

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 602

OCB GRIEVANCE NUMBER: 31-12-901121-0059-01-07

GRIEVANT NAME: DeVOE, DENISE

UNION: OCSEA/AFSCME LOCAL 11

DEPARTMENT: DEPARTMENT OF TRANSPORTATION

ARBITRATOR: BITTEL, PATRICIA THOMAS

MANAGEMENT ADVOCATE: TORNES, JOHN

2ND CHAIR: PRICE, MERIL

UNION ADVOCATE: EALEY, JOE

ARBITRATION DATE: MAY 16, 1991

DECISION DATE: MAY 16, 1991

DECISION: NOT ARBITRABLE

CONTRACT SECTIONS

AND/OR ISSUES: 30 DAY SUSPENSION OF GRIEVANT UNTIMELY FILED

HOLDING: "THE CONTRACT LANGUAGE APPLICABLE TO THIS CASE IS AS CLEAR AS IT IS MANDATORY. IN THE EVENT A DEADLINE IS MISSED, THE GRIEVANCE IS DEEMED WITHDRAWN. THERE ARE NO EXCEPTIONS FOR MISUNDERSTANDINGS ABOUT GRIEVANCE NUMBERS OR OTHER SPECIAL SITUATIONS. THIS LANGUAGE WAS JOINTLY NEGOTATED AND FUNCTIONS TO KEEP THE GRIEVANCE PROCEDURE CLEAR OF DELAY AND CONFUSION. THIS ARBITRATOR HAS NO AUTHORITY TO REDESIGN SUCH A PROCEDURE; HER ESSENTIAL PURPOSE IS TO FULLY ENFORCE IT."

ARB COST: \$207.97

May 21, 1991

In the Matter of Arbitration)
between)
Ohio Civil Service Employees)
Association, Local 11,) Case No. 31-12-(11-21-
AFSCME, AFL-CIO) 90)-59-01-07
and) Grievant: D. DeVoe
Ohio Department of Transportation)

#602

APPEARANCES

For the Union:

Joe Ealey	Staff Representative
Thaddeus Kilgore, Jr.	Chapter President
Denise DeVoe	Grievant

For the Employer:

John Tornes	Advocate
Meril Price	Second Chair
Bill Tallberg	Labor Relations
Mike Karhan	Engineer
Dave Rossi	Project Inspection
	Specialist
Gil Sellers	Observer

Arbitrator:

Patricia Thomas Bittel

BACKGROUND

This matter was heard on May 16, 1991 at the Ohio Department of Transportation (ODOT) facility in Garfield Heights, Ohio before Patricia Thomas Bittel, the impartial arbitrator mutually selected by the parties in accordance with Article XXV of the Collective Bargaining Agreement.

The parties stipulated to the preliminary issue: "Whether the grievance is arbitrable in accordance with Article 25, Sections 01, 03, 05 and 07?" Pursuant to the agreement, the parties were to go forward on the merits if the case were found arbitrable or if a preliminary decision could not be reasonably made.

The Employer maintained the case was not arbitrable because the timeliness requirements for filing a grievance were not met. The evidence showed Grievant was notified of her discipline on November 1, 1990 in the presence of Union representation. Article 25 states as follows in pertinent part:

"25.01 Process

D. The mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period.

25.03 Arbitration Procedures

Questions of arbitrability shall be decided by the arbitrator. Once a determination is made that a matter is arbitrable, or if such preliminary determination cannot be reasonably made, the arbitrator shall then proceed to determine the merits of the dispute.

25.05 Time Limits

Grievances may be withdrawn at any step of the grievance procedure. Grievances not appealed within the designated time limits will be treated as withdrawn grievances.

The time limits at any step may be extended by mutual agreement of the parties involved at that particular step. Such extension(s) shall be in writing.

25.07 Advance Grievance Step Filing

* * * An employee with a grievance involving a suspension or a discharge may initiate the grievance at Step Three of the grievance procedure within fourteen (14) days of notification of such action."

The record established the grievance was postmarked Nov. 17, 1990, sixteen days after notification was received. The Employer argued the intent of the parties is clearly expressed in the collective bargaining agreement and the use of mandatory language was intentional. An agreement to extend was never executed in this case, it contends.

It maintained the Arbitrator has no authority under the agreement to add to, subtract from or otherwise modify the language of the agreement, and therefore has no authority to exercise jurisdiction over the merits of the case. The Employer provided the Arbitrator with copies of several decisions by other panel arbitrators enforcing the restrictive language on timeliness.

The Union argues the higher purpose of a harmonious relationship between the parties should be the guiding principle in this case. It maintains a good faith extension was requested in this case and identified a letter from the Union stamped 'received' by the Employer on December 31, 1990. In the letter, the Chapter President apologized for

missing the time limits and claimed to have been under the misimpression that the grievance required a number before it could be filed.

DISCUSSION

The contract language applicable to this case is as clear as it is mandatory: a grievance filed at Third Step must be filed within fourteen days of notification. In the event a deadline is missed, the grievance is deemed withdrawn. There are no exceptions for misunderstandings about grievance numbers or other special situations; if the deadline is not met or mutually extended in writing, the grievance "will be treated as withdrawn". To the extent an extension is needed, the agreement provides only one procedure for obtaining one -- a written agreement to that effect signed by both parties.

This language was jointly negotiated into the agreement by the parties. It is a significant part of the structure of their relationship and functions to keep the grievance procedure clear of delay and confusion. By the parties' own choice, theirs is a grievance procedure which moves expeditiously, intentionally screening out cases that fail to meet specific criteria. The arbitrator has no authority to redesign such a procedure; rather her essential purpose is to fully enforce it.

Notification of the discipline involved in this case was given on Nov. 1, 1990. Under the 14-day limit for filing a grievance at Third Step established in Article 25.07, the grievance was required to have been filed on or before Nov. 15, 1990. The evidence shows it was not filed until Nov. 17, 1990.

AWARD

The contract language is clear and unambiguous in setting deadlines and in providing for withdrawal if time limits are not met. There is no evidence of a mutually agreed extension -- written or otherwise. The grievance is therefore not arbitrable.

Respectfully Submitted,


Patricia Thomas Bittel

Dated: May 21, 1991

ARBITRATION

BENCH DECISION AND AWARD #602

ARBITRATOR: Bittel

State of Ohio Department: Ohio Department of Transportation

Union: OCSEA

Grievance #: 31-12 (11-21-90) 59-01-07

Grievant: Denise DeVoe

Date of Hearing: May 16, 1991

ISSUE:

Whether the grievance is arbitrable in accordance with Article 25, Sections 01, 03, 05 and 07?

AWARD:

Notification of the discipline involved in this case was given on Nov. 1, 1990. Under the 14-day limit for filing a grievance at Step III established in Article 25.07, the grievance was required to be filed on or before Nov. 15, 1990. The evidence is clear that it was not filed until Nov. 17, 1990. The contract language is clear and unambiguous in setting deadlines and in providing for withdrawal if time limits are not met. There is no evidence of a mutually agreed extension -

Arbitrator Signature

Date

written or otherwise. The grievance is therefore not arbitrable.

Patricia Thomas Bittel

5-16-91