

1980 WL 121229 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 16, 1980

***1 Re: USC Faculty Reinstatement Orders**

Paul Jerald Ward, Esquire
University Legal Counsel
University of South Carolina
Columbia, South Carolina 29208

Dear Paul:

You have recently addressed several questions to this Office concerning issues which are related to the University's obligation to reinstate employees pursuant to decisions of the State Employee Grievance Committee, hereafter 'the Committee' or the State Budget and Control Board, hereafter 'the Board.' Your questions are answered as follows:

(1) What must the University do in order to 'take action immediately to implement its obligations under the decision' when a grievant refuses to be reinstated within a reasonable period of time?

The University must contact the grievant or the grievant's attorney to fix a date for the grievant's return to work. If a grievant refuses to return to work after a reasonable period of time following a decision by the Committee or the Board ordering his reinstatement, an agency may consider the grievant to have chosen not to return to work. In such case the grievant ordinarily would be entitled to a back pay award, calculated to reimburse the employee for the amount of money, less any interim earnings, that he or she would have earned but for the wrongful separation from state service. See, [Taylor v. Safeway Stores, Inc.](#), 365 F.Supp. 468 (D.Colo. 1973), aff'd in part, rev'd and rem'd on other issues, 524 F.2d 263 (10th Cir. 1975) and the Budget and Control Board's State Personnel Rules Manual, Section 6.02H. Of course, the length of a 'reasonable period of time' will vary from one appeal to the next.

(2) Are grievants entitled to travel costs to attend grievance hearings?

In the absence of a statutory provision providing for the recovery of incidental costs of grievance appeals, grievants are not entitled to recover travel expenses or other incidental costs incurred during the appeal. See (4) *infra*.

(3) If a reinstatement occurs during a semester, must the University remove one or more professors from assigned courses in order to provide teaching responsibilities to a reinstated professor?

The answer to this question is negative. In [Earle v. Aycock](#), 270 S.C. 326, 242 S.E.2d 402 (1978) the South Carolina Supreme Court said that a state agency could reinstate an employee by providing the employee with another position of equal pay and equal rank. State personnel policy requires reinstated employees to be reinstated with the same status acquired in the former position. Section 7.05C, Budget and Control Board's State Personnel Rules Manual. See, [Patterson v. American Tobacco Company](#), 535 F.2d 257 (4th Cir. 1976) wherein the court of appeals refused to order the displacement of incumbent employees to accommodate the victims of discrimination because the incumbents did not participate in the illegal discrimination and the rippling effect of 'bumping' would disrupt the employers business.

*2 (4) Are grievants entitled to relocation expenses if they have voluntarily moved during the period?

There is no statutory provision that would allow an employee to be compensated for moving expenses incurred in a change of residence during the pendency of a grievance appeal precipitated by the grievant's separation from state service. [Section 8-11-130, 1976 Code of Laws of South Carolina](#), the only statute concerning moving expenses, authorizes an agency to pay moving expenses when employees' headquarters are 'moved in the course of the business of the agency.' The Appropriations Act for 1979, Act and Joint Resolutions No. 199, Section 135J, allows a state agency to 'advance travel and subsistence expense monies to employees of that agency for the financing of ordinary and necessary travel required in the conducting of the business of the agency.' Moving and travel expenses may be paid to employees when the relocation or travel is occasioned by the 'business of the agency.' Since the grievant's change of residence was not caused by agency business there is no provision in the law allowing the reimbursement of moving expenses.

(5) Must the grievant necessarily be assigned the same office and telephone number?

No. Based upon the [Earle](#) decision and the regulations of the Board, it is not necessary to reinstate a grievant to the very same place or position that he or she once occupied. Section 7.05C, Budget and Control Board's State Personnel Rules Manual. An agency should attempt to avoid the appearance of retaliation against or harassment of a grievant when effecting his or her reinstatement. Consideration should be given to the grievant's seniority, rank and abilities when making office space and duty assignments.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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