

**MERIT SYSTEMS PROTECTION BOARD
Washington D.C. Field Office**

David W. Noble Jr.,
Appellant

v.

United States Postal Service,
Agency.

Docket No. DC-0752-11-0880-I-1

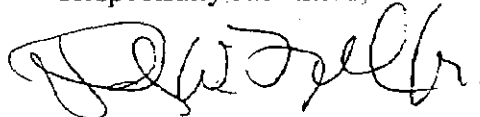
AJ: Turbitt

Date: November 3, 2011

Appellant's Unopposed Motion to Postpone Hearing.

For the reasons stated in the accompanying declaration, appellant moves for a postponement of the hearing presently scheduled for November 4, 2011. Before bringing this motion appellant contacted the agency, which indicated that it would not oppose the motion.

Respectfully submitted,



David W. Noble, Jr.

Certificate of Service

I certify that I sent on November 3, 2011 *Appellant's Unopposed Motion to Postpone Hearing, November 3, 2011 Declaration of David W. Noble, Jr. and Exhs. III and JJJ* by facsimile transmission to Stephen W. Furgeson at 301.955-0701 and to the Honorable Daniel Madden Turbitt at the MSPB Washington Regional Office at 703.756-7112.



David W. Noble, Jr.

November 3, 2011 Declaration of David W. Noble, Jr.

I, David W. Noble, Jr., make this declaration based on personal knowledge:

1. Although ordered by the judge to provide responses to my September 12, 2011 discovery requests by 5:00 p.m. on October 31, 2011, the agency did not provide its first responses until about 4:45 p.m. on November 1. The first responses consisted of about 250 pages of material, which I have not even been able to finish reading. The agency sent a second response by email beginning at about 4:15 p.m. on November 2nd. The second response was illegible, so I haven't been able to read it at all.

2. Included among the responses I received on November 1st was an incomplete answer to Interrogatory No. 2. A true and accurate copy of the agency's response to No. 2 has been submitted as Exh. YY. The agency's answers to appellant's interrogatories were not made under oath.

3. I received the judge's *Rulings on Appellant's Additional Motions* at 10:05 a.m. on November 2, 2011. A true and accurate copy of the emailed notice is attached as Exh. III. Included among the rulings was an order allowing me to take depositions sometime between 10:05 a.m. on November 2nd and the start of the hearing at 9:30 a.m. on November 4th. I was unable on less than one day's notice to arrange for the attendance of a notary public to administer oaths on November 3rd. Therefore, I have not yet been able to take the depositions of Washington, Jones, French, and Colter.

4. I received the agency response to my October 14th discovery requests on November 3rd at 11:47 a.m. A true and accurate copy of the response is attached as Exh. JJJ. The agency's contentions in response to my interrogatories that Washington, Colter, Jones, and French can't remember any of the substance of their numerous discussions about my removal are patently false. I believe that after I have had the opportunity to take depositions that I will be able to move for sanctions against the agency.

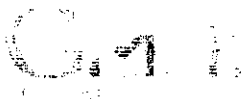
5. The agency's refusal to produce any documents based on its contention that it doesn't know of any is likewise false. At a NLRB hearing on July 22, 2011 the union, in response to a NLRB subpoena, produced numerous files of grievances with recent decisions and settlements. I was only able to glance at the files during the lunch hour, and the union's attorney took the files back right after lunch before I could copy them. I have since requested copies from the union, but the union has ignored my requests. I plan to file an unfair labor practice charge against the union next week, but I know from experience that it will take almost a year before NLRB processing of the charge will cause the union to provide me with the requested copies. As with its false responses to my interrogatories I want to move for sanctions against the agency in relation to its false response to my document requests.

6. In its 11:47 a.m. response the agency for the first time in this proceeding identified Antonio Jones as the person who made the decision to remove me. That fact supports a new affirmative defense because Jones was a second-level supervisor, and the collective bargaining agreement requires that the decision to take disciplinary action be made by a first-level supervisor. I need more time before the hearing to file a motion for leave to add another affirmative defense and to submit additional exhibits in support of that defense.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 3, 2011.



David W. Noble, Jr.



David Noble <dwnoble@gmail.com>

(no subject)

2 messages

David Noble <dwnoble@gmail.com>

Thu, Nov 3, 2011 at 12:13 PM

To: "Furgeson, Stephen W - Washington, DC" <stephen.w.furgeson@usps.gov>

I'm going to file a motion for a postponement. It will be just like the others I've filed. Please let me know whether you will oppose the motion.

