RICHARD D. COLLINS,

Grievant,

v.

DOCKET NO. 98-RS-479

WEST VIRGINIA DIVISION OF REHABILITATION SERVICES,

Respondent.

D E C I S I O N

Grievant, Richard D. Collins, originally filed this grievance directly at level four of the grievance procedure on May 14, 1996, protesting his termination from West Virginia Division of Rehabilitation Services ("Rehab") by letter dated April 30, 1996. Rehab moved for dismissal and remand on the ground that Grievant was a probationary employee, and thus, not entitled to appeal his dismissal directly to level four. The motion was granted and this grievance was remanded to level one of the grievance procedure. Grievant appealed that ruling to the Circuit Court of Kanawha County, and on February 10, 1997, the Honorable Lynn Ranson held that Grievant was a probationary employee and not entitled to appeal his dismissal directly to level four.

Thereafter, Grievant reinstated his grievance at level one on June 18, 1997. Grievant's immediate supervisor, Roger L. Crookshanks, did not have authority to grant the grievance at level one, and a level two meeting was held on July 3, 1997, and thegrievance again denied by Ken Kennedy, Administrative Reviewer. A level three hearing was conducted on September 12, 1997 and May 27, 1998, and the grievance was denied by Michael T. Smith, Hearing Examiner, on November 18, 1998. (See footnote 1) Grievant appealed to level four on November 24, 1998, and a level four hearing was conducted on March 11, 1999, in the Grievance Board's Charleston, West Virginia office. Grievant was represented by Christopher S. Smith, Esq., Hoyer, Hoyer, Smith & Miesner, and Rehab

was represented by Robert Nunley, Esq., Assistant Attorney General. This matter became mature for decision on March 22, 1999, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

December 12, 1995 request for annual leave the week of April 14-20, 1996.

Ex. 2 -

Application for Annual Leave for the period April 16-22, 1996.

Ex. 3 -

April 1996 Recreation Services Work Schedule.

Ex. 4 -

Copy of Check Number 666 in the amount of $586.42 payable to Rehabilitation Services from Richard D. Collins, dated April 9, 1996.

Ex. 5 -

Copy of Interdepartmental Mail envelope addressed to Lynn Dotson, Human Resources, from Richard Collins.

Ex. 6 -

March 29-April 28, 1996 phone bill of Richard Collins.

Ex. 7 -

Copy of Check Number 667 in the amount of $586.42 payable to Rehabilitation Services from Richard D. Collins, dated April 25, 1996.

Ex. 8 -

Bank One Statement of Accounts from March 28, 1996 through April 28, 1996, for Richard D. Collins.

Ex. 9 -

May 9, 1996 Demand Deposit Display History.

Ex. 10 -

April 30, 1996 letter to Richard D. Collins from William C. Dearien, Director.

Ex. 11 -

Job Performance Evaluation for Richard D. Collins, dated February 19, 1996.

Ex. 12 -

Job Performance Evaluation for Richard D. Collins, dated April 30, 1996, with response of Richard D. Collins.

Joint Exhibit

Ex. 1 -

Deposition Transcript of Kenneth W. Blake, December 1, 1997.

Testimony

Grievant testified in his own behalf, and presented the testimony of Elizabeth Gilson, Sondra Young, Roger Crookshanks, and Ann Lacey-Parsons. Rehab presented the testimony of Ann Lacey-Parsons and Lynn Dotson.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant had been employed at Rehab since June 1991 as an intermittent six-month employee.

2. In November 1995, Grievant was hired as a full-time Recreation Specialist for Rehab. Grievant was placed on a six-month probationary period as a new full-time employee. Grievant was assigned to the evening shift.

3. On December 12, 1995, Grievant submitted a request for annual leave to his supervisor for

the period April 14-20, 1996. G. Ex. 1.

4. Grievant's immediate supervisor, Roger Crookshanks, approved the annual leave request on December 12, 1995. Ann Lacey-Parsons, the next level supervisor over Mr. Crookshanks, approved the annual leave request on December 13, 1995. G. Ex. 1.

5. In February 1996, Grievant was attending a Special Olympics event sponsored by Rehab at Canaan Valley Ski resort. While there, Grievant fell and injured himself while skiing.

