

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE STYLE OF THE CASE:

MISSOURI CORRECTIONS OFFICERS ASSOCIATION,

Appellant,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,

Respondent.

**DOCKET NUMBER WD75418
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

Date: August 27, 2013

Appeal from:
Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:
Division One: Mark D. Pfeiffer, P.J., and Victor C. Howard and Alok Ahuja, JJ.

Attorneys:
Chris Koster, Attorney General, and J. Andrew Hirth, Deputy General Counsel, Jefferson City,
MO, for Respondent,

Heidi D. Vollett, William E. Peterson, and Shelly A. Kintzel, Jefferson City, MO, for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

MISSOURI CORRECTIONS OFFICERS ASSOCIATION,

Appellant,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,

Respondent.

WD75418

Cole County

The Missouri Corrections Officers Association, Inc., is a labor organization representing corrections officers who staff prisons run by the Missouri Department of Corrections (“the Department” or “DOC”). The Association and DOC entered into a Labor Agreement in 2007. Under the Labor Agreement, a corrections officer earns state compensatory time, at their regular, “straight-time” rate, when he or she “works in excess of an assigned daily shift, but has not physically worked in excess of 40 hours during a standard work week.” The officer may either be paid for this state compensatory time, or use it as paid time off, or “compensatory leave.” Section 7.9 of the Labor Agreement provides that the Department “will provide fourteen (14) days prior notice before scheduling mandatory compensatory time reduction.”

In response to reductions in its budget, the Department changed its personnel policies in 2009 to limit officers’ accrual of state compensatory time. The Department’s new policy provides that, where a corrections officer works in excess of an assigned daily shift earlier in a week, the Department may reduce the officer’s hours later in the week, keep the officer from being compensated for more than 40 total hours, and thereby avoid the accrual of state compensatory time. The Association, on the other hand, takes the position that the Department’s policy change authorizes it to require officers to “burn” their compensatory time as compensatory leave, without giving them the 14 days’ notice to which they are entitled under § 7.9 of the Labor Agreement.

The Association filed this lawsuit in the Circuit Court of Cole County, seeking a declaratory judgment that the Department’s position concerning the accrual of state compensatory time violates the Agreement. The circuit court ultimately granted summary judgment to DOC, accepting its interpretation of the Labor Agreement and Department Manual. The Association appeals.

REVERSED AND REMANDED WITH INSTRUCTIONS TO ENTER SUMMARY JUDGMENT FOR APPELLANT.

Division One holds:

The Department Manual, which is incorporated into the Labor Agreement, provides that state compensatory time accrues when “[a] code 2 employee works in excess of an assigned daily shift, but has not physically worked in excess of 40 hours during a standard work week.” The Manual imposes only two conditions on a code 2 employee’s right to state compensatory time: (1) work in excess of an assigned daily shift, and (2) physically working forty hours or less during that week. The Manual’s definition of state compensatory time embodies this straightforward principle: a code 2 employee earns state compensatory time for hours worked in excess of an assigned daily shift, *unless* the employee is entitled to federal overtime for those hours (because they meet the 40-hour threshold for entitlement to federal overtime).

The circuit court held that the Manual’s statement that a code 2 employee is only eligible for state compensatory time if he or she “has not physically worked in excess of 40 hours during a standard work week,” “implies that the officer has already earned more than 40 hours that week, but due to vacation time or sick leave he was not physically present at the job site for all of them.” The additional condition the circuit court “implied” has no textual basis in the Department Manual’s definition of “state compensatory time,” however. Under well-established principles of statutory interpretation, we may not insert additional conditions on the accrual of state compensatory time into the Labor Agreement or Department Manual under the guise of “interpretation.”

We hold only that under the Manual’s current definition of “state compensatory time,” which the trial court found had been incorporated into the Labor Agreement (a proposition the Department does not dispute), the Department may not extinguish an employee’s right to state compensatory time by making schedule changes *after* beyond-shift hours are worked. We do not address the scope of the Department’s authority to modify corrections officers’ schedules (except to the extent such schedule changes purport to affect the accrual of state compensatory time for hours previously worked). Nor do we address whether DOC has the power to modify the provisions of its Department Manual on which this opinion relies.

Before: Division One: Mark D. Pfeiffer, P.J., and Victor C. Howard and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

August 27, 2013

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