

IN THE MATTER OF ARBITRATION BETWEEN:

Union

AND

**Case No.: Knott #1**

Employer

Log Number: C-----03

ARBITRATOR'S OPINION AND AWARD

This arbitration took place under the January 1, 2002, through December 31, 2004 Collective Bargaining Agreement between the Employer, and the Union. Under this Agreement Ildiko Knott was selected to serve as Arbitrator and under which her Award would be final and binding on both parties.

At issue in this arbitration is the Employer's claim that the instant grievance is untimely and therefore not arbitrable. Consistent with Article 9, Section D, ¶ 5, the Employer moved to have the grievance bifurcated and the procedural defect issue addressed by submission of briefs by the parties and resolved by the Arbitrator prior to any hearing on the merits of the grievance. Upon receipt of these briefs, the record was closed.

For the Employer:

For the Union:

P.D., Office of Labor Relations

K.B., Staff Specialist

BACKGROUND

The threshold procedural issue to be decided in this matter is the Employer's contention that the grievance is not arbitrable as it was not filed in a timely manner.

According to the Union's brief, the grievant, Ms. D.M., was suspended on October 10, 2002, pending an investigation, until November 2, 2002, for alleged misconduct. This suspension was extended several times as the investigation continued, until a determination was made to suspend her without pay commencing on December 18, 2002. According to the Union, she returned to work on January 28, 2003.

A written grievance regarding the suspension was received by the third step Employer representative in person from Union representative A.O. on March 4, 2003. The Employer informed the Union representative that the grievance did

not conform to time limits set in Article 9, Section A (8). A Step Three disciplinary conference was nonetheless scheduled and held on March 14, 2003, in which both the timeliness issue and the merits of the grievance were discussed. The grievance was subsequently denied on April 30, 2003, on both the procedural and the merit grounds.

## RELEVANT CONTRACT LANGUAGE

### ARTICLE 9 GRIEVANCE PROCEDURE

#### Section A. General

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8. All grievances must be presented promptly and no later than ten (10) weekdays from the date the employee first became aware or should by the exercise of reasonable diligence, have become aware of the cause of such grievance.

\* \* \* \* \*

#### Section D. Time Limits

In the event a grievance is rejected by the Employer at any step as untimely, the issue shall be treated as separate and distinct at Step Four. Such issue shall be addressed by the submission of briefs to an Arbitrator. A decision by the Arbitrator shall be made prior to the merits of the existing grievance being heard.

## RELEVANT CIVIL SERVICE RULE

### Civil Service Rule 9.01

Good cause means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence or inattention to the filing or other requirements.

Special extenuating circumstances means a compelling excuse for the failure to file a matter timely that arises out of one of the following:

- (a) An intentionally or fraudulently misleading action by an appointing authority or party that prevented the filing.

(b) Serious physical or mental incapacity of the person that prevented the filing.

(c) Extraordinary unforeseen circumstances that were outside the control of the person that prevented the filing.

#### EMPLOYER'S POSITION

It is the Employer's contention that the grievance on behalf of D.M. was not received until fifty-seven days after the January 6, 2003, deadline. The Employer immediately informed the Union representative that the grievance was untimely.

The Employer maintains that no "good cause" or "special extenuating circumstances" were presented by the Union to explain the late filing. According to the Employer, while the Union official claimed that a grievance had been mailed at an earlier date, no evidence of either the grievance or the mailing was produced.

The Employer further argues that at the third step conference the Union was informed again that the grievance was untimely but that it again failed to provide evidence of good cause or extenuating circumstances for the untimely filing of the grievance.

The Employer asserts that the contractual language is clear and given the absence of any good cause or extenuating circumstances, asks that the grievance be denied in its entirety.

#### UNION'S POSITION

It is the Union's position that it mailed a grievance shortly after the grievant had returned to work, on January 28, 2003, following her suspension. However, the grievance had not been sent by registered mail and, therefore, the Employer now can claim non-receipt for reasons unknown. It charges that the Employer is taking advantage of an oversight.

The Union also makes the argument that it did not have information that it needed to file an "informed grievance," and that the Employer's "haphazard nature of the investigation" hindered the Union's ability to file a proper grievance or mount a cogent defense.

The Union maintains that there were clearly special circumstances that prevented strict adherence to the letter of the contract and it also cites Civil Service Rule 9.01 to bolster its case.

## DISCUSSION AND FINDING

There is no dispute that the grievance that was filed on behalf of D.M. was received only after a substantial delay from the cause and event that gave rise to it; her suspension commencing on December 18, 2002.

The parties negotiated a self-imposed time limitation of "no later than ten (10) week days from the date the employee first became aware or should by the exercise of reasonable diligence, have become aware of the cause of such a grievance." Thus, the parties have limited the cases that they will arbitrate according to the terms of the collective bargaining agreement. Time limitations are designed to encourage disputes to be brought forward when these occur and before these and recollections become stale. Arbitrators would generally prefer to resolve disputes on the merits rather than dismiss a case on procedural grounds, especially if there is any reasonable doubt concerning the application of the contractual time limitations. At the same time, absent such doubt or other extenuating circumstances, such as those recognized in the Civil Service code, arbitrators will not hesitate to apply clear contractual timelines.

In the instant case there is no claim that the grievant had no knowledge that the Employer took disciplinary action against her in form of an unpaid suspension, and there is no claim of a waiver of timelines, express or implied. Further, there is no dispute that the Employer raised the issue of procedural arbitrability as soon as it received the grievance on March 4, 2003.

The claim here is that a Union representative mailed a grievance to the appropriate Step Three official sometime after January 28, 2003. There is a significant problem with this: there is absolutely no evidence of a grievance having been mailed; indeed, the Union has not been able to produce a copy of the grievance form. Since failure to meet deadlines may cause a grievance to be dismissed, verifications such as receipts are routinely utilized in grievance processing. Inattention to detail cannot be considered good cause or be the basis for reasonable doubt that would permit the Arbitrator to modify the specific time limitations of the contract.

The other argument offered by the Union for its late filing is that it did not have certain necessary information to bring forward the grievance and that the Employer's investigation made "a proper and cogent defense near impossible."

The purpose of filing a grievance in a discipline matter, however, is not to mount a "proper and cogent defense." The purpose is to bring the disputed action by the Employer forward within negotiated timelines or otherwise seek an extension. If procedural irregularities occurred, a separate grievance could have been filed or the matter could have been addressed and argued in arbitration.

The Union was not able to provide me with convincing evidence that it had "good cause" to miss the contractual time limitations or that "special extenuating circumstances" were present that could serve as acceptable reasons to modify these.

#### AWARD

Therefore, the grievance is dismissed on the grounds that it is untimely and the Arbitrator lacks authority to hear the grievance under the parties' contractual arrangement

Ildiko Knott

Date: 2/13/2004