

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMIL AHMAD : CIVIL ACTION  
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 v. : No. 06-5064  
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 UNITED PARCEL SERVICE, et al. :  
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**MEMORANDUM**

**Juan R. Sánchez, J.**

**May 4, 2007**

Defendants United Parcel Service, Inc. and Teamster Local #773 ask this court to dismiss Jamil Ahmad's "Hybrid Action" pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Ahmad argues Defendants denied him the right to arbitrate his grievance in violation of the Collective Bargaining Agreement. Defendants contend the Collective Bargaining Agreement did not entitle Ahmad to arbitration and the Teamster Local did not breach its duty of fair representation. I agree with Defendants and grant their Motions for Summary Judgment.

**FACTS**

Plaintiff Jamil Ahmad was employed at United Parcel Service, Inc. from 1999 until his discharge on November 21, 2005. Throughout this period, Ahmad's employment was governed by a Collective Bargaining Agreement (CBA) between UPS and the Teamster Local Union #773. In 1999, Ahmad was hired as a helper and part-time pre-loader. In 2003, Ahmad was assigned a route as a full-time driver, a position he held until he was dismissed.

On September 18, 2005, Ahmad was arrested for driving under the influence of alcohol. Upon reporting this violation to UPS, Ahmad was evaluated by substance abuse professionals to

determine what rehabilitation treatment was necessary before returning to work. Ahmad then signed a Rehabilitation Agreement requiring him to stay drug and alcohol free and to successfully complete the alcohol rehabilitation program. The Agreement stated Ahmad could be fired for failing to complete rehabilitation, submitting any positive test for alcohol, or failing to comply with the substance abuse professionals' recommendations or aftercare treatment program. Ahmad admits he received verbal warnings of expected compliance with six unannounced alcohol tests in the first year he returned to work and three unannounced tests in the second year. He also knew failure to submit clean samples could result in his dismissal.

The morning of November 21, 2005, Ahmad called his supervisor, Earl Yeager, asking if he could stay home from work because he was not feeling well. Yeager explained there were no other drivers to cover Ahmad's route and asked him to come in despite his illness. Ahmad also told Yeager he had been taking Vick's NyQuil. Between 2:30 a.m. and 8:30 a.m. on the morning of November 21, 2005, Ahmad drank an entire six-ounce bottle of NyQuil.<sup>1</sup> That morning, Ahmad received a phone call from Business Manager Wayne Foulke asking Ahmad to report for an alcohol test before his shift.

Ahmad reported to St. Luke's Medical Center between 8:45 a.m. and 9:00 a.m. and was subjected to two Breathalyzer tests approximately 15 minutes apart. The first test showed Ahmad's alcohol content to be 0.034 and the second test showed his alcohol content to be 0.027. After both tests were positive for alcohol, Ahmad left the Hospital and reported to work. Shortly thereafter, Ahmad was called into a meeting with UPS officials and a Union representative and terminated by UPS.

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<sup>1</sup> Ahmad admitted he knew NyQuil contains alcohol and later testified he drank three to four beers late on the night of November 20, 2005.

Immediately after the meeting, Ahmad called his Union Business Agent, Darrin Fry, informing Fry he had been fired. That same day, Fry filed a grievance protesting Ahmad's discharge under the CBA.<sup>2</sup> At the grievance hearing pursuant to Article 51 of the CBA, Ahmad asserted the positive result of the Breathalyzer test was caused by NyQuil, although he failed to mention he drank beer the night before in violation of the Rehabilitation Agreement. Ahmad's dismissal was upheld and Fry announced he would appeal.

Under the CBA, "[i]f the parties fail to reach a decision or agree upon a settlement in the matter [at the grievance hearing], it shall be submitted in writing within ten (10) working days, unless otherwise mutually agreed, to the [Central Pennsylvania Area Parcel Grievance Committee]." Due to a clerical error, the Union failed to timely file Ahmad's appeal. Fry later filed a docketing form for a hearing by the grievance panel scheduled for February 2, 2006. At the hearing, UPS raised the untimely docketing of Ahmad's case. The Panel adjourned for an "Executive Session" to decide the procedural objection. While Fry was in the hallway asking UPS to withdraw its objection, the chair of the grievance panel approached Fry and asked him whether Ahmad wished to resign. After consulting with Fry, Ahmad stated on the record he wished to resign and withdrew

