HHC v. CIR, 43 OCB 13 (BCB 1989) [Decision No. B-13-89 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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IN THE MATTER OF THE ARBITRATION

-between-

Decision No. B-13-89
Docket No. BCB-1131-89
(A-2945-88)

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

Petitioner,

-and-

THE COMMITTEE OF INTERNS AND RESIDENTS

Respondent.
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DECISION AND ORDER

On January 17, 1989, the New York City Health and Hospitals Corporation ("HHC") filed a petition challenging the arbitrability of a request for arbitration filed by the Committee of Interns and Residents (the "CIR") on November 15, 1988. The CIR filed its answer on February 16, 1989, after receiving two extensions of time. The HHC did not submit a reply.

BACKGROUND

The grievant, Douglas B. Karel, received a letter dated November 13, 1987 from Dr. Michael Daras, chief of Neurology at the Metropolitan Hospital Center ("the Notification"), informing him of the hospital's intention not to renew his employment contract at the close of his appointment year. Dr. Karel's appointment year was to expire on July 1, 1988.

Thereafter, CIR filed a Step I grievance alleging that the HHC had violated Article VI, §3[1] of the collective bargaining agreement ("the Agreement") by notifying the grievant of the non-renewal of his employment contract in an untimely manner. It contended that the grievant had not received the Notification by November 15, 1987, as required by the cited provision of the Agreement. On or about July 27, 1988, the CIR filed a grievance at Step II of the grievance procedure, which in addition to the original grievance, alleged that the HHC had not responded to its Step I grievance.

On or about September 1, 1988, the HHC denied the Step I grievance. The HHC also denied the Step II grievance on or about October 11, 1988, claiming that the Notification constituted timely notice to the grievant of his non-renewal.

No satisfactory resolution of this dispute having been reached, the CIR filed a request for arbitration alleging a violation of Article VI, §3 of the Agreement. As a remedy, it seeks renewal of the grievant's services for the 1988-89 year as a PGY-3 in the Metropolitan Hospital's neurology residence training program, and/or such other relief as is equitable.

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[1]Article VI, §3 of the Agreement provides in relevant part as follows:

> HSOs [House Staff Officers] who have July 1st appointments will be notified in writing by November 15th . . ., if their services are not to be renewed for the next year of a given residency program . . .

Positions of the Parties

City's Position

The HHC argues that the grievant was notified of the non-renewal of his contract in accordance with the specifications set forth in Article VI, §3 of the Agreement. It contends that Black's Law Dictionary defines "notice" as being complete when "[a] person . . . tak(es] such steps as may be reasonably required to inform the other in the ordinary course whether or not such other actually comes to know of it". The HHC also notes that both CPIR §2103 (b)(2)[2] and Federal Rule of Civil Procedure 5(b)[3] have adopted the rule that service of process is complete at the time of the mailing of papers, as opposed to the time of their receipt. Therefore, it argues by analogy, that the intent of Article VI, §3 of the Agreement is to mandate that the mailing of non-renewal notices to House Staff Officers ("HSOs") be completed on or before November 15, and that there is no contractual requirement that such notification be received by HSOs on or before November 15. The HHC contends that in the

[2]CPIR §2103(b)(2) provides in relevant part that:

> Service by mail shall be complete upon deposit of the paper enclosed in a post paid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States post office department within the state; . . . .

[3]Rule 5(b) of the Federal Rules of Civil Procedure provides in relevant part as follows:

> Service by mail is complete upon mailing.

instant case, it complied with this provision when the Notification, dated November 13, 1987, was mailed to the grievant.

Additionally, the HHC notes that November 15, 1987 fell on a Sunday and that the grievant does not claim that his receipt of the Notification was delayed to such an extent that he detrimentally relied upon the premise that his employment contract would be renewed. Therefore, it contends that any delay Dr. Karel experienced in receiving notice of his non-renewal is de minimis, and does not rise to the level of being a grievable violation of the Agreement.

Union's Position

The CIR asserts that the instant dispute involves a determination of whether Article VI, §3 of the Agreement mandates that notification of the non-renewal of an HSO's services be received by November 15, or whether it merely requires that such notification be mailed by that date. It argues that this issue is one of contract interpretation, which should be resolved by an arbitrator.

Contrary to the HHC's position, the CIR maintains that pursuant to Article VI, §3 of the Agreement, an HSO must receive notice of the non-renewal of his employment contract on or before November 15. It contends that in the instant case, the Notification could not have constituted timely notice within the intent of this provision, because it was post marked on November 16, 1987.

Moreover, the CIR argues that the date papers are received is not irrelevant under New York State law. It notes that service and physical possession of a summons and complaint is required in order to comply with any statutory limitations period, and that the courts view a delay in meeting a statute of limitations as grounds for dismissal. Therefore, it maintains that it is for an arbitrator to determine whether the delay in the grievant's receipt of the Notification was in fact de minimis and warrants denial of the grievance.

Discussion

This Board has long held that in considering challenges to arbitrability, the burden of proof is on the proponent of arbitration to demonstrate that a prima facie relationship exists between the act complained of, and the source of the right being invoked.[4] Moreover, when a request for arbitration is contested, it must be clear that the parties agreed to arbitrate the type of dispute set forth in the challenged request for arbitration.[5]

In the instant case, the CIR has complied with the requisites of this threshold arbitrability test. We note initially that the parties do not dispute that Article XIV, §1 of their Agreement provides for the arbitration of grievances which involve the application or interpretation of its terms, and that the instant challenge to arbitrability involves such a grievance.

[4]Decision Nos. B-53-88, B-44-88, B-40-88, B-33-88.

[5]Decision Nos. B-52-88, B-35-88, B-13-87, B-31-85.

Moreover, we find that the central issue in this case involves a matter of contractual interpretation which is a proper subject for arbitration.

The HHC contends that in the instant case, the Metropolitan Hospital complied with the notification requirements set forth in Article VI, §3 of the Agreement. It argues that this provision mandates only that management "take . . . such steps as may be reasonably required to inform" an individual of his non-renewed status on or before November 15 of his appointment year, and that the mailing of notice constitutes compliance with this requirement. Therefore, the HHC asserts that the mailing of the Notification, dated November 13, 1987, constituted timely notice to the grievant of the non-renewal of his employment contract, and that the CIR has failed to demonstrate an arguable violation of the Agreement.

The CIR disputes the HHC's interpretation of the phrase "notified in writing by November 15th" as specified in Article VI, §3 of the Agreement. It maintains that to be timely within the meaning of that provision, notification must be received on or before November 15, and contends that since the envelope containing the Notification was post marked on November 16, 1987, the grievant was not timely notified of the non-renewal of his services. Consequently, it argues that in light of the instant dispute involving the meaning of the notification requirement in Article VI, §3, an arbitrator must resolve the issue of whether or not the grievant was timely notified of the non-renewal of his services.

We agree with the CIR's contention that the instant dispute should be resolved through arbitration. A determination of whether the grievant was timely notified of his non-renewed status requires an interpretation of Article VI, §3 of the parties' Agreement. We have long held that we will not examine matters of contractual interpretation and that they are appropriately within an arbitrator's domain.[6]

We also note that the HHC's argument which applies the "mailbox rule" that is adopted by the service of process requirements of CPLR §2103 and Rule 5(b) of the Federal Rules of Civil Procedure, to the notification requirement of Article VI, §3 of the Agreement involves the merits of the central issue in this case. Therefore, it should be examined in the arbitral forum.

Finally, we reject the HHC's contention that even if the grievant was not notified of his non-renewal in a timely manner, any delay in doing so was de minimis, and does not rise to the level of being a grievable contractual violation. Article VI, §3 specifies that HSO's must be notified of the non-renewal of their employment contracts by a specific date. The question of whether a violation of the contractual mandate is merely de minimis is determinable by the arbitrator and not this Board.

Accordingly, we dismiss the HHC's petition challenging arbitrability. We emphasize that in doing so we have made no finding on the merits of this dispute. Our decision does not go

[6]Decision Nos. B-36-88, B-30-86, B-27-86, B-31-85.

beyond the determination that the Union has met our threshold test of arbitrability by demonstrating a nexus between the grievance and Article VI, 53 of the Agreement.

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the City's petition challenging arbitrability be, and the same hereby is denied; and it is further

ORDERED, that the Union's request for arbitration be, and the same is hereby granted.

Dated: New York, N.Y.
March 30, 1989

MALCOLM D. MACDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER

EDWARD SILVER
MEMBER

DEAN L. SILVERBERG
MEMBER

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MEMBER

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