

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF DENNIS LAGERTE Docket 889-D-2

August 18, 1989

The Personnel Appeals Board (McNicholas, Cushman and Scott) met on Wednesday, July 19, 1989, to hear the demotion appeal of Dennis Lacerte. Mr. Lacerte was represented by Pierre A. Planchet, an employee of the Department of Corrections. The agency was represented by Viola Lunderville, Administrator for the Bureau of Community Corrections.

Facts:

Appellant is an employee of the Department of Corrections. Prior to January 18, 1989, he held the rank of Corrections Corporal in the Minimum Security Unit of the Skate Prison. On January 18, 1989, he was demoted to Corrections Officer as a result of an incident that will be discussed below. Appellant took a timely appeal of that decision.

The demotion resulted from an incident that occurred on December 8, 1988, between Appellant and his superior officer, Lieutenant Perry. On December 1, Appellant had submitted a request for annual leave for two weeks in February. On December 7, having heard nothing about his request, Appellant asked Acting Sergeant Archambault to find out about the status of the leave request.

On December 8, at the start of Appellant's shift, Archambault informed Appellant that his leave request had been denied by Perry. Appellant immediately called Perry at home to discuss the leave denial. Although it was approximately 11:00 p.m., Perry had indicated that officers could call him at home, and no real objection had been raised by anyone about the lateness of the hour.

During the telephone conversation, Perry informed Appellant that he had decided to deny all leave until he had put together a seniority list so that Perry could more easily and equitably decide leave requests. The list was eventually generated in January.

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Perry claims that Appellant shouted and swore at him during the telephone conversation. Appellant denies that he did. In support of his claims, Perry offers the hearsay statement of his wife. In opposition, Appellant offers the affidavit of Corrections Officer Haney, who apparently overheard Appellant's end of the conversation. Both parties agree, however, that at the end of the conversation, Appellant told Perry he would "go over [Perry's] head".

After Appellant hung up, Perry decided to go to the Prison to discuss the matter in person with Appellant. When he got to the Prison, he asked Appellant to speak with him in his office. Perry claims Appellant threw down his clipboard and sarcastically said "yes sir". In any case, the two of them went into Perry's office to discuss the matter.

While in Perry's office, the two got into a shouting match. At one point, apparently in an attempt to calm the situation, Perry suggested to Appellant that he was reacting childishly to the situation. Not surprisingly, at least in retrospect, this had the opposite effect.

Appellant left the office, and Perry followed him out. Perry told Appellant to go back in the office; and Appellant refused, stating that he did not want to be called names. When Perry indicated that he was ordering Appellant back into the office, Appellant acquiesced. Perry also described a finger-pointing incident during the exchange outside the office.

Corrections Sergeant Hanson also testified about when happened when Perry and Appellant had their confrontation. He confirmed that Appellant went back into the office only when directly ordered to do so, that both Perry and Appellant were shouting at each other during the first discussion in the office, and that things calmed down when they went back into Perry's office.

Hanson testified that he could not hear profanity while the two were in the office. As noted earlier, Archambault stated he overheard no profanity while Appellant was on the telephone. Accordingly, the Board finds that any profanity that may have occurred was not overheard by any other officer or inmate.

Shortly after the incident, Appellant was transferred out of the Minimum Security Unit, and therefore out from under the supervision of Perry. At the new assignment, Appellant was apparently granted his requested two weeks leave.

After an investigation, the Warden decided to demote Appellant. In reaching this decision, the Warden apparently followed the recommendation of the Unit Manager, John Sanfilippo, who felt the actions amounted to insubordination and justified the demotion. Perry testified that he merely reported the incident and left the disciplinary decision to his superiors.

Standards:

Appellant was demoted without prior warning. Under Per 308.02(c), the appointing authority need not give a warning "in the case of an employee who is demoted in lieu of discharge".

The appointing authority justifies this immediate demotion under the optional discharge provisions of RSA 308.03(2)(b). Under that provision, depending upon "the seriousness of the violation ... immediate discharge without warning may be warranted [for] willful insubordination."

Discussion:

Two facts stand out from the evidence presented. On one hand, when given a direct order by his superior officer, Appellant obeyed. On the other hand, Appellant clearly acted disrespectfully to his superior officer.

The Board had no difficulty believing Appellant to be an easily excitable person. Indeed, at the hearing his own representative had difficulty assisting him in his testimony, because of Appellant's intense desire to say his piece. The Board can easily imagine how, under the circumstances, the situation on December 8th quickly got out of hand. While the matter could perhaps have been handled more diplomatically by Perry, the Board attributes most of the responsibility to Appellant.

Nevertheless, the Board does not feel that the disrespect shown by Appellant, while clearly wrong, was of such seriousness as to justify immediate discharge. For support of this conclusion, the Board looks to Per 308.03 (3) which describes other offenses for which only a letter of warning may be issued. Included in the list are "obscene language" and "lack of cooperation".

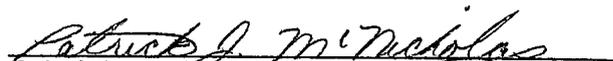
The Board recognizes that the State Prison may present special circumstances since it has a para-military character. Since little of Appellant's outbursts were witnessed by other officers or inmates, however, and did not appear to cause long term damage to morale or discipline at the Prison, the Board is reluctant to conclude that this is more than an isolated incident, insufficiently serious to justify immediate discharge.

If the incidents were insufficiently serious to justify immediate discharge under the optional discharge provisions of the rules, they were insufficient to justify immediate demotion. Accordingly, the State Prison is

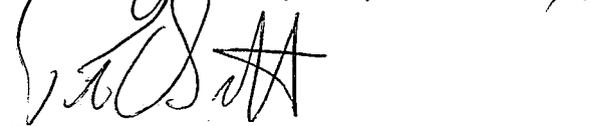
ordered to reinstate Appellant to the rank of Corrections Corporal. The letter of January 18, 1989, shall be treated by the Prison as a warning for disciplinary demotion under Per 308.02(a). Appellant should be aware that the Prison may well deal severely with any subsequent outbursts.

The Board also notes that the demotion did not appear to comply with Per 308.02(b) which requires prior notification of the demotion "at least 14 calendar days prior to the effective date of the action".

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


George R. Cushman, Jr., Member


Peter C. Scott, Alternate

cc: Pierre Planchet, Steward
Department of Corrections

Viola Lunderville, Administrator
Bureau of Community Corrections

Virginia A. Voyel
Director of Personnel