

Failure To Disclose Tax Returns Results In Rescission Of Back Pay Award

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In the Matter of Arbitration between Hollidaysburg School District and AFSCME Council 83 (June 30, 2015). Arbitrator rescinds back pay award after Grievant refuses to turn over tax records to verify that she did not receive other income during her separation from employment with the District

SUMMARY AND FACTUAL BACKGROUND

In May 2014, Arbitrator Marc A. Winters overturned the discharge of Grievant Kim Wilt by the Hollidaysburg School District and awarded her back pay. The District unsuccessfully appealed the Award of the Arbitrator and ultimately offered the Grievant reemployment, which she declined. In an attempt to mitigate its liability for back pay, the District requested that the Grievant provide copies of her tax returns and wage records for the relevant time period, January 2014 through April 2015. The Grievant refused, and the issue was referred back to Arbitrator Winters for further consideration.

The District did not dispute that the Grievant was owed back pay. However, to the extent that the Grievant had earned other income during the period in question, the damages would be mitigated. Accordingly, the District sought tax returns and other relevant financial information concerning wages earned.

On behalf of the Grievant, the Union argued that she should not have to turn over the tax returns due to concerns that the District would compromise the confidentiality of the returns. The Union further asserted that the District had already breached the Grievant's confidentiality.

Arbitrator Winters noted that there is a "well settled principle in labor arbitration that an employer may mitigate or offset back pay awards for the amount of wages that a grievant may have earned from other employers" during the period that the grievant is separated from employment. Accordingly, a grievant is required to turn over relevant tax and wage information upon the request of the employer. By refusing to disclose this information, a grievant "becomes suspect over her motivation not to divulge that information."

Since the Grievant failed to testify or provide credible evidence to support her concerns regarding a breach of confidentiality, Arbitrator Winters found for the District and released the District from paying the Grievant any back pay compensation as a result of Grievant's failure to turn over relevant tax and wage information.

PRACTICAL ADVICE

Due to the potentially significant impact on back pay liability, Districts should request relevant tax and wage information prior to paying a back pay award, particularly where there has been a lengthy separation from employment.

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