

<p>In the Matter of Arbitration Between</p> <p>Federal Bureau of Prisons</p> <p>and</p> <p>AFGE, Local 3020</p> <p>Charles J. Coleman, Arbitrator</p>	<p>FMCS 06-59027</p> <p>Discipline/ Just Cause</p> <p>Hearing: July 26, 2007</p> <p>Briefs: September 21, 2007</p> <p>Award: October 21, 2007</p>
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APPEARANCES

For the Company: James A. Vogel, Jr. Federal Bureau of Prisons

For the Union: Jocelyn A. Stotts, Esq., Coplin & Heuer

BACKGROUND AND ISSUE

This case is set in the federal prison in Minersville, Pa. The grievant is Steven Ney, a Correctional Officer with about ten years service in the federal prison system, and about fifteen years in the military. The issue concerns a three-day suspension without pay that was given to him because he failed to turn in a physician's certification upon his return from a one-day absence due to sick leave.¹ The issue has been defined by the parties as this: Was the disciplinary action (i.e. the suspension) taken for just and sufficient cause? The parties also agree that the reason given to Mr. Ney for his punishment was "Failure to Follow Instructions." (J2) The Union is seeking a make-whole remedy and attorney's fees. Both parties agree that there are no issues of procedural arbitrability and that this case is properly before this arbitrator.

¹ Subsequently reduced to a one-day suspension.

There are very few factual disputes. The parties agree that on May 12, 2005, David Debow, the Chief Correctional Officer of the institution, sent a letter to Officer Ney in which he cited his recent use of sick leave, told him that it was unacceptable, and instructed him that: "In the future, sick leave will not be approved unless you provide me with medical certification." Later in the letter Chief Debow said that: "If you do not provide this information upon your return to duty from sick leave, you will be charged Absent Without Leave (AWOL). You may also be subject to disciplinary action." (J3) The following day, Mr. Ney sent a letter requesting clarification, specifically asking about the application to family leave. (U2) Chief Debow replied by explaining that the documentation was to be provided whether it was a personal or a family illness and that: "The documentation should be given to me." (U3)

On July 3, about seven weeks later, Mr. Ney requested sick leave and it was granted. He took one day, returned to work on July 6, but he did not provide any medical documentation on the day of his return to work. On July 11, Chief Debow informed him of this and requested medical certification for his incapacitation by the close of work on July 15, 2005. (J4) Mr. Ney turned in this material on the requested date.

Mr. Ney was then informed that he had violated the requirements specified in the letter of May 12 (J3) and disciplinary processes began. The wheels appear to move very slowly in this institution because the next entry in the file is a letter of May 19, 2006 in which Chief Debow proposed that Mr. Ney be suspended for five days for failure to follow instructions (by failing to provide a "medical certification required by the sick leave abuse letter instructions") and AWOL (for his absence on July 3, 2005). (J5) Mr. Ney protested the discipline (J6) and on August 16, Warden Holt dropped the AWOL

charge, sustained the failure to follow instructions charged, and reduced the penalty to a three-day suspension. (J7) Mr. Ney's pay was later docked for three days. Finally, just prior to the arbitration hearing, a new warden, T.R. Snizek, entered the picture. He reduced the three-day suspension to one day.

THE CONTRACT

Article 20, Section b. Employees will not be required to furnish a medical slip to substantiate sick leave to three (3) days or less. However, in cases of questionable sick leave usage of any length, the employee will be given advance notice, in writing, that all future absences due to sickness must be substantiated by a medical certificate. . . .

Article 30, Section a. The provisions of this article apply to disciplinary and adverse actions which will be taken only for just and sufficient cause and to promote the efficiency of the service, and nexus will apply.

ANALYSIS

Normally at this point in an arbitration opinion, the arbitrator records all of the arguments submitted by the parties and later goes on to analyze them one by one. I am going to resist the temptation to do that. The parties have offered an extensive set of arguments, replete with citations to statutory and case law. They have done a fine job in outlining the legal context for this case, the public policy surroundings, and fundamental issues of principle. I have read these arguments, highlighted the text, and taken notes, but I am not going to report on those arguments or provide my analysis of them.

I am taking this step because I have come to the conclusion that this case *can be* and, therefore, *must be* decided within the four corners of the contract. Although there

The Government has argued that the Union position is hair-splitting and specious. Mr. Ney was a ten year employee of the prison system and a fifteen year member of the military. He knew about chain of command and knew that when the Chief was absent, he had to turn in the medical documentation to the person standing in for him. When he failed to turn in the documentation on the day he returned to work, he violated the Chief's order and earned the suspension.

My. Ney responds by saying that the medical information he provided was personal and that he did not want it floating around the institution. He specifically asked when he received his instructions about who was to receive the information, was told that it was to be given to the Chief, and that's what he did.

I agree with the Government when it argues that the arguments in favor of Mr.

are certain legal considerations in this case and there may be some underlying issues of principle, I think that the case is covered entirely by the labor-management agreement. I thank the advocates for their work. I appreciate their effort and I understand that they had to do it to cover all of the bases upon which I might rule. However, I am reluctant to add pages to the award and dollars to my bill to report on matters when I have concluded that the case should be decided on other grounds.

This is a contractual case. To paraphrase the parties' definition of the issue, the question is whether management had just cause to suspend the grievant for failing to turn in medical documentation on the day that he returned to work from one day of sick leave. Article 20 (b) gave management the right to require medical documentation for sick leave of any length, and I do not think it is an unreasonable extension of this rule to require the documentation to be provided upon the return to work. The question, then, becomes whether, in applying this managerial right in this case, the government trampled on the contractual rights of the grievant.

Here is how the parties have argued this point. The Union has argued that Mr. Ney was ordered to provide medical documentation upon return from sick leave to Chief Debow and to Chief Debow alone. When he returned from his sick leave on July 6, the Chief was not on the premises and would not return for several days. Once he learned that the Chief had returned, that is, when he received the request for the medical documentation from him, he complied and submitted the requested document on the day specified in the communication.. The grievant did nothing wrong. He followed the instructions given to him.

documentation to the Chief. When the Chief returned and asked for documentation to be supplied no later than July 15, the grievant met this deadline.

The grievant was disciplined for failure to follow instructions. However, those instructions specifically told him to supply information to the Chief and to nobody else. The Chief was not at work to receive the information when Ney returned to his job. When the Chief came back and discovered that the information had not been supplied, he gave him until July 15 to supply it and Ney met that deadline. The grievant may be playing with words, but those words, written by management, all support his actions.

The grievant did not fail to follow instructions: he followed them to the letter. And I do not think that an employee can be punished for failure to follow instructions when he followed them as they were written.

THE AWARD

For the reasons specified above, the grievance is sustained and he should be awarded the three days of pay that had been deducted from his paycheck. I do not award the attorneys fees requested by the Union.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "C. Coleman", written in a cursive style.

Charles J. Coleman, Arbitrator

October 22, 2007