

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 150, AFL-CIO

and

MERITER HOSPITAL

Case 78
No. 52457
A-5353

Appearances:

Mr. Todd Anderson, Representative, Service Employees International Union, AFL-CIO, 15 South Blair Street, Madison, Wisconsin 53703-2902, for the Union.

Axley Brynelson, Attorneys at Law, 2 East Mifflin Street, P.O. Box 1767, Madison, Wisconsin 53701-1767, by Mr. Michael J. Westcott, for the Hospital.

ARBITRATION AWARD

Service Employees International Union Local 150, AFL-CIO, "the Union," and Meriter Hospital "the Hospital," are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission, on May 3, 1995, appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Madison, Wisconsin on November 3, 1995. The parties filed briefs, the last of which was received December 18, 1995.

ISSUE

The parties stipulated to the following issue:

Whether the current short-term disability plan has coverage and benefits that are substantially similar to the predecessor plan; and if not, what is the appropriate remedy?

BACKGROUND

In July, 1992, employe Deb Stansaas gave birth by caesarian section. At that time she received eight weeks' disability payments from the Hospital's disability insurance carrier, Mutual of Omaha. She was not required to provide medical evidence relating to her individual condition. Subsequently, the Hospital changed disability insurance carriers, engaging ITT Hartford. On February 16, 1994, she again gave birth by caesarian section. When she sought to make

preparations for short-term disability payments, she was informed that she was entitled to only six weeks' compensation instead of the eight weeks' she had received from Mutual of Omaha. She was informed that to receive more than six weeks' disability payment, her physician would have to submit documentation of medical necessity. She grieved, asserting that under the previous insurance plan, employees undergoing caesarian section deliveries would automatically receive eight weeks' disability payments. Subsequently, the carrier received satisfactory medical evidence and eight weeks' disability pay was provided to Grievant. The Union maintained the grievance, asserting that the eight weeks' pay should be provided automatically, without medical documentation. That Grievance is the subject of this award.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE XXVII. BENEFITS

. . .

Section 3. Disability (Sickness and Accident) Insurance

A. The Hospital shall provide a disability income protection plan for all full-time and regular part-time employees. The coverage and benefits shall not be less than those currently in effect. The Hospital shall continue to pay the full premium for this plan. The Hospital may, upon notification to the Union change carriers, so long as the coverage and benefits of the new carrier are substantially similar to those currently in effect.

. . .

POSITIONS OF THE PARTIES

The Union

The Union asserts that the clear language of the contract requires ITT Hartford to provide the same length of disability pay for a caesarian section that was provided by the previous disability carrier. The Union cites Grievant's own physician as well as a physician associated with the Physicians Plus Medical Group who support the necessity of an eight-week recovery period for a caesarian delivery. Further, it finds that the record does not establish any medical authority for the judgment of the ITT Hartford's Disability Claims Supervisor's judgment that the six-week period is sufficient. The Union argues that an employee should not have to present medical documentation for cases such as this, and the Union should not have to process a grievance in order to maintain this benefit.

The Hospital

The Hospital argues that coverage and benefits of the current short term disability plan provided by ITT Hartford are essentially the same as those offered under the predecessor plan, Mutual of Omaha, with the only differences being enhancements. It further argues that the benefits received by Grievant were the same as those she received under the predecessor carrier. Finally, it argues that the contract does not require that the new carrier provide equal benefits and coverage, but only that coverage and benefits be substantially similar to the those in the earlier coverage. It supports this interpretation of the language with evidence of discussions between the parties that took place during bargaining.

DISCUSSION

The parties agree that the contract language gives the Hospital the right to change the disability insurance carrier as long as the new coverage and benefits are substantially similar to the those of the earlier carrier. Inasmuch as Grievant was ultimately granted the eight-weeks' disability pay, the essence of the dispute is whether ITT Hartford's medical evidence requirement, by itself, is so significant a change that the new coverage and benefits are no longer substantially similar to those under the Mutual of Omaha policy.

Obviously, in requiring evidence of medical necessity, the new policy is different from the former policy. However, the contract language does not require the Hospital to duplicate every aspect of the predecessor policy when changing to a new carrier. In assessing the coverage and benefits involved in this dispute, it becomes apparent that on the instant record, both the event covered, a caesarian delivery, and the benefit, eight weeks' payment, are unchanged. The difference is in the carrier's assigning itself the discretion to deny benefits if it should judge the medical evidence insufficient to justify eight weeks' leave. This discretion would make it possible for ITT Hartford to grant less than eight weeks' disability pay. Depending upon the facts presented in such a potential case, that act might or might not be found to violate the contract. At this time, however, based on the instant record, such a conclusion would be mere speculation.

In the instant case, the only change suffered by the employe was the requirement to provide medical evidence. There was no showing that obtaining the medical evidence was onerous or detrimental to Grievant in any way. Consequently, based on the record before the undersigned, the new requirement that the employe present medical evidence when applying for an eight-weeks' disability leave after a caesarian section is not a significant change and the coverage and benefits of the disability insurance plan remain substantially similar to those of the previous carrier. Thus, the contract has not been violated.

AWARD

1. The current short-term disability plan has coverage and benefits that are substantially similar to the predecessor plan.

2. The Grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 15th day of August, 1996.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator