

FILED
CLERK

2012 APR -2 PM 2: 09
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK
AMERICAN POSTAL WORKERS UNION,
AFL-CIO
and
ROSEBUD E. GRANT
Plaintiffs,
v.
UNITED STATES POSTAL SERVICE
and
GARY M. LAURANT
Defendants.

COMPLAINT

CV 12 - 1586

Case No.

GARAUFIS, J.

LEVY, M.J.

NATURE OF ACTION

1. This is an action by American Postal Workers Union, AFL-CIO ("Union" or "APWU") for breach of a collective bargaining agreement against the United States Postal Service ("Postal Service"), for violations of the Debt Collection Act, and for a declaratory judgment and injunction and other relief; and by Rosebud E. Grant ("Grant") for damages against Gary Laurant ("Laurant"), an official of the United States Postal Service in his individual capacity for violations of the Due Process clause of the Fifth Amendment to the United States Constitution, namely, deprivation of property without due process of law. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). The action against Laurant is not subject to the

Westfall Act, which, under 28 U. S. C. § 2679(b)(2)(a), excludes from its provisions an action “which is brought for a violation of the Constitution of the United States.”

JURISDICTION AND VENUE

2. This Court has jurisdiction over the action and the parties under 28 U.S.C. §§ 1331, 1339, 2201 and 2202, and 39 U.S.C. § 1208(a). This Court has jurisdiction to review the Postal Service’s compliance with the Debt Collection Act under the federal common law right to judicial review of agency action.

3. Venue is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, in the Eastern District of New York.

PARTIES

4. Plaintiff APWU is a labor organization recognized by the Postal Service as the exclusive representative of postal employees in a number of job classifications, including postal clerks. Plaintiff APWU and the Postal Service have been parties to a series of nationwide collective bargaining agreements (“National Agreements”) since 1971 to the present.

5. Plaintiff Grant is an annuitant formerly employed as a postal clerk by the Postal Service in Brooklyn, New York.

6. Defendant Postal Service is an independent establishment of the executive branch of the Government of the United States established in accordance with 39 U.S.C § 201.

7. Defendant Laurant is a manager in the Disbursement Section of the Postal Service’s Accounting Service Center in Eagan, Minnesota. Laurant committed and continues to commit acts without the State of New York causing injury to the person or property of the

Plaintiff Grant within the State of New York, and regularly did and continues to do business in the State of New York and engaged and continues to engage in a persistent course of conduct in the State of New York, and derived and continues to derive substantial revenue in the State of New York for and as an agent of the Postal Service. Some of Laurant's contacts with New York are detailed below, and Laurant, either directly or through Postal Service employees at his direction and subject to his control, communicated with Grant in Brooklyn, New York, approximately thirty-one (31) times about Grant's alleged indebtedness to the Postal Service.

STATEMENT OF FACTS

8. Grant was employed by the Postal Service from in or about January 1971 until she retired on or about May 30, 2009. The annuities of retired postal employees are administered by the U.S. Office of Personnel Management (OPM).

9. Since in or about June 1995 until she retired, Grant was a postal clerk and occupied the position of Self Service Postal Center ("SSPC") Technician.

10. Among the duties of postal clerks in the SSPC Technician classification are stocking self-service vending machines with stamps and similar items and removing cash from them from time to time. Under postal regulations, SSPC Technicians are required to account for the cash and stock entrusted to them and to follow certain procedures in doing so.

11. On or about April 21, 2009, the Postal Service issued a document entitled "Discrepancy Report – Financial Responsibility" stating that Grant was responsible for a discrepancy of \$75,535.68.

12. On or about April 21, 2009, the Postal Service issued Grant a "Letter of Demand for Indebtedness for Employee Accountable Credit Shortage" ("Letter of Demand"), stating in

part the Postal Service's "intention to collect from you the sum of \$75,535.68 for a shortage found in your accountable credit." The Letter of Demand alleged that the Postal Service discovered the shortage as a result of a count performed on March 19, 2009.

