

ITEM 5

Dedicated to Outstanding Customer Service for a Better Community

SERVING SOLUTIONS SUCCEEDS



TO: Civil Service Commission, CSC  
FROM: Linda Ball Thomas, HR Director & CSC Secretary  
DATE: November 6, 2013  
SUBJECT: Jesus A. Rios – Sick Leave Grievance

Mr. Rios filed a grievance on the City of El Paso Employee Grievance Form alleging that his rights under Rule 6, Section 2(a) Accrual, 2(b) Sick Leave Verification, and Rule 14 Grievances, set forth below, were violated.

Rule 6, Leave of Absence, Resignation, Sick Leave and Vacations

*Section 2(a) Accrual*

*All regular and probationary employees who are regularly scheduled to work a minimum of forty (40) hours per week are entitled to an annual sick leave, with full pay in the amount of 120.0 hours per year or 4.62 hours per pay period. (Amended 7/09/85, 8/11/87, 6/28/88, 1/30/90, 2/07/06, 8/25/09)*

*Section 2(b) Sick Leave Verification*

*No sick leave of three (3) or more consecutive work days will be granted to any person without a certificate verifying that the leave is necessary for medical reasons. Additionally, no sick leave the day before, the day of, or the day after a City designated holiday will be granted to any person without a certificate. Such certificate must be from a health care provider, and verify that the leave is necessary for medical reasons. (Amended 7/09/85, 2/14/89, 9/17/96 and 2/07/06)*

Rule 14, Grievances

*An employee has the right to file and process a grievance as provided in this Rule. Any employee disciplined for failure to comply with any rules, regulations, policies, or procedures as promulgated hereunder, shall have the right to file a grievance that meets the requirements of Rule 14 regarding any rule, regulation, policy or procedure promulgated hereunder. (Amended 7/31/07, 3/6/12)*

I have reviewed Mr. Rios' grievance and have made the determination that it should be denied. In accordance with Rule 11, Section 1, the department head shall have the right to promulgate rules and regulations regarding the operation of the

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City Manager  
Joyce A. Wilson



HUMAN RESOURCES DEPARTMENT  
300 NORTH CAMPBELL, EL PASO, TEXAS 79901 · 915-541-4504

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department. In a memo dated July 24, 2013 from Department Head Jay Banasiak, he deemed his presence as necessary for the continuity of department operation.

In conformity with Rule 11, Section 3, the Human Resources Director may promulgate, rules, regulations and policies and procedures regarding any requirements applicable to City employees. The Sick Leave Policy that was in force at the time of his AWOL is not in conflict with any other policy or rule. The policy states when there is an operational need, employees may be directed to work, even though they have sufficient sick leave balances. The department head required you to go to work due to an operational necessity. In addition, employees who believe they have been improperly coded AWOL may appeal in writing to the Director with the appropriate medical documentation. You failed to appeal the AWOL in conformity with the City of El Paso Sick Leave Policy.

Lorenzo R. Chavez, Assistant Superintendent of Operations, addressed the same concern in a letter (attached), dated June 18, 2013 addressed to Mr. Rios. In addition, Jay Banasiak, Sun Metro Director, addressed the same concern in a letter (attached), dated July 24, 2013, addressed to Mr. Rios. Additionally, the HR Director addressed Mr. Rios' concerns in a memorandum dated August 28, 2013 (attached).

The portion of the Rule that Mr. Rios cites in his grievance is outside the jurisdiction of the Civil Service Commission. Specifically, paragraph two above gives total discretion and authority to the Department Head when scheduling and employee's work. Furthermore, pursuant to Rule 14, a grievance must raise a violation of Rule or Charter provision where the employee has a remedy to be granted by the CSC. The CSC has no authority to direct an action or grant a remedy to Mr. Rios relating to a complaint under Rule 6.2a and 6.2b.

In conclusion, there is no item being presented to the CSC for review. The Rule cited as being violated in Mr. Rios' grievance does not fall into a category that can be acted upon by the CSC. There is no jurisdiction or action that the CSC can take under Rule 6.2a and 6.2b.



MISCELLANEOUS APPEAL FORM

Date: 9-10-13



Linda Ball Thomas, PHR, Civil Service Commission Secretary  
300 North Campbell  
El Paso, Texas 79901

To the Honorable Civil Service Commission:

Name: JESUS A. RIOS

Appeal of: SICK LEAVE RULE / POLICY

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you a current City of El Paso employee? Yes  No

Have you ever been employed by the City? Yes  No

Signature: *Jesus A. Rios*

(Please Print)

Name: JESUS A. RIOS

Address: \_\_\_\_\_

City/State/Zip: EL PASO, TX 79905

Telephone: \_\_\_\_\_

Employee ID #: \_\_\_\_\_

Last 4 of SS#: \_\_\_\_\_

APPELLANTS REPRESENTATIVE - AFSCME LOCAL 59  
1155 WESTMORELAND DR. STE 112  
EL PASO, TX 79925 (915) 920-2559  
(915) 630-2742  
ATTN: DAVID OCHOA

CITY OF EL PASO  
EMPLOYEE GRIEVANCE FORM



Employee's Name: Jesus Rios

Social Security #

Job Title: Coach Operator

Department/Division or Section: Sun Metro Fixed Route Service

Work Phone # 534-5810

Immediate Supervisor's Name: Lorenzo Chavez & Lloyd Williams

STEP ONE

I discussed the following problem with my immediate supervisor on Week of May 13 and wish to go on to Step Two of the grievance procedure, Civil Service Rule 24. (Complete the boxes below, sign and date form and give it to your supervisor's supervisor)

I believe that the following rights allowed me under the City Charter and/or Civil Service Commission Rules have been violated: (You must cite the rule or provision.)

Rule 6 sec. 2(a) Accrual: All regular and probationary employees who are regularly scheduled to work a minimum of 40 hours per week are ENTITLED to an annual sick leave, with full pay in the amount of 120.0 hours per year or 4.62 hours per pay period.

Rule 6 sec. 2(b). Sick leave Verification: No sick leave of three (3) or more consecutive work days will be granted to any person without a certificate verifying that the leave is necessary for medical reasons. Additionally, no sick leave the day before, the day of, or the day after a City Designated holiday will be granted to any person without a certificate...

Rule 14 Grievances: An employee has the right to file and process a grievance as provided in this Rule. Any employee disciplined for failure to comply with any rules, regulations, policies, or procedures as promulgated hereunder, shall have the right to appeal as set forth in the City Charter...

Explanation of how my rights have been violated including date of occurrence: (Attach additional sheets if needed)

On May 13, 2013, I reported to dispatch that I was ill, and would not be reporting for duty. Later, my absence was wrongfully considered AWO, and was not paid for that day.

Current administrative policy - as set forth by First Transit Manager Lloyd Williams, and enforced by HR Manager Carlos Ramirez - has been executed with willful blindness to City Charter Rule 14 Grievance guidelines. Moreover, according to a letter sent to me by Ramirez, my absence of May 13 is considered AWO, therefore Ramirez threatened disciplinary action. Because of the disciplinary threat, I have turned to my AFSCME brothers and sisters for assistance. AFSCME will represent me throughout the entire course of this grievance.

According to a conversation between Lloyd Williams and me, Williams argued, "We have the right to change policy..." This argument, as well as the true definition of Operational Necessity, will be determined by the Civil Service Commission.

Requested Remedy: A fair hearing with the Honorable Civil Service Commissioners. Remove the false AWO charge from the employee file, grant sick leave with pay for my absence, and be made whole.

Employee's Signature:

Date: 06-12-2013

STEP TWO - (Give form to your supervisor's supervisor)

Immediate Supervisor's Statement: FORWARDED TO MY IMMEDIATE SUPERVISOR

Next Level Supervisor's Statement: (Return form to the employee and a copy to Department Head)

Grievance: Upheld  Denied  Explain the reason for your decision below:

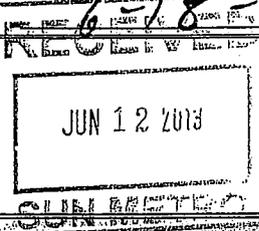
See attachment

Next Level Supervisor's Signature: [Signature] Date: 6/18/2013

Employee's Initials (indicating receipt of form): JR Date: 6-18-13

N-Grievance Form.dot

INSTRUCTIONS ATTACHED



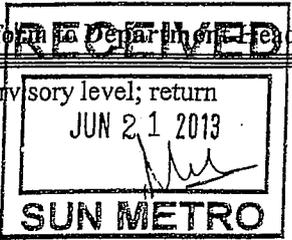
Revised 5/05

Side 2 of 4

STEP THREE

I am not satisfied with the next level supervisor's response and ask to go on to the Department Head.

Employee's Signature: [Signature] Date: 6-21-13 (Give form to Department Head)



Department Head or Designated Manager's Statement: (Required only if not resolved at supervisory level; return completed form to the employee, and copy to Personnel Director)

Grievance: Upheld  Denied  Explain the reason for your decision below:

See Attachment

Department Head's Signature: [Signature] Date: 07/24/13

Employee's Initials (indicating receipt of form): JR Date: 7-24-13

STEP FOUR

I am not satisfied with the decision of the Department Head and ask to go on to the Human Resources Director.

Employee's Signature: [Signature] Date: 7-24-13 (Give form to HR Director)

Human Resources Director's Recommendation: (Required only if not resolved at department head level; return completed form to the employee, and a copy to department head.)

Please see attached Grievance Response dated 8/28/13

Human Resources Director's Signature: [Signature] Date: 8/29/13

Employee's Initials (indicating receipt of form):

*JR*

Date:

*9-3-13*

STEP/FIVE

I am not satisfied with the findings and recommendations of the Human Resources Director and ask to appeal to the Civil Service Commission for final disposition of my grievance. (Give to Secretary of Civil Service Commission)

Employee's signature:

*James A. ...*

Date:

*9-10-13*

N-Grievance Form.dot

INSTRUCTIONS ATTACHED

RECEIVED  
SEP 10 2013 *me*  
CIVIL SERVICE  
COMMISSION

RECEIVED  
JUN 12 2013  
SUN METRO

RECEIVED

SEP 10 2013  
CIVIL SERVICE  
COMMISSION

CITY OF EL PASO  
EMPLOYEE GRIEVANCE FORM

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JUN 12 2013

SUN

## INSTRUCTIONS FOR COMPLETING THIS FORM

If your grievance involves discrimination or sexual harassment, you may contact the Human Resources Department for guidance and information about the correct procedure to use.

All permanent employees may use this grievance procedure to voice grievances and to have them considered fairly. A grievance is any order that you believe violates employee rights. Discipline has a separate appeal process and is excluded from this procedure

Most grievances resolve informally by discussing them with your immediate supervisor. The immediate supervisor has the most knowledge of your work and the problems that happen. The rule requires you to discuss your grievance with your immediate supervisor no more than **ten working days** after the incident causing your grievance. The immediate supervisor may seek advice from other knowledgeable employees, including his/her superiors, before answering your grievance. The immediate supervisor has up to **five working days** to answer your grievance.

If you are not satisfied with your immediate supervisor's answer, you have **five working days** to file an official grievance form. You may contact the Human Resources Department to obtain the official form and advice in using the procedure.

To fill out the form:

Enter your name, social security number, job title, department/division or work section, work phone number, and your immediate supervisor's name.

#### Step One

Enter the date that you asked your immediate supervisor to resolve the grievance. Enter the Civil Service Charter and/or CSC rule which you believe has been violated. Enter a description of your complaint and request a remedy to your grievance.

#### Step Two

Your supervisor's supervisor (next level supervisor) has **five working days** to process the grievance. He/she asks the immediate supervisor to enter a statement. The next level supervisor reviews the grievance and enters his/her statement

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COMMISSIONCITY OF EL PASO  
EMPLOYEE GRIEVANCE FORM

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## INSTRUCTIONS FOR COMPLETING THIS FORM (CONTINUED)

## Step Three

If the employee is still dissatisfied, he/she has **ten working days** to complete the first block of step three and submit the grievance form to the department head. The department head or designated manager investigates the grievance and schedules a meeting with the employee within **five working days**. The department head has **ten working days** after the initial meeting to respond to the grievance. The department head enters his/her statement.

## Step Four

If the employee is still dissatisfied, he/she has **ten working days** to complete the first block of step four and submit the grievance form to the Human Resources Director. The Human Resources Director or assignee ordinarily has **thirty working days** to make a recommendation. The Human Resources Director may notify the employee if an additional **fifteen working days** are necessary. The Human Resources Director enters his/her recommendation.

## Step Five

If the employee is still dissatisfied, he/she has **ten working days** to complete the block for step five and appeal to the Civil Service Commission. The grievance will be placed on the next available Commission agenda. Both the employee and the department head will receive written confirmation of the Commission's action concerning the grievance.

Time limits may be extended by mutual agreement. If the employee misses a time limit the grievance is denied further processing. If management misses a time limit, the employee may go to the next higher level in the process.

Employees covered by collective bargaining agreements may not use this grievance procedure and must use grievance procedures contained in their bargaining agreements.

Dedicated to Outstanding Customer Service for a Better Community

**S E R V I C E   S O L U T I O N S   S U G G E S T I O N S**

**TO:** Jesus Rios, Coach Operator (ID#004084)  
**FROM:** Carlos H. Ramirez, Sun Metro HR & Payroll Manager  
**RE:** Failure to Provide Physician's Certificate  
**DATE:** May 22, 2013      6-6-13      14:30 Approx



On May 13, 2013, you were scheduled for work and called in sick. Due to Operational needs, any Coach Operator calling in sick on May 13, 2013 was informed that he/she would be required to bring in a doctor's note for that absence. Without this physician's certificate, the absence is considered Absence Without Leave (AWL/AWO)

As stated in the attached *City of El Paso Sick Leave Policy*, you may appeal this AWO determination to the Director by submitting your appeal in writing within five (5) calendar days from the day you receive a copy of this memorandum. Please note that as stated in the policy, should you wish to appeal the AWO determination, you will be required to provide the "appropriate medical documentation adequately demonstrating the medical need for the employee's absence from work."

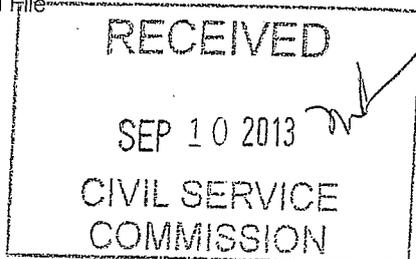
Should your absence remain as AWO, you will not be compensated for the time off and you will be subject to disciplinary action in accordance with the attached *City of El Paso Disciplinary Matrix*.

If you believe you are receiving this communication in error or if you have any questions or concerns, please visit with me by contacting Sun Metro HR & Payroll Secretary Aide Bencomo at (915) 534-5813.

I received a copy of this memo. I understand that my signature does not indicate agreement.

Received (signature): Jesus Rios Date: 6-6-13

Distribution  
Original: Employee  
Copies: Lloyd Williams, Assistant Director for Operations  
Departmental File



- Mayor  
John E. Cook
- City Council
- District 1  
Ann Mayanelli
- District 2  
Suzie Byrd
- District 3  
Ernie Avenda
- District 4  
Carl L. Robinson
- District 5  
Dr. Manuel R. Nee
- District 6  
Eddie Holman Jr.
- District 7  
Steve Ortega
- District 8  
Cortney Carlisle Wilford
- City Manager  
Joyce A. Wilson

JUN 12 2013

Dedicated to Outstanding Customer Service for a Better Community



TO: Jesus Rios, FR Coach Operator (ID#004084, SS#9634)

FROM: Jay Banasiak, Sun Metro Director

RE: Formal Counseling (Failure to Provide Required Medical Documentation)

DATE: June 11, 2013

On May 13, 2013, you called Dispatch to place yourself on the sick list. Due to Operational needs any Coach Operator calling in sick on May 13, 2013 was informed that he/she would be required to bring in a doctor's note for that absence. You failed to provide medical documentation as required when you called in sick. Without this physician's certificate, the absence is considered Absence Without Leave (AWL/AWO).

Be advised that future violations of this order may result in further disciplinary action.

This formal counseling will be made part of your permanent personnel file and maintained for future reference. In accordance with Civil Service Commission Rule 8 Section 8, Formal Counseling, employees have the right to "place responses to the formal counseling into their personnel files which shall remain in the file so long as the formal counseling to which the response relates remains in the file." Additionally, "upon an employee's request, a formal counseling shall be removed from an employee's personnel file after the expiration of twenty-four (24) months from the date of the formal counseling, provided the employee has not received any disciplinary action during that time period."

I received a copy of this memo. I understand that my signature does not indicate agreement.

Received: Jesus Rios *Refuse to sign*

Witness: [Signature]

Date: 6/12/2013

Distribution  
Original: Human Resources Director for Personnel File  
Copies: Jay Banasiak, Director  
Departmental File  
Employee

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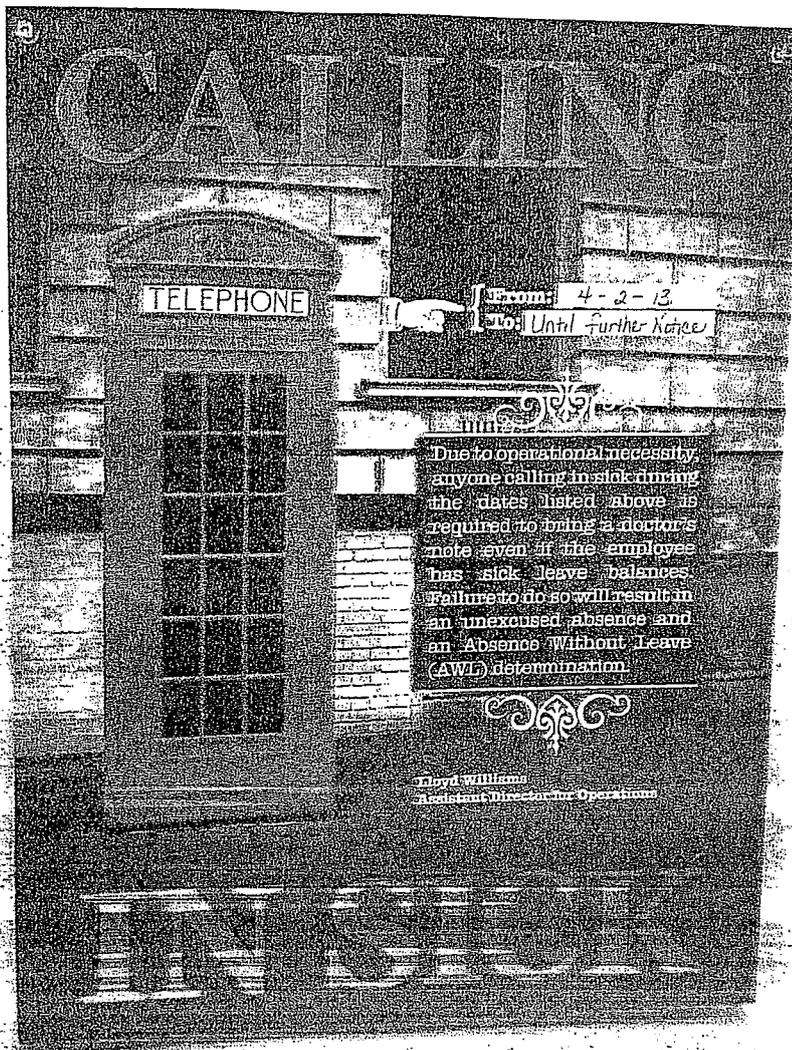
- Mayor: *John F. Cook*
- City Council
- District 1: *Ann Morgan Lilly*
- District 2: *Susie Byrd*
- District 3: *Emma Agosto*
- District 4: *Carl L. Robinson*
- District 5: *Dr. Michael B. Roe*
- District 6: *Eddie Holguin Jr.*
- District 7: *Steve Ortega*
- District 8: *Gormey Carlisle Niland*
- City Manager: *Joyce A. Wilson*

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American Federation of State, County and Municipal Employees, AFL-CIO  
Local 59

Dear Mr. Banasiak,

Rule 6, Section 2 of the El Paso Civil Service Rules and Regulation (hereinafter "Rule 6") states:

All regular and probationary employees who are regularly scheduled to work a minimum of forty (40) hours per week are entitled to an annual sick leave, with full pay in the amount of 120.0 hours per year or 4.62 hours per pay period.

Therefore, in order for Mr. Rios to receive the pay that he was deprived as a result of his alleged AWO on May 13<sup>th</sup>, 2013, he must show that he is (a) considered a regular employee, (b) works forty (40) hours per week, and (c) there are no provisions to Rule 6 that would negate his entitlement to his accrued sick leave.

Indeed, as expressed in his contract and on his paystubs, Mr. Rios is considered a regular employee for Sun Metro and works over forty (40) hours per week. Further, Rule 6 expresses that once the employee has met the aforementioned conditions, then the employee is "entitled to an annual sick leave." The verb entitle, generally defined, means, "to give a legal right or a just claim to receive or do something;" therefore, Mr. Rios has a legal right to use the sick leave that he has accrued over the course of his employment at Sun Metro, so long as there are no provisions or conditions that alter this entitlement established by Rule 6.

The remainder of the Civil Service Rules and Regulations make no mention of provisions that might alter a city employee's entitlement to sick leave and are relevant to the issue at hand; however, in his denial of Mr. Rios's grievance, Mr. Lorenzo Chavez states, "Sun Metro was/is only following 'Administrative Policies and Procedures' set forth by Human Resources Department on May 5, 2010 and Human Resources Director May 10, 2010;" we presume this statement is provided as a means of asserting that Rule 6 is not applicable in Mr. Rios's situation. Additionally, Mr. Chavez provided copies of the referenced policies (hereinafter "Sick Leave Policy"), and highlighted the portions that he presumably deemed relevant to Mr. Rios's situation; both attachments communicate the same message. The highlighted portions read:

When operationally necessary an employee may be directed to report to work, even though they may have sufficient sick leave balance available. Under these circumstances, if the employee fails to report to work, they will be coded as AWO and will be subject to progressive discipline, up to and including terminations.

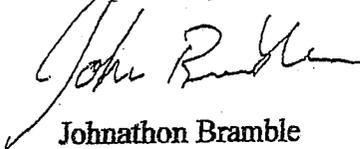
This Sick Leave Policy, however, is not relevant to Mr. Rios's issue and also does not grant management the ability to implement a policy that is not otherwise

included in the Civil Service nor the Sun Metro Rules and Regulations.

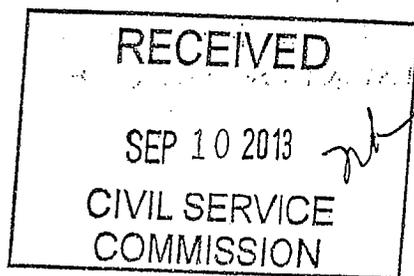
In the case at hand, Mr. Rios his Transit Supervisor, Mr. Chris Compos, within the required timeframe, and stated that he would not be present at work for that day. In response, Mr. Compos mentioned he would need a physician's certificate. Had his supervisor denied Mr. Rios of his request for sick leave and had Mr. Rios subsequently failed to attend work the next day, then the Sick Leave Policy would be applicable and Mr. Rios should be coded as AWO. But Mr. Rios's request was never denied, and nowhere in the Sick Leave Policy is there any section, provision, or condition that would allow the management of Sun Metro to depreciate Mr. Rios's entitlement to sick leave as established by Rule 6.

