

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

**XXXX**

Docket No. BD-03-18

Creditor Claim  
XXXX Credit Union

**Decision and Order on Appeal  
Decision**

This matter comes before the National Credit Union Administration Board (Board) under 12 C.F.R. Part 746, Subpart B, as an administrative appeal of the decision by the Liquidating Agent for XXXX Credit Union to disallow a creditor claim by XXXX requesting payment of XXXX in severance pay.

**Background and Initial Determination**

XXXX Credit Union (XXXX) was a federally insured, state-chartered credit union located in XXXX. Effective February 28, 2018, the XXXX Department of Banking and Insurance placed XXXX into liquidation due to insolvency and appointed the NCUA Board as liquidating agent.<sup>1</sup> XXXX Federal Credit Union (XXXX) was awarded the purchase and assumption of XXXX. As a routine part of the liquidation process, AMAC terminated XXXX's entire staff, including XXXX, as of the date of liquidation. All of XXXX staff members became employees of XXXX, including XXXX. Subsequently, XXXX was notified that she would be released from her employment with XXXX, effective April 30, 2018.

XXXX appealed an initial agency determination by the NCUA's Asset Management and Assistance Center (AMAC), the liquidating agent for XXXX. AMAC initially denied XXXX's claim for XXXX in severance pay that she alleges was owed to her by XXXX. In consultation with the NCUA's Office of General Counsel (OGC), AMAC determined that XXXX's severance pay policy provides that in the case of either voluntary or involuntary termination of employment, an employee is not eligible for severance pay except in the event of a staff reduction or company merger. XXXX was terminated in a routine staff-wide elimination as part of the liquidation process, as distinguished from a "staff reduction or company merger." Thus, AMAC determined she was ineligible for severance pay, and denied her claim. XXXX

---

<sup>1</sup> The NCUA Board has delegated complete authority to act as liquidating agent to the President of AMAC under Delegation of Authority AMAC 2.

subsequently requested reconsideration, and AMAC upheld its initial decision and issued a determination disallowing her claim. XXXX sought administrative review of that determination by the Board.

### **Discussion and Analysis.**

XXXX's appeal asserted hardship and unfairness arguments, and questioned why other XXXX employees have purportedly received severance pay while her claim was denied.

XXXX's Employee Handbook (Employee Handbook) states, in pertinent part:

#### Resignations/Terminations

In situations of either voluntary or involuntary termination of employment, an employee is not eligible for any form of severance payment with the exception of staff reduction or company merger.

#### Severance Pay Policy

This policy on Notice and Severance Pay applies to XXXX Credit Union employees [sic] accordance with the terms and conditions set forth below, employees covered under this policy are eligible to receive notice prior to the separation of their employment from XXXX Credit Union and/or severance pay. This policy is compensation assistance for employees in the matter if there is a staffing reduction or company merger.

The Employee Handbook explicitly provides that it is not a formal legal contract and it creates no contractual obligation for severance pay. Nevertheless, we recognize that a credit union employee could reasonably rely on the policies stated therein. The Employee Handbook states, "[The severance pay policy] is compensation assistance for employees in the matter if there is a staffing reduction or company merger." Read plainly, this language creates a reasonable expectation that an employee will be paid severance in the event of a credit union closure in which all staff is eliminated as part of the liquidation process. On balance, therefore, under this particular set of facts, we have determined that it is fair and equitable for XXXX to receive severance pay for her longtime employment with the credit union.

### **Conclusion**

While the Employee Handbook is not an employment contract and did not create a legal obligation, XXXX had a reasonable expectation for severance pay following her termination from XXXX based on a plain reading of the credit union's severance pay policy. Accordingly, it is fair and equitable that she receive severance pay in accordance with the terms of the Employee Handbook in the amount of XXXX.

### **Order**

For the reasons set forth above, it is ORDERED as follows:

The decision of the Liquidating Agent for XXXX denying XXXX's claim for severance pay is reversed and the appeal of XXXX is approved.

The Board's decision constitutes a final agency determination, which is reviewable in accordance with the provisions of Chapter 7, Title 5, United States Code. Such action must be filed within 60 days of the date of this final determination.

So **Ordered** this 14<sup>th</sup> day of February, 2019, by the National Credit Union Administration Board.

---

Gerard Poliquin  
Secretary of the Board