

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT**

MONICA SLOCUM,

HF No. 4 G, 2015/16

Petitioner,

DECISION

DIANA SUTFIN,

Petitioner,

v.

**EAGLE BUTTE SCHOOL DISTRICT #20-1
and BOARD OF EDUCATION,**

Respondent.

This matter came before the Department of Labor & Regulation when Monica Slocum and Diana Sutfin, filed a Petition for Hearing on Grievance pursuant to SDCL 3-18-15.2. The Department conducted a hearing on April 12, 2017, in Eagle Butte, South Dakota. The matter was heard by Michelle M. Faw, Administrative Law Judge. Anne Plooster appeared on behalf of Petitioners. Eric H. Bogue represented Respondent, Eagle Butte School District #20-1 and Board of Education.

FACTS

Monica Slocum and Dianna Sutfin, (hereafter Grievants) were previously employed by the Eagle Butte School District (hereafter District). Sutfin began teaching in the District in 2003. On March 9th, 2016, Sutfin submitted a retirement letter to the District.¹ Sutfin began collecting retirement from the South Dakota Retirement System in October, 2016. Slocum began teaching in the Eagle Butte School District in 2005. She retired in May, 2016. Slocum also began collecting retirement in October, 2016.

Both Grievants also had a number of unused sick days accrued at the time of their respective retirements. Sutfin had 50 days accrued while Slocum had 48. Both Grievants requested that they be paid for their unused sick leave at the rate of \$60.00

¹ Sutfin testified that she could not remember to whom she gave the letter, though it is undisputed that the District received and accepted her retirement letter.

per day, as outlined in the negotiated agreement. Both were informed that, per District policy, they would not be compensated for the first 50 days of accrued sick leave.²

ANALYSIS

Sick leave is governed by Article XI of the agreement. Section 9 provides:

Unused sick leave will be paid at the rate of \$60.00 per day when the employee retires.

(Employees hired before June 30, 2003, unused sick leave will be paid when the employee leaves the system at the rate of \$60.00 per day.)

It is undisputed that Grievants were hired after June 30, 2003, and therefore must retire in order to be compensated for their sick leave. At issue is what constitutes retirement for purposes of compensation for sick leave under the agreement.

The South Dakota Supreme Court has opined:

When interpreting a contract, this Court looks to the language that the parties used in the contract to determine their intention.’ ” *Id.* (quoting *Clarkson & Co.*, 2011 S.D. 72, ¶ 15, 806 N.W.2d at 619). “ ‘In order to ascertain the terms and conditions of a contract, we examine the contract as a whole and give words their plain and ordinary meaning.’ ” *Nygaard v. Sioux Valley Hosps. & Health Sys.*, 2007 S.D. 34, ¶ 13, 731 N.W.2d 184, 191 (quoting *Canyon Lake Park, L.L.C., v. Loftus Dental, P.C.*, 2005 S.D. 82, ¶ 17, 700 N.W.2d 729, 734). “

Poeppel v. Lester, 2013 S.D. 17, ¶ 16, 827 N.W.2d 580, 584

Additionally, “a contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.”

² Sutfin was apparently paid for a number of days from the 2015-16 school year which were unused at the end of the year.

Spiska Eng'g, Inc. v. SPM Thermo-Shield, Inc., 2007 S.D. 31, ¶ 19, 730 N.W.2d 638, 645(citation omitted).

Here, the negotiated agreement includes two uses for the term “retire”. First, under Article XV Section 1, the agreement references retirement as it applies to participation in the South Dakota Retirement System (SDRS). Participation in the SDRS is prefaced on a certified staff member making regular contributions to a state-administered fund. After that staff member has reached the requisite age, and has taught a certain number of years, he/she is eligible to stop working and draw a monthly benefit from the SDRS.

The second use of retirement is modified by the word “voluntary”. Voluntary retirement, as outlined in Article XVA, is an incentive which allows veteran teachers to retire from the District early. After having taught for 15 years in the District, a teacher may opt to retire from the district and receive 4% of their last year’s salary in either a lump sum or in two payments. Article XV references “voluntary retirement” only once, to proclaim that “Voluntary retirement during the period of a valid contract should be considered a breach of contract and treat accordingly.”

It is clear that the agreement intended for these two uses for “retirement” be two separate concepts. A teacher may be eligible for voluntary retirement from the District, though not necessarily eligible to draw from SDRS. Likewise, a teacher who has not taught within the Cheyenne Eagle Butte School District for 15 years is not eligible for voluntary retirement though he/she may meet the requirements to retire under the SDRS guidelines.

It is noteworthy that the provision providing for payment of accrued sick leave is not found within Article XVA. This section dealing with voluntary retirement therefore does not govern payout of accrued sick leave. Rather, since the sick leave payout is located in the same article as the more general definition of “retire”, this definition applies to sick leave payout.

Under article XI, Grievants meet the definition of retired. It is undisputed that both Grievants have met the necessary experience and age requirements established

by SDRS gave timely notice to the District of their intention to leave teaching at the end of the school year. The business manager for the District timely remitted the necessary paperwork to SDRS and thereafter both Grievants began drawing benefits from SDRS. Under the terms of the agreement, Grievants are entitled to be compensated for any accrued sick leave at a rate of \$60.00 per day.

Finally, District argues that by practice, no other employee who has retired under Article XI has received a payout of accrued sick leave. This evidence is not relevant here. As the language of Article XI is unambiguous, the Department shall limit its interpretation to the four corners of the negotiated agreement.

Dated this 21 day of June, 2017

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

/Michelle Faw/
Michelle M. Faw
Administrative Law Judge