



## IMPROPER LWOP DENIAL

### Preface

*These types of grievances come about when a carrier is denied LWOP and feels like its unjustly so. This is a type of grievance that has a high burden of proof if management understands just how to answer questions in an interview about this. One thing you must keep in mind is the guiding principle that management does not have full discretion, something they will say is the truth. Just as Article 3 provides them the ability to manage, it also limits their ability, and their decisions must not be in conflict with the National Agreement.*

*The main way to win these is to understand what is limiting managements discretion in this case. In this case it is the ELM section 514.22. It reads in relevant part that although the service has administrative discretion the service must examine each LWOP request and a decision must be made based on the 3 criteria which are the needs of the employee, the needs of the service and the cost to the service. In this case you must prove that management didn't give due consideration to those following three. If at least two of the three are in favor of the grievant I would move to file this grievance.*

*Please understand these commonly misunderstood principles; Management need not exhaust a carriers annual or sick leave balance prior to approving LWOP, this is not a factor taken into consideration as enumerated in the ELM. If management is telling carriers that LWOP cannot be approved in general as a directive from above, you will also have to make the argument that this is a blanket policy, blanket policies are not enforceable when the ELM specifies that each LWOP request must be duly considered against the 3 above criteria when making a decision to approve or deny.*

### Preparation

Things you will need to include in the casefile

1. Everything Report and Hours Analysis for the date in question.
2. An interview with the supervisor who made the decision to deny the LWOP in question.
3. A copy of all the LWOP requests being challenged. Please note the controlling document for all leave is a PS form 3971 but if you have any other supporting documentation please include it as well. Without a PS form 3971 this case has no leg to stand on.
4. A statement from the grievant on why they needed this LWOP request.
5. A copy of the following relevant contract provisions: Article 19, ELM 514.22, Article 10.6, M-1136, and M-1235.
6. **(If Understood To Be A Blanket Policy you must provide documentation such as carrier statements or supervisor admissions by interview to prove that management has been implementing a blanket policy, this cannot be proven by that which could be considered circumstantial evidence such as hours reports indicating no LWOP had been approved)**
7. Any RFI involved in this case



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8. Any and all extensions, appeals, and written communication with management involving this case.
9. Steward certification.

### Examination

As stated in the preface this case has a high burden to prove. Included in this document is a example investigative interview with management, this should be your first step. If they admit that they did not consider the 3 considerations, then management has lifted your heavy burden of proof. Over time, after losing this a few times management will understand just how to answer your questions, and will give the burden back to you to have to prove that they did not give due consideration.

1. The needs of the employee. This is simple, have the grievant write a statement that enumerates the reasons why they needed this LWOP request. Not only should they explain why they needed the time off in detail, but also, if this request was shifted to annual or sick leave, they must explain why they would not fare well if they used their leave balances. Such as if they have a vacation planned and use of the Annual may affect their ability to take a full week off.
2. The Needs of the service. In order to prove that the service did not need this carrier one must examine the hours reports. Search for any approved leave on that day and add it together, if it's a significant number question the reason why this leave was approved over the denied leave. If there is any CCAs leaving early for the day this will not show up as leave, take into consideration whether or not CCAs could have provided auxiliary assistance. Additionally take into consideration not only straight time that could have been provided but also any overtime. Take into consideration whether or not there were major inequity in the ODL that could have been satisfied if the ODL had taken the work off of the grievant. This is the toughest one to win, but ultimately you need to prove that management didn't need the grievant here. If management refused to grant LWOP but switched it to annual or sick management has helped prove your burden because they have shown that the grievant's presence wasn't need by the service for that time period.
3. The cost to the service. This is a tough one as well, the best way to prove that it was not costly to provide the grievant with LWOP is if management either switched the requested LWOP to paid leave, or if management offered the grievant the leave as long as they opted to take paid leave. Secondly, if there was above straight time that would have provided plenty of room for the grievant to take this LWOP, this would also prove your burden. If it can be understood that the greivant's LWOP request did or could have directly resulted in overtime this will be a very tough obstacle to overcome.

Ultimately if two of the three factors of consideration could be proven that management was in the wrong, than you should move on with this case. If two or more are reasonably considered by management, you will lose this case.



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### Arguments

The main winning argument for your contentions would be that management's administrative discretion that was gifted to them by ELM 514.22 also limits such discretion. That they cannot make a decision to approve or deny LWOP without giving due deference to the 3 considerations of ELM 514.22. That this also limits their ability to enforce a blanket policy. In your contentions you must show proof and refer to documentation that would explain why management didn't lend due deference to the 3 considerations and in what ways were they wrong for denying the LWOP.

### Remedy

A proper remedy in this case would be for management to agree to cease and desist violation of this ELM provision, and for them to consider the 3 reasons the ELM 514.22 had enumerated before issuing a decision on LWOP denial or approval. If the carrier had to use Annual or Sick leave, you must ask that the management representative process a PS form 2240 for the purpose of changing the paid leave hours to LWOP so that the carrier will get their leave back. If this was a blanket policy you must ask that management cease and desist use of this blanket policy. And finally if it is a repetitive issue, do not forget to include all prior settlements in the casefile, include article 15 in your issue statement, and include a remedy that provides incentives for future contract compliance such as monetary escalation.

### Exemplary issue statement

Did management violate Article 19 of the National Agreement via ELM 514.22 in its denial of an LWOP request from city carrier **(Placeholder for name)** for the date of **(placeholder for date)**, and if so, what is the appropriate remedy?

\*if issue is repetitive add the following issue statement

Did management violate Article 15 of the National Agreement via local settlements **(Placeholder for settlements)**, and if so, what is the appropriate remedy?

### Exemplary Remedy

1. That management cease and desist violation of Article 19 of the National Agreement via ELM 514.22 by examining closely, for each LWOP request, the needs of the employee, the needs of the service, and the cost to the service, and consider such when reaching a decision in terms of approving or denying LWOP.
2. All leave inappropriately charged to **(Annual or Sick, or AWOL)** be recorded to LWOP on a PS form 2240 and that the grievant be made whole for the improper balance charges.



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3. **(If this issue is repetitive)** To encourage future compliance, and to address non compliance to prior local agreements, management shall pay a one time compensatory remedy of **(insert remedy of your choosing)** to city carrier **(grievant)**.
4. Management will issue all awards in this settlement within 30 days of the settlement date and will provide the union with receipts upon fulfillment. Any other remedy a Step B or Arbitrator deems appropriate.

### Exemplary Investigative Interview Questions

1. State your name and position for the record.
2. Is this your signature on the 3971 presented before you? (attach the 3971 to the interview questions)
3. Did you deny the LWOP request presented before you?
4. What was your consideration in denying the request for LWOP?
5. Is there anything else you would like to add?



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**RFI Items to support your case**

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