COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DENDRA BODREAU *Petitioner*	:	Docket No. CR-21-0283
v.	:	Date: January 12, 2024
WORCESTER RETIREMENT SYSTEM, *Respondent*	:	

Appearance for Petitioner:

Dendra Bodreau, *pro se*

Appearance for Respondent:

Christopher Collins, *Esq.*
Law Offices of Michael Sacco, P.C.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a Head Start teacher for almost two years. Her salary was spread out over 10 months (from September to June). Although she worked some over the summers—for example, by closing down her classroom or preparing for the upcoming school year—she did not receive regular compensation during that time. Accordingly, she did not provide "service" and is not entitled to "creditable service" for those months.

INTRODUCTION

The Petitioner, Dendra Bodreau, timely appeals a decision by the Worcester Retirement System ("System" or "WRS"), calculating the total days of creditable service to which she was entitled. On August 23 and September 13, 2023, I conducted a hearing, virtually, via the WebEx

platform.[1] The Petitioner testified on her own behalf.[2] The Board did not present any witnesses. I admitted Exhibits 1-7 into evidence without objections. The parties submitted closing briefs on October 27, 2023, at which point I closed the administrative record.

FINDINGS OF FACT

1. The Petitioner is presently a member of the Massachusetts Teachers' Retirement System ("MTRS"). She began as a teacher in Webster from 1995-2000, and since then has been teaching in Oxford. (Ex. 1; Testimony.)

2. Before joining the MTRS, from September 9, 1993 through August 26, 1995, she was a teacher in a Head Start program. Through this job, she became a member of the WRS.[3] (Ex. 2; Testimony.)

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[1] On the first day of the hearing, counsel for WRS put forth a new argument—that the Petitioner was now entitled to even less time than the Board originally suggested. Because the Petitioner was surprised by this argument, I suspended the hearing so that the Board could put it in writing and the Petitioner could be better prepared to address it. *See Biundo v. MTRS*, CR-15-416 & 417 (DALA Dec. 14, 2018) ("because this appeal is *de novo* I can affirm a retirement system's denial on a ground other than the one it originally invoked as long as the petitioner had sufficient notice of the new ground.").

The Petitioner did not object to this process. The Board submitted a written statement with its position. We reconvened for a second date, at which point, the Petitioner had notice of the Board's position and was prepared to proceed. The Petitioner testified on this date.

[2] Counsel for WRS suggests that the Petitioner was not a credible witness because she "was evasive and could not answer simple questions." I disagree. The factual issues in this case took place almost 30 years ago. Instead of embellishing or guessing, the Petitioner took pains to accurately answer as best as she could remember. At times, she would pause to think. I find the Petitioner was a credible witness.

[3] All teachers must be members of the Massachusetts Teachers' Retirement System. *See* G.L. c. 32, § 2. Head Start teachers are not typically considered "teachers" and are not usually members of a retirement system. *Fraser v. MTRS*, CR-04-789, 2007 WL 1660994 (DALA May 4, 2007). However, in 1972, the WRS specifically made Head Start teachers part of its system. *See Levitt v. Worcester Ret. Bd.*, CR-93-381 (DALA Jul. 15, 1994).

3. It was her first job. She had no written contract. (Testimony.)

4. There was no discussion about how long her job would last. Her understanding is that she could work as a teacher indefinitely. When school finished in June 1994, she assumed (rightly so) she would continue to teach the next school year. Indeed, she was not told she was rehired sometime in the summer; she just kept working. (Testimony.)

5. As a Head Start teacher, her schedule followed a typical teacher's schedule. The school year ran from September through the end of June. However, like most teachers, she worked more than that. She would prepare for the school year before it started. So, even though the first day of school was in September 1993, she had worked some days that summer getting her classroom ready. After the school year ended, she continued to work into the summer "dismantling" the classroom. Also, during the summer, she participated in professional development courses. The next summer she followed a similar pattern. (Testimony.)

6. At Head Start, she was paid like she is paid now: her salary was spread out over 10 months, with no payments (or deductions) over the summer—even if she was working in the summer preparing her classroom or performing other tasks. (Exs. 5-6; Testimony.)

