

COMMONWEALTH OF MASSACHUSETTS  
Division of Administrative Law Appeals

**Vincent Cullen,**  
Petitioner

Docket No. CR-25-0263

v.

**Boston Retirement System,**  
Respondent

**Appearances:**

For Petitioner: John M. Becker, Esq.  
For Respondent: Timothy Smyth, Esq.

**Administrative Magistrate:**

Timothy Pomarole, Esq.

**SUMMARY OF DECISION**

The respondent determined that a 2019 payment the petitioner received for unused vacation leave did not constitute regular compensation for purposes of calculating his retirement benefits. The decision is affirmed. Payments for unused vacation leave made after May 1, 2018 will not be considered regular compensation unless, among other things, the member had “consistently” elected to receive payments for unused vacation leave. G.L. c. 32, § 106. The petitioner, however, did not receive such payments “consistently,” as that term is construed by the applicable regulation. Accordingly, the respondent was correct to exclude the 2019 payment from the petitioner’s regular compensation.

**DECISION**

The petitioner, Vincent Cullen, appeals a determination by the Boston Retirement System (“BRS”) that a payment he received in August 2019 for unused vacation time could not be considered regular compensation for purposes of determining his retirement benefits. I held a hearing on April 15, 2026. I admitted Exhibits 1-8 into evidence. The parties stipulated

to certain facts, which will be cited by paragraph number as “(Stipulation \_\_).” Mr. Cullen was the only witness. The parties made oral closing statements, whereupon the record was closed.

**FINDINGS OF FACT**

I make the following findings of fact:

1. Mr. Cullen was a police officer for the Boston Police Department from January 1, 2007 through November 1, 2019. (Stipulation 1).
2. At all relevant times, Mr. Cullen was a member of the Boston Retirement System and a member of the Boston Police Patrolmen’s Association (“BPPA”). (Stipulation 2-3).
3. The BPPA and the City of Boston are parties to a collective bargaining agreement that allows BPPA members to receive payment for some or all of their unused vacation leave on an annual basis. (Stipulation 4-5).
4. In 2014, Mr. Cullen was injured while on duty and was on leave for some period of time. He returned to light duty in 2016. (Testimony).
5. When Mr. Cullen returned to duty, he sought to receive payment for vacation time from 2015. He was told that he could not receive payment for that time. The reasons for that denial are unclear. (Testimony).
6. Mr. Cullen received payment for unused vacation leave in August 2016, August 2017, August 2018, and August 2019. (Stipulation 6).
7. In November 2019, Mr. Cullen retired from the Boston Police Department for accidental disability under G.L. c. 32, § 7. (Stipulation 8-9).
8. The BRS calculated Mr. Cullen’s retirement benefits using the regular compensation he received during the twelve months preceding his retirement, which was November 2, 2018

through November 1, 2019. (Stipulation 11; Exhibit 7).

9. At the time of Mr. Cullen's retirement, BRS had a policy of including unused vacation payments as regular compensation only if the member, prior to retiring, had elected to receive unused vacation payments for five consecutive years. (Stipulation 12).
10. Because Mr. Cullen had elected to receive unused vacation payments for only four consecutive years, the BRS did not include the unused vacation payments he received in 2019 when calculating his regular compensation. (Stipulation 13).
11. The BRS informed Mr. Cullen of this determination shortly after he retired in November 2019. (Testimony).<sup>1</sup>
12. On November 17, 2023, the BRS submitted for the Public Employee Retirement Administration Commission's ("PERAC") consideration a proposed regulation concerning payment for unused vacation leave. PERAC approved the regulation. (Stipulation 22; Exhibit 4).
13. On April 24, 2024, Patrick Charles of PERAC e-mailed Mr. Cullen and told him he thought that section 1(a)(iii) of the BRS regulation, discussed in the following section of this decision, applied to his situation. (Stipulation 24-25).
14. On April 1, 2025, BRS sent Mr. Cullen a formal decision letter stating that Mr. Cullen's 2019 unused vacation payments were not entitled to be included in his retirement benefits calculation as regular compensation. (Stipulation 27).
15. Mr. Cullen timely appealed to this Division. (Stipulation 28).

---

<sup>1</sup> The record does not indicate whether the BRS informed Mr. Cullen of its determination, evidently made in late 2018, by way of an appealable decision.

**CONCLUSION AND ORDER**

“Regular compensation” is defined in G.L. c. 32, § 1, as “compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.” The “straightforward and unambiguous language of § 1 indicates that regular compensation is ordinary, recurrent, or repeated payments not inflated by any extraordinary ad hoc amounts such as bonuses or overtime pay.” *Public Employee Ret. Admin. Comm’n v. Contributory Ret. App. Bd.*, 478 Mass. 832, 835 (2018) (citation and internal quotation marks omitted).

