

State of New Hampshire



**PERSONNEL APPEALS BOARD**

25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

Appeal of Frank Emiro  
Docket #2003-D-007

Department of Transportation

Issued: April 23, 2007

Attached is the New Hampshire Personnel Appeals Board's decision in the Appeal of Frank Emiro, NH PAB Docket #2003-D-007.

Although the decision was drafted by a member of the Board and distributed to the Board members for review and edit after the hearing was concluded, the members did not approve the final draft of the decision for several months. During that time, there were several personnel changes within the Personnel Appeals Board and the Division of Personnel, which further delayed publication of that decision. The Board and its staff sincerely apologize for the obvious inconvenience to the parties.

Respectfully,

A handwritten signature in cursive script that reads "Mary Ann Steele".

Mary Ann Steele, SPHR

Executive Secretary to the NH Personnel Appeals Board

cc: Karen Levchuk, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Frank Emiro, PO Box 285, 110 Rockingham Rd., Londonderry, NH 03053  
Jean Chellis, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303  
Frances Buczynski, HR Administrator, Dept. of Transportation, 7 Hazen Dr., Concord,  
NH 03302-0483  
Attorney General's Office/Transportation Bureau, 33 Capitol St., Concord, NH 03301

# State of New Hampshire



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## **APPEAL OF FRANK R. EMIRO**

**Docket #2003-D-007**

**Department of Transportation**

Dated: February 10, 2005

Issued: April 23, 2007

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Urban) met in public session on Friday, September 26, 2003, under the authority of RSA 21-I:58, to hear the appeal of Frank R. Emiro, an employee of the New Hampshire Department of Transportation. Mr. Emiro was represented by Jean Chellis, Senior Field Representative, SEA. He appealed a letter of warning dated May 3, 2002, which was amended during the informal review process on February 12, 2003. Ned Lucas, Esq., Assistant N.H. Attorney General, represented the State.

The record of the hearing in this matter consists of pleadings submitted prior to the hearing, the audiotape recording of the hearing held on offers of proof on the merits of the appeal, and the documents admitted into evidence without objection as follows:

Appellant's Exhibits

- Exhibit 1 A 5/3/02 two-page letter of warning to Mr. Emiro
- Exhibit 2 A 5/3/02 (amended 2/12/03) four-page letter of warning to Mr. Emiro along with a copy of the 2/14/03 cover letter from Ms. Buczynski to Ms. Welch
- Exhibit 3 A three-page statement by Mr. Frank Emiro re the 4/19/02 incident at the Merrimack patrol shed
- Exhibit 4 A six-page DOT Investigation Report re Emiro vs. The Bureau of Turnpikes #2002-03A
- Exhibit 5 A five-page performance summary for Mr. Emiro dated 1/2/02
- Exhibit 6 A two-page 12/14/01 letter to Mr. Jonathan Hanson from Mr. Frank Emiro re response to letter of counsel.

Exhibit offered by Department of Transportation

- Exhibit A A three-page DOT letter of counsel addressed to Mr. Emiro dated Nov. 14, 2001

**FACTS**

As no testimony was heard at the hearing, the facts are necessarily taken from the exhibits as submitted. Those exhibits are incorporated herein by reference.

The State's version of the facts concerning an incident on April 19,2002, between Mr. Emiro, Highway Maintenance II, and his supervisor, Kenneth Knowlton, Highway Patrol Foreman are primarily set out in Exhibit 2 being the letter of warning dated May 3,2002, as amended February 12,2003. Appellant, Frank Emiro's, statement appears as Exhibit 3,

It should be noted that the original letter of warning dated May 3,2002, alleged a violation of Rules of the Division of Personnel, Per 1001.03 (a) (5) for exhibiting physically and

verbally abusive behavior in the workplace, including but not limited to injuring or attempting to injure any person in the workplace.

The parties engaged in the following informal process, which is summarized as follows:

|                  |  |
|------------------|--|
| May 6,2002       | Mr. Emiro Received 5/3/02 Letter of Warning (LOW)  |
| May 17,2002      | Ms. Welch appealed LOW to Mr. Goodwin (Step I)   |
| June 3,2002      | Ms. Welch appealed LOW to Lyle Knowlton (Step II)  |
| June 19,2002     | Step II Meeting held by Mr. Knowlton   |
| July 18,2002     | Mr. Knowlton wrote to Ms. Welch requesting approval to delay the Step II response pending completion of the department's internal investigation.   |
| October 17,2002  | Ms. Welch agreed to extend time limits until completion of the investigation   |
| December 5,2002  | The Department's Investigation Report was forwarded to Mr. Emiro   |
| December 26,2002 | Ms. Welch appealed LOW to Carol Murray (Step III)  |
| January 9,2003   | Commissioner Murray wrote to Ms. Welch notifying her that Gil Rogers would handle the Step III meeting   |
| January 22,2003  | Lyle Knowlton wrote to Ms. Welch <u>issuing a late Step II decision</u> stating an amended letter of warning would be sent under separate cover  |
| February 7,2003  | Step III Meeting held by Gil Rogers  |
| February 14,2003 | Human Resource Administrator Frances Buczynski wrote to Ms. Welch enclosing an amended letter of warning that indicated it was <u>amended February 12,2003</u>   |
| February 20,2003 | Mr. Rogers wrote to Ms. Welch stating, "I have read the amended letter of warning dated February 14,2003 ..." "Our meeting as described above affirms the action taken for failure to meet any work standard." |
| March 7,2003     | Ms. Welch appealed to Joseph D'Allesandro (Step IV)  |
| April 16,2003    | Director D' Alessandros e-mailed Ms. Welch denying the appeal  |
| April 30,2003    | Ms. Chellis on Mr. Emiro's behalf, filed an appeal to the Personnel Appeals  |

## Board

As appears from the documents referenced above, the investigation undertaken during the informal process, resulted in a finding that although Mr. Ken Knowlton "thought" Mr. Emiro was going to swing at him during the incident, he withdrew his original statement and denied that Mr. Emiro hit or threatened to hit him. (See Exhibit 4).

This new evidence resulted in the amended letter of warning being issued in February, 2003, which alleged only a violation of Per 1001.03 (a) (1), failure to meet any work standard.

### **POSITION OF THE PARTIES**

Mr. Emiro disputes the remaining allegation that he failed to meet the work standard. He further argues that the letter of warning, as amended, is "improper and highly inappropriate." There was no citation to any authority for that position.

The position of the State is that the letter of warning was properly amended during the informal process based on new evidence discovered during the State's investigation of this incident.

### **RULINGS OF LAW**

- A. Per 1001.03 (a) (1) authorizes an appointing authority to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance or misconduct for offenses including, but not limited to: (1) Failure to meet any work standard.

B The NH Department of Transportation complied with the provisions of Per 1001.03 in issuing a letter of warning to Mr. Emiro.

**DECISION AND ORDER**

After consideration of the pleadings, documentary evidence submitted, and the arguments of their representatives, the Board determined that there were sufficient grounds for a finding that Mr. Emiro failed to meet the work standard by engaging in conduct which was uncooperative, antagonistic and contributed to the verbal confrontation with his supervisor on April 19,2002.

On the evidence submitted, the Board on September 26,2003, voted unanimously that the letter of warning dated May 3,2002, as amended February 12,2003, was properly issued and was justified for failing to meet work standards as set forth in Rule Per 1001.03 (a) (1).

The Personnel Appeals Board

/s/  
Philip P. Bonafide, Acting Chair

/s/  
Robert Johnson, Commissioner

/s/  
Anthony Urban, Commissioner