

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

ONEIDA COUNTY (HIGHWAY DEPARTMENT)

and

ONEIDA COUNTY HIGHWAY EMPLOYEES,
LOCAL NO. 79, AFSCME, AFL-CIO

Case 100
No. 50716
MA-8355

Appearances:

Drager, O'Brien, Anderson, Burgy & Garbowicz, Attorneys at Law, by Mr. John L.
Mr. David A. Campshure, Staff Representative, Wisconsin Council 40, AFSCME,

O'Brien, Arbut
AFL-CIO, 156

ARBITRATION AWARD

Oneida County, hereinafter referred to as the County, and the Oneida County Highway Employees, Local No. 79, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a Request for Arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr. to arbitrate a dispute over the discipline of an employee. Hearing in the matter was held in Rhinelander, Wisconsin on October 6, 1994. Post-hearing written arguments were received by the undersigned by November 25, 1995. Full consideration has been given to the testimony, evidence and arguments presented in rendering this award.

ISSUE:

During the course of the hearing the parties agreed upon the following issue:

"Whether the written reprimand placed in the grievant's personnel file was reasonable?"

"If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS:

. . .

Article 10 - Sick Leave With Pay

Section A: Permanent employees and seasonal employees shall earn sick leave credit at the rate of one (1) day for each month of employment up to twelve (12) days each year. Unused sick leave shall carry over and be added to the next year's accumulation until a maximum of eighty-five (85) days of unused sick leave has been accumulated.

Section B: Sick leave shall be paid at the current job classification rate of the employee.

Section C: Employees absent three (3) or more days will be required to present a doctor's certificate upon returning to work specifying dates and time off.

Section D: No sick leave will be allowed an employee while on paid vacation.

Section E: Sick leave may be used for serious illness in the employee's immediate family (spouse and children). The County shall have the prerogative of requiring the employee to provide a doctor's certificate indicating why the employee's presence is necessary.

Section F: Sick leave will be allowed for time lost due to serious illness, injury or physical disability incurred while in the employ of Oneida County. The employee may be required to confer with the County Nurse and/or obtain written certification from a physician or, where appropriate, a dentist on a form approved by the County that the use of sick leave is necessary. Medical/dental professional service fees for such examinations/reviews shall be reimbursed by the County where the use of sick leave is certified as being medically necessary. If there is a clear indication of abuse, the employee shall be subject to disciplinary action.

Section G: Absence due to illness or sickness shall be reported to the department head or his/her designee at least one quarter hour prior to the starting time of the work day, except in case of emergency. In case of emergency, the employee shall report as soon as possible after the emergency condition ceases to exist.

Section H: Employees shall seek to schedule medical and dental appointments after normal working hours. If that is not possible, the employee shall seek to make such appointments as close to the beginning or end of the normal working day as possible.

Section I: Upon retirement, each employee shall receive in a lump sum the cash value of thirty percent (30%) of up to a maximum of fifty-five (55) days of the sick leave he/she may have accumulated, provided the employee has given eight (8) years of service to the County. The cash value shall be determined by multiplying the amount of accumulated sick leave by the employee's rate at the time of retirement. At the employee's option, the lump sum may be placed in a fund and used to pay health insurance premiums for the employee and/or his/her dependents until the fund is depleted.

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BACKGROUND:

Amongst its various governmental functions the County operates a Highway Department and employs individuals represented by the Union. Amongst the various work classifications in the Highway Department the County has an Operator I classification. At the time of the hearing the County had employed Gustave J. Bramann, hereinafter referred to as the grievant, a ten and one-half year employe, as an Operator I. On Thursday, November 11, 1993 the grievant, while working, slipped and fell off of a County truck. On Friday, November 12, 1993 the grievant was examined by a physician and given a written excuse for one (1) week. That same day the grievant presented the written excuse to the County. The grievant also verbally informed the County he had a follow up examination scheduled with the physician for Friday, November 19, 1993. On November 19, 1993 the grievant was examined by the physician and given a written authorization to return to work on Tuesday, November 23, 1993 with a restriction of light duty for one (1) week. On Monday, November 22, 1993 the grievant did not contact the County fifteen minutes prior to the start of his work schedule. The County attempted to contact the grievant and was unable to do so. The County did contact their Worker's Compensation Carrier, Lori Meier, the individual who was handling the grievant's claim. On that Monday the grievant contacted Meier

about his claim, informed her he would not be going to work until Tuesday because of the physician's examination, and Meier than contacted the County about the grievant's status. On December 3, 1993 the grievant received the following written reprimand:

December 03, 1993

Gustave Bramann
6555 Hwy 8 West
Rhinelander, WI 54501

Dear Gus,

On Monday, November 22, 1993, you failed to show up for work, or to call in, prior to 6:45 a.m., to let us know your medical status. Oneida County considers this a "no show" for work that day.

