

#1608

ARBITRATOR: ROBERT G. STEIN	HEARING DATE: 10/02/02
GRIEVANT: Patricia Kouns	GRIEVANCE #: 17-02012812710103
DEPARTMENT: DRC	UNION: OCSEA
MANAGEMENT ADVOCATE: DAVID BURRUS	UNION ADVOCATE: JAMES McELVAIN

Was the Grievant, Patricia Kouns on probation when she was terminated?

AWARD

The grievance is not arbitrable. Ms Kouns' probationary period was extended (originally scheduled to end July 24, 2001) as a result of her worker's compensation leave that commenced March 17, 2001. Her leave continued on a full time basis until January 14, 2002, when she was able to return to work. Although she returned to work for half days (under Return to Work Program) and was on worker's compensation leave the other half of each day, her probationary period was no longer extended. It resumed each partial work day beginning on January 14, 2002. This is no different than

ISSUED AT:
DATE: 10/02/02

ARBITRATOR'S
SIGNATURE: Robert Stein

missing partial work days due to illness or injury where workers compensation is not involved. In Accordance with 6.01 these days would count as work days provided they did not result in less than ^{consecutive} fourteen (14) days or ~~more~~ longer.

Mrs. Kounis was terminated while on probation on January 18, 2002. By operation of the Collective Bargaining Agreement, Article 6.01, her termination is not appealable through any grievance or appeal procedure.

Case: Kouns
Date: 10/2/02
Advocate:

BURRUS MGMT

JOINT #1 CONTRACT

#2 GRIEVANCE TRAIL

#3 MASTER TIME CARD

#4 EHOC

ISSUE:

SUBSTANTIVE ARBITRABILITY

WITNESS - TED WILLIAMS
LRO

Knows Kouns as a former
employee. Removed
on 1-18-02. Had been

credited with time
served as an external
interim before becoming
a full-time employee.

Served 91 days of a
365 day probationary
period

UNION

ISSUE - UNJUST REMOVAL

WAS NOT ON PROBATION

ARTICLE 24 violated

Union #1: IOC from
Yolanda Jacks to
Ted Williams
outlining probationary
period upon return
from BWC.

Testimony Williams:
Return to work
program - purpose
to bring employee
back to work with
medical restrictions.

Case:
Date:
Advocate:

MGMT

Reference to 601
and extending
probationary periods.

Reference to Joint 3,
Grievant's time sheet.

March 16 2001 BWC
absence began through
~~December~~
~~January~~ 1, 2001. A

continuous absence
not counted toward
probationary period.

Consistent application
of 6.01 language.

Identified probationary
removal of Grievant
noted 6.01 action.

UNION

Union position on
BWC when on
return to work
policy.

Union rests
suggesting she was
not on probation
she was in some
other "protected"
status.

Probationary removal
not appealable.

Recap by Barnes:

Clearly on probation
workers comp was
not determinant.

Asked for a directed
verdict.

She is either on
probation or she
was not.

Stein
Bench decision:

IOC does not apply
in determining actual
probationary period.

once she
returned to work
she is subject
to probation and
may be removed
under 6.01.

Not arbitrable.

