

State of New Hampshire



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

Appeal of Brian Beaudin

Docket #97-P-2

Department of Transportation

Response to Appellaizt's Request for Relzeariuzg and State's Objectionz

April 6, 1998

On March 16, 1998, the Personnel Appeals Board received Mr. Beaudin's request for rehearing of his appeal of non-selection to the position of Highway Patrol Foreman, which the Board had denied by order dated March 4, 1998. The State's Objection to Motion for Rehearing was received on March 23, 1998.

A party requesting rehearing must set forth fully every ground upon which it is claimed that the decision or order relied upon is either unlawful or unreasonable. If, in the Board's opinion, good cause is established therein, it may grant the request. Having reviewed the appellant's Request and the State's Objection in conjunction with the Board's decision in this matter, the Board voted unanimously to deny Mr. Beaudin's request for rehearing. In so doing, the Board found the following:

1. The Board's incorrect attribution of Mr. Charland's remark about "someone up north" having "a problem" has no effect on the Board's substantive findings.
2. Within the framework of the Personnel Rules, written warnings are the only kind of warnings recognized for the purposes of discipline.
3. The document marked "confidential" which Appellant described as "liable" [sic] was offered into evidence by the appellant without objection from the State.
4. - 7. While it is clear that Mr. Beaudin disagrees with the Board's assessment of the evidence and its decision denying his appeal, such disagreement does not constitute "good reason" for a

rehearing, nor does it establish a basis upon which to claim that the order complained of is unreasonable or unlawful.

The appellant's allegations that the Board had to ignore the facts in order to reach its decision, and that its decision was politically motivated are unsupported by any credible evidence or argument. Per 602.02 (a) of the Rules of the Division of Personnel provides that, "Whenever possible, selection by the appointing authority to fill a vacancy shall be made from within an agency and shall be based upon the employee's: (1) Possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position; and (2) Capacity for the vacant position as evidenced by documented past performance appraisals." Per 602.02 (b) of the Rules also provides that, "The most qualified candidate for the position, in the opinion of the appointing authority, shall be selected from designated groups of employees..." (Emphasis added.)

At his first hearing, Mr. Beaudin alleged that the Department did not consider his knowledge, skills, abilities or personal characteristics, or capacity for the vacancy as evidence by documented past performance appraisals. He alleged that before considering any of those factors, the Department violated the Rules of the Division of Personnel by pre-selecting Mr. Wright for the vacancy. He alleged that the interview panel met in the Lancaster Patrol Headquarters prior to the interview for the specific purposes of formulating a plan to ensure that Mr. Beaudin would not be selected for promotion. He also alleged that after his appeal was filed, members of the crew had been threatened to keep them from testifying on the appellant's behalf at a hearing before the Board.

Given the seriousness of the allegations, and the appellant's offers of proof, the Board scheduled a second hearing for the specific purpose of receiving evidence relative to those allegations to determine whether or not the Department of Transportation violated the Rules of the Division of Personnel by denying Mr. Beaudin promotion to Patrol Foreman. Pages 1 - 9 of the decision provide a summary of the testimony, documentary evidence and oral argument offered by both parties and considered by the Board in reaching its decision.

Whereas the evidence failed to support those allegations, or prove that the agency had abused its discretion in selecting Dean Wright for promotion, the Board voted unanimously to deny Mr.

Beaudin's appeal. That decision is hereby affirmed. In consideration of the State's objection, and for the reasons set forth above, the Appellant's request for a rehearing is denied.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

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APPEAL OF BRIAN BEAUDIN

Docket #97-P-2

Department of Transportation

March 4, 1998

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met on July 2, 1997 and August 6, 1997, under the authority of RSA 21-I:58, to hear the appeal of Brian Beaudin, an employee of the Department of Transportation. Mr. Beaudin, who appeared *pro se*, was appealing his non-selection for promotion to the position of Patrol Foreman. Senior Assistant Attorney General Karen Levchuk appeared on behalf of the Department. The matter was originally heard on offers of proof on July 2, 1997.

At that hearing, Mr. Beaudin argued that most of the men on the crew preferred him to the candidate who was selected for promotion, and that John Ross, the District Engineer had even told Mr. Beaudin that he wanted him for the job. However, he said that a few weeks before the selection was made, Mr. Ross asked if Mr. Beaudin belonged to the union. Mr. Beaudin asserted that Mr. Ross then told him that someone "up north" was having "a problem," and that Mr. Beaudin should be patient because he'd probably be "where he wanted to be" in another year. Mr. Beaudin believed that even before the other candidates had been interviewed, the decision had already been made to promote Dean Wright, and that the decision was part of a larger plan to advance the career of Brian Charland. Mr. Beaudin argued that before the selection decision was made, there were already rumors about who had gotten the job. Mr. Beaudin asserted that Dean Wright, the candidate who was selected, agreed that Mr. Beaudin was a better candidate for the job. He also argued that there

were subtle threats made to members of the crew who would have been willing to testify on his behalf.

