

State of New Hampshire

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

APPEAL OF JILL POWER  
Division of Human Services

Docket #90-0-6

November 13, 1990

90-0-806

By letter dated May 11, 1990, Jill Power, a former part-time employee of the Division of Human Services, requesting that the Board order her to be paid under the provisions of RSA 98-A:6 (pay in lieu of annual leave), upon her notice of lay-off prior to her anniversary date of employment.

In her request, the appellant asked that the Board hold the matter in abeyance, noting that the Supreme Court had not yet issued an order in the matter of Carol Higgins-Brodersen and William McCann (N.H. Supreme Court Case No. 89-139).

In the Higgins-Brodersen and McCann appeal, the State Employees' Association argued that the Appeals Board had jurisdiction to hear appeals by part-time employees, and that the Board also had subject matter jurisdiction inasmuch as the issue under consideration related to payment of annual leave defined by Per 307.03 N.H. Code of Administrative Rules. The Board had dismissed the appeal of Higgins-Brodersen and McCann (1) finding that their appeal was not within the Board's subject matter jurisdiction, and (2) that the action under appeal was not as a result of an application of the Personnel Rules, but rather one of statutory entitlements for certain part-time employees.

Following a dismissal of the original appeal, the appellants had filed a motion for reconsideration. Again, the Board declined to hear the appeal, stating its opinion that it lacked jurisdiction.

In its decision of August 27, 1990, the New Hampshire Supreme Court affirmed the Board's decision. Several pertinent passages from that order are reproduced below:

"In reviewing RSA 21-I:58, it is clear to us that the legislature intended to confer upon State employees a specific right of appeal to the Board based upon permanent status. Permanent employees have completed a working-test period and have been recommended for permanent appointment by the proper authority. See N.H. Code of Admin. Rules, Per 101.26. The

term "permanent" reflects a degree of mutual commitment between employer and employee and an expectation that their relationship will be long-term. It is quite reasonable for the legislature to accord employees holding permanent status greater opportunity to challenge personnel decisions affecting them."

"It is also reasonable to conclude that the legislature did not intend RSA 21-I:58 to confer upon such employees a right to challenge all personnel decisions, but only ones involving the application of a personnel rule which affects them while they hold their permanent status..."

"A party seeking to set aside the decision of an administrative agency bears the burden of showing that the decision was clearly unreasonable or unlawful. RSA 541:13; see Appeal of Dep't of Safety, 123 N.H. 284, 285, 461 A.2d 98, 99 (1983). After reviewing the record, we conclude that the Board did not act unreasonably or unlawfully in ruling that, for an employee to have a right of appeal under RSA 21-I:58, the personnel rule in question must have been applied to the employee while permanently employed. We hold that the Board did not err in ruling that it lacked jurisdiction, under RSA 21-I:58, over claims arising from the petitioners' part-time employment."

"Upon review, we conclude that the petitioners' claims are founded upon RSA 98-A:6 (Supp. 1989) and do not arise out of an application of the personnel rules. We therefore hold that the Board's conclusion, that it lacked jurisdiction to hear their appeals under RSA 21-I:46, was both legal and reasonable. See Appeal of Tamm, 124 N.H. at 110-11, 469 A.2d at 1293. "

In consideration of Ms. Power's part-time status at the time of the decision to deny her prorated pay in lieu of annual leave, and the claim for compensation on the basis of a statutory entitlement, the Board dismisses the appeal.

THE PERSONNEL APPEALS BOARD

  
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