

Arb Decision # 1126

OPINION AND AWARD
IN THE MATTER OF ARBITRATION BETWEEN
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AND

STATE OF OHIO, OHIO DEPARTMENT OF NATURAL RESOURCES

Office of Information Technology

Before: Sarah Rudolph Cole

Case No. 25-20-20121017-002-01-14

Grievant: Norman Spellman

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FEB 12 2014
OCSEA-OFFICE OF
GENERAL COUNSEL

Appearances for the Union:

Timothy Rippeth, OCSEA Staff Representative

Treva Knasel, Chief Steward

Appearances for the Employer:

Kandie L. Carson, Employer Representative

Jim Miller, Office of Collective Bargaining

Jennifer Wright, Witness

Jennifer Kull, ODNR, Witness

Issue

The parties did not stipulate to an issue in this case. After hearing the case, I conclude that the issue to be decided is:

Whether the Grievant, Norman Spellman, who was terminated and later reinstated through an arbitrator's decision, is entitled to longevity pay and vacation benefits at the same rate as he had received them prior to his termination, even though he retired shortly after his termination?

Facts

The parties to this dispute are the Ohio Department of Natural Resources (ODNR) and the Ohio Civil Service Employees Association (Union or OCSEA), representing Norman Spellman (Grievant), an Information Technologist 3 at ODNR.

ODNR removed Grievant from his position on approximately February 6, 2012 for failure of good behavior. (ODNR Ex. C) Two days later, on April 8, 2012, Grievant applied to receive his retirement from the Ohio Public Employees Retirement System (OPERS). (ODNR Ex. D) OPERS sent a letter to Grievant stating that he, the Grievant, would begin receiving his retirement benefits on March 1, 2012. On February 11, 2012, Grievant filed a grievance, claiming that ODNR did not have just cause to remove him from his position. (ODNR Ex. F.) Arbitrator Robert Brookins heard this grievance on April 18, 2012 and issued his decision on June 14, 2012. (ODNR Ex. H). In his opinion, Arbitrator Brookins reinstated the Grievant to his position "without back pay or any other job-related benefits to which he would have been entitled but for his removal. . . . the Grievant's seniority shall remain undiminished as if he were never terminated." (ODNR Ex. H).

Grievant returned to his position as an Information Technologist 3 at ODNR on July 2, 2012. ODNR placed him back into his previous pay range and restored his benefits beginning July 2nd. Shortly after that, however, management determined that Grievant was not entitled to longevity pay and was not entitled to earn vacation benefits at the same rate he had earned them prior to his removal. As a result, ODNR required Grievant to repay the longevity pay he had received since he was returned to his position on July 2nd. Grievant filed the grievance that is at issue in this case on October 18, 2012, seeking restoration of his longevity and benefits to the level he had received prior to the initial removal.

Union Position

The Union contends that the Grievant is entitled to the same longevity rate and vacation benefit accrual that he received prior to his February 2012 removal because Arbitrator Brookins reinstated him to his former position with his seniority intact. The Union believes that ODNR is erroneously treating Grievant as a standard retire/rehire employee. The Union believes that the intent of the Collective Bargaining Agreement, Article 36.07, which addresses longevity pay issues for employees who have retired and later return to service with the State, does not address Grievant's situation because Grievant did not have a break in his seniority. Thus, the Union wants Grievant's longevity pay and vacation benefit accrual returned to the pre-removal level.

Employer Position

ODNR contends that under the Collective Bargaining Agreement, section 36.07 and state statutes ORC 9.44 and 124.181, Grievant is not entitled to longevity pay or vacation benefits at the same rate he received them prior to his removal in February 2012. According to ODNR, Grievant applied for his retirement benefits shortly after his removal in February 2012. Because

he retired from state service, he is not entitled to have any prior service time counted toward longevity or vacation accrual when he was reinstated in July 2012. The Employer contends that Grievant's reinstatement with no break in seniority has no relevance to the longevity pay and vacation benefit accrual. Instead, it is Grievant's decision to retire that impacts his current ability to collect longevity pay and vacation benefits at the same rate that he received them prior to his removal.

Opinion and Award

ODNR removed Grievant from his position. A few days later, Grievant chose to claim from OPERS the retirement benefits he had earned over the course of his career working at ODNR. Ultimately, Arbitrator Brookins reinstated Grievant, without a break in seniority but without back pay or other job-related benefits. The question is whether Grievant's retirement following his removal should impact his ability to receive longevity pay and vacation benefits at the same rate as he received them prior to his removal because he was reinstated through an arbitration award rather than through the more traditional retire/rehire scenario.

I find that Grievant is not entitled to receive longevity pay and vacation benefits at the same rate as he had received them prior to his removal. Although Grievant's reinstatement is not the standard way in which an employee returns to service with the state, Grievant's decision to receive his retirement benefits triggers the application of Section 36.07 which states, in pertinent part, "[a]n employee who has retired [from State service] shall not have his/her prior service with the State . . . counted for the purpose of computing longevity." A statutory provision with virtually identical language addresses the vacation benefit accrual issue. (ODNR Ex. N) Whatever the reason for Grievant's decision to retire, he retired voluntarily. As a result, the state

has no choice but to apply the provision of the CBA that precludes the State from counting prior service time toward longevity accrual or vacation benefit accrual.

Grievant testified that his difficult financial situation compelled him to retire. Unfortunately, for Grievant, however, his decision to retire was, nevertheless, voluntary. His subsequent reinstatement cannot alter the retirement decision or the implications of that decision on his subsequent work with the State. Retirement triggers the provisions identified above. The language of the Agreement, and the state statutes, compelled the State to treat the Grievant as an employee who had retired. Thus, its actions upon Grievant's reinstatement, were proper and the grievance must be denied.

Award

The grievance is denied.

February 11, 2014

Sarah R. Cole
Sarah Rudolph Cole, Arbitrator