13. The Letter of Demand asserted that under Article 28 of the National Agreement between the Union and the Postal Service, Grant was "financially liable for the proper care and handling of US Postal Service funds." The Letter of Demand also informed Grant: "Pursuant to the Employee and Labor Relations Manual [ELM] Section 460 and Article 28 of the National Agreement, collection will be postponed until adjudicated through the applicable appeals process." The Letter of Demand also informed Grant of her right to file a grievance under the National Agreement and stated: "If a grievance is not timely filed, advanced to the next step of the grievance procedure within the prescribed time limits, is settled between the USPS and the union under which you remain liable for all or a portion of the debt, or an arbitrator rules that the grievance is not arbitrable, a Notice of Involuntary Administrative Salary Offset will be issued."

14. The Postal Service's Employee and Labor Relations Manual ("ELM") is incorporated into the National Agreement by Article 19 of the National Agreement.

15. On or about May 7, 2009, the Brooklyn Local of the APWU ("Brooklyn Local APWU"), initiated a timely grievance at Step 1, contending that Grant was not responsible for the alleged shortage. The Brooklyn Local APWU timely appealed the grievance at each step after the Postal Service denied the grievance, and the APWU appealed the grievance to arbitration on October 26, 2009. The grievance is currently awaiting a hearing.

16. Article 28 of the National Agreement states in part:

Section 4. Collection Procedure

A. If a grievance is initiated and advanced through the grievance-arbitration procedure or a petition has been filed pursuant to the Debt Collection Act, regardless of the amount and type of debt, collection of the debt will be delayed until disposition of the grievance and/or petition has (have) been had, either through settlement or exhaustion of contractual and/or administrative remedies.

B. No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

17. The ELM states at 462.41:

Stay of Collection of Debt

Whenever a grievance concerning any letter of demand has been initiated in time, in accordance with Article 15 of the applicable collective bargaining agreement, and/or a petition for a hearing has been filed in time, in accordance with 462.22, regardless of the type and amount of the debt, the Postal Service will stay the collection of the debt until after the disposition of the grievance and/or the petition, through settlement or exhaustion of the contractual and/or administrative remedies.

18. On or about June 1, 2009, following Grant's retirement on or about May 31, 2009, OPM issued Grant a notice of her retirement benefits stating in part that her monthly retirement benefit was \$3,139.00, minus the government's claim of \$1,248.69. OPM's statement to Grant of the government's alleged claim was based on information supplied to OPM by Laurant or Postal Service employees acting at his direction and subject to his control.

19. Notwithstanding the fact that there was an active grievance over the Letter of Demand issued to Grant, Laurant or disbursement officials acting at Laurant's direction and subject to his control, caused the Postal Service to deduct \$8,427.02, which the Postal Service owed to Grant for earned unused annual leave, from Grant's final paycheck, reducing the debt

she allegedly owed to \$67,108.66.

20. On or about October 13, 2009, OPM issued Grant a "Special Notice" stating in part: "We Have Withheld Part of Your Initial Payment for the Reasons Checked Below: We have collected a debt you owe a Federal agency. We have deducted the amount claimed by the agency from your annuity. If you have a question about the debt, you should contact the agency shown on the attached copy of the debt claim. The deduction for the debt is shown on your annuity statement." The amount of the debt allegedly owed by Grant to the Postal Service was calculated based on information supplied to OPM by Laurant or Postal Service employees acting at his direction and subject to his control, and OPM began to deduct the amount claimed by the Postal Service at the request of Laurant or Postal Service employees acting at his direction and subject to his control.

21. On or about November 2, 2009, David H. Rudy, the Postal Service's Manager, Human Resources, Triboro District ("Rudy"), sent a letter to OPM's Civil Service Retirement System in Boyers, PA 16017, referencing Grant and stating: "Please suspend the collection of the postal related debt for the above referenced retiree. While employed with the Postal Service, Ms. Grant filed a grievance as per the Collective Bargaining Agreement (CBA) contesting the debt. Even though she is no longer employed, the CBA with the American Postal Workers Union allows for former employees to have their cases adjudicated by an Impartial Arbitrator." The letter continued: "Should the status of this debt change, I will notify your office." The letter invited OPM to contact him if there were any questions.

