

ARBITRATION DECISION NO.:

499a

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Transportation

DATE OF ARBITRATION:

June 17, 1993

DATE OF DECISION:

June 21, 1993

GRIEVANT:

P. Lorubbio

OCB GRIEVANCE NO.:

31-10-(92-05-13)-0014-01-14

ARBITRATOR:

Rhonda Rivera

FOR THE UNION:

Richard Sycks

Jamie G. Parsons

FOR THE EMPLOYER:

Ted Durkee

Michael P. Duco

KEY WORDS:

Job Abolishment

Back Pay

Reinstatement

Remedy

Mileage

Subsequent Bump

ARTICLES:

Article 18 - Layoffs

Article 32 - Travel

§32.03 - Travel Reimbursement

FACTS:

The grievant was an Administrative Assistant 3, Prevailing Wage Coordinator. Her position was abolished and she bumped into an Administrative Assistant 1 position. She filed a grievance and in a previous arbitration decision she was ordered to be reinstated and she received back pay.

On June 17, 1993, the Union, State and Arbitrator held a phone Conference to determine the scope of

the Arbitrator's award (#499). There were three issues discussed:

1. During the period between the grievant's abolishment and the arbitration award, the grievant was on disability leave. The state calculated her back pay award as the amount by which her disability pay would have been increased for that period had she been an Administrative 3 at the time of her disability.
2. The state refused to pay the grievant for mileage she incurred when she traveled to the job she bumped into.
3. The state would neither reinstate the person bumped by the grievant nor pay the person bumped by the grievant the difference between the position she bumped into and that which was taken by the grievant.

UNION'S POSITION:

1. Had it not been for the abolishment, the grievant would never have gone on disability and therefore she should receive the difference between the disability pay and the pay of the Administrative Assistant 3.
2. The State should pay the grievant for mileage traveled to the replacement job.
3. Finally, in light of the state's refusal to make the person whom the grievant bumped whole, this person has filed a grievance subsequent to the Arbitrator's original decision.

EMPLOYER'S POSITION:

1. The grievant was on disability during this period. Had she been in the Administrative Assistant 3 position during this time she would be compensated at an appropriate disability leave pay. Therefore she should receive the difference between the disability compensation she received based on her Administrative Assistant 1 position and the pay which she would have received as an Administrative Assistant 3.
2. The replacement job was her report in location and therefore she should not be compensated for travel time.
3. The employee in question had not filed a timely grievance because she did not grieve at the same time as the grievant. Further, this arbitrator does not have jurisdiction over this matter.

AWARD:

1. The grievant went on disability, presumptively in good faith. No evidence was introduced at the original hearing on this issue. The Arbitrator will not attempt to make calculations on such a speculative and inherently subjective matter. The Arbitrator therefore, approved the state's calculations, i.e., the difference between the disability paid and the disability that should have been paid based on the Administrative Assistant 3 position.
2. Following Section 32.03 by analogy, the Arbitrator instructed the state to pay the grievant mileage for any miles traveled per day over 120 miles round-trip.
3. The Arbitrator presumed that the person who was bumped by the grievant would be reinstated in her old job and would be paid the differential lost in pay. The Arbitrator also did not believe that a grievable issue arose until the grievant was reinstated. Given the subsequent filing of a grievance the Arbitrator deferred the matter to the new grievance and its resolution.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

OCSEA, Local 11
AFSCME, AFL-CIO

Union

and

State of Ohio

Employer.

Grievance No. 31-10-(92-05-13)-0014-01-14

Grievant (P. Lorubbio)

Hearing Date: March 11, 1993

Closing Date: April 5, 1993

Award Date: May 13, 1993

Arbitrator: R. Rivera

For the Employer:

Ted Durkee

Michael P. Duco

For the Union:

Richard Sycks

Jamie G. Parsons

On June 17, 1993, the Advocates to the State (Durkee) and for the Union (Sycks) held a phone conference with the Arbitrator to determine the scope of the Award. Three issues were discussed.

1. During the period between the Grievant's abolishment/bump and the Grievant's reinstatement as an Administrative Assistance 3, the Grievant had gone on disability leave. In calculating the Grievant's back pay, the State paid her the amount by which her disability pay would have been increased for that period had she been an Administrative Assistant 3 at the time of her disability. The Union argued that but for the abolishment she never would have gone on disability, and, hence, she should have received the difference between the disability pay and the pay of an Administrative Assistant 3.

Award: The Arbitrator approved the State's pay calculation, i.e., the difference between the disability paid and the disability that would have been paid at the higher position. The Grievant went on disability, presumptively in good faith. No evidence was introduced at the original hearing on this issue. Moreover, the Arbitrator will not attempt to make calculations on such a speculative and inherently subjective matter.

2. The Union requested that the State pay the Grievant for mileage traveled to the replacement job. Following Section 32.03 by analogy, the Arbitrator instructed the State to pay the Grievant mileage for any

miles traveled per day over 120 miles round-trip.

3. An issue arose with regard to the person bumped by the Grievant and what remedy was available to her. The Arbitrator stated that she presumed that the person would be reinstated in her old job and would be paid the differential lost in pay.

The State argued that the employee in question had not filed a timely grievance because she did not grieve at the same time as the Grievant. The Arbitrator stated that she did not believe a grievable issue arose until the Grievant was reinstated. The State did not accept the Arbitrator's jurisdiction in the matter. The Union indicated that the person affected has grieved. The Arbitrator deferred and left the matter to the new grievance and its resolution.

Rhonda R. Rivera
Arbitrator

June 21, 1993
Date