

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:
GARY WARREN

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DOCKET NO. 82-69

MEMORANDUM AND ORDER

At issue here is a dispute over backpay due Grievant as a result of his improper dismissal. On March 26, 1987, subsequent to a Vermont Supreme Court decision in this matter, the Labor Relations Board issued a Memorandum and Order reinstating Grievant with backpay to his position as correctional officer at the Woodstock Community Correctional Center. 10 VLRB 65. The Board left the case open for the purpose of determining the backpay and other benefits due Grievant from the date of his improper discharge until his reinstatement.

On May 7, 1987, Grievant and the State of Vermont, Department of Corrections ("Employer") filed a factual stipulation on backpay and other benefits but informed the Board they were unable to resolve the following issues and submitted them to the Board for decision:

1) whether interest should be added to Grievant's backpay award, and if so, from what date and at what rate;

2) whether interest, if appropriate, should be compounded or calculated as simple interest; and

3) whether Grievant's fees for bankruptcy proceedings should be added to his backpay award.

Oral argument on these issues was heard before Board Members Charles H. McHugh, Chairman; William G. Kemsley, Sr., and Catherine L. Frank on May 7, 1987. Attorney Susan Dole represented Grievant. Assistant Attorney General Michael Seibert represented the Employer. Grievant and the Employer filed memoranda on these issues on May 13 and 14, 1987, respectively.

Interest on Backpay Award

The Employer contends the Board should reconsider its practice with respect to awarding interest on backpay awards. The Employer raises various issues in this regard, each of which will be discussed in turn.

First, the Employer contends that, absent some specific authorization either by statute or by the collective bargaining agreement, the Board lacks the authority to grant any award of interest on a backpay award.

In calculating a backpay award, 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. Kelley 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 in had he not been improperly dismissed. Grievance of Benoir, 8 VLRB 165, 168.

We conclude that adding interest to the backpay award is necessary to make Grievant "whole" for income losses suffered as a result of his dismissal. By awarding interest, we are not imposing a

penalty or punishment on management, but are simply compensating Grievant for the loss of the use of the money represented by the wages not paid to Grievant because of his improper discharge. Grievance of Benoir, supra, at 169 (1985). c.f. Vermont Structural Steel Corp. v. Buckman, 131 Vt. 144 (1973).

The Employer next contends that if the Board does award interest, the Board should reconsider whether its practice of awarding interest at a 12 percent rate is appropriate. The State contends that there is no legal requirement on the Board to impose a 12 percent rate of interest and that an award at that rate will restore Grievant to a better place than where he would have been if he had not been dismissed.

It has been the practice of the Board to award the legal rate of interest calculated at the legal rate allowed for "forbearance for use of money", which is 12 percent pursuant to 9 VSA §41(a). We agree with the Employer that the Board is not bound to award the legal rate of interest. However, in the exercise of our discretion, we believe the most appropriate rate to apply as one element of making the employee "whole" is the legal rate determined by the legislature for "forbearance for use of money".

Finally, with respect to payment of interest, the Employer contends that it should be required to pay interest only from the date of this Order of the Board, which will be the first time the Employer will be ordered to pay any sum certain to Grievant.

As indicated above, in awarding interest we are simply compensating Grievant for the loss of the use of the wages not paid to

Grievant because of his improper discharge. Grievant would have had use of any such wages on the first date paychecks were issued after his dismissal. Thus, interest liability should commence on that date. It logically follows that interest calculated on the amount of the award continues to run until Grievant receives his backpay.

Calculation of Interest

In determining whether interest should be compounded or calculated as simple interest, we conclude it is appropriate to apply the more accepted method of simple interest which is used in civil cases.

Bankruptcy Proceedings Fees

Grievant contends that the fees he paid for bankruptcy proceedings should be paid by the Employer since he would not have considered filing for bankruptcy if he was not improperly discharged. However, Grievant presented no evidence to demonstrate bankruptcy filing was due to loss of his job. Absent such evidence, we conclude it is inappropriate to require the State to reimburse Grievant for fees he paid for bankruptcy proceedings.

In his memorandum of law, Grievant renewed his request for attorney fees. We adhere to the view stated in our March 26, 1987, decision in this matter that to so order would be in excess of our authority under law.

ORDER

Now therefore, based on the foregoing reasons and consistent with the Board's Order of March 26, 1987, in this matter, it is hereby ORDERED:

1. The terms and conditions of paragraphs 1-3 of the Board's Order of March 26, 1987, and the terms and conditions of the parties' stipulation of May 7, 1987, are incorporated herein by reference and the parties are ordered to comply therewith;

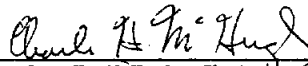
2. The Employer shall, forthwith, pay to Grievant an amount representing back pay, which sum shall be calculated in accordance with the provisions of this order and which sum was \$31,531.35 as of May 15, 1987;

3. Grievant shall not be reimbursed for \$75.00 he paid in 1983 and 1984 for bankruptcy proceedings; and

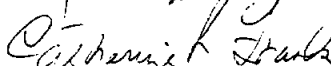
4. The State shall restore Grievant to all benefits in accordance with the parties' stipulation, as though he had not been dismissed.

Dated this 10th day of June, 1987, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


William G. Kemsley, Sr.


Catherine L. Frank