22. On or about November 2, 2009, James Musumici, President of the Brooklyn Local APWU ("Musumici"), faxed to Laurant a copy of Rudy's letter to OPM, stating [sic]: "As

per the Attached Letter From Triboro District Mgr Dave Rudy no collection on this Debt should be made. If you have any Questions call Dave Rudy or me, Jim Musumici, (718) 827-0219.”

23. Rudy’s letter was unsuccessful in stopping collections from Grant’s annuity payments because OPM’s practice and policy is to accept agencies’ due process certifications without further inquiry. Rudy also told Musumici that he had a discussion with Laurant explaining that collections from Grant’s annuity payments were improper while a grievance over the Letter of Demand was pending and that Laurant was “obstinate” in his refusal to suspend collections.

24. Notwithstanding the fact that there was an active grievance over the Letter of Demand issued to Grant and even though Rudy had explained to Laurant in writing and verbally that the offset was improper, on or about August 16, 2010, Laurant issued to Grant a “Notice of Intent to Collect Delinquent Debt” in the amount of \$67,108.66.

25. Notwithstanding the fact that there was an active grievance over the Letter of Demand issued to Grant and even though Rudy had explained to Laurant in writing and verbally that the offset was improper, on or about September 9, 2010, Laurant executed an amended “Request for Recovery of Debt Due to the United States” on OPM’s Standard Form 2805 requesting that OPM withhold 50 percent of each installment of Grant’s annuity payments to collect the debt of \$67,108.66 she allegedly owed the Postal Service. Laurant also certified the following under “Due Process”: “I hereby certify that the individual identified above owes the United States a debt in the amount certified [and] that procedures in 31 CFR 901, et seq., and 5 CFR 831.1801, et seq. or 5 CFR 845 have been followed” Laurant checked the part of the form stating: “Date of demand letter giving notice required by 31 CFR 901, et seq.” entering

“06-11-09” but leaving blank the “yes” or “no” box stating: “Letter included notice of intent to offset retirement benefits.” Laurant also checked the box stating: “Debtor did not respond, but consent to collection is assumed,” entering “09-09-2010.” On September 10, 2010, an OPM official checked a box stating: “Retirement amount is available for immediate set-off. OPM will make payment to you as soon as possible.”

26. On or about September 10, 2010, OPM issued a “Schedule for Collecting Government Debt from Your Annuity” signed by the same OPM official who signed OPM’s Standard Form 2805, stating that, beginning on the payment dated October 1, 2010, OPM would collect a debt of \$67,108.66 in 54 installments of \$1,223.44 and a final installment of \$1,042.90. The document stated: “We have received confirmation from the creditor agency that you were given ‘due process’ rights. Therefore, we will begin collection as shown above.” It directed question to Laurant’s office.

27. Shortly after she received the September 10, 2010 notice from OPM, Grant called Laurant. Laurant abruptly told Grant to contact her union and ended the call.

28. Around this time Grant sought the additional assistance of Local President Musumici. Musumici called Laurant on the telephone and informed him that there was a current active grievance pending over the Letter of Demand issued to Grant and that collection of the alleged debt violated both Article 28 of the National Agreement and the Debt Collection Act.

29. Around this time Musumici also discussed Grant’s situation with Linda Evans, the financial manager of the Postal Service’s Triboro District (“Evans”). Evans said that she would do what she could to stop collections from Grant’s annuity payments. Thereafter she informed Musumici that her efforts had failed.

30. Around this time Musumici also discussed Grant's situation with James Lloyd, a manager of the Postal Service's Triboro District Labor Relations office ("Lloyd"). Musumici told Lloyd that he had told Laurant that collection of the alleged debt from Grant's annuity payments while a grievance was pending violated both the National Agreement and the Debt Collection Act and that Laurant dismissed his statements. Lloyd told Musumici that Laurant was in error. Musumici also spoke with David H. Rudy, the Postal Service's Manager, Human Resources, Triboro District, and related the conversation Musumici had with Laurant. Rudy likewise agreed with Musumici that Laurant was in error and said he would do what he could to stop collections from Grant's annuity payments.