7. The parties agree that August 25, 1995 was the last day as an employee at Head Start.

8. She left Head Start to teach at an elementary school in Webster. She began there on September 1, 1995. (Ex. 1.)

9. When she became a member of the MTRS, her creditable service from her time at Head Start transferred over. (Ex 2; Testimony.)

10. One day, while looking over her MTRS creditable service grid, she noticed she received 1.9167 years of service credit for her time in the WRS, which is the equivalent of 1 year and 11 months. (Ex. 2; Testimony.)

11. Because the Petitioner worked two school years, she believed she was entitled to two full years of creditable service. Thus, she contacted the WRS seeking an explanation. It responded with a letter informing her its calculations were correct. This is the letter she appealed. (Ex. 3.)

12. However, at the beginning of the hearing, WRS's counsel explained that WRS now believed it had miscalculated the Petitioner's service and suggested it should be less. WRS's position is that the Petitioner is entitled to credit only for the days in which she received compensation (essentially, the school year from September to June). Thus, instead of receiving credit for 1 year and 11 months (or 23 months), its position is she should have received credit only for 20 months.

DISCUSSION

This case was originally about whether the Petitioner was entitled to two full years of creditable service. It is now also about whether, if not, WRS miscalculated her creditable service and gave her too much.

1. The Petitioner is not entitled to two full years of creditable service.

The Petitioner's position does not take into account the fact that she did not exactly work for two school years. Rather, she stopped working at Head Start on a specific date. That is why the WRS originally credited the Petitioner for working from September 9, 1993 until August 26, 1995, indicating that was the span she contributed to the system. The various exhibits reflect those same dates of employment—recall her last paycheck was August 26, 1995. The Petitioner even agreed in her testimony those dates were accurate. Her new job began September 1, 1995. Giving her the full two years of creditable service would mean crediting her with service after she left Head Start and while she was working in Quincy.

Her argument stems from her experience with how teachers normally receive creditable service, which is how she is credited with service now. As codified in MTRS regulations, "[a]ll persons defined as teachers who earn their salary during the school year from September to June, shall, irrespective of the manner in which their salary is paid, be allowed a year's credit for each full school year of service and one-tenth of a year for each full month of service rendered during a school year." 807 Code Mass. Regs. § 3.02. However, that method of calculation is inapplicable here because 1) it only applies to MTRS members and 2) no equivalent regulation existed within WRS when the Petitioner taught at Head Start.

Absent a regulation, she is entitled to "all service rendered by [her]." G.L. c. 32, § 4(1)(a). That means the WRS cannot prorate her service unless a regulation authorizes it. *Murphy v. Falmouth Ret. Bd.*, CR-20-0453, 2023 WL 5528749 (DALA Aug 18., 2023); *Holt v. Cambridge Ret. Bd.*, CR-10-593, *12 (DALA Mar. 27, 2015), *quoting Gallagher v. CRAB*, 4 Mass. App. Ct. 1, 11 (1976). But it also means she is not entitled to more service credit than she earned.

2. <u>The Petitioner is only entitled to credit for service in which she received regular compensation.</u>

Having rejected the Petitioner's argument, I turn to WRS's argument that it erred and gave the Petitioner too much credit. In the circumstances of this case, the Board properly advanced this new position at the hearing. "Once it recognized its error, the Board was obligated to correct its error." *Gallagher v. BCRS*, CR-20-0135 (DALA Jul. 11, 2022); G.L. c. 32, § 20(5)(c)(2).

The issue seems straightforward, yet there are few (if any) prior decisions clearly explaining how to calculate creditable service in this scenario. WRS agrees the Petitioner is entitled to "full credit for all service rendered." G.L. c. 32, § 4(1)(a); WRS Supplemental

Regulation, April 17, 2018 (available at https://www.mass.gov/info-details/worcester-retirement-board-supplemental-regulations). But while service may seem easy to define, even the WRS interpreted it differently just within this case: it originally concluded that service for the Petitioner meant the entire date range she was employed at Head Start but now suggests that was wrong because she did not actively work during the summer. Specifically, it argues she did not receive regular compensation for those months and therefore did not provide service.

WRS acknowledges that the Petitioner did have responsibilities during the summer, but because she was not being compensated, it maintains this work should be considered "voluntary and incidental." I disagree with the characterization that her summer work was voluntary and incidental. Full-time teachers teach about ten months a year, but they work more than that. Although their paychecks are spread out over the school year, they are expected to work some over the summer. Perhaps not every day, but, at the very least, they are expected to prepare and close their classrooms and take professional development courses. It would be absurd to say teachers work off a series of 10-month contracts to be renewed at some undetermined time in some undetermined manner before the start of the following school year. The Petitioner was not unemployed in July and August, volunteering her time, and hoping to be rehired.

That said, the WRS makes a valid point. While I would not call what the Petitioner did "voluntary or incidental," I would characterize it as unpaid service, a period during which she did not receive regular compensation. Unfortunately for the Petitioner, that also means she is not entitled to creditable service for that time.

"Creditable service" is defined as "all membership service, prior service and other service for which credit is allowable to any member." G.L. c. 32, § 1. "Service" in turn, is defined as "service as an employee in any governmental unit for which regular compensation is paid." *Id.*

"Regular compensation" includes "the salary, wages or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority[.]" *Id.* The Petitioner did not receive regular compensation during the summer months; she therefore did not provide service; and if she did not provide service, she is not entitled to creditable service. The Petitioner was employed at Head Start the entire time. But simply being employed is not the same as providing service.

I have found one case that, while not identical, is analogous to the Petitioner's situation. In *Turco v. State Bd. of Ret.*, CR-16-101 (DALA Dec. 23, 2016), a state correctional officer was seeking to retire under G.L. c. 32, § 28M; that required 20 years of "performed services in the department of correction." *Turco* explained that "service" is limited "to periods in which an individual was actually working as a paid government employee." *Id*. at *4. Ms. Turco was off payroll twice while on maternity leave. Some of that time was unpaid under the Federal Family and Medical Leave Act. However, she did receive creditable service for some of her unpaid leave pursuant to G.L. c. 32, § 4(c).[4] Ms. Turco was denied creditable service for "periods during which she was not working as a correction officer and was off payroll." *Id.* "Ms. Turco was a state correction officer for more than twenty years, but that does not necessarily mean that she performed at least 20 years of service as a correction officer." *Id*; *see Vanhoenacker v. MTRS*, CR-99-602, *5 (DALA Jul. 21, 2000), *citing Roussos v. SBR*, CR-92-835 (CRAB Jun. 25, 1993)

[4] G.L. c. 32, § 4(c) provides, in part:

> Creditable service in the case of any member may be allowed by the board for any period of his continuous absence without regular compensation which is not in excess of one month. Any portion of any leave or period of continuous absence of any member without regular compensation which is in excess of one month shall not be counted as creditable service except as specifically otherwise provided for in this section, but no duly authorized leave or period of absence shall be deemed to be a termination of membership or service.

("uncompensated service is not service as an employee under section 4(1)(a)"). Likewise, here, the Petitioner was a Head Start teacher for almost two years, but that does not mean she performed two years of service as a Head Start teacher.

The WRS makes one other persuasive argument worth noting. A "board, subject to rules and regulations promulgated by the commission, shall fix and determine how much service in any calendar year is equivalent to a year of service." G.L. c. 32, § 4(2)(b). Pursuant to this statute, boards like the MTRS passed regulations crediting teachers who work a typical 10-month school year with a full year of creditable service. WRS recently passed a similar regulation for non-teacher school employees who follow the same schedule, e.g., custodians or administrative secretaries.[5] WRS argues that if school employees were entitled to a full year of creditable service for working within that 10-month window, this regulation would be unnecessary. The fact that it exists shows the Petitioner is not entitled to credit for the summer months, absent some statutory or regulatory authority.

CONCLUSION AND ORDER

The WRS decision crediting the Petitioner with 1 year and 11 months of credit is **vacated**. Instead, the Petitioner is entitled to 20 months of creditable service.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate

[5] This regulation does not apply to the Petitioner's service because it was not in place when she worked for WRS.