

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

RONALD BENOIR

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DOCKET NO. 84-18

MEMORANDUM AND ORDER

On May 20, 1985, Grievant filed a motion requesting the Labor Relations Board reconsider, in part, its Memorandum and Order of May 17, 1985, 8 VLRB 165, relating to back pay due Grievant as a result of his improper discharge.

Grievant's motion is based on two grounds. First, Grievant contends interest on the back pay due him should begin to run from the date of the first paycheck Grievant did not receive after his dismissal, rather than from the date of the filing of this grievance as determined by the Board. On this issue, we adhere to our views stated in the May 17 Memorandum and Order.

Second, Grievant contends he should not be liable for interest on the amount he received for accrued annual leave upon his dismissal. In our May 17 decision, we concluded Grievant was liable for interest computed from the date he received the accrued annual leave payment until the date of the May 17 order because Grievant had the use of the money during that period. Upon reconsideration, we agree with Grievant that he is not liable for any interest on that amount because the State did not request interest on that sum when the parties submitted disputed back pay issues to the Board for resolution.

We note that on February 13, 1985, Grievant requested the Board petition the Washington Superior Court, under 3 VSA §1002, to enforce the Board's November 6, 1984, Order in this matter because the State refused to comply with the Order by not restoring Grievant to a duty status. We believe no need for enforcement of the Order exists given the present circumstances. On May 29, 1985, Grievant filed a new grievance with the Board (Docket No. 85-29). The grievance indicated Grievant was reinstated to his position effective December 4, 1984, and was, at the same time, temporarily relieved from duty with pay; was subsequently demoted on February 25, 1985; and was then dismissed again, effective May 13, 1985, which dismissal was being grieved. Since the grievance over the second dismissal is now pending before the Board and since our Order today finally corrects the back pay due Grievant as a result of his first dismissal, petitioning the Superior Court to return Grievant to duty status would be premature pending a Board decision on whether just cause exists for the second dismissal.

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

1. The May 17 Memorandum and Order in this matter is RETRACTED to the extent it provides Grievant was liable for interest on the amount he received for accrued annual leave upon his dismissal;
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 and 19 1/2 days shall be restored to Grievant's accrued annual leave balance; and

3. Grievant's February 13, 1985, application to enforce the Board Order dated November 6, 1984, is DISMISSED.

Dated this 5<sup>th</sup> day of July, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney  
Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.  
William G. Kemsley, Sr.