

8/4/20

No. 20-258

IN THE
Supreme Court of the United States

ALVIN E. MEDINA, PETITIONER

v.

FEDERAL AVIATION ADMINISTRATION

*PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Alvin E Medina, the Petitioners, request this Petition for Writ of Certiorari be granted given the salient issue equitable tolling, and the constitutional matter of proper notice of appeal rights and proper certificate of service of a decision is absent. When a Federal Circuit Courts has jurisdiction of its own court's precedent, "do you throw the baby out with the bath water"? Notice of appeal rights 5 C.F.R. § 1201.21 (a) to get you to 5 U.S.C. § 7703 (b) (1) (A); and 5 U.S.C. § 7121 (f) ("Section 7303.....pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board") An arbitrator "issues notice" on "the date on which" the arbitrator "sends the parties the final decision, whether electronically, by regular mail, or by other means."1) (A); the 60 day time limit to lead you to the federal court to appeal a decision is silent is that equitable tolling? Notice of Appeal Rights on March 29, 2019, and "[t]he arbitrator's decision letter was silent on the Petitioner appeal rights in this process," and "had no instructions, guidance, or any language on where, when, or how to file an appeal." Petition for Review should have been granted under 5 U.S.C. § 7703 (b) (1) (A); and 5 U.S.C. § 7121 (f). Pro-se party must be afforded the same protections mandated by the rules of the MSPB, and the constitution. 28 U.S Code § 2107. Time for appeal to court of appeal

WHETHER THE FAILURE TO PROVIDE NOTICE OF APPEAL RIGHTS WITH ARBITRATOR'S DECISION AND CERTIFICATE OF SERVICE TO PRO-SE LITIGANTS WARRANTED A FAVORABLE RULING FOR A PETITION FOR REVIEW UNDER 5

STATEMENT OF RELATED CASES

None.

TABLE OF CONTENTS

| | Page |
|--|------|
| QUESTION(S) PRESENTED | i |
| STATEMENT OF RELATED CASES..... | iii |
| TABLE OF AUTHORITIES..... | v |
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 1 |
| RELEVANT PROVISIONS INVOLVED | 1 |
| STATEMENT | 3 |
| REASONS FOR GRANTING THE PETITION..... | 6 |
| CONCLUSION..... | 7 |
| APPENDIX | |
| <i>Circuit Court Order</i> | 1a |
| <i>District Court Order</i> | 5a |
| <i>Order denying rehearing</i> | 11a |

TABLE OF AUTHORITIES

Page

CASES

Cornelius v Nutt 472 US 648 (1985) 4

STATUTES

5 U.S.C. § 7121 2, 4

5 U.S.C. § 7121(b)(1)(A) 2

28 U.S.C. Section 1254 1

RULES

Fed. R. Civ. P Rule 12(b)(6) 3

REGULATION

5 C.F.R. § 1201.21 4, 6

5 C.F.R. § 1201.21(a) 2

5 C.F.R. § 7703 6

OPINIONS BELOW

The case is presented to this Honorable Court from an appeal from a decision of the Federal Courts of Appeal for the Federal Circuit, which decision is dated February 28, 2020. (1a).

The Petitioner had filed an original appeal from a United States District Court for the Central District of California dated June 4, 2019, transferring the Action to the United States Court of Appeals for the Federal Circuit for lack of jurisdiction.

JURISDICTION

The statutory provision for this Federal Circuit Court's jurisdiction is 28 U.S.C. Section 1254. The Ninth Circuit denied the Petitioners' Petition for Panel Rehearing on February 28, 2020, and On Petition for Panel Rehearing and Rehearing En Banc on April 30, 2020.

RELEVANT PROVISIONS INVOLVED

Fourteenth Amendment, United States Constitution:

The Due Process Clause of the Fourteenth Amendment provides that no State "shall ... deprive any person of life, liberty, or property, without due process of law. "

5 C.F.R. § 1201.21(a)

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

5 U.S.C. § 7121(b)(1)(A)

Except as provided in subparagraph (B) and paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review shall be filed within 60 days after the Board issues notice of the final order or decision of the Board.

5 U.S.C. § 7121 (f)

In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to

those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

STATEMENT

Procedural History

Petitioner commenced the underlying case against the Respondents on or about June 4, 2019, United States District Court for the Central District of California for Petition for Review of Arbitrator's Decision.

On March 28, 2019, Arbitrator Linda Byars ruled against National Air Traffic Controllers Association, AFL-CIO, (NATCA) representing Petitioner (Alvin E Medina) Arbitrator's decision in the present case. Respondents filed their initial Motion to Dismiss the Complaint pursuant to Fed. R. Civ. P Rule 12(b)(6).