As the Supreme Judicial Court recognized in *O’Leary*, payments for unused vacation time “are not by their nature ‘recurrent’ or ‘repeated,’ but rather repeat only upon specific election by the employee during the election period,” even if the employee consistently elects to receive those payments. *O’Leary v. Contributory Ret. Appeal Bd.*, 490 Mass. 480, 483–84 (2022) (citation omitted). Accordingly, they do not satisfy the requirements for regular compensation recited above. *Id.*

Section 106 of Chapter 32 carves out certain exceptions to the rule set forth in *O’Leary*. The first exception is for payments for unpaid vacation leave made on or before May 1, 2018. Such payments are includable as regular compensation if: (1) the payments were made to an individual who was a member in service as of May 1, 2018; and (2) they were made “pursuant to any applicable collective bargaining agreement, individual contract for employment, written benefits or personnel policy or municipal plan or ordinance in effect on May 1, 2018 and for which the applicable retirement system was accepting regular contributions or deductions as of May 1, 2018.” § 106(b).

The second exception applies to payments for unused vacation leave made after May 1, 2018. To qualify as regular compensation, these payments must meet the requirements listed above, as well as the requirement that such payments may be made only to:

a member who consistently participates in a program that is available to all similarly situated employees and shall not have been made: (i) only in the final 3 years of employment for a member who joined the retirement system prior to April 2, 2012; (ii) only in the final 5 years of employment for a member who joined the retirement system on or after April 2, 2012; or (iii) as a result of providing retirement notice.

*Id.* The statute does not define the term “consistently.”

The BRS regulation interpreting and implementing § 106(b) provides that payments for unused vacation made after May 1, 2018 will be included as “regular compensation” only if (1) the member was in service as of May 1, 2018; (2) the payment was made under an applicable collective bargaining agreement (or under other documents not applicable here); and (3) the payment was made to a member who “consistently” participated in a program available to all similarly situated employees. (Stipulation 22; Exhibit 4).<sup>2</sup>

There does not appear to be any dispute that Mr. Cullen’s 2019 payment meets the first two requirements of the BRS regulation. Unfortunately, Mr. Cullen’s 2019 payment does not meet the third requirement. Under the regulation, to meet the “consistently” requirement, the member must either have “been paid for annual unused vacation leave at least the last five years of creditable service” or “been paid for annual unused vacation leave no less than eight of the member’s last ten years of creditable service.” (Exhibit 4). Mr. Cullen, who received

---

<sup>2</sup> The BRS regulation is presumed valid and has the force of law. *Klug v. State Bd. of Ret.*, CR-25-0392, 2026 WL 1198177, at \*3 (Div. Admin. Law App. April 24, 2026).

payment for unused vacation leave for only four years (2016, 2017, 2018, and 2019), does not meet either of these criteria.

Mr. Cullen argues that because he started receiving payments for unused vacation leave prior to May 1, 2018, the consistency requirement does not apply to his August 2019 payment. This argument is based on his supposition that “the regulation is intended to treat employees who began to receive annual vacation buyback payments before May 1, 2018 differently than those who began receiving them after that date.” (Prehearing Memorandum, at p. 9). The implication is that Mr. Cullen should be grouped with the former cohort, not the latter. The argument is unsound. The pre-May 1, 2018/post-May 1, 2018 division does not differentiate between two categories of employees, but between two categories of payment. Under both § 106 and the BRS regulation, payments that are made after May 1, 2018 must meet certain requirements that are not applicable to payments made before that date.<sup>3</sup>

Also unavailing is Mr. Cullen’s suggestion that because he tried to receive payments for vacation time in 2015, but was told he couldn’t, he should essentially be credited with the attempt for purposes of meeting the consistency requirement. There are at least three difficulties with this argument. First, the regulation requires a certain number of payments within a specified time span; it does not contemplate an inquiry into why certain payments had not been made. Second, assuming Mr. Cullen is making an equitable argument of some kind – an argument sounding in estoppel, perhaps – that would require him to show that there was

---

<sup>3</sup> I acknowledge the e-mail from PERAC’s Patrick Charles to Mr. Cullen in which he states, “I believe that 1(a)(iii) [of the BRS regulation] applies to your situation.” (Exhibit 5). Section 1(a)(iii) of the regulation provides that payments for unused vacation leave as of May 1, 2018 do not need to meet the consistency requirement. That provision is inapplicable to Mr. Cullen’s August 2019 payment.

something unfair in the refusal to allow him to receive payment in 2015 for vacation time. The record does not allow me to conclude that there was anything improper, unfair, or mistaken in the determination that he could not receive payment for his 2015 vacation time. Third, this Division lacks the authority to provide equitable relief. *Bristol County Ret. Bd. v. Contributory Ret. App. Bd.*, 65 Mass. App. Ct. 443, 450-51 (2006).

Nor do I agree with Mr. Cullen's suggestion that subsection (c) of the statute requires that his 2019 payment be considered regular compensation. That subsection provides:

Notwithstanding any general or special law to the contrary, a retirement system subject to the requirements of subsections (a) and (b) shall regard as regular compensation any payment in lieu of vacation leave made subsequent to May 1, 2018 to a member who was in service as of May 1, 2018 and the systems shall take appropriate measures to effectuate this section.

§ 106(c). The critical language for present purposes is "subject to the requirements of subsections (a) and (b)" of § 106. Subsection (c) does not supplant the requirements of subsection (b); it reinforces them.

For the foregoing reasons, the decision of the Boston Retirement System is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

***/s/ Timothy M. Pomarole***

---

Timothy M. Pomarole, Esq.  
Administrative Magistrate

Dated: October 9, 2026

