

State of New Hampshire

PERSONNEL APPEALS BOARD
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88-0-103

APPEAL OF JOHN MARTIN July 28, 1988

On June 28, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, heard the appeal of John Martin, formerly a Corrections Lieutenant at the New Hampshire State Prison. On March 15, 1988, Mr. Martin was demoted to Corrections Sergeant and given a four week suspension for the action he allegedly took after the assault of an inmate by two Corrections Officers. The appellant was represented at the hearing by SEA Field Representative Stephen McCormack. David O'Connor, Administrator of Security, appeared on behalf of the Department of Corrections.

In his letter of appeal, Mr. Martin contended that the suspension and demotion were "inappropriate and need[ed] to be rescinded." At the hearing, the appellant argued that the discipline imposed was "too much."

Neither party submitted requests for findings of fact and rulings of law. After considering all of the evidence presented, the Board made the following findings and rulings. On Sunday, February 21, 1988, the appellant was on duty as the officer-in-charge of the Special Housing Unit at the New Hampshire State Prison. During his shift, two Corrections Officers reported an incident to him which occurred while they were escorting a handcuffed inmate from the office. During their return to the cellblock area, one of the officers gave the inmate a "hip roll" which knocked the inmate to the ground. The other guard hit the inmate in the stomach as he was falling. When the inmate hit the floor, the first guard hit his head against the floor "a couple of times." Later that shift, the two guards told the appellant what had happened. Mr. Martin advised the guards that in completing a report about the inmate they should be general. He further stated that if the prison officials wanted to know anything, they would ask questions.

Later that week, lieutenants Martin went to ask the Investigator assigned to the incident if he would accept a plea from the inmate as rumors of abuse were increasing. In subsequent discussions with the inmate, the investigator learned the full details of the incident.

As a result of the investigation, the two guards involved in the incident were given four week suspensions. The appellant, their supervisor, was demoted from lieutenant to sergeant and also given a four week suspension for failing to report the incident. All three individuals appealed the disciplinary action. Warden Cunningham, as the appointing authority, agreed

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to reduce the suspensions of the two guards to two weeks because they admitted that they had committed the acts. Because the appellant continued to deny that he had any knowledge of the incident on the day that it occurred, Warden Cunningham did not reduce the discipline imposed.

Upon review of this matter, the Board voted to uphold the action taken by the Warden. In so doing, the Board noted its concern that the offense which took place was extremely serious. A handcuffed individual was subjected to actions by two guards which had the potential for causing serious physical injury. Although the Board did not concur that the disciplinary action imposed upon the two guards was sufficient, no action could be taken by the Board as those individuals did not appeal. Similarly, although the Board had concerns about the sufficiency of the discipline imposed upon the appellant, who as supervising officer should have reported the actions, the Board would not order his discharge when the two perpetrators remained on staff at the prison.

The Warden's policy of reducing discipline when individuals "admit their mistakes" caused the Board concern. As noted at the hearing, such a policy can be abused. The seriousness of the actions in this case and the prison management's expressed concern that order be maintained within the prison among both prisoners and staff appeared to have been in conflict with the application of the policy in this case.

For the foregoing reasons, the Board voted to uphold the actions of the Warden and deny the appeal.

FOR THE PERSONNEL APPEALS BOARD

MARY ANN STEELE, Executive Secretary

1 Had all three individuals appealed to the Board, the Board based upon the evidence presented in this matter, would have exercised its authority to modify the discipline consistent with the recommendations of those employees who investigated and/or reviewed the matter for the Warden. The Board would have voted to discharge all three individuals.

cc: David J. O'Connor, Administrator of Security
Dept. of Corrections

Stephen McCormack, SEA:Field Representative

Virginia A. Vogel
Director of Personnel