

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF RAYMOND PROULX

Docket #96-D-5

New Hampshire State Liquor Commission

August 15, 1994

The New Hampshire Personnel Appeals Board (Miller, Rule and Barry) met Wednesday, July 17, 1996, under the authority of RSA 211:58, to hear the appeal of Raymond Proulx, an employee of the Liquor Commission. Mr. Proulx, who was represented at the hearing by SEA Director of Field Operations Thomas Hardiman, was appealing an August 31, 1995, written warning under the provisions of Per 1001.03 (a)(1) for unsatisfactory work – failing to meet the work standard. George Liouzis, Human Resources Administrator, appeared on behalf of the Liquor Commission. The appeal was made on offers of proof by the representatives of the parties. The parties also submitted documentary evidence including the August 31, 1995, written warning, a January 15, 1996, Procedure for Purchasing at Retail Liquor Stores, documents detailing Mr. Proulx's request for informal settlement of his appeal, and a February 26, 1996, letter from Thomas Hardiman to John Bunnell, Stores Operation Director, concerning disciplinary action against Mr. Proulx and another Union Steward.

Mr. Liouzis argued that the Liquor Commission issued a written warning, the least severe form of discipline recognized by the Personnel Rules, after receiving a complaint that Mr. Proulx had told a customer, "You're a day late and a dollar short." Mr. Liouzis asserted that by treating a customer in a rude and unprofessional manner, Mr. Proulx made an error in judgment which warranted a written warning. He argued that sales and customer service are the mission of the Liquor Commission. He said that the customer found Mr. Proulx's remark to be sufficiently offensive that it prompted him to lodge a complaint directly with the supervisor of Stores.

Mr. Hardiman argued that the appellant, an employee with more than 25 years of service with the Commission, was simply referring to the January 15, 1990, Sales Procedure that required all on-premise licensees to place telephone orders at least 24 hours in advance of an expected pick-up when the order exceeded 36 bottles. In his November 22, 1995, notice of appeal, Mr. Proulx stated, "Woodsky's Restaurant [whence the complaint emanated] was aware of the policy and yet they tried to have same day service as often as possible. My comment of 'you're a day late and a dollar short' was only meant to put emphasis on the policy. It was not meant to be rude. It may have been misinterpreted by a person who was seeking instant service from an over-worked and under-manned store."

Mr. Hardiman asserted that when the Liquor Commission investigated the complaint against Mr. Proulx, it allowed personality to get in the way of good management and common sense. He argued that the Store Supervisor who investigated the incident resented Mr. Proulx's frequent absences from work because of his involvement with the S.E.A. union negotiating team. He asserted that several months earlier, the supervisor who recommended the warning had also given Mr. Proulx an unfair performance evaluation which the Liquor Commission ultimately had ordered removed from his file. He said that the supervisor abused his authority and should not have been assigned to investigate the incident or recommend disciplinary action.

Mr. Liouzis responded to the appellant's arguments saying that the 1990 Sales Procedure was obsolete, and was no longer distributed to licensees. He said that the policy was adopted before the invoicing system had been computerized, and larger orders could be handled at the stores without advance notice. He also said that even if the policy were still in effect, telling a customer that he was "a day late and a dollar short" was a poor way of explaining Liquor Commission policy. Finally, he argued that when a customer wants to purchase something, Commission employees should be ready to complete the sale. He asked the Board to find that Mr. Proulx's conduct failed to meet the work standard and warranted a written warning.

Having considered the documentary evidence, oral argument and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. Mr. Proulx is a veteran Liquor commission employee with a record of approximately 25 years of service.
2. On August 11, 1995, at approximately 9:45 a.m., Steve Yanosky, owner of Woodsky's Restaurant, attempted to place a telephone order for roughly \$700 worth of products.
3. Robert Gaffney, the clerk who took the original call from Woodsky's explained that he was alone in the store at that time. He asked the customer to call back later.
4. Mr. Proulx arrived at work at about 11:15 a.m. and discovered that there had been an error in scheduling, leaving the store short-handed.
5. Mr. Proulx set up his register and relieved the first clerk for a break at approximately 11:30 a.m..
6. Woodsky's Restaurant called as directed at 11:30 with its liquor order. Mr. Proulx said he was alone at the register and couldn't get the order at that time. Thinking that he was speaking with the bartender, he remarked that, "you're a day late and a dollar short, like usual." (See Proulx memo, 8/27/95) During the conversation, Mr. Proulx also told Mr. Yanosky that if he didn't like it, he should call the Liquor Commission.
7. Although it is not clear from the evidence whether Mr. Yanosky called the Commission to complain of Mr. Proulx's comment or about the process of phoning in his orders, he did tell the Director of Stores that he found Mr. Proulx's comment insulting.
8. Mr. Proulx admitted to making the offensive remark, but insisted it was only a prelude to his attempt to explain why orders must be called in 24 hours before pick up, and why Woodsky's should not continue to expect same day service.

Rulings of Law

1. Per 1001.03 (a) (1) provides that an appointing authority is authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance for failing to meet the work standard.
2. Per 801.03 (a) (5) lists "Communication skills" as a performance evaluation category, "...including the capacity to get along with co-workers and to express job-related information effectively."
3. Written warnings remain effective as a basis for further disciplinary action for a period of two years from the date they are issued. [Chapter Per 1000]

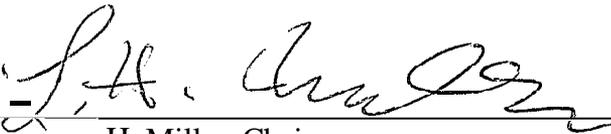
Decision and Order

Liquor Commission stores are the only retail facilities in the State authorized to sell hard liquor. As such, a customer who feels he has been treated rudely by an employee of the nearest retail outlet has little opportunity to simply find another supplier. Liquor Commission employees, particularly those like Mr. Proulx who have records of long service with the Commission, should be sensitive to that fact. If Mr. Proulx had a continuing complaint about last minute ordering by Woodsky's restaurant, he should have taken the issue up with the Director of Stores Operations, not with the customer. Even if the Liquor Commission policy required large phone orders to be made 24 hours in advance of pick-up, telling a customer, "You're a day late and a dollar short, like usual," is discourteous and unprofessional. It also forms a poor framework for politely and carefully explaining any policy.

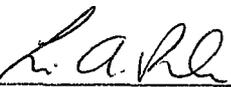
While the Board appreciates that every workplace is "over-worked and under-manned from time to time, those conditions do not excuse rude or discourteous treatment of customers, clients or fellow employees. Therefore, on the evidence, oral argument and offers of proof, the Board found that Mr. Proulx's remark was sufficiently offensive to warrant a written warning for unsatisfactory work. The Board found that the Liquor Commission acted within its discretion in

using the written warning as the least severe form of discipline to correct Mr. Proulx's performance. Accordingly, his appeal is denied.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Lawrence H. Miller, Chairman



Lisa A. Rule, Commissioner



James Barry, Sr., Commissioner

cc: Virginia A. Lamberton, Director of Personnel
George E. Liouzis, Human Resources Administrator, N.H. State Liquor Commission
Thomas F. Hardiman, SEA Director of Field Operations