UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-20136

(Summary Calendar)

RAY E. GARCIA,

Plaintiff-Appellant,

versus

NATIONAL ASSOCIATION OF LETTER CARRIERS AFL-CIO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
(CA H 92-3963)

(December 22, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Ray E. Garcia, a letter carrier for the United States Postal Service ("the Postal Service") appeals the district court's summary judgment on his claim against the National Association of Letter Carriers, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO, Local 283 ("the Union") for breach of its duty of fair

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* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

representation under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1988). We affirm.

I

The Postal Service removed Garcia from his position as a letter carrier based on charges that he had deviated from his route without authorization, failed to timely report an accident, and filed a fraudulent injury claim. Pursuant to a collective bargaining agreement between the Union and the Postal Service, the Union, through its representative Raul M. Ayala, filed a grievance challenging Garcia's removal and seeking reinstatement with back pay. After losing at all three stages of the grievance procedure, the Union appealed Garcia's grievance to arbitration.[1]

During the arbitration hearing, Ayala made an opening statement outlining several reasons why Garcia's grievance should be upheld. Ayala presented supporting testimony of Garcia and a union steward. Ayala also cross-examined each of the Postal Service witnesses. Although the Postal Service's representative made a closing statement summarizing its arguments, Ayala informed the arbitrator that he planned to submit a post-hearing brief instead.

Ayala failed to submit the post-hearing brief by the deadline, claiming that he erroneously placed Garcia's grievance in a stack of closed files and forgot to write the brief. Approximately one week after the deadline passed, the arbitrator asked the Postal Service representative about the overdue brief. The arbitrator

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[1] Ayala represented Garcia in the first two steps of the three-step grievance process and at the arbitration hearing.

also called the Union Hall to locate the brief. However, Ayala did not learn of the arbitrator's inquiries until approximately three weeks later. Ayala believed that by then it was too late to submit the brief. The arbitrator had in fact closed the hearing the day he called the Union Hall, almost two weeks before Ayala ever received the messages.

In his twenty-one-page decision, the arbitrator reviewed the position of the Union at the arbitration proceeding and the arguments Ayala made during the grievance procedure. The arbitrator, after pointing out that his findings depended on the witnesses' credibility, found that the employer's charge that Garcia deviated from his route was substantiated by eyewitness testimony that Garcia had not rebutted. The arbitrator also found that the evidence established that Garcia attempted to use a doctor's report to claim that he was totally disabled although the doctor had told him he could work under limited conditions. The arbitrator further found that the Postal Service lacked just cause for charging Garcia for failing to make a timely report of an accident. The arbitrator concluded that Garcia's infractions, while "very serious," were insufficient to justify the discharge of an employee with twenty-six years of seniority. He also concluded, however, that Garcia's infractions were sufficient to warrant a denial of back pay.

Garcia brought an action against the Union, claiming that Ayala's failure to file the post-hearing brief constituted a breach of the Union's duty of fair representation, resulting in Garcia's

loss of $32,147 in back pay and other undetermined employee benefits. The district court granted the Union's motion for summary judgment and dismissed the complaint. Garcia appeals.

II

Garcia argues that the district court erroneously granted the Union's motion for summary judgment. In an appeal from summary judgment, we review the record *de novo*, applying the same standard as the district court. *Garcia v. Elf Atochem N.A.*, 28 F.3d 446, 449 (5th Cir. 1994). We "`indulge every *reasonable* inference from [the] facts in favor of the party opposing the motion.'" *Powers v. Nassau Development Corp.*, 753 F.2d 457, 462 (5th Cir. 1985) (quoting *Hall v. Diamond M Co.*, 732 F.2d 1246, 1249-50 (5th Cir. 1984)). "Summary judgment is proper if the movant demonstrates that there is an absence of genuine issues of material fact." *Duckett v. City of Cedar Park*, 950 F.2d 272, 276 (5th Cir. 1992) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986)). The burden then shifts to the nonmovant to "direct the court's attention to evidence in the record sufficient to establish that there is a genuine issue of material fact for trial." *Id*. "An issue is not genuine when there is nothing more than `some metaphysical doubt as to the material facts.'" *Scallan v. Duriron Co.*, 11 F.3d 1249, 1251 (5th Cir. 1994) (quoting *Matsushita Elec. Indus. Corp. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d. 538 (1986)).

