

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	DOCKET NO. 85-2
	)	
CHARLES HOLDEN	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 4, 1985, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of State Police Corporal Charles Holden ("Grievant"). The grievance alleged the State of Vermont, Department of Public Safety ("Employer") violated Article 11 of the State Police Unit contract and Article 28 of the master contract, both contracts entered into by the State and VSEA effective for the period July 1, 1982 to June 30, 1984, by requiring Grievant to charge his bank of sick leave for part of an absence from work resulting from an on-the-job injury.

On October 22, 1985, the Employer and VSEA filed a stipulation of facts and for submission of exhibits. The parties agreed to submit this matter to the Board for its decision, without a hearing, based on the stipulated facts and exhibits and memoranda submitted by the parties.

Grievant and the Employer filed Memoranda of Law on November 7, 1985. Grievant filed a Reply Memorandum on November 14, 1985. The State filed no reply brief.

FINDINGS OF FACT

1. On August 4, 1973, Grievant, then a State Police Trooper, was injured in an on-the-job automobile accident which occurred on Interstate Highway 91. Included among Grievant's injuries was a "sore left knee." (Exhibits A, B and C.)

2. As a result of that accident, Grievant did not work from August 4, 1973 to August 31, 1973 (Exhibits F and G).

3. As a further result of that accident, Grievant received Workmen's Compensation benefits, which included both payment of medical expenses and compensation for 19 days of temporary total disability during the period August 4, 1973 to August 31, 1973 (Exhibits D, E, F, G, H, I and J).

4. As a direct and proximate result of the injury sustained by Grievant in that accident, surgery was performed on Grievant's left knee on May 2, 1984. By reason of that surgery, Grievant was absent from work for four days (i.e., May 2, 1984, May 3, 1984, May 4, 1984, and May 7, 1984) and two hours (i.e., on May 1, 1984). As a result of that absence, Grievant received Workmen's Compensation benefits, including compensation for temporary total disability during the period of absence (Exhibits J, L and N).

5. The collective bargaining agreements in effect for the period July 1, 1982 to June 30, 1984 contained the following relevant provisions:

MASTER CONTRACT

ARTICLE 28

INJURY ON THE JOB

1. For an injury relating to the performance of a State job under the special circumstances described below, an employee will be paid the difference between his basic weekly salary and workmen's compensation without charge to sick or annual leave:

b....(A) state police officer injured in a highway accident....

...d. The provisions of this Article may be extended in other appropriate cases as, for example, to airport firefighters involved in a conflagration. In any such instances, as in all other instances, the determination of the Workmen's Compensation Board (or the Board on State Employee Benefits) shall be conclusive on whether an injury is job-related....

(Exhibit U)

#### STATE POLICE UNIT CONTRACT

##### ARTICLE 11

##### PERSONAL LEAVE

An employee who, in any calendar four-month period (commencing July 1, November 1, and March 1): (1) does not use sick leave... shall be entitled to one personal leave day, but not more than three per fiscal year..."

6. The contract in effect from July 1, 1979 to June 30, 1981 (Exhibit S) was the first collective bargaining agreement containing a provision authorizing the payment, without charge to sick or annual leave banks, of the difference between Workmen's Compensation benefits and an injured employee's basic weekly salary. In particular, the contract in effect on August 4, 1973 contained no such provision.

7. As a result of his absence from work during the period May 1, 1984 to May 7, 1984, Grievant was paid the difference between his Workmen's Compensation and his basic weekly salary, but his bank of accrued sick leave was charged therefor. By reason of that use of sick leave, Grievant lost, under Article 11 of the contract, one personal leave day (Exhibit J).

8. On May 24, 1984, Grievant requested that the sick leave used to pay him the difference between his Workmen's Compensation benefits and his basic weekly salary during his absence from work during the

period May 1, 1984 to May 7, 1984 be restored to his bank of sick leave under Article 28 of the contract, and that he be entitled to one day of personal leave under Article 11 of the contract (Exhibits J and M).

9. Grievant's request was denied by the Department of Personnel (Exhibit P).

#### OPINION

The issue before us, as stipulated by the parties, is whether Article 28 of the Contract applies to a personal injury which requires treatment during the term of the Contract, but which was caused by an accident which occurred before the existence of any such contractual benefit.

Grievant contends he is entitled to Article 28 benefits under the 1982-1984 contract even though the 1973 automobile accident which precipitated Grievant's injury occurred before the existence of such a contractual benefit because the injury manifested itself during the term of the 1982-1984 contract. The Employer contends that since the contract in effect at the time of the 1973 accident causing the injury did not provide for any such benefits, the benefits do not apply to any subsequent treatment for an injury resulting from the accident regardless of whether the contract in effect at the time of treatment provided for the benefits. Thus, Grievant looks to treatment of an injury as a triggering point of Article 28 benefits while the Employer looks to the accident causing the injury as the trigger.

In resolving these differences, the task before us is one of

contract interpretation. Article 28 provides benefits will apply "for an injury related to the performance of a State job under the ...circumstances" of a "state police officer injured in a highway accident." A contract will be interpreted by the common meaning of its words where the language is clear, In re Stacey, 138 Vt. 68, 71 (1980), and here it is evident that in 1984 Grievant had a continuing "injury" within the common meaning of that word resulting from the 1973 accident.

Without further guidance from the contract, we conclude Article 28 benefits apply. Absent express language in the Contract supporting the State's position, we cannot presume the parties intended that benefits provided under a contract which went into effect on July 1, 1982, should not be given effect in May, 1984, when Grievant had surgery because of his injury. cf., Grievance of Sherman, 7 VLRB 380, 399 (1984). Once Grievant was treated during the term of the contract for an injury which indisputably arose from a highway accident, he was entitled to the full protection of Article 28 without reference to when the accident occurred. cf., Grievance of Lawrence Cole, 6 VLRB 204 (1983).

Thus, Grievant was entitled to the benefit of Article 28 of the Contract by reason of his absence from work from May 1, 1984, through May 7, 1984, and his sick leave bank should not have been charged for such absence. Improper charging of sick leave also resulted in Grievant being improperly denied a personal leave day.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

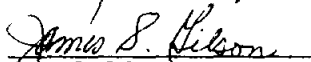
The Grievance of Charles Holden is SUSTAINED and the Employer shall restore to Grievant's sick leave bank the sick leave used to pay him the difference between his Workmen's Compensation benefits and his basic weekly salary during his absence from work during the period May 1, 1984, to May 7, 1984, and shall grant Grievant one day of personal leave under Article 11 of the State Police Unit Contract.

Dated at Montpelier, Vermont this 12<sup>th</sup> day of December, 1985.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Kemsley, Sr.

  
James S. Gilson