

#440

STATE OF WISCONSIN  
BEFORE THE STATE PERSONNEL BOARD

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Cornelius Van Beek,	)
Appellant,	)
vs.	)
C. K. Wettengel, Director	)
State Bureau of Personnel, and	)
Wilbur J. Schmidt, Secretary	)
Department of Health and	)
Social Services,	)
Respondent.	)

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MEMORANDUM DECISION

This matter is at the final step in the state-wide grievance procedure. The question involved is as to continuous service credits.

Appellant commenced state service in 1950 as a prison guard or officer.

On September 14, 1963, Appellant submitted a written resignation to be effective October 1, 1963 and stated as his reason for resignation, "due to other interests."

On January 6, 1964, Appellant requested and received a reinstatement to employment at Central State Hospital.

It appears that sometime after reinstatement, credit was given Appellant for his service before October 1, 1963 by the appointing authority for the purpose of vacation time. There was at that time no seniority restoration.

When the first collective bargaining contract became effective on January 16, 1969, Appellant's seniority date was fixed as of the date of the January 6, 1964 reinstatement. When the second contract became effective May 14, 1970, the Appellant's seniority date was fixed as of the time of his initial employment in 1950. This was done to make continuous service and seniority coincide. Seniority is used for vacation selection, job posting and overtime selection.

Shortly after this seniority list was posted, several union members filed a grievance that Appellant and others who had been reinstated were not entitled to the adjustments accorded them.)

The Grievants were sustained and Appellant's seniority date was established as of January 6, 1964, the date of his reinstatement. Because the contract provision on reinstatement is identical in wording with the statute on continuous service credits, the Department reset Appellant's continuous service date also as of January 6, 1964.

s. 16.275(1)(g) Wis. Stats. reads:

"The continuous service of an employe eligible for annual leave shall not be considered interrupted if he: 1. was absent for not more than 30 calendar days; 2. was on an approved leave of absence; 3. left the service for any reason except to take other employment and is reemployed within 3 years . . . ." (Emphasis is ours)

Art. V, Sec. 1 of the Collective Bargaining Contract reads:

"Seniority is defined as an employe's total length of continuous service in permanent, seasonal, sessional or unclassified position. Continuous service shall not be interrupted if the employe:

f. Left the service for any reason except to take other employment and is re-employed within 3 years. . ."

The only question presented by this appeal is whether or not the Appellant left state service as of October 1, 1963 to take other employment.

The Board concludes that "employment" is not to be construed literally as restricted to working for others, but includes "self-employment."

Appellant's letter of resignation read,

"September 14, 1963

To Whom it may concern:

Due to other interests I am submitting my resignation as psychiatric officer to be effective on October 1, 1963.

Sincerely,

Cornelius Van Beek"

About the 9th of September, 1963, Appellant leased a Standard Oil Co. filling station in Shell Lake. He signed the lease as lessee and signed all of the financing papers. His son, Steven, operated the station until Appellant joined him sometime before October 1, 1963. Appellant and his son ran the station until Appellant was reinstated on January 6, 1964. Thereafter, the son ran the station until it was closed and sold in June or July, 1964.

Appellant's income tax returns for the years 1963 and 1964 indicate that Appellant was the owner of the filling station and took whatever benefit there was from the operating and capital losses. The son reported income as an employe of the Appellant.

Appellant contends that he never intended to go into business in Shell Lake. He testified that his son had problems in Waupun where the family lived and that he felt it best to relocate the boy. Appellant stated that the station was bought for the son and that everything was in Appellant's name because the son was 19 or 20 years old and the oil company would not deal with a minor. Appellant further stated that his plan was to stay with the station only a few months to get it started, then leave it to his son and return to state employment.

In support of Appellant's contentions is that the son was under age, that Appellant did not abandon the home in Waupun, that Appellant's wife and three other children did not go to Shell Lake, but remained in Waupun, and that in fact, he did leave Shell Lake after about three months, leaving his son in charge of the business, and sought reinstatement.

However, the Board is not persuaded that such was the Appellant's intention at the time he resigned in September, 1963. Appellant apparently told no one about such a plan before he left. The form of the resignation had a great measure of finality - "due to other interests." If Appellant intended to return in a matter of months, he had good grounds to request a formal leave of absence. Such a request would have been more consistent with an intent to return than was a resignation.

A logical explanation for the fact that his wife and three younger children did not go to Shell Lake with him is that she had a teaching job in Waupun and the children were in school there.

The Board believes that the record contains ample support for the position that Appellant resigned to be self-employed as a filling station owner and operator at Shell Lake. We believe that his request for reinstatement was due to the fact that the business quickly proved to be irreversibly unprofitable. Self-employment is other employment.

Counsel for the Respondent shall draft appropriate Findings of Fact and Conclusions of Law consonant with this decision.

Dated: June 15th, 1971.

STATE PERSONNEL BOARD

BY

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