The State of New Hampshire | Supreme Court

No. 91-355 Appeal of Richard Lalumiere

TO THE CLERK OF PERSONNEL APPEALS BOARD

I hereby certify that the Supreme Court has issued the following order(s) in the above-entitled action(s):

June 25, 1992 The appeal is moot in part, and the remaining claims are not ripe for review. See Appeal of Linda Tancrede, 135 N.H. ___ (decided May 28, 1992). Accordingly, the appeal is dismissed. ~~See id.~~

~~Appeal dismissed~~.

Attest: Howard J. Zibel, Clerk

July 17, 19 92

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 91-355 Appeal of Richard Lalumiere

June 25, 1992

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Appeal dismissed.

Distribution:

Personnel Appeals Board
Michael C. Reynolds, Esquire
Attorney General
Personnel Appeals Board
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Howard J. Zibel
Clerk

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State of New Hampshire

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

APPEAL OF RICHARD LALUMIERE
Docket #91-0-4
Department of Transportation

Response to Appellant's Motion for Reconsideration

July 18, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, June 5, 1991, to consider the appellant's March 18, 1991 Motion for Reconsideration of the Board's February 27, 1991 decision dismissing his appeal.

In its February 27, 1991 decision, the Board found that the General Court's ban an position reclassifications and reallocations prohibited the Director of Personnel from taking any action on his request that his position be reviewed for reclassification or reallocation.

The appellant, in his Motion for Reconsideration, argued:

1. "Per-A 205.01 of the Rules of the Personnel Appeals Board states...'In appeals by permanent employees, both the appealing employee and the appointing authority shall have the right to be heard publicly in accordance with these rules and the procedures provided for adjudicative proceedings in RSA ch. 541-A'.""

The Board's procedural rules provide for disposition without evidentiary hearing in matters where there are no material facts in dispute. The Division of Personnel did not dispute any of the "facts" as presented by the appellant in his original request for hearing. Ergo, neither the Rules of the Personnel Appeals Board, nor the provisions of RSA 21-I and RSA 541-A can be construed as requiring the Board to receive testimonial evidence before rendering a decision.

2. The appellant argued that the Board erred by consolidatina the instant appeal with the appeals of Bailey, Burton and Eaton, and Further argued that he was not afforded the same opportunity as in Bailey, Burton and Eaton to submit "additional evidence and legal argument.

In his original request for hearing, the appellant claimed, "This appeal is similar to the appeal of Linda Burton (Docket #89-O-14), Christine Eaton (Docket #89-O-15) and Susan Bailey (Docket #89-O-16) that the Board heard on January 10, 1990. We agree with the appellants' position in the above cited cases". Clearly, it was the appellant and not the Board who drew the comparison between the two cases. Further, in the Board's May 17, 1990 order, the parties were allowed to submit legislative documents or testimony concerning HB 764-FN-A and to file further memoranda of law. By the time the appellant filed his original appeal in August of that year, it should have been quite clear what the position of the parties was in that matter, as well as what supporting evidence they had offered. Therefore, his argument that he was not afforded the opportunity to submit additional evidence and legal argument, or to have the Board hear testimony which would distinguish his appeal from the appeals of Bailey, Burton and Eaton is without merit.

3. The appellant argued that the Board erred in consolidating his appeal with Bailey, Burton and Eaton because the Director did not refuse to accept the appellant's review request, but that she had refused to complete the review already in progress.

As the Board noted in its February 14, 1991 decision in the matter of Bailey, Burton and Eaton, "...it is apparent from an examination of Chapter 209:4 of the Laws of 1990, that the General Court wishes to see a moratorium or freeze on. reallocation or reclassification 'considerations' or 'implementations' until, at least, July 1, 1991. ..." (Emphasis added)

The appellant is technically correct in differentiating between a refusal to initiate a review and a refusal to complete a review in progress. The outcomes, however, are identical. The Director of Personnel was prohibited by law from giving "consideration" to any request for reclassification or reallocation. The Director, therefore, neither accepted new requests for reclassification, nor gave further consideration to requests for reclassification which were not completed prior to June 5, 1989.

4. The appellant argued that his request for reclassification "was well underway prior to distribution of the technical assistance manual [and] should not have been affected by [enactment of] Chapter 408:105."

