

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:13-CV-00327-H

MARY BARNES

PLAINTIFF

v.

U.S. POSTAL SERVICE

DEFENDANT

MEMORANDUM OPINION AND ORDER

This case arises out of Plaintiff's allegations that the United States Postal Service misdelivered or failed to deliver certain issues of the Boston Globe newspaper. The named Defendant, U.S. Postal Service, has moved to dismiss the complaint on various different grounds. It is only necessary for the Court to consider one of those grounds in order to sustain the motion.

The United States and its agencies are immune from suit, except to the extent they waive sovereign immunity through a statute or other authority. *Dolan v. United States Postal Service*, 546 U.S. 481, 483-84 (2006). The Federal Court Claims Act ("FTCA") waives the sovereign immunity of the United States and the Postal Service in tort cases. However, the express terms of the FTCA indicate that sovereign immunity is not waived for claims ". . . arising out of the lost, miscarriage or negligent transmission of letters or postal material." 28 U.S.C. § 2680(b); *Dolan*, 546 U.S. at 485-86. Here, Plaintiff's complaint is based on the misdelivery or incomplete delivery of issues of several newspapers. Because sovereign immunity is not waived for this type of claim, the Court lacks subject matter jurisdiction and must dismiss the complaint as a matter of law.

The Court also notes that Plaintiff has sued an improper party, the proper party being the

United States of America rather than the Postal Service. The Court further notes that it may lack jurisdiction because Plaintiff did not previously file a proper administrative claim which is a precondition to bringing an actual lawsuit in federal court. The Court finds it unnecessary to discuss these potentially meritorious defenses.

For all these reasons and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Defendant's motion to dismiss is SUSTAINED and Plaintiff's claims are DISMISSED WITH PREJUDICE.

This is a final and appealable order.

September 19, 2013

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written over a circular seal of the United States District Court. The seal features an eagle with wings spread, perched on a shield, with the words "UNITED STATES DISTRICT COURT" and "DISTRICT OF" visible around the perimeter.

**John G. Heyburn II, Judge
United States District Court**

cc: Mary Barnes, Plaintiff *Pro Se*
Counsel of Record