

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF
EARL PECOR

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Docket No. 79-488

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This is a grievance brought by the Vermont State Employees Association on June 27, 1979, on behalf of Earl Pecor, a member of the Non-Management Bargaining Unit. The grievance involves the interpretation of the right to use sick leave credits. The parties have submitted the case to the Board under an agreed statement of facts dated September 21, 1979. The Grievant is represented by the Vermont State Employees Association and Michael R. Zimmerman, Esq. The State of Vermont is represented by Bennett Evans Greene, Assistant Attorney General.

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FINDINGS OF FACT

1. The Grievant, Earl Pecor, is a member of the Non-Management Unit of state employees.
2. Grievant has been an employee of the State of Vermont since August 15, 1973.
3. During the month of April 1979, Grievant was employed by the State of Vermont as a Building Custodian A in pay grade 02, and his workplace was at the District Court and Office Building, 39 Pearl Street, Burlington, Vermont.

4. On April 9, 1979, Grievant had 23-1/2 days of accrued sick leave.

5. On April 9, 1979, Grievant appeared before the Vermont District Court, Chittenden Circuit, Unit II, for arraignment on a charge of sexual assault, to which charge Grievant entered his plea of not guilty. At the request of the State's Attorney, and over the objections of Grievant's attorney, that Court made an order that Grievant forthwith be committed to the Chittenden County Community Correctional Center for psychiatric evaluation as to Grievant's sanity at the time of the alleged offense and as to Grievant's mental competence to stand trial. Grievant was, on April 9, 1979, admitted to the Vermont State Hospital at Waterbury, Vermont, for said evaluation.

6. On April 20, 1979, the Washington County Superior Court granted a petition for writ of habeas corpus (which had been filed on April 10, 1979, by Grievant's attorney), and ordered Grievant's release from Vermont State Hospital.

7. Grievant was released from Vermont State Hospital on April 20, 1979.

8. For the entire period from April 9, 1979, to April 20, 1979, Grievant remained at Vermont State Hospital, and, for that reason, was unable to work for that period.

9. On April 23, 1979, Grievant returned to work.

10. On April 12, 1979, Grievant's attorney, on Grievant's behalf and at Grievant's request, submitted an oral request for sick leave to cover the period of his commitment.

11. On April 13, 1979, Thomas J. Sandretto, Business Manager of the Division of State Buildings, conveyed, by letter to Grievant (which letter was received by Grievant), the denial of Grievant's request for sick leave. A copy of that letter is attached hereto as Exhibit A and incorporated herein by reference.

12. On or about April 16, 1979, Grievant's response to Mr. Sandretto's letter (Exhibit A) was conveyed to Mr. Sandretto, to wit: grievant desired to take annual leave to the limit of his accumulated annual leave days, and, once those accumulated leave days had been used, to be placed in an administrative leave status.

13. As a result of Grievant's response to Mr. Sandretto's letter, Grievant was paid for Monday, April 9, 1979 through Friday, April 13, 1979, and for Monday, April 16, 1979 through Thursday, April 19, 1979, and nine (9) days were deducted from his annual leave account for that period. In addition, since Grievant had no more accumulated leave days by April 19, 1979 Grievant was placed in an off-payroll status for his absence from work on Friday, April 20, 1979.

14. On May 2, 1979, the Vermont State Employees Association, Inc., as representative of Grievant, filed a Step III Grievance on behalf of Grievant with the Commissioner of Personnel. The subject of that grievance was the denial of Grievant's request for sick leave for the period April 9, 1979, to April 20, 1979.

15. On June 11, 1979, Joseph G. Kecskemethy, by letter, denied Grievant's Step III Grievance. A copy of that letter is attached hereto as Exhibit B and is incorporated herein by reference.

16. On June 27, 1979, the Vermont State Employees Association, Inc., as representative of Grievant, filed this Step IV Grievance with the Vermont Labor Relations Board.

CONCLUSIONS OF LAW AND OPINION

The issue in this case is whether the Grievant, Earl Pecor, is entitled to sick leave benefits for the period he was detained involuntarily at the Vermont State Hospital as the result of a Court order. In order to have the benefit of sick leave, the employee must be "absent from work and unable to perform his duty because of illness, injury or quarantine for contagious disease." Based upon the agreed statement of facts, there is no evidence that the Grievant was ill, injured or quarantined for a contagious disease. The Grievant was absent from work because a District Court Judge ordered that he be examined by a psychiatrist to determine mental competence to stand trial and sanity at the time of the alleged offense. The record is void as to why the Grievant was committed to the Vermont State Hospital for the psychiatric evaluation. It is clear, however, that the detention of the Grievant at the Vermont State Hospital was part of a criminal proceeding because of the Grievant's alleged criminal conduct.

Counsel for the Grievant has argued that the Grievant's stay at the Vermont State Hospital should be construed as "medical appointment" for which the contract permits use of sick leave. In construing contractual language, words should be given their common meaning and usage. (Cross Abbott Co. vs. Howards, Inc., 124 Vt. 439, 207 A2d 134 (1965); Dunsmore

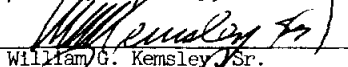
vs. Co-operative Fire Ins. Association of Vermont, 131 Vt. 14, 298 A2d 853 (1972).) An appointment is "an arrangement to do something or meet someone at a particular time and place" (The American Heritage of the English Language, 1969). We doubt that the Grievant's stay at the Vermont State Hospital should be considered an "appointment" within this definition, because it was involuntary. Even if we ignore that issue, however, we must consider whether it was a medical appointment. The facts presented to this Board by agreement of the parties are clear that the purpose of the appointment was to determine the mental status of the Grievant for purposes of criminal charges. In fact, the Grievant objected to the incarceration and was released after a writ of habeas corpus was filed on his behalf. Neither the incarceration nor the absence from work was for medical purposes.

The Grievant was absent from work due to a Court order for commitment for psychiatric evaluation to determine legal sanity and competence to stand trial in a criminal case. The collective bargaining agreement between the VSEA and the State does not permit the use of sick leave credit for such absences. We note in passing that Grievant might have a remedy for his alleged wrong by appeal to the Claims Commission under 32 V.S.A. §931. But we find no contractual remedy. Therefore, the Grievance of Earl Pecor is hereby dismissed.

Dated this 11th day of January, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


Robert H. Brown