

Minutes for a Ticonderoga Special Town Board Meeting for an Employee Hearing (Wright) held on August 13, 2020 commencing at 4:30 p.m.

Present: Joseph Giordano, Supervisor
Mark Russell, Councilman
Tom Cunningham, Councilman
Joyce Cooper, Councilwoman
Dave Woods, Councilman
Matthew Fuller, Town Attorney
Tonya M. Thompson, Town Clerk

Others: Laura and Mark Wright, Jim Cawley, Sal Barnao, Ashley Brand

Councilwoman Cooper (Deputy Supervisor) opened the Hearing and stated the date of commencement being August 13, 2020 and all board members were present. This hearing is in regard to letter dated June 30, 2020 and the question is the right if any to approve the payment of vacation time accrued.

The floor was opened up for Laura Wright as she quoted from her letter dated June 30, 2020. She appreciates the opportunity to speak before you today to address payment of her unused vacation hours as it pertains to the Ticonderoga Handbook (also referred to as the Handbook) section 311 and 702. Upon her resignation she was under the direction of the Town of Ticonderoga Employee Handbook adopted on April 29, 2014 which was revised and updated January 1, 2020. The handbook section 311 and 702 have not been altered since the original adoption on April 29, 2014. Upon her resignation effective June 9, 2020, she had 94.25 hours of unused vacation days. According the handbook section 702 under the section Termination of Employment it states "an employee who resigns, retires or is laid off will receive payment for unused earned vacation leave to which the employee is properly entitled at the employees then current rate of pay, in case of the death of the employee, the town will pay the employees estate for any unused earned vacation leave" see full June 30, 2020 letter below.

Pursuant to §1100 of the Town of Ticonderoga Employee Handbook ("Handbook" hereinafter), and as further detailed below, this letter serves as Ms. Wright's written grievance related to the Town of Ticonderoga's denial of payment for her accruals upon separation.

Nature of the Dispute:

In a letter dated June 19, 2020, Mr. Giordano, citing §311 of the Handbook, informed Ms. Wright that "the Town cannot pay [her] the accruals [she] requested" because she failed to provide two-weeks' notice of her resignation.

In accordance with §1101 of the Handbook, this grievance is being submitted on June 30, 2020, within seven (7) working days of the date that Ms. Wright first had knowledge of the Town's intention to deny her payment for her accruals.

Also in accordance with §1101, this grievance is being submitted directly to the Town Board, through the Town Clerk, because Ms. Wright reasonably believes that she cannot present this dispute to Mr. Giordano, who serves as both Ms. Wright's Department Head and as Town Supervisor.

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It is the unilateral decision made by Mr. Giordano that is being challenged herein. As such, please accept this written grievance as Ms. Wright's Step One, Step Two, and Step Three grievance pursuant to §1101. **A hearing before the Board is hereby requested pursuant to Step Three of that provision (§1101).**

Statement of Facts:

Ms. Wright's husband is immunocompromised due to several medical issues. During the month of March 2020, the COVID-19 pandemic began to reach its peak in New York State. By March 16, 2020, by order of the Governor, the Town Offices were closed to the public and began operating at 50% staffing. Due to fear for her husband's health, safety and wellbeing, on or about that date Ms. Wright requested permission to begin working from home. Mr. Giordano initially granted Ms. Wright's request. However, the next day, without providing any basis, Mr. Giordano informed Ms. Wright that he had changed his mind and he insisted that Ms. Wright continue to work from the office.

The stress and anxiety caused by Mr. Giordano's refusal to grant Ms. Wright's reasonable request to work from home during these unprecedented times caused her to become sick, thereby requiring her to use sick leave on Friday, March 20, 2020. Despite taking a sick day, Ms. Wright still performed her payroll duties from home. She submitted her work to Mr. Giordano, who accepted the submission without objection. Ms. Wright was hopeful that by demonstrating that she could adequately perform her essential job functions from home, that Mr. Giordano would reconsider her request to work from home. During the period of March 20, 2020, through March 30, 2020, Ms. Wright sent multiple written requests to Mr. Giordano, requesting his response with respect to either (a) allowing her to work from home, or (b) in the alternative, granting her a two-week vacation. Despite responding to other work-related emails, Mr. Giordano intentionally refused to respond to any of Ms. Wright's requests to work from home. Notably, during this same period, other town employees were granted similar work-from-home requests. This suggests that Mr. Giordano's refusal to even respond to Ms. Wright's requests was both discriminatory and retaliatory in nature.

