

C#10846

Regular Arbitration Panel

\* \* \* \* \*  
In The Matter of Arbitration \*  
between \*  
United States Postal Service \*  
and \*  
National Association of \*  
Letter Carriers, AFL-CIO \*  
\* \* \* \* \*

Grievant: A. Glasper  
Post Office: East St. Louis, IL  
USPS Case No: C7N-4Q-D 30833  
NALC Case No: CHI-RA-221R

Before: Linda DiLeone Klein

Appearances

For the Postal Service: Paul A. Lyons  
For the Union: Warren E. Fredrich

Place of Hearing: East St. Louis, IL

Date of Hearing: April 9, 1991

Award: The grievance is arbitrable.

Date of Award: May 6 1991

*Linda DiLeone Klein*  
LINDA DILEONE KLEIN

I S S U E

Is the grievance arbitrable?

O P I N I O N

On June 11, 1990, the grievant, the NALC Local President and the Superintendent of Postal Operations entered into a last chance agreement through the Union Management Pairs Program (UMPS); this last chance agreement was a "full and final settlement" of a pending removal for the grievant's attendance deficiencies. The grievant was required to enter and successfully complete a 28 day residential rehabilitation program.

The UMPS Agreement set forth six conditions which the grievant and the Union were required to meet. The condition in dispute in this case is Item C., which states as follows:

- c. This is a last chance settlement and any future or similar offenses will constitute just cause for removal and both Avery Glasper and the NALC agree to waive any appeal rights challenging said removal.

On October 30, 1990, the grievant was issued a Notice of Removal based upon 24 hours of absenteeism due to claimed illness and 5 incidents of tardiness which were charged as AWOL. According to Management, the grievant failed to "live up to" the terms of the above-referenced last chance agreement.

The Local President submitted the removal notice to the UMPS team and on November 16, 1990, the following settlement was reached:

The subject employee was issued a removal on October 30, 1990 based on a last chance settlement dated June 8, 1990. The UMP Team agrees this issue will not be adjudicated by the UMP Team, but that the local union will file a timely Step One grievance through the regular grievance arbitration procedure in compliance with Article 15 of the National Agreement.

The Union UMPS member who signed the above-cited decision testified that he and the Management representative were fully aware of the terms of the last chance agreement when the November 16, 1990 settlement was reached.

On November 23, 1990, the instant grievance was initiated by the Union on behalf of Mr. Glasper. The grievance was denied, and at Step 2, Management asserted that "The grievant failed to comply with Item C. of that agreement in that 'any future or similar offense will constitute just cause for removal and both Avery Glasper and the NALC agree to waive any appeal rights challenging said removal'".

After the Step 3 denial, the grievance was appealed to arbitration. At the hearing, Management requested that the Arbitrator consider only the arbitrability issue.

In June of 1990, the Local President and the SPO entered into a good faith settlement to preserve the grievant's job, says Management. Pursuant to Article 15, grievances are to be settled at the lowest possible level, and such settlements are legitimate and binding. As part of the settlement, Management afforded the grievant "another chance", and the Union agreed to waive its rights to challenge or appeal any future or similar offense. This agreement was presented to the grievant and each point was discussed. Several days elapsed before it was finalized, therefore, says Management, the grievant and the Union had ample opportu-

nity to consider the commitment which was being made, as well as the consequences of the failure to abide by the specific terms of said agreement.

The clear intent of the last chance agreement was that Mr. Glasper would be removed for any future failure to fulfill his obligations as set forth therein, says Management, and under such circumstances, he would not have access to the grievance procedure; the parties did not intend that this agreement would be modified. Any subsequent alteration of a last chance agreement will have an adverse impact on the settlement process, claims the Employer; if settlements are not strictly enforced, there will be no incentive to enter into such arrangements in the future. These agreements must be viewed as legitimate and "just as controlling as any contractual provision", adds Management.

The Postal Service submits that the November 16, 1990 UMPS decision should not be permitted to jeopardize and invalidate the June 1990 settlement reached by the local parties. The Postal Service asks the Arbitrator to find that the within matter is not arbitrable.

The Union, however, contends that the grievance is arbitrable despite the agreement reached in June 1990. When the grievant was removed in October 1990, the Union pursued his claim through the UMPS Program and the UMPS team agreed that a grievance could be filed, therefore, says the Union, the grievance is arbitrable; the November 1990 UMPS agreement overturned the restrictions set forth in the last chance settlement. The Union asks that the grievance be heard on its merits.

After evaluating the evidence presented at the hearing and reviewing the awards submitted by the parties in support of their respective positions, the Arbitrator finds that Mr. Glasper's grievance is arbitrable.

On November 16, 1990, the UMPS team considered the current Notice of Removal and the June 1990 last chance settlement, and both participants agreed that they would not adjudicate the issue presented to them; however, they further agreed that the local Union could file a grievance at Step 1. By this action alone, the grievance of Mr. Glasper is arbitrable.

The Arbitrator recognizes Management's concern regarding the adverse impact on the settlement process in instances where "good faith" agreements are not upheld, however, the agreement not to grieve an action in the future is unenforceable for the reason that it ignores the right to grieve as set forth in the National Agreement. The local parties do not have the authority to amend this contractual provision or to require a grievant to bypass rights granted through collective bargaining at the national level. The "waiver of appeal rights" as referenced in Item C. of the last chance agreement is not enforceable.

Item C. also provides that similar future offenses will constitute just cause for removal. An agreement dictating that certain behavior automatically constitutes just cause for removal is likewise unenforceable. The grievance-arbitration procedure allows for other Managers or an arbitrator to be involved in the decision making process as it relates to the determination of just cause. Despite the existence of a last chance agreement, the grievant is entitled to a review of the facts which occurred subsequent to said agreement for the purpose of determining the existence of just cause and the appropriateness of the penalty.

In accordance with the provisions of the National Agreement, the grievance of A. Glasper may be considered on the merits.

A W A R D

The grievance is arbitrable.

  
LINDA DILEONE KLEIN

Dated this 6<sup>th</sup> day of May 1991  
Cleveland, Ohio.