

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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PATRICIA ANDERSON,

Appellant,

v.

SECRETARY, DEPARTMENT OF TRANSPORTATION,

Respondent.

Case No. 77-126

\* \* \* \* \*

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

**OFFICIAL**

OPINION AND ORDER

NATURE OF THE CASE

This is an appeal pursuant to ss. 16.05(1)(f) and 16.03(2), Wis. Stats., of the effective date of a reclassification.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed by the respondent with permanent status in the classified service in the division of highways, district 2, Waukesha.

2. On or about May 2, 1977, the district engineer refused to approve a reclassification request for appellant for the reclassification of her position from real estate technician 1 to real estate technician 2.

3. The requested transaction was and continued to be handled on a delegated basis.

4. On May 4, 1977, the appellant wrote a letter (Respondent's Exhibit 1) to the director, bureau of personnel management, in which she stated that she was "grieving against discrimination and retaliation under the administrative procedure."

5. In a memo dated May 6, 1977 (Respondent's Exhibit 2), Mr. Roslak responded, in part, as follows:

Grievances should be filed on the standard grievance forms under one of two grievance procedures . . . If your letter was meant to indicate that you feel that your position should be reclassified because the duties that you have performed over the past year and are expected to perform in the future are at a higher classification, then you should so indicate in another letter to us enclosing all relevant data and specifics that show how your position has changed, what higher level duties and responsibilities you have assumed, and what projects you are presently working on and expect to work on in the coming months.

6. In a memo dated May 7, 1977, to Mr. Roslak (Appellant's Exhibit 2), the appellant stated:

As per your letter dated May 6, 1977, I wish to inform you I am requesting a reclassification review by D.O.T. However, if there is no response to this correspondence, this matter will be pursued through the personnel board appeal procedure as per "time limit" guide lines.

7. Mr. Roslak's office never received this correspondence.

8. In a telephone conversation on May 10, 1977, Mr. Roslak reiterated to the appellant the information contained in his memo to her dated May 6, 1977 (Respondent's Exhibit 2), including the information set forth in finding 5.

9. The appellant filed a contract grievance which was ultimately submitted at the third step on May 25, 1977. This grievance was appealed to the personnel board on June 17, 1977, when it was not answered at the third step within the prescribed time limits. This grievance contained in part the following language:

On May 2, 1977, Tom Kinsey (district engineer) turned down a promotional reclass recommendation made by Victor C. Hammer and V. J. Weisinger, the reasons given were in no way related to the duties assigned and performed for a minimum of 18 months, which were technician II duties.

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Relief sought

That the discrimination and harassment cease, that the reclass be granted retroactive to May 2, 1977, and that all mention of this grievance be removed from my file.

10. On May 23, 1977, the chief of administration for district 2, Mr. Brown, who had responsibility for personnel matters at the district

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level, convened a meeting that was attended by him, the appellant, and others.

11. That meeting was called because Mr. Brown was concerned, following conversations with Mr. Hammer, appellant's immediate supervisor, that he (Hammer) did not understand the correct procedures for obtaining a review of appellant's classification transaction and that consequently he was giving incorrect information to the appellant.

12. At that meeting Mr. Brown explained that it was necessary to write a letter to Mr. Roslak's office to obtain a reclassification review. He read to them parts of Mr. Roslak's May 6, 1977, memo (Respondent's Exhibit 2).

13. The appellant never checked with Mr. Roslak's office to ascertain whether her May 7, 1977, letter had been received.

14. On August 24, 1977, the appellant submitted a letter to Mr. Roslak (Respondent's Exhibit 4) requesting reclassification review. This letter was prompted by a personnel board prehearing conference held that date where it was agreed that procedure would be followed.

15. Following the requested review, the reclassification to real estate technician was granted on September 29, 1977, with an effective date of October 24, 1977.

16. The August 24, 1977, reclassification request was processed in approximately a normal amount of time.

17. The appellant was on leave of absence without pay from July 5-25 and from August 1 - October 24, 1977.

#### CONCLUSIONS OF LAW

1. This appeal is properly before the board pursuant to ss. 16.05(1)(f) and 16.03(2), Stats.

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2. The effective date of the reclassification was properly established as October 24, 1977.

OPINION

In this case the reclassification review was completed in a relatively timely fashion once the respondent's personnel office received the August 24, 1977, request for review. The May 7, 1977, request was never received by the agency personnel office. The appellant never inquired as to its receipt although her conversation with Mr. Roslak on May 10, 1977, and the conference on May 23, 1977, should have provided some indication that it had not been received.

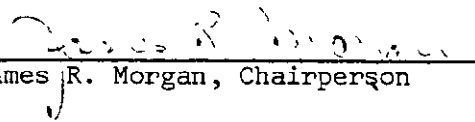
A post-hearing letter from Mr. Hammer dated April 20, 1978, was objected to on a number of grounds. In the letter he says that his statement is based on an "assumption" about Mr. Kinsey's motivations. In the board's opinion this statement by Mr. Hammer on that premise lacks sufficient probative value to be considered in this proceeding. The board does not reach the other grounds of objection to this letter.

ORDER

The action of the respondent with respect to the October 24, 1977, effective date for the reclassification is affirmed and this appeal is dismissed.

Dated: June 16, 1978.

STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson