

VERMONT LABOR RELATIONS BOARD

GRIEVANCES OF:	)	DOCKET NOS:	84-58
	)		85-13
PROFESSOR GEORGE MERCER and	)		
THE VERMONT STATE COLLEGES	)		
FACULTY FEDERATION, AFT	)		
LOCAL 3180, AFL-CIO	)		

FINDINGS OF FACT, OPINION AND ORDER

STATEMENT OF CASE

This matter involves two separate grievances. On December 18, 1984, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO ("Federation") filed a grievance on behalf of Professor George Mercer ("Grievant"). The grievance alleged Johnson State College ("College") violated Article 5 (Federation Officers' Rights), Article 36 (Sick Leave), Article 23 (Workload) and Article 8 (Anti-Discrimination) of the 1984-86 Contract between the Federation and the Vermont State Colleges ("Contract") by charging Grievant's sick leave bank at the rate of 5 days per week, rather than 3 days per week, when Grievant began using his accumulated sick leave because of a hearing disability.

Grievant filed a second grievance on March 26, 1985. The grievance alleged the College violated Article 36 of the Contract by discontinuing paying Grievant for sick days he had accrued because TIAA/CREF, the faculty retirement program, had begun disability payments to him.

Pursuant to an agreement of the parties, the Board combined the two grievances so both grievances could be examined at a single hearing. A hearing was held before Board Chairman Kimberly B. Cheney and Member William G. Kemsley, Sr., on September 12, 1985. Member James S. Gilson was absent from the hearing and has not participated in the decision. Dr. Stephen Butterfield, Federation Grievance Chairperson, represented

Grievant. Attorney Paul Sutherland represented the Vermont State Colleges ("Colleges"). Requested Findings of Fact and Arguments were filed by the Federation and Colleges on September 27, 1985.

FINDINGS OF FACT

1. Grievant taught Biology and Ecology at the College from about 1970 through the Spring 1984 Semester. Grievant accumulated sick leave throughout his employment in accordance with rates specified for full-time faculty in the contracts between the Federation and Colleges. As of August, 1984, he was a tenured professor with 104.5 days of accumulated sick leave.

2. On July 17, 1984, Grievant informed College President Eric Gilbertson it would be necessary for him to take indefinite sick leave effective immediately because of a hearing disability (Grievant Exhibits 11, 12).

3. Grievant began drawing on his sick leave bank at the beginning of the Fall 1984 Semester.

4. Grievant served as Federation grievance counselor during 1983 and 1984. He was grievance counselor while absent due to disability in the Fall of 1984. As a grievance counselor, Grievant was entitled by Article 5 of the Contract to two days a week free of scheduled classes. Before going on sick leave, Grievant maintained a three-day teaching schedule.

5. The College depleted Grievant's sick leave bank during the Fall 1984 Semester at the rate of 5 days per week.

6. From July 17, 1984, until January 17, 1985, Grievant received his regular paychecks from the College while he remained on sick leave. He also received full benefits.

7. Faculty members, in general, while on sick leave receive regular paychecks, are entitled to full benefits, are expected to return to work when able, and are considered to have employment responsibilities which must be covered on a temporary basis.

8. At some point after July 17, 1984, Grievant applied to TIAA-CREF (Teachers' Insurance and Annuity Association/College Retirement Equities Fund) for total disability benefits.

9. TIAA/CREF disability insurance coverage is a benefit provided by the Colleges to its faculty. Total disability insurance coverage protects employees against total loss of income because of permanent inability to perform job duties due to disability. Under the terms of the policy, total disability benefits are paid to an individual establishing total disability. Benefits can commence only after the insurance company has processed the claim, and at same time at least six months following the onset of actual total inability to work. At the time of application, it is difficult to know whether and when benefits will begin.

10. At some time prior to January 17, 1985, Grievant was deemed eligible for total disability benefits by TIAA/CREF, and by January 17 began to receive regular benefit checks directly from the company.

11. Following commencement of Grievant's receipt of total disability benefits, the College ceased to consider Grievant an employee and stopped paying him sick leave. At that point, Grievant's sick leave bank was not exhausted. (Grievant Exhibit 8).

12. At any one time in the Colleges, 6-8 individuals receive TIAA/CREF total disability benefits. No individual has ever previously received total disability benefits and sick leave pay at the same time.

13. In the past, individuals who have applied for and received total disability benefits have been considered by the Colleges to be former employees, terminated upon commencement of total disability benefits. Paychecks are no longer issued to the individual.

14. For individuals who have established eligibility for total disability benefits and have begun to receive them, the Colleges have no expectation the individual will return to work if she/he recovers from disability; the individual has no right to return if he/she recovers and wishes to do so; and arrangements are made to either find a permanent replacement or eliminate the position.

15. The total disability benefits Grievant receives constitute 60% of his regular salary. If Grievant were to receive sick leave and disability payment simultaneously, he would receive approximately 160% of his regular salary while not working.

16. If a faculty member ceases employment with the Colleges, he or she does not receive an accumulated sick leave payment.

17. Grievant is and has been at all times relevant a dues-paying member of the Federation.

18. The Contract provides in pertinent part as follows:

ARTICLE 1  
DEFINITIONS

... Faculty Member - The term "Faculty Member" as used in this Agreement shall mean any member of the bargaining unit; "faculty" shall mean all members of the bargaining unit.

ARTICLE 2  
RECOGNITION

A. The Vermont State Colleges recognizes the Federation as the exclusive bargaining agent for all full-time teaching faculty and ranked librarians employed by the Colleges...

ARTICLE 36  
SICK LEAVE

A. Sick leave may be used if a faculty member must be absent from his/her duties because of disability, illness or accident. In addition, a faculty member may use up to three (3) days of sick leave per year for personal reasons.

B. Each faculty member shall earn six (6) days of sick leave per semester of full-time teaching service.

.....H. When absent from scheduled duties prescribed in Article 23, Workload, for reasons given in (A.) above, faculty shall be charged the appropriate number of days of sick leave.

I. Faculty shall make every effort to arrange for satisfactory coverage of their duties while absent for disability, illness, or accident. Where leave is for personal reasons, satisfactory coverage or other alternative arrangements may be required by the designated administrator. Notice for need of absence shall be given, as soon as possible, to said administrator. Upon return, the faculty member shall complete and submit to said administrator a "Sick Leave Absence" form (see Appendix D).

OPINION

There are two issues before the Board: 1) whether Grievant is entitled under the Contract to receive sick leave benefits at the same time he receives disability benefits; and 2) whether Grievant's sick leave bank ought to be depleted at a rate of three days per week, not five days per week.

We address first the issue concerning Grievant's entitlement to disability benefits and sick leave benefits at the same time because the rate of depletion of the sick leave issue need be reached only if the Board should decide the other issue in favor of Grievant. Since Grievant was fully compensated for the entire period of his sick leave prior to commencement of total disability benefits, there is no claim the College's method of depleting his sick leave bank at a rate of five days instead

of three days has wrongfully deprived him of earned sick leave unless it is determined Grievant is entitled to receive sick leave and total disability benefits at the same time.

Grievant contends the Contract makes no connection between disability payments and accrued sick days; that the College violated Article 36, Sick Leave, of the Contract because the article does not make the payment of sick days conditional on the onset of disability payments. We disagree.

Entitlement to sick leave benefits under Article 36 is based on the presumption the faculty member is only temporarily absent and will be returning to assume duties. This presumption is indicated by the article's provisions that sick leave may be used if a faculty member "must be absent from his/her duties because of disability, illness or accident;" that "faculty shall make every effort to arrange for satisfactory recovery of their duties while absent;" and that the faculty members shall submit a sick leave absence form "upon return." A contract will be interpreted by the common meaning of its words where the language is clear, and effect must be given to all material parts of a contract. In re Stacey, 136 Vt 68, 71 (1980). These provisions make it clear entitlement to sick leave depends on a presumption of return to duties and that the article's reference to "disability" refers to temporary disability. For us to hold otherwise would be not to give effect to every part of the article.

When an employee begins to receive total disability benefits, the presumption of return to duties is ended. At that point, the Colleges have no expectation the individual will return to work even if he/she recovers from disability; the individual has no right to return if he/she recovers and wishes to do so; and arrangements are made

to find a permanent replacement or eliminate the position. An individual receiving total disability benefits has no duties from which to be absent pursuant to Article 36. Thus, when Grievant began receiving total disability benefits, he was no longer entitled to sick leave benefits even though his sick leave bank had not been exhausted.

For us to decide Grievant is entitled to sick leave benefits and disability benefits at the same time would mean he would receive 160% of his normal salary. He would thus make more money by not working than he did while working. We cannot conclude the parties intended such a seemingly illogical result unless it is explicitly provided in the Contract. Absent that, we find no merit in Grievant's position.

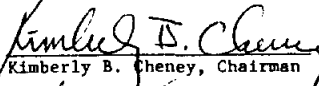
ORDER

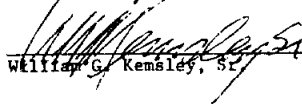
Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

The Grievances of Professor George Mercer and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, are DISMISSED.

Dated this 21<sup>st</sup> day of November, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Kemsley, Sr.