Again, the Board's decision of February 14, 1991 addresses that issue:

> "In its Order of May 17, 1990, the Board reviewed the parties' contentions and legislation contended to be pertinent to the instant appeal, and concluded that it was appropriate to delay the issuance of a final ruling in this matter until the parties were afforded an opportunity to submit

additional evidence and legal argument. The State submitted a document ... containing further legal argument and providing copies of pertinent legislative history contained in the Senate Journal. No other submissions were received by the Board

"we would ordinarily turn to the State's Response to the Board's Order of May 17, 1990, and that Order itself in deciding the instant appeal; however, that becomes unnecessary in light of supervening events. We decide this appeal on narrow grounds without comment upon the merits, or lack thereof, of the parties' positions.

Chapter 209:4 of the Laws of 1990, provides that:

> Notwithstanding any other provision of law, the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1991."

..."it is apparent from an examination of Chapter 209:4 of the Laws of 1990, that the General Court wishes to see a moratorium or freeze on reallocation or reclassification 'considerations' or 'implementations' until, at least, July 1, 1991."

5. The appellant stated, "A fair interpretation of Chapter 209.04 [sic] of the Laws of 1990 would allow Mr. Lalumiere's job review to be completed, since the director had already done a substantial review of his position and was just waiting for further agency action. Ms. Lalumiere, as was obvious to the director and to the agency, was relying reasonably and in good faith on the director and the agency completing this process."

The fact that the appellant disagrees with the Board's findings and interpretation of Chapter 209:4 is apparent. His disagreement, however, does not constitute a substantive ground upon which to argue that the Board's decision was unreasonable or unlawful. Further, good faith and reasonable reliance are standards which the Board might apply in deciding an appeal when the statutes and administrative rules provide for such latitude. In the instant appeal, the provisions of Chapter 209:4 of the Laws of 1990 provide for no such latitude.

In consideration of the foregoing, the Board voted to affirm its earlier order dismissing Mr. Lalumiere's appeal. The Board also affirms its Order of February 27, 1991 that the Director of Personnel is ordered to consider the classification of his position under the then lawful system pertinent thereto as soon as she is lawfully and reasonably able to do so in accordance with

said system. The Director may require that the appellant submit a new position classification questionnaire at that time, or such other information as may be warranted for consideration under the then applicable system.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Mark J. Bennett

Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Jean Chellis, SEA Field Representative
John Kirby, Highway Administrative and Personnel Officer, D.O.T.

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State of New Hampshire

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

APPEAL OF RICHARD LALUMIERE
Docket #91-0-4
Department of Transportation

February 27, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, February 13, 1991, to consider the above captioned appeal which was received by the Board on August 8, 1990. The matter had been held in abeyance pending a final order in the appeals of Susan Bailey (No. 89-0-16), Linda Burton (No. 89-0-14) and Christine Eaton (No. 89-0-15) relative to the refusal of the Director of Personnel to review their positions for possible reclassification or reallocation. Having found the instant appeal to also arise from the Personnel Director's refusal to accept the appellant's position review request, the Board, upon its own motion, voted to consolidate this appeal with the appeals of Bailey, Burton and Eaton. (Per-A 202.07 N.H.C.A.R.)

The Director of Personnel had determined that under the provisions of Chapter 408:105 effective June 5, 1989, no classification, allocation or evaluation reviews received on or after that date could lawfully be conducted. Chapter 209:4 of the Laws of 1990 clarified the General Court's ban on position reclassifications or reallocations:

> "Notwithstanding any other provision of law, the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1991."

The Board's final order, dismissing the appeals of Bailey, Burton and Eaton, provides in pertinent part:

> "The instant appeals are dismissed. The Director of Personnel is ordered to consider the classification of the affected positions under the then lawful system pertinent thereto as soon as she is lawfully and reasonably able to do so in accordance with said system. The Director may require that the appellants submit new position classification questionnaires at that time, or such other information as may be warranted for consideration under the then applicable system." (A copy of the full text of the Board's order is attached herewith.)

Appeal dismissed.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson

Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Jean Chellis, SEA Field Representative
Charles P. O'Leary, Commissioner, Department of Transportation
Richard Williams, Human Resource Coordinator, Department of Transportation