

Billler 218211

Free Court Leave 47



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 24, 1984

RECEIVED

MAY 30 1984

OFFICE OF
PRESIDENT

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Gentlemen:

As you may be aware, the Postal Service's court leave regulations have been called into question in certain discrimination suits brought against the Postal Service. Most recently, in Stup v. Bolger, Civil Action No. 83-0205-A (February 7, 1984), a district court held that our denial of compensation to an employee testifying on behalf of a Title VII plaintiff was inequitable. While we believe that our court leave regulations are legally sound, and that the decision in the Stup case does not require any change in those regulations, we recognize an element of unfairness in not providing compensation for plaintiffs' witnesses in such cases. Accordingly, the Postal Service proposes to expand the definition of court leave contained in section 516.31 of the Employee and Labor Relations Manual, as follows (substantive changes underscored):

516.31 Definition. Court leave is the authorized absence from work status (without loss of, or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee who is summoned in connection with a judicial proceeding, by a court or authority responsible for the conduct

Mr. Moe Biller
Mr. Vincent Sombrotto

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of that proceeding, to serve as a juror or to serve as a witness in a nonofficial capacity on behalf of a state or local government or in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. The court or judicial proceeding may be located in the District of Columbia, a state, territory, or possession of the United States, including the Commonwealth of Puerto Rico, the Canal Zone, or the Trust Territory of the Pacific Islands. Judicial proceedings contemplate any action, suit, or other proceedings of a judicial nature, but do not include administrative proceedings such as hearings conducted pursuant to 650, Adverse Personnel Action-Grievance and Appeal (Nonbargaining).

Consistent with this revision, the Postal Service also proposes to change the following related sections of the court leave regulations:

516.1 Absences for Court or Court Related Service

Nature of Service	Court Leave	Official Duty	Annual Leave or LWOP
II. Witness Service (C) on behalf of private party (2) not in official capacity (a) <u>USPS a party</u> (b) <u>USPS not a party</u>	<u>X</u>		X

516.331 Pay Status Requirement. Court leave is granted only to eligible employees who, except for jury duty, service as a witness in a nonofficial capacity on behalf of a state or local government, or service as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest, would be in work status or on annual leave. An employee on LWOP when called for such court service, although otherwise eligible for court leave, is not granted court leave, but may retain any fees or compensation received incident to court service.

Mr. Moe Biller
Mr. Vincent Sombrotto

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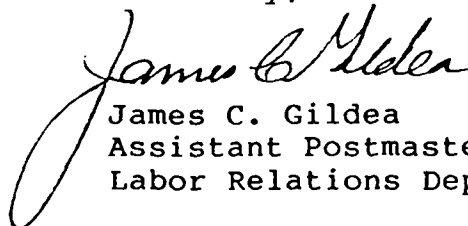
516.332 Employee on Annual Leave. If an eligible employee while on annual leave is summoned for jury duty, service as a witness in a nonofficial capacity on behalf of a state or local government, or service as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is party or the real party in interest, while on annual leave, the employee's annual leave is cancelled and the employee is placed on court leave for the duration of such court service. Employees who are not entitled to court leave must use annual leave or LWOP for the period of absence from duty for such court service.

516.43 Witness Services in a Nonofficial Capacity on Behalf of a Private Party. An employee who testifies in a nonofficial capacity (as a private individual) on behalf of a private party is not performing official duty. The employee's absence is charged to court leave if the testimony is given in a judicial proceeding to which the Postal Service is a party or the real party in interest (see 516.31). If the Postal Service is not a party or the real party in interest, the employee's absence is charged to annual leave or LWOP and the employee may retain any fees or compensation received for such witness service.

As you can see, under these proposed revisions, the Postal Service would continue to provide court leave to employees serving as jurors or testifying on behalf of a state or local government, and, in addition, would provide court leave to employees testifying on behalf of private parties in judicial proceedings brought by or against the Postal Service. Thus, for example, court leave would be provided to employees testifying on behalf of plaintiffs in Title VII discrimination suits brought against the Postal Service.

If you have no objection to the above revisions, please notify Ned Braatz of my staff at 245-5158. We will then take the necessary action to implement these changes.

Sincerely,



James C. Gildea
Assistant Postmaster General
Labor Relations Department



American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W. Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

March 12, 1984

James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W
Washington, D.C. 20260

Dear Mr. Gildea:

The United States District Court for the Eastern District of Virginia in the case of Douglas H. Stup v. William F. Bolger, Civil Action No. 83-0205-A decided that the plaintiff was entitled to court leave even though he was not testifying in an official capacity. This decision differs from USPS interpretation of leave provisions governing court leave. Is it the intent of the Postal Service to modify existing interpretation and practice to conform to this decision?

Sincerely,

William Burrus,
Executive Vice President

WB:mc
court leave.

