

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

Ruling on Motion to Dismiss APPEAL OF HAROLD EICHEL Docket #89-0-6

By letter dated July 5, 1989, Harold Eichel, through his representative the State Employees' Association, filed a Motion for Reconsideration of the Board's May 17, 1989 decision to dismiss his appeal of denial of a day's pay.

On July 10, 1989, Personnel Director Virginia Vogel filed an Objection to Motion for Reconsideration - Appeal of Harold Eichel, arguing that the instant appeal does not qualify as "a decision arising out of the application of rules adopted by the Director of Personnel" but rather was a matter more properly adjudicated through the grievance process provided as part of the Collective Bargaining Agreement.

In his original appeal (McCormack letter to Personnel Appeals Board, June 5, 1989), Mr. Eichel argued that "The current Collective Bargaining Agreement addresses employees' hourly salaries, based upon labor grade, and how absences from work will be compensated." In his request for reconsideration, Appellant argues that "Denying an employee a day's pay is not a matter covered by the Collective Bargaining Agreement. Thus, the only conceivable and proper way to address this matter is through the Personnel Rules of the State of New Hampshire." Finally, Appellant states, "If denying an employee a days pay is not a disciplinary action, then I request that the Personnel Appeals Board define what type of action this is and by what criteria this was determined."

The Rules of the Division of Personnel provide that an appointing authority may issue a letter of warning for "Absenteeism without approved leave" (Per 308.03(3)b). Mr. Eichel was not issued a warning for such absenteeism, although the record provides ample evidence, including Mr. Eichel's own statements and those of his representative, that he did not request the use of any type of leave and was, in fact, absent from his worksite on May 11, 1988.

The record also provides ample evidence that academic employees of the Berlin Technical College were expected to be on campus five days a week unless some other schedule had been accepted through an approved Professional Growth Plan. Mr. Eichel, by his own admission, did not have an approved Professional Growth Plan and was not on campus on May 11th. Under the provisions of Per 308.03 (2)c., Mr. Eichel could have been disciplined for refusal to accept job assignments by being absent from the campus without prior approval. No such disciplinary action was taken.

Motion for Reconsideration - Appeal of Harold Eichel
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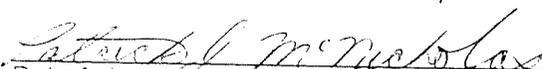
Finally, Appellant admits that President Twitchell asked him to complete a leave slip to cover the May 11th absence. He states in his August 3, 1988 letter to Stephen McCormack, "...when I had this discussion with Larry [Twitchell] I decided to hold one day back in case Larry was really serious about the day I was not in school. I discussed it with my department chair and I told him I didn't think Larry would really make me fill out a leave slip, that he was just letting me know he was boss. I talked with the registrar and she tore up my leave slip for the end of May, so that I would have a day for Larry if he notified in writing that I needed to fill out a leave slip for May 11."

Having been given the opportunity to utilize available leave for the absence from campus on May 11th, and having refused to complete such application for leave, Appellant was not in a paid leave status while absent. Despite the opportunity provided in the Rules of the Division of Personnel to discipline an employee for being absent without approved leave, or failing to appear at the worksite, the Technical College did not issue any warning or take any disciplinary measures. In the Board's judgment, the Technical College had no choice but to compensate the employee for only those days worked. Thus "docking" Appellant's pay was the only practical mechanism to ensure that this employee was not compensated for a day on which he neither appeared at the worksite, worked at an alternate site with the approval of the appointing authority, nor utilized approved leave.

Based upon the foregoing, the Board voted unanimously to deny the request for reconsideration.

DATED: November 15, 1989

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Esq.


George R. Cushman, Jr.

cc: Stephen J. McCormack, Field Representative
Larry B. Twitchell, President, NHTC/Berlin
Virginia A. Vogel, Director of Personnel
David. S. Peck, Asst. A.G., Civil Bureau

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APPEAL OF HAROLD EICHEL Ruling on Motion to Dismiss

89-0-6

By letter dated May 4, 1989, SEA Field Representative Stephen J. McCormack filed on behalf of the above-named employee of the Department of Postsecondary Education, an appeal of "Loss of Pay." Submitted with that appeal were documents to support Appellant's contention that he was, in fact, denied paid leave.

On May 8, 1989, Personnel Director Virginia Vogel filed with the Board a Motion to Dismiss, arguing that the denial of pay for annual leave did not constitute an application of the Personnel Rules appealable under the provisions of RSA 21-I:58, but rather a grievance to be pursued under the grievance procedures of the Collective Bargaining Agreement.

On June 6, 1989, the Board received Mr. McCormack's June 5, 1989 response to the Director's motion, requesting again that the Board schedule a hearing before the Board, claiming that denial of pay in this instance constituted a disciplinary action. "As such, to deny Mr. Eichel a days [sic] pay can only be construed as a disciplinary action on the part of President Larry Twitchell." (June 5, 1989 response from SEA re: Harold Eichel, p.1)

In consideration of the documents filed to date, the Board does not find that disciplinary action was taken against appellant. The Board (Commissioners Bennett, Cushman and Johnson) voted at its meeting of June 7, 1989, to grant the Director's Motion to Dismiss.

THE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett, Esq.

Mark J. Bennett, Esq.

Handwritten signature of George R. Cushman.

George R. Cushman

Handwritten signature of Robert J. Johnson.

Robert J. Johnson

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cc: Stephen J. McCormack, SEA Field Representative

Virginia A. Vogel, Director of Personnel

Mary P. Brown, Commissioner of Postsecondary Education

Thomas F. Manning, Manager of the Bureau of Employee Relations