31. Around this time Musumici contacted an official at OPM about its debt collection procedures in circumstances like those of Grant. The OPM official told Musumici that when OPM gets notice of a debt from an agency it makes no additional inquiries and proceeds with collections from annuity payments.

32. Laurant routinely ignores notification of the pendency of grievances involving letters of demand issued to postal employees who have subsequently retired and has requested OPM to collect alleged debts from the annuity checks of many retired postal employees notwithstanding the pendency of grievances over their alleged indebtedness to the Postal Service. The APWU at the National Level has asked the Postal Service's national labor relations officials to intervene to correct Laurant's unlawful practices, and the Postal Service officials reported to the APWU that they are unable to stop Laurant's practices. As recently as July 8, 2011, Postal Service headquarters-level labor relations management officials informed the APWU that they have had "no luck" convincing Laurant to change his unlawful practices.

33. In early January 2012, the Union again brought the situation to the attention of Postal Service officials, including the Postmaster General of the United States. Postal officials promised to investigate but to date have taken no action to correct the unlawful deductions from annuitants' retirement payments authorized by Laurant's false certifications to OPM on OPM Standard Form 2805.

34. Since on or about October 1, 2010, OPM has reduced by one-half the amount of each installment of Grant's annuity payments. This has caused Grant great physical and emotional distress, including depression and high blood pressure. Grant lives alone and has no husband or other relative who supports her through the financial difficulties caused by OPM's wrongful deductions from her annuity payments made at Laurant's request. Grant has exhausted her savings and been unable to pay other debts which she would have been able to pay had she received the full annuity payments to which she was entitled. Grant has had to forgo the retirement she has earned and to take on a job to be able to afford the basic necessities of life.

35. On July 15, 2011, Chief Administrative Law Judge James G. Gilbert, the Postal Service's Judicial Officer, issued an Initial Decision *In the Matter of the Petition of Dorinda Tolson*, P.S. Docket No. AO 11-10, which became final when no party appealed ("Decision"). Laurant was the Postal Service principal witness at the hearing. The Decision states on page 3:

On June 8, 2009, Gary M. Laurant, Supervisor of the [Postal Service's] Accounting Service Center, executed Office of Personnel Management (OPM) Form 2805 seeking to collect by administrative offset from Petitioner's retirement annuity the debt that was the subject of the April 29, 2009, Invoice....

36. The Postal Service's Judicial Officer also found (Decision at page 11):

I also conclude that [Laurant's] certification to OPM that it had complied with the due process requirements of the FCCS was false. The certification on

Form 2805 is not *pro forma*. It requires that Respondent ensure that the former employee has been properly informed of his or her rights. As discussed herein, Respondent's Accounting Service Center failed to satisfy Respondent's legal obligations prior to certification to OPM that it had complied with federal law. Such an unmistakably false certification cannot withstand judicial scrutiny. Based on the foregoing, I find that Respondent denied Petitioner the due process to which she was entitled under Section 10 of the Debt Collection Act and its implementing regulations.

37. The Postal Service has taken no actions to remedy the violations of the Debt Collection Act found by its Judicial Officer in the Decision.

CAUSES OF ACTION

VIOLATIONS OF CONSTITUTIONAL RIGHTS (Grant v. Laurant)

38. By causing OPM to deduct an alleged debt from Grant's annuity payments and by certifying to OPM that the Postal Service has provided Grant with due process, with knowledge that a grievance over the alleged shortage has remained unadjudicated, Laurant has deprived Grant of her right under the Fifth Amendment to the United States Constitution not to be deprived of her property without due process of law.

39. Grant has no alternative remedy to redress the violations of her constitutional rights.

40. Grant's and the Union's efforts on her behalf to correct the violations of her constitutional rights or to deter Laurant from constitutional violations have been ineffective.

