

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF JOHN SUPRY Response to State's Motion for Reconsideration

December 28, 1988

On November 4, 1988, Assistant Attorney General Douglas N. Jones, on behalf of the Division of Plant and Property Management, filed with the Personnel Appeals Board a Motion for Reconsideration of the Board's October 28, 1988 decision in the letter of warning appeal of John Supry. That order reduced the written warning for unsatisfactory work and lack of cooperation to a verbal warning for poor judgment.

Upon consideration of that motion, and the record before the Board in Mr. Supry's appeal, the Board, Commissioners Brickett, Cushman and Platt sitting, voted at its meeting of December 13, 1988, to affirm its decision of October 28, 1988. In so doing, the Board ruled as follows:

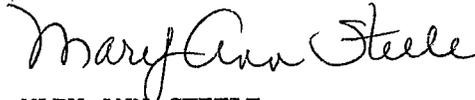
1. Per 308.03 (4) describes the manner in which "Other Offenses" such as unsatisfactory work and lack of cooperation are to be handled. (See Per 308.03 (3) e. and f.) The agency's presentation at the hearing of August 23, 1988 did not persuade the Board that "oral warnings have been, are, or would be ineffective or insufficient in view of the attitude of the employee, and/or the nature of the offense," (See Per 308.03(4)b.)
2. The Board need not explain why or if it "rejected the Division's evidence in favor of the appellant's." The Board did, however, in its decision of October 28, 1988 state its determination to not "condone or sustain issuance of disciplinary actions in which the agency appears unwilling to present all the pertinent facts which might support such an action."
3. The Agency did not provide evidence or testimony at the hearing in support of its allegation in the Motion for Reconsideration that "Mr. Supry's poor judgment in refusing to unload the truck and in stirring up a controversy with Jerry Boucher was the very basis of the Division's claim of 'unsatisfactory work performance.'" The agency did not prove that Mr. Supry refused to unload the truck, nor did the agency prove that Mr. Supry had stirred up a controversy. Finally, the Board is not bound to limit its findings to the offenses listed in Per 308.03 (3). Per 308.03(3) refers specifically to "Other offenses, such as..." The Board's decision found that Mr. Supry's poor judgment warranted a verbal warning associated solely with his decision to contact Mr. Boucher rather than Mr. Corson when he found he was unable to unload the truck.

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4. Neither statute nor rule requires that the Board's decisions be rendered in the format recommended by the Office of the Attorney General. Further, the decision clearly states what members of the Board heard Mr. Supry's appeal and that they did vote to grant the appeal.
5. The Director of Personnel's letter of June 9, 1988 was submitted as an exhibit in the hearing of John Supry and is, therefore, germane to Mr. Supry's appeal and the Board's deliberation on that appeal.
6. The present record does not "plainly [demonstrate] that Mr. Supry did perform his job (i.e., unloading the truck) in an inadequate manner on November 20, 1987." The Board's finding to the contrary is plainly stated in its decision of October 28, 1988, that "the Division of Plant and Property Management had provided insufficient evidence to justify sustaining the warning as issued."

Based upon the foregoing, the Board voted to deny the Motion for Reconsideration.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE

cc: Douglas N. Jones
Assistant Attorney General

Dennis Martino, Representative
State Employees' Association

Michael Barlow, Acting Commissioner
Department of Administrative Services

Virginia A. Vogel
Director of Personnel

State of New Hampshire



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APPEAL OF JOHN SUPRY

October 28, 1988

On Tuesday, August 23, 1988, the Personnel Appeals Board consisting of Commissioner Brickett and Cushman, heard the letter of warning appeal of John Supry, an employee of the Division of Plant and Property Management (hereinafter "Division") of the Department of Administrative Services. Mr. Supry, who had appealed a December 21, 1987 letter of warning for unsatisfactory work and lack of cooperation, was represented at the hearing by SEA Representative Dennis Martino. Douglas N. Jones, Assistant Attorney General, represented the Division.

The Division alleged that on November 20, 1987, Mr. Supry was ordered to take a load of waste materials to the Concord Landfill. Rather than complete the assignment as directed, the appellant went to the Plant and Property Warehouse on Hills Avenue where he spoke with Mr. Boucher, his immediate supervisor's superior. When the appellant requested Mr. Boucher's cooperation in securing assistance for him in completing his assignment, Mr. Supry was ordered back to the White Farm to speak with his own immediate supervisor. Mr. Corson, his supervisor, then took over the assignment and completed unloading the truck at the Landfill without any difficulty.

