

ARBITRATION DECISION NO.:

347

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Transportation
Garfield Heights

DATE OF ARBITRATION:

May 16, 1991

DATE OF DECISION:

May 21, 1991

GRIEVANT:

Denise DeVoe

OCB GRIEVANCE NO.:

31-12-(90-11-21)-0059-01-07

ARBITRATOR:

Patricia Thomas Bittel

FOR THE UNION:

Joe Ealey
Staff Representative

FOR THE EMPLOYER:

John Tornes
Advocate
Meril Price
Second Chair

KEY WORDS:

20 Day Suspension
Arbitrability
Timeliness

ARTICLES:

Article 25-Grievance Procedure
§25.01-Process
§25.03-Arbitration
Procedures
§25.05-Time Limits
§25.07-Advance Grievance
Step Filing

FACTS:

The grievant received a 20 day suspension for allegedly violating Rule 16(a) of an ODOT Directive. The issue in this case was whether the grievance was timely filed at the Third Step of the grievance procedure. According to Article 25.07 of the Contract, grievances involving suspensions or removals must be filed at Step Three within fourteen days of notification of the disciplinary action. In the present case, the grievant did not file her grievance until sixteen days after she received notification of her discipline.

UNION'S POSITION:

The union argued that the higher purpose of a harmonious relationship between the parties should be the guiding principle in this case. The union maintained that a good faith extension was requested in this case which was evidenced by a letter received by the employer stamped "received." In the letter, the Chapter President apologized for missing the time limits and claimed to have been under the incorrect impression that the grievance required a number before it could be filed.

EMPLOYER'S POSITION:

The employer argued that the intent of the parties is clearly expressed in the collective bargaining agreement. The employer recognized that it has the discretion to extend the deadlines of the grievance procedure but asserted that no such extension was given in this case. The employer maintained that the arbitrator has no authority under the Contract to add to, subtract from or otherwise modify the language of the Contract, and therefore the arbitrator has no authority to exercise jurisdiction over the merits of the case. The employer provided the arbitrator with copies of several decisions by other panel arbitrators enforcing the restrictive language on timeliness.

ARBITRATOR'S OPINION:

The arbitrator stated that the contract language applicable to this case was mandatory language. In the event a deadline is missed, the grievance is deemed withdrawn. The arbitrator held that there are to be no exceptions for misunderstandings about grievance numbers or other special situations. If the deadline is not met or mutually extended in writing, the grievance will be treated as withdrawn. To the extent an extension is needed, the agreement provides only one Procedure for obtaining one - a written agreement to that effect signed by both parties. The arbitrator held that she had no authority to redesign such a procedure.

AWARD:

The grievance is not arbitrable.

TEXT OF THE OPINION:

May 21, 1991

**In the Matter of Arbitration
between**

**Ohio Civil Service Employees
Association, Local 11,
AFSCME, AFL-CIO**

and

Ohio Department of Transportation

Case No.:

31-12-(11-21-90)-59-01-07

Grievant:

D. DeVoe

APPEARANCES

For the Union:

Joe Ealey, Staff Representative
Thaddeus Kilgore, Jr., Chapter President
Denise DeVoe, Grievant

For the Employer:

John Tornes, Advocate
Meril Price, Second Chair
Bill Tallberg, Labor Relations
Mike Karhan, Engineer
Dave Rossi, Project Inspection Specialist
Gil Sellers, Observer

Arbitrator:

Patricia Thomas Bittel

BACKGROUND

This matter was heard on May 16, 1991 at the Ohio Department of Transportation (ODOT) facility in Garfield Heights, Ohio before Patricia Thomas Bittel, the impartial arbitrator mutually selected by the parties in accordance with Article XXV of the Collective Bargaining Agreement.

The parties stipulated to the preliminary issue: "Whether the grievance is arbitrable in accordance with Article 25, Sections 01, 03, 05 and 07?" Pursuant to the agreement, the parties were to go forward on the merits if the case were found arbitrable or if a preliminary decision could not be reasonably made.

The Employer maintained the case was not arbitrable because the timeliness requirements for filing a grievance were not met. The evidence showed Grievant was notified of her discipline on November 1, 1990 in the presence of Union representation. Article 25 states as follows in pertinent part:

"25.01 Process

D. The mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period.

25.03 Arbitration Procedures

Questions of arbitrability shall be decided by the arbitrator. Once a determination is made that a matter is arbitrable, or if such preliminary determination cannot be reasonably made, the arbitrator shall then proceed to determine the merits of the dispute.

25.05 Time Limits

Grievances may be withdrawn at any step of the grievance procedure. Grievances not appealed within the designated time limits will be treated as withdrawn grievances.

The time limits at any step may be extended by mutual agreement of the parties involved at that particular step. Such extensions shall be in writing.

25.07 Advance Grievance Step Filing

* * * An employee with a grievance involving a suspension or a discharge may initiate the grievance at Step Three of the grievance procedure within fourteen (14) days of notification of such action."

The record established the grievance was postmarked Nov. 17, 1990, sixteen days after notification was received. The Employer argued the intent of the parties is clearly expressed in the collective bargaining agreement and the use of mandatory language was intentional. An agreement to extend was never executed in this case, it contends.

It maintained the Arbitrator has no authority under the agreement to add to, subtract from or otherwise modify the language of the agreement, and therefore has no authority to exercise jurisdiction over the merits of the case. The Employer provided the Arbitrator with copies of several decisions by other panel arbitrators enforcing the restrictive language on timeliness.

The Union argues the higher purpose of a harmonious relationship between the parties should be the guiding principle in this case. It maintains a good faith extension was requested in this case and identified a letter from the Union stamped 'received' by the Employer on December 31, 1990. In the letter, the Chapter President apologized for missing the time limits and claimed to have been under the misimpression that the grievance required a number before it could be filed.

DISCUSSION

The contract language applicable to this case is as clear as it is mandatory: a grievance filed at Third Step must be filed within fourteen days of notification. In the event a deadline is missed, the grievance is deemed withdrawn. There are no exceptions for misunderstandings about grievance numbers or other special situations; if the deadline is not met or mutually extended in writing, the grievance "will be treated as withdrawn." To the extent an extension is needed, the agreement provides only one procedure for obtaining one -- a written agreement to that effect signed by both parties.

This language was jointly negotiated into the agreement by the parties. It is a significant part of the structure of their relationship and functions to keep the grievance procedure clear of delay and confusion. By the parties' own choice, theirs is a grievance procedure which moves expeditiously, intentionally screening out cases that fail to meet specific criteria. The arbitrator has no authority to redesign such a procedure; rather her essential purpose is to fully enforce it.

Notification of the discipline involved in this case was given on Nov. 1, 1990. Under the 14-day limit for filing a grievance at Third Step established in Article 25.07, the grievance was required to have been filed on or before Nov. 15, 1990. The evidence shows it was not filed until Nov. 17, 1990.

AWARD

The contract language is clear and unambiguous in setting deadlines and in providing for withdrawal if time limits are not met. There is no evidence of a mutually agreed extension -- written or otherwise. The grievance is therefore not arbitrable.

Respectfully Submitted,

Patricia Thomas Bittle

Dated: May 21, 1991