Furgeson, Stephen W - Washington, DC <stephen.w.furgeson@usps.gov>

Thu, Nov 3, 2011 at 12:16 PM

To: "dwnoble@gmail.com" <dwnoble@gmail.com>

I won't oppose it for the reasons stated in our joint motion to suspend.

From: David Noble [mailto:dwnoble@gmail.com]

Sent: Thursday, November 03, 2011 11:13 AM

To: Furgeson, Stephen W - Washington, DC

Subject:

[Quoted text hidden]



David Noble <dwnoble@gmail.com>

DAVID NOBLE v. UNITED STATES POSTAL SERVICE

2 messages

washingtonregion@mspb.gov <washingtonregion@mspb.gov>

Wed, Nov 2, 2011 at 10:05 AM

This is an issuance by Merit System Protection Board in connection with following case:
Short Case Title: DAVID NOBLE v. UNITED STATES POSTAL SERVICE
Docket #: DC-0752-11-0880-I-1
Description: Rulings on Appellant's Additional Motions

Please click on the link below to View/Download the document.
<https://e-appeal.mspb.gov/Login.aspx?docs=k9AtdD4w7JloQHDHfBk0qpm+w+Zuj6FKcXnLhThdDHk=>

The MSPB document has been served on all other parties and representatives in this appeal.

Do not reply to this email account for submitting additional case data. All electronic submissions must be made via the e-Appeal web site.

washingtonregion@mspb.gov <washingtonregion@mspb.gov>

Wed, Nov 2, 2011 at 10:06 AM

This is an issuance by Merit System Protection Board in connection with following case:
Short Case Title: DAVID NOBLE v. UNITED STATES POSTAL SERVICE
Docket #: DC-0752-11-0880-I-1
Description: Rulings on Appellant's Additional Motions

Please click on the link below to View/Download the document.
<https://e-appeal.mspb.gov/Login.aspx?docs=k9AtdD4w7JloQHDHfBk0qpm+w+Zuj6FKcXnLhThdDHk=>

The MSPB document has been served on all other parties and representatives in this appeal.

Do not reply to this email account for submitting additional case data. All electronic submissions must be made via the e-Appeal web site.

Exh. III

1/3/11

Gmail - FW: Please scan in and send back to me before noon today. I been ...

David Noble <dwnoble@gmail.com>


FW: Please scan in and send back to me before noon today. I been order by the judge to email this to Noble by noon today.

1 message

Furgeson, Stephen W - Washington, DC <stephen.w.furgeson@usps.gov>
To: David Noble <dwnoble@gmail.com>

Thu, Nov 3, 2011 at 11:47 AM

Attached is the Agency's Responses to your second set of discovery.

 2011 11-03 Agy's Resp to 2nd Set of Disc.pdf
58K

Exh. JJJ

CAPITAL METRO LAW OFFICE



November 3, 2011

VIA EXPRESS MAIL and EMAIL

David Noble
1 Fenceline Drive
Gaithersburg, MD 20785

Re: David Noble v. US Postal Service
Docket Number DC-0752-0880-1-1

Dear Mr. Noble:

Enclosed is a copy of the Agency's responses to your second set of discovery and a certificate of service.

Sincerely,

A handwritten signature in cursive script that reads "Stephen W. Furgeson".

Stephen W. Furgeson
Attorney

**UNITED STATES OF AMERICA
MERIT SYSEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

DAVID W. NOBLE, JR.,
Appellant,

v.

UNITED STATES POSTAL SERVICE
Agency.

DOCKET NO. DC-0752-11-0880-I-1

ADMINISTRATIVE JUDGE:
Daniel Madden Turbitt

AGENCY'S ANSWERS TO COMPLAINANT'S INTERROGATORIES

The Agency, through counsel, responds to Complainant's Interrogatories, as follows:

RESERVATION OF RIGHTS

In responding to Complainant's Interrogatories, the Postal Service reserves the right to supplement, clarify, revise, or correct any or all of the answers herein. The answers to the Interrogatories are accurate to the best of the Postal Service's knowledge as of this date. The Postal Service expressly reserves the right to rely in this action on subsequently discovered information and amend these answers to reflect such newly discovered evidence that is responsive.

A. Request for Admissions.

1. The NALC/USPS collective bargaining agreement provides that the Agency may only issue discipline to letter carriers for "just cause."

RESPONSE: Admit

2. NALC and the Agency agree that before discipline against a letter carrier is initiated, just cause requires that the letter carrier must be given an opportunity to "tell his side of the story" as to the subject of the possible discipline.

RESPONSE: Admit

3. The Agency almost always discharges its duty to give a letter carrier the opportunity to tell his side of the story by conducting a pre-disciplinary interview.

