UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: August 10, 2004

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG
Administrative Law Judge

SUBJECT: DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
ATLANTA, GEORGIA

Respondent

and Case No. AT-CA-04-0100

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. §2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the stipulation, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION ATLANTA, GEORGIA Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION Charging Party	Case No. AT-CA-04-0100

NOTICE OF TRANSMITTAL OF DECISION

Pursuant to §2423.26 of the Authority's Rules and Regulations, the above-entitled case was stipulated to the undersigned Administrative Law Judge. The undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. §2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **SEPTEMBER 13, 2004**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

_____

PAUL B. LANG
Administrative Law Judge

Dated: August 10, 2004
Washington, DC

OALJ 04-38

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION ATLANTA, GEORGIA Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION Charging Party	Case No. AT-CA-04-0100

Bradford Stuhler
For the General Counsel

Kishawn N. Wise
For the Respondent

Tracy E. Levine
For the Charging Party

Before: PAUL B. LANG
Administrative Law Judge

DECISION

Statement of the Case

This case arises out of an unfair labor practice charge which was filed on November 21, 2003, by the National Air Traffic Controllers Association (Union) against the Department of Transportation, Federal Aviation Administration, Atlanta, Georgia (Respondent or Agency). On February 9, 2004, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (Authority) issued a Complaint and Notice of Hearing in which it was alleged that the Respondent committed an unfair labor practice in violation of §7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (Statute) by repudiating a settlement agreement with the Union. The repudiation allegedly occurred when the Respondent failed to pay the agreed upon amount of monetary compensation to

Charles Rathburn, a member of the bargaining unit represented by the Union.

On May 4, 2004, the parties submitted a joint motion for consideration based on stipulations of fact pursuant to §2423.26 of the Rules and Regulations of the Authority; the parties also submitted seven joint exhibits with the motion.

The Joint Motion

Upon consideration of the joint motion, including the exhibits, I have determined that the stipulation adequately addresses the appropriate material facts. I will, therefore, grant the motion and proceed to decide the case on the merits. This Decision is based upon consideration of the stipulations of fact, the joint exhibits and the briefs which were subsequently submitted by each of the parties.

Positions of the Parties

The General Counsel maintains that the Respondent repudiated a settlement agreement with the Union dated August 6, 2003, whereby the Respondent was obligated to pay $3,000.00 to Rathburn within 60 days of the date of the signing of the agreement. In return for such payment, the Union would consider all matters regarding grievance number (NC) SO-00-1797-MIA-03 to be settled and the matter closed. The Respondent failed to make the agreed-upon payment to Rathburn and has persisted in its refusal to do so.

The General Counsel further contends that the settlement agreement is legal and that the monetary payment to Rathburn would not be in violation of the Back Pay Act, 5 U.S.C. §5596 (Act).

The Respondent acknowledges that its failure to pay the $3,000.00 to Rathburn is a clear and patent breach of the settlement agreement and that the breach goes to the heart of the agreement. It also acknowledges that its settlement of the grievance is an implicit admission that an unjustified or unwarranted personnel action occurred in violation of the collective bargaining agreement. However, the Respondent contends that its refusal to make the payment to Rathburn was not an unlawful repudiation of the agreement because the payment would be a violation of the Act.[1] The Respondent argues that, in view of Rathburn's election not to repurchase his sick leave, he did not suffer a withdrawal

[1] According to the Respondent, William Alexander, who executed the settlement agreement on behalf of the Respondent, was not familiar with the provisions of the Act.

or reduction of his pay, allowances or differentials because of the unjustified or unwarranted personnel action.

Findings of Fact

Findngs of Fact That are Admitted or Stipulated

In its Answer to the Complaint the Respondent has admitted that it is an agency within the meaning of §7103(a)(3) of the Statute. The Respondent has also admitted that the Union is a labor organization as defined in §7103(a)(4) of the Statute and is the exclusive representative of a unit of the Respondent's employees appropriate for collective bargaining. In addition, I adopt the parties' stipulations of material fact:

1. Charles Rathburn (Rathburn) submitted a Claim for Compensation (CA-7 form) signed on July 11, 2000, to repurchase leave in association with his worker's compensation case (Ex. 4)[2].