6. Grievant's injury was compensable under the Workers' Compensation laws. Grievant used his accumulated annual leave for the time off due to his injury. Pursuant toWorkers' Compensation laws, Grievant anticipated “buying back”, or reinstating, his annual leave once he received his Workers' Compensation benefits.

7. As the time was drawing nearer for Grievant to take his already approved annual leave in April 1996, he and the personnel department were working together to determine the exact dollar figure he owed to Rehab in order to buy back his annual leave.

8. Grievant also had a job outside Rehab as a sports official. When he was reimbursed from Workers' Compensation, his check included benefits for that job, as well as his job at Rehab.

9. Grievant informed Lynn Dotson, the Benefits Coordinator at Rehab, that the Workers' Compensation check included amounts for his officiating job, and that he did not owe Rehab the entire amount of the check.

10. Ms. Dotson misunderstood Grievant, and took that to mean that he had been officiating for Rehab while he was off work on Workers' Compensation. She called the office of Mr. James Quarles, the Director of Personnel, and they in turn called Ms. Lacey- Parsons, who informed them that Grievant had not been officiating while he was off on Workers' Compensation, and did not officiate for Rehab at all.

11. Ms. Dotson eventually provided Grievant with an exact dollar amount of what he owed Rehab in order to buy back his annual leave. (See footnote 2) 12. On Friday, April 12, Grievant worked a half-day. He had come into work early in order to meet with Mr. Tanzey regarding the Student Advisory Committee, with which he was involved. Grievant left work between 4:30 and 5:00 p.m. that day. He called Ms. Dotson around 4:00 p.m., but she was not in her office in Human Resources.

13. Grievant placed check number 666, drawn on his Bank One checking account, in the

amount of $586.42, payable to Rehabilitation Services, in an interdepartmental envelope around 4:00 p.m. on April 12, 1996, addressed to Lynn Dotson in Human Resources. G. Exs. 4, 5.

14. Grievant left that evening for his honeymoon in the Bahamas, which was the annual leave he had requested and had approved back in December 1995.

15. On Monday morning, Roger Crookshanks received a call from personnel wanting to know if Grievant had gone on his vacation, because they had not received his buy back payment.

16. Mr. Crookshanks attempted to reach Grievant at his mother-in-law, Elizabeth Gilson's, home in Morgantown, West Virginia, that Monday morning, and she informed him that Grievant and her daughter had left for their honeymoon.

17. Mr. Crookshanks informed Ms. Lacey-Parsons when she came in to work that Monday morning that personnel had not received Grievant's payment. Ms. Lacey-Parsons had spoken with Grievant about the payment on Friday, and he told her it was all taken care of, so she believed there was just a mix-up with the interdepartmental mail.

18. Ms. Lacey-Parsons spoke with Ms. Gilson regarding this matter, and Ms. Gilson offered to make the payment for Grievant while he was off on his vacation. Ms.Lacey-Parsons checked with Mr. Quarles' office in personnel, and was instructed not to accept any check other than from Grievant. She relayed this information to Ms. Gilson.

19. Ms. Gilson asked Ms. Lacey-Parsons if Grievant was in trouble. She told Ms. Gilson she felt it would all resolve itself, and from her level of authority, Grievant might receive a verbal reprimand about the situation.

20. Later during the week, Grievant contacted Ms. Lacey-Parsons, and told her that he had placed the check in the interdepartmental mail on Friday, April 12. G. Ex. 6. She told Grievant it was not a good idea to send money through interdepartmental mail, as it was slow and inefficient.

21. Grievant returned to work on Wednesday, April 24, 1996, at 2:15 p.m. The check had still not been found when he returned that day.

22. Grievant wrote a second check, number 667, payable to Rehabilitation Services in the amount of $586.42 on April 25, 1996. G. Ex. 7. That check was processed by Rehab.

23. On Tuesday, April 30, 1996, Grievant was attending a Special Olympics event at Laidley Field in Charleston, West Virginia. His wife brought him a letter from Rehab dated that day, informing him that he was being terminated. G. Ex. 10. This letter was the first indication he had that he was

going to be terminated.

24. The letter states that Grievant has “either been unwilling or unable to be considered a trustworthy and responsible employee” and has “not satisfactorily met the required standards of the agency during your probationary period warranting your termination.” The letter goes on to detail the events leading up to and including Grievant's taking annual leave for his honeymoon, and the “alleged” lost check. Included in thatrecitation is a statement that “you [Grievant] engaged in a conversation with Ms. Dotson concerning officiating at a ball game while you were receiving TTD benefits.” Mr. William Dearien, Director of Rehab, concludes by saying “I believe your explanation [regarding the check] lacks credibility.” G. Ex.10.

25. Grievant's pay was docked for the time period he was on vacation because he did not have enough annual leave accumulated.

26. Grievant was evaluated by his immediate supervisor ono February 19, 1996, for the period of November 1, 1995 through February 1, 1996, or the first three months of his probationary period. Grievant received an overall rating of 3.7, or slightly above adequate performance. The categories of evaluation and scores received by Grievant are as follow:

Job Knowledge - Job knowledge is adequate. Rating 3

Planning and organization - Employee has met all deadlines and got all work schedules, Special Olympic and sports papers and materials completed in a timely fashion. Rating 4

Work Quantity - Employee's work quantity is excellent. He supervises and coordinates Special Olympic programs, Student Advisory Committee and gymnasium. Rating 4

Work Quality - Employee exceeds quality requirements for a three month employee. Rating 4

Communication Ability - Employee turns in all reports on time and follows proper channels. Rating 4

Attitude Toward Work - Employee's attitude is adequate. Rating 3

Working With Others - Employee's ability to work with students, staff and people in the community is excellent. Mr. Collins has already been assigned two part time

employees to supervise. Rating 4

Judgment - Employee's judgement is adequate. Rating 3

Initiative - Employee is self starter and has carried out all task assigned with minimal supervision. Rating 4

Dependability - Employee has worked a variety of schedules in order to carry out WVRC programs. He has spent his personal time coaching and working with Center Special Olympic Teams. Rating 4G. Ex. 11.

27. Grievant was evaluated again by Mr. Crookshanks on April 30, 1996, the same day he was terminated. That evaluation was for the period November 1, 1995 through May 5, 1996. Because of Grievant's termination, he was unable to finish working out his probationary period. Grievant's overall rating on the second evaluation was 2.5. The specific categories and scores are as follows:

Job Knowledge [no comments] Rating 3

Planning and Organizing [no comments] Rating 3

Work Quantity [no comments] Rating 3

Work Quality [no comments] Rating 3

Communication Ability - Employee failed to carry out the directions of supervisory staff and Human Resources regarding reimbursement of leave. Rating 2

Attitude Toward Work - Employee disregarded directions and policies of the Human Resources Department concerning his leave. Rating 2

Working With Others [no comments] Rating 3

Judgment - Employee left his job without having appropriate leave accumulated. Employee doesn't always follow procedures specifically in regard to monies entrusted to him through Student Advisory Committee. Rating 1

Initiative [no comments] Rating 3

Dependability - Employee disregarded the directions of Human Resources and left his job site without authorized

leave. Employee failed to return money and receipt
entrusted to him by Student Advisory Committee for purchase
of CD player. Rating 2.

G. Ex. 12.

28. Grievant was responsible for overseeing the Student Advisory Committee at Rehab. The students had raised money to buy a CD player for dances. Grievant and another employee, Ron Markley, went to buy a 5-changer CD player. Grievant put the receipt and change in a bank money envelope and put it in the Recreation Departmentsafe. The money turned up missing. Virtually everyone in the Recreation Department had access to the safe.

29. On May 5, 1996, the interdepartmental mail envelope and check were found in the Rehab mail room and delivered personally by Sondra Young, an Office Assistant, to Mr. Quarles. G Exs. 4, 5. Ms. Young was aware that personnel had been looking for the envelope from Grievant, and told Mr. Quarles, "[t]his looks like what you were looking for." LIII Tr., p. 9.

30. The envelope had markings on it, of "DMV", "DNR", and "REHAB", all of which were circled, with DMV and DNR scratched out.

31. Ms. Young told Lynn Dotson in May 1996 that she had found the interdepartmental envelope addressed to her from Grievant. LIII Tr., p. 15.

32. Mr. Crookshanks found out later that the envelope had been found. LIII Tr., p. 30.

33. Ms. Lacey-Parsons found out at the first level three hearing on September 12, 1997, that the envelope had been found. LIII Tr., p. 51.

34. Grievant found out at the first level three hearing on September 12, 1997, that the envelope had been found.

DISCUSSION

West Virginia Division of Personnel Administrative Rule 10.5(a) provides that, "[i]f at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with Subsection 12.2 of this Rule. If the appointing authority gives the fifteen calendar days notice on or before the last day of the probationary period, butless than fifteen calendar days in advance of that date, the

probationary period shall be extended fifteen days from the date of the notice and the employee shall not attain permanent status." Subsection 12.2 of the Rule provides that, "[f]ifteen (15) calendar days after notice in writing to an employee stating specific reasons, the appointing authority may dismiss any employee for cause."

When a probationary employee is terminated on grounds of incompetency or unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the employer carries no burden of proof in a grievance proceeding. Rather, the employee has the burden of establishing that his services were satisfactory. Bonnell v. W. Va. Dept. of Corr., Docket No. 89-CORR-163 (Mar. 8, 1990).

To summarize this case in a nutshell, Grievant was supposed to buy back annual leave he had used while off work due to a compensable injury, once he received his Workers' Compensation benefits. If he did not buy back the annual leave taken, he would not have enough leave accumulated to go on his pre-approved vacation in April 1996. The Friday before he left on his vacation, Grievant deposited the requisite amount in an interdepartmental envelope addressed to Lynn Dotson in Human Resources. Ms. Dotson did not receive the payment the next week, and Grievant was so informed. When he returned from his vacation, he wrote another check for the buy back, which was duly processed by Rehab.

Despite repaying his debt, Rehab determined that Grievant was untruthful, and dismissed him from employment on April 30, 1996. Rehab had also docked Grievant his pay for the vacation time he had taken without sufficient accumulated annual leave. However, on May 5, 1996, five days following issuance of Grievant's termination letter, andprior to the effective date of his termination (May 15, 1996), the interdepartmental mail envelope and first check were found and presented personally to Mr. Quarles, Director of Human Resources. Ms. Dotson was informed the envelope and check were found on May 5, 1996. However, that critical item of information did not leave the Human Resources office, and indeed, did not surface until more than a year later, at the level three hearing in this matter on September 12, 1997. Rehab intimates that Grievant placed the envelope with check number 666 in the Rehab mail room after he was terminated.

As a result, this grievance proceeded to level four originally on May 14, 1996, the day before the effective date of Grievant's termination, was dismissed, appealed to Circuit Court, remanded on February 10, 1997, heard at level one on June 8, 1997, at level two on July 3, 1997, and finally at

level three on September 12, 1997, before the Human Resources office finally decided to inform Grievant that they had the envelope and missing check all along. Looking at Grievant's performance evaluations conducted during the time of his probation, it is clear that, despite Mr. Crookshanks' characterization of Grievant as “a hair above average” employee (LIII Tr., p. 32), the first evaluation he performed of Grievant speaks for itself, and shows Grievant to be an exemplary employee, and that Mr. Crookshanks recommended that Grievant be retained for employment. G. Ex. 11.

The second evaluation, completed on April 30, 1996, the date of Grievant's termination, places Grievant in the overall rating of 2.5 or “weakness”. All scores in all categories were decreased, however, 6 out of 9 categories give no explanation at all for this decrease in rating. The comments that are on this evaluation deal solely with Grievant's alleged failure to buy back his annual leave before going on vacation in April 1996. There is mention of an incident regarding a CD player, as well, but there is nothingin Grievant's termination letter referring to the CD player. Clearly, the sole reason Grievant received a lower evaluation from Mr. Crookshanks in April 1996, was because of the buy back incident and the decision to terminate him. G. Ex. 12.

