



2. From February 23, 1976, to June 9, 1976, the appellant was assigned to and did work part-time at the Hayward office while continuing to work his permanent assignment out of the Wausau office.

3. During this period the appellant worked approximately 139½ hours overtime for which compensation was not granted by the respondent.

4. The reasons for appellant's temporary reassignment to the Hayward office were as follows:

- a. The incapacity due to illness of the employe normally assigned to that office;
- b. The appellant's prior experience and his record of high production as a tax representative.

5. Appellant was in an exempt status for payment of overtime under the respondent's administrative directive and the rules of the director, § Pers. 5.06(4), Wis. Adm. Code.

6. The appellant filed a non-contractual grievance regarding the foregoing matters which was denied at all three steps and appealed to the board.

7. In May 1976 the appellant received an employe performance summary for the 6 month period ending April 30, 1976, Board's Exhibit 6.

8. The contents of this performance summary was not a result of a grievance previously filed by appellant.

#### CONCLUSIONS OF LAW

1. The personnel board has jurisdiction over these appeals pursuant to §16.05(7), Wis. stats.

2. The respondent's decision to temporarily reassign the appellant to the Hayward office was not illegal or an abuse of discretion.

3. It having been found that the performance summary was not filled out as it was as a result of a grievance being previously filed, it is concluded, based on the issues, that there was no illegal action or abuse of discretion in connection therewith.

OPINION


While reasonable people could differ about the merits of the management decision to assign appellant to the Hayward office, the question presented by this appeal is whether that assignment was illegal or an abuse of discretion, and this record does not support such a conclusion. With respect to the performance summary, the question was whether it was filled out as it was as a result of the appellant filing the first grievance. There was ample testimony presented that the evaluation was based in part on grouching, complaining and other actions by the appellant that was separate from the grievance.\* There was no direct evidence that the evaluation was a result of the grievance. As to overtime compensation, the appellant was an exempt employe. Compensation for those hours was within the discretion of the agency. The agency chose not to compensate appellant directly but did indicate that he would be entitled to take time off that otherwise would be chargeable as personnel holiday time. Again, while reasonable people could differ about the merits of the decision, there is no basis for a conclusion that it amounted to an abuse of discretion.

ORDER

The position of the respondent on these greivances is sustained and these appeals are dismissed.

Dated: May 18, 1978

STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson

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\* There was evidence that part of the evaluation of appellant's attitude was based on a reason the board believes and the respondent concedes was inappropriate, the refusal by the appellant of his supervisor's dinner invitation. However, this aspect of the case is strictly speaking outside the scope of the stipulated issue, and there were other reasons for the evaluation beside this incident.