

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Karen MacAleese,**  
Petitioner

v.

Docket No.: CR-21-0134  
Date Issued: March 15, 2024

**Braintree Retirement System,**  
Respondent

**Appearance for Petitioner:**

Casey E. Berkowitz, Esq.  
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**Appearance for Respondent:**

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**Administrative Magistrate:**

Kenneth J. Forton

**SUMMARY OF DECISION**

A \$63,163.36 payment for back wages negotiated under a settlement agreement is not regular compensation because it was not paid for the performance of any duties, it was ad hoc, and it was not available to other employees generally. The payment was also made in exchange for Petitioner's promise to retire, which means that the payment was made as the result of the employer's knowledge of Petitioner's retirement.

**DECISION**

Petitioner Karen MacAleese appeals, under G.L. c. 32, § 16(4), the decision of Respondent Braintree Contributory Retirement System to exclude from regular

compensation a \$63,163.36 payment made under a settlement agreement between Ms. MacAleese and the Town of Braintree to resolve a grievance regarding discriminatory hiring practices in the Braintree Police Department.

On March 4, 2022, DALA ordered the parties to submit a joint pre-hearing memorandum. The parties did so on June 22, 2022, along with 19 proposed exhibits. A hearing was conducted by Webex on January 17, 2024. I entered the 19 exhibits into evidence as marked. (Exs. 1–19.)

### **FINDINGS OF FACT**

Based on the exhibits and testimony, I make the following findings of fact:

1. Karen MacAleese worked for the Braintree Police Department from 1987 until her retirement in February 2021. (Stipulation; Ex. 10.)
2. Ms. MacAleese served as a Lieutenant in the Braintree Police Department beginning in 2000. She served as Interim Deputy Chief from September 26, 2017 to February 29, 2020. (Stipulation; Testimony.)
3. While serving as Interim Deputy Chief, Ms. MacAleese applied for appointment to a permanent position as Deputy Chief of Police. (Testimony; Exs. 14, 19.)
4. On February 8, 2020, Ms. MacAleese participated in the assessment center required as part of the application process for the Deputy Chief position. On February 12, 2020, Braintree Police Chief Mark Dubois notified candidates of their assessment center scores and informed Ms. MacAleese that she would not be appointed Deputy Chief. (Stipulation; Ex. 19.)

5. On or about February 26, 2020, the Braintree Police Superior Officers Association filed a grievance on behalf of Ms. MacAleese alleging that the decision not to appoint Ms. MacAleese as Deputy Chief violated the non-discrimination clause of the CBA between the Town of Braintree and the Braintree Police Superior Officers Association because the denial was on account of Ms. MacAleese's race, color, religion, national origin, age, sex or combination thereof. (Ex. 19.)

6. In March 2020, Ms. MacAleese returned to her old Lieutenant position in the Braintree Police Department. From the time she returned to the Lieutenant position through her retirement, Ms. MacAleese did not perform the duties of Deputy Chief. (Testimony; Stipulation.)

7. In a letter dated March 13, 2020, Chief Dubois denied Ms. MacAleese's February 26, 2020 grievance. (Ex. 8.)

8. On January 11, 2021, Ms. MacAleese, the Braintree Police Superior Officers Association, and the Town of Braintree entered into a General Release and Settlement Agreement regarding the grievance. The Braintree Retirement System was not a party to this settlement agreement. (Ex. 9.)

9. Under the Settlement Agreement, Ms. MacAleese agreed to dismiss her grievance and retire from employment with the police department no later than February 25, 2021. She would also be sworn in as Deputy Chief on her last day of employment. In exchange, the town agreed to pay Ms. MacAleese \$63,163.36. Ms. MacAleese and the Town reached this figure through a calculation including her payment from her last three years of employment, the difference between the Lieutenant and Deputy Chief salary rates, plus a longevity percentage. (Testimony; Exs. 9, 15–18).

10. The Settlement Agreement stipulated that the \$63,163.36 payment would “be deemed retroactive wages” and would “be made through the Town’s payroll system with all required deductions, including pension contributions and taxes.” (Ex. 9.)

11. In a letter dated January 15, 2021, Ms. MacAleese notified Chief Dubois that, in accordance with the settlement agreement, she intended to retire effective February 25, 2021. Ms. MacAleese stated that she retired freely and not under duress. (Ex. 10.)

12. In a letter dated March 26, 2021, the Braintree Retirement System notified Ms. MacAleese “that the settlement amount of \$63,163.36 is **not** subject to pension contributions and cannot be considered as part of [her] retirement allowance.” The letter provided appeal rights. Ms. MacAleese timely appealed. (Exs. 11, 12.) (Emphasis in original.)

