

State of New Hampshire



PERSONNEL APPEALS BOARD
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Appeal of Joan Pierce
Docket #2003-T-13
Department of Transportation

Personnel Appeals Board Decision on State's Motion to Dismiss
and
Appellant's Objection to State's/DOT/s May 19, 2003 Motion to Dismiss

June 20, 2003

The New Hampshire Personnel Appeals Board (Wood, Johnson and Urban) met on Wednesday, June 4, 2003, under the authority of Chapters Per-A 100-200 and Chapter 21-1:46 of the Revised Statutes Annotated to consider the State's Motion to Dismiss and the Appellant's Objection thereto in the appeal of Joan Pierce, a former part-time employee of the New Hampshire Department of Transportation.

Ms. Pierce admits that at the time of termination she was working part-time.

RSA 98-A:1, V defines "part-time basis" as "...employment calling for less than 37-1/2 hours work in a normal calendar week or calling for less than 40 hours work in a normal calendar week with respect to positions for which 40 hours are customarily required."

RSA 98-A:3 provides that: "Any person appointed under a temporary appointment or any person appointed under a seasonal appointment who works the equivalent of 6 months or more, not necessarily consecutively, in any 12-month period shall be deemed to be respectively a permanent temporary employee or a permanent seasonal employee and entitled to all the rights and benefits of a permanent employee in the classified service of the state."

The language of RSA 98-A makes no reference to permanent part-time employees

The Board's authority to hear and decide appeals is described by RSA 21-I:46, I, which states in pertinent part: "The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel..."

The rights conferred by RSA 21-I:57 apply to decisions of the Director of Personnel concerning the allocation of a position in the classification system and thus has no bearing upon the instant appeal.

RSA 21-I:58, I, provides a right of appeal to "Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57..."

In its decision in the Appeal of Higgins-Brodersen, 133 N.H. 576 (1990), the New Hampshire Supreme Court addressed the Board's jurisdiction to hear appeals by part-time employees. In its decision, the Court wrote:

"In reviewing RSA 21-I:58, it is clear to us that the legislature intended to confer upon the 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. (Citation omitted.) 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. It is true that the petitioners are personally affected ... But, beyond the timing of the decision, they are not affected as full-time employees by the application of a personnel rule to their prior part-time employment."

Based on the parties' pleadings, the Board finds that the decision to dismiss Ms. Pierce from her employment was made while she was in part-time status. Under the language of Higgins-Brodersen and McCann, it appears that RSA 21-I:58 does not give the Board jurisdiction to hear the appeal. As such, the Board voted unanimously to dismiss the appeal without prejudice, finding that it lacks jurisdiction to hear the appeal.

FOR THE PERSONNEL APPEALS BOARD



PATRICK H. WOOD, CHAIRMAN

cc: Joseph P. D'Alessandro, Director of Personnel
Ned Lucas, Assistant Attorney General
Michael Reynolds, SEA General Counsel