Schneider #10

EXPEDITED ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION BETWEEN,

Employer

-and-

Union

Grievant: Employee 1

BEFORE:	Karen Bush Schneider, Arbitrator
PLACE OF HEARING:	Employer Facility Some Street City, MI
DATE OF HEARING:	October 2, 2001
DATE OF AWARD:	October 4, 2001
RELEVANT CONTRACT PROVISIONS:	Articles 3, 5, 8, 9, 10, 16, 19, and 37 of the National Agreement; and ELM Sections 161.2, 162.3, 162.4, 162.42, 342.5, 343.31, 814.2, 864.31, and 864.32
CONTRACT YEAR:	1998-2000
TYPE OF GRIEVANCE:	Contract

AWARD SUMMARY

The grievance is granted. Grievant is entitled to restoration of any accrued/accumulated leave time charged to his account for the period February 22, 2000 to March 1, 2000, as well as to be made whole for any overtime lost for which Grievant had already volunteered to work and been approved prior to being placed on involuntary leave on February 22, 2000.

Karen Bush Schneider, Arbitrator

ISSUE PRESENTED

Did the Employer violate any provision of the National Agreement or the ELM in refusing to allow Grievant to work from February 22, 2000, to March 1, 2000?

The Grievant and Union respond, "Yes."

The Employer responds, "No."

The Union has the burden of proof in this matter.

THE UNION'S AND GRIEVANT'S CASE

Grievant, Employee 1, was hired by the Employer in November of 1987, as a full-time clerk. As of February, 2000, he was assigned to the Certain Automation Center on Tour 3 as a small bundle parcel sorter/operator.

In January of 1991, Grievant was diagnosed with Type 1 diabetes while in the employ of the Employer. Since that time, he has not requested light duty, nor been subject to work restrictions.

Grievant testified that his diabetes is controlled by diet, exercise, and medication. He checks his sugar levels approximately four to five times daily. If his sugar level is too low, he will typically ingest some juice and food to elevate it. If his sugar level is too high, he gives himself an insulin injection. Usually Grievant is able to manage his condition without professional medical assistance.

On or about February 2, 2000, Grievant experienced low blood sugar while on duty. This occurred at approximately 4 p.m. The Employer contacted the paramedics who, along with the police, were dispatched to assist Grievant.

By the time the paramedics and police arrived, Grievant had already addressed his medical condition by having some juice and food. He declined offers to take him to the hospital. Nonetheless, the Employer would not allow Grievant to continue working that day and sent him home. Grievant worked all of his ensuing duty days until February 16, 2000. On that day, he reported for duty but he was approached by his Supervisor, Supervisor 1, who advised him to report for a fitness for duty exam.

Grievant reported for a fitness for duty exam on February 16, 2000. As part of that exam, he underwent hearing and vision tests and was given a blood glucose exam. He was further asked to submit to an HbAIC hemoglobin test. He advised the independent medical examiner that he had recently undergone such a test at the direction of his personal physician. Grievant then signed a waiver (Joint Exhibit "6") so that the independent medical examiner could obtain a copy of the HbAIC from his physician.

At the conclusion of the fitness for duty exam, Grievant was not given, according to his recollection, any restrictions. Nor was he advised by the independent medical examiner that he could not return to work. In fact, he did report for the balance of his shift and worked the ensuing days, including his NS day (Sunday, February 20), and the postal holiday, which fell on Monday, February 21, 2000. Grievant had previously volunteered to work both of those days.

On February 22, 2000, Grievant reported for work but could not locate his time card. He was subsequently approached by his supervisor, who advised him that she had already spoken with the Union and that Grievant would not be allowed to work until the independent medical examiner had certified him as fit for duty. Grievant requested a union steward, but his request was denied.

Shortly thereafter, Grievant obtained a copy of his most recent hemoglobin test from his personal physician and provided it to his union steward and/or his supervisor. Subsequently, Grievant was advised that the test was "too old" and that he had to submit to a new one. The Employer set up an appointment for him to have the test on or about February 24, 2000. It took several days to obtain the test results from the laboratory following that exam. Grievant was not allowed to work from February 22, 2000 to March 1, 2000. The Employer did not place him on administrative leave during that period, but docked his sick leave accumulation for the time off.

At all times relevant to this dispute, Grievant was available and able to work. He cooperated with the Employer's request for a fitness for duty exam. At no time did the Employer's independent medical examiner certify in writing that he was unable to work. *(See* Joint Exhibit "7.")