A union has a duty to provide fair representation to its members when enforcing a collective bargaining agreement. *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S. Ct. 903, 909-10, 17 L. Ed. 2d 842 (1967). A breach of the duty of fair representation occurs "only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Id*. at 190, 87 S. Ct. at 916. A union does not breach its duty when its representation of an employee is "less than enthusiastic" or "not perfect," or when the union's conduct amounts to "simple negligence or a mistake in judgment." *Landry v. The Cooper/T. Smith Stevedoring Co.*, 880 F.2d 846, 852 (5th Cir. 1989). "The critical question is whether a union's conduct . . . undermined the fairness and integrity of the grievance process." *Id.* Courts must also consider whether "there is a substantial reason to believe that a union breach of duty contributed to the erroneous outcome of the contractual proceedings." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 568, 96 S. Ct. 1048, 1058, 47 L. Ed. 2d 231 (1976).

Garcia argues that he raised a genuine issue of material fact regarding whether the Union breached its duty. We decline to make that determination because we hold that, regardless of the existence of any breach, Garcia's summary judgment evidence does not establish a genuine issue of material fact as to whether the Union's failure to file the brief contributed to the allegedly erroneous outcome of the arbitration proceeding.[2] Garcia does not

[2] In fact, Garcia only implicitly argues that the outcome of the arbitration proceeding was erroneous and states no grounds to support this implicit contention.

point to any facts to demonstrate that without the post-hearing brief the arbitrator failed to consider certain arguments put forth orally during the hearing or that the arbitrator misapplied the law. Garcia does not delineate any new arguments not presented at the hearing that if communicated to the arbitrator would have undermined the arbitrator's findings.[3] Garcia also does not suggest how the brief could have enhanced his credibility. Garcia's only argument is that the arbitrator's inquiries regarding the whereabouts of the brief imply that the arbitrator must have thought the brief was important, which in turn implies that the failure to file the brief affected the outcome of the arbitration proceeding. Although all inferences are to be viewed in the light most favorable to the nonmovant, these inferences must be reasonable. *See Powers*, 753 F.2d at 462. Garcia's attempt to draw one questionable inference from another does not suffice to create

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[3] Garcia argues that the following language in the arbitrator's decision shows that the Union failed to make an argument on Garcia's behalf that might have affected the arbitrator's finding on the deviation charge:

> [Garcia's] most logical possible argument [to rebut the eyewitness report that he deviated from his route], namely that the mail volume was of such magnitude that he could not have deviated for lunch and complete his route on time, was not made on his behalf. Unfortunately from this stand point Saturday is normally a very light day on his route as evidenced by the time of his departure from the T. W. House Station.

Record on Appeal, vol. 1, at 293. However, failing to raise the argument in a post-hearing brief clearly did not affect the outcome of the arbitration because the arbitrator considered and rejected it in his opinion.

With the advantage of hindsight, Garcia also suggests that Ayala could have argued that: (1) Garcia had never been on sick leave before this instance; (2) the supervisor may not have allowed Garcia to perform light duty anyway considering the tension between them; and (3) Garcia's pain was so severe that he in good faith believed that he could not work at all. However, nothing in the summary judgment record suggests that these arguments would have changed the arbitrator's conclusion that Garcia misrepresented his condition. In fact, Garcia admitted that the doctor told him he would still be able to do light work and that he did not tell his supervisor what the doctor had said. The arbitrator withheld back pay because of Garcia's deception, not because Garcia failed to explain his motives.

a genuine issue of material fact. The arbitrator's inquiries about the brief raise at best only a "metaphysical doubt" as to whether the union's alleged breach affected the outcome of the arbitration. *See Scallan*, 11 F.3d at 1251.

III

For the foregoing reasons, we **AFFIRM**.