

**American Federation of Government Employees, Local 1923 and Social Security Administration**

101 FLRR 2-1146

January 29, 2001

Appealed (O-AR-3401)

The Arbitrator denied the grievant's charges of racial and sexual discrimination, but found the agency's error in the selection process entitled the grievant to priority consideration. The arbitrator also found the grievant had performed higher-grade duties and was entitled to a retroactive temporary promotion.

The grievant filed three grievances alleging the Agency created a hostile work environment through racial and sexual discrimination, the Agency's removal of the grievant was arbitrary and capricious, the Agency discriminated against the grievant by not selecting her for two different vacancies she had applied for, and the Agency did not properly compensate the grievant for performing higher-graded work. The Agency denied the grievances. The grievances were consolidated at arbitration.

The Union argued that the grievant had been discriminated against due to her gender (female) and race (African-American) in the Agency's actions to remove her from the project she managed and in her non-selection for two GS-13 positions. The Union pointed out that due to the discriminatory actions of co-workers and supervisors, the Agency created a hostile work environment towards the grievant. The Union further argued that the grievant had performed higher-grade duties since 1996 without being compensated. The Agency argued that the best-qualified candidate was chosen for each of the two positions and race and gender were not a factor in those selections.

The Agency further argued that the grievant did not show that there was a connection between her race and gender and her protected activities and the selection process. The Agency noted that the grievant was removed from the project in 1996, but that was due to a conflict between the grievant and the other organization component working on the project and the grievant was reinstated to the project shortly thereafter. The Agency noted that the discriminatory actions and remarks the grievant claimed created a hostile work environment were without corroboration. The Agency stated that there was some crossover of duties between the grievant's and another position, but that the duties performed by the grievant were not grade controlling.

The Arbitrator found the grievant failed to prove the Agency discriminated against the grievant due to her gender or race or protected activities in regard to her non-selection, removal from the 1996 project, or creating a hostile work environment. The Arbitrator further found that due to the Agency's inability to produce a signed a dated copy of the application by the selectee for the building manager position, the grievant should be provided with priority consideration for the building manager or equal position. Finally, the Arbitrator found the grievant had performed higher-graded duties and should be given a temporary retroactive promotion with back pay and interest for the time period she performed higher-grade duties.

Arbitrator: Irwin R. Kaplan