

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRABILITY DECISION

In the Matter of : MARCH 25, 2024
:
NORWALK TRANSIT DISTRICT : CASE NO. 2023-A-0059
: (Mike Schiff- Vacation)
AND :Hearing Date: 11/06/2023
:
Date of Award: March 28, 2024

AFSCME CO. 4, LOCAL 1303-186 : LOCATION OF HEARING:
: State Board
: of Mediation and Arbitration
: 38 Wolcott Hill Road
: Wethersfield, CT 06109
: REMOTE HEARING (ZOOM)

APPEARANCES:

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Management Attorney

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AFSCME Co. 4
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Union Staff Representative

ISSUE

Is this matter arbitrable?

FACTS

This matter concerns the filing of a grievance by AFSCME Council 4, Local 1303-186 (“Union”) alleging that Norwalk Transit District (“Norwalk”) violated Section 19.1 of the parties Collective Bargaining Agreement (“CBA”) by denying additional vacation days on employee Mike Schiff’s (“Grievant”) employment anniversary date. Norwalk timely alleges the grievance is not arbitrable as it was not timely filed in accordance with CBA requirements.

Both parties appeared before the Panel remotely for a hearing on November 6, 2023. The Union and Norwalk were each represented during the hearing, presented documentary and testimonial evidence and were afforded the opportunity to examine and cross-examine witnesses. This decision addresses the issue of whether the grievance is arbitrable.

A grievance was filed by the Union on or about September 2, 2022 alleging that Norwalk violated the CBA by not providing additional vacation days on Grievant’s anniversary of employment. The grievance was denied by the Chief Financial Officer (“CFO”) of Norwalk on September 16, 2022. The crux of the Step 3 denial was that Grievant resigned prior to his July 1st eligibility date and therefore the Union failed to establish a CBA violation.

Grievant was advised during the month of May, 2022 that he would not receive additional vacation days on his employment anniversary date because vacation accruals occur on July 1st and Grievant was scheduled to resign prior to July 1st. Thereafter Grievant resigned from employment with Norwalk and was given his final paycheck on June 30, 2022.

Article 20, Section 20.2 requires that a grievance be filed within fourteen (14) calendar days of its occurrence or knowledge by the Union of its occurrence, and if not filed within fourteen (14) days the grievance shall be waived. Grievance received his final paycheck on June 30, 2022 and the grievance was not filed until September 2, 2022.

In addition, Article 20, Section 20.4 of the CBA provides that a grievance submitted to arbitration (emphasis added) must be submitted within fourteen (14) calendar days after the response at Step 3. The Step 3 denial response by the Norwalk CFO was on September 16, 2022. The request for arbitration was not received by the State Board of Mediation and Arbitration (“SBMA”) until October 3, 2022 (Employer Ex. 3), which was more than fourteen (14) calendar days from Norwalk’s receipt of the Step 3 denial.

NORWALK POSITION

Norwalk claims that the Union failed to: (1) comply with CBA Article 20, Section 20.2 (Jt. Ex. 1, at pg. 17) by not filing the grievance within fourteen (14) calendar days after its occurrence or knowledge by the Union and the grievance shall be deemed waived, i.e. the “trigger” date for filing the grievance was June 30, 2022, the day Grievant was given his final check but the grievance was not filed until September 2, 2022 (Employer Ex. 2, at pg. 24); and (2) the grievance was not timely filed with the SBMA pursuant to the requirement of Article 20.4 of the CBA; the grievance was not received by the SBMA until October 3, 2022 (Employer Ex. 3) which was more than fourteen (14) calendar days from the issuance of the September 16, 2022 denial by the CFO at Step 3.

Norwalk contends the testimony of Union Representative Perez that he was at the SBMA Office on September 29, 2022 and he “probably” (emphasis added) dropped the grievance in question at the SBMA office on that day is pure speculation.