Furthermore, American Federation of State, County and Municipal Employees Local 59 requests that Mr. Rios be provided with a statement addressing (1) which policy allows for an employee's entitlement to accrued sick leave, as established by the Civil Service Rules and Regulations, to be trumped by a temporary policy that is hung on a department bulletin board, (2) which policy within the Civil Service and Sun Metro Rules and Regulations allows management to implement temporary departmental policies, and (3) how the highlighted portions of the Sick Leave Policy are applicable to Mr. Rios's case. Otherwise, American Federation of State, County, and Municipal Employees requests that Mr. Rios be paid for May 13<sup>th</sup>, 2013, and that all disciplinary actions, which were taken as a result of May 13<sup>h</sup>, be expunged.

Respectfully,

  
Johnathon Bramble

June 20, 2013



①

② Can't make people  
call in sick for 1  
day --



**STEP ONE - GRIEVANCE SUBPROCESS**

To: Jesus Rios, FR Coach Operator / ID #004084  
From: Lorenzo R. Chavez, Assistant Superintendent of Operations  
Date: June 18, 2013  
Subject: Response to Grievance Dated June 12, 2013

The following is a response to a City of El Paso Employee Grievance Form that you submitted as "Step One" to my office on June 12, 2013.

Upon review of your grievance, you specifically mention a possible violation of Rule 6 Section 2. (b), Sick Leave Verification.

Upon the investigation conducted I found no violation as you were reminded of operational requirement for medical documentation at the time you called (4:06am spoke to Chris Campos supervisor) Dispatch to inform them of your absence. You yourself provided a copy of the poster informing all coach operators of the need to provide medical documentation for any sick leave absence. Your absence was not "wrongfully considered AWO" until medical documentation wasn't presented, the letter you mention Mr. Carlos Ramirez sent as being threatening was sent as an informative notice for you to avail yourself of the appeal process.

Sun Metro was/is only following "Administrative Policies and Procedures" set forth by Human Resources Department on May 5, 2010 (attached) and Human Resources Director May 10, 2010 (attached).

Upon review of all the facts your grievance is denied.

Of course you are welcome to meet with me or any member of my chain of command to further discuss this, or any other concern you might have.

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COMMISSION

- Mayor**  
John F. Cook
- City Council:**
- District 1**  
Ann Mayan City
- District 2**  
Suzie Byrd
- District 3**  
Emma Booth
- District 4**  
Carl L. Robinson
- District 5**  
Dr. Michael H. Roe
- District 6**  
Edie Holman Jr
- District 7**  
Steve Drape
- District 8**  
Cathy Carole Nisad
- City Manager**  
Angie A. Wilson





Individual and Organizational Development

**SERVICE SOLUTIONS SUCCESS**

TO: Jesus Rios, FR Coach Operator  
FROM: Jay Banasiak, Sun Metro Director *Jay Banasiak*  
RE: Grievance Responses (AWOL – No Doctor's Note)  
DATE: July 24, 2013

On July 11, 2013, we met to discuss a grievance that you filed regarding an AWOL posted on May 13, 2013, for not having a doctor's note.

During the meeting, your representative spoke on your behalf and stated that you were not treated fair by not paying you for that day. He quoted Rule 6 section 2b "No sick leave of three (3) or more consecutive work days will be granted to any person without a certificate verifying that the leave is necessary for medical reasons.." He mentioned that the Sick Leave Policy states that it supersedes any departmental policy in place. Although that is true for most instances, your one day absence brought a burden to the department by having to cover your shift at a crucial time when the department expects every driver to be at work. As the policy also states "When operationally necessary, any employee may be directed to report to work, even though they may have sufficient sick leave balances available."

Regrettably, I will have to deny your grievance. If you are not satisfied with my response, you may avail yourself to the next step in the grievance process. Thank you for allowing me the opportunity to address your concern.

Distribution  
Original: Employee (as part of grievance packet)  
Copies: Human Resources Director

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SEP 10 2013 *WJL*  
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COMMISSION

*VAC 7/1 -> 7/12*  
*-> cell #*  
*-> return to work*  
*Mon 7/15*

Mayor  
*John E. Cook*

City Council

District 1  
*Ann Morgan Lily*

District 2  
*Steve Byrd*

District 3  
*Emma Anaya*

District 4  
*Carl L. Robinson*

District 5  
*Dr. Michael B. Rice*

District 6  
*Eddie Holguin Jr.*

District 7  
*Steve Ortega*

District 8  
*Carmey Canale Noland*

City Manager  
*Joyce A. Wilson*



metro

2013

From Mr. Lorenzo  
Chavez



## ADMINISTRATIVE POLICIES AND PROCEDURES

Policy ID: Human Resources  
Subject: Sick Leave Policy  
Creation Date: April 22, 2010  
Revision Date: None  
Prepared By: Human Resources Department  
Approved By: City Manager  
Legal Review: John Batoom

**DESCRIPTION:** Coding employees with inadequate sick leave balances

1. Policy:

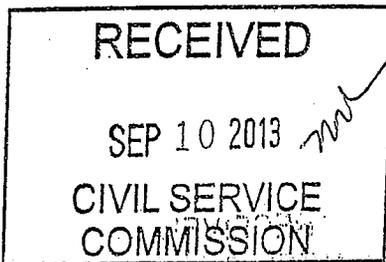
Regular attendance is considered to be an essential function of every City employee's job and employees are expected to report to work as scheduled. While occasional medical appointments and illnesses occur employees who exhaust their sick leave balances and attempt to use "vacation in lieu of sick" leave or request leave without pay are subject to having their sick leave usage reviewed by the Department Head as described in Ordinance 8063, Rule 13, Section 2e., and being required to provide medical certification before any available leave is granted.

2. Procedures:

a. If an employee calls his department and requests to be absent for medical reasons and he has inadequate sick leave balances, the supervisor will deny the request and direct the employee to report to work at his scheduled time or as soon as possible thereafter.

b. Supervisors are not permitted to allow employees to use vacation leave "in lieu of sick leave". Vacation in lieu of sick leave will only be permitted for employees on a protected leave status such as Family and Medical Leave Act (FMLA) or while absent due to a compensable claim under the Texas Workers Compensation Act. Vacation leave shall be allowed by the department only on a prior scheduled basis. At a minimum, an employee must request vacation in advance equal to the amount of vacation time requested, e.g., one full working day in advance for every one day of vacation leave requested. Under no circumstances will the employee be permitted to use vacation in lieu of sick leave on the same day of the request.

c. When operationally necessary any employee may be directed to report



to work, even though they may have sufficient sick leave balance available. Under these circumstances, if the employee fails to report to work, they will be coded as Absence-Without-Leave (AWO) and will be subject to progressive discipline, up to and including termination.

d. Employees on AWO status are subject to a review of their work attendance record in accordance with Ordinance 8065, Rule 13, Section 2e. Such employees will be required to provide medical documentation for subsequent absences involving the use of sick leave.

3. Appeal Procedures:

a. Employees, who believe they were improperly denied leave, may appeal the posting of the AWO pay code to their Department Head in writing within five (5) calendar days from the denial. The employee will be required to provide the appropriate medical documentation adequately demonstrating the medical need for the employee's absence from work. The medical documentation must state that the employee was medically required to be absent from work and note the time period. *A medical appointment alone is not adequate to cover the entire day's absence; only the office visit and reasonable travel time will be allotted.* If the employee's appeal is approved, they will be placed on a "Leave-Without-Pay" (LWO) status and if necessary any adjustments to the employee's pay will be made.

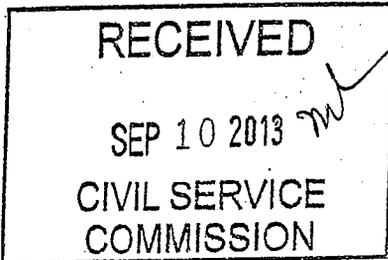
b. If the employee wishes to appeal the Department Head's decision, the employee can appeal to the Human Resources Director within five (5) calendar days of the notification of the denial from the Department Head on the City's "Employee's Appeal of Sick/Vacation Leave Denial" form. The Human Resources Director will make a final decision and communicate with the employee within ten (10) calendar days of the receipt of the appeal. The decision of the Human Resources Director is final and there are no other appeals.

4. Applicability: This policy supersedes any departmental policy.

APPROVED BY:

Joyce A. Wilson  
Joyce Wilson, City Manager

5/5/10  
Date



Chavez

Dedicated to Outstanding Customer Service for a Better Community

SERVICES SOLUTIONS STRATEGIES



TO: All City employees  
 FROM: Linda Ball Thomas, Human Resources Director *LB*  
 DATE: May 10, 2010  
 SUBJECT: Sick Leave Policy

Attached you will find the City's Sick Leave Policy. The major provisions of the policy are below:

- Employees with inadequate sick leave balances will not be able to substitute Vacation Leave (VAC) when calling in sick.
- Employees who exhaust their sick leave balances and attempt to use "vacation in lieu of sick" leave or request leave without pay are subject to having their sick leave usage reviewed.
- Supervisors are not permitted to allow employees to use vacation leave "in lieu of sick leave" when not in a protected leave status.
- Vacation in lieu of sick can be used for employees in a protected leave status, such as Family Medical and Leave Act (FMLA), etc.
- Vacation leave must be requested in advance.
- Vacation in lieu of sick leave cannot be granted on the same day of the request.
- When operationally necessary, any employee may be directed to report to work, even though they may have sufficient sick leave balances available.
- Employees not authorized leave who fail to report to work will be coded Absence-Without-Leave (AWO).
- Employees on AWO status are subject to review of their work attendance record.
- Only the office visit and reasonable travel time for a medical appointment will be coded as sick leave.
- Medical documentation, when required, must state that the employee was medically required to be absent from work and note the time period.
- Appeal procedures are covered in the policy. Please read the entire policy. All questions should be directed to the respective Department Head.

