BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

IN THE MATTER OF	)	
ROBERT SISSON,	)	
Grievant,	)	**DOCKET NO. 96-11-66**
	)	
v.	)	
	)	**DECISION AND ORDER**
STATE OF DELAWARE	)	
DEPARTMENT OF TRANSPORTATION,	)	
Agency.	)	
	)	

BEFORE Katy K. Woo, Chairperson, Robert Burns, Vice-Chairperson, Walter Bowers and Dallas Green, Members, constituting a quorum of the Merit Employee Relations Board ("Board") pursuant to 29 *Del. C.* § 5908(a).

APPEARANCES

For the Grievant: Roy S. Shiels, Esquire
Brown, Shiels & Chasanov
108 East Water Street, P. O. Drawer F
Dover, Delaware 19903

For the Agency: Frederick Schranck, Deputy Attorney General
Department of Transportation
Administrative Center
P. O. Box 778
Dover, Delaware 19803

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NATURE OF THE PROCEEDINGS

The Board entered a decision and order concerning this grievance on December 23, 1996 which required that Grievant Robert Sisson be paid back pay in the amount of the difference in pay which he would have received had he been paid in paygrade 15, rather than the paygrade in which he was actually paid for the three year period prior to October 3, 1995.

By letter dated March 11, 1997, the Grievant requested that the Board schedule a further hearing in this matter and determine what computations are appropriate in order to specifically calculate the amount of back pay which will make the Grievant whole.

The Board allowed the parties to file written comments and statements of position concerning the Grievant's March 11, 1997 application and stated that it would take the matter under advisement and make its determination concerning the application at a future meeting of the Board without further oral presentations unless such were deemed necessary. Further argument is not required, and this constitutes the determination of the Board with respect to the application.

The Department of Transportation takes the position that it has paid the Grievant in full compliance with the direction of the Board to pay back pay in accordance with Merit Rule 13.0110 which provides for a raise of the higher of at least 5% over Mr. Sisson's prior paygrade 12 salary or the minimum entry level pay for a paygrade 15. The Department asserts that the back pay already paid to Mr. Sisson was at a level which exceeded 80% of the midpoint of a paygrade 15 for each of the periods in question.

The Grievant seeks to have his back pay computed with further reference to Merit Rule 5.0711 which provided the appointing authority with discretionary authority to approve a starting salary up to 80% of midpoint where the applicant's qualifications are clearly over and above those

required as minimum by the class specification. The difference between the two positions is the difference between $4,646.30 which Mr. Sisson has been paid and the sum of $21,706.72 he now seeks.

DECISION

As a matter of general practice, the Board believes it should not reach back to review or reconsider Board decisions and orders which have become final after the period for appeal has elapsed. Because of the lapse of time between the Board's final order and the actual calculation of back pay in this case, the Board will consider this matter. In this instance, the applicant has been compensated in the form of back pay in a manner consistent with the normal application of Merit Rule No. 13.0110 and seeks extra-ordinary and discretionary treatment which the Board views, under the circumstances, is neither necessary nor required to make the Grievant whole. The Department of Transportation has correctly computed the Grievant's entitlement to back pay under the Board's Order.

ORDER

The application for further relief filed by the Grievant on March 11, 1997 is **DENIED** by the affirmative vote of Katy K. Woo, Walter Bowers and Dallas Green, with Robert Burns not participating in the deliberations nor voting on the matter.

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OF THE STATE OF DELAWARE

IN THE MATTER OF	)	
ROBERT SISSON,	)	
Grievant,	)	**DOCKET NO. 96-11-66**
v.	)	
	)	**FINDINGS, OPINION AND ORDER**
STATE OF DELAWARE DEPARTMENT OF TRANSPORTATION,	)	
Agency.	)	

IT IS SO ORDERED this 19th day of June, 1997.

Katy K. Woo, Chairperson

Walter Bowers, Member

Robert Burns, Vice-Chairperson
(Not Voting)

Dallas Green, Member

Mailing Date: July 21, 1997

Distribution:
Original: File
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Agency's Representative
Merit Employee Relations Board
Katy K. Woo, Chairperson
Robert Burns, Vice Chairperson
Walter Bowers, Member
Dallas Green, Member

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