

State of New Hampshire



PERSONNEL APPEALS BOARD

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Concord, New Hampshire 03301
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APPEAL OF RICHARD THOROUGHGOOD

Department of Transportation

Docket #95-D-6

Response to Appellant's Motion for Reconsideration and/or Rehearing

April 9, 1997

By letter dated March 7, 1997, received by the Board on March 10, 1997, John G. Vanacore, Esq., requested reconsideration and/or rehearing of the Board's February 12, 1997, decision in the appeal of Richard Thoroughgood.

The Board reviewed the Motion in conjunction with its decision in this matter and voted to deny the request for reconsideration or rehearing.

THE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive.

Mark J. Bennett, Acting Chairman

Handwritten signature of Robert J. Johnson in cursive.

Robert J. Johnson, Commissioner

Handwritten signature of Lisa A. Rule in cursive.

Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
John G. Vanacore, Esq.
Karen A. Levchuk, Assistant Attorney General

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February 12, 1997

The New Hampshire Personnel Appeals Board (Bennett and Johnson and Rule) met on September 27, 1995, November 8, 1995, and March 6, 1996,¹ under the authority of RSA 21-I:58, to hear the appeal of Richard Thoroughgood, an employee of the Department of Transportation, concerning his demotion from Bridge Construction Superintendent to Bridgeman III. Mr. Thoroughgood was represented at the hearing by Attorney John G. Vanacore. Assistant Attorney General Karen Levchuk appeared on behalf of the Department of Transportation. The record in this matter, which consists of the audio tape recording of the hearing, pleadings submitted by the parties before and after the hearing, and exhibits entered into evidence at the hearing on the merits, was closed on March 25, 1996, when final written arguments had been received from both parties.

The following persons gave sworn testimony:

Harvey Goodwin, Administrator, Bureau of
Bridge Maintenance

John Hunt, Bridgeman III

David Kitson, Sr., Bridgeman III

David M. Vezina, Bridgeman III

Darrell Turner, Bridge Superintendent

Christopher Locke, Crew #8 Supervisor

Dennis W. Hisler, Bridge Superintendent

Patrick McGranahan, Bridgeman

Richard Thoroughgood, Appellant

¹Continuing difficulties in the availability of witnesses and conflicting schedules of those representing the parties, forced significant delays in completing the hearing and finalizing a review of the testimony and evidence.

Mr. Thoroughgood was notified of his immediate demotion by letter dated March 8, 1995, signed by Harvey Goodwin, Administrator of the Bureau of Bridge Maintenance. The infractions listed in the letter as supporting such disciplinary action included "willful misuse of a supervisory position, willful insubordination, willful abuse of State property and a blatant disregard of appropriate safety practices in performing work." Mr. Thoroughgood denied that he had committed any of the alleged offenses, arguing that the incidents cited in support of the demotion were misrepresented by members of Crew #8 called to testify at the hearing. He argued that the crew to which he was assigned was not well "motivated" and that they resented his supervisory style.

The appellant argued that when he was assigned as superintendent of Crew #8, he was specifically instructed to "motivate" the crew, which he said had a reputation as a difficult crew that didn't like to be pushed. He argued that after working with the crew for several years, he asked for a transfer to another crew, and was told he would have to apply for the position when it became available. The appellant was upset when he learned that the bureau refused his request for a transfer, deciding instead to promote one of the foremen to be superintendent. The denial of his request prompted him to complain to the Commissioner's office. The appellant argued that Mr. Goodwin, the bureau administrator, was angry that one of his employees had gone over his head. He argued that Mr. Goodwin then began looking for something for which the appellant could be disciplined.

The appellant argued that the members of the crew did not like his "style of trying to move a job along" and that, "The records would suggest that they simply didn't like to be moved along." The appellant argued that all of the witnesses had some sort of axe to grind. He characterized Dave Vezina as typical of the crew, recalling an incident when he was directed to begin a bridge washing detail. He asserted that Mr. Vezina knew that the bridge had already been washed and oiled, that carrying out his instructions and washing the bridge again would undo the work which had been completed. Nonetheless, he carried out those orders, to the detriment of the project and the citizens of the State. The appellant argued that John Hunt openly disliked him, particularly after the appellant had selected Chris Lock, who had a supervisory style and work ethic like his own, to be

the new crew foreman. He also argued Darrell Turner seized upon the opportunity to get rid of the appellant as superintendent as a means of being promoted into his job.

The appellant argued that the Department of Transportation spent some six months digging up allegations and complaints, taking no action against him until they thought they might have enough charges to make the demotion stand. In his closing arguments, Attorney Vanacore wrote, "This shot gun approach toward killing the career of a good man is a result of the inability of the Department of Transportation to come up with one good bullet."