Mayor  
John F. Cook

City Council

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Ann Morgan Lilly

District 2  
Susie Byrd

District 3  
Emma Acosta

District 4  
Carl L. Robinson

District 5  
Rachel Quintana

District 6  
Eddie Holguin, Jr.

District 7  
Steve Omega

District 8  
Beto O'Rourke

City Manager  
Joyce A. Wilson

RECEIVED  
 SEP 10 2013 *TK*  
 CIVIL SERVICE  
 COMMISSION

RECEIVED  
SEP 10 2013  
CIVIL SERVICE  
COMMISSION

RECEIVED  
SEP 3 2013  
Rec'd by employee

Dedicated to Outstanding Customer Service for a Better Community



**TO:** Jesus, Rios, Coach Operator  
**FROM:** Linda Ball Thomas, Human Resources Director  
**DATE:** August 28, 2013  
**SUBJECT:** Grievance Response

I have completed my review of your grievance. In accordance with Civil Service Commission Rules, I have reviewed the available information, policies, procedures and applicable rules. This memo will serve as my response (step four) of your grievance received by this department on July 24, 2013.

**BACKGROUND**

On June 12, 2013 you filed a grievance for an AWOL you received on May 13, 2013 for not providing a doctor's certificate. In your grievance, you stated that your rights have been violated under the following Rules:

**6.2a - Accrual**

All regular and probationary employees who are regularly scheduled to work a minimum of forty (40) hours per week are entitled to an annual sick leave, with full pay in the amount of 120.0 hours per year or 4.62 hours per pay period. (Amended 7/09/85, 8/11/87, 6/28/88, 1/30/90, 2/07/06, 8/25/09)

**6.2b - Sick Leave Verification**

No sick leave of three (3) or more consecutive work days will be granted to any person without a certificate verifying that the leave is necessary for medical reasons. Additionally, no sick leave the day before, the day of, or the day after a City designated holiday will be granted to any person without a certificate. Such certificate must be from a health care provider, and verify that the leave is necessary for medical reasons. (Amended 7/09/85, 2/14/89, 9/17/96 and 2/07/06)

**14 - Grievances**

An employee has the right to file and process a grievance as provided in this Rule. Any employee disciplined for failure to comply with any rules, regulations, policies, or procedures as promulgated hereunder, shall have the right to appeal as set forth in the City Charter or the Civil Service Rules and Regulations. Employees shall have the right to file a grievance that meets the requirements of Rule 14 regarding any rule, regulation, policy or procedure promulgated hereunder. (Amended 7/31/07, 3/6/12).

HUMAN RESOURCES DEPARTMENT  
300 NORTH CAMPBELL, EL PASO, TEXAS 79901 · 915-541-4504  
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You are contesting your absence coded AWOL on May 13, 2013 based on Rule 6.2b *No sick leave of three (3) or more consecutive work days will be granted to any person without a Certificate.* You are also disputing Sun Metro's authority in assert "operational need" under the Sick Leave policy.

You have requested a hearing with the Civil Service Commission and to remove the AWOL from your file and grant sick leave with pay.

### FINDINGS

On June 6, 2013, you received a memo dated May 22, 2013 from Carlos Ramirez, Sun Metro HR & Payroll Manager outlining your appeal rights for your absence on May 13, 2013 that was coded AWOL. As specified in the memo and in accordance with the Sick Leave Policy, you had five (5) calendar days from the day you received the memo to submit an appeal. You failed to submit the appeal within the five (5) days provided for in the policy. As a result and in conformity with the City of El Paso Disciplinary Matrix, you were issued formal counseling on June 12, 2013 based on your being AWOL on May 13, 2013.

Any Department Head shall have the right to promulgate rules and regulations regarding the operation of his department in accordance with Rule 11.1. Your department head, Jay Banasiak, deemed your presence as necessary for the continuity of his department operations in his memo dated July 24, 2013. You refer to Rule 6 in your grievance and claim that you are entitled to use accrued sick leave and you challenge the City's right to use a policy such as the Sick Leave policy, because such policy is not mentioned in Civil Service Rules or in Sun Metro's rules and regulations.

In conformity with Rule 11.3, the Human Resources Director may promulgate, rules, regulations and policies and procedures regarding any requirements applicable to City employees. The Sick Leave Policy that was in force at the time of your AWOL is not in conflict with any other policy or rule. The policy states when there is an operational need, employees may be directed to work, even though they have sufficient sick leave balances. You were required to report to work due to operational necessity and you did not appeal the AWOL as outlined in policy and you did not provide appropriate medical documentation that demonstrated the need for being absent. In this instance, I shall not substitute my judgment for that of the department head regarding his declaration of operational necessity.

### DECISION

I do not find a violation of Civil Service Rules or policies based on the foregoing information, policies, procedures and applicable rules that have been submitted. This grievance is denied.

Department Name  
Location | Address | El Paso, Texas 799 | (915) 000-0000  
**EL PASO. IT'S ALL GOOD.**