### **CONCLUSION AND ORDER**

Generally, the contributory retirement law awards creditable service for service in any governmental unit rendered by an employee, for which regular compensation was paid. G.L. c. 32, § 1. *Tarlow v. Teachers’ Retirement Sys.*, CR-10-793, at \*3 (CRAB Nov. 26, 2013), *aff’d* Memorandum of Decision and Order on Plaintiff’s Motion for Judgment on the Pleadings, Civil Action No. 13-CV-4512-B (Mass. Super. Ct., Jan. 26, 2015). “Regular compensation” is defined as “compensation received exclusively as wages by an employee for service performed in the course of employment for his employer.” G.L. c. 32, § 1. “Wages” are an employee’s “base salary or other base compensation paid to the employee by the employer for his employment.” G.L. c. 32, § 1. “Wages” do not include bonuses; overtime; lump sum payments or unused vacation or

sick time; payments for termination, severance, or dismissal; and other additional enumerated forms of payment. G.L. c. 32, § 1.

The settlement agreement stipulated that the \$63,163.36 payment would be deemed retroactive wages and subject to retirement deductions. In certain circumstances, retroactive wages may be considered regular compensation. However, the Contributory Retirement Appeal Board (CRAB) has drawn a line between payments made under a court judgment and payments made under a settlement agreement between an employee and employer. *See Tarlow, supra*, at \*3–5. “There can be no question that a judgment entered by a court in a wrongful termination case may include an appropriate award of back pay, including restoration of rights such as seniority, tenure, or retirement.” *Id.* at \*4 (citation omitted). Under such a judgment, a retirement system may be compelled to credit the member with service. Unlike a court judgment, however, a settlement between an employee and employer does not involve a determination of the parties’ rights. *Id.* at \*5. Rather, parties to a settlement agree to resolve their dispute without a court’s determination of each party’s legal entitlements. *Id.*; *Hurton v. MTRS*, CR-17-655, at \*5 (DALA Oct. 15, 2020). For this reason, CRAB held in *Tarlow* that “where the retirement system is not party to a settlement agreement between an employer and an employee, the agreement cannot bind the retirement system.” *Tarlow, supra*, at \*5. “Moreover, the settlement agreement is unlawful if it goes beyond what the employee would be entitled to under the retirement law.” *Id.* In the instant appeal, therefore, the Braintree Retirement System is not required to treat the settlement agreement payment as regular compensation.

Ms. MacAleese's case is similar to DALA's decision in *Hurton*. There, the petitioner received payments characterized as "back wages" pursuant to a settlement agreement resolving an age discrimination complaint the petitioner filed when his school district passed over his application for a Dean of Students position. *Hurton*, supra, at \*2–3. DALA affirmed the MTRS's decision that these payments could not be used to calculate the petitioner's retirement allowance because they were not paid for the performance of any duties associated with the Dean of Students position, were ad hoc, and were not available to other employees generally. *Id.* at \*3–6. Thus, the payments were not "regular compensation" that could be used in calculating in the petitioner's retirement allowance. *Id.*

Here, as in *Hurton*, the settlement agreement payment does not represent wages "for services performed in the course of employment." G.L. c. 32, § 1. The payment was ad hoc and only available to Ms. MacAleese as part of a settlement agreement to resolve her discrimination grievance. *See Hurton*, CR-17-655, at \*4–6; *see also Burke v. Hampshire Cnty. Retirement Sys.*, CR-10-35, at \*4 (CRAB Aug. 14, 2015). Ms. MacAleese and the town agreed upon the \$63,163.36 figure through a calculation that considered Ms. MacAleese's salary in her last three years of employment, the difference between the deputy chief salary and her lieutenant salary, plus an annual longevity percentage. As Ms. MacAleese herself testified, this payment was not made for the performance of any duties associated with the Deputy Chief position.

Moreover, the town made the payment "as a result of the employer having knowledge of the member's retirement." G.L. c. 32, § 1. The settlement agreement stipulated that Ms. MacAleese would retire from employment with the Braintree Police

Department in return for the payment and the last-day promotion. Chapter 32 explicitly prohibits counting as wages any payment made “as a result of the employer having knowledge of the member’s retirement.” *Id.* For this reason, the \$63,163.36 payment does not represent wages or regular compensation and cannot be counted toward Ms. MacAleese’s retirement allowance. *Id.*; *see* G.L. c. 32, § 4(1)(a).

For the above stated reasons, Ms. MacAleese’s settlement agreement payment must be excluded from the calculation of her retirement allowance. The Board’s decision is therefore affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

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Kenneth J. Forton  
Administrative Magistrate

DATED: March 15, 2024