

Dist

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

MABLE BURCH, JR.,
Appellant,

v.

UNITED STATES POSTAL SERVICE,
Agency.

DOCKET NUMBER
CH0752910272C1

DATE: DEC 19 1991

Marce Gonzales, Jr., Esquire, Highland, Indiana, for
the appellant.

Paul Woods, Gary, Indiana, for the agency.

BEFORE

Daniel R. Levinson, Chairman
Antonio C. Amador, Vice Chairman
Jessica L. Parks, Member

OPINION AND ORDER

This case is before the Board pursuant to a petition for enforcement filed by the appellant alleging that the agency failed to comply with the terms of a Settlement Agreement entered into between the parties resolving the issues in this case. For the reasons set forth below, we find the agency in COMPLIANCE and dismiss this proceeding without prejudice.

BACKGROUND

The appellant was employed by the agency as a Letter Carrier when the agency allegedly caused his involuntary retirement on March 14, 1989. The parties submitted a joint settlement agreement which stipulated that the appellant's

retirement was involuntarily submitted. Official File, Volume I, Tab 7. The parties agreed that the agency would cancel the appellant's involuntary disability retirement and substitute in its place an optional retirement, that it would provide the appellant with the necessary forms to apply for a lump-sum return of his retirement contributions, and that it would pay \$2000 in attorney fees to the appellant's counsel. The administrative judge found that the parties freely entered into the settlement agreement and the terms were lawful. The agreement was accepted into the record. Official File, Volume I, Tab 8.

The appellant subsequently submitted a petition for enforcement alleging that the agency had failed to comply with the terms of the agreement. He argued that he had received none of the relief stipulated in the agreement. The administrative judge found that the agency failed to produce satisfactory evidence of compliance and recommended that the agency be found in noncompliance with the parties' settlement agreement. Official File, Volume II, Tab 4.

ANALYSIS AND FINDINGS

The Board retains authority to enforce the terms of a settlement agreement which has been accepted into the record. *Harris v. U.S. Postal Service*, 44 M.S.P.R. 547 (1990). Although the burden of proof lies on the party alleging breach of a settlement agreement, an agency is expected to produce evidence and explanations concerning its efforts to comply with the agreement and to respond to a

petition for enforcement with evidence of compliance. *Kemp v. U.S. Postal Service*, 44 M.S.P.R. 10, 15 (1990).

In response to the administrative judge's initial decision recommending a finding of noncompliance, the agency's representative submitted a letter stating that the agency agreed to take the recommended actions. Official File, Volume III, Tab 1. The representative stated that the check for attorney fees was issued to the appellant's counsel, that the agency had provided the necessary forms for optional retirement to the appellant, and that it would process the appellant's optional retirement when the forms were returned to the agency. *Id.* In response to the agency's evidence, the appellant's attorney stated that the forms required for the conversion to optional retirement were returned to the agency on September 30, 1991, and the conversion was expected to be completed by October 12, 1991. Official File, Volume III, Tab 2. Although the appellant's attorney indicated on November 22, 1991, that the conversion had not yet been completed, the agency submitted an affidavit that the forms had been forwarded to the Office of Personnel Management and that the conversion was pending.* Consequently, the agency agreed to take the recommended actions to ensure compliance, and it appears from the evidence that it has done so. Both parties appear to be waiting for the necessary processing to occur.

* The appellant's attorney admits that the forms were not returned to the agency until September 30, 1991, so a completion date of October 12, 1991, was unlikely.

ORDER

Accordingly, we hereby find the agency in COMPLIANCE and dismiss this action as moot. The action is DISMISSED without prejudice and the appellant may refile if further problems develop in this matter.

NOTICE TO APPELLANT

This is the Board's final order in this case. You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in this proceeding if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.