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State of New Hampshire



See
90-0-906

PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF BENJAMIN MOZRALL

Docket #90-0-6

Response to Appellant's Motion for Reconsideration
and
Division of State Police's Objection

March 19, 1992

On December 2, 1991, Chris Henchey filed on behalf of the above-named Benjamin Mozrall a Motion for Reconsideration of the Board's November 12, 1991 Decision dismissing Mr. Mozrall's amended appeal as untimely. In his Motion, Mr. Henchey argued that the Board's decision was flawed, arguing that the pleadings were hand-delivered to the Division of Personnel on October 11, 1991, and that the "date-stamp" clock at the Division of Personnel was not functioning properly. He also argued that the 30 day limit for filing the amended pleadings should not have begun until the Board had issued a pre-hearing conference order setting forth the terms and conditions for the filing of an amended appeal. Mr. Henchey filed a letter dated December 4, 1991, in further support of that motion.

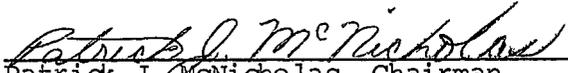
By letter dated December 4, 1991, received by the Board December 6, 1991, Major Thomas Kennedy filed the State's Answer and objection to the request for rehearing.

Instructions to the parties on the date of the pre-hearing conference were clear and unequivocal. The appellant was allowed 30 additional days from the date of the pre-hearing conference to file his amended pleadings. Having reviewed the pleadings and supporting affidavits filed by the parties, the Board voted to affirm its earlier decision, finding that the matter was not timely filed.

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Accordingly, the Board voted to deny the appellant's Motion for Reconsideration.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett


Robert J. Johnson

cc: Virginia A. Vogel, Director of Personnel
Maj. Thomas Kennedy, Division of State Police
Chris Henchey, SEA Chief Negotiator

State of New Hampshire

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APPEAL OF BENJAMIN MOZRALL Docket #90-O-6

Division of State Police, Department of Safety

November 12, 1991

On September 26, 1991, the New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) issued an order following its September 11, 1991, pre-hearing conference in the appeal of Benjamin Mozrall, an employee of the Division of State Police. That conference, which had been convened to narrow the factual issues related to his appeal of transfer/reassignment, concluded with an oral order of the Board, allowing the appellant 30 days from the date of the pre-hearing conference in which to file an amended notice of appeal. The appellant was advised that such notice of appeal must cite specifically those grounds upon which the appellant intends to rely in alleging that his transfer was violative of Per 302.05 of the Rules of the Division of Personnel:

"...[Transfers] can be made only for the best interests of the agency. Such transfers are subject to appeal to the [board] by the employee affected if he feels that the transfer was made for some other reason."

The appellant was required to include the following:

1. The specific reasons the appellant believes the agency relied upon in effecting his transfer, and
2. A demonstration of why those reasons were not in the best interests of the agency.

As the Board indicated in its oral order to the parties at the prehearing conference, upon receipt of the amended notice of appeal, the Board would review the notice for compliance with its order. The appellant was further cautioned that failure to make specific allegations and to enumerate specific

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grounds upon which his appeal may be heard, would result in the Board voting to grant the State's Motion to Dismiss without further hearing. The appellant was also cautioned that failure to timely file his amended notice in compliance with the Board's order would result in the Board dismissing the appeal upon its own motion.

Per-A 206.02 (a) of the Rules of the Personnel Appeals Board provides in pertinent part that:

"...Filing may be accomplished by first class mail addressed to the clerk of this Board, but filing shall not be timely unless the papers are received by the clerk within the time fixed by rule or law." (Emphasis added)

Per-A 202.02 of the Rules of the Personnel Appeals Board, Order for More Specific Facts, states, "The Board shall order the appellant to furnish more specific facts upon its own motion or if it agrees with the motion of an opposing party. Unless otherwise ordered by the Board, the appellant shall respond within ten (10) days."

In the instant appeal, the appellant requested 30 days from the September 11, 1991 prehearing conference in which to complete the filing of his amended notice of appeal. The Board granted that request.

In order to be timely filed, pursuant to Per-A 202.01 of the Rules of the Personnel Appeals Board, and the Board's oral order on the date of the pre-hearing conference expanding the timeframe for timely filing, the amended notice of appeal must have been received by the Board not later than October 11, 1991. The Board clearly warned the appellant in its order of September 26, 1991, that failure to file his amended appeal within the time fixed by that order would result in dismissal of the appeal on the Board's own motion.

