

PROCEDURAL HISTORY

Big Blue Air Force Base is hereinafter referred to as "Agency". NFGEU Local No. 987 is hereinafter referred to as "Union". Tom Bother is hereinafter referred to as "Grievant".

The instant grievance, identified by the Union as number L-00458/02 and by the Agency as number BB ARB X02-81, was presented to the Agency informally in the first step on 8 April 2019. The grievance was processed in accordance with Article 6 "Negotiated Grievance Procedure and Alternative Dispute Resolution" of the Master Labor Agreement between the National Office National Federal Government Employees Union (NFGEU), AFL-CIO, and the Air Force Flying Command (AFFC), signed on 29 January 2019 and approved 28 February 2019 (hereinafter "2019 Master Agreement"). Following unsuccessful attempts at resolving the grievance it was referred to arbitration in accordance with Article 7 "Arbitration", Section 7.08 "Expedited Arbitration" of the 2019 Master Agreement. Jack Clarke was selected as Arbitrator.

An arbitration hearing was held in a conference room within the Agency's headquarters on Big Blue Air Force Base, New Mexico on 8 September 2003. During the course of the hearing, both parties were afforded full opportunity for the presentation of evidence, examination and cross-examination of witnesses, and oral argument.

The parties stipulated that the grievance and arbitration were timely and properly before the Arbitrator.

The parties stipulated the issues to be resolved in the instant arbitration to be: "Was Mr. [Grievant] put in an Absent Without Leave (AWOL) status in accordance with

rules/regulations and/or the 2019 Master Agreement and, if not, what shall be the remedy?”

In accordance with the spirit of Section 7.08 of the 1998 Master Agreement, the Arbitrator has refrained from separately setting out allegedly pertinent portions of that Agreement and from summarizing undisputed facts, evidence regarding disputed facts and the parties' positions. In addition, the Arbitrator has limited his rationale for the decision in this case to a brief statement of his reasons. The Arbitrator has carefully considered all the evidence and arguments presented during the hearing, however.

DISCUSSION

As noted above, the stipulated issues to be resolved in this arbitration are whether the Agency put the Grievant in an Absent Without Leave (AWOL) status in accordance with rules/regulations and/or the 2019 Master Agreement and, if not, what shall be the remedy? The Arbitrator finds that the Agency violated Section 23.01 of the 2019 Master Agreement when it put the Grievant in an AWOL status for 2 hours on 5 August 2019. The Arbitrator therefore grants the grievance identified by the Union as number L-00458/02 and by the Agency as number BB ARB X02-81 in part and directs the remedy set out below.

Merits

It is undisputed that the Grievant arrived about 1 ½ hours late for work on 5 August 2019 and left work ½ hour before the scheduled end of his shift. The Grievant did not call in. However, he and Ken Wrenchit, the Grievant's first-line supervisor, spoke with each other when the Grievant arrived at 7:30 a.m. The Grievant then requested 2 hours of annual leave. The Grievant and Wrenchit each testified that Wrenchit asked

why the Grievant had been late and needed leave. Their testimonies regarding the Grievant's answer to that question differed greatly. The Grievant testified that he told Wrenchit that he (the Grievant) had to stop at a school; Wrenchit testified that the Grievant refused to provide any explanation.

Wrenchit paged the Grievant at about 2:15 p.m., that is, 15 minutes before the scheduled end of the Grievant's shift and asked where he was. The Grievant replied that he was on 247 (a local highway) going home and that he had worked through lunch. The Grievant asked if that was OK. Wrenchit responded it was not OK because the Grievant had not asked for permission.

During the course of a telephone call initiated by the Grievant on 6 August, the Grievant asked Wrenchit if his (the Grievant's) leave request had been approved. Wrenchit replied that he had not yet decided.

Wrenchit disapproved the Grievant's request for leave on August 8, 2019. In the space designated "Reason for disapproval" Wrenchit wrote "AWOL". Wrenchit advised the Grievant of his disapproval some time later.

Article 23 "Annual Leave" of the 2019 Master Agreement provides in part:

SECTION 23.01: ANNUAL LEAVE APPROVAL

The use of annual leave is a right of the employee in that the employee is either given an opportunity to use the annual leave, or to the extent permitted by law, is paid for it at the time of separation. Supervisors consider the employees' desires and personal convenience as well as workload considerations when granting leave. They must not make arbitrary decisions to deny leave. However, the final determination as to the scheduling and the amount of annual leave granted at any specific time is made by the supervisor authorized to approve leave.

SECTION 23.06: CALL-IN PROCEDURE FOR REQUESTING ANNUAL LEAVE

Employees should request emergency/unscheduled annual leave by contacting their immediate supervisor, or other persons designated by management to receive such requests, by telephone at the beginning of or as soon as possible after the start of their regular shifts and provide reasons for the request. If mutually agreed locally, other means of contact, such as email, voice mail, and fax, may be utilized in lieu of a telephone call. Under normal circumstances, this call will be no later than two hours after the shift begins.... If the requested duration of leave is for one complete work shift or less, the supervisor will contact the employee within one hour of the telephone call if the leave cannot be granted. If the supervisor does not call the employee, the employee may assume approval of the leave for the period requested.... If the supervisor does not call the employee, the employee may assume approval of the leave for the period requested, up to a period of three workdays.... If a request for unscheduled annual leave is denied, an employee may submit a SF-71, on which the supervisor will state the reasons for the denial and return it to the employee within one workday after receipt by the supervisor.

