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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Adam SCHULZE, Respondent,
v.
CITY OF NEWBURGH FIRE DEPARTMENT, Appellants
WORKERS' COMPENSATION BOARD, Respondent.

February 9, 2023

Facts: This was an established claim for Workers' Compensation Benefits for the neck and back, which resulted in a finding that the claimant was permanently partially disabled. The employer had paid the claimant full wages during his period of disability, and was seeking reimbursement of the those wages out of the Workers' Compensation Benefits. The claimant had taken a performance of duty disability retirement in April 2016, and the wage replacement benefits were discontinued, and the employer began paying the difference between the amount of his pension and the amount of his regular wages. In 2019 the claimant filed for retroactive indemnity benefits from April 2016 to date and continuing based on his classification and the employer sought reimbursement for the supplement payments they were making. The Law Judge denied the request for reimbursement, making awards to the claimant, and the Board affirmed.

Holding: *Affirmed.*

Discussion: The Court cited to a prior decision Matter of Harzinski v Village of Endicott (126 AD2d 56 [3d Dept 1987]) and noted that while the case involved an accidental disability retirement pension and the present case involved a performance of duty retirement pension, the same holding applies. The employer is entitled to a credit for advanced payments of compensation made, or payments made to an employee in like manner as wages pursuant to WCL Section 25(4). WCL Section 30 provides for reimbursement for wages paid under General Municipal Law 207-a(2) to a firefighter. The Court found that

the pension payments made subsequent to the claimant's retirement do constitute wages, and the supplemental payments under General Municipal Law 207-a(2) were not characterized in the statute as wages and were made to the claimant as a retiree and not as an employee. Therefore, the Court found the Board correctly determined the Workers' Compensation awards were not reimbursable to the employer.

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