

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Scott Nahodil

Docket #2002-O-2

Department of Corrections

April 17, 2002

The New Hampshire Personnel Appeals Board (Rule, Johnson, and Urban) met on Wednesday, March 27, 2002, under the authority of RSA 21-I:58, to hear the appeal of Scott Nahodil, an employee of the NH Department of Corrections. Mr. Nahodil, whose appeal was filed *pvo se*, appeared at the hearing on his own behalf. Thomas Maiming, Director of Personnel, appeared on behalf of the State. Mr. Nahodil was appealing what he described as the State's "denial of payment of time accuinated during the course of a trip [the appellant] was ordered to make under the color of [his] position as a state corrections officer."

Without objection, the appeal was heard on offers of proof by the parties. The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, and the audio tape recording of the hearing on the merits of the appeal. Although no documents were formally offered into evidence by either party, the documents reviewed by the Board included the following:

1. January 14, 2002 letter from the appellant to the Personnel Appeals Board concerning denial of compensation
2. January 17, 2002 letter from the Board to the appellant requesting the appellant to file an amended notice of appeal in conformance with Per-A 206.01 of the Board's rules
3. February 12, 2002 Notice of Scheduling

Mr. Nahodil told the Board that he had received a federal subpoena on December 10, 2001, to testify against a former NH Department of Corrections inmate who was on trial in Montana. He said he had checked with Mindy Normand, an Accounting Technician at Department of Corrections, about his compensation. He said that Ms. Normand contacted someone at the Division of Personnel, then informed him that he "would be paid, [he] just needed to log [his] time and activities." He said he submitted his hours and was then told his request was denied. He said he believed that someone at the prison made an error trying to pay him under the civil leave provisions. He said he thought that he was being sent to Montana "under the color of his job," and since he was there doing his duty, he should be paid.

Mr. Manning said that the Civil Leave provisions of the Rules are very clear. Employees who are subpoenaed to appear before a court are entitled to compensation for those hours that actually conflict with their hours of work. He explained that employees are compensated for travel time to and from a court appearance only when that time conflicts with the employee's regular work schedule. Mr. Manning said that the additional hours for which the appellant requested compensation did not appear to conflict with any of the appellant's regular duty hours and he did not recall the appellant requesting compensation for additional work time or for overtime.

The parties offered very little evidence in support of the material facts in this case. Based on the parties' uncontroverted offers of proof, the Board made limited findings of fact as follows:

1. Mr. Nahodil is employed by the Department of Corrections as a property officer.
2. On December 10, 2001 Mr. Nahodil received a federal subpoena to appear for a trial in Montana to testify against a former NH Department of Corrections inmate.
3. Mr. Nahodil departed Manchester, New Hampshire at 8:40 a.m. eastern time on Sunday, December 16, 2001, and arrived that same day in Montana at 4:08 p.m. mountain time.
4. After his arrival, he proceeded to the US Marshall's office for a meeting that was scheduled for 5:45 p.m. By 8:30 p.m. he was back in his hotel room.
5. Mr. Nahodil appeared in court in Montana on December 17, 2001.
6. Although it is unclear at what time he arrived at court, he did not leave court until 6:00 p.m., 3 hours past the end of his regular shift.

7. Mr. Nahodil traveled on Monday, December 18, 2001, departing Montana at 6:25 a.m. mountain time and arriving in Manchester, New Hampshire at approximately 11 p.m. eastern time.

Rulings of Law

- A. Per- 1208.01 (a): "An employee shall be granted civil leave without loss of pay or annual leave: (1) When performing jury duty; or (2) When subpoenaed to appear before a court, public body, or administrative tribunal."
- B. Per 1208.01 (b): "An employee shall be granted such civil leave only when the time needed conflicts with the employee's normal work schedule."
- C. Per 1208.01 (c): An employee on civil leave shall surrender to the state any fees received for such activity, less mileage reimbursement for use of the employee's own vehicle."
- D. Per-A 207.01 "Burden of Proof. In all cases, the burden of proof shall be upon the party making the appeal. The appointing authority shall have the burden of production."

Standard of Review

Per-A 207.12 (d) "In appeals arising out of an application of rules adopted by the director of personnel, the board shall determine if the appellant proves by a preponderance of the evidence that:

- (1) The rule was incorrectly interpreted and applied;
- (2) The rule was invalid; or
- (3) The appointing authority's or the personnel director's application of the rule was unlawful."

Decision and Order

Mr. Nahodil's trip to Montana to testify in a trial was undertaken solely at the request of the federal agency that issued him the subpoena. His trip to Montana and his appearance in court

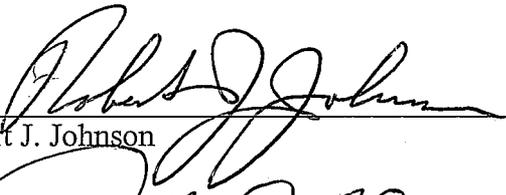
were not work assignments made by the NH Department of Corrections. Therefore, the appellant would not be entitled to straight-time or over-time compensation for any of the hours worked in connection with the trip or the trial. Although testifying at the trial in Montana was not a work assignment that required the appellant to travel out-of-state, the Department of Corrections apparently recognized the subpoena and permitted the appellant to be paid during his absence for those hours that actually conflicted with his regular work schedule. The Board found that the decision was consistent with the requirements of Per 1208 (b).¹

Therefore, for the reasons set forth above, the Board voted unanimously to DENY the appeal, finding that under this particular set of facts and circumstances, the appellant was not entitled to compensation for non-duty hours or travel time that occurred outside his regularly scheduled hours of work.

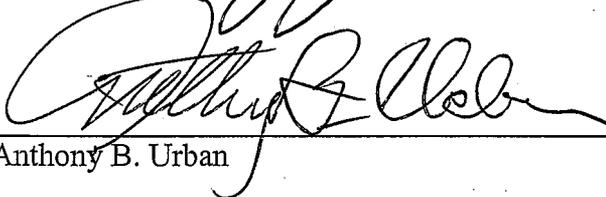
THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chair



Robert J. Johnson



Anthony B. Urban

cc: Thomas Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Scott Nahodil, NH State Prison – SHU, 281 N. State St., Concord, NH 03302-0014
Lisa Currier, Human Resources Administrator, NH Dept. of Corrections, 105 Pleasant
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¹ Per 1208.01 (c) also requires an individual who has been granted civil leave to surrender to the state any fees received for such activity, less mileage reimbursement for use of the employee's own vehicle. Neither party raised that as an issue, so the Board did not treat it as a factor in deciding the appeal.