The appellant alleged that the load of waste materials he had been instructed to unload at the Concord Landfill had shifted in the bed of the truck, jamming the tailgate, and making it impossible for him to push the materials off the truck. He further argued that because of the types of materials in the truck and the manner in which they had been loaded, it was impossible for him to remove the materials and manually unload them over the side of the truck or over the tailgate without some assistance. He stated that he knew there was no one available at the White Farm, other than his supervisor who was working alone, from whom he could get help. He therefore decided to seek assistance from Mr. Boucher or one of the employees at the Warehouse rather than returning directly to the White Farm.

Subsequent to issue of the original letter of warning by the appellant's supervisor, Mr. Corson, the appellant filed an in-house appeal. After meetings between the appellant's SEA Representative, the appellant's supervisor, Timothy Gibney (Director of Plant and Property) and the appellant himself, both Director Gibney and Stephen M. Kennedy, Commissioner of Administrative Services, decided to uphold the warning as justified. The appellant, his representative, Mr. Gibney and Personnel Director Virginia

Vogel then met as a last appeal step prior to bringing the appeal before the Board. In a letter dated June 9, 1988, Personnel Director Vogel issued her decision to sustain the written warning, stating that, "Mr. Supry has had other instances of not completing tasks which necessitated other personnel doing same."

Based upon all the evidence and testimony presented, the Board voted unanimously to grant Mr. Supry's appeal, ordering that the letter of warning be removed from the appellant's personnel file. In reaching that decision, the Board determined that the Division of Plant and Property Management had provided insufficient evidence to justify sustaining the warning as issued.

It was apparent to the Board during the course of the hearing that a good working relationship does not exist between the appellant and the Division of Plant and Property Management. It was equally apparent that the agency was experiencing some difficulty with this employee regarding "chain of command" and response to supervision. The agency did not, however, warn Mr. Supry for his attitude nor did the agency warn the appellant for poor judgment. The letter as issued warned the employee for unsatisfactory work and lack of cooperation.

Regarding the issue of unsatisfactory work, the Board found this charge unsubstantiated. The appellant alleged that the load in the truck had shifted. Mr. Corson's ease at unloading the materials in the vehicle without difficulty neither proves or disproves this contention. Although Personnel Director Vogel referred in her letter to "other instances of not completing tasks," the Division failed to offer this argument or documentation of previous, similar instances which might lead the Board to question the appellant's credibility. Therefore, the Board voted that a letter of warning for unsatisfactory work was not justified in light of the record before it.

The second charge was lack of cooperation. The Division's justification for a warning on this basis was the appellant's failure to report immediately back to his supervisor Mr. Corson, reporting instead to Mr. Corson's supervisor at the Warehouse, Mr. Boucher. In the Board's judgment, appellant's failure to operate within the apparent chain of command does not, in and of itself, justify a formal warning for lack of cooperation. Such failure might be construed as poor judgment or, in the extreme, insubordination had the agency provided evidence that the appellant had previously been warned concerning chain of command. The testimony and evidence provided by the Division, however, was insufficient to sustain the warning as issued and did not provide a history of such behavior to confirm intent on the appellant's part to be uncooperative or knowledge that such behavior constituted lack of cooperation.

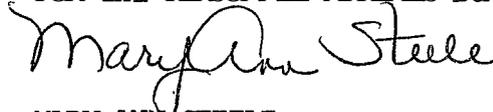
While Mr. Supry may have conducted himself in such a manner as to warrant receipt of a formal warning, the Division of Plant and Property Management

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failed to substantiate their allegations of unsatisfactory work and lack of cooperation. The Board is hesitant to rescind or overturn management decisions which demand corrective action of a problem employee. The Board cannot, however, condone or sustain issuance of disciplinary actions in which the agency appears unwilling to present all the pertinent facts which might support such an action.

Based upon the foregoing, the Board voted to grant this appeal, ordering removal of the letter of warning from Mr. Supry's personnel file. The Board did, however, vote to incorporate this decision in Mr. Supry's personnel file as documentation of a verbal warning for poor judgment and to caution the appellant that this decision in no way bars the Division from taking disciplinary action in accordance with the Rules of the Division of Personnel should such action be justified.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE
Executive Secretary

cc: Dennis Martino, Representative
State Employees' Association of N.H.

Douglas N. Jones, Assistant Attorney General
Office of the Attorney General

E. Timothy Gibney, Director
Division of Plant and Property Management