NATIONAL EXECUTIVE BOARD • MOE BILLER, President

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1 IN THE DISTRICT COURT OF THE THIRTEENTH
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA
3 IN AND FOR THE COUNTY OF CARBON

4
5 STATE OF MONTANA,

No. DC 82-02

6 Plaintiff,

SUBPOENA

7 vs.

8 KENT ALLEN SANDERSON,

9 Defendant.

10
11 THE STATE OF MONTANA TO _____

12 YOU ARE COMMANDED to appear and attend before our District
13 Court of the Thirteenth Judicial District of the State of
14 Montana, in and for the County of Carbon, at a term of said
15 Court to be held at the Courthouse, at Billings, in the County
16 of Yellowstone, on the 12th day of April, 1983, at 9:00 o'clock
17 a.m., then and there to testify as a witness on behalf of the
18 Defendant in the above-entitled action now pending in said
19 District Court, and disobedience will be punished as a contempt
20 of said Court, and will also forfeit to the party aggrieved the
21 sum of One Hundred Dollars, and all damages which may be
22 sustained by your failure to attend. By Order of the Court.

23 Given under my hand and the seal of said Court, this

24 11 day of April, 1983.

25 GAYLE STRAUSBURG, Clerk of Court

26 (COURT SEAL)

27 By: _____
28
29

*7:00 AM
-09*

350 Court Leave (See ELM 516)

351 Definition

Court leave is the authorized absence (without loss of, or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee from work status for jury duty or for attending judicial proceedings in a nonofficial capacity as a witness on behalf of a state or local government.

352 Eligibility

352.1 Eligibility Chart

<i>Employee Category</i>	<i>Eligible</i>
Full-time	yes
Part-time regular	yes
Part-time flexible	no
Casual	no
Temporary	no

352.2 Noneligibles

Employees not eligible for court leave must use annual leave or LWOP to cover the period of absence from duty for such court service.

352.3 Other Factors

Court leave is granted only to eligible employees who, but for jury duty of service as a witness in a non-official capacity on behalf of a state or local government, would be in a work status or on annual leave. Eligible employees who are summoned for

such court service while on annual leave are placed in a court leave status for the duration of the court service. Eligible employees on LWOP when called for such court service are not granted court leave, but may retain any fees or compensation incident to such service.

352.4 Rural Carriers

Court leave for rural carriers is discussed in Chapter 5.

353 Authorization and Supporting Forms

353.1 Installation heads (or their designees) are responsible for ascertaining the exact nature of court service in order to determine whether the employee is entitled to court leave. If a summons to witness service is not specific or clear, the installation head contacts appropriate authorities to determine the party on whose behalf the witness service is to be rendered. (For information as to court service which constitutes "official duty" status, see ELM 516.4.)

353.2 When it is determined that the court service is of such a nature as to entitle an eligible employee to court leave, the employee should initiate a Form 3971 and present it to his supervisor for action. (Employees who are not eligible for court leave for such service also use a Form 3971, requesting annual leave or LWOP, to cover their absence from duty.)

United States Senate

June 17, 1983

RECEIVED

The Honorable William F. Bolger
Postmaster General
United States Postal Service
475 L'Enfant Plaza West SW
Washington, D. C. 20260

JUN 21 1983

OFFICE OF
PRESIDENT

Dear Mr. Postmaster:

Because of a technicality in the National Agreement, pertinent section enclosed, a Postal Service employee in Montana was required to take leave without pay, or lose annual leave, because he was subpoenaed to appear in court on behalf of a defendant. By order of the court, he would have been forced to pay \$100 to the aggrieved party, plus "all damages, which may be sustained by your failure to attend".

Apparently, if he had been subpoenaed by the State or local government as their witness, he would have suffered no loss of pay. This seems a strange tilt "of justice" on behalf of the State, to say the least.

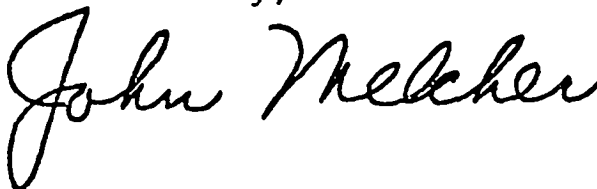
For example, as interpreted by your managers, a postal worker who witnesses an accident in which a government vehicle collides with a private car as a result of the government driver's negligence, could be called as a witness for the government and suffer no loss of pay. But if subpoenaed by the private driver as a witness for the plaintiff, he would personally suffer loss in pay under threat of a substantial fine if he failed to testify.

Federal employees' court leave is not so restricted, and certainly should not be. Your policy is not only unfair to the subpoenaed postal employee, it is unfair to the litigant who is a private citizen. His witnesses are obviously under a strain not suffered by the State witnesses.

I hope you can take the necessary steps to amend this unfair provision at the earliest opportunity.

Best regards.

Sincerely,



Enclosure

cc: Moe Biller
Morris Harrell
Vincent Sombrotto