2. On September 28, 2000, the Union filed a grievance claiming that the Agency failed to comply with federal regulations regarding the timely processing of the Claim for Compensation (CA-7 form) referenced in paragraph 1 (Ex. 5).[3]

3. On November 4, 2000, Rathburn elected not to repurchase leave at that time (Ex. 6).

4. On August 6, 2003, the Federal Aviation Administration (FAA), thru [*sic*] William Alexander, entered into a settlement agreement in order to resolve the grievance referenced in paragraph 2; grievance number (NC) SO-00-1797-MIA-03 (Ex. 7).

5. William Alexander, as Air Traffic Management Representative, had the authority to enter into settlement

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[2] Each of the exhibits cited in this Decision refer to the attachments to the stipulation of facts.

[3] Although the grievance refers to Article 9, Section 11 of the collective bargaining agreement, the agreement is not in evidence. The Respondent has submitted two exhibits along with its brief: one is the joint motion of the parties and the other is the collective bargaining agreement. The first exhibit is already part of the record. I will not consider the second exhibit because the stipulation by the parties does not provide for the submission of additional evidence.

agreements on behalf of the FAA, Southern Region (Respondent)[4].

6. The agreement entered into on August 6, 2003, provided for the payment of $3,000.00 to the grievant, Rathburn, on or before October 6, 2003.

7. To date, Rathburn has not been paid anything.

Findings of Fact Based on the Joint Exhibits

The grievance at issue (Ex. 5) states, in pertinent part, that:

> . . . the agency failed to comply with federal regulations by not forwarding the appropriately completed claim forms (Form CA-7) to the Department of Labor in a timely manner. This intentional delay negatively affects ATCS Rathburn's claim, requires him to use accrued leave, and delays compensation he is entitled to.
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> * * * *
>
> . . . . ATCS Rathburn should be placed on administrative leave for a time period commensurate with the administrative delay caused by the agency failure to comply with federal regulations.

On October 30, 2000, Janice Harper, the Manager of the Respondent's Payroll Branch, prepared a Leave Buy Back (LBB) worksheet/Certification and Election form for Rathburn (Ex. 6) on which she calculated that the total amount necessary for him to repurchase leave was $7,500.76. Rathburn's Federal Employees' Compensation Act (FECA)[5] entitlement was estimated as $6,055.34, thus requiring

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[4] In spite of this designation of the Respondent in the stipulation, I will use the term to refer to the party identified in the Complaint. As a practical matter, there may be little if any difference.

[5] The FECA is codified at 5 U.S.C. §8101, *et seq.*

Rathburn himself to pay the difference of $1,445.42.[6] There is a note in the form in which the employee is cautioned not to submit his portion of the payment until he has been notified that payment has been received from the Department of Labor. On the bottom portion of the form there is a handwritten check alongside the statement, "I hereby elect *not* to repurchase the leave used at this time." A signature which is apparently Rathburn's appears in the blank labeled "Signature of the Claimant."

The settlement agreement (Ex. 7) merely states that the Respondent is to "compensate" Rathburn in the amount of $3,000.00 in settlement of the grievance; there is no mention either of the purpose of the payment or of the method by which it was calculated. The agreement also states that it "does not constitute an admission by any of the Parties of any violation of any Federal law, rule or regulation."

Discussion and Analysis

The Legal Framework

Although not every breach of an agreement between an agency and a union is an unfair labor practice, the Authority has long held that the repudiation of such an agreement is a violation of the Statute, *U.S. Department of Labor, Occupational Safety and Health Administration, Chicago, Illinois*, 19 FLRA 454, 467 (1985). A repudiation occurs when the breach is clear and patent and when the nature of the breach goes to the heart of the agreement, *Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 40 FLRA 1211, 1218 (1991).

The Respondent has admitted that its failure to pay Rathburn the $3,000.00 is a clear and patent breach of the settlement agreement and that the breach goes to the heart of the agreement (Resp. brief, p.8). Nevertheless, the Respondent maintains that it has not committed an unfair labor practice because the payment would be in violation of the Act. Each of the parties has correctly cited *General Services Administration, Washington, DC*, 50 FLRA 136, 139

6 The interpretive regulations of the Department of Labor, 20 CFR §10.425, provide that:

> The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing agency. Forms CA-7a and CA-7b are used for this purpose.

(1995) in support of the proposition that a violation of §7116(a)(1) and (5) of the Statute does not arise out of the breach of an agreement which calls for an act which is contrary to law. Accordingly, the sole issue to be addressed is the legality of the payment to Rathburn.

The Payment to Rathburn Would Not Violate the Back Pay Act

§5596(b)(1) of the Act states, in pertinent part:

> An employee of an agency, who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee-
>
> > (A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect-
> >
> > > (i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred . . . .

The Respondent does not dispute the proposition that, in entering into the settlement agreement, it acknowledged that an unwarranted personnel action occurred within the meaning of the Act (Resp. brief, p.9). However, the Respondent maintains that, because Rathburn declined to repurchase his leave, there can be no causal connection between the unwarranted personnel action and his claim for the contractual payment.

The Respondent's position is inconsistent with the undisputed evidence. In the grievance filed on Rathburn's behalf (Ex. 5) the Union alleged that the delay in processing his workers' compensation claim "requires him to use accrued leave, and delays compensation he is entitled to". The Leave Buy Back Worksheet (Ex. 6), in which Rathburn declined to repurchase his leave, establishes a buy back price of $7,500.76 which is the monetary value of that

leave. In order for Rathburn to have repurchased the leave he would have had to forego the receipt of FECA benefits in the amount of $6055.34 and to pay an additional $1,445.42. Stated otherwise, the Respondent's alleged delay in processing Rathburn's workers' compensation claim caused him to "lose" accrued leave (an "allowance" within the meaning of the Act)[7] which had a value of $7,500.76. Therefore, there is a clear causal connection between the Respondent's unwarranted personnel action and Rathburn's monetary claim.

The Authority has held that, in ascertaining the meaning of contract language, Administrative Law Judges are to follow the standards and principles applied by arbitrators and by federal courts, *Department of Veterans Affairs, Ralph H. Johnson Medical Center, Charleston, South Carolina*, 57 FLRA 495, 498 (2001). Among those standards and principles is the parol evidence rule by which extrinsic evidence is used to determine the meaning of ambiguous contract language, *Department of Defense, Department of the Navy, Consolidated Civilian Personnel Office*, 1 FLRA 717, 727 (1979). The settlement agreement does not state the basis for the monetary payment and is, to that extent, ambiguous. However, the agreement unambiguously states that its purpose is to settle the grievance. Since the grievance concerns Rathburn's leave, I find as a fact that the intent of the parties to the settlement agreement was to partially compensate Rathburn for the use of his leave. In agreeing to pay Rathburn $3,000.00 the Respondent was settling a claim for more than twice that amount.

In summary, the evidence shows that the intent of the agreement was to settle a grievance concerning an unwarranted personnel action. The evidence further shows that the unwarranted personnel action was causally related to a monetary claim.[8] Therefore, the agreement does not violate the act.

In *Defense Logistics Agency, Defense Distribution Region East, New Cumberland, Pennsylvania*, 50 FLRA 282, 291

[7] The language of 5 U.S.C. §5596(b)(1)(B)(i) and (ii) covers the crediting of accrued annual leave in excess of the maximum leave accumulation permitted by law. Although Rathburn used sick leave rather than annual leave (see Ex. 4), that language demonstrates that the value of leave is within the contemplation of the Act.

[8] In view of these factual findings, it is unnecessary to consider the General Counsel's contention that, by the mere fact of having executed the settlement agreement, the Respondent admitted the existence of the causal connection.

(1995) the Authority adopted the Decision of an Administrative Law Judge who observed that the no-fault settlement of monetary claims would be impossible if it were required that the settlement agreements include explicit determinations that an unjustified or unwarranted personnel action occurred such as to entitle the grievant to relief under the Act. Such a requirement would be inconsistent, not only with the concept of a no-fault settlement, but also with the policy of the Authority to encourage the amicable resolution of disputes, *American Federation of Government Employees, Local 2145 and U.S. Department of Veterans Affairs Medical Center, Richmond, Virginia*, 44 FLRA 1055, 1061 (1992).

In determining that the payment to Rathburn is not in violation of the Act, I have assigned no significance to the fact that Rathburn declined to repurchase his leave. Although Rathburn's "measure of damages" was derived from the value of the accrued leave he was required to use, he was under no obligation to use the settlement funds for any particular purpose. The causal connection between the Respondent's admittedly unwarranted personnel practice and the negotiated payment to Rathburn is in no way affected by Rathburn's election.9

It is also of no consequence whether Alexander was familiar with the provisions of the Act. The General Counsel has alleged only that the Respondent unlawfully repudiated the settlement agreement. It has not been alleged that the Respondent bargained in bad faith by negotiating an agreement that it knew or suspected was illegal.

For the reasons set forth herein I have concluded that the Respondent committed an unfair labor practice in violation of §7116(a)(1) and (5) of the Statute by repudiating the settlement agreement with the Union and by refusing to pay $3,000.00 to Rathburn as required by that agreement. Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to §2423.41 of the Rules and Regulations of the Federal Labor Relations Authority (Authority) and §7118 of the Federal Service Labor-Management Relations Statute (Statute), it is hereby ordered that the Department of

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It goes without saying that, after declining to repurchase his leave, Rathburn may not complain of the loss of leave.

Transportation, Federal Aviation Administration, Atlanta, Georgia, shall:

1. Cease and desist from:

(a) Refusing to honor and abide by the agreement with the National Air Traffic Controllers Association (Union) dated August 6, 2003, in settlement of grievance number (NC) SO-00-1797-MIA-03 and requiring the payment of $3,000.00 to Charles Rathburn.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) In accordance with the Back Pay Act, 5 U.S.C. §5596(b), and the settlement agreement with the Union, make the required payment of $3,000.00, plus interest, to Charles Rathburn.

(b) Post at its Southern Regional facilities where bargaining unit employees represented by the Union are located copies of the attached Notice on forms to be furnished by the Authority. Upon receipt of such forms, they shall be signed by the Financial Management Division Manager and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material.

(c) Pursuant to §2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director of the Atlanta Region of the Authority, in writing, within 30 days of the date of this Order, as to what steps have been taken to comply herewith.

PAUL B. LANG
Administrative Law Judge

Dated: August 10, 2004
Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF

THE FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Transportation, Federal Aviation Administration, Atlanta, Georgia violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to honor and abide by the agreement with the National Air Traffic Controllers Association (Union) dated August 6, 2003, in settlement of grievance number(NC) SO-00-1797-MIA-03 and requiring the payment of $3,000.00 to Charles Rathburn.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by the Statute.

WE WILL, in accordance with the Back Pay Act, 5 U.S.C. 5596 (b), and the settlement agreement with the Union, make the required payment of $3,000.00, plus interest, to Charles Rathburn.

_____
(Agency)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Nancy Speight, Regional Office, whose address is: Federal Labor Relations Authority, 285 Peachtree Center Avenue, Suite 701, Atlanta, Georgia 30303-1270, and whose telephone number is: 404-331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by PAUL B. LANG, Administrative Law Judge, in Case No. AT-CA-04-0100 were sent to the following parties:

_____

CERTIFIED MAIL AND RETURN RECEIPT **CERTIFIED NOS:**

Bradford A. Stuhler **7000 1670 0000 1175 4212**
Federal Labor Relations Authority
285 Peachtree Center Ave., Suite 701
Atlanta, GA 30303-1270

Kishawn N. Wise **7000 1670 0000 1175 4229**
Federal Aviation Administration
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Tracy E. Levine **7000 1670 0000 1175 4236**
National Air Traffic Controllers Association
1325 Massachusetts Avenue, NW
Washington, DC 20005

Dated: August 10, 2004
Washington, DC