

STATE OF WISCONSIN

STATE PERSONNEL BOARD

ELLA B. TOIGO, *

Appellant, *

v. *

PRESIDENT, University of Wisconsin, *

Respondent. *

Case No. 76-251 & 77-59 *

OFFICIAL

OPINION AND ORDER

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

NATURE OF THE CASE

These are appeals pursuant to § 16.05(7), stats., of non-contractual grievances at the 4th step. At the prehearing conference the parties agreed to submit these cases for decision on the basis of certain documents on file as will be set forth in the findings.

FINDINGS OF FACT IN 76-251

1. In the prehearing conference held October 26, 1977, the parties agreed to the following stipulations:

"STIPULATION OF FACTS:

Parties agreed to submit this case to the Board for decision on the written record as contained in appellant's appeal letter dated November 5, 1976; steps 1, 2, and 3 of the grievance, plus their respective management answers; and appellant's travel voucher. It was further agreed that the amount of the travel voucher was not in question.

ISSUES:

Whether or not appellant is legally entitled to travel expenses when appearing at a Personnel Board prehearing conference."

2. On July 1, 1976, appellant attended a prehearing conference in an appeal she had pending before the Personnel Board, No. 76-26.
3. Her travel expenses related to attendance at said prehearing conference were in the amount of \$36.60.
4. Appellant submitted a claim to the respondent for these travel expenses and it was denied.
5. The appellant pursued a non-contractual grievance with respect to the denial of this claim which was denied by the respondent and appealed to the Board.
6. At all relevant times the appellant has been employed by respondent in the classified service at U.W.-Parkside.

FINDINGS OF FACT IN 77-59

7. At the prehearing conference held October 26, 1977, the parties agreed to the following stipulations:

"STIPULATION OF FACTS:

Parties agreed to submit this case to the Board for decision on the written record as contained in appellant's appeal letter dated March 11, 1977; step 3 filed January 28, 1977, plus management response; step 3 of the grievance on pay status, filed January 28, 1977, plus management response, and appellant's travel voucher. It was further agreed by the parties that the Personnel Board would review the broad question of whether the expenses were reimbursable but not whether these particular expenses were within the limits set up by the university.

ISSUES:

1. Whether or not appellant is legally entitled to travel expenses when appearing at a Personnel Board hearing.
2. Whether or not appellant should be in regular pay status for the time she spent traveling to attend the Personnel Board hearing."

8. On January 6 and 7, 1977, the appellant was in attendance at a Personnel Board hearing on an appeal she had pending, No. 76-26, commencing at 8:30 a.m. on January 6th, 1977.

9. Her travel expenses related to attendance at said hearing was in the amount of \$70.53.

10. The respondent denied appellant payment for these travel expenses.

11. The appellant was absent from her work station (U.W.-Parkside) for 4 hours and 45 minutes on January 5, 1977, as a result of her travel arrangements to Madison for the aforesaid hearing.

12. The appellant took time off from work on January 5, 1977, to travel to Madison because a ride was available with the U.W.-Parkside Personnel Administrator and she did not believe later bus service was available.

13. Bus service was available that would have permitted Ms. Toigo to depart Kenosha after work and arrive in Madison at 9:40 p.m. on January 5, 1977.

14. The respondent did not carry the appellant in pay status for the 4 hours and 45 minutes she was absent from work on January 5, 1977.

15. The appellant pursued non-contractual grievances with respect to both the denial of travel expenses and the non-payment of the 4 hours and 45 minutes she was absent from work on January 5, 1977, which were denied by the respondent and appealed to the Board.

16. At all relevant times the appellant has been employed by respondent in the classified service at U.W.-Parkside.

CONCLUSIONS OF LAW IN 77-251

1. This case is properly before the Board pursuant to § 16.05(7), Wis. Stats.

2. The appellant is legally entitled to travel expenses when appearing at a Personnel Board prehearing conference.

CONCLUSIONS OF LAW IN 77-59

3. This case is properly before the Board pursuant to § 16.05(7), Wis. Stats.

4. The appellant is legally entitled to travel expenses when appearing at a Personnel Board hearing.

5. The appellant should be in regular pay status for the time she spent traveling to attend the Personnel Board hearing, provided that based on her classification and on respondent's policies and procedures she would be entitled to such pay status if attendance at the hearing were treated as attendance at any official work function.

