

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 LOCAL 1168, COUNCIL 40, AFSCME, AFL-CIO : Case 78  
 : No. 49938  
 and : MA-8113  
 :  
 ADAMS COUNTY, WISCONSIN :  
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Appearances:

Mr. Sam Froiland, AFSCME Council 40 Representative, P.O. Box 944, Waukesha, Wisconsin 53187, appearing on behalf of the Union.  
Mr. Michael J. McKenna, Corporation Counsel, Adams County, P.O. Box 450, Friendship, Wisconsin 53934, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for final and binding arbitration of certain disputes. Pursuant to a request for arbitration filed by the Union, the Wisconsin Employment Relations Commission designated the undersigned to resolve the instant grievance. A hearing was held on November 4, 1993, and the parties were given full opportunity to present their evidence and arguments. The hearing was transcribed. Both parties submitted initial briefs and the Union submitted a reply brief. Briefing was completed on January 21, 1994, at which time the record was closed.

ISSUE:

The Union frames the issue as follows:  
 Did the County have just cause to suspend Archie Hayes for six days for an alleged violation of agency policy under the collective bargaining agreement, and if not, what should the remedy be?

The Employer frames the issue as follows:  
 Whether the County imposed a disciplinary suspension upon grievant pursuant to Article 4 of the collective bargaining agreement for just cause after the director found a violation of departmental policy for a failure to pre-approve leaves of absence?

The parties agreed at the hearing that the Arbitrator would frame the issue in the award. The undersigned frames the issue as follows:

Did the Employer have just cause to suspend the Grievant Archie Hayes for six days for failing to obtain his supervisor's approval for planned absences? If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

The parties' 1993-94 collective bargaining agreement contains the following pertinent provisions:

. . .

Article 4 - Discipline

4.01 The Employer shall not suspend, discharge, or otherwise discipline any employee without just cause. When such action is taken against an employee, the employee will receive written notice of such action. Such notice shall be given to the employee and the Union within five (5) working days after the action is taken. Such notice shall include the reasons on which the Employer's action is based.

. . .

Article 6 - Sick Leave

. . .

6.03 An employee off work under sick leave must give notice to the office no later than 8:00 a.m. on the first day of absence if at all possible to do so.

. . .

6.10 Any employee claiming benefits under this Article shall fill out and file with the Department Head an employee sick leave request form (sic) which forms shall be made available to the employees by the Department Head.

6.11 Employees will be permitted to use

accumulated sick leave for doctor and dentist appointment. Said time used for appointments shall be in minimum time spans of one (1) hour.

RELEVANT PORTIONS OF THE ADAMS COUNTY PERSONNEL POLICY HANDBOOK

EMPLOYEE BENEFITS

Sick Leave.

. . .

An employe intending to use sick leave must give notice to the office no later than 8:00 a.m. on the first day of absence if at all possible to do so.

. . .

Employes will be permitted to use accumulated sick leave credits for doctor, dentist and optical appointments. Sick leave granted shall be done in minimum time spans to one (1) hour.

Willful misuse of sick leave or the willful making of false reports regarding illness may subject the employe to disciplinary action.

. . .

CONDITIONS OF EMPLOYMENT

. . .

Prohibited Conduct. The following are examples of some specific conduct which is prohibited and will result in disciplinary action. This list is not intended to be all inclusive, and other circumstances which may warrant disciplinary action will be treated on a case-by-case basis.

. . .

22. Violation of any other commonly accepted, reasonable rule of conduct including departmental rules and procedures which are not in conflict with County policy.

. . .

Discipline. Disciplinary procedures will be followed. Supervisory personnel will uniformly enforce rules and regulations and document and date specific instances of misconduct. In all instances, this should be done with the employe's knowledge. In all appropriate disciplinary situations the supervisor should consider the need for a referral to the Employe Assistance Program and make an offer of this service. Documentation of this offer and the employe's response should be made and retained in the employe's personnel file. The degree of disciplinary action may be tailored to the offense and must be consistent with other practices. Nothing in this policy is to be construed as establishing a just cause standard for discipline of employes.

. . .

Disciplinary Actions.

1. Disciplinary Suspension. When, in the judgment of the Department Head, discipline beyond reprimand is necessary, the Department Head shall suspend the employe as discipline. Whenever possible, the Department Head shall confer with the appropriate Committee relative to the anticipated action. Any employe charged with or alleged to have committed a criminal act may be suspended immediately by the Department Head if the circumstances of the pending charge substantially relate to the particular job. Major or repeated employment related problems may indicate other problems exist in the employe's life and at this level of discipline a referral to the Employe Assistance Program should be strongly encouraged and documented.

All disciplinary suspensions must be in writing informing the employe of the reasons for such disciplinary suspension with a copy given to the employe and should not exceed thirty (30) calendar days in one calendar year.

Disciplinary suspensions are without pay.  
All suspensions result in either  
reinstatement or termination.

An employe on disciplinary suspension is  
to leave work and not to report to work  
until instructed to do so in writing.  
All disciplinary suspensions may be  
appealed to the appropriate committee  
following the grievance procedure of this  
policy.

. . .

BACKGROUND

Adams County provides mental health, drug and alcohol therapy to clients through the Department of Community Programs. Clients are scheduled with therapists by appointment. When therapists are ill or absent, appointments with clients may need to be cancelled or rescheduled. In the spring of 1993, some absence-reporting difficulties arose. On May 3, 1993, Helen Mills, Administrative Assistant, sent the following memorandum to all staff:

MEMO

TO: All Staff  
FROM: Helen  
DATE: 5-3-93  
RE: Leave Authorizations

In adding up the time cards for this pay period, I find that I do not have leave slips for time off that was taken during the last two weeks. In the future, no time card will be submitted to the courthouse without the proper leave authorizations. Your supervisor should approve the leave after I have initialed the authorization to indicate that you indeed have the time available to take.

I need sick leave authorizations for JJ, Archie and Ron for this pay period.

If you have any questions, please see me or Susan.

The Grievant, Archie Hayes, has multiple sclerosis, vision problems and other physical difficulties. On September 9, 10 and 20, the Grievant had doctor's appointments. He knew about the appointments approximately one month prior to those dates and contacted the Administrative Assistant to inquire about his sick

leave balance. This was the only contact regarding the appointments with the Director's office prior to the appointments.

During the appointments on September 9 and 10, the Grievant learned that additional tests would need to occur the next week. These tests were scheduled for September 14, 15, 16, and 17. When the Grievant reported to work on Monday, September 13, he notified the Receptionist and Administrative Assistant about the appointments later that week. Rita, the Receptionist, left a note for Helen Mills on the scheduling sheet that states as follows:

Helen, Archie came in and will be off parts of Tuesday through Friday this week. I didn't have much luck contacting people-the #'s are by names, etc. Sorry-best I could do! If x over, I reached those. Thanx R

Later that morning, Director Ziegahn reviewed the appointment book and saw Rita's note. The Director was unaware that the Grievant had scheduled time to be away and checked for leave records. Because the Director had not been contacted about the absences, she reviewed the sick leave provisions of the contract and the policy and procedures manual. She contacted the Corporation Counsel and discussed the matter with him. The Director did not discuss her concerns about sick leave procedures with the Grievant during the week of September 13, 1994.

The Grievant submitted leave authorization slips as follows:

SLIP #1

September 9 and 10, 1993 (Thursday and Friday)  
15 Hours Sick Leave  
Date Employee Submitted: 9-13-93  
Date Timekeeper Verification: 9-13-93  
Director's Notation: 9-20-93 - after time  
already taken-no approval

SLIP #2

September 14, 1993 (Tuesday)  
1 Hour Sick Leave (12 Noon - 1 P.M.)  
Date Employee Submitted: 9-16-93  
Date Timekeeper Verification: 9-16-93  
Director's Notation: none

SLIP #3

September 15, 1993 (Wednesday)  
1/2 Hour Sick Leave (8:00 A.M. - 8:30 A.M.)  
Date Employee Submitted: 9-16-93  
Date Timekeeper Verification: 9-16-93  
Director's Notation: Received 9/20/93 - after

time

already taken. No approval.

SLIP #4

September 16, 1993 (Thursday)  
3 Hours Sick Leave (8 A.M. - 11 A.M.)  
Date Employee Submitted: 9-16-93  
Date Timekeeper Submitted: 9-16-93  
Director's Notation: none

SLIP #5

September 17, 1993 (Friday)  
7 1/2 Hours Sick Leave (8 A.M. - 4:30 P.M.)  
Date Employee Submitted: 9-16-93  
Date Timekeeper Verification: 9-16-93  
Director's Notation: none

The slips were retained by the Administrative Assistant until she submitted the leave slips to the Director on September 20, 1993. A leave authorization slip was not submitted for the Grievant's September 20, 1993 absence.

After investigating the matter, the Director issued a six-day suspension which read as follows:

September 21, 1993

TO: Archie Hayes  
FROM: Susan Ziegahn  
RE: Policy Violation

In May of 1993, Archie, you chose to take time out of the office without signed approval (see attached memo dated 5-3-93) which is in violation of the agency's policies on required signed approval from your supervisor prior to taking time out of the office. You have chosen again to violate this same policy by failing to appear for your scheduled work hours on 9-9-93, 9-10-93, 9-14-93, 9-15-93, 9-16-93, 9-17-93 and 9-20-93 without indication to your supervisor and without prior signed approval for a planned absence. This is time not worked and you will not be paid for the absence.

You have previously received a written reprimand on July 6, 1993 for an agency policy violation. Because of this continued policy violating behavior, Archie, we must proceed

with the next disciplinary step in the progressive disciplinary procedure. This step is disciplinary suspension. You will be suspended for a one week period beginning September 22, 1993. You will return to work on September 30, 1993. While this action is taken because of your disregard for procedures we will always consider a properly presented request for medical leave.

Disciplinary suspensions are without pay. I feel it again necessary to suggest a second referral to the Employee Assistance Program for you.

You will not be in the agency building during the time of your suspension. Your check will be mailed to you.

Archie Hayes /s/

/s/  
Archie Hayes

Susan Ziegahn

Susan Ziegahn



On September 22, 1993, Helen J. Mills, Administrative Assistant, prepared the following document:

September 22, 1993

To Whom It May Concern:

The standard procedure for this agency with regard to time off for vacation, doctor's appointments, etc. is for the employee to fill out a leave slip, submit it to the Administrative Assistant to verify that the employee does, in fact, have the time available. The Administrative Assistant initials the leave slip and submits it to the employee's supervisor for approval. The supervisor will then return the leave slip to the Adm. Assist. for recording on the employee's time sheet and to verify that it shows up on the employee's time card.

On or about September 9, Archie Hayes advised both the receptionist and me that he would need to reschedule some of his appointments due to the fact that he had doctor's appointments early each morning of that week and would be working the afternoons only. At that time, he also asked me if I would figure out what time he had available to take off, both sick leave and vacation time, as he knew he would not have enough sick leave to cover the time. I advised him what time he had accumulated and he filled out leave slips to cover the time he was required to be absent due to doctor's appointments. I put the leave slips in my payroll folder and did not submit them to the Director until the payroll was finished on Monday morning, September 20.

Helen J. Mills /s/  
Helen J. Mills  
Administrative Assistant

Absences within the department fall into one of two categories either planned or unplanned. Employees who have planned absences with definite durations are required to obtain approval from the supervisor in advance. Employees with unplanned absences are required to contact the office before 8:00 a.m. or as soon as possible.

Sometimes leave authorization forms are submitted before an absence, while other times forms are submitted afterwards. The

Administrative Assistant generally submits leave forms to the Director at the end of the payroll period rather than as they are received. Employees, who have submitted leave slips after the absence, have not been disciplined.

#### POSITIONS OF THE PARTIES

##### The County

The County argues that just cause existed to suspend the Grievant for six days. The Grievant admitted that he was aware of the policy requiring advanced approval by his supervisor prior to a planned absence. The Grievant acknowledged the May 5, 1993 memorandum that was issued to address this matter. The County asserts that the Grievant also admitted that he deliberately and intentionally chose not to inform his supervisor of his planned medical absences in spite of knowing about the appointments more than one month in advance. The advance approval work rule is reasonable in light of the work done in the department. Therapists like the Grievant have scheduled meetings with clients.

When the therapists are absent these meetings need to be rescheduled. Prior notification and planning help reduce scheduling difficulties. The fact that the Grievant specifically elected not to inform his supervisor is not only irresponsible but an acknowledged violation of the department's policy. The sick leave requests that were submitted to the Director were dated after the time was taken. The Director reviewed the sick leave taken by the Grievant as well as other employees prior to issuing the disciplinary suspension. In response to the Grievant's allegation that he had been unfairly singled out, the County identifies that the Director could have taken such action in May of 1993 when this activity was first discovered. Instead, the Grievant was given the benefit of the doubt and a memorandum explaining the procedure was provided to all employees. In the Director's review of sick leave usage, she concluded that, to her knowledge, no one except the Grievant has violated the policy. Other employees testified that they attempt to schedule doctor's appointments when they are not working. Employee witnesses acknowledged that there was a notification requirement. The suspension was proportionate, progressive and appropriate. The Grievant knew of the need for the time off over a month in advance and he deliberately and intentionally chose not to notify his supervisor. The penalty was carefully considered and had rehabilitation of the Grievant as an objective.

##### The Union

Approximately one month prior to his medical appointments on September 9, 10 and 20, the Grievant notified the Receptionist responsible for scheduling and the Administrative Assistant of his need to be gone from work on these dates. At this time he also inquired about his sick leave balance. Only at his September 9

and 10 appointment did he learn that he would need to receive follow-up tests on September 14 through the 17. The Grievant completed the leave authorization forms and submitted those to Helen Mills, the Administrative Assistant. The leave slips were placed in the payroll folder and given to Director Ziegahn on September 20, 1993. According to Ms. Mills, this was the procedure that had been in effect for approximately ten years. This process of submitting the leave authorization forms to the Director at the end of the payroll period confirms that employes do not always have leave forms approved by the Director prior to taking leave. The Union acknowledges the right of the County to promulgate and enforce reasonable work rules, but asserts that the process followed by the County in approving leaves does not always provide for compliance. The Union argues that witnesses testified that at times when they attempted to contact the Director regarding time off requests, the Director referred the employes to the "time-keeper" with their requests. This re-routing tends to promote confusion rather a clear and consistent policy. The witnesses believed that the Grievant followed the policy and is being required to meet a different standard than other employes. Other employes have filled out written requests for sick leave after the use of such leave without being disciplined. The Union points out that the contract does not make a distinction between requesting sick leave for illness versus medical appointments. The contract also does not identify a distinction between planned and unplanned medical appointments. The Grievant did not knowingly violate any departmental policy. On the contrary, the Grievant did what he and other employes believed the policy required them to do. The Union also contends that the six day suspension clearly is inappropriate. Even if a violation occurred, a six day suspension is clearly excessive. The suspension coupled with the denial of sick leave for medical appointments is offensive to the concepts of just cause and fair treatment.

## DISCUSSION

It is undisputed that the Grievant is in relatively poor health. He suffers from multiple sclerosis, poor vision and other physical problems. His health condition requires periodic doctor's appointments and tests. This dispute is not centered on the validity of the Grievant's absence but rather on whether existing policies regarding notification and approval of leave were followed.

The record supports that leaves fall into two basic categories: planned and unplanned. Regarding planned leaves, when dates and times are known in advance, employes are required to seek approval from the appropriate supervisor. While, in most situations leave authorization forms are completed prior to planned absences, forms have also been completed after the time

has been taken. Leave forms are submitted to the Administrative Assistant, who verifies that leave time is available. The Administrative Assistant then forwards the form to the supervisor for approval. Regarding unplanned absences, employees are required to notify the office as soon as possible when the need becomes known or before 8:00 a.m. on the first day of absence. This notification is normally provided to either the Receptionist, Administrative Assistant or a message is left on an answering machine. When the employee returns to work, a leave slip is completed and submitted to the Administrative Assistant for leave balance verification. The Administrative Assistant then forwards the form to the supervisor for approval. In both instances, planned and unplanned, the supervisor returns the forms to the Administrative Assistant so that appropriate notations can be made on the employee's timesheet.

The record is clear that the Grievant had planned absences for scheduled doctor's appointments on September 9, 10 and 20, 1993. He acknowledged checking with the Administrative Assistant about his sick leave balance approximately one month prior to the appointments. This was done so that he could determine how much of the absence could be covered under sick leave and how much would need to be covered under vacation so that he would not lose pay. While the Grievant characterizes this contact as providing notification to the office, and the Administrative Assistant testified that she felt that she should have notified the Director, his inquiry does not rise to that level or place a burden on the Administrative Assistant to provide notification or seek absence approval. The purpose of his contact was to determine leave balances for his planning purposes, not to provide notification or request approval for those days. The Grievant acknowledged that he did not contact his supervisor, Director Ziegahn, to obtain approval. 1/

During his medical appointments on September 9 and 10, the Grievant became aware of the need to complete certain tests during the next week. On Monday, September 13 the Grievant informed Administrative Assistant Mills that he would need to take some time off during September 14, 15, 16 and 17 for medical appointments. At that time he was uncertain about the amount of time needed for the medical follow-up. In this series of doctor's appointments, he provided as much advance notice as possible. These dates were handled as unplanned absences. Later in the week when his sick leave needs were known, the Grievant completed leave authorization forms and submitted them to the Administrative Assistant. The slips for his absences on September 14, 15, 16 and 17 were dated September 16. These slips were submitted on a timely basis and processed in a manner consistent with the unplanned absence reporting procedure. Administrative Assistant

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Mills kept the forms in the payroll file until September 20, 1993, at which time she provided them to the Director. The Administrative Assistant, who had functioned in that capacity for ten years, identified the unplanned absence reporting procedures and testified that in her opinion the Grievant had complied with those policies.

On September 13, 1993, Director Ziegahn became aware that the Grievant planned to be absent for medical purposes September 14 through September 17. This occurred when she checked the appointment book and saw a notation to that effect written by the Receptionist. She became concerned because of the need to reschedule client appointments, but did not raise this matter with the Grievant who was present for duty that day. The Director could have expressed her leave approval concern and client impact concerns prior to the Grievant's absences during that week. However, the Director chose not to address her concerns with the Grievant until after the sick leave time was taken. Had the Director confronted the Grievant in a timely manner, difficulties could possibly have been minimized and the Grievant could have taken action to satisfy the Director's leave approval concerns.

Based upon the record, I conclude that the County had just cause to suspend the Grievant for violating the leave policy by not requesting approval for the planned absences on September 9, 10 and 20. The Grievant provided no extenuating circumstances to justify his conduct. In fact, he identified that he chose not to request approval from the Director. I further conclude that the County did not have just cause to suspend the Grievant for his unplanned

absences on September 14, 15, 16 and 17. The Grievant was in compliance with the procedures in effect for unplanned absences. With respect to the appropriate discipline, I find that a 3 day suspension is warranted.

AWARD

For the foregoing reasons and based on the record as a whole, it is the decision of the undersigned Arbitrator that:

1. The Employer had just cause to suspend the Grievant, Archie Hayes, for three (3) days for failing to obtain his supervisor's approval for his planned absences on September 9, 10 and 20, 1993.

2. The County shall modify the September 21, 1993 suspension letter to reflect a suspension of three (3) days for failing to obtain prior approval for his planned absences on September 9, 10 and 20, 1993 and make the Grievant whole for the loss of pay experienced due to the additional three (3) days of suspension and denial of sick leave benefits for September 14, 15, 16 or 17, 1993.

Dated at Madison, Wisconsin, this 29th day of March, 1994.

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Arbitrator

By William K. Strycker /s/  
William K. Strycker,