

**RICHARD KLETT,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF NATURAL  
RESOURCES,**  
*Respondent.*

**RULING ON REQUEST  
FOR HEARING  
POSTPONEMENT**

Case No. 00-0141-PC

Mr. Klett telephoned Commissioner Rogers at about 10 a.m. on January 19, 2001, to request postponement of the hearing scheduled for January 29, 2001. Two conferences were held this morning regarding the request. First, Attorney Henneger was added to the conference by recording on his voice mail. Second, Attorney Henneger initiated a second conference call which included Mr. Klett and (with Mr. Klett's permission) Mr. Steve Fajfer.

Mr. Klett advanced the following two reasons for requesting a postponement:

1. There was a mix up in communications that led him to believe that the hearing was to be held on February 29, 2001, rather than January 29<sup>th</sup>. As a result, he is unprepared to go forward on January 29<sup>th</sup>.
2. The appellant's supervisor, Steve Fajfer, is willing to work with the appellant to draft a new PD. A co-worker, Mr. Swansby, had his hearing postponed under similar circumstances.

The parties agreed to hearing on January 29, 2001, at a prehearing conference held by telephone on September 21, 2000 and such agreement was memorialized in a conference report of the same date. The second page of the conference report noted that Mr. Klett had the option of proceeding by arbitration or by formal hearing and a deadline of October 13, 2000, was established for him to make this decision. Mr. Klett elected to proceed by arbitration in a letter dated October 10, 2000, the text of which is shown below:

I, Richard Klett, would like to proceed with my reallocation appeal by arbitration (informal hearing) on February 29, 2001, at 9:30 a.m.

Mr Klett recited the incorrect hearing date in the above memo (also there is no February 29<sup>th</sup> in 2001). I must have read his letter because I responded by letter dated October 12, 2000, noting that he had elected arbitration. I did not point out in my letter that Mr Klett's letter recited the incorrect hearing date. I am unsure whether I even noticed his error. In any event, it was his responsibility when he received the conference report to place the correct dates on his own calendar. The conference report recited the correct hearing date and Mr Klett's subsequent confusion over the correct hearing date was of his own making.

Mr. Klett noted that his supervisor, Mr. Fajfer, is willing to work with him to develop a new position description (PD). I asked what purpose he expected the new PD to serve and Mr Klett said he thought it could result in his position being moved to the advanced level, which is the relief he is seeking through his appeal. The problem I had with this argument is that the appellant already has had an opportunity to submit a new PD as a potential means of settling the case. This was discussed at the prehearing conference on September 21, 2000, as memorialized in the conference report (page 2) as follows:

The reallocation decision at issue in this case appears to have been based upon the PD signed by Mr. Klett on or about January 11, 1999. Mr. Klett indicated that the duties of his job have changed over the past years and have recently resulted in a new PD approved by Cornell Johnson on September 13, 2000. Mr. Klett signed the new PD on May 1, 2000. Mr. Klett agreed to fax a copy of the new PD to Attorney Henneger by end of business tomorrow. Attorney Henneger agreed to review the new PD and to get back to Mr. Klett by end of business on September 29, 2000, as to whether respondents' feel the new PD might justify classification at the FT Advanced level.

Mr. Klett indicated today that respondent reviewed the new PD and reported that it was insufficient to warrant the advanced level.

Mr. Klett indicated that a hearing was postponed for Mr. Swansby one of Mr. Klett's co-workers under similar circumstances and Mr. Klett felt it was unfair that the same was not done for him. Attorney Henneger and Mr. Fajfer provided information about Mr. Swansby's case, which was handled by a different Commission hearing examiner.

Mr Swansby's case went to hearing as scheduled on January 9, 2001. Prior to going on the record, a discussion was held regarding a re-written PD submitted by Mr. Swansby as a hearing exhibit. Attorney Henneger thought the new PD looked as if it could justify the higher classification being sought at hearing. The parties agreed to postpone the hearing to allow respondent to consider the new PD. There was nothing discussed at the prehearing conference in Mr. Swansby's case about a timetable for him to submit a new PD as an attempt to settle the case prior to hearing. Mr Klett, on the other hand, already has had this opportunity.

The conference report of September 21, 2000 (pages 3-4), contained the following information (emphasis is in the original):


As provided in §PC 5.02, Wis. Adm. Code, a request to postpone a date for hearing will be granted only upon a showing of good cause. Postponement requests should be in writing, if possible, and the party making the request should indicate the reason for the request and whether the opposing party agrees with the request. Generally speaking, the following reasons are not considered as good cause for granting a hearing postponement:

- a) waiting an unreasonable amount of time to request postponement after knowing that a reason exists to request the same,
- b) being unprepared for hearing,
- c) waiting until too close to the hearing date to initiate settlement negotiations,
- d) waiting until too close to hearing to seek representation and
- e) waiting too long to secure witness attendance and any resulting unavailability of witnesses.

The reasons advanced by Mr. Klett for his postponement request are akin to items "a" through "c" above. The reasons provided do not constitute good cause within the meaning of §PC 5.02, Wis. Adm. Code.

Dated: January 19, 2001.

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JUDY M. ROGERS, Commissioner  
(608) 266-9764

cc: R. Klett  
R. Henneger