You have been disciplined or warned in the past for being late for work or not showing up. Any future tardies or "no shows" will result in time-off without pay or discharge. There will be no more verbal or written warnings.

Sincerely,

Robert H. Maass /s/
Robert H. Maass
Oneida County Highway Commissioner

cc: Oneida County Personnel Dept.
Pat Hall, Union President

Thereafter the grievant filed a grievance over the discipline and the matter was processed to arbitration in accordance with the parties' grievance procedure.

On February 7, 1994 the grievant received the following letter from Meier:

GUSTAVE J. BRAMANN
6555 HWY 8 WEST
RHINELANDER WI 54501

Employee: Gustave J Bramann

Claim Number: D01-452036 LAR3
Accident-Date: November 11, 1993
Insured Name: Oneida County

Gustave,

On November 22, 1993, I had received a call from you regarding your return to work status, you had informed me that you had gone to the doctor on November 19, 1993. The doctor had released you to light duty work which was to begin on November 23, 1993. You stated that you had the authorization slips and would give them to your employer. After speaking with you I had contacted your employer and informed them of your return to work status, and that you would be giving them the light duty slips.

If you require any further information, please call me.

Lori A. Meier /s/
Lori A. Meier
CLAIM SERVICE REP III
F1

cc: ONEIDA COUNTY

On February 15, 1994 the County's Personnel Committee sent the following grievance denial to the grievant:

February 15, 1994

Mr. Clarence Cooper
Highway Union Steward

RE: Gus Bramann Grievance

Dear Mr. Cooper,

The Personnel Committee, after much discussion, has decided to deny Mr. Bramann's grievance for the following reasons:

1. Dr. Swank's medical slip dated 11/12/93 states "please excuse from work 1 week". This medical slip excused

Mr. Bramann from work 11/15/93 through 11/19/93. The County had the reasonable expectation that he would be back at work Monday, 11/22/93.

2. It is the responsibility of the employee to notify and/or keep management informed as to his medical status. The Highway Department attempted to contact Mr. Bramann, by phone, several times on 11/22/93. No one answered. Wausau Insurance Company has no responsibility for notifying the Highway Department of Mr. Bramann's change in medical status.
3. There are three prior written warnings in Mr. Bramann's Personnel File connected to the same type of activity.
 - a. 6/30/93 - oversleeping, called in after shift started.
 - b. 5/23/91 - did not report for work, did not call in.
 - c. 12/10/86 - tardiness.

The Personnel Committee believes the written warning that was issued in this instance is justified and appropriate.

Respectfully,

Bob Fries /s/
Mr. Robert Fries
Personnel Committee Chairman

cc: Mr. Gus Bramann
Mr. Robert Maass

COUNTY'S POSITION:

The County submits that the written reprimand received by the grievant was completely reasonable. The County argues Article 10, Section G, is crystal clear and requires the reporting of absences due to illness or injury at least one-quarter hour prior to the starting time of the work day except in cases of emergency. The County asserts it is undisputed the grievant did not report to the County that he would not be returning to work on Monday, November 22, 1993. In support of its position the County points to the testimony of County Personnel Director Carey Jackson, Highway Commissioner Bob Maass, and Maass' secretary, Patti Wrycha. Jackson testified that

the language had been in the collective bargaining agreement for a number of years and had been uniformly followed. Maass and Wrycha testified the procedure is uniformly followed.

The County contends the language of the agreement is clear and unambiguous and must be interpreted in accordance to its clear and plain meaning. The County points out no claim was made by the grievant that the language was ambiguous or there was any difficulty in interpreting its meaning. The County also points out the grievant acknowledged he had never been permitted to miss work in the past without notifying the County ahead of time and that he was aware of the language requirements. The County argues the grievant offered no reason why he should not have been required to follow the procedures.

