

REGULAR ARBITRATION PANEL

C# 09937

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

B. R. SKELTON, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service:

James B. Reeves

For the Union:

Alex Alcorta

Place of the Hearing:

Dallas, TX

Date of the Hearing:

March 8, 1990

AWARD:

This grievance is not arbitrable.

Date of the Award: April 5, 1990


B. R. Skelton, Arbitrator

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JOE Z. ROMERO
NATIONAL BUSINESS AGENT
N. A. L. C.
DALLAS REGION #10

STATEMENT OF THE CASE

On December 8, 1987 the Grievant, Roosevelt Long, submitted medical documentation to accompany a light duty request. The medical restrictions were what would be considered severe for Postal Service carrier jobs or other jobs of lifting, carrying, pushing or pulling.

The Postal Service submitted requests to the Light Duty Committee seeking a light duty assignment on other tours and also to the Area 4 manager. In no case was light duty work available within the strict medical limitations imposed by his physician. On February 9, 1988, a grievance was filed challenging the failure of the Postal Service to provide a light duty assignment for him. This grievance remained unresolved in the earlier steps of the grievance procedure and is now the subject of this arbitration.

ISSUE

The parties stipulated that the issue to be resolved in this matter is as follows:

Is the grievance properly before the Arbitrator?

POSITION OF THE UNION

The Union makes the following contentions and allegations in support of its position that the grievance should be sustained:

1. The grievance is properly before the Arbitrator.
2. The Grievant is not a preference eligible employee, and for this reason the settlement reached between the Postal Service and the Grievant in a Merit System Protection Board case is invalid.

For these reasons the grievance should be heard on its merits and the Grievant should be immediately assigned to a light duty assignment.

POSITION OF THE POSTAL SERVICE

The Postal Service makes the following contentions and allegations in support of its position that the grievance should be denied as not arbitrable:

1. The grievance was filed on light duty. While the grievance was pending, the Grievant filed an MSPB appeal on the light duty denial.
2. The United States Postal Service and the National Association of Letter Carriers Memorandum of Understanding dated March 3, 1988 precludes hearing the grievance on its merits.

3. The record will show that the complaint was appealed to the MSPB and a settlement was negotiated whereby the Grievant was to be given a fitness for duty examination.
4. The Postal Service abided by the settlement in that MSPB hearing in good faith.
5. The purpose of the Memorandum of Understanding is to prevent dual pursuit of complaints before MSPB and through the grievance procedure.
6. The subsequent denial of MSPB jurisdiction in a removal action does not invalidate the earlier MSPB negotiated settlement of a light duty denial claim.

For these reasons, the grievance is procedurally inappropriate for arbitration.

DISCUSSION AND OPINION

On March 3, 1988 the United States Postal Service and the National Association of Letter Carriers entered into a Memorandum of Understanding "to prevent situations in which the employer is required to defend the same adverse action before the MSPB and in the grievance-arbitration procedure." This Memorandum of Understanding outlined the procedures that would be applied. These procedures, as they apply to the instant grievance, are as follows:

1. If the Grievant appeals the matter to the MSPB at any time after the Union appeals the matter to arbitration. The record shows that grievance was appealed to arbitration on April 7, 1988. The denial of light duty was also appealed to MSPB on June 13, 1989. Under this provision of the Memorandum of Understanding the Union will be deemed to have waived access to arbitration.

2. The Union will be deemed to have waived access to arbitration if at any time the employee and the employer resolve the MSPB appeal through settlement.

The record evidence establishes that a settlement was negotiated between the employer and the Grievant and the light duty denial issue was resolved and that the Grievant was to be given a fitness for duty examination as part of the resolution. This resolution was dated February 9, 1989.

The Grievant pursued the light duty denial through both the grievance procedure and MSPB. Once the matter was appealed to MSPB and a settlement was negotiated between the employee and the employer calling for a fitness for duty examination, the grievance could not be heard in arbitration.

The Union also argued that the settlement negotiated with the MSPB was invalid and not binding on the Grievant because in a subsequent removal action before MSPB his removal action was not heard because of a lack of jurisdiction. It was determined in that hearing that he was not a preference eligible veteran. The negotiated settlement in the light duty denial was accepted by the Grievant and he was given a fitness for duty examination based on that settlement. It is clear both parties entered the settlement in good faith and now both must abide by that settlement. The grievance is not arbitrable because it has already been settled in the MSPB forum.