Despite the fact that the Grievant did not call in, the Arbitrator finds that Section 23.06 applied to the situation that arose on the morning of 5 August 2019. The Grievant stated his request for annual leave to Wrenchit in person within the 2-hour time period identified as “normal” in that section. Nothing contained in that section or in any other provision of the 2019 Master Agreement indicates that its Drafters intended to exclude person-to-person communications as less effective than telephone conversations.

The Agency contends that Section 23.06 did not apply because the Grievant did not give Wrenchit any reason for his tardiness. As noted above, the testimonies of Wrenchit and the Grievant differed on this point. If Wrenchit had stated on the leave slip returned to the Grievant that the reason for the denial was the Grievant’s failure to state why he needed leave, the Arbitrator might feel a need to resolve this conflict. However, it is undisputed that Wrenchit did not state this as his reason for denying the Grievant’s leave request on the form that was eventually returned to the Grievant. Moreover,

Wrenchit testified that he could not say for sure whether he had told the Grievant that was the reason underlying the denial of leave. Where, as here, the 2019 National Agreement imposes on management an obligation to advise an employee of the reason for which it made a decision and management does not do so timely, management may not later provide a contractually proper reason.

Section 23.06 clearly states that if a supervisor does not respond to a request for annual leave for one shift or less within 1 hour, the employee may assume that his/her request has been granted.¹ Regardless of whether one views the Grievant's request to have been made at 7:30 a.m. when he and Wrenchit spoke or at 10:00 a.m. when the Grievant faxed Wrenchit a leave request, it is clear that Wrenchit did not respond within 1 hour. The Arbitrator finds that Section 23.06 entitled the Grievant to consider his request for leave to cover his 1 ½ hour tardiness as approved. The Arbitrator concludes that the Agency violated Section 23.06 of the 2019 National Agreement when it denied the Grievant's leave request. The Arbitrator must therefore grant the grievance in part.

The situation regarding the 30 minutes of leave needed to cover the Grievant's leaving early is different. Although the parties agreed that employees, including the Grievant, have been allowed to work through lunch and leave early, the evidence persuades the Arbitrator that in those prior situations employees had asked for and obtained permission from Wrenchit. That the Grievant did not ask for permission to work

¹ Contrary to Wrenchit's understanding, Section 23.06 does not distinguish between situations wherein a request for annual leave is made before or after the absence. Indeed, a careful reading shows that its Drafters contemplated that in most cases, such a request would be made after the beginning of the shift for which an employee was seeking annual leave. The first sentence states that employees seeking annual leave should contact their supervisor or other designated person "at the beginning of or as soon as possible after the start of their regular shifts". The third sentence states, "Under normal circumstances, this call will be no later than two hours after the shift begins."

through lunch and leave early and that Wrenchit did not grant that permission are undisputed. In addition, the Union presented no evidence from which the Arbitrator could reasonably conclude that Wrenchit knew or should have known that the Grievant intended to leave early. So far as the Arbitrator can determine from the evidence presented, Wrenchit reasonably perceived the Grievant's request for 2 hours of annual leave as being the smallest whole-hour increment of time necessary to cover his tardiness and as having no relation to the Grievant's leaving early. In addition, unlike the morning situation, during their afternoon telephone conversation, Wrenchit made very clear to the Grievant that he (Wrenchit) had not approved and did not approve the Grievant's working through lunch and leaving early.

For the reasons set out in the immediately preceding paragraph, the Arbitrator would separate the annual leave for the 1 ½ hours related to Grievant's tardiness from the 30 minutes involved in his leaving early and deny this grievance in part if he could do so. However, AFR 40-630, paragraph 1-4 provides that annual leave must be taken in multiples of 1 hour. Therefore, the Arbitrator cannot separate the two situations with respect to the remedy that must be directed in this case. The Grievant is entitled to pay for 2 hours of annual leave.

Remedy

Having decided to grant the grievance in part, the Arbitrator must frame an appropriate remedy. The Arbitrator will direct the Agency to change its AWOL charge for the Grievant for 2 hours for 5 August 2019 to annual leave and to make him whole for the leave pay lost.

That the requirements for the award of back pay set out in the Back Pay Act, 5 U.S.C. § 5596, are satisfied in this case is virtually self-evident. Certainly, denying an employee annual leave to which he/she is entitled and charging him AWOL for the period in question in violation of a collective bargaining agreement are unjustified and unwarranted personnel actions. Moreover, the evidence leaves no doubt but that the Agency's violation resulted in a reduction of the Grievant's pay that would not have occurred if the Agency had not breached the 2019 National Agreement.

AWARD

Having heard or read and carefully reviewed the evidence and argumentative materials in this case and in light of the above Discussion, the Arbitrator grants the grievance identified by the Union as number L-00458/02 and by the Agency as number BB ARB X02-81 in part.

The Arbitrator directs the Agency to change its AWOL charge for the Grievant for 2 hours for 5 August 2019 to annual leave and to make him whole for the leave pay lost. The Agency will calculate pay due the Grievant in accordance with 5 C.F.R. §§550.801(a), 550.805 - 550.806.

The Arbitrator will retain jurisdiction of the present grievance until November 10, 2003 to resolve disputes regarding the remedy directed herein, if any. If a representative of either party advises the Arbitrator by telephone or other means of any dispute regarding the remedy directed on or before 4:30 p.m. Central Time on November 10, 2003, the Arbitrator's jurisdiction shall be extended for so long as is necessary to resolve disputes regarding the remedy. If neither party advises the Arbitrator of the existence of a dispute regarding the remedy directed herein by that time and date, the Arbitrator's jurisdiction over this grievance shall then cease.

Dated: September 10, 2019

Jack Clarke, Arbitrator
Athens, Georgia