The appellant's amended notice of appeal was not received by the Board until October 14, 1991. Accordingly, having found the appeal to be untimely, the Board voted unanimously to dismiss the appeal. Having so ruled, the

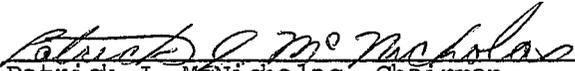
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Board need not address the more substantive matters raised by the State's
April 18, 1991 Motion to Dismiss.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett


Robert J. Johnson

cc: Virginia A. Vogel, Director of Personnel
Maj. Thomas Kennedy, Jr., Division of State Police, Department of Safety
Chris Henchey, Chief Negotiator, State Employees' Association, Inc.

State of New Hampshire

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PERSONNEL APPEALS BOARD

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APPEAL OF BENJAMIN MOZRALL

Docket #90-0-6

Division of State Police, Department of Safety

PREHEARING CONFERENCE ORDER

September 26, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) met Wednesday, September 11, 1991, to convene a pre-hearing conference in the appeal of Benjamin Mozrall, an employee of the Division of State Police, to narrow the factual issues related to his appeal of transfer/reassignment.

Major Thomas Kennedy appeared on behalf of the Division of State Police. SEA Chief Negotiator Chris Henchey, appeared on behalf of Sgt. Mozrall.

A portion of the Board's scheduling order of May 7, 1991, is reproduced below:

"In his original request for hearing (June 6, 1990), the appellant alleged that his 'transfer/reassignment from Troop D, Division of State Police and SWAT Team to the Major Crime Unit effective May 23, 1990 ... violates Per 102.01 (F), Per 302.05 and Per 306.04 of the Rules of the Division of Personnel. Specifically, the [appellant] alleges the transfer was initiated in direct retaliation for Union activities, in response to recent litigation filed by Sgt. Mozrall against the Division of State Police, based on an evaluation used as a personal attach instead of the intended purpose as a management tool, and for the general all-purpose harassment of Sgt. Mozrall.'

"The Board voted unanimously to take the State's Motion to Dismiss under advisement, and to schedule the matter for hearing on the merits of Mr. Mozrall's appeal..."

Prior to the hearing on the merits, the Division of State Police filed a request for a pre-hearing conference to narrow the factual issues under appeal, which request was granted by the Board.

At the prehearing conference, the Division of State Police argued that the appeal, on its face, lacked specificity and was, for all practical purposes, simply a repetition of allegations raised in three previous appeals (November, 1988; February 1990; and November, 1990) to the Public Employee Labor Relations Boards for alleged unfair labor practices. The Division of State Police argued that the appellant, having raised those issues as violations of a contract, should not now be allowed to readjudicate those matters before the PAB. The Division of State Police also argued that RSA 21-I specifically prohibits appeals of performance evaluations, unless an evaluation results in disciplinary action. The Division then renewed its Motion to Dismiss.

Mr. Henchey agreed that the appellant would withdraw any allegations which had been presented for review by the PELRB, and would further consider withdrawing the allegation that the appellant had suffered from retaliation for litigation filed by him against the Department of Safety. Mr. Henchey then argued that if the appeal were deficient on its face, the Board could order an appropriate remedy by requiring the appellant to file an amended petition.

The Board, in consideration of the arguments presented by the parties, voted to allow the appellant 30 days in which to file an amended notice of appeal. Such notice of appeal must cite specifically those grounds upon which the appellant intends to rely in alleging that his transfer was violative of Per 302.05 of the Rules of the Division of Personnel:

"...[Transfers] can be made only for the best interests of the agency. Such transfers are subject to appeal to the [board] by the employee affected if he feels that the transfer was made for some other reason."

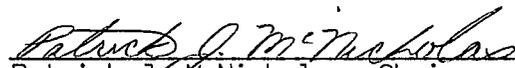
The appellant shall cite specifically the reasons he believes were relied upon in effecting his transfer, and shall demonstrate why those reasons were not in the best interests of the agency.

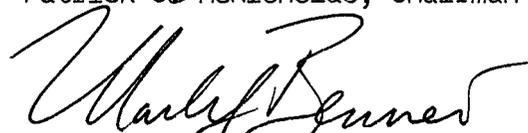
As the Board indicated in its oral order to the parties at the prehearing conference, upon receipt of the amended notice of appeal, the Board will review the notice for compliance with the above order. If the appellant fails to make specific allegations and to enumerate specific grounds upon which his appeal may be heard, the Board will grant the State's Motion to Dismiss

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without further hearing. If the appellant fails to timely file his amended notice in compliance with the above order, the Board, upon its own motion, will dismiss the appeal.

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Maj. Thomas Kennedy, Jr., Division of State Police, Department of Safety

Chris Henchey, Chief Negotiator, State Employees' Association, Inc.