

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 00-67
LESLIE BROWN)	

MEMORANDUM AND ORDER

In the October 24, 2001, decision in this matter concluding that just cause did not exist for Grievant's dismissal, we ordered that "Grievant shall be awarded back pay and benefits from the date commencing 30 working days from the effective date of his dismissal until his reinstatement, for all hours of his regularly assigned shift, minus any income . . . received by Grievant in the interim". 24 VLRB 159, 183. Grievant is requesting that we amend our order providing that he receive "back pay . . . for all hours of his regularly assigned shift" by ordering in addition that his back pay award include lost overtime wages he would have earned but for his dismissal. The Employer contends that estimated earnings should not be included in Grievant's back pay award.

In calculating a back pay award, the monetary compensation awarded shall correspond to specific monetary losses suffered; the award should be limited to the amount necessary to make the employee "whole". Grievance of Goddard, 4 VLRB 189, at 190-191 (1981). In past cases spanning approximately two decades, the Board has addressed whether improperly dismissed employees are entitled to overtime compensation as part of a back pay award. The Board has held that back pay awards generally do not include overtime pay because it is not predictable and not part of the regular workweek. Grievance of Lilly, 23 VLRB 129, 130, 139 (2000). Grievance of Goddard, 4 VLRB 189, 190 (1981). If the specific amount of overtime is predictable and part of the employee's regular schedule, the Board has concluded overtime pay is an appropriate remedy. Lilly, 23 VLRB at 139-140.

We are not inclined to diverge from our longstanding precedents that overtime pay is not an appropriate part of a back pay award when it is not part of an employee's regular schedule and the specific amount of overtime is unpredictable. This results in denying Grievant's request that his back pay award include lost overtime wages. The amount of overtime Grievant would have worked is unpredictable. It depended on the vagaries of the weather, determinations whether to require overtime, and Grievant's use of scheduled leave and sick leave. The most appropriate measurement of the specific monetary losses suffered by Grievant is to base his back pay award on the wages he earned during his regular workweek.

We note that, given our conclusion that Grievant's back pay award should not include lost overtime wages, it logically follows that any overtime wages received by Grievant in his interim employment during the period he was improperly dismissed should not be deducted from his back pay award. Since Grievant's back pay award is based on the amount of his non-overtime hours in his employment with the Employer, any deductions to his back pay award based on wages he earned in interim employment should be limited to non-overtime hours.

Based on the foregoing reasons, it is ordered that Grievant's request that his back pay award include lost overtime hours is denied, and this case is closed.

Dated this ____ day of September, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

John J. Zampieri