

**OFFICE OF ADMINISTRATIVE LAW JUDGES**

**WASHINGTON, D.C. 20424-0001**

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION  
ADMINISTRATION, GAINESVILLE AUTOMATED FLIGHT SERVICE STATION,  
PENSACOLA FLIGHT SERVICE STATION, PENSACOLA, FLORIDA  
Respondent

and

NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS  
Charging Party

Case No.  
AT-CA-30113

Mr. D. Vance White            For the Respondent  
Linda J. Norwood, Esquire      For the General Counsel  
Before: WILLIAM B. DEVANEY      Administrative Law Judge

**DECISION**

Statement of the Case

The Complaint and Notice of Hearing in this case issued on March 29, 1994, and stated, in part that an answer filed by mail must be mailed and postmarked not later than April 25, 1994. On June 10, 1994, General Counsel, pursuant to § 2423.22(a) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.22(a), filed with the Regional Director a Motion For Summary Judgment asserting that ". . . Respondent has not answered the allegations of the Complaint in this matter." (General Counsel's Motion, p. 4). By Order also dated June 10, 1994, the Regional Director, pursuant to § 2423.22(b) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.22(b), referred General Counsel's Motion For Summary Judgment to the Chief Administrative Law Judge who, by Order dated June 17, 1994, gave notice of the referral of the Motion For Summary Judgment for decision and gave notice to all parties that, "Any pleadings or briefs filed by the parties . . . must be filed in this office by July 7, 1994. The record will then be closed. . . ." Respondent on June 16, 1994, had mailed, to the Regional Director and to the Office of Administrative Law Judges, "Exception To The General Counsel's Memorandum In Support Of Its Motion For Summary Judgment", received by the Office on June 20, 1994. No further response was filed, the record was closed and the Motion was duly referred to the undersigned for decision.

Findings

1. Contrary to the assertion of General Counsel in her Motion, an Answer was filed, dated April 5, 1994, and received by the Office of Administrative Law Judges on April 11, 1994. Copies also were shown as having been mailed to Assistant General Counsel David L. Feder and to the Charging Party.
2. In its Answer, Respondent asserts that the "agency" alleged in Paragraph 3 of the Complaint is now closed.

3. In its Answer, Respondent asserts that,

". . . Mr. Nielson was not the facility representative (FACREP) at the Pensacola FSS. Mr. Warren Poole was the FACREP and Mr. Alton Bostic was the Assistant FACREP. Both agreed to the change in procedure. Both substance and I&I bargaining were completed even though the contract in place at that time had an explicit waiver requiring only 'consultation.' (See attached Article 72.) (Respondent's Answer).

4. In its Answer, Respondent further asserts,

". . . I do not recall any investigation being done by the FLRA. Had there been, the issue of FACREP vs. Hub representative could have been addressed, thus making clear that bargaining had been done with the appropriate union officials and agreement had been reached. Also, the 'consultation' article could have been brought forward." (Respondent's Answer).

### Conclusions

Respondent's failure to file its Answer with the Regional Director is inexcusable. Not only did Respondent fail to comply with the quite specific language of § 2423.13(a) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.13(a), but it obviously ignored the equally specific instruction set forth in the Complaint, i.e., ". . . the Respondent must file an original and 4 copies of this answer with the Atlanta Regional Director at the address below." (Complaint, p. 3).

Nevertheless, Respondent did file a timely Answer with the Authority's Office of Administrative Law Judges, with copies shown to the Office of the General Counsel and to the Charging Party. Allegations of an Answer are not proof of the truth of the allegations; however, Respondent in its Answer asserts, inter alia, that: (a) the activity at which the asserted § 16(a)(1) and (5) violation, namely that, a union representative must, ". . . obtain prior approval . . . to use official time. . .", is now closed; (b) the person named in Paragraph 11 of the Complaint, Lars M. Nielson, was not the facility representative; and (c) that the Pensacola FSS representatives had agreed to the change in procedure and both substance and I&I bargaining had been completed. The Answer, timely filed with this Office, though not filed at all with the Regional Director, raises issues which convincingly demonstrate that it would not effectuate the purposes and policies of the Statute to grant General Counsel's Motion For Summary Judgment. The issues raised by Respondent's Answer require resolution in a hearing on the merits. In so concluding, the blatant failure and refusal to properly serve the Answer on the Regional Director is not condoned and except for having timely filed an Answer with the Authority, albeit not the Regional Director, which raises substantial issues which require resolution, the mere filing of an Answer with the Authority, but not with the Regional Director, would constitute no justification to

deny summary judgment and summary judgment may be granted where the Answer is not filed with the Regional Director.

Accordingly, because it would not, in the particular circumstances of this case, effectuate the purposes and policies of the Statute to grant General Counsel's motion, it is hereby:

ORDERED, that General Counsel's Motion For Summary Judgment in Case No. AT-CA-30113, be, and the same is hereby, denied.

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WILLIAM B. DEVANEY

Administrative Law Judge

Issued: August 31, 1994

Washington, DC