Grievant requested that he be made whole for the leave time lost, as well as for lost overtime, for the period February 22, 2000 to March 1, 2000.

POSITION OF THE EMPLOYER

Manager 1, Manager of District Operations, and Supervisor 1, Supervisor of District Operations, testified that they were concerned about Grievant's medical condition, given his apparent diabetic episode on February 2, 2000, as well as due to prior episodes of tardiness. Supervisor 1 consulted with Employee 2 about sending Grievant for a fitness for duty exam. Mr. Employee 2 agreed. Subsequently, on February 15, Supervisor 1 spoke with Employee 3, OHNA, who set up a fitness for duty exam for Grievant on February 16, 2000.

Grievant submitted to the fitness for duty exam on February 16, 2000. When he returned to the postal facility to conclude his shift, Supervisor 1 asked him whether he had any

paperwork for her or instructions from the physician. He replied in the negative. Supervisor 1 allowed Grievant to resume his duties, after attempting to contact the independent medical examiner personally. Because of the hour of the day, she was not able to do so. The next two days, February 17 and 18, Supervisor 1 was off duty and did not return to work until Saturday, February 19, 2000. She did not attempt to contact the independent medical examiner's office on that day.

On February 22, 2000, Supervisor 1 inquired of Employee 3 about the status of Grievant's fitness for duty exam. Supervisor 1 and Employee 3 then contacted the independent medical examiner who advised them that she still did not have the results of a hemoglobin test. She also told them that Grievant should not work until the test results were reviewed and the fitness for duty could be determined. Supervisor 1 immediately advised Grievant that he could not work until hemoglobin test results were submitted to the independent medical examiner.

On or about February 24, Grievant produced hemoglobin test results, but the test was "too old" to be utilized as the basis for the fitness for duty exam. Grievant then submitted to a new hemoglobin test and the results of that test were faxed to the Employer's IME on or about February 29, 2000. Grievant was determined to be "fit for duty" on or about March 1, 2000, whereupon he was allowed to return to work.

The Employer has the right to require employees to undergo fitness for duty exams, given its obligation to maintain a safe work place and the employee's obligation to remain mentally and physically fit for duty. Grievant should have advised the Employer on February 16, 2000, that the independent medical examiner was not allowing him to return to work until the hemoglobin test results were available to her and she could determine his fitness for duty. Thus, the Employer was within its rights to place Grievant on a leave of absence, chargeable to his

accumulated sick leave, until fitness for duty was determined. The Employer requests that the Arbitrator deny the grievance in its entirety.

OPINION

After careful consideration of the testimony, exhibits, and arguments of the parties, the Arbitrator determines that the Union has met its burden in this case and the grievance should be granted.

Grievant has been a full-time employee of the Employer. In February of 2000, he was ready, willing, and able to work and presented himself to work for the Employer. It was the Employer, not the Grievant, that prevented Grievant from working his full-time schedule during the period February 22, 2000 to March 1, 2000. The Employer did not have an economic, disciplinary, or medical reason for preventing Grievant from working.

The Employer vigorously argued that it had a medical reason for preventing Grievant from working, as scheduled. The Employer argued that until its independent medical examiner had current hemoglobin test results to review, Grievant could not be declared fit for duty and returned to active employment.

This Arbitrator has carefully reviewed the medical evidence on the record, specifically, Joint Exhibit "7." Nowhere on the exhibit does it state that Grievant should not return to work until current hemoglobin test results could be reviewed. The only evidence the Employer presented to that effect was hearsay testimony about a conversation with the independent medical examiner on February 22, 2000. However, there is no documentation which would corroborate that it was the doctor's position that Grievant could not work pending the outcome of the fitness for duty exam. Grievant had been working regularly both prior to and following the

fitness for duty exam.

Grievant was a full-time clerk. His rights under the collective bargaining agreement to hours of work, seniority, a compensation schedule, and the like, were violated when the Employer refused to allow him to work as scheduled absent an economic, disciplinary, or medical reason.

AWARD

The grievance is granted. Grievant is entitled to restoration of any accrued/accumulated leave time charged to his account for the period February 22, 2000 to March 1, 2000, as well as to be made whole for any overtime lost for which Grievant had already volunteered to work and been approved prior to being placed on involuntary leave on February 22, 2000.

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Karen Bush Schneider, Arbitrator