The County argues the grievant made no claim the provision in dispute had been waived by past practice. The County asserts the grievant's claim one individual was permitted to deviate from this provision was not supported by any corroborating witnesses. The County also points out the grievant presented no reason as to why he was unable to call in. Further, that the grievant had no reason to believe the physician would submit an excuse to the County nor that the Worker's Compensation Carrier would contact the County as it would not know of the grievant's condition until he contacted the carrier.

The County concludes it had reason to issue the reprimand and would have the undersigned deny the grievance.

UNION'S POSITION:

The Union does not dispute the County's right to reprimand employes for failing to report absences in a timely manner. The Union does assert that the County's actions were excessive and questions whether they were reasonable given the facts in the instant matter.

The Union points out that the grievant did not believe it was necessary to report his absence for Monday, November 22, 1993 for two reasons. First, he had previously been on workers compensation and was under the assumption the County should not expect his return to work until the County received authorization from the workers compensation carrier or the physician that the grievant was released to return to duty. The Union argues that because the physician's written excuse did not explicitly state he was released to return to work after the one week he did not feel it was necessary to provide another written excuse. Second, the grievant believed that under Article 10, Section C, he did not have to present the physician's statement authorizing his return to work until he actually returned to work.

The Union also argues that the grievant's three previous letters of reprimand, dated June 30, 1993, May 23, 1991 and December 10, 1986, over ten and a half years of employment history, hardly warrant a threat of suspension or discharge. The Union argues this does not present a record of a problem of chronic absenteeism. The Union argues that if the grievant

reported to work one minute late he could be subject to a suspension or discharge. The Union points out that a former employe of the County Highway Department was tardy or a no-show thirty-some times over a four year period prior to being discharged by the County. The Union concludes the County's discipline is excessively harsh.

The Union would have the undersigned sustain the grievance and direct the County to cleanse the grievant's personnel file of the written reprimand.

DISCUSSION:

A careful review of Article 10, Section G, demonstrates that all employes of the County Highway Department who are covered by the terms of the collective bargaining agreement are required to inform the County at least fifteen minutes prior to their scheduled start time that they will be absent due to illness or injury except in an emergency. The record demonstrates there was no emergency in the instant matter. The grievant, as well as the County, was aware the physician's notice only acknowledged he would be absent until Friday, November 19, 1993. The record also demonstrates the grievant became aware the physician was not releasing him to return to work until Tuesday, November 23, 1993, on Friday, November 19, 1993. The record demonstrates the grievant informed neither the County nor the worker's compensation carrier of his absence until after the start of his scheduled work day. The undersigned finds the grievant, by his actions, clearly violated Article 10, Section G.

The undersigned notes here that the grievant testified that he verbally informed the County he was to see the physician again on November 19, 1993. Reasonably, by the grievant's own testimony, the County could expect the grievant to thus return to work on November 22, 1993 because the work release was for one week only. The grievant's contention that because he was on workers compensation he was relieved of any reporting responsibilities is not supported by any language in the collective bargaining agreement, by the physician's November 12, 1993 written excuse, or by any demonstrated past practice.

The undersigned notes here that had the grievant informed the worker's compensation carrier of the extended physician's work release prior to his scheduled start time on November 22, 1993, rather than afterwards as the record demonstrates in the instant matter, such a notification would have some bearing on the instant matter. The grievant could of concluded the carrier would inform the County in a timely matter and Article 10, Section G, does not specify the employe must do the notifying. However, the undersigned finds an after the fact notification to the carrier does not relieve the grievant of the duty to inform the County prior to his scheduled start time in a timely manner, fifteen minutes that he will be absent.

The undersigned also finds the notification to the grievant that any future failures to comply with Article 10, Section G, is neither harsh nor excessive. While the Union may be concerned with an issue of disparate treatment given the amount of tardiness and no-shows cited by the Union

in an excessive absenteeism case, such a concern can be raised if the Union believes the grievant is receiving undue discipline if he again fails to notify the County of an absence and the County issues a discipline to the grievant which the Union feels is inconsistent with the treatment received in the excessive absenteeism case.

Based upon the above and foregoing, and the arguments, testimony and evidence presented the undersigned finds the reprimand given to the grievant was reasonable. The grievance is therefore denied.

AWARD

The reprimand placed in the grievant's personnel file was reasonable.

Dated at Madison, Wisconsin this 23rd day of March, 1995.

By Edmond J. Bielarczyk, Jr. /s/