**OCB AWARD NUMBER: 2236**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2236** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **25-20-20121017-0002-01-14** |
| **DEPARTMENT:** | **Department of Natural Resources** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Sarah Rudolph Cole** |
| **GRIEVANT NAME:** | **Norman Spellman** |
| **MANAGEMENT ADVOCATE:** | **Kandie L. Carson** |
| **UNION ADVOCATE:** | **Timothy Rippeth** |
| **ARBITRATION DATE:** | **1-5-2014** |
| **DECISION DATE:** | **2-14-2014** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Articles 21 and 36** |
| **OCB RESEARCH CODES:** | **117.201 Seniority-In General** |

**HOLDING: Grievance DENIED. The Grievant was not entitled to receive longevity pay and vacation benefits at the same rate he had received them prior to his removal. Grievant’s decision to receive retirement benefits triggered Article 36. His decision to retire was voluntary and the Arbitrator has no choice but to apply the CBA’s language.**

The Grievant was removed from his position in February of 2012. Two days later, the Grievant applied to receive his retirement benefits. After that, the Grievant filed a grievance against ODNR, claiming that his removal was not for just cause. Arbitrator Brookins reinstated the Grievant “without back-pay or any other job-related benefits to which he would have been entitled but for his removal…the Grievant’s seniority shall remain undiminished, as if he were never terminated.” ODNR placed the Grievant into his previous pay range and restored his benefits. Short after that, however, management determined that the Grievant was not entitled to longevity pay or vacation benefits at the same rate he had before. As a result, ODNR required the Grievant to repay the longevity pay he had received since returning to work. Thus, the issue in this case was: whether the grievant was entitled to longevity pay and vacation benefits at the same rate he had received them prior to his termination, even though he retired.

The Employer contended that the Grievant was not entitled to longevity pay or vacation benefits at the same rate he had received them prior to his removal. Because he retired from state service, once he was reinstated, he was not entitled to have any prior service time counted toward longevity or vacation accrual. Further, no break in seniority is irrelevant to longevity pay or vacation benefit accrual.

The Union argued that the Grievant is entitled to the same longevity rate and vacation benefit accrual that he received prior to his February 2012 removal, since the Grievant had been reinstated to his former position with his seniority intact. The Employer erroneously treated the Grievant as a standard retire/rehire employee when Article 36 did not address the Grievant’s situation.

The Arbitrator found that the Grievant was not entitled to receive longevity pay and vacation benefits at the same rate he had received them prior to his removal. Grievant’s decision to receive retirement benefits triggered Article 36. His decision to retire was voluntary and the Arbitrator has no choice but to apply the CBA’s language. Further, this language precludes the State from counting prior service time toward longevity accrual or vacation benefit accrual.