Adding insult to injury, on or about March 30, 2020, during the peak of the pandemic, Mr. Giordano held a meeting and issued Ms. Wright a counseling memo. As the rebuttal and supporting evidence submitted by Ms. Wright establishes, Mr. Giordano's counseling memo was full of lies, falsities, and misinformation. Ms. Wright firmly believes that Mr. Giordano's sole intention in (a) denying and/or refusing to respond to her reasonable requests to work from home, and (b) serving her with a counseling memo, were intended to harass, intimidate, and/or otherwise create a hostile work environment against Ms. Wright, in violation of §307 of the Handbook ("Prohibited Conduct"). As such, on or about April 7, 2020, Ms. Wright filed a complaint with the New York State Division of Human Rights ("DHR") and the Equal Employment Opportunity Commission ("EEOC"). See EEOC Charge No. 16GC002649.

During the months of April and May, and the first week of June, the Town Offices were closed to both the public and employees. Ms. Wright continued to perform her duties faithfully and competently from home during that time. On or about June 8, 2020, the offices were re-opened to staff, including Ms. Wright. On or about that date, Ms. Wright was notified by a

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colleague that Mr. Giordano had accused her of unlawfully accessing confidential personnel files for her own personal benefit – an allegation that has no merit. Ms. Wright firmly believes that Mr. Giordano's baseless investigation and accusations involving her allegedly accessing personnel files was further retaliation against her for filing a complaint with DHR/ EEOC.

To prevent against further harassment, intimidation, and retaliation, on June 9, 2020, Ms. Wright submitted a notice of resignation. In her letter, she clearly states that she is resigning due to the "toxic, hostile work environment" created by Mr. Giordano, and to prevent any further attempts by him to "unjustly discredit [her] and impugn [her] character." In other words, Ms. Wright's resignation was not "voluntary" in nature, but rather it was akin to a forced resignation created and caused by Mr. Giordano's conduct. In her notice, she requested to be paid for the 94.25 hours of earned, but unused, vacation days, pursuant to §702 of the Handbook ("Termination of Employment").

Argument and Analysis:

§702 of the Handbook states, in pertinent part, that "[a]n employee who resigns... will receive payment for unused earned vacation leave to which the employee is properly entitled at the employee's then current rate of pay." Notably, §702 places no conditions whatsoever upon payment of earned, unused vacation time, thereby entitling Ms. Wright to payment for the 94.25 hours of vacation she has earned.

Mr. Giordano improperly relies upon §311 of the Handbook in denying Ms. Wright her payment. Although §311 does state that employees must submit two-weeks' notice of resignation, §311 does not condition payment of earned vacation days upon providing such notice. The only condition placed upon payment of earned vacation days is that vacation days may not be used during the two-week notice period. Notably, in compliance with this provision, Ms. Wright did not use vacation time during the two-week notice period, thereby qualifying for payment of her 94.25 hours of earned vacation time. Moreover, Mr. Giordano's denial letter fails to acknowledge the nature of Ms. Wright's resignation, which was forced to avoid further retaliatory conduct.

Ms. Wright is aware of several occasions upon which town employees resigned without providing two-weeks' notice, but were still paid for earned vacation time. The differential treatment towards Ms. Wright in denying her payment for earned vacation time while granting it for others demonstrates that this denial, which was made unilaterally by Mr. Giordano, is both discriminatory and retaliatory. §800 of the Handbook ("Compliance Policies") prohibits retaliation against an employee who files a complaint. Ms. Wright firmly believes that Mr. Giordano's refusal to pay her for her earned vacation time, as well as his false accusations related to Ms. Wright allegedly accessing personnel files, is retaliation for the DHR/ EEOC complaint she filed in April 2020.

Notably, §311 of the Handbook also mandates that exit interviews be conducted to discuss, among other things, employee benefits and COBRA eligibility. Ms. Wright has not been afforded an exit interview, and was therefore not given an opportunity to discuss employee benefits or her eligibility for COBRA insurance.

Requested Relief:

Ms. Wright, through this grievance, demands the immediate payment for 94.25 hours of earned, unused vacation time, as well as reimbursement of reasonable attorney's fees associated with the cost of filing the instant grievance. Failure to grant the relief requested herein could subject the Town of Ticonderoga to further litigation.

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Ms. Wright stated that Mr. Giordano's interpretation of handbook section 311 and 702 in 2016 and as recent as January 2020 approved unused vacation pay for two employees who also left without giving two week notice. In closing, the Town of Ticonderoga employee handbook, section 311 and 702 are very clear in stating that she is entitled to payment for the 94.25 of unused vacation pay without conditions.

Councilman Cunningham wanted to know who the other Town Employees were....

Ms. Wright stated Amy Quesnel in 2016 and Suzanne Middlebrook in 2020 and she was instructed not to pay her unless she came in and asked for it.

