

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

STEVEN TOLOCZKO,
Appellant

v.

C-19-086

MassDOT,
Respondent

Appearance for Appellant:

Pro Se
Steven Toloczko

Appearance for Respondent:

Peter M. Mimmo, Esq.
MassDOT
10 Park Plaza, Suite 3740
Boston, MA 02116

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On April 8, 2019, the Appellant, Steven Toloczko (Mr. Toloczko), an employee at MassDOT, filed a reclassification appeal with the Massachusetts Civil Service Commission (Commission).
2. On April 30, 2019, I held a pre-hearing conference which was attended by Mr. Toloczko and counsel for MassDOT.
3. Prior to the pre-hearing, MassDOT filed a Motion for Summary Decision, arguing that the issues underlying the appeal to the Commission have already been fully litigated and resolved by an arbitrator.
4. At the pre-hearing, the parties stipulated to the following:
 - A. The Appellant, while serving as a Civil Engineer III, filed a request for reclassification to CE IV on December 13, 2013.
 - B. The Appellant was promoted to the position of CE IV on December 28, 2015.

- C. In regard to the time period 12/13/13 – 12/28/15, the Appellant filed a grievance which covered this time period, arguing that he was working in a higher grade without additional compensation.
 - D. The union, on the Appellant's behalf, filed for arbitration upon the denial of their grievance.
 - E. On November 14, 2016, an arbitrator issued a decision denying the Union's grievance.
 - F. The arbitrator's decision addresses the duties and responsibilities performed by the Appellant between 12/13/13 and 12/28/15, the time period that is the subject of the instant appeal before the Commission.
5. The Appellant does not dispute that the same issues were already litigated and decided by an arbitrator. Rather, the Appellant argues that the arbitrator's decision is wrong and pointed to various findings of the arbitrator that he argues are incorrect. He seeks to bring those issues before the Commission as part of the instant reclassification appeal and receive a different result than he received via arbitration.
6. MassDOT argues that, since the issues underlying the instant appeal to the Commission are identical to those already decided by an arbitrator, the Commission lacks jurisdiction to hear the appeal.
7. The Appellant had thirty (30) days to respond to MassDOT's Motion for Summary Decision. He failed to submit a reply.

Analysis / Conclusion

The Appellant, through his union, opted to litigate his request for reclassification through an arbitrator. He candidly acknowledges that his appeal to the Commission is effectively an appeal of the arbitrator's decision. The Commission is not the proper venue to appeal an arbitrator's decision. As this matter has already been adjudicated by an arbitrator, and for all the reasons cited in MassDOT's Motion for Summary Decision, the Appellant's appeal under Docket No. C-19-086 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on July 18, 2019..

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Steven Toloczko (Appellant)

Peter M. Mimmo, Esq. (for Respondent)