The Department of Transportation argued that until discovery of significant problems on the Bellarny River Bridge project, there had been no reason to investigate Mr. Thoroughgood's conduct or work performance. The Department argued that while Mr. Thoroughgood's difficulties with leadership appeared in his performance evaluations, management in the Bureau of Bridge Maintenance was unaware of the previous incidents or offenses. The Department argued that upon discovery of the problems on the Dover job, the Department undertook a review of the jobs Mr. Thoroughgood had supervised, and discovered that there had been similar, serious problems in the recent past.

The Department argued that their investigation revealed that Mi. Thoroughgood had willfully disobeyed express instructions regarding the disposal of concrete and other solid waste in environmentally sensitive work areas, and had actually led his crew in violating known procedures regarding solid waste disposal. The Department alleged that Mr. Thoroughgood willfully abused safety-sensitive equipment, and in at least one case, that abuse resulted in equipment being destroyed. The Department alleged that Mi. Thoroughgood willfully abused his supervisory position by leading his crew in misconduct in the manner in which work was performed. The Department also argued that on at least two separate occasions, Mr. Thoroughgood had ignored safety measures, endangering both his crew and members of the motoring public.

The Department argued that after assessing the seriousness of the alleged misconduct, the Board would find that any one of the offenses was sufficient, in and of itself, to warrant his immediate termination. However, the Department argued that because of his long career with the Bureau of Bridge Maintenance, the department had elected to demote him rather than terminating his employment. The Department argued that by demoting Mr. Thoroughgood to a position of Bridgeman III, his skills and experience could be utilized without making him responsible for environmental issues, project management, equipment, safety procedures, or supervision of a crew.

After considering the testimony, evidence and oral argument offered by the parties, the Board made the following findings of fact and rulings of law. Given the extent of the evidence, the Board has concentrated its findings on those incidents related to the Bellamy Bridge project:

FINDINGS OF FACT

1. As a Bridge Construction Superintendent, Mr. Thoroughgood was responsible for planning and scheduling work for bridges in his assigned area, providing input for repair schedules, prioritizing work, undertaking preventive maintenance, assuring that equipment and supplies were available for the scheduled work, and ensuring that the work performed was carried out in a manner which would provide for the safety of his crew and the members of the general public.
2. Mr. Thoroughgood had a reputation in his bureau and on his crew as an aggressive supervisor who was always pushing to get jobs done expeditiously.
3. When he was assigned as superintendent for Crew #8, the appellant found the crew difficult to motivate and unreceptive to his supervisory style. Disputes between him and his crew about how work was to be performed were not uncommon. Tension on the crew increased when Mr. Thoroughgood selected Christopher Locke as the crew foreman.
4. In the fall of 1994, Mr. Thoroughgood's crew was assigned to make repairs to the bridge deck and pier caps on the Bellamy River Bridge in Dover. Neither Mr. Thoroughgood nor his crew were familiar with the bridge or procedures normally used for containment of debris in a tidal area.

5. Darrell Turner, a Bridge Construction Foreman who was familiar with the Bellamy River Bridge, was assigned to work on the project with Mr. Thoroughgood. Mr. Thoroughgood resented the assignment of Mr. Turner to work on the project.
6. Mr. Thoroughgood described Mr. Turner as having "the reins" and being "in charge" of the project.
7. In preparation for repairs to the pier caps, Mr. Turner oversaw the production of steel reinforcements over which the concrete caps were to be formed. Without consulting Mr. Turner, Mr. Thoroughgood decided to decrease the size of the steel forms, believing that the finished form should be 4'6" in length rather than 5'.
8. The appellant cut the forms and welded them to achieve a finished length of 4'6", resulting in pier caps which were six inches smaller than the plan called for. Mr. Thoroughgood never saw a diagram, nor did he ask for one.
9. During repair of the bridge piers, Darrell Turner had ordered stock and designed column forms which called for having the walers "run by" at the corners. Mr. Thoroughgood chose to use a different design and different size for the columns, interlocking them instead with welded ties. The ties were not properly welded and the form failed, causing wet concrete to spill into the water.
10. During preparation of the bridge deck, Mr. Thoroughgood permitted the contractors pouring concrete to wash out their tremie tubes on the bridge deck. In the process of washing down the deck, more concrete was spilled into the water.
11. Crew #8 borrowed Spider staging during the course of repairing the bridge. In attempting to remove the staging, Mr. Thoroughgood directed his crew to lower the staging onto rafts so that it could be towed, assembled, to the shore. When the staging shifted on the raft, Mr. Thoroughgood continued with the towing operation. The staging twisted, was immersed in salt water, and sustained damage.
12. Mr. Thoroughgood neglected to report that the staging was damaged, expecting Mr. Locke to inform the yard from which it had been borrowed.

RULINGS OF LAW

- A. Per 1001.07 (b) of the Rules of the Division of Personnel provides for immediate demotion without prior warning when an employee commits an offense which threatens the safety of another employee or client or disrupts services provided by the agency.
- B. Per 1001.08 (a) of the Rules of the Division of Personnel provides for termination without prior warning when an employee engages in willful abuse or destruction of state property.
- C. Per 1001.08 (b) of the rules of the division of Personnel provides for immediate termination without prior warning when an employee engages in willful insubordination or willful misuse of a supervisory position.

