



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Evan Scott, City of  
Newark

Request for Enforcement

CSC Docket No. 2019-1261

**ISSUED: SEPTEMBER 12, 2019 (ABR)**

Evan Scott, a Laborer 1 with the City of Newark, represented by Samuel Wenocur, Esq., requests resolution of a dispute concerning his benefits.

By way of background, on December 12, 2017, Administrative Law Judge Ellen S. Bass (ALJ) modified the petitioner’s removal, effective September 11, 2015 to a 30 working day suspension. As the Civil Service Commission (Commission) did not have a quorum, the ALJ’s determination was deemed adopted per *N.J.S.A. 52:14B-10(c)*. The appointing authority indicates that petitioner returned to work on April 9, 2018. Although the parties agreed that the petitioner was owed \$54,011.64 in back pay, they were unable to agree on the amount of vacation and sick leave that the petitioner was entitled to. After the parties were unable to settle the matter, the petitioner requested the Commission’s review. *See N.J.A.C. 4A:2-2.10*.

In the instant matter, the petitioner asserts that he is entitled to the unused vacation leave and sick leave days he accrued prior to his removal, effective September 11, 2015, plus all of the vacation leave, sick leave and other benefit days that he would have accrued between the date of his removal and his reinstatement. He states that the appointing authority is erroneously relying upon contractual language in its collective bargaining agreement with the Service Employees International Union Local 617 (SEIU Contract) as a basis for denying him vacation leave which accrued more than two years ago. He asserts that *N.J.A.C. 4A:2-2.10* and case law obligate the appointing authority to provide him with the unused vacation time he accrued prior to September 2015 and the vacation leave he would

have earned thereafter. Furthermore, he argues that permitting him to utilize the foregoing vacation leave would not run contrary to the SEIU contract or State law, as the intent of those provisions is to prevent an employee from hoarding vacation time while at work and his wrongful termination precluded him from utilizing such leave time in 2016 and 2017. Finally, he asserts that a full remedy under *N.J.A.C.* 4A:2-2.10 requires that he also be given two years from his return to work to utilize his accrued vacation time.

In response, the appointing authority, represented by Joyce Clayborne, Assistant Corporation Counsel, states that based upon the March 18, 2013 effective date of the petitioner's appointment as a Laborer 1 with its Department of Neighborhood and Recreational Services<sup>1</sup> and the SEIU Contract, the petitioner is entitled to 12 vacation days per year and 15 sick days per year. However, it argues that the petitioner is not entitled to any vacation or sick leave from the period prior to his reinstatement, as the parties' agreed upon back pay award compensates the petitioner for both salary and leave time he would have otherwise been entitled to during that period. Additionally, it asserts that, pursuant to its departmental policy, the petitioner's leave entitlement for 2018 must be prorated to account for a separate 30 working day suspension without pay that the petitioner received, effective September 3, 2018.<sup>2</sup> In support, the appointing authority submits copies of Article XIII of the SEIU Contract and its Division of Personnel, Department of Administration Operating Policy and Procedure No. PDP-22, which address vacation leave entitlement, and Article XIV of the SEIU Contract, which covers sick leave entitlements.

## CONCLUSION

*N.J.A.C.* 4A:2-2.10(a) provides, in pertinent part, that where a disciplinary penalty is modified, back pay, benefits and seniority may be awarded. Pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain health insurance coverage during the period of improper suspension or removal. *N.J.A.C.* 4A:6-1.1(a)1 provides, in pertinent part, that local appointing authorities shall establish leaves and procedures for leaves of absence and that local employees shall also be entitled to vacation leave

---

<sup>1</sup> Agency records indicate that the petitioner was appointed as a Laborer 1, effective June 21, 2006 with the appointing authority's Engineering Department and subject to a layoff, effective November 30, 2010. As a result of this layoff, the petitioner's name was placed on the subject special reemployment list. Subsequently, the petitioner was reappointed from the special reemployment list as a Laborer 1 with the appointing authority's Department of Neighborhood and Recreational Services, effective March 18, 2013.

<sup>2</sup> It is noted on October 16, 2018, the petitioner filed an appeal of his 30 working day suspension, effective September 3, 2018, with the Commission. His appeal of that matter is currently pending at the Office of Administrative Law.