It is safe to conclude that the sole reason for Grievant's dismissal from employment at Rehab was because it was believed he had lied about remitting a check to buy back his annual leave before he took his vacation. Rehab also believes Grievant placed the envelope and check in the mail room after he was terminated, and doctored the envelope to show it had circulated through two other agencies before coming to rest at Rehab. It would have been extremely clever of Grievant to put check number 666 in this envelope, and then use check number 667 after he returned from his vacation, in order to pull off this “scam.” While Grievant clearly is an intelligent person, there is nothing to suggest, let alone prove, that he manufactured this scenario as Rehab would like to believe.

For some inexplicable reason, though, Rehab determined not to do all that it could have reasonably done at that time to prove or disprove that Grievant had tampered with the mail. Rather, Rehab kept the discovery of the envelope and check a secret for more than a year before admitting its existence. Rehab had the opportunity to remove the cloud of suspicion hanging over Grievant, but it exercised a meaningful choice to misinterpret the status of the search for the missing check, and thereafter conceal its recovery which could have immediately restored Grievant's good name and reputation. See Alkire v. First Nat. Bank of Parsons, 197 W. Va. 122, 475 S.E.2d 122 (1996).

Alkire involved a very similar factual situation to the instant grievance. Mr. Alkire was accused of stealing his employer's nightly bank deposit, when it failed to show up in the bank's night depository. He was dismissed and criminal charges were brought againsthim. Later, the bank found the night deposit bag in its night depository. However, the bank decided not to inform Mr. Alkire or the prosecutor that the bag had been discovered. In discussing how a jury should determine the amount of punitive damages, the West Virginia Supreme Court of Appeals set forth certain factors to be considered. First, the Court identified the type of conduct which could give rise to a punitive damage award:

> In actions of tort, where gross fraud, malice, oppression, or wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others appear, or where legislative enactment authorizes it, the jury may assess exemplary, punitive, or vindictive damages; these terms being synonymous.

Alkire at 129.

The Court then instructed the jury to consider the following factors found in Syllabus Points 3 and 4 of Garnes v. Fleming Landfill, Inc., 186 W. Va. 656, 413 S.E.2d 897 (1991), and Syllabus Point 15 of TXO Production Corp. v. Alliance Resources Corp., 187 W. Va. 457, 419 S.E.2d 870 (1992), *aff'd*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993):

> The jury may consider . . . the reprehensibility of the defendant's conduct. The jury should take into account how long the defendant continued in his actions, whether he was aware his actions were causing or were likely to cause harm, whether he attempted to conceal or cover up his actions or the harm caused by them, whether/how often the defendant engaged in similar conduct in the past, and whether the defendant made reasonable efforts to make amends by offering a fair and prompt settlement for the actual harm caused once his liability became clear to him.

Alkire, at 130.

Obviously, this Grievance Board is not authorized to award punitive damages in cases arising out of the grievance procedure. However, this Board is authorized to award costs when it determines a party has acted in bad faith. W. Va. Code § 29-6A-7 states, specifically, that:

> Both employer and employee shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure. The hearing examiner may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. Such allocation of costs shall be based on the relative ability of the party to pay such costs.

In the instant case, the undersigned hereby makes a determination that Rehab acted in bad faith when it did not divulge the discovery of the buy-back check until more than one year later, at level three of the grievance procedure, when it knew before the grievance process was even initiated that the check had been found. (See footnote 3)

Rehab attempts to portray that Grievant was dismissed for unsatisfactory performance; however, his performance evaluations speak directly to the contrary. Clearly, the reason Rehab dismissed Grievant was due to "cause", that being his alleged untruthfulness and dependability resulting from the loss of the buy back check. Once that "cause" turned out to be false, Rehab should have immediately taken action to clear up the record in this matter, but did nothing. Rehab continued to conceal the existence of the envelope and check for more than a year, and throughout the various levels of proceeding in this matter. In fact, it was not until after Rehab admitted the existence of the envelope, in September 1997, that it retained a handwriting analyst to examine the envelope. The results were completely inconclusive. See, Jt. Ex. 1. Clearly, Rehab knew that its conduct would cause, and did cause, harm to Grievant, i.e., his continued unemployment, and cloud of suspicion covering his termination. Unfortunately for Grievant, the redress to which he is entitled is limited, due to his status as a probationary employee. If a probationer in the classified service cannot complete the probationary employment through no fault of his own, he must be permitted a reasonable time to complete the trial work period when deficiencies were fabricated or exaggerated simply to facilitate a termination. See Major v. DeFrench, 169 W. Va. 241, 286 S.E.2d 688 (W. Va. 1982); Bonnell, supra. The undersigned cannot begin to express her dismay that she is limited by Grievant's probationary status, and cannot reinstate him to employment as a full-time permanent employee, with all requisite back pay, benefits, and interest.