RESPONSE: Admit

4. During the pre-disciplinary interview the Agency informs the letter carrier of the subject of the possible disciplinary action and asks for the carrier's side of the story.

RESPONSE: Admit

5. In May of 2009 Supervisor Brandon Toatley sent Appellant a written pre-disciplinary interview concerning irregular attendance and/or AWOL.

RESPONSE: Admit.

6. Appellant answered the pre-disciplinary interview letter to Toatley dated 5/14/09.

RESPONSE: Admit with explanation. The answers did not match the questions (PDI)

7. After receiving Appellant's 5/14/09 letter neither Toatley nor any other Agency representative issued discipline to Appellant concerning the absences that had been the subject of the May 2009 interview.

RESPONSE: Deny.

8. In February 2010 Supervisor Brandon Toatley sent Appellant a written pre-disciplinary interview concerning irregular attendance and/or AWOL.

RESPONSE: Deny

9. Appellant answered the pre-disciplinary interview by letter to Toatley dated February 25, 2010.

RESPONSE: Admit

10. After receiving Appellant's February 25, 2101 letter neither Toatley nor any other Agency representative issued discipline to Appellant concerning the absences that had been the subject of the February 2010 interview.

RESPONSE: Deny

11. On August 12, 2010 supervisor Brandon Toatley conducted a pre-disciplinary interview with appellant concerning irregular attendance and/or AWOL.

RESPONSE: Admit

12. After the August 12, 2010 pre-disciplinary interview neither Toatley nor any other Agency representative issued discipline to Appellant concerning the absences that had been the subject of the interview.

RESPONSE: Admit with explanation. Mr. Toatley does not recall issuing any discipline for that. PDI.

13. In or about November 2010 supervisor Bill French conducted a pre-disciplinary interview with Appellant concerning irregular attendance and/or AWOL.

RESPONSE: Admit

14. During the November 2010 pre-disciplinary interview Appellant referred French to Appellant's letter to Toatley dated 2/25/10, a copy of which Appellant had provided to French.

RESPONSE: Deny with explanation. Mr. French does not recall whether he did or not. There is nothing on file to show that he did, but believes it is certainly possible.

15. After the pre-disciplinary interview in or about November 2010 neither French nor any other Agency representative issued discipline to Appellant concerning the absences that had been the subject of the interview.

RESPONSE: Admit.

16. On February 23, 2011 Agency representative Antonio Jones conducted a pre-disciplinary interview with Appellant concerning irregular attendance and/or AWOL.

RESPONSE: Admit

17. The subject of the February 23, 2011 interview was either AWOL from November 2010 to February 23, 2011 (Agency File Tab 4e) or AWOL from January 14, 2011 to February 16, 2011 (Agency Filed Tab, 4f.)

RESPONSE: Admit with explanation. Interview was for AWOL from January 14, 2011 to February 16, 2011.

18. After the February 23, 2011 predisciplinary interview neither Antonio Jones nor any other Agency representative issued discipline to Appellant for the absences that had been the subject of the interview.

RESPONSE: Admit with explanation. Antonio Jones received no further contact from the Appellant and Mr. Jones made a request for removal.

19. On April 28, 2011 the Agency initiated disciplinary action against Appellant by sending him a Notice of Proposed Removal that charged Appellant with having been AWOL during the period February 24, 2011 through April 28, 2011 (Agency File, Tab 4b).

RESPONSE: Admit

20. Before issuing the April 28, 2011 Notice of Proposed Removal, the Agency did not conduct a predisciplinary interview with Appellant to give Appellant an opportunity to tell his side of the story as to the absences from February 24, 2011 through April 28, 2011 that were the subject of the notice.

RESPONSE: Admit with explanation. On or about February 23, 2011 the Appellant attended a pre-disciplinary interview abruptly without any plausible explanation and never returned to work or gave any notification as to the reasons for his absence.

21. Until the Notice of Proposed Removal was issued on April 28, 2011 the Agency did not in any way inform Appellant that he was considered to be AWOL during the period February 24, 2011 through April 28, 2011.

RESPONSE: Deny

22. Before the Notice of Proposed Removal was issued on April 28, 2011 the pay stubs the Agency sent Appellant showed his leave status during the period February 24, 2011 through April 28, 2011 was LWOP.

RESPONSE: Unable to determine at present. The Agency will respond as soon as we have definite determination. Of course, it is assumed that the Appellant has this information himself.

23. LWOP is an approved leave status.

RESPONSE: Admit with an explanation. It can be approved but is not always an approved leave status.

24. The Agency has on numerous occasions settled grievances by stating that it would "cease and desist" from requiring appellant to work overtime.

RESPONSE: Deny with Explanation. The Agency was not able to find if there were any settlements with this language for overtime grievances filed by the Appellant.

25. Since May 2010 appellant has on numerous occasions provided Zone 16 supervisors with statements from appellant's physician stating that he recommended that appellant not work overtime.

RESPONSE: Deny.

26. In October and November 2010, Bill French knew about the "cease and desist" settlements and about appellant's physician's recommendation that appellant not work overtime.

RESPONSE: Deny

27. In October and November 2010 Bill French on numerous occasions instructed appellant to work overtime.

RESPONSE: Admit

B. Interrogatories 13-17

INTERROGATORY NO. 13: State whether any person made any statement or statement in any form in 2011 to Bill French, Sterling Colter, or Paris Washington regarding removal of appellant from postal employment. If so, identify each person by whom the statement was made, the person to whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.

RESPONSE: There were numerous conversations on many occasions between Mr. Colter, Mr. Jones, Mr. Washington and Mr. French regarding the removal of Mr. Noble. There were also conversations with employees in the labor relations department. No one can recall the contents of these numerous conversations other than talking about when the removal would be ready from Labor, when it would be mailed and how, etc.

Mr. Colter recalls also discussing with Mr. Maddox, but does not recall making any statements.

INTERROGATORY NO. 14: State whether Bill French made any statement or statements in any form in 2011 to any person regarding removal of appellant from postal employment. If so, identify each person to whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.

RESPONSE: There were numerous conversations on many occasions between Mr. Colter, Mr. Jones and Mr. French regarding the removal of Mr. Noble. There are also may have been some conversation with Mr. Washington. There were also conversations with employees in the labor relations department. Mr. French cannot recall the contents of these numerous conversations other than talking about when the removal would be ready from labor, when it would be mailed and how, etc..

INTERROGATORY NO. 15: State whether Sterling Colter made any statement or statements in any form in 2011 to any person regarding removal of appellant from postal employment. If so, identify each person to whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.

RESPONSE: None to his knowledge or recollection other than the general references in the preceding responses to interrogatories.

INTERROGATORY NO. 16: State whether Paris Washington made any statement or statements in any form in 2011 to any person regarding removal of appellant from postal employment. If so, identify each person to whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.

RESPONSE: None to his knowledge or recollection other than the general references in the preceding responses to interrogatories.

INTERROGATORY NO. 17: List the dates in 2010 on which first class or priority mail was curtailed overnight in Zone 20016.

RESPONSE: There is no recollection of curtailing first class or priority mail overnight in Zone 20016.

C. Document production requests.

REQUEST NO. 8: All grievance settlements in which the agency agreed to "cease and desist" from requiring appellant to work overtime.

RESPONSE: Administrative Judge denied this request.

REQUET NO. 9: All settlements of appellant's grievances entered into in 2010 and 2011.

RESPONSE: To the Agency's best knowledge and belief we do not believe we are in possession of any settlements during this time frame. If the Appellant can identify any settlements that he believes exists please advise us with as much information as possible.

REQUEST NO. 10: All grievance decisions issued at any step of the grievance procedure as to appellant's grievances in 2010 and 2011.

RESPONSE: To the Agency's best knowledge and belief we do not believe we are in possession of any grievances during this time frame. If the Appellant can identify any grievances that he believes exists please advise us with as much information as possible.

REQUEST NO. 11: Any regulation or instruction that provides that a Form SF-50 should be cut for a single day of LWOP.

RESPONSE: The Agency has been unable to find such a regulation or instruction.

REUQUEST NO. 12: All Forms SF-50 cut in 2011 for a Single day of LWOP.

RESPONSE: Administrative Judge denied this request.

Respectfully submitted,



DATE: November 3, 2011

Stephen Furgeson, Esq.
United States Postal Service
Capital Metro Law Office
8200 Corporate Drive
Landover, MD 20785-2244
301-955-0703
301-955-0701 Fax

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that on this 3rd day of November, 2011, a true and correct copy of the foregoing was sent, Express Mail and emailed to the Appellant, to:

Appellant

David Noble
1 Fenceline Drive
Gaithersburg, MD 20785



Stephen Furgeson

To: MSPB Washington Regional Office
Fr: David W. Noble, Jr.
Re: Dkt. No. DC-0752-11-0880-I-1
Dt: November 3, 2011
By fax: 703-756-7112

Attached for filing are *Appellant's Unopposed Motion to Postpone Hearing, November 3, 2011 Declaration of David W. Noble, Jr., Exhs. III and JJJ* and a certificate of service.

cc: Stephen W. Furgeson