

The Respondent argues that this case is not comparable to Van Laanen v. State Personnel Board, Dane County Circuit Court #145-395 (8/26/75) and Hipp and Conner v. Wettengel, Wis. Pers. Bd. No. 74-84 (10/17/75) where the date of decision by the Director was determined to be the second of two replies sent to the Director. The Respondent argues that this case is distinguishable:

In Mr. Nowacki's case, the first letter (Respondent's Exhibit 1) makes it abundantly clear that the decision has been made and is not subject to further arguments. Appellant's letter of October 7, 1975 (Respondent's Exhibit 3) makes no allegation of illegality or abuse of discretion. It raises no issue of any kind but simply asks why the Appellant was not appointed. The reply of October 10, 1975 (Respondent's Exhibit 4) is a general assurance that proper procedures were followed. It cannot be reasonably read to indicate that upon receipt of Appellant's October 7 letter serious consideration was given to changing the original appointment decision, since Appellant did not advance any basis for doing so. The situation also differs from Van Laanen and Hipp in that this was not the kind of decision that could be deferred to a later time without affecting other employees.

The Appellant has not argued that there was a later date for decision or notice than September 1, 1975. Rather he argues that upon receiving the notice on August 29, 1975, he called someone in the "district office" and requested information on why he did not receive the position but was advised that he could not have information concerning the details of the selection process. He was particularly unable to get an explanation of why he apparently did not receive credit for seniority or veterans' preference points.

These kinds of allegations potentially could give rise to an equitable estoppel. In Pulliam & Rose v. Wettengel, Wis. Pers. Bd. 75-51 (11/25/75), we held that under certain circumstances where employees are misled by an employer as to their appeal rights the employer may be "estopped" or in other words on equitable grounds be prevented from relying on the untimeliness of an appeal:

The elements of such an estoppel are inequitable conduct by the estopped party and irreparable injury to the other parties honestly and in good faith acting in reliance thereon. Jefferson v. Eiffler, 16 Wis. 2d 123, 132-133 (1962). In order to establish estoppel, the acts of the agency must amount to "a fraud or a manifest abuse of discretion." Surety Savings and Loan Assn. v. State, 54 Wis. 2d 438, 445 (1972).

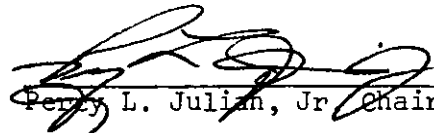
If the Appellant were not given timely information on certain details of the selection process, including an explanation of why he apparently was not afforded veterans' points or seniority credit, it is arguable that he lacked sufficient information to evaluate his potential grounds for appeal, and thus would not be in a position to file a timely appeal. Based on this record we determine that the motion to dismiss should be denied and that this matter should be set for hearing.

ORDER

IT IS HEREBY ORDERED that the Respondent's motion to dismiss is denied and this matter be scheduled for hearing.

Dated October 18, 1976.

STATE PERSONNEL BOARD


Perry L. Julian, Jr. Chairperson