UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

BOBBY L. HICKS, Appellant, v. UNITED STATES POSTAL SERVICE Agency.	DOCKET NUMBER PH075290C0035 DATE: FEB 11 1992

Charles Scialla, Paterson, New Jersey, for the appellant.

George W. DePietropolo, Philadelphia, Pennsylvania, 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 on a petition for enforcement of an initial decision which became the final decision of the Board on January 26, 1990. For the reasons set forth below, the Board finds that the Postal Service (agency) has complied with the final decision of the Board.

BACKGROUND

The appellant was a supervisor of delivery and collections in Charlottesville, Virginia. He was removed by the agency on September 29, 1989, for inflating mail volume figures. While his appeal was pending in the Philadelphia Regional Office, the appellant and the agency entered into a

settlement agreement which was accepted into the record. The appeal was dismissed on December 22, 1989, in an initial decision that became the final decision of the Board. *Hicks v. United States Postal Service*, MSPB Docket No. PH07529010035 (December 22, 1989).

As the agency had agreed to do, it reduced the appellant to the top step of a full-time letter carrier at the Elkton, Virginia, Post Office. The Elkton Post Office employs two letter carriers. The appellant's assignment began on December 30, 1989. Regional compliance file, tab 3.

The other letter carrier in the Elkton office, a part-time employee, filed a grievance in which he contended that the appellant's placement in the only full-time position violated the union agreement which gave him priority rights to the position. The grievant and the agency agreed to hold the grievance in abeyance pending the issuance of a national arbitration decision on the same issue in another case, and to let that decision be the deciding factor in the grievance. Regional compliance file, tab 3.

In the national arbitration decision, which was issued on August 13, 1990, the arbitrator concluded that transferring a Clifton Heights, Pennsylvania, supervisor who had been demoted "for disciplinary reasons pursuant to a Merit Systems Protection Board [O]rder" to a different postal facility and giving him a full-time letter carrier position violated the union agreement. Regional compliance

file tab 3, subtab 10 at 8, 28, 30. As a result of this decision, the grievance relating to appellant's position was resolved in favor of the grievant. The agency assigned the grievant to the position to which the appellant had been assigned and reassigned the appellant to the position that the grievant had held effective October 6, 1990. Regional compliance file, tab 3. The appellant received pay as a full-time employee, however, while serving in the grievant's position. *Id.* The agency subsequently reassigned the appellant to a full-time letter carrier position in the Waynesboro, Virginia, post office effective January 12, 1991. *Id.*

It is these reassignments that the appellant contends constitute a breach of the settlement agreement. The agency contends that the arbitration decision required it to assign the part-time letter carrier as it did and to reassign the appellant to a different facility, because it did not need two full-time carriers at Elkton.

The administrative judge found that the agency did not comply with the terms of the settlement agreement. We disagree, as we explain below.

ANALYSIS

The burden of proving that a settlement agreement has been breached rests on the party asserting the breach. *Fredendall v. Veterans Administration*, 38 M.S.P.R. 366, 370 (1988). In order to decide whether the agency has breached

the settlement agreement in this case, we must look at all the relevant factors.

The first factor we consider is the undisputed fact that the agency's decision to reassign appellant was made as a result of the national arbitration decision and the grievance decision. The agency has stated that national arbitration decisions are treated as precedent, and the appellant has not challenged this statement. The Board treats the provisions of a collective bargaining agreement as having the weight of regulations and requires agencies to comply with them. *See Appling v. Social Security Administration*, 30 M.S.P.R. 375, 381 (1986). Therefore the agency was required to abide by the interpretation placed on the collective bargaining agreement provisions in question in the national arbitration decision.