OPINION IN 76-251

The decision in this matter is controlled by an earlier Board decision in Sheda v. Carballo, Wis. Pers. Bd. No. 76-91, 114 (6/13/77). In that case there was an issue as to the appellant's expenses relative to attendance at the prehearing conferences:

With regard to the appellant's expenses, we are guided by an opinion of the attorney general. See 36 OAG, 90, 91-92 (1947). In that opinion, the attorney general was responding to a question from the personnel director concerning the pay status of certain employees who attended a personnel board appeal hearing. The opinion stated:

" . . . we are of the opinion that this matter is controlled by our prior opinion, XXX OAG 24, at pp. 217-218:

' . . . the administration of justice being a course of mutual benefit to everyone in the state, each is under obligation to aid in furthering it as a matter of public duty, including the state itself as an employer, and . . . the state should not, therefore, penalize its own employees by withholding their compensation when they are compelled to be absent from their duties to testify in court matters relating to such duties.

The employees in question in the present case were present before an administrative tribunal of the state and engaged in a successful defense of their rights as civil service employees of the state. We are of the opinion that in so defending their civil service rights they were engaged in matters relating to their employment and hence are employed within the meaning of sec. 16.27 and are entitled to be certified on the pay roll as being so employed." [Section 16.27 is now 16.37].

Prehearing conferences are provided for both by the personnel board rules, Section P.B. 1.05 W.A.C., and the state's administrative procedure act, Section 227.07(4), stats., and are an integral part of the appeal hearing process. We conclude that the appellant's attendance at the prehearing conference falls within the reasoning set forth in the cited opinion.

With respect to appellant's attendant expenses, Section 20.916(1), stats., provides:

"State officers and employees shall be reimbursed for actual, reasonable and necessary traveling expenses incurred in the discharge of their duties in accordance with Section 15.535."

As was indicated in the foregoing attorney general's opinion, employees involved in personnel board appeals are "engaged in matters relating to their employment and hence are employed . . ." In this sense their traveling expenses may be said to be "incurred in the discharge of their duties" and hence, we conclude, appellant's expenses are reimbursable.

Based on the rationale set forth above, the appellant in this case is also entitled to reimbursement for expenses.

OPINION IN 77-59

Again, based on the rationale set forth in the Sheda case, the appellant is entitled to reimbursement for travel expenses in connection with her attendance at a personnel board hearing. She may be entitled to pay status for the travel time in question but this depends on the applicable policy on payment of salary for travel time. If the appellant would have been paid for the time in question if she had been traveling to Madison as a regular part of her job, as for example, to conduct an audit or attend a training session, then she should be paid here.

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The record is not clear as to what the normal university policy is here, and there therefore is not basis for a final conclusion on this point.

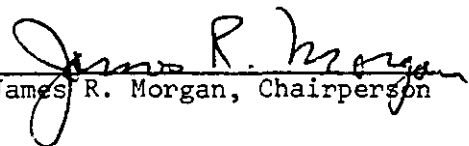
The respondent has taken the position that it was unreasonable for appellant to have taken time off work the day before the hearing because bus transportation after work was available. In the Board's opinion the record here also is insufficiently complete to deal with this facet of the case. If a U.W. employe in this classification normally were entitled to be carried in pay status for travel performed outside his or her normal shift, the availability of evening bus service may not be relevant to this question.

ORDER

With respect to No. 76-251, the appellant shall be paid her actual, reasonable and necessary travel expenses in connection with her attendance at the July 1, 1976, prehearing conference. With respect to 77-59, the appellant shall be paid her actual, reasonable, and necessary travel expenses in connection with her attendance at the hearing January 6 and 7, 1977. The respondent shall determine appellant's pay status for the 4 hours and 45 minutes in question on January 5, 1977, in accordance with this decision.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson