

STATE OF WISCONSIN

STATE PERSONNEL BOARD

HOWARD H. HELLER,

Appellant,

v.

PRESIDENT, University of Wisconsin,

Respondent.

Case No. 77-207

OFFICIAL

OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of a termination of probationary employment and of an allegedly forced resignation of permanent employment. The respondent has moved to dismiss on the ground that there was no timely appeal or appeals. This decision is based on material in the file that appears to be uncontested, including a stipulation reached at a prehearing conference.

FINDINGS OF FACT

1. Appellant began his employment with the U.W. System River Falls campus on April 23, 1969.
2. The River Falls position was classified as Building Maintenance Helper 2 (BMH 2) and appellant passed probation and attained permanent status in class.
3. On September 4, 1977, appellant transferred to a BMH 2 position in the Central System at Barron County Center, Rice Lake.
4. Appellant was advised by a letter dated September 15, 1977, that he was on a 6 month permissive probation at Rice Lake.

5. Appellant was terminated from the Rice Lake position effective October 7, 1977.

6. On October 10, 1977, appellant reported back to River Falls to his former BMH 2 position.

7. On October 31, 1977, appellant resigned from the BMH 2 position at River Falls.

8. The letter of appeal was dated October 16, 1977, postmarked October 20, 1977, and dated as received by the Personnel Board office on October 31, 1977.

9. The letter of appeal included in part the following:

"I am writing concerning my employment at Rice Lake . . . it also will make a hardship for me and my family to have to move back to River Falls . . ."

10. The appellant received notice of his impending termination no earlier than September 23, 1977, and no later than September 26, 1977.

11. The appellant's positions were at all relevant times subject to a contract between the state and the WSEU.

CONCLUSIONS OF LAW

1. Appellant filed a timely appeal with respect to his probationary termination at Rice Lake.

2. Appellant did not file a timely appeal with respect to his alleged forced resignation from his position at River Falls.

OPINION

In Request of AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO, for a Declaratory Ruling, Wis. Pers. Bd. 75-206 (8/24/76), the Board held that

the time limit for appeals of probationary terminations would be governed by the time limit agreed to in the contract for the presentation of grievances, Art. IV, Sec. 1, paragraph 36:

"All grievances must be presented promptly and no later than thirty (30) calendar days from the date the grievant first became aware of, or should have become aware of with the exercise of reasonable diligence, the course of such grievance." (emphasis supplied).

The appellant has argued that the actual date of termination (October 7, 1977) was the operative date here since any grievance before that date would have been unripe or anticipatory. The Board does not need to reach this contention since in the Board's opinion the term "presented" should be interpreted liberally to include situations such as this where an appeal is postmarked in a timely manner.

While it is correct, as respondent points out, that the Board has interpreted the 15 day time limit of s. 16.05(2), Stats., to require actual receipt by the Board as opposed to mailing by the appellant, there are two distinctions in this case. The first is that by its terms s. 16.05(2) only applies to appeals pursuant to s. 16.05(1)(e) and (f), and the appeal of a probationary termination does not fall within either of these subsections. The second is that s. 16.05(2) utilizes the language "is received by the Board" while the contract used the terminology "be presented." The latter language does not have the same connotation of final receipt by the Board as does the statutory language. In the Board's opinion language limiting appeal rights should be construed liberally wherever possible.

This policy of liberal construction falls short of permitting a construction of the language of the letter,^{*} as urged by the appellant, as an appeal of an alleged

* . . . it also will make a handicap for me and my family to have to move back to River Falls"

Heller v. U.W.
Case No. 77-207
Page Four

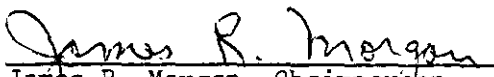
forced resignation which did not occur until 2 weeks after the letter
was written.

ORDER

The motion to dismiss is denied as to appellant's termination at Rice Lake
and granted to his resignation at River Falls.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan
James R. Morgan, Chairperson