

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

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DOCKET NO. 15-29

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ADAM MICKEL

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ORDER

The issue before the Labor Relations Board is whether to grant the motion of the State of Vermont Department of Corrections (“Employer”) to dismiss this grievance. Adam Mickel (“Grievant”) filed a grievance on July 22, 2015, as amended on August 3, 2015. He contends that the Employer violated various personnel policies and work rules forcing him to resign from his Corrections Services Specialist position effective April 30, 2015. Grievant requested as a remedy reinstatement to his position.

The Employer filed a motion to dismiss the grievance on August 21, 2015, on the grounds that: 1) Grievant failed to file a Step 1, Step II, or Step III grievance alleging that his resignation had been “forced”; 2) Grievant cannot appeal his resignation directly to the Labor Relations Board; and 3) even if Grievant was able to file his grievance directly to the Board, he filed it in an untimely manner. Grievant filed a response in opposition to the motion on October 9, 2015.

The Board will resolve an issue on the merits if at all possible unless the collective bargaining agreement or Board *Rules of Practice* require it to be dismissed on procedural grounds. Grievance of Brewster, 23 VLRB 96, 98 (2000). Grievance of Kimble, 7 VLRB 96, 108 (1984). Grievance of Amidon, 6 VLRB 83, 85 (1983). Under contracts providing that grievances must be filed within specified times at earlier steps of the grievance procedure, and must include a concise statement of relevant facts and the provision(s) of the contract alleged to be violated, the Board, with the approval of the Vermont Supreme Court, has refused to consider grievances which were untimely filed, or issues which were not raised or were untimely raised, at earlier

steps of the grievance procedure. Grievance of Benoit, 31 VLRB 237, 249-50 (2011). Grievance of Adams, 23 VLRB 92 (2000). Grievance of Boyde, 18 VLRB 518 (1995); *Affirmed*, 165 Vt. 624 (1996). Grievance of Ulrich, 12 VLRB 230, 239 (1989); *Affirmed*, 157 Vt. 290 (1991). Also, the Board has dismissed grievances as untimely filed if they did not meet the requirement of Section 18.1 of the Board Rules of Practice of being "filed within 30 days after receipt of notice of final decision of the employer." Grievance of Monti, 10 VLRB 246, 249-250 (1987). Grievance of Roy, 147 Vt. 403 (1986).

We conclude that this grievance should be dismissed based on two grounds, either of which independently warrants dismissal. First, we conclude that we are precluded from hearing this grievance on the merits due to the failure of Grievant either to seek to rescind his resignation, or to file a grievance with the Employer concerning his resignation, within the 15 workdays set forth in the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association for filing grievances at lower steps of the grievance procedure. We would be ignoring the compelling realities of the workplace if we were to hold otherwise. These realities require an employee to take action quickly once it accepts an employee's resignation. The employer must either replace the departing employee or decide to not fill the employee's position. Grievance of Baron, 8 VLRB 63 (1985). The strict time limits imposed in the grievance procedure permit planning based on the assumption that actions which are not challenged within the specified time cannot be challenged thereafter. Id. at 64.

Second, even operating under the assumption that Grievant could file a grievance directly with the Board over the alleged involuntary nature of his resignation without seeking to rescind his resignation or filing a grievance with the Employer concerning it, Grievant filed his grievance with the Board in an untimely manner. Grievant was required to file his grievance with

the Board within 30 days after receipt of notice of final decision of the Employer. Monti, 10 VLRB at 249-50 (1987). Grievant received this notice at the very latest on April 30, 2015, the effective date of his resignation. Yet he did not file his grievance with the Board until July 22, 2015, 83 days later.

Based on the foregoing reasons, it is ordered that the Grievance of Adam Mickel is dismissed.

Dated this 6th day of November, 2015, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park, Acting Chairperson

/s/ James C. Kiehle

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James C. Kiehle

/s/ Alan Willard

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Alan Willard