BREACH OF CONTRACT (APWU v. Postal Service)

41. There is no disagreement between the Union and the Postal Service that the pendency of a grievance contesting an alleged debt requires the Postal Service and its agents, including Laurant, to suspend efforts to collect the alleged debt.

42. Because there is no disagreement between the Postal Service and the Union that

the National Agreement requires the Postal Service to stay collection while a grievance or petition contesting the alleged debt is pending, there is no necessity for the Union to exhaust the grievance procedure before bringing an action for breach of the National Agreement.

43. Because the Postal Service has been unable or unwilling to correct Laurant's unlawful practices despite the absence of a disagreement between the Postal Service and the Union that the National Agreement requires the Postal Service to stay collection while a grievance or petition contesting the alleged debt is pending, the Union's resort to the grievance procedure would be futile.

44. The Postal Service's inability or unwillingness to stop Laurant's false certifications on OPM Form 2805 that the Postal Service has provided due process to annuitants whose challenges to the alleged debts in the grievance or administrative procedure remain unadjudicated is a breach of Article 28, Section 4, of the National Agreement and ELM 462.41.

45. Annuitants who retired before the effective date of the current National Agreement have no access to the grievance procedure to redress violations of the National Agreement.

VIOLATIONS OF DEBT COLLECTION ACT (APWU v. Postal Service)

46. The Debt Collection Act, 5 U.S.C. § 5514, which governs collection of debts of federal and Postal Service employees, provides at Subsection (a)(2): "The timely filing of a petition for hearing shall stay the commencement of collection proceedings."

47. By attempting to collect and collecting alleged debts of annuitants for whom grievances contesting debts are pending the Postal Service is in violation of the Debt Collection Act.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff Rosebud E. Grant asks this Court to award the following relief against Defendant Gary M. Laurant:

- (1) \$25,555.18 collected by OPM from her annuity to date, and any additional collections, with interest;
- (2) Compensatory and punitive damages according to proof;
- (3) Attorneys' fees, expenses and costs;
- (4) A preliminary and permanent injunction prohibiting Laurant from authorizing or instructing that deductions be made from Grant's annuity payments and ordering him to rescind any such authorizations or instructions; and
- (5) Such other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff American Postal Workers Union, AFL-CIO, asks this Court to award the following relief against Defendant United States Postal Service:

- (1) A declaratory judgment declaring that the Postal Service is in violation of the National Agreement and the Debt Collection Act;
- (2) A preliminary and permanent injunction ordering the Postal Service to cease and desist from attempting to collect alleged debts of annuitants when grievances contesting the alleged debts remain unadjudicated in the grievance procedure and rescinding any collection efforts against such individuals;
- (3) An order directing the Postal Service to make whole all individuals affected by these contractual violations, including compensatory, consequential and exemplary damages;
- (4) Attorneys' fees, expenses and costs; and
- (5) Such other and further relief as the Court deems just and proper.

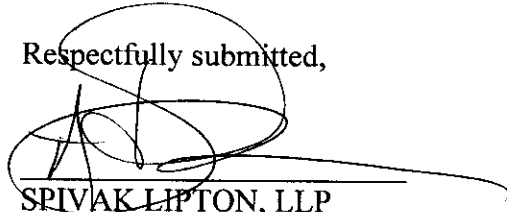
JURY DEMAND

The Plaintiffs demand a trial by jury.

Dated: April 2, 2012

Respectfully submitted,

By:



SPIVAK LIPTON, LLP
1700 Broadway, Floor 21
New York, NY 10019
Tel: (212) 765-2100
Adrienne Saldaña
asaldana@spivaklipton.com
Local Counsel to Plaintiffs

O'DONNELL, SCHWARTZ &
ANDERSON, P.C.
1300 L Street, NW, Suite 200
Washington, D.C. 20005-4178
Tel: (202) 898-1707
Anton G. Hajjar
ahajjar@odsalaw.com
Sarah Kanter
skanter@odsalaw.com
Counsel to Plaintiffs
Pending admission Pro Hac Vice