Two other important considerations are the fact that the settlement agreement did not contain a provision requiring that appellant be kept in the full-time position at Elkton for any specific period of time and the fact that the agency complied with the settlement agreement in full for a period of ten months. Settlement agreements brought to the Board for enforcement are to be enforced and interpreted in accordance with contract law. *See Greco v. Department of the Army*, 852 F.2d 558, 560 (Fed. Cir. 1988). The interpretation of the terms of a contract is a question of law, to be decided from the language of the agreement itself when that language is unambiguous. *Id.* Where, as

here, a settlement agreement is silent as to the time or duration of performance, a reasonable time under the circumstances will be presumed. *See* 1 A. Corbin, *Corbin on Contracts* §96 (Supp. 1990). *See also Societe Anonyme Des Ateliers Brillie Freres v. United States*, 160 Ct. Cl. 192, 201 (1963).

The reasonableness of the time period at issue is a matter to be decided under the circumstances of each case. *Id.* at 202. The relevant circumstances to be considered here are the agency's prompt and complete compliance with the agreement until the terms of the agreement came into conflict with the collective bargaining agreement. In addition, we have considered the fact that the agency continued to pay the appellant on a full-time basis even after it reassigned him to a part-time position; the fact that the Waynesboro post office to which appellant was reassigned is closer to his residence than the Elkton facility is; and the fact that the appellant has made no showing that he was harmed as a result of the two reassignments, or that the agency acted in bad faith in making the reassignments.

In light of the foregoing factors, we find that the agency has complied with the settlement agreement. The reassignment of the appellant to the part-time position in Elkton and subsequently to a new facility after a 10-month period of full compliance did not constitute a breach of the agreement because it occurred after a reasonable period

of full compliance, it was taken only as a result of the national arbitration decision, and efforts were made to minimize any harmful effect on the appellant by keeping his pay at the full-time level and placing him in a facility nearer his residence.

Appellant argued before the administrative judge that, if the agency will not place him back in the full-time carrier position in the Elkton Post Office, then the settlement agreement should be invalidated because of fraud practiced by the agency. Specifically, appellant argued that the agency's actions in adjudicating the grievance by reassigning the appellant from the full-time position in Elkton constituted fraud on the appellant. He argues that this fraud is sufficient to invalidate the settlement agreement, and asks that his original appeal be reinstated. Regional compliance file, tab 4.

The party attacking the validity of a settlement agreement bears the burden of proving the invalidity. The Board will set aside an agreement shown to have been entered into fraudulently. *See Asberry v. United States*, 692 F.2d 1378, 1380 (Fed. Cir. 1982); *Townsel v. Tennessee Valley Authority*, 33 M.S.P.R. 456 (1987). Appellant, however, has made no showing of fraud on the part of the agency in negotiating or entering into the settlement agreement. Instead, his arguments seem to be that the agency acted fraudulently after the agreement had been finalized by representing itself in the grievance proceeding without

informing appellant of the proceeding. These arguments, therefore, are appropriately considered as going to the good faith of the agency in the way it went about complying with the agreement. We find no evidence, however, that the agency acted in bad faith in its handling of the grievance. Appellant has not pointed to any legal authority which entitles him to be informed of grievances relating to his position. We are not persuaded by appellant's argument that the agency's conduct of the grievance proceeding constituted fraud and required that the settlement agreement be invalidated. Instead, we have found in this decision that the agency acted in good faith in placing the appellant in the full-time carrier position in Elkton and keeping him there until the grievance of the part-time carrier was resolved. Accordingly, appellant's request that the agreement be invalidated and his appeal reinstated is DENIED.

Appellant's motion that we impose sanctions on the agency is also DENIED, in light of our conclusion that the agency has complied with the settlement agreement. *See Eikenberry v. Department of Interior*, 39 M.S.P.R. 119, 121 (1986); *Norris v. U.S. Postal Service*, 29 M.S.P.R. 434, 436 (1985).

CONCLUSION

Accordingly, we find that the agency has complied with the settlement agreement. Therefore the petition for enforcement is DENIED. This is the final decision of the

Merit Systems Protection Board in this enforcement proceeding.

NOTICE TO THE APPELLANT

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.