Councilwoman Cooper noted that you are saying that these two employees were paid--- in audible

Councilman Cunningham wanted to discuss a section in the letter that Ms. Wright noted about an investigation of someone looking into personnel files....

Ms. Wright asked what this has to do with today.... if she couldn't bring it up then why would a Town Board member be allowed to speak to that....she is not allowed to elaborate on this otherwise she would have had another 10 minutes speech on that subject....

Councilwoman Cooper stated that this was mentioned in that letter....

Ms. Wright agreed that there was a lot mentioned in that letter and the letter that she received from Mr. Fuller was very clear to her that she was not to discuss any part of that letter today except the handbook. What is fair to her is fair to you all.

Councilwoman Cooper stated that there will be no action taken today by the Town.

Ms. Wright stated that in the letter she received from Mr. Fuller, a decision will be made tonight. The letter stated that the appeal will be limited to that interpretation of the Town to that interpretation referencing the handbook and the town board will thereafter issue a decision in accordance with the Handbook. Maybe she is misreading that and she is not going to get an answer tonight, she felt that this was saying that she was getting an answer.

Councilman Russell explained that thereafter meant that we would be scheduling another meeting to discuss this next Thursday....

Ms. Wright stated that this has been two months, she can't... she came here thinking that it would be over tonight, one way or another. She does not know what else there is to interpret here.

Councilwoman Cooper stated that we needed to hear you and then have our discussion.

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Ms. Wright respects that and she just wants to point out that all she did tonight was re-read what was already submitted to you all on June 30, in writing. So she doesn't understand why the interpretation of that has not been taking place this entire time so you were in preparation for tonight to bring this to a finale. She also hopes that the board is using the HR consultant that the Town employs to help you understand the Handbook since he helped write it.

Councilman Russell stated that he has been consulted, there are some questions on how this is interpreted and he wants to do this right, since he is relatively new on the board. So he has some questions that he wants to follow up on and then they will re-group on this.

Ms. Wright again noted that there are precedents that have happened with this under the same supervision of Mr. Giordano where he interpreted this in 2016 and gave the person their vacation pay and in January did the same thing, she doesn't understand why this interpretation has suddenly changed....

Councilman Cunningham again asked who these two were??

Ms. Wright again stated Amy Quesnel and Suzanne Middlebrook. She doesn't understand why the interpretation has changed. She would also like to respectfully ask if this delay is because she has a hearing tomorrow on her harassment case.

Councilman Russell stated that this is a stand alone hearing, this is not personal but the board has a responsibility fiscally and from a policy stand point....

Ms. Wright respects that, she does and there is no disrespect coming from her chair, but what she is trying to say is that it has been 45 days. These conversations couldn't have been happening.... this has been a very long journey for her. This is not just about the money, there is mental fatigue sitting in front of you right now....45 days since this has been given to you. Two months since she left, this needs to end and to keep putting off interpretation and having to talk to someone else, again she respects that but she doesn't understand why that hasn't been happening. You have had this in writing. If there were additional questions to ask me you should have called her 30 days ago, when you had it for two weeks. She could have stood up and read this again 30 days ago and by now maybe that money would be sitting in her bank account where she needs it. The delay and delay and delay is exhausting her mentally. She is not done, she is going to stick with this until it is finished, but delay after delay is crazy. She appreciates you letting her say that.

Councilman Cunningham understands and he is sorry it has taken this long to get through this, but this is a new issue for himself as well and reading through the handbook and trying to understand it and we want to get this done as soon as we can.

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Ms. Wright would also like to recommend when this decision is made one way or the other that the handbook gets altered and specifically say this situation so that there is never someone else put through this same thing ever.

Councilwoman Cooper stated that this is already being worked on.

Councilman Cunningham wants to look into these other two as he is not familiar with how they left. This will also give us a chance to review and see how they left.

Ms. Wright stated that there is plenty of documentation, Amy Quesnel is documented but Suzanne Middlebrook, she was instructed by Mr. Giordano to pay her only if she came and asked because he was upset that she quit on the third day of the year and had been front loaded. So she does not know what you will find in writing to that effect, but she did not come and ask for it and she did not reach out to her because it was not her place. It is known around the office if you ask other employees, they know that I was told not to pay her unless she asked.

Councilman Russell stated that this is what we need is this additional information and to read through it and know the circumstances...

Ms. Wright stated that the sections are exactly the same now as they were in 2014...

Councilman Russell stated that he needs to read it through...and we will set a meeting at tonight's meeting to announce a determination.

Discussion on meeting schedule.

Adjourn at 4:50 p.m.

Respectfully submitted, Tonya M. Thompson, Town Clerk