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

GRIEVANT'S REMOVAL ON 2/15/91 THE

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

DATA BASE REVIEW SHEET

Grievance # 31-13-910225-0014-01-09
Award # _ <u>594</u>
BNA Codes 94.09 Arbitrability - Procedured 94.57 Time lines for requesting arbitration
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 25.02 Arref- Lef.
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
Removal is arbitrable only if Ginevant was not
on probationary status at the time she was removed.
whather External was on ambationary states at that
time is only adoitable if the issue was timely
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
held to be untimery raises are
arbitrable.

OPINION

O.C.S.E.A. LOCAL 11, A.F.S.C.M.E., AFL-CIO

* Anna D. Smith, Arbitrator * Case 31-13-(02-25-91)-14-01-09

and

Misty Tademy, Grievant

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 Arbitrability

The following is the Arbitrator's reasoning in the award rendered May 1, 1991 at Columbus, Ohio in the cited case:

The Grievant's removal is arbitrable only if she was not on probationary status on February 15. Whether she was on probationary status is arbitrable only if the issue was timely raised under §25.02 of the Collective Bargaining Agreement:

All grievances must be presented not later than ten (10) working days from the date the grievant became or reasonably should have become aware of the occurrence giving rise to the grievance not to exceed a total of thirty (30) days after the event.

The event giving rise to the grievance occurred when Ms. Tademy continued to be carried as probationary after sixty days of ODOT employment. Having been hired on October 22, December 22 is when her 30-day clock started ticking. She had until January 21, 1991 to grieve her probationary status. The issue, however, was not raised until after she was removed on February 14, 1991.

The Union raises two arguments with some merit. The first is that the Grievant was not harmed until after she was removed. The Arbitrator disagrees. If the Grievant was inappropriately

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. 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 <u>not</u> 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, Ph.D.

Arbitrator

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