Petitioner seeks review of a final arbitration award affirming Petitioner's removal from his position as a Drug and Alcohol Compliance and Enforcement Inspector. Petitioner filed thirteen grievances against the Agency with nine grievances to the arbitrator related to the Federal Aviation Administration's decision to remove the Petitioner with 37 years of federal service, 20 years military and 17 years civil service, with an unblemished record.

Petitioner received an email stating "We received

Arbitrator Byars' decision on your case. Please give me a call when you have a few minutes to discuss it." on April 9, 2019.

Petitioner received a soft copy of arbitrator's decision by email on April 10, 2019. The Petitioner never received the certificate of service nor notice of appeal right as required by 5 C.F.R. § 1201.21, and 5 U.S.C. § 7121, 7703.

Petitioner questioned whether the Arbitrator's decision does not draw its essence from the collective bargaining agreement, and it does not comply with case law.

The Petitioner believes the Arbitrator's decision incorrectly determined that the Petitioner's immediate supervisor complied with case law and the CBA when a higher-level manager did not provide concurrence of the Agency final action to remove Petitioner from federal service. The Arbitrator has an obligation to follow the same "substantive" rules as the Merit System Protection Board (MSPB) does in reviewing the Agency action (*Cornelius V Nutt* 472 US 648 (1985))

The Petitioner filed a Petition for Review of Arbitrator's Decision to the United States District Court for the Central District of California dated June 4, 2019.

On September 27, 2019, the United States District Court for the Central District of California transferred the case to the United States Court of Appeals for the Federal Circuit. The United States Court of Appeals for the Federal Circuit then denied the Petition for Review of Arbitrator's Decision Rehearing due to Respondent motion under Federal Rules of Appellate Procedure and Federal Circuit Rule 27(f) and dismissed the petition for lack of jurisdiction.

This Writ is timely filed. Therefore, the Petitioner seeks relief from this Honorable Court.

Facts

The Petitioner (Alvin E Medina) former Federal Aviation Administration, Drug and Alcohol Compliance and Enforcement Inspector.

From January 27, 2014, through April 23, 2018, Petitioner was subjected to reprisal and disparate treatment. Throughout September 2014 and September 2015, Mr. Jeffrey Stookey, first-line supervisor told several of Petitioner coworkers that he was stressed out dealing with Petitioner. Mr. Jeffrey Stookey told these employees that Petitioner was a terrible inspector and they should stay away from Petitioner, and not bid on inspections with Petitioner. Mr. Jeffrey Stookey told several new employees that Petitioner was fired and won his MSPB case, so the Agency had to bring Petitioner back to work.

On December 5, 2013, The Merit System Protection Board (MSPB) Administrative Law Judge ruled in Petitioner's favor and did not sustain the Agency removal action.

On January 16, 2014, Rafael Ramos, FAA Drug Abatement Division Manager initiated an investigation with the office of Security and Hazardous Materials Safety. The Agency was dissatisfied with the AJ ruling.

On January 27, 2014, Petitioner returned to federal service as an Inspector while still under the protected activity with the MSPB.

From January 27, 2014, through April 23, 2018, Petitioner was subjected to reprisal and disparate

treatment. The Petitioner filed thirteen grievances against the Agency.

On April 23, 2018, Petitioner was terminated from the FAA by his first line supervisor.

On December 11th and 12th 2019, an arbitration hearing was held.

REASONS FOR GRANTING THE PETITION

I. THE FAILURE TO LIST NOTICE OF APPEAL RIGHT TO DIRECT THE PETITIONER TO TIME LIMIT OF 60 DAYS. A PLEADING UPON PRO-SE LITIGANT WARRANTED A FAVORABLE RULING UNDER 5 C.F.R. § 1201.21, AND 5 C.F.R. § 7703.... PERTAINING TO JUDICIAL REVIEW SHALL APPLY TO THE AWARD OF AN ARBITRATOR IN THE SAME MANNER AND UNDER THE SAME CONDITIONS AS IF THE MATTER HAD BEEN DECIDED BY THE BOARD”).

5 C.F.R. § 1201.21 Notice of appeal rights

When an agency issues a decision notice to an Employee on matter that is appealable to the Board, the agency must provide the employee with the following:

- (a) Notice of time limits for appealing to the Board, the requirements of § 1201.21(c), and the address of the appropriate Board office for filing the appeal:
- (b) A copy, or access to a copy, of the Board's regulation;

CONCLUSION

For the reasons stated herein, this petition should be granted

Respectfully submitted,

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