

In the Matter of Arbitration:

Sarah Rayfield,  
*Claimant,*

v.

Chatham Area Transit Authority,  
*Respondent.*

DSP Case No. 14-13c-01

Issued: September 10, 2014

### **FINAL DECISION**

This claim arises under the terms and conditions of the Department's certification of the protective arrangement dated July 23, 1975,<sup>1</sup> and December 8, 1987, between Chatham Area Transit Authority (CAT) and Local 1324 of the Amalgamated Transit Union. The Arrangement has been certified by the Department as fair and equitable to protect the interests of employees and sufficient to meet the requirements of the Act, and has been made applicable to federal assistance provided to the CAT since that time.

The terms and conditions of the Department's certification state:

6. Employees of mass transportation providers in the service area of the project who are not represented by a union party to, or otherwise referenced in the certification letter, shall be afforded substantially the same levels of protections as are afforded to the employees represented by the union(s) under the above referenced protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement to utilize any other final and binding resolution procedure, any party to the dispute may submit the controversy to final and binding arbitration. ... If the employees are not represented by a union for purposes of collective bargaining, the Recipient or employee(s) may request the Secretary of Labor to designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination of the dispute.

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<sup>1</sup> The July 25, 1975 Agreement is also known as the Model Agreement and is applied to operating assistance and capitalized items historically funded as operating.

Claimant Sarah Rayfield was a non-represented employee of Veolia Transportation Services (Veolia), a contractor charged with operating Chatham Area Regional Transit Services for CAT. As a non-represented employee, Rayfield is entitled to substantially the same levels of protections as bargaining unit employees.

Rayfield's employment with Veolia was terminated effective May 16, 2013, the last day of Veolia's contract with CAT. Thereafter, CAT resumed self-directed management. On May 3, 2013, CAT made a written offer of employment to Rayfield. CAT alleges that the written offer was preceded by a verbal offer made during the week of April 15, 2013. Rayfield denies that a verbal offer of employment was made. By letter dated May 8, 2013, CAT rescinded its offer of employment due to Rayfield's failure to respond to it by May 6, 2013. Rayfield denies that CAT informed her of a deadline for responding to its offer. An exchange of letters between the parties followed but did not resolve the matter. Rayfield claims that she is a "dismissed employee" under the Arrangement and is thus entitled to certain protections. She appeals to the Department to make a final and binding determination on her claim.

## DISCUSSION

The Arrangement provides protections for dismissed employees. Paragraph (7)(a) states:

Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his or her employment, the employee shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance ...

In order to be eligible for a dismissal allowance or other benefits under the Arrangement, Rayfield must show that her termination from Veolia was the result of a project receiving federal assistance. Paragraph 1 defines the term "Project" stating in part:

(1) The term "Project," as used in this agreement, shall not be limited to the particular facility, service, or operation assisted by federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase 'as a result of the Project' shall, when used in this agreement, include events occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto or to the federal program of assistance under the Act generally, including the requirements relative thereto which are or may be imposed by or on behalf of the United States Government or any department of agency thereof; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this agreement. (emphasis added).

Under the Arrangement, paragraph 15(b), an employee claiming that she was affected by the Project, has the obligation to “identify the Project and specify the pertinent facts of the Project relied upon.” Once she does so, it is the Recipient’s burden to prove that factors other than the Project affected the employee. Under the Arrangement, the claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee.

Here, Rayfield has not identified any federal assistance or alleged any causal connection between any federal assistance provided and her termination. Rayfield simply asserts that the term “project” is applicable to CAT’s decision to resume self-directed management. Thus, she has not fulfilled her obligation under paragraph 15(b) of the Arrangement.<sup>2</sup> See *Certain Captains et al v. City of Vallejo*, OSP Case No. 94-13c-20, Digest A-412; *Dalton v. Dallas Transit System*, DEP Case No. 78-13c-56, Digest A-115; *Local 1086, Amalgamated Transit Union v. Port Authority of Allegheny County et al*, DEP Case No. 79-13c-12, Digest A-88; *Haddad v. Worcester Regional Transit Authority et al*, DEP Case No. 78-13c-43, Digest A-196. Moreover, CAT has denied the use of any federal assistance in its return to self-directed management. Therefore, Rayfield’s claim against CAT is dismissed.

#### DETERMINATION

The evidence does not support a finding that Rayfield suffered a worsening of position related to employment as a result of a project. Therefore, the claim is dismissed.

This decision is final and binding.

Date Sept. 19, 2014

Michael J. Hayes

Michael J. Hayes  
Director, Office of Labor-Management Standards

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<sup>2</sup> In its May 6, 2014 letter to the parties, the Department specifically asked Rayfield to provide “support for her claim that she was affected by a federally assisted project” and directed the parties to “address their arguments supporting their claims and defenses with reference to their obligations under the protective arrangement [], including, but not limited to, paragraphs 1, 15(b), and 18.”

