, Child 1 who is six and a younger son. Around 6:30 am on June 19th Grievant called to tell her Employer she would not report. She spoke to Person 1, Fire Equipment Operator, who was the proper person to take her call and is also the Union President. Person 1 testified that Grievant said Child 1 was ill and she would not report, that she believed he had chicken pox and he was swollen and had sores and she was taking him to the doctor. Person 1 continued that the information in the grievance which came from Grievant gave the same information as what she said on the phone on June 19th. Person 1 also said he told her to get a physician's statement for substantiation, but he was not sure if he told her the Employer might reject her request and might not pay, although, he added, I "must have advised her of that otherwise I wouldn't have told her to get a physician's statement."

Grievant explained that her son's condition on the morning of June 19th included a temperature of 103°, swollen abdomen and pain, together with open sores on his penis which caused severe pain while urinating. She also said that she was not sure what was wrong and that her other, younger child, who already had chicken pox, had none of these severe symptoms. Grievant also said that within a couple hours of talking to Person 1, she took Child 1 to the doctor where he was diagnosed as having chickenpox and given a prescription. Grievant also said that her son needed her direct and immediate attention on June 19th, that she had to administer drugs and that she could not leave him with the babysitter because of his condition.

Grievant was scheduled off from June 20th until 7:00 am on June 24th. She reported as

scheduled on June 24th and submitted a request for sick leave for June 19th. It requests one day (24 hours) of sick leave for the given reason, "Child Care, son had chicken pox." On this form, under item 10 which is entitled "Supervisor's Substantiation," Person 2 notes that Grievant provided "a slip from Doctor 1 for Child 1 Employee 1 (son)." In item 11 of this form is a section entitled "Approved" and it is checked "yes," being approved by the Employer, including by Fire Chief Person 3.

Person 4, Deputy Fire Chief, testified he reviews sick leave request and reviewed and approved Grievant's. He also said, however, that he and the Chief know that when, they approve use of sick Leave the matter still gets "further scrutiny" by payroll and that payroll in the past has rejected Employer approval. Person 4 also said that he reviewed illness in family requests for sick leave and found none from the past where chicken pox was the cause, nor measles nor croup, strep throat or tonsillitis. Thus, he never forwarded an earlier sick leave request for immediate family for chicken pox or any other childhood malady.

After Grievant's Request for Sick Leave left the department it went to payroll and subsequently was reviewed by Person 5, Labor Relations Supervisor. Person 5 explained that the controller supervisor reviews all sick leave forms that questionable ones are sent to Person 5 and that through this route Grievant's request came to his attention. Person 5 continued that he reviewed her request and documentation and decided Grievant's case did not involve an "acute critical illness." Person 5 also explained that he called Doctor 1's office on July 3rd and asked if chicken pox with a 103 fever was an acute critical illness and the information he received persuaded him it was not, although he did not speak directly to the doctor. As a result, Person 5 marked item 10 on Grievant's request form with the following comment: "Not acute critical illness nor life threatening. Denied by Person 5, Labor Relations." As a result, Grievant was

denied the use of a sick day for June 19th and to cover the day she had to use a vacation day.

Person 5 also testified that he has never approved a sick leave request for chicken pox, measles, croup or other childhood ailments. Instead, he added, he considers life threatening conditions like cancer, heart trouble and Reyes syndrome to be acute critical illnesses and if he has a doubt he calls the doctor's office.

The grievance is dated June 28, 1986 and alleges a violation of Article XXII Sec. 4b(s).

The statement of the grievance is:

On the above date Child 1 Employee 1 had what I thought was the chicken pox and a temperature of 103°. What concerned me the most was the fact that his abdomen and penis were extremely swollen and irritated. There were open sores on his penis which caused severe pain while urinating. Because of the reaction his body was having I called the doctor. Doctor 1 wanted to see Child 1 immediately. Without professional attention, I had no way of knowing whether my son had an acute critical illness or not. Being a single parent, I am solely responsible for the welfare of my children.

The Step 2 response from Person 6, Labor Relations Director, states in part:

... Chicken pox is a childhood disease and not an "acute critical illness". A statement from James W. Doctor 1, M.D., of the Pediatric and Neonatal Associates, P.C., did not indicate that the child had an "acute critical illness". It stated that it was necessary for the grievant to remain at home from work on the following day. The Employer doesn't quarrel with the grievant taking the child for medical attention, however, the question is one of whether the Employer should pay for the time the employee utilized in seeking medical/professional attention for the child. The question of whether the Employer will pay must be based on a medical determination that there is an "acute critical illness." In this instant grievance, Doctor 1 has made a decision that chicken pox is not an "acute critical illness."