(*N.J.A.C.* 4A:6-1.2(b) through (h)) and sick leave (*N.J.A.C.* 4A:6-1.3(a) through (h)). *N.J.S.A.* 4A:6-1.2(b) provides, in pertinent part, that from initial employment up to the end of the first calendar year, annual paid vacation leave for full-time local employees shall be at least the amounts specified in *N.J.A.C.* 4A:6-1.2(a)1 and (a)2 and that thereafter, their vacation leave shall be at least:

1. From the beginning of the first full calendar year of employment and up to 10 years of continuous service, 12 working days; [and]
2. After 10 years of service and up to 20 years of continuous service, 15 working days;

*N.J.S.A.* 4A:6-1.2(c) states, in relevant part, that continuous service, for purposes of vacation leave entitlement, shall mean employment for the same jurisdiction, without actual interruption due to resignation, retirement or removal and that an employee who has been appointed from a special reemployment list shall be credited with any continuous service prior to the layoff in addition to continuous service subsequent to reemployment. *N.J.S.A.* 11A:6-3(e) provides that vacation leave for full-time political subdivision employees not taken in a given year shall accumulate and be granted during the next succeeding year only. *See also N.J.A.C.* 4A:6-1.2(g). *N.J.A.C.* 4A:6-1.3(c) states that paid sick days shall not accrue during a leave of absence without pay or suspension. *N.J.S.A.* 11A:6-5 and *N.J.A.C.* 4A:6-1.3(f) provide, in pertinent part, that unused sick leave shall accumulate from year to year without limit.

With regard to the petitioner's request for vacation time accrued prior to his removal on September 11, 2015 and thereafter, the Commission notes that, per *N.J.S.A.* 11A:6-3(e) and *N.J.A.C.* 4A:6-1.2(g), vacation leave not taken in a given year can only be carried over to the following year. *See also In the Matter of Donald H. Nelsen, Jr.*, Docket No. A-2878-03T3 (App. Div. February 4, 2005); *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). Since the accumulation of vacation leave is statutory, the Commission is unable to award the petitioner any unused vacation leave he possessed as of September 11, 2015, or any vacation leave that he would have earned in 2016 or 2017. The Commission finds that the petitioner is entitled to receive vacation leave for the full 2018 calendar year, subject to the adjustments set forth below. Specifically, although the appointing authority states that the petitioner's leave entitlement should be based upon the March 18, 2013 effective date of his reemployment, the Commission notes that, in accordance with *N.J.A.C.* 4A:6-1.2(c), the appointing authority must also credit the petitioner's continuous service prior to his November 30, 2010 layoff. Therefore, the appointing authority must review whether, based upon this additional continuous service credit, he should have received more than 12 vacation leave days for 2018 and 2019. In this regard, a review of agency records indicates that the petitioner reached 10 years of

continuous service during the pendency of the instant matter and the Commission notes that full-time local employees are entitled to at least 15 working days of vacation leave per year after 10 years of continuous service. *See N.J.S.A. 11A:6-3 and N.J.A.C. 4A:6-1.2.* After determining, based upon this additional service credit, what the petitioner's full vacation leave entitlement should have been for the 2018 and 2019 calendar years, the appointing authority may then, in accordance with its departmental policies, prorate his vacation leave entitlement for 2018 to account for his 30 working day suspension, effective September 3, 2018.

With regard to the amount of sick leave due to the petitioner, the petitioner should receive any unused sick days up to his removal, as well as his yearly allotments from his date of removal to his reinstatement, since sick leave can accumulate from year to year without limit. *See N.J.S.A. 11A:6-5 and N.J.A.C. 4A:6-1.3(f); See also, In the Matter of John Raube, Senior Correction Officer, Department of Corrections, Docket No. A-2208-02T1 (App. Div. March 30, 2004).* However, pursuant to *N.J.A.C. 4A:6-1.3(c)*, the appointing authority must prorate his sick leave entitlement for 2018 to account for his 30 working day suspension, effective September 3, 2018.

As to any other benefit days, the Commission has no authorization to review benefits provided by the local jurisdiction and not specifically awarded by Title 11A of the New Jersey Statutes Annotated. *See In the Matter of James Nance (MSB, decided October 1, 2003).*

### ORDER

Therefore, it is ordered that the petitioner be granted vacation leave and sick leave as noted above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 10<sup>TH</sup> DAY OF SEPTEMBER, 2019




---

Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Evan Scott  
Samuel Wenocur, Esq.  
Aondrette Williams  
Joyce Clayborne, Assistant Corporation Counsel  
Kelly Glenn  
Records Center