

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 98-23
MATTHEW GREENIA	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

At issue is a dispute over compensation due Matthew Greenia ("Grievant") who was dismissed by the State of Vermont, Agency of Human Services, Department of Corrections ("Employer"). On January 22, 1999, the Vermont Labor Relations Board issued Findings of Fact, Opinion and Order, concluding that Grievant was dismissed in violation of Article 14 of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association for the Corrections Bargaining Unit, effective for the period July 1, 1997 to June 30, 1999 ("Contract"). The Board reduced the dismissal to a 10 day suspension, and determined that Grievant was entitled to reinstatement with back pay and other benefits. The Board left the case open for the purpose of determining the specific back pay and other benefits due Grievant from the date commencing 10 working days from the date of his improper discharge to the date of his reinstatement. 22 VLRB 18 (1999).

Grievant and the Employer entered into a stipulation and agreement resolving all back pay and benefit issues except whether Grievant is entitled to receive compensation for annual leave in excess of the contractual limit which he was unable to use because of his improper discharge. The Board conducted oral argument on the annual leave issue in dispute on February 11, 1999. On February 18, 1999, the parties

filed memoranda of law on the issue.

#### FINDINGS OF FACT

1. The Contract provides limits to the amount of annual leave which an employee may accumulate. The limits are based upon the number of years of service. Grievant's limit was 280 hours at the time of his discharge.

2. The Contract further requires that up to 160 hours of annual leave accrued by an employee separated from classified service be paid as a lump sum when the employee receives a final paycheck. Grievant had accumulated 240 hours of annual leave at the time of his discharge and the Employer paid Grievant a lump sum payment for 160 hours of annual leave. Grievant forfeited the additional 80 hours he also had accumulated.

3. Grievant has agreed to pay back the 160 hours of annual leave upon his reinstatement to classified service; the Employer will restore this 160 hours to Grievant's annual leave bank. The Employer also will restore the 80 hours of annual leave which Grievant had forfeited upon his dismissal, thereby restoring the entire 240 hours of annual leave which Grievant had accumulated at the time of his discharge.

4. Grievant would have accrued annual leave during the time he was improperly dismissed. His 240 hours of restored annual leave and this additional annual leave accrual will exceed the contractual limit of 280 hours.

#### OPINION

The parties have presented one issue for the Board to resolve. The Board needs to decide whether Grievant is entitled to be compensated for any annual leave

in excess of 280 hours in making him whole.

Grievant contends that he is entitled to receive the monetary value of every hour of annual leave accrued during the period of his unlawful dismissal in excess of 280 hours. The Employer contends that Grievant is not entitled to any compensation for annual leave which exceeds the contractual cap of 280 hours and contends that to so compensate Grievant would make him more than whole.

In calculating a back pay 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). c.f., Kelley v. Day Care Center, Inc., 141 Vt. 608, at 615-616 (1982). To make employees whole is to place them in the position they would have been in had they not been improperly dismissed. Grievance of Benoit, 8 VLRB 165, 168 (1985).

In a nearly identical case, we previously decided that an improperly dismissed State employee who was owed annual leave accruals which would have put him over the contractual limit was entitled to a payment representing the monetary value of the annual leave exceeding the contractual limit. Grievance of Merrill, 8 VLRB 383, 386 (1985). The Board concluded that such payment was proper since the grievant was in this situation of not being able to use his leave through no fault of his own. Similarly here, Grievant is in this situation through no fault of his own, and we conclude that he is entitled to the monetary value of every hour of annual leave accrued from the time commencing 10 days from his dismissal until his reinstatement which exceeds the contractual cap of 280 hours.

ORDER

Now therefore, based on the foregoing findings of fact and the foregoing reasons, and consistent with the Board Order of January 22, 1999, it is hereby ORDERED that the State of Vermont, Agency of Human Services, Department of Corrections, shall pay Matthew Greenia the monetary value of every hour of annual leave he accrued from the time commencing 10 days from his dismissal until his reinstatement which exceeds the contractual cap of 280 hours.

Dated this 26th day of March, 1999, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Richard W. Park, Acting Chairperson



Carroll P. Comstock



John J. Zampieri