On Thursday, July 3, 1986... Person 5 contacted Doctor 1's office... on Thursday July 3, 1986, a Person 7, from the doctor's office, returned the call and informed Person 5 that Doctor 1 states that, "Chicken pox is not a serious, life threatening situation."....

Finally, Person 1 testified that during negotiations, before June 1986, the Union proposed, in part, the use of sick leave for less than acute illness for members of family. He said

that the Union approached it as family care but that the Employer would not agree.

PERTINENT CONTRACT LANGUAGE

ARTICLE XXII SICK LEAVE

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Section 4. Permitted Uses.

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b. Emergency Use.

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2. An employee shall be entitled to use up to three (3) days of his/her accumulated paid sick leave for any absence necessitated by serious injury, acute critical illness requiring emergency medical treatment or professional attention, or death of any member of his/her immediate family, upon application approved by the Employer Manager....

POSITION OF THE UNION

The Union contends that Grievant's request for sick leave should have been approved because, at the time she called Station 11 to request sick leave, her son appeared acutely ill, and although she had a younger child who had recently had the chicken pox, Child 1's symptoms were substantially different and they gravely concerned her. Although, the Union continues, chicken pox is commonly considered one of the ordinary childhood diseases, it may involve complications which can result in death. In this regard it cites to Taber's Cyclopedic Medical Dictionary, 10th Edition, for *Varicella*, or chicken pox. In part, it states: "Occasionally lesions in the vicinity of the larynx may cause edema of the glottis and threaten the life of the patient."

Since, the Union reasons, there is no dispute that Child 1 appeared acutely ill and that he required immediate professional attention, there was a basis for the use of sick time under the relevant portions of the Collective Bargaining Agreement. It stresses that a mother who undisputedly is confronted with an acutely ill child with the potential for a severely complicated illness and perhaps death should not be held to the standards of a physician but rather to notions

of good common sense and honesty. As relief, the Union asks, that an, award issue requiring the Employer to permit Grievant to use an accumulated sick day in lieu of the vacation day which she was charged.

POSITION OF THE EMPLOYER

The Employer contends that chicken pox is not an acute critical illness and that the grievance should, therefore, be denied. In this regard it points out that Grievant identified the illness as chicken pox in her June 24th sick Leave request, that Vander Rout called the doctor to make sure nothing more serious than the normal childhood disease was involved and that even Person 1 acknowledged that he told Grievant the Employer might reject her claim and for that reason that she should get medical substantiation. Further, the Employer points out that Person 4 testified the Employer has never approved paid sick leave for a case of childhood illness other than this one and that the Employer, as explained by Person 5, has not allowed sick leave for these circumstances. The lack of a practice to cover such cases is further supported, the Employer continues, by the Union's unsuccessful bargaining efforts to secure the use of paid sick leave on the occasion of illness in the immediate family of a nature less than an acute critical illness.

ANALYSIS AND CONCLUSIONS

Article XXII Sec. 4 b(2) clearly provides that accumulated sick leave may be used or any absence necessitated by ... acute critical illness requiring emergency medical treatment ... of any member of his/her immediate family." There is no dispute that her son's illness required Grievant's absence on June 19th and it is undisputed that she had accumulated sick leave to her credit. It is also undisputed that the boy needed prompt medical attention which apparently was secured when the Grievant took him to the doctor's office. The question becomes whether or not

the circumstances of the son's illness amounted to "acute critical illness requiring emergency medical treatment."

The parties have focused on the terms "acute critical illness" not on the "emergency medical treatment." (In this regard, the arbitrator notes that even though serious, the child's symptoms did not cause nor apparently should have caused the Grievant to take him to a hospital for emergency treatment rather than wait until the doctor's office opened. Although such action could be considered in an overall evaluation of what medical conditions qualify under Subsection (b), the arbitrator agrees that this consideration is secondary to the seriousness of the family member's condition). The basic argument of the Union is that since chicken pox can be life threatening and since Child 1's symptoms were severe and worried Grievant, that the requirement of "acute critical illness" is fulfilled. The arbitrator is not, however, persuaded that this was the case. The facts reveal that Grievant believed or at least suspected that the problem was chicken pox, the symptoms had only appeared that morning and after a doctor's visit, were confirmed. Nothing in Grievant's testimony or any other evidence indicates that there was a serious threat to Child 1's health from his illness and this, at the very least, is what the arbitrator finds to be required by the term "critical." Without such further information, the arbitrator agrees that the usual childhood disease does not constitute an "acute critical illness."

AWARD

1. The grievance is denied.
2. The Union shall be responsible for the fee. (Article VIII Sec. 3, Step 3 c).

May 15, 1987

ELAINE FROST,

Arbitrator Detroit, Michigan