

COMMONWEALTH OF PENNSYLVANIA

MARK KUTNYAK	:	BEFORE THE BOARD OF CLAIMS
	:	
VS.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF CORRECTIONS	:	DOCKET NO. 2818

FINDINGS OF FACT

1. Claimant Mark Kutnyak was an inmate at all times relevant hereto incarcerated at the State Correctional Institution at Retreat. (N.T. 24, 25, 49).

2. Respondent is the Commonwealth of Pennsylvania, Department of Corrections (referred to hereinafter from time to time as “D.C.” or “Department”), an administrative department of the Commonwealth with its principal office at 2520 Lisburn Road, Camp Hill, Pennsylvania 17011. (Pleadings).

3. On November 24, 1995 while being processed at the State Correctional Institution at Graterford, Claimant executed a Department of Corrections form, DC 155, referred to as a Power of Attorney. (N.T. 52; Ex. D-1).

4. On December 31, 1998 Claimant asserted a breach of contract action and claimed damages relating to revocation of a bail bond. (Pleadings).

5. On March 17, 1999 Claimant filed an Amended Complaint alleging that the Department was in breach of contract when it failed to perform under the above-referenced Power of Attorney. (Pleadings).

6. The Power of Attorney stated:

POWER OF ATTORNEY

I, (print inmate name and DCI number) Mark Kutnyak do make, constitute, and appoint the Superintendent/Director, or his/her authorized representative, of any institution, facility or center within the Department of Corrections to which I am then confined my true and lawful attorney for me and in my name to sign my name as endorsement on all checks, money orders, or bank drafts for deposit to my credit in the Inmate General Welfare Fund Cash Account and to receive and document receipt of mail on my behalf. This power shall continue so long as I am an inmate of any institution, facility or center within the Department of Corrections and shall not be affected by my

subsequent disability or incapacity while confined therein unless sooner revoked. This power shall be for the doing of all lawful acts necessary to carry out the purposes set forth above. I hereby ratify, confirm and intend to be bound by any and all acts, as described in the previous sentence, which these attorneys or substitutes shall commit pursuant to this power of attorney. (Ex. D-1).

7. According to his amended complaint, Claimant had initiated an action in the District Court for the Eastern District of Pennsylvania (not related to contract) which was dismissed on or about August of 1998. (Amended Complaint, paras. 9, 13).

8. Claimant sought to petition that court for rehearing, but his petition was not received by the District Court. (Amended Complaint, para.1).

9. Claimant then sought to prove the petition had been filed by providing the District Court copies of legal documents that were kept in the storage area of the restricted housing unit wherein he was incarcerated. (Amended Complaint, para. 2).

10. Claimant asserts that, when he turned over his documents to a prison official to be placed in the prison mail system and delivered for copying, the official failed to provide him with the required receipt. (Amended Complaint, paras. 3, 4, 19, 26).

11. When these documents could not be located subsequently, Claimant concluded that, while in the prison mail system, the documents and copies had been lost. (Amended Complaint, para. 8).

12. Claimant has argued in this case that the Department breached the Power of Attorney Agreement by losing his documents, and, as a result, he has incurred damages. (Pleadings).

13. Claimant asserts that his damages result from his inability to pursue an appeal in the Federal Court as well as from losing the money he spent photocopying, mailing and filing his petition. (Amended Complaint, para. 29).

14. In opposition, the Respondent has argued that the Claimant has failed to prove that there was a breach of contract by D.C. because the DC-155 form only applied to U.S. Mail coming into and going out of the prison, while the documents which Claimant alleges were lost were only going to the prison librarian for copying. (See Post-Hearing Briefs of Respondent).

15. On October 11, 1998, Defendant was in the restricted housing unit (RHU) of the state correctional institution at Retreat. (N.T. 29).

16. In the RHU, documents and mail to be transmitted are handled by the corrections officer since inmates are not permitted to leave their cell. (N.T. 30).

17. At 9:00 p.m. on October 11, 1998, Claimant put certain papers on his cell door. (N.T. 34).

18. Claimant intended for the documents placed on the cell door to be collected by the corrections officer and transmitted to the institution library where copying facilities were located and where inmate documents were copied at a cost of ten cents a page. (N.T. 34, 40).

19. There were ten pages of documents to be copied. (N.T. 32-33).

20. Claimant asserts that the documents placed on the cell door were lost on or about October 11, 1998. (N.T. 34; Ex. D5).

21. Claimant admitted the documents were in-house "mailings" not intended to go out of the prison or into the U.S. Mail Postal Service, but to be copied and returned to him. (N.T. 33-35, 40-41, 77, 88, 115-117; Board Findings).

22. Upon inquiring as to what happened to the documents in a request slip dated October 14, 1998, the institution librarian responded "I have no idea what you are talking about." (N.T. 94; Ex. C2).

23. Officer Tavella, on behalf of Respondent, testified that inmates housed in the RHU could not mail items themselves, and the mail had to be collected and distributed by a corrections officer. (N.T. 133-134).

24. Mr. Tavella also stated that inmates were not allowed to put material on the opening to their cell door, and he stated that he could have confiscated such material. However, he would usually ask the inmate if the material was mail or garbage. (N.T. 139-140).

25. The Claimant conceded that nowhere in the DC-155 form was there a guarantee that none of his mail or documents would be lost. (N.T. 114).

26. The Respondent's mailroom supervisor, Mary Jean Ruckle, stated that she was not aware of any form that indicates the Department of Corrections promises not to lose any mail and she was also not aware of any form in which the Department insures inmate mail that it receives from inmates. (N.T. 105-108).

27. The Claimant conceded that his federal lawsuit against the City of Allentown to which the lost documents relate was dismissed nine months before the date the documents were allegedly lost and also admitted that his federal claim was dismissed in part because the claim was frivolous. (N.T. 117).

28. Claimant's appeal was dismissed two months before the alleged loss of documents and he failed to timely appeal the dismissal by the Third Circuit Court to the U.S. Supreme Court. (N.T. 120-121).

29. All of the documents which Claimant alleges were lost were only intended to go to the prison librarian for copying. Claimant did not intend to, nor did he in fact, place the documents that were lost into the care of prison personnel for the purpose of placing same into the U.S. Mail. (F.O.F. 18, 21; Board Finding)

30. The lost documents which are the basis of the claim were internal prison transfers sometimes referred to throughout the pleadings as “mailing” but not intended for placement in, and did not constitute, U.S. Mail. (F.O.F 18, 21, 29; Board Finding)

CONCLUSIONS OF LAW

1. The Board of Claims has jurisdiction over the claim presented herein since it is a claim against the Commonwealth arising from a contract entered into by the Commonwealth.

2. The law of the case is that DC-155 Power of Attorney could be the basis for a contract claim against the Commonwealth. However, the scope of the DC-155 Power of Attorney has not been delineated by the Commonwealth Court as it relates to the facts found in this case.

3. The U.S. Postal Service requires prisons to be granted authorization through a Power of Attorney in order to receive mail on behalf of an inmate. Guyer v. Beard, 907 F.2d 1424 (U.S. Court of Appeals 3rd Circuit 1990).

4. The Form DC-155 Power of Attorney here at issue is the power of attorney utilized by the D.C. to comply with the aforementioned U.S. Postal Service requirement. The operative language of the form DC-155 “...to receive and document receipt of mail on my behalf,” applies to U.S. Postal Service mail coming into, and going out of, the correctional facility. Id.

5. The DC-155 Power of Attorney only refers to U.S. Mail and not to documents passing in-house or internally within the prison that are not intended to be placed into outgoing U.S. Mail. Id.

6. Even though the Board accepts, for the purpose of this case, that the DC-155 Power of Attorney form was a contract between the Claimant and the Department, because no U.S. Mail was involved, the DC-155 Power of Attorney form does not apply to the lost documents, and Claimant has failed to prove any breach of contract by the Respondent pursuant to the Power of Attorney.

7. The Claimant has failed to prove by a preponderance of evidence any basis for a breach of contract by the Department with respect to the lost documents.

OPINION

At the hearing held on this matter on June 21, 2006, the facts essential to resolving this matter clearly came to light. The ten pages of documents that were purportedly lost, although sometimes referred to as “mailings”, did not enter the U.S. Mail Postal Service System, nor was it ever intended that they would. Claimant placed the documents in a location where they would have been collected by a corrections officer for transfer to the institution library for copying. Claimant wanted the documents copied and returned to him as in-house transmittals of documents. This is dispositive of the matter.

When some aspects of this dispute were appealed to the Commonwealth Court previously, Commonwealth Court, in a footnote, noted the Form DC-155, Power of Attorney, could create contractual rights in the claimant falling within the jurisdiction of the Board of Claims. However, the Commonwealth Court then referred the matter back to the Board for further findings of fact.

Following a full hearing on the matter, the salient facts of the case have now been clarified. Case law makes it clear that the DC-155 Form applies only to U.S. Mail and is intended to comply with U.S. Postal Service requirements in order for the institution to receive mail intended for the inmates. See e.g., Guyer v. Beard, 907 F.2d 1424, 1428 (3d Cir. 1990) (The Court, referencing essentially the same language as in Mr. Kutnyak’s power of attorney, stated that the limited power of attorney form also would have enabled the warden to comply with the United States Postal Service, Domestic Mail Manual §115.97, which requires prison officials to obtain the inmates’ consent to the prison’s receipt of their mail so that prison officials can open, inspect and censor incoming mail in lieu of returning the mail marked “Refused.”)

There is no question that, in this case, the lost documents were not placed in the U.S. Mail nor was it ever intended that they would be. Mr. Kutnyak merely placed these documents in a spot where he believed they would be picked up and transmitted internally to the prison librarian for copying and return to Mr. Kutnyak.

In view of the above facts and prior holdings of the Appellate Courts, it is clear that any duties of the institution created by the DC-155 Power of Attorney did not extend to internal transmission for copying of the documents in question. That being so, no contractual rights respecting Claimant's lost documents were ever created in the Claimant by DC-155 Power of Attorney or otherwise, and no contractual rights were breached when these documents were lost.

ORDER

AND NOW, this 6th day of December, 2006, it is hereby **ORDERED, ADJUDGED** and **DECREED** that judgment is entered in favor of the Respondent, Commonwealth of Pennsylvania, Department of Corrections, and against Claimant, Mark Kutnyak. The parties will each bear their own costs and attorneys' fee.

BOARD OF CLAIMS

Jeffrey F. Smith
Chief Administrative Judge

OPINION SIGNED

Ronald L. Soder, P.E.
Engineer Member

John R. McCarty
Citizen Member