Norwalk argues that Perez could not say with certainty that he was at the SBMA Office for filing this grievance on September 29th and he admitted he did not get a receipt. Norwalk asserts that when the CBA contains clear time limits for filing of grievances the arbitrator should enforce such time constraints because that is what the parties negotiated.

Norwalk concludes its argument by asserting the decision in *Norwalk Transit District, Case No. 2023-A-0058* (a grievance involving the same parties and same issue in the instant grievance) was incorrectly decided when the Panel ruled that grievance arbitrable.

UNION POSITION

The Union argues in its brief that it was aware the grievance “must be filed by Friday, September 30th” (Union Brief, pg. 3). Staff Representative Charles Paris sent an email together with the Union grievance to Counsel Secretary Stephanie Wise with instructions that the grievance must be filed by Friday, September 30th. Ms. Wise confirmed she received the email and she would request a check for the grievance filing fee. Ms. Wise, according to the Union, had 25 years of experience in her current position and part of her job was to forward grievances to the Labor Board. The Union further argues that once she received the check (the check is dated September 28, 2022)(Union Ex. 6) on

Wednesday, September 28, 2022 she filled out the form (Union Ex. 5) to be submitted to the SBMA. The Union goes on to argue that after completing the form her procedure was to contact someone to bring the package for filing with the SBMA. She also could recall giving the grievance to Perez on September 29, 2022 to be filed with the Labor Board.

The Union also points to the testimony of Perez that he occasionally gets a call from Ms. Wise to bring grievances to the Labor Board and he “confirmed” his arrival to the Labor Board on September 29, 2022, stating that he noted it on his expense report that is submitted to Council 4 (Union Brief, pg. 3). The Union also argues that Perez testified that he gave the package to the SBMA security guard in the front entrance of the building but he did not receive a receipt for the “package” (Union Brief, pg. 3).

RELEVANT CONTRACT LANGUAGE
ARTICLE XX-GRIEVANCE AND ARBITRATION

20.1 Any difference or dispute concerning the meaning interpretation, or application of this Agreement shall be considered a grievance.

20.2 All grievances shall be addressed in the following manner.

STEP#1 The grievance shall first be presented to the Department Head by the employee and his/her Shop Steward. Any grievance not brought within fourteen (14) calendar days of its occurrence or knowledge by the Union of its occurrence shall be deemed waived.

STEP#2 If the grievance is not resolved at Step #1, it may be presented, in writing, by the employee and his/her Shop Steward to the Department Chief (Chief Operating Officer (COO), Chief Finance Officer (CFO), or Chief Logistics Officer (CLO)). Any grievance not presented to the COO/CFO/CLO within fourteen (14) calendar days after it has been presented to the Department Chief shall be deemed waived. A meeting between the COO/CFO/CLO and the employee, accompanied by his/her Shop Ste4ward, shall be held within fourteen (14) calendar days. In the event there is no satisfactory solution, the matter may be referred to Step #3.

STEP #3 If the grievance is not resolved at Step #2, the grievance may be forwarded in writing to the Chief Executive Officer (CEO). Any grievance not presented to the CEO within fourteen (14) calendar days after the COO/CFO/CLO gives his/her written response shall be deemed waived. A meeting among the CEO, the employee and the Union Representative (Union President or Shop Steward) shall be held within fourteen (14) calendar days. In the event there is no satisfactory resolution, the matter may then be taken to arbitration.

20.3 The time limits contained in this Article may be extended by mutual consent of the Union and the Employer. Such agreement shall not be unreasonably withheld by either party.

20.4 ARBITRATION: Any grievance which is not settled through the grievance procedure provided above may be submitted to the Connecticut State Board of Mediation and Arbitration under the rules providing for final and binding arbitration. Such submission must be within fourteen (14) calendar days after the response at Step #3.

20.5 The Union or the Employer may refer an unresolved grievance to arbitration.

20.6 The Arbitrator shall be limited to ruling on the interpretation or application or alleged breaches of the terms of this Agreement. The Arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement or any other agreements made supplementary thereto.

