

CHAPTER 192

NATIONAL GUARD

ORGANIZATION

192.01 MINNESOTA NATIONAL GUARD; WHO COMPOSE.

Amended by L. 1947 c. 125 s. 3.

192.10 EXAMINATIONS FOR COMMISSIONS; ASSIGNMENTS OF OFFICERS.

Amended by L. 1947 c. 125 s. 4.

192.11 OFFICERS TO HAVE POWERS AND DUTIES OF UNITED STATES OFFICERS.

Complaint which alleges that, at the time and place stated, defendant imprisoned the plaintiff without probable cause, states a cause of action. A captain of a company of the national guard, when the company is not acting as a military force, is not authorized to punish summarily by imprisonment a member of his company for a refusal to obey his orders. *Nixon v Reeves*, 65 M 159, 67 NW 989.

It will be presumed from the record that the oath was properly administered. But conceding usual formalities were omitted, he signed the oath in question in the presence of the recruiting officer for the purpose of completing his enlistment and that officer signed the jurat to complete the act of taking the oath. This was sufficient to make it binding. *State v Madigan*, 57 M 425, 59 NW 490; *State v Day*, 108 M 121, 121 NW 611; *State ex rel v Fisher*, 174 M 84, 218 NW 542.

192.13 SUPPLIES; HOW ISSUED; BOND.

Commanding officer may maintain replevin to recover clothing or equipment loaned to a member, or the value of it if it is impossible to recover specific articles. OAG Nov. 13, 1929 (310-I).

192.18 VACATION OF COMMISSIONS.

Subd. 1. Amended by L. 1947 c. 125 s. 5.

Legal status of members of the national officers' reserve corps. 21 MLR 162.

192.23 SERVICE MEDALS.

Amended by L. 1947 c. 125 s. 6.

192.26 STATE AND MUNICIPAL OFFICERS AND EMPLOYEES NOT TO LOSE PAY WHILE ON MILITARY DUTY.

While leaves of absence for terms of one year or more without pay are authorized in certain cases, there is no provision for an educational leave of one year with pay. 1944 OAG 265, Jan. 25, 1944 (644-D).

Promotional appointments while on military leave permitted. The service must be actual, not constructive. The 45-day limitation within which to make application cannot be waived. An employee is entitled to immediate employment on reinstatement. 1944 OAG 266, March 15, 1944 (644-D).

The certificate of transfer to the inactive enlisted reserve corps is such a release from active service as is referred to in the act, and the 45-day period commences

MINNESOTA STATUTES 1947 ANNOTATIONS

481

NATIONAL GUARD 192.261

to run upon the issuance of such release, and any application for reinstatement must be made within that period. 1944 OAG 174, March 21, 1944 (120).

Employees granted leave of absence for service with the state guard are eligible to the same rights and benefits regarding annual leave, reinstatement, sick leave, and similar, as are persons reinstated from military leave of absence following honorable discharge from the armed forces. OAG Jan. 9, 1946 (644-D); OAG Feb. 5, 1946 (310-H-1-a); OAG March 7, 1946 (120); OAG May 18, 1946 (120); OAG June 3, 1946 (120); OAG June 25, 1946 (785-J).

Application for reinstatement must be made within 45 days after discharge or other release from active service. Transfer to inactive reserve is a release within the meaning of this section. OAG June 7, 1946 (120).

Provisional employers of departments which have granted annual leave to provisional employees of the same class subsequent to the opinions of Nov. 28, 1940 and Dec. 20, 1940 are entitled to lump sum payments under L. 1945, c. 492, and to the benefits of accumulative leave when reinstated pursuant to L. 1941, c. 120. OAG June 7, 1946 (644-D).

Applicant is entitled to leave of absence pay. He used exactly 15 days and returned to his position upon being relieved from naval service. The fact that he made statements indicating he might resign is immaterial, no formal resignation having been filed. OAG Dec. 9, 1946 (644-D).

192.261 LEAVE OF ABSENCE NOT OTHERWISE ALLOWED BY LAW.

Persons who at the time of their entry into the armed forces of the United States were on the list of those eligible for employment in the police department of the city of Minneapolis, but who were not actually discharging duties of policemen because they had not been hired, do not come within the terms of section 192.261, and are not eligible for the benefits of the statute. *Arlandson v Humphrey*, 224 M —, 27 NW(2d) 821.

A teacher on his return and compliance with the provisions of the statute is entitled to reinstatement. 1942 OAG 55, May 27, 1942 (172).

"Former employment" means most recent employment. 1944 OAG 152, July 8, 1943 (885-A).

A teacher entering the armed forces has all his rights preserved, and upon his return his contract is in force unless the time has expired. 1944 OAG 130, Feb. 24, 1944 (172-c-2).

Formula for arriving at rate of pay of all employees while taking accumulated vacation after return from military leave. OAG Nov. 7, 1946 (120).

A school board is without authority to declare a vacancy in board membership because of entry into armed forces of a school board member. 1944 OAG 118, April 25, 1944 (61-A-25).

Time for making application for reinstatement after termination of service is the same under state and federal laws. OAG April 26, 1945 (310-H-1-a).

Upon reinstatement the question as to what merit increase he might have been entitled to at appropriate times may be appraised in part by his history in state service prior to leave, and his record while in service, and the possibility of granting merit leaves to other returnees. OAG July 6, 1945 (644-F).

While on military leave civil service employees accumulate annual leave, security, sick leave, and similar. OAG Oct. 2, 1945 (120).

While in military service nurses holding civil service positions in the city of Minneapolis are entitled, upon completion of military service, to reinstatement in former positions. OAG Oct. 24, 1945 (310-A-1-a).

