

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 86-49

BOBBY GOOSLIN, ET AL., PLAINTIFF,

VS: REPORT AND RECOMMENDATION

KENTUCKY CARBON CORPORATION, DEFENDANT.

INTRODUCTION

As noted in the previous Report and Recommendation, filed August 8, 1986, the above-styled action was brought under the Labor Management Relations Act by a former employee of the defendant company and his union. They allege a violation of the National Bituminous Wage Agreement of 1984, and desire to set aside an arbitrator's award issued November 8, 1985 which upheld the employee's discharge from employment. Currently pending is the defendant's motion to summary judgment.

FACTS

The recitation of facts from the prior Report and Recommendation is incorporated by reference, although a few summarizing remarks are in order.

In essence, the record demonstrates that the arbitrator based his decision to deny the grievance upon the fact that it had not been timely filed, according to the ten day limit set out in Article XXIII(d) of the collective bargaining agreement. The arbitrator further rejected the union's claim that the period had been tolled by virtue of the grievant's lack of mental competence; in doing so, he noted ^{that} the delay of essentially two months had not been adequately explained away and recited factors such as the complete lack of any psychiatric/psychological evidence for any period of time and the fact that the

grievant had refused to allow the only doctor who had submitted reports to be contacted about a vital conflict of information.

The defendant company has filed its motion for summary judgment, under which, according to the order of Judge William O. Bertelsman, the only issue for determination is whether the arbitrator's award drew its essence from the contract. This principle was lately detailed as follows:

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from any sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

Cement Divisions, National Gypsum Company (Huron) v. United Steelworkers, 793 F.2d 759 (6th Cir. 1986).

It is noted that the plaintiff has not responded in writing to the motion for summary judgment, except for the Objections filed on August 18, 1986, only eight lines of which were in any way related to the issue for decision. Plaintiff's counsel, however, did appear before the undersigned at a hearing held on August 8, 1986.

DISCUSSION

The undersigned is persuaded by the arguments and evidence of the arbitration decision, the extensive briefs of the company, and the affidavits filed by the company. It appears in the present instance that the arbitration award does draw its essence from the collective bargaining agreement. The arbitrator found that the plaintiff had not filed his grievance until more than two months after the intent-to-discharge letter was mailed to him and about seven weeks after the

discharge letter was sent. However, the arbitrator also fully investigated evidence that actions by the company may have constituted a waiver of the limitations period, or whether there were any equitable considerations justifying tolling the period.

It is, therefore, RECOMMENDED that the company's motion for summary judgment be GRANTED. Objections to this Report and Recommendation must be filed with ten days of the date of same or further appeal is waived. Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984); aff'd _____ U.S. _____, 38 Cr. L. 3031 (December 4, 1985); Fed. R. Civ. P. 72(b).

This the _____ day of November, 1986.

JOSEPH M. HOOD,
UNITED STATES MAGISTRATE