

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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ADRIAN FRANCIS,

Plaintiff

vs.

CARLOS VALLE, Director
VIRGIN ISLANDS FIRE SERVICE,

Defendant

CIVIL NO. 1005/1982

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MEMORANDUM OPINION
(March 22, 1983)

FEUERZEIG, J.

Plaintiff, a fireman, seeks to have a Virgin Islands Fire Service regulation, which prohibits the growth of hair of any length on one's face, declared arbitrary and unlawful. ^{1/} The court granted a temporary restraining order barring the dismissal of the plaintiff and scheduled a hearing on the motion for a preliminary injunction. Before that matter was heard, though, the parties stipulated to an indefinite extension of the temporary restraining order, and agreed to submit memoranda in support of their respective positions.

^{1/} "Personal Appearance and Safety Standards" directive issued September 3, 1982 by Carlos Valle, Director, Virgin Islands Fire Service.

The present contract between the Department of Public Safety, Government of the Virgin Islands, and the International Association of Firefighters, Local 2125, provides a procedure for resolving grievances, which may culminate in binding arbitration. In pertinent part the agreement provides:

Section 25.1. Grievance is defined as a complaint, dispute controversy (sic) between the parties as to the interpretation or application of this agreement. The following procedure, which may be initiated by either party, shall be the exclusive means of settlement of all grievances arising under the agreement, including discharge, suspension, or demotion.

Section 25.2. [Thè] Grievance Procedure shall be the exclusive remedy for disputes between the parties to this Agreement . . .

In the face of these provisions the plaintiff asserts that "[a]s such[,] any constitutional issue destroys the arbitrator [sic] function . . ." He does this without any citation to authority or any statement as to the precise nature of the constitutional issues he says are implicated.

In Manning v. Bouton, 678 F.2d 12 (3d Cir. 1982), the court also was faced with the applicability of a grievance provision culminating in arbitration. There, the plaintiff, who had been discharged from his position as an assistant attorney general of the Virgin Islands, also did not avail himself of the grievance procedures mandated by the collective bargaining agreement. Instead, he filed suit in the District Court seeking an injunction. The District Court granted summary judgment in the defendant's favor, holding that the plaintiff, first, should have pursued his claim of a wrongful discharge in accordance with the provisions of the collective bargaining agreement. On appeal, the Third Circuit affirmed:

We will not address Manning's argument on the merits of his discharge because we believe, as did the district court, that the appropriate forum for the resolution of these issues is not the courts but the grievance/arbitration mechanism established by the collective bargaining agreement.

678 F.2d at 15. This court believes that rationale is equally applicable to this case, particularly in view of the plaintiff's failure to direct the court to any authority to the contrary. See 5 V.I.C. App. V R. 6(b) (1982). Accordingly, it is

ORDERED that the plaintiff's motion for a preliminary injunction is denied, and it is further

ORDERED that the temporary restraining order issued on December 20, 1982 is vacated and the complaint is dismissed for failure to comply with the grievance procedures provided in the collective bargaining agreement between the Government and the Firefighters.


HENRY L. FEDERZIC
Judge of the Territorial Court