Labor employees appointed under the provisions of the civil service act on return from military service are entitled to reinstatement, subject to general reinstatement provisions. OAG Nov. 6, 1945 (644-D); OAG Nov. 28, 1945 (768-K).

County employee reinstated upon return from service is entitled to accumulated vacation time and sick leave for the full period of his military leave. OAG Nov. 29, 1945 (120).

Upon reinstatement a city employee may claim all seniority rights accumulated during his military leave of absence. OAG Jan. 3, 1946 (644-D).

Upon reinstatement, employee is entitled to same vacation time as he would have been entitled to had he been actually at work. OAG Feb. 5, 1946 (310-H-1-a).

Applicant for reinstatement for the sole purpose of utilizing accrued credits, and with no intention of continuing employment, is entitled to such leave and for payment on resignation. OAG March 6, 1946 (644-D).

The legislature intended among other things to insure public employees against being deprived of benefits which would have been theirs had they not entered the armed service. Applicant must comply with other conditions precedent to reinstatement. OAG March 14, 1946 (120).

If a policeman dies while in armed service, his widow, or child under 16 years, is entitled to payment of pensions in the amount and at the time authorized by statute. OAG March 29, 1946 (785-J).

Employee entitled to vacation accumulated while on military leave may not continue to work during such vacation period and be paid during such vacation period at the rate he would have received in position occupied at time vacation was due, plus present rate of pay for position now occupied. OAG June 3, 1946 (120).

Superintendent in the division of public institutions, who was a member of state civil service in unclassified service, was entitled to benefit of this section. OAG July 1, 1946 (644-D).

Veteran is entitled to only such vacations as were granted to other employees. OAG July 9, 1946 (120).

The chief of police of Sleepy Eye who had enlisted and served in the armed forces, upon his separation from service is entitled to reinstatement in his position upon compliance with the statute. OAG Aug. 3, 1946 (310-H-1a).

The appointing authority designates the time when a returned policeman shall enjoy his accrued vacation. OAG Sept. 5, 1946 (120).

It is the duty of the city council and mayor to provide funds necessary in order to comply with the provisions of this section. OAG Sept. 17, 1946 (120).

192.262 OFFICERS AND EMPLOYEES TO PRESERVE PENSION AND RETIREMENT RIGHTS.

The rights of those granted leave of absence to enter military service are fully preserved upon compliance with sections 192.262 to 192.264.

The rights of those taking war jobs are not preserved. Those on sick leave are protected provided they kept up their payments while sick. OAG June 25, 1946 (785-J).

An officer is entitled to reinstatement only in the grade he held when he went into service. If any promotional examinations were held during his absence he may demand and receive an equivalent examination for promotion. OAG Feb. 13, 1947 (120).

192.263 VACANCIES TO BE FILLED TEMPORARILY.

During the absence of the state auditor his deputy is, in effect, the acting auditor and as such he may perform the duties of the office, among which is the acting as a member of the official bodies on which the state auditor is by law required to serve. 1942 OAG 293, April 8, 1942 (24).

Upon reinstatement of veteran the tenure of the temporary incumbent terminates, no rights accruing to him by virtue of his temporary occupancy. OAG May 15, 1946 (310-H-1-a).

192.264 SUPPLEMENTARY.

If an employee is reinstated under the provisions of section 192.261, he is entitled to a service credit on the records of the retirement association for the period of his absence in the military service as soon as he is reinstated. If he fails to be reinstated he nevertheless is entitled to a credit for such military period on his service record in the association whenever he requests it. 1944 OAG 272, Nov. 29, 1944 (331-A-9).

192.265 STATUS WHILE IN MILITARY TRAINING..

HISTORY. 1947 c. 350 ss. 1, 2, 3.

192.49 PAY AND ALLOWANCES OF OFFICERS AND ORGANIZATIONS.

Amended by L. 1947 c. 125 s. 7.

192.50 INSPECTION AND MUSTER ALLOWANCE.

Repealed by L. 1947 c. 125 s. 22.

192.51 CAMP PAY FOR ENLISTED MEN.

Amended by L. 1947 c. 125 s. 8.

192.53 PAY OF COMPANY CLERKS AND CERTAIN NON-COMMISSIONED OFFICERS.

Repealed by L. 1947 c. 125 s. 22.

192.58 AFFAIRS TO BE ADMINISTERED ACCORDING TO UNITED STATES ARMY RULES.

The rules and regulations of the military code are merely disciplinary, designed to secure higher efficiency in service. Violation does not constitute a criminal offense within the meaning of Section VII of the bill of rights. Punishment prescribed for a violation by a limited fine, or limited imprisonment in case the fine is not paid, is not unconstitutional. State ex rel v Wagener, 74 M 518, 77 NW 424.

192.581 FAILURE TO RETURN PROPERTY ON DEMAND; PENALTY.

HISTORY. 1947 c. 125 s. 9.

MILITARY COURTS

192.59 COURTS OF INQUIRY.

Civil authority versus military. 3 MLR 105.

Double jeopardy and courts-martial. 3 MLR 181.

Court-martial, jurisdiction over non-military persons under the articles of war. 4 MLR 79.

Civil safeguards before courts-martial. 25 MLR 323.

A comparison of the court-martial system with civil criminal procedure. 30 MLR 78.

192.60 COURTS-MARTIAL.

Only questions which can be reviewed on a writ of habeas corpus are whether the court-martial had jurisdiction of the relator, and whether the sentence was one which the court, under the law, could pronounce. State ex rel v Wagener, 74 M 522, 77 NW 422.