

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

RONALD BENOIR

)
)
)

DOCKET #84-18

MEMORANDUM AND ORDER

At issue here is a dispute over back pay due Grievant as a result of his improper discharge. On October 16, 1984, the Labor Relations Board issued Findings of Fact, Opinion and Order granting the above-entitled grievance and reinstating Ronald Benoir ("Grievant") to the position of Psychiatric Technician A at Vermont State Hospital. 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 November 6, 1984, the State of Vermont and Grievant filed a stipulation as to back pay and other benefits due Grievant. The Board issued an Order on November 8, 1984, For Reinstatement and Other Relief. The Order provided the Board would retain jurisdiction until the expiration of a period of 30 days following payment by the State to Grievant of back pay for the purpose of resolving any disputes or disagreements between the parties as to amounts owed Grievant.

On January 9, 1985, Grievant informed the Board the parties were in disagreement as to the correct amount of money due Grievant for the period April 4, 1984, to December 1, 1984. Subsequently, the parties agreed to some of the issues in dispute but on April 17, 1985, informed the Board they were unable to agree on a resolution of the following issues and submitted them to the Board for decision:

1. Should there be an offset against the amount owed to Grievant of some, or all, of \$1,034.28 which Grievant received in payment of accrued annual leave upon his dismissal?

2. Should interest run from the date of the Board's order, or should it run from the end of each pay period from April 4, 1984 to December 1, 1984? If the latter is the correct method of calculating interest, then what method of calculation should be used?

Grievant and the State filed memoranda on these issues on April 15 and 18, 1985, respectively. We discuss each of these issues in turn.

Annual Leave

Article 26, Section 2q of the 1982-84 Non-Management Unit Contract requires payment for all accrued annual leave to "an employee separating from the State classified service". Grievant was paid \$1,034.28 at the time of his separation for 19 1/2 days of accrued annual leave. The November 6, 1984, Stipulation of the parties provided:

Inasmuch as Grievant received a cash payment for all annual leave days he had accrued up to the date of his dismissal, those annual leave days will not be restored to him upon his reinstatement.

The November 8, 1985, Order of the Board ordered that "(t)he State 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..."

The State contends that since Grievant, in effect, has not been separated from State service due to the Board Order reinstating him, Article 26, Section 2q would not be applicable and payment for this accrued annual leave would no longer be appropriate or required by the Contract. The State maintains such payment would result in Grievant receiving double pay for 19 1/2 days. If it is the Board's intention

to restore the "status quo ante", then the State contends Grievant's accrued annual leave balance should be restored and the \$1,034.28 payment made at the time of separation should be offset against the amount of back pay otherwise due. The State maintains it was in error when it entered into the November 6, 1984, Stipulation by ignoring the payment for accrued annual leave in the determination of Grievant's back pay amount.

Grievant contends the back pay award should not be offset by an amount representing the accrued annual leave paid to Grievant upon his dismissal; that if it was the State's intention to offset Grievant's annual leave payment from the back pay award, it should have said so when the parties were discussing the Stipulation concerning back pay in November. Also, Grievant maintains it was the State which set in motion the wheels of Grievant's improper dismissal and the State should not now be heard to complain of its consequences. Further, Grievant contends the State's theory is too speculative, based as it is on what would have happened had Grievant not been dismissed.

We agree with the State that Grievant's accrued annual leave balance should be restored and the \$1,034.28 payment made at the time of separation should be offset against the amount of back pay otherwise due. An improperly dismissed employee should be reinstated with back pay and other emoluments from the date of the improper discharge less sums of money earned or that without excuse should have been earned from that date. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). 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). cf. Kelly v. Day Care Center, Inc., 141 Vt. 608 at 615-616 (1982).

To make Grievant "whole" in this case is to place him in the position he would have been had he not been dismissed. If Grievant had not been dismissed, he would not have been given a lump sum payment for accrued annual leave and would have had his annual leave balance reduced only as authorized by his superiors and allowed by the Contract. Accordingly, Grievant should have his leave balance of 19 1/2 days restored and the accrued annual leave payment made to him at the time of his dismissal should be used to offset the amount of back pay otherwise due Grievant. Otherwise, Grievant would be receiving more monetary compensation than he is entitled.

Interest

The November 8, 1984, Order of the Board provided Grievant be paid back pay with interest at the rate of 12 percent per annum. The parties disagree on the method of implementing the Board's Order concerning the payment of interest on the back pay amount. Grievant contends the interest should run from the date of each paycheck he should have drawn from the effective date of his dismissal (i.e., April 3, 1984) until December 1, 1984. The State contends it had no back pay liability or obligation until the date of the Board's November 8, 1984, Order. Prior to such determination, the State contends its action should be presumed to be legitimate, and not subject to the payment of interest which is, in effect, a penalty for failure to pay a financial obligation in a timely manner.

We believe interest should run from the date of each paycheck Grievant should have drawn from the date he filed this grievance with the Board on April 24, 1984, until December 1, 1984. To compute interest from

the date of the Board Order would be to penalize Grievant for the delay between filing of the case with the Board and the Board decision. An employee should not be punished because of any delay resulting from Board processes. Kelley v. The Day Care Center, Inc., *supra*. Likewise, the State should not incur any interest liability until dissatisfaction with its dismissal action is officially voiced in the form of grieving to the Board.

By this rule, we are not imposing a penalty or punishment on management. We make no judgment whether management took its action in good or bad faith. We are simply seeking to make Grievant "whole" for income losses suffered as a result of his dismissal. This rule should have easy application. It is not based on a subjective assessment of management's actions.

We note the interest computation should be directly offset by unemployment compensation payments received by Grievant. Also, in carrying our interest computation rule to its logical conclusion, interest should be computed on the accrued annual leave payment made to Grievant from the date he received that payment to the date of this Order because Grievant had the use of the money during this period.

ORDER

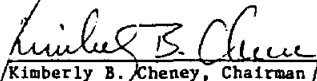
Now therefore, based on the foregoing reasons, it is hereby ORDERED:

1. The interest due Grievant on back pay shall be at the rate of 12 percent per annum and shall run from the date each paycheck during the period April 24, 1984, to December 1, 1984, was due; such interest for each paycheck date between April 24, 1984 to December 1, 1984, shall be computed from the amount of each paycheck minus unemployment compensation received by Grievant during the payroll period; and

2. The back pay due Grievant shall be offset by the \$1,034.28 accrued annual leave payment received by Grievant at the time of his separation plus interest at the rate of 12 percent per annum computed from the date he received that payment to the date of this Order, and 19 1/2 days shall be restored to Grievant's accrued annual leave balance.

Dated this 17th day of May, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.