DISCUSSION

The evidence in this case is bothersome in several respects. The appellant insisted that his crew's lack of "motivation," poor communication by his supervisors and administrators, and lack of direction from management in the Bureau of Bridge Maintenance were responsible for the problems disclosed during the Department's investigation. For instance, Mr. Thoroughgood testified that he was unfamiliar with the Bellamy River Bridge, and he did not receive clear instruction from management about the repairs to be undertaken. If that were true, the Board believes the appellant was responsible for ensuring that he understood the scope of the repair, the engineering expectations, and the extent of his authority in directing those repairs once Darrell Turner had been assigned to work with him on the project.

Mr. Thoroughgood testified that he was never sure exactly who was in charge of the Bellamy River Bridge repair. However, whenever Mr. Thoroughgood disagreed with Mr. Turner's methods, whether it involved the correct way to form a column or the size of the steel forms fabricated at Mr. Turner's direction for repair of the pier caps, Mr. Thoroughgood never consulted Mr. Turner. He simply ignored Mr. Turner's decisions and did it his own way. When the column form which Mr. Thoroughgood had designed failed, allowing wet concrete to spill into the water, Mr. Thoroughgood

blamed the individual who had welded the ties for that form. Mr. Thoroughgood insisted that he had never experienced a form failure. However, having taken it upon himself to alter the column form design, he had the ultimate responsibility for ensuring that the form ties were properly welded before the concrete was poured.

During the hearing, the appellant made every effort to discredit the testimony of Darrell Turner by casting him as an opportunist who took advantage of management's displeasure with the appellant, seizing on the opportunity to provide damaging information about the appellant as a means of securing his own promotion to the appellant's position. However, after questioning Darrell Turner's motives and his credibility as a witness, the appellant asks the Board to give great weight to Mr. Turner's testimony that Mr. Thoroughgood had taken adequate measures to contain concrete on the Bellamy Bridge project.

In support of its allegations, the Department of Transportation relied heavily on the testimony of Mr. Thoroughgood's crew members. However, in more than one instance, those same individuals testified that they had participated in the same activities which resulted in the appellant's demotion, such as shoveling solid waste including concrete and silica sand into environmentally sensitive tidal and river waters,. There was no evidence that any of those crew members refused to perform those tasks or made any attempt to report their supervisor's misconduct to management in the Bureau of Bridge Maintenance. The Board believes that supervisors have a higher level of accountability than their subordinates. However, the fact remains that those subordinates knew that they were engaging in improper or prohibited activities, yet there was no evidence that any of those individuals were disciplined for their misconduct.

The Board is reluctant to recommend that employees begin to make a regular practice of complaining about their supervisors and co-workers, or questioning their supervisors' orders. However, employees do have some responsibility for apprising management of practices which they believe to be improper, unsafe or illegal. Those employees who testified that Mr. Thoroughgood directed his crew to create "false" expansion joints, that Mr. Thoroughgood handled State property,

including tools and equipment, in an unsafe or destructive manner, and that he put his co-workers at risk by ignoring appropriate safety practices all had a responsibility to bring those issues to the attention management. While the failure of crew members to report such activities does not diminish their seriousness, it does provide compelling evidence of a breakdown in communications between Department management and its employees in the field.

DECISION AND ORDER

Insofar as the appellant was demoted without prior warning, the Board must be persuaded by a preponderance of the evidence that the appellant committed the alleged offenses, and that his conduct threatened the safety of another employee or client, or disrupted services provided by the agency. However, in disciplinary appeals, the appellant bears the burden of proof.

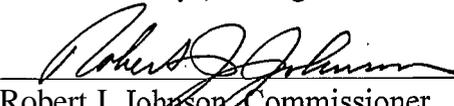
After considering the testimony and evidence, the Board voted to deny Mr. Thoroughgood's appeal. In so doing, the Board found that Mr. Thoroughgood misused his supervisory authority, directing the performance of work on the Bellamy River Bridge project which compromised the successful and safe completion of that project. The Board found that Mr. Thoroughgood disregarded explicit instructions concerning protection of an environmentally sensitive area by allowing concrete to be washed out on the bridge deck and subsequently washed into the water. The Board also found that Mr. Thoroughgood, who did not believe himself to be "in charge" of the project, directed his crew to prepare column forms different from those which Darrell Turner had approved, and that one of those forms failed, permitting concrete to spill into the tidal area. The Board found that Mr. Thoroughgood's decisions with respect to removal of the Spider Staging resulted in substantial damage to that staging. The Board further found that Mr. Thoroughgood compromised the safety of other departmental employees by failing to ensure that information about the damage to the staging was fully explained to the crew to which it was returned.

While the Board is not persuaded that the evidence would support an immediate termination without warning in this case, the Board believes that the Department of Transportation exercised its discretion in demoting the appellant to the position of Bridgeman III.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
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