

C#09730

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between) GRIEVANT: Anita Walker
UNITED STATES POSTAL SERVICE) POST OFFICE: Atlantic City,
and) New Jersey
AMERICAN POSTAL WORKERS) CASE NO: E7C-2B-D3329
UNION, AFL-CIO)
)

BEFORE: Wayne E. Howard, Arbitrator

APPEARANCES:

For the U. S. Postal Service: John A. Higgins

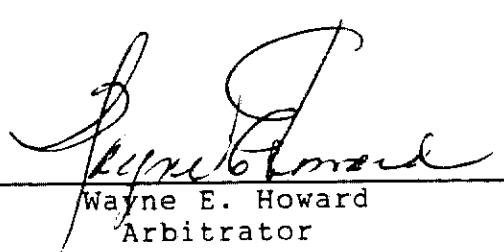
For the Union: James Burke

Place of Hearing: Atlantic City, New Jersey

Date of Hearing: June 30, 1989
29

AWARD: The grievance is arbitrable.

Date of Award: July 18, 1989


Wayne E. Howard
Arbitrator

In the Matter of the Arbitration) CASE NO. E7C-2B-D3329
between) -
UNITED STATES POSTAL SERVICE) GRIEVANCE OF WALKER
and) -
AMERICAN POSTAL WORKERS) OPINION OF ARBITRATOR
UNION, AFL-CIO)
)

BACKGROUND OF THE CASE

On November 3, 1988 a hearing was scheduled at the Atlantic City, New Jersey Post Office concerning the removal of the grievant. Upon his arrival at the hearing site, the arbitrator was informed by the parties that they did not want to proceed with the hearing. A second hearing was held on March 23, 1989 on the same issue at which time the Service contested the arbitrability of the grievance on the sole basis that a previous settlement had taken place on November 3, 1988. After receiving post-hearing briefs on this issue, the arbitrator, on June 5, 1989 ruled that the grievance was arbitrable. (Joint Ex. 4) On June 29, 1989, a third hearing was held at which time the Service contests the arbitrability of the grievance on the basis that the original grievance was untimely. This opinion deals solely with the latter issue.

POSITIONS OF THE PARTIES

The Service's Position

The grievant received her Notice of Removal on October 30, 1987. (Joint Ex. 3) Yet, the grievance papers make clear that she did not notify the Union until December 2, 1987, and a

Step 1 hearing was not held until December 11, 1987, far beyond the fourteen (14) day time limit contained in Article 15, Section 2 of the Agreement. (Joint Ex. 2, p. 1) Thus, the grievance is untimely and not arbitrable.¹

The Union's Position

The arbitrator ruled on June 5, 1989 that the grievance was arbitrable. Such a decision was final and binding and any subsequent challenge to the arbitrator's jurisdiction is improper.

On its face the Notice of Removal states, in relevant part:

If you subsequently qualify on the....scheme....
prior to the effective date of your removal,
the removal action will be cancelled.

The grievant had until December 2, 1987 to qualify and the removal would have been automatically cancelled by her qualification. Thus, the date of December 2, 1987 starts the time clock on any issue of timeliness. A first step meeting was held on December 11, 1987, well within the fourteen (14) day limit provided in Article 15, Section 2 of the Agreement.²

Thus, the grievance is arbitrable.

OPINION

The issue in the instant matter is whether the grievance is arbitrable. The Service essentially contends that the grievance is untimely. The Union basically argues that having

¹The Service cites the decision of Arbitrator Haber in Case NC-C-5187-D dated September 14, 1977.

²The Union cites in support of this contention the decision of Arbitrator Javits in Case N4C-1N-D19217 dated August 6, 1987.

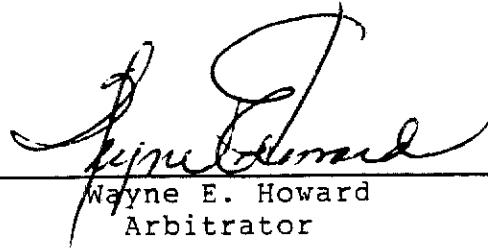
ruled the grievance arbitrable, albeit on other grounds, the arbitrator may not reverse himself, and declare it now not arbitrable. Moreover, the Union contends that the grievance was timely.

It is unnecessary to examine the interesting question of whether a decision by the arbitrator rejecting the Service's contest to the arbitrability of a grievance on the basis of prior settlement stands as a bar to a subsequent contest by the Service to the arbitrability of the same grievance on the basis of timeliness. While there are limits to the principle, it is preferable to decide a matter on the most narrow grounds possible, and to refrain from resolving questions not absolutely necessary to the result.

It is generally accepted that an employee is not required to grieve a prospective or potential grievance, but may wait until the action grieved becomes reasonably certain. It should be noted that had the grievant qualified prior to December 2, 1987, the removal action would have been cancelled, and the grievance would have been devoid of any practical significance. This fact was made clear to the grievant on the Notice of Removal, cited supra. It is not unreasonable for the time requirements contained in Article 15, Section 2 of the Agreement to start tolling at time of the effective date of the grievant's removal, therefore, rather than the date of her receipt of the Notice of Removal, notwithstanding that the Notice of Removal

pointed out to the grievant her right to file a grievance immediately. This conclusion is in accord with the reasoning of Arbitrator Javits, and no contrary authority was submitted.

For this reason, the grievance is deemed timely and arbitrable.



Wayne E. Howard
Arbitrator