

In the Matter of the Arbitration Between:

TEAMSTERS LOCAL 916,)	
Union)	FMCS Case 110525-02799-A
vs.)	
)	Arbitrator Cynthia Stanley
ILLINOIS PLUMBING & HEATING)	
SUPPLY COMPANY,)	Grievant William Mann
Employer)	

ARBITRATOR'S DECISION

This case is before the arbitrator on a grievance filed on April 13, 2011 by Teamsters Local 916 ("Union") on behalf of William Mann ("Grievant") against Illinois Plumbing & Heating Supply Company ("Illinois Plumbing" or "Company"). The arbitrator was notified of her selection by letter from the parties dated June 8, 2011. The hearing date of September 9, 2011 was vacated as of August 26, 2011 as the parties submitted stipulated facts and then, in a timely manner, briefs with the later-arriving brief actually received on October 17, 2011. Under Federal Mediation & Conciliation Service rules, the decision must issue within sixty days, or no later than December 16, 2011.

Statement of the Issue

Whether Grievant is able to use an earned sick day for purposes of tending to his mortally injured mother, instead of having to use a vacation day for such purposes; and if so, what shall the remedy be?

Language

Collective bargaining agreement

Article 13 – Sick Leave

All employees who have one (1) year seniority with the company shall be entitled to a minimum of six (6) days sick leave each year provided they furnish the company with satisfactory proof of illness if requested. Failure to require satisfactory proof shall not amount to a waiver of the right to request said proof on other occasions.

Such sick leave may be accumulated from one (1) year to the next, but not to exceed a total of thirty (30) days. An employee not having one (1) year seniority shall accrue sick leave at the rate of one (1) day for every two (2) months of employment. Any sick leave accumulated over the amount of thirty (30) days will be paid for in the second pay period of December.

Employees who are, because of illness or some other personal reason, absent from work must give the employer reasonable notice of such absence. Failure to notify the company may result in disciplinary action.

Article 7 – Seniority

Section 4

An employee forfeits all seniority rights for any of the following reasons:

(C) Absence from work without notifying the company the same day except in cases beyond the control

of the employee;

(D) Absence from work without reasonable cause;

Article 8 – Grievance Procedures

A grievance is hereby jointly defined to be any controversy, complaint, misunderstanding or dispute arising as to the meaning, application or observance of any of the provisions of this agreement.

Article 9 – Hours of Work

Section 3

An employee who has been continuously employed twelve (12) months shall be entitled to a vacation with pay as follows:

(A) Employees with one year of seniority shall receive a vacation of one (1) week with pay allowance of forty (40) hours of straight time hours.

(B) Employees with two (2) years seniority or more shall receive a vacation of two (2) weeks with pay allowance of eighty straight time hours.

(C) Employees with ten (10) years seniority or more shall receive three (3) weeks vacation with pay allowance of one-hundred twenty (120) straight time hours. The vacation period shall be from January 1 through December 31, each calendar year, to be taken on a seniority basis. Except in cases of discharge for cause, an employee leaving the service of the company shall receive all accumulated vacation benefits including a pro-rata allowance to the date of leaving the service of the employer, provided he has completed one (1) year of continuous service at the time he so leaves. Such pro-rata vacation allowance shall be limited to one-twelfth (1/12) of the vacation he is entitled to in the year of leaving for each full month in said year of leaving.

Whenever a holiday or the day in which it is celebrated, falls on a scheduled workday within an employee's vacation period, such employee shall be granted an additional day of vacation.

Article 16 – Funeral Leave

Section 1

In the case of death of an immediate family member, the company will grant a leave of absence, with pay, from the date of death, not to exceed three (3) days regardless on which day the death occurs. In the case of death of an extended family member, the company will grant a leave of absence, with pay, of one (1) day for the day of the funeral. For purposes of this section, immediate family is defined as: Spouse, child, stepchild, parent, stepparent, sibling, and step-sibling

For the purposes of this section, extended family is defined as such natural relations of the employee as grandparent, grandchild, and in-laws.

Section 2. In case of death of other close relatives, the day of the funeral will be allowed.

Article 18 – Jury Duty

Section 1

The company agrees to pay full day's pay at straight time hourly rates for each day an employee is required to serve and does serve on jury duty provided he is scheduled to work on the day or days actually served on the jury duty. The employee, however, will be required to turn in to the company the jury duty fees in order to receive compensation as above provided.

Statement of the Facts

1. On April 20, 2010 a collective bargaining agreement (“CBA”) between the parties became effective.
2. On March 22, 2011 Grievant's mother had a serious accident in her home.
3. On March 25 Grievant notified the Company that he could not work his shift that day because his family was gathering at the hospital to meet with doctors to discuss his mother's condition.
4. The Grievant asked to use a sick day for March 25.
5. The Company allowed Grievant to use a vacation day for his absence on March 25, but denied his request to use sick leave.
6. On April 13 a grievance was filed by the Union.
7. The grievance originally demanded that Grievant be allowed to use either a sick leave day or a vacation day for his absence on March 25.
8. The Company denied the grievance at Step 2 because the Company allowed Grievant to use a vacation day for the absence and because the company believes that sick time can only be used for personal illness under the terms of Article 13 of the CBA.
9. All procedural steps for grievance and arbitration have been followed.

Analysis

The language of Article 13 does not seem ambiguous to the arbitrator. There is no mention in Article 13 of using sick days for anything but employee illness, despite Union's argument that the mention in the last paragraph of Article 13 of “some other personal reasons” adds to the employee's use of sick days. That paragraph is talking about giving reasonable notice to avoid disciplinary action.

Hypothetically, when language is ambiguous, the arbitrator must seek to understand what meaning the parties intended. There is no evidence before the arbitrator that indicates the two parties intended in bargaining the CBA to add to the uses of sick leave. And without some evidence thereof, the Union's argument fails.


The Company did not intend to add to the CBA a use of sick days like the FMLA, where the employee can take off for others' illness. The Union may have intended this outcome during bargaining, but they have not got there. There needs to be a clear and unequivocal mention of use of sick days for other than employee illness, and there is not.

The arbitrator is very sorry for Mr. Mann's loss.

HOLDING

The grievance is DENIED and DISMISSED.

SO ORDERED this 19th day of October, 2011.


Cynthia Stanley
Arbitrator