20.7 Any decision or award of the Arbitrator shall be final and binding upon both parties.

20.8 Arbitration shall be the sole and exclusive remedy for violation of this Agreement, except in the event of a breach of the No Strike-No lockout clause hereof or the refusal of either party hereto to honor an arbitration award.

20.9 Regardless of the outcome of any matter submitted to arbitration, the cost of the Arbitrator shall be borne equally by the Employer and the Union. All other costs, such as witnesses and preparation for the arbitration, shall be borne by the respective parties.

20.10 Should a dispute arise in which the issue is not specifically covered by this Agreement, but is a mandatory subject of bargaining, the parties shall negotiate on a basis of the cooperative spirit of this Agreement, and if they cannot agree, shall submit the matter to arbitration and final determination in the matter as theretofore provided.

DISCUSSION

The parties appeared before the Panel on November 6, 2023. The hearing was held remotely via zoom.

Both parties appeared with representatives, presented documentary and testimonial evidence, were afforded the opportunity to examine and cross-examine witnesses, and filed post hearing briefs.

The parties agreed on the submission which is “Is the matter arbitrable?” This decision addresses the issue of whether the grievance is arbitrable.

It is admitted by the Union that the grievance needed to be filed with the SBMA by Friday, September 30th in order to comply with the clear and unequivocal CBA Article XX, Section 20.4 language which provides in part: “Such submission must be within fourteen (14) calendar days after the response at Step #3.” The decision/response at Step 3 of the CBA was issued by the CFO on September 16, 2023.

The Panel cannot ignore Perez’s testimony that he could not say for certain that he was at the SBMA Office on September 29, 2022 to file the claim for arbitration in this grievance and he did not get a receipt which would have confirmed the filing was made prior to the due date of September 30th. (Norwalk in its brief states that Perez could not say for certain that he was at the SBMA Office on September 28th (Norwalk Brief, pg. 9-10). The Panel accordingly finds that Perez’s testimony was at best speculative. Perez also testified he could not swear he dropped off this particular grievance as he had another grievance to drop off. While Perez testified there was a note in his expense report that he was

at the SBMA on September 29 that report was never presented in evidence for the Panel's review.

The Panel further finds that the Union was well aware that the filing with the SBMA needed to be made by Friday, September 30th. This is evidenced by the Union's statement in its brief that Mr. Paris emailed the Council Secretary that the filing must be made by September 30th (Union Ex. 4)

The Panel recognizes that the authority of arbitrators is derived by clear language of the CBA and that language cannot be added to, amended or deleted (Arbitrator Murphy, *Town of Coventry, No. 2021-A-0103 (2021)*). The Panel finds the CBA language is clear and unambiguous and requires strict adherence to the fourteen (14) calendar day filing requirement. The Union failed to timely file the arbitration with the SBMA and this grievance was untimely. (The Panel does not opine on the Norwalk argument that the Union failed to timely file the grievance within fourteen (14) calendar days of its occurrence or knowledge, since the aforementioned decision is dispositive of the submission, as the grievance is not arbitrable). The Union filing with the SBMA was time stamped on October 3, 2022. (Norwalk Ex. 3), more than the required fourteen (14) day time limitation. The Panel is mindful of the well-established principle set forth in *United Steel Workers of America v. Warrior Land Gulf Navigation Company, 363 U.S. 574 (1960)* that arbitration is the favored way to resolve disputes. The Panel, however, cannot ignore the equally well-established principle that arbitrators need to follow the clear time limits for filing and processing grievances. The

parties have negotiated the time limits for the filing of grievances and the Panel must recognize those limits.

After a review of the documentary and testimonial evidence, and by a preponderance of the evidence, this grievance is not arbitrable.

DECISION

This grievance is non-arbitrable.

/s/ Gerald T. Weiner

Gerald T. Weiner
Chair and Public Member

/s/ Betty Kuehnel

Betty Kuehnel
Labor Member

/s/ Michael C. Culhane, Sr.

Michael C. Culhane, Sr.
Management Member