

87-0-500

RECEIVED  
DIV. OF PERSONNEL  
THE STATE OF NEW HAMPSHIRE  
SEP 11 10 14 AM '87

SUPREME COURT

In Case No. 87-115 Appeal of Wayne Cassavaugh .....  
September 8, 1987  
the court upon ..... made the following order:

Case is remanded to the Personnel Appeals Board for  
reconsideration in light of Petition of SEA, Thomas  
Robinson, 129 N.H. \_\_\_\_\_ (Decided July 23, 1987).

Distribution: Personnel Appeals Board  
Robert T. Clark  
Attorney General's Office  
File

Ralph H. Wood,  
Clerk

# State of New Hampshire

PERSONNEL APPEALS BOARD  
Edward J. Haseltine, Chairman  
Gerald Allard  
Loretta Platt



EXECUTIVE SECRETARY  
Mary Ann Steele

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

88-D-107

## APPEAL OF WAYNE CASSAVAUGH

June 29, 1987

On June 9, 1987, the Personnel Appeals Board, Commissioners Haseltine and Platt sitting, heard the appeal of Wayne Cassavaugh, an employee of the New Hampshire State Prison, who was appealing his demotion from Unit Manager to Corrections Sergeant. This demotion was based on Mr. Cassavaugh's "marking up a caricature of a female employee of the prison by adding breasts to the picture and then joking about it with male staff and an inmate," and his discussing proceedings before a prison administrative review board after having been admonished by the chairperson not to do so. Mr. Cassavaugh was represented by SEA Field Representative Stephen McCormack. Warden Michael Cunningham appeared on behalf of the Prison.

At the beginning of the hearing, Mr. Cassavaugh stipulated that the events set forth in his letter of demotion dated March 31, 1987 had taken place, but that his demotion was in violation of the Rules of the Division of Personnel and that the discipline administered was not warranted.

Neither party submitted requests for findings and rulings. Accordingly, in addition to those facts set forth in the letter of warning, the Board made the following findings and rulings after reviewing the evidence presented.

On or about February 18, 1987, Mr. Cassavaugh was the Unit Manager of a prison unit housing sexual offenders. A prisoner confined to the sexual offenders unit had drawn caricatures of several unit staff. When another officer saw the caricature of a female staff person, he asked Mr. Cassavaugh, in the presence of the inmate, "Where are the breasts?" Mr. Cassavaugh proceeded to mark up the caricatures and joke about it with the other officer in the presence of the inmate and other staff. The female staff member, a counselor, did not see the marked-up caricature but was informed of the incident by another guard. She later found that this incident became known to other prisoners in the unit and impaired many of the counselling relationships which she had established.

The appellant contended at the hearing that this incident did not constitute sexual harassment and therefore the disciplinary action taken by the appointing authority was not warranted. He further argued that the implementation of the demotion had not been consistent with State personnel rules, specifically Per 308.02.

N.H. PERSONNEL APPEALS BOARD DECISION  
In the Matter Of:  
Wayne Cassavaugh

June 29, 1987  
page 2

The Board found both of these arguments to be without merit. Substantial evidence was presented of the negative effects upon the counselor's work created by the caricature incident. The Board was convinced of the negative impact of Mr. Cassavaugh's conduct upon the counselor.

The Board found that Mr. Cassavaugh's conduct on February 18, 1987 was highly inappropriate, particularly given his position as commanding officer of the unit. As the leader of the unit staff, Mr. Cassavaugh was a role model to both staff and inmates. His actions should have been supportive of his staff and beyond reproach. Instead, by subjecting a staff member, whether present or not, to ridicule, he impaired her ability to function as a counselor, thus jeopardizing the integrity of the prison rehabilitative process. Given these findings, the Board concluded that Mr. Cassavaugh's demotion was correctly implemented pursuant to Per 308.02(c). The Board noted that the requirements set forth in Per 308.02(a) and (b) were inapplicable to two classes of actions: those in which demotion is imposed in lieu of discharge or in emergency cases where immediate demotion without warning is necessary to improve the efficiency and integrity of State service. The Board found that the appellant's conduct supported action taken for either reason. Given the evidence presented that the appellant's actions had undermined counselling relationships which then had to be re-established, the Board found that the appellant's immediate demotion without warning was necessary both to preserve the integrity and improve the efficiency of the unit to which Mr. Cassavaugh was assigned. The Board further found that the appellant's conduct could have resulted in his discharge.

For the foregoing reasons, the Board voted to uphold the appointing authority's action in demoting Mr. Cassavaugh and to deny the appeal.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

cc: Stephen McCormack, Field Representative  
State Employees' Association

Warden Michael J. Cunningham  
N. H. State Prison

Virginia A. Vogel  
Director of Personnel

# State of New Hampshire

PERSONNEL APPEALS BOARD  
Edward J. Haseltine, Chairman  
Gerald Allard  
Loretta Platt



EXECUTIVE SECRETARY  
Mary Ann Steele

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

88-4-107

## PROMOTION APPEAL TRIBUNAL DECISION

In the Matter Of:

WAYNE CASSAVAUGH

August 28, 1986

The Promotion Appeal Tribunal met on Thursday, July 17, 1986 to hear the appeal of Lt. Wayne Cassavaugh relative to his non-selection to the position of Corrections Captain at the New Hampshire State Prison! Department of Corrections.

Lt. Cassavaugh was represented by Stephen J. McCormack, Field Representative of the State Employees' Association. The Prison was represented by Warden Michael J. Cunningham.

Mr. McCormack testified that a selection procedure had been established by Warden Cunningham and in using that established procedure Lt. Cassavaugh had received the greatest number of points and, "...should be promoted to Captain." He presented several exhibits to substantiate his testimony. He also stated that Lt. Cassavaugh had been in front of a Promotion Board several times and this time came out the highest and should be promoted.

Warden Cunningham stated that the selection procedure requires the scores of all applicants be submitted to the Warden who will select the individual to be promoted. The Warden has the right and the responsibility to select the best possible person for the available job. He also called upon Major George Ash and David J. O'Connor, Administrator of Security. They had both sat on the Promotions Board and both testified as to the criteria for selecting the Corrections Captain! who was to be the Third Shift Supervisor.

After hearing all testimony, the Board determined that all appropriate provisions of the "Rules of the Department of Personnel" were properly followed and Lt. Cassavaugh's appeal is, therefore! denied.

The Board also wants to emphasize that the promotion procedure is not an automatic and mechanical point count. If it were a computer could

PROMOTION APPEAL TRIBUNAL DECISION

In the Matter Of:  
Wayne Cassavaugh

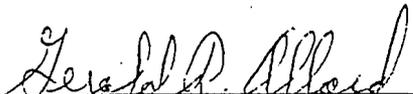
page 2 .

handle all promotions.

In addition, Lt. Cassavaugh's non-selection for this position in no way reflects upon his work history and experience. It simply means he was not considered the best possible candidate for this specific position.

DATED:

August 28, 1986

  
\_\_\_\_\_  
GERALD ALLARD, Chairman  
Promotion Appeal Tribunal

mas

cc: Stephen J. McCormack, SEA  
Warden Michael Cunningham, State Prison  
Conrad Chapman, Dept. of Corrections