

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 84-41
RICHARD CAROSELLA)	

MEMORANDUM AND ORDER

At issue here is a dispute over backpay due Grievant as a result of his improper discharge. On May 2, 1985, the Labor Relations Board issued Findings of Fact, Opinion and Order sustaining the above-entitled grievance and reducing Grievant's dismissal to a 30-day suspension. The Board left the case open for the purpose of determining the back pay and other benefits due Grievant from the date of his improper discharge until his reinstatement.

On May 20, 1985, the State of Vermont and Grievant filed a partial stipulation as to back pay and other benefits due Grievant. However, the parties were unable to agree to resolution of the following issues and submit them to the Board for its determination:

1. Should Grievant's backpay award include holiday premium pay for holidays which fell on Grievant's regularly-scheduled workdays?
2. Should Grievant receive interest (at 12 percent per annum) on his backpay award, and, if so, should it begin to run from the date of the Board's Order, or from the date Grievant would have, but for his dismissal, received his paychecks?
3. Should Grievant's backpay award be offset by the sum of \$250.86, which sum represents the amount of money Grievant received upon dismissal for unused annual leave (5.22 days)?

We discuss each of these issues in turn. In determining whether Grievant's backpay award should include holiday premium pay for holidays which fell on Grievant's regularly-scheduled workdays, we look to the pertinent provisions of the applicable contract between the State and Vermont State Employees Association, the Non-Management Bargaining Unit Contract effective July 1, 1984 to June 30, 1986. Article 35, Section 5 of the Contract provides in pertinent part:

a. An employee who is normally scheduled to work on a day observed as a legal holiday and does not work on that day shall receive no compensation for that day in addition to his minimum bi-weekly compensation.

b. Employees... who are required to work on a day which is normally a scheduled workday and is also a day observed as a legal holiday shall receive compensation at designated rates as explained below, plus applicable shift differential for all hours actually worked on that day. The compensation shall be in addition to the employee's minimum bi-weekly compensation. If the designated rate for the holiday is straight time, the employee shall receive cash or compensatory time off at straight time for all hours actually worked on that day, if he so chooses. If the designated rate for holiday work is time and one-half, and the employee requests time off for all hours worked that day, he shall receive compensatory time off up to a maximum of 8 hours, and the employer shall determine whether to pay the additional holiday compensation in compensatory time off or in cash. In no event shall the employer be required to grant more than 8 hours of compensatory time for work on a holiday.

In interpreting this contract language, we are guided by the rule of construction that a contract will be interpreted by the common meaning if its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). It is our duty to interpret the provisions of a disputed contract, not remake it or ignore it. In re Grievance of VSEA on Behalf of Certain Phase-Down Employees, 139 Vt. 63, 65 (1980). We will not read terms into a contract unless they arise by necessary implication. Stacey, supra, at 71.

Here, the contractual language is clear: "An employee who is normally scheduled to work on a day observed as a legal holiday and does not work on that day shall receive no compensation for that day in addition to his minimum bi-weekly compensation"; and "Employees... who are required to work on a day which is normally a scheduled workday and is also a day observed as a legal holiday shall receive compensation at designated rates... for all hours actually worked on that day". We follow this language literally. Grievant did not work on holidays which fell on his regularly-scheduled workday; although through no fault of his own since he had been dismissed, and thus is not entitled to holiday premium pay for those days.

The second issue before us is whether Grievant should receive interest at 12 percent per annum on his backpay award, and, if so, from what date should that interest begin to run.

In Grievance of Benoir, 8 VLRB 165-170, 175-176, we determined an employee who was reinstated and given backpay commencing on the effective date of his dismissal should receive interest at the rate of 12 percent per annum on the backpay beginning from the date of each paycheck Grievant should have drawn from the date he grieved his dismissal to the Board until the date of his reinstatement. The same principle applies here; however, the circumstances differ. The Board has imposed a 30-day suspension as a penalty on Grievant, whereas in Benoir the Board imposed no penalty.

As a result, the effective period of Grievant's suspension - a six-week period commencing with the date he was dismissed - lasted past the time he grieved his dismissal to the Board, which was less than 30 days after he was dismissed. Thus, the interest should run from the date of each paycheck Grievant should have drawn from the effective date of the end of his suspension until his reinstatement.

The final issue is whether Grievant's backpay award should be offset by the amount of money Grievant received upon dismissal for unused annual leave. We conclude Grievant's accrued annual leave balance should be restored and the accrued annual leave payment made at the time of separation should be offset against the amount of backpay otherwise due. Grievance of Benoir, supra.

ORDER

Now therefore, based on the foregoing reasons, it is hereby ORDERED:

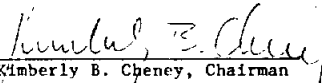
1. The terms and conditions of paragraphs 1-3 of the Board's previous order, dated May 2, 1985, are incorporated herein;
2. The State shall, forthwith, pay to Grievant an amount representing backpay, said sum being calculated in accordance with the terms of the stipulation of the parties (the terms of which are incorporated herein by reference) and the provisions of this order;
3. The interest due Grievant on backpay shall be at the rate of 12 percent per annum and shall run from the date each paycheck during the period commencing 30 regularly-scheduled workdays after Grievant's effective July 19, 1984, dismissal, and ending on the date of his reinstatement was due; such interest for each paycheck date shall be computed from the amount of each paycheck minus unemployment compensation received by Grievant during the payroll period;
4. The back pay due Grievant shall be offset by the \$250.86 accrued annual leave payment received by Grievant at the time of his separation, and 5.22 days shall be restored to Grievant's accrued annual leave balance;

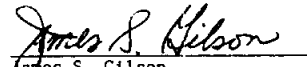
5. The backpay award shall not include holiday premium pay for holidays which fell on Grievant's regularly-scheduled workdays; and

6. The State shall restore to Grievant all benefits (e.g., sick leave, annual leave, insurance) in accordance with the parties' stipulation, as though he had not been dismissed.

Dated this 5th day of July, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


James S. Gilson