

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Robin Stuart,
Petitioner

v.

Docket No. CR-19-0555

Massachusetts Teachers' Retirement System,
Respondent

Appearance for Petitioner:

Jesse R. Gibbings, Esq.
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Appearance for Respondent:

Salvatore Coco, Esq.
Massachusetts Teachers' Retirement System
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Charlestown, MA 02129

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Longevity payments to petitioner were contingent on her retirement and thus not regular compensation.

DECISION

The petitioner, Robin Stuart, appeals the Massachusetts Teachers' Retirement System's exclusion from regular compensation of two longevity payments that she received.

The parties agreed to have this appeal decided on submissions and without a hearing.

After I began writing this decision, I realized that I needed more evidence on whether the Walpole Public Schools knew that Ms. Stuart planned to retire. I held a hearing on that issue by Webex on July 30, 2024. I recorded the hearing, which was transcribed. Ms. Stuart was the only witness. I admitted eight exhibits.

Both parties submitted post-hearing briefs in September 2024.

Findings of Fact

1. During her career, Ms. Stuart worked variously for the Walpole Public Schools (more than once), the Newton Public Schools, and the Weston Public Schools. (Stipulation) (This appeal is about her service with the Walpole Public Schools.)

2. Ms. Stuart worked for the Walpole Public Schools (WPS) for the school years 1978-79; the school years 1993-94 through 2001-02; and the school years 2007-08 through 2018-19, until her retirement on June 30, 2019. (Stipulation)

3. Ms. Stuart was covered under a collective bargaining agreement (CBA) between WPS and the Walpole Teachers Association (WTA). (Stipulation)

4. In a simple provision, the CBA provided that teachers would receive longevity payments of various dollar amounts for 15, 20, 25, and 30 years of service. (Ex. 8, p. 16)

5. A dispute arose over WPS's failure to pay longevity payments, the WTA pursued a grievance, and WTA and WPS entered into a settlement agreement on December 11, 2018. (Stipulation; Exs. 3, 6)

6. The settlement agreement named Robin Stuart and seven other WTA members, and, regarding them:

A. required WPS to

count all years of service in the WPS when calculating their longevity payments –

notwithstanding...that they had all separated from employment with the WPS at one point in their careers.

B. provided that they “will begin receiving...longevity payments...effective retroactively to September 1, 2018.”

C. provided that if they retire during the 2018-2019 or 2019-2020 School Years, they shall receive retroactive longevity payments they would be entitled to...so that they are made whole for pension purposes (up to a total of two years retroactive not including the current year).

(Exs. 3, 6)

7. On May 31, 2019, Ms. Stuart wrote to the WPS superintendent to notify him that she planned to retire on June 30, 2019. (Ex. 7)

8. On July 26, 2019 Ms. Stuart applied for superannuation retirement benefits. (Ex. 5)

9. Ms. Stuart’s application showed that she received longevity payments of \$1,850 each for school years 2016-17 and 2017-18. (Ex. 5, part 2, section 5, page 4)

10. On November 8, 2019 MTRS notified Ms. Stuart that the longevity payments for school years 2016-17 and 2017-18 under the settlement agreement were not regular compensation. (Ex. 1)

11. MTRS invoked 807 CMR 6.02(f), which excludes from regular compensation any amounts paid as a result of employer having knowledge of member’s retirement. (Ex. 1)

12. On November 17, 2019 Ms. Stuart timely appealed. (Ex. 2)

Discussion

Regular compensation excludes

amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member's retirement.

G.L. c. 1 (emphasis added). *See* 840 CMR 15.03(3)(f) (wages exclude “amounts paid as early retirement incentives”); *Curtis W. Frye v. Barnstable County Retirement Board*, CR-95-426 (CRAB 1998) (“A payment that is contingent upon retirement... is excluded from regular compensation for purposes of calculating a retirement allowance”). This exclusion applies regardless of whether a public employer knew that a member planned to retire.

The settlement agreement provided that if Ms. Stuart retired during school years 2018-2019 or 2019-2020, she could receive two retroactive longevity payments totaling \$3,700. If she did not retire during those years, she would not receive the \$3,700. Thus, the payments were early retirement incentives that do not count as regular compensation.

Both the following are true: One, MTRS excluded Ms. Stuart’s two longevity payments from regular compensation under 807 CMR 6.02(f), which refers to compensation paid as a result of employer having knowledge of member’s retirement. (Ex. 1) Two, no evidence or even indication exists that WPS knew that Ms. Stuart planned to retire when WPS entered into the settlement agreement in 2018.

MTRS properly excluded Ms. Stuart’s two longevity payments from regular compensation but not under the proper ground. Nonetheless,

because this appeal is *de novo*, *e.g.*, *Namay v. Contributory Retirement Appeal Board*, 19 Mass. App. Ct. 456, 462 (1985), 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. *See Constance E. Strauss v. Teachers’ Retirement System*, CR-07-488 (DALA 2008)(“The decision of the Teachers’ Retirement System is affirmed, but not for the reasons stated in the Board’s denial letter.”).

Michael Biundo v. Massachusetts Teachers' Retirement System, CR-15-416 and 417 (DALA 2018).

Ms. Stuart had sufficient notice that MTRS was pursuing or might pursue the argument

that her longevity payments were early retirement incentives. In the joint prehearing memorandum, MTRS pressed its position that Ms. Stuart's retroactivity payments were a result of WPS's knowledge that she would retire. But MTRS also cited and quoted *Frye* about "a payment that is contingent upon retirement." (Joint Memo at 11) And at the hearing, while Ms. Stuart was still on the witness stand (remotely) and still available to testify (Tr. 35), when I had a colloquy with the lawyers about WPS's knowledge that Ms. Stuart would retire, MTRS's lawyer repeatedly described the longevity payments as "conditional" and "conditioned" and used the word "conditions" and "condition precedent." (Tr. 24, 28, 32) That is, MTRS argued that the longevity payments were contingent on Ms. Stuart's retirement. There is no dispute that the longevity payments were contingent on Ms. Stuart retiring, and thus they ran afoul of the rule stated in *Frye*.

Conclusion and Order

The decision of the Massachusetts Teachers' Retirement System to exclude Ms. Stuart's contingent longevity payments from regular compensation is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: