

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 594

OCB GRIEVANCE NUMBER: 31-13-910225-0014-01-09

GRIEVANT NAME: TADEMY, MISTY

UNION: OCSEA/ASFCME

DEPARTMENT: TRANSPORTATION

ARBITRATOR: SMITH, ANNA D.

MANAGEMENT ADVOCATE: WAGGONER, MIKE

2ND CHAIR: COE, ROGER

UNION ADVOCATE:

ARBITRATION DATE: MAY 1, 1991

DECISION DATE: MAY 1, 1991

DECISION: NOT ARBITRABLE

CONTRACT SECTIONS

AND/OR ISSUES: IS THE GRIEVANT'S REMOVAL ON 2/15/91
ARBITRABLE?

HOLDING: REMOVAL IS ARBITRABLE ONLY IF SHE WAS NOT ON PROBATIONARY
STATUS ON FEB. 15. WHETHER SHE WAS ON PROB. STATUS AT
THAT TIME IS ARBITRABLE ONLY IF THE ISSUE WAS TIMELY
RAISED UNDER 25.02 OF THE CONTRACT, WHICH IT WAS NOT.
THIS ISSUE IS, THEREFORE, NOT ARBITRABLE.

ARB COST: \$375.20

new

JS
12-6-96

DATA BASE REVIEW SHEET

Grievance # 31-13-910225-0014-01-09

Award # 594

BNA Codes 94.09 Arbitrability - procedural
94.57 Time lines for requesting arbitration

What Article(s) of the contract does this decision impact and where should it be referenced in the annotated contract? _____

25.01 } Annot-ref.
25.02 }

3.07

3.08

37.02

Does the award have a summary in the Data Base? NO ____ YES ☒

If yes is it correct? NO ____ YES ☒

Please attach a new or corrected summary if necessary.

Is this case in your opinion one that holds any precedential value? If so please explain. yes.

Removal is arbitrable only if Grievant was not
on probationary status at the time she was removed.
Whether Grievant was on probationary status at that
time is only arbitrable if the issue was timely
raised under 25.02 of the contract. The issue was
held to be untimely raised and therefore not
arbitrable.

kept on probationary status, she was harmed by not receiving full protection and rights of seniority status.

The second claim is that the Grievant was not oriented by her employer and was therefore unaware of her rights under the collective bargaining agreement. The Arbitrator searched the Contract for language requiring the Employer to train employees on Contractual rights. While language on training does exist (in §3.07, 3.08 and 37.02), no such requirement was found, and the Arbitrator is prohibited by §25.03 from creating one. The Union goes on to state that the Employer did not inform the Grievant that she was entitled to a shortened probation because of her prior service. However, the Employer does not here appear to accept the Union's view of the Grievant's qualification for the shortened probation. One cannot expect the Employer to tell an employee she is entitled to something the Employer believes she is not entitled to. Had the Employer acted in bad faith to keep the Grievant in the dark--perhaps by concealing the provision for a truncated probationary period--a different result would have obtained. However, the Grievant knew she was in trouble on January 15 when she wrote the statement of Joint Exhibit 12, six days prior to the lapse of her grievance window. She also had eight months of service with the State, adequate time to learn the benefits of consulting her Union steward. She also had adequate time to discover the issue of her probationary status and raise it in a timely fashion. The Arbitrator has no reason here to hold the Employer accountable for the Grievant's lapse.

For the foregoing reasons, this issue was held to be untimely raised and therefore not arbitrable.

Anna D. Smith
Anna D. Smith, Ph.D.
Arbitrator

May 10, 1991
Date