CONCLUSIONS OF LAW

1. West Virginia Division of Personnel Administrative Rule 10.5(a) provides that, "[i]f at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with Subsection 12.2 of this Rule. If the appointing authority gives the fifteen calendar days notice on or before the last day of the probationary period, but less than fifteen calendar days in advance of that

date, the probationary period shall be extended fifteen days from the date of the notice and the employee shall not attain permanent status."

2. Subsection 12.2 of the Rule provides that, "[f]ifteen (15) calendar days after notice in writing to an employee stating specific reasons, the appointing authority may dismiss any employee for cause."

3. Where a probationary employee is terminated on grounds of incompetency or unsatisfactory performance, rather than misconduct, the termination is not disciplinary,and the employer carries no burden of proof in a grievance proceeding. Rather, the employee has the burden of establishing that his services were satisfactory. Bonnell v. W. Va. Dept. of Corr., Docket No. 89-CORR-163 (Mar. 8, 1990).

4. If a probationer in the classified service cannot complete the probationary employment through no fault of his own, he must be permitted a reasonable time to complete the trial work period when deficiencies were fabricated or exaggerated simply to facilitate a termination. See Major v. DeFrench, 169 W. Va. 241, 286 S.E.2d 688 (W. Va. 1982); Bonnell, supra.

5. W. Va. Code §§ 29-6A-1, et seq., do not expressly empower a hearing examiner to award costs and fees for grievance proceedings at level four unless a party alleges and proves bad faith pursuant to section seven of the statute. Section 29-6A-7 states, specifically, that:

> Both employer and employee shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure. The hearing examiner may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. Such allocation of costs shall be based on the relative ability of the party to pay such costs.

6. Grievant has proven that his dismissal from probationary employment by Rehab was arbitrary, capricious, and in extreme bad faith.

Accordingly, this grievance is **GRANTED** to the extent that Grievant shall be reinstated to his probationary employment, and given the opportunity to complete his probationary period, providing his work is satisfactory. In addition, Rehab is hereby **ORDERED** to compensate Grievant for the amount he was docked prior to his separationfrom employment, because upon payment of his workers' compensation buy-back, Grievant had sufficient annual leave to cover his vacation, and thus, it is improper to dock him for those days. In addition, Rehab is hereby **ORDERED** to pay all of

Grievant's costs associated with the processing of this grievance from the date of the original filing of the grievance through the conclusion of this matter at level four, including preparation time for proposed findings of fact and conclusions of law. Grievant shall submit a statement of costs to the undersigned for approval, outlining his costs, including, but not limited to, attorney travel, copying, long-distance telephone calls, and witness fees. If approved, Rehab will have seven (7) days from the receipt of the statement of costs to reimburse Grievant.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7(1998). 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. However, the appealing party is required by W. Va. Code § 29A- 5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: March 31, 1999

Footnote: 1

The transcript of the hearing on September 12, 1997, was lost and the parties utilized the level four hearing to supplement the testimony presented at that hearing.

Footnote: 2

There was much testimony as to the exact date that Ms. Dotson informed Grievant of the amount of the buy back. Frankly, the undersigned finds that information irrelevant, because there was no date established upon which Grievant had to buy back the leave, other than before he took it. Thus, it makes no difference if Ms. Dotson informed Grievant of the buy back amount one day, or two weeks, prior to his vacation, as long as he remitted the money sometime before he left.

Footnote: 3

The Grievance Board hearing examiners have no authority to award attorneys' fees. See Bonnell, supra.