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<sup>2</sup> Article 51 describes the grievance procedure under the CBA:

- Step One: Employee is to report to his or her shop steward who will meet with the employee's supervisor to determine whether the action was proper under the CBA;
- Step Two: If the parties fail to agree, the matter is reported to the Union which will make a written submission and attempt to resolve the issue;
- Step Three: If the parties fail to reach an agreement, the Union shall submit the matter in writing within ten working days to the Central Pennsylvania Area Parcel Grievance Committee (the grievance panel is comprised of half Union representatives and half UPS representatives); and
- Step Four: ***If*** the dispute cannot be settled by a majority of the CPAGC Panel, the grievance ***may*** be submitted to the American Arbitration Association by either party.

his grievance.

## **DISCUSSION**

Summary judgment is appropriate when the admissible evidence fails to demonstrate a dispute of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c) (2005); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party's favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986) (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)). “[T]here can be ‘no genuine issue as to any material fact’ . . . [where the non-moving party’s] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

The party moving for summary judgment bears the initial burden of showing the basis for its motion. See *Shields v. Zuccarini*, 254 F.3d 476, 481 (3d. Cir. 2001). If the movant meets that burden, the onus then “shifts to the non-moving party to set forth specific facts showing the existence of [a genuine issue of material fact] for trial.” *Id.* Viewing the record in the light most favorable to Ahmad and drawing all inferences therefrom in Ahmad’s favor, I conclude no reasonable jury could find in favor of Ahmad.

A breach of contract and fair representation suit brought pursuant to the Labor Management Relations Act of 1947 (LMRA)<sup>3</sup> § 301 is hybrid in nature, in that a plaintiff must establish two violations. First, the plaintiff must show the company breached the CBA and second, that the union breached its duty of fair representation. *DelCostello v. Int’l. Brotherhood of Teamsters et al.*, 462 U.S. 151, 165 (1983) (holding a LMRA § 301 claim is the consolidation of two separate but

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<sup>3</sup> 29 U.S.C.A. § 185 (2007).

inextricably interdependent actions; the first action is against the employer for dismissing him in violation of the CBA and the second action is against the union for breach of its duty of fair representation.). “To prevail against either the company or the Union, [the plaintiff] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union.” *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-71 (1976). Here, Ahmad fails to show UPS violated the CBA or to show the Union breached its duty of fair representation.

On November 21, 2005, Ahmad failed two Breathalyzer tests, violating his Rehabilitation Agreement. The Rehabilitation Agreement clearly stated Ahmad could be fired for any positive test of alcohol use.<sup>4</sup> Under the CBA, the appropriate forum for Ahmad’s appeal was the grievance procedure enumerated in the CBA. *See Continental Airlines, Inc.*, 391 F.3d 613, 618-620 (5th Cir. 2004) (entering summary judgment for employer who discharged employee who violated last chance agreement by testing positive for alcohol due to ingesting cough medicine).

Ahmad argues UPS violated the CBA agreement because it did not allow him an opportunity to air his grievance before an arbitrator. This argument is baseless. The CBA clearly lays out a step-by-step process for the resolution of grievances: first, an employee is to report to his or her shop steward who will meet with the employee’s supervisor to determine whether the action was proper under the CBA; second, if the parties fail to agree, the matter is reported to the Union which will make a written submission and attempt to resolve the issue; third, if the parties fail to reach an agreement, the Union may submit the matter in writing within ten working days to the CPAPGC; and finally, if the dispute cannot be settled by a majority of the grievance panel, the grievance may

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<sup>4</sup> During Oral Argument, Ahmad suggested his dismissal was in violation of the CBA if he could prove his positive Breathalyzer test was due to NyQuil. This argument ignores the language of the Rehabilitation Agreement which states UPS *may* fire Ahmad for *any positive test*

be submitted to the American Arbitration Association by either party.

I find UPS and the Union complied with the CBA's grievance procedure. Step one of the process was completed on November 21, 2005 when Ahmad met with Union member Chuck Miller, UPS Business Manager Wayne Foulke, and Occupational Health Supervisor Troy Burd. After Ahmad was terminated, Fry and Union Shop Steward Dennis Hower filed a grievance on Ahmad's behalf claiming he was "Un-justly Discharged." Ahmad Dep. at 207:21 -208:21. On December 2, 2005, a "Step Two" grievance hearing took place upholding Ahmad's discharge. At this point, the Union failed to submit an appeal to the grievance panel within the ten day window. Although Fry followed up with an untimely submission, the panel could not consider Ahmad's grievance unless UPS agreed to waive the timing requirement.<sup>5</sup> When UPS did not agree to waive this requirement, Ahmad resigned, effectively ending the grievance process under the CBA.

Ahmad's argument UPS violated the CBA is misplaced. Under the CBA, Ahmad was only entitled to arbitration if the grievance panel deadlocked and if he submitted his grievance to the American Arbitration Association within five days of the panel hearing. The Supreme Court has stated, "we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable collective bargaining agreement." *Vaca v. Sipes*, 386 U.S. 171, 191 (1967). Without more, I must find UPS did not violate the CBA.

Ahmad next argues the Union failed its duty of fair representation. "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca*, 386 U.S. at 190. Allegations of

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<sup>5</sup> According to the CBA, UPS was not required to waive this requirement. Instead, UPS made a settlement offer to allow Ahmad to resign in exchange for Fry dropping a separate grievance. While Ahmad suggests this settlement offer was inappropriate, I find this offer did not violate the CBA.

negligent conduct by the union are insufficient to state a claim for breach of duty. *See Riley v. Letter Carriers Local No. 380*, 668 F.2d 224, 229 (3d Cir. 1981). Instead, the plaintiff is responsible for alleging the union acted arbitrarily or with a bad faith motive. *Id.* at 228; *Medlin v. Boeing Vertol Co.*, 620 F.2d 957, 961 (3d Cir. 1980). A union's behavior is arbitrary when, in light of all the circumstances, it is "so far outside a 'wide range of reasonableness' as to be irrational." *Air Line Pilots Assn., Int'l*, 111 S.Ct. at 1130 (quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953)).

In the context of a grievance proceeding, the rule is "that a union may not arbitrarily ignore a meritorious grievance or process it in [a] perfunctory fashion . . . ." *Vaca*, 386 U.S. at 191. For the union's conduct to be considered perfunctory, "it is not enough for a [member] to show that the union committed a mistake in the prosecution of a grievance, nor is it sufficient to show negligence or poor judgment on the union's part." *Bellesfield v. RCA Communications, Inc.*, 675 F. Supp. 952, 955-56 (D.N.J. 1987); *see also Riley v. Letter Carriers Local*, 668 F.2d 224, 228 (3d Cir.1981). In other words, the member must present credible evidence to prove the union's conduct was in fact arbitrary, discriminatory, or undertaken in bad faith. *Riley*, 668 F.2d at 228.

Here, Ahmad has presented no evidence the union's conduct was arbitrary, discriminatory, or undertaken in bad faith. During his deposition, Ahmad said Fry treated him fairly, had his best interest at heart, and did everything he could beside filing the paperwork for the grievance panel on-time. All the evidence suggests Fry did everything he could for Ahmad, despite advice the grievance was meritless. In fact the Union's only misstep was a clerical error resulting in the late filing of the appeal to the grievance panel.<sup>6</sup> Because "[t]he conduct of a union official in handling grievances is

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<sup>6</sup> A union's decision whether to pursue arbitration is a discretionary determination which does not constitute any breach of fair representation. *Vaca*, 386 U.S. at 191.

not deemed arbitrary or perfunctory when it is merely inept or negligent,” *Vavro v. Gemini Food Mkts., Inc.*, 39 F. Supp. 2d 553, 559 (E.D. Pa. 1999), I find the Union did not fail its duty of fair representation. *See, e.g. Riley*, 668 F.2d at 228 (holding a union representative’s failure to timely file a grievance did not rise to the level of bad faith).

An appropriate order follows.

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**ORDER**

AND NOW, this 4th day of May, 2007, Defendants United Parcel Service, Inc.'s (Document 19) and Teamsters Local 773's (Document 18) Motions for Summary Judgment are GRANTED. Judgment is entered in favor of Defendants United Parcel Service, Inc. and Teamsters Local 773 and against Plaintiff Jamil Ahmad. The Clerk is directed to close the above-captioned case for statistical purposes.