LESLIE THOMASON, .

Grievant, .

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v. . Docket Number: 94-HHR-245

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES and DIVISION .

OF PERSONNEL, .

Respondent(s). .

DECISION

Leslie Thomason (hereinafter Grievant) filed this complaint pursuant to the provisions of West Virginia Code §29-6A-1 et seq. on June 25, 1993, alleging as follows: "When reclassification was done, I was given pay grade 08. It has now been changed to pay grade 09 by Division of Personnel. Relief sought: Back wages due to reclassification error that was effective 12-16-92." After receiving denials at the lower levels, Grievant appealed to level four requesting a hearing. Subsequently, he requested that a decision be based upon the lower level record and a briefing schedule was established. The case became mature for decision onAugust 16, 1994, after the Respondent filed with the undersigned a Motion to Dismiss.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. The Undersigned takes notice that the West Virginia Division of Personnel (hereinafter Personnel) undertook what it called a Statewide Reclassification Project in December 1991. As a result of this reclassification project, many classified state employees' positions were reallocated to different class titles and pay grades.

2. As a result of Personnel's reclassification of positions within the Department of Health and Human Resources (hereinafter HHR), Grievant's position was classified as an Economic Service Worker at a pay grade eight.

3. After Personnel's decision, Grievant filed a grievance challenging his position's classification and assigned pay grade.

4. On May 26, 1993, Grievant entered into a settlement agreement with Personnel and HHR wherein it was agreed that HHR would recommend to the State Personnel Board that it create a new classification of Investigator I at pay grade nine. Upon approval of this recommendation, Grievant's position was to become so classified on or before June 1, 1993. In consideration of this agreement, Grievant agreed to dismiss his grievance challenging Personnel's initial reclassification decision.

5. The State Personnel Board approved the recommendation discussed in finding number four above at its meeting on May 20, 1993. However, Grievant did not receive financial benefit from this change until July 15, 1993. Grievant was then awarded back pay representing the difference between his former and new positions' salaries for the period of June 1, 1993 to July 16, 1993.

Discussion

Grievant contends that he is entitled to back pay for the period of December 16, 1992 through June 1, 1993 by virtue of the fact that his position was reallocated to that of Investigator I effective June 1, 1993. He argues that because his duties have remained the same, he should receive back pay to the date of the reclassification. HHR contends that this case is moot based upon the fact that Grievant entered into a settlement agreement compromising any claim he may have had prior to June 1, 1993 and because the classifcation of Investigator I did not exist in December 1992. Based upon the evidence of record, HHR must prevail.

The essence of Grievant's argument is that by virtue of the terms of the settlement agreement, HHR and Personnel admitted that his classification in December 1992 was in error; therefore, he is

entitled to back pay reflective of the difference between the salary he received at that time and the salary for the position he received effective June 1993. This argument is wholly inconsistent with both the facts of the case and the law. At no time has therebeen an admission on behalf of either Respondent that Grievant has ever been improperly classified. Further, the terms of the settlement agreement cannot legally be construed in such a light. See, Moore v. Goode, 375 S.E.2d 549 (W.Va. 1988); Agelasto v. Frank Atkinson Real Estate, 327 S.E.2d 84 (Va. 1985). Therefore, Grievant's complaint must be denied.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusion of law.

Conclusion of Law

Grievant has failed to establish a violation, misapplication or misinterpretation of any statute, policy, rule, regulation or written agreement under which he works. W. Va. Code §29-6A-2(i).

Therefore, this grievance is necessarily **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

November 17, 1994