Mr. Beaudin asserted that the interview panel met in the Lancaster Patrol Headquarters prior to the interview to formulate a plan to ensure that Mr. Beaudin didn't get the job. He argued that there was personal bias on the Board, and that the members of the interview committee had already decided before the interviews to recommend the promotion of Dean Wright.

Mr. Beaudin argued that when he challenged the selection process, he began hearing rumors that he was to be assigned the town truck for plowing, even though his supervisors knew it would pose a hardship on him because of problems with his knees. He also asserted that DOT staff began to blame him for road wash-outs that could not have been avoided, and they hid the salt usage reports from him, making it more difficult for him to provide evidence that he was the better candidate. Mr. Beaudin argued that the department had maligned his character in its "confidential" report on the candidates for promotion by reporting that he was a "good talker, tries to impress people with what he thinks he knows, places blame on others." He also took exception to the assessment that his potential for increased responsibility was "limited, will require constant looking after." He argued that the department had relied on him to run the patrol section in the foreman's absence, that he'd maintained the roads as well or better than his predecessors, and that the department had unreasonably placed blame on him for maintenance problems created by other drivers. He also asserted that the candidate selected for promotion was just about to receive a written warning for allowing the transmission in his truck to run dry, and that the department ignored that in selecting him for promotion. He accused the department of pre-selecting Mr. Wright, and allowing Mr. Wright's friends to serve on the selection panel to ensure his promotion back to a position in "the notch."

The State argued that appointing authorities have broad discretion in selecting candidates for promotion based on the candidates' possession of the knowledge, skills and abilities to perform the duties of a position. Ms. Levchuk argued that each of the candidates had been considered in terms of their past performance and their responses to questions during the structured interview. She

argued that Mr. Beaudin gave inaccurate responses to questions about heights of warning signs, reporting of oil spills, and types of rights-of-way. She also argued that the appointing authority took into consideration Mr. Beaudin's reaction to any criticism of his work, and his tendency to shift responsibility for problems in the patrol section to other members of the crew. She stated that Dean Wright scored 10 points higher on the structured interview, and that while the criteria could be considered somewhat subjective, in the appointing authority's opinion, Mr. Wright was clearly the stronger candidate. Ms. Levchuk also argued that Mr. Beaudin's conduct after the selection was made gave further proof that he was not the best candidate. She argued that he approached the members of his crew to have them sign a petition supporting his promotion, and that he failed to understand how disruptive that conduct had been.

Mr. Beaudin responded that in the meeting with Personnel Director Virginia Lamberton, John Ross had informed the director that the interview was given very little weight in the selection decision. He also argued that the interview scores were unfair, since he had received 0% for one of his wrong answers, where Mr. Wright received 65% for a wrong answer. He admitted that he'd given inaccurate information about oil spills and the height of emergency signs, but argued that the material he'd studied prior to the interview was out of date.

After considering the evidence and oral argument, the Board determined that it had insufficient evidence to fairly decide the appeal. Accordingly, the Board issued an order for the parties to appear for a second hearing where the appellant would be permitted to offer the testimony of witnesses to support his assertion that they believed Mr. Beaudin was the stronger candidate, and that they had been discouraged from offering evidence supporting that position. The Board also directed the Department to produce the personnel files of Brian Beaudin and Dean Wright for a comparison of their evaluations and qualifications.

The Board met again on August 6, 1997, to take live testimony and receive additional evidence.

The record in this matter consists of the pleadings submitted by the parties, orders and notices issued by the Board, the audio tape recording of the hearing, and documents admitted into evidence as follows:

State's Exhibits

- A. November 27, 1996, letter scheduling interviews for Highway Patrol Foreman
- B. Structured Interview Rating Form for candidate Beaudin's interview on 1211196
- C. Structured Interview Rating Form for candidate Wright's interview on 12111/96
- D. Individual Rating Forms for candidates Wright and Beaudin
- E. Summary of comments on candidates' current job performance and potential for increased responsibility
- F. December 12, 1996, letter from Thomas Considine to John Ross recommending selection of Dean Wright for Patrol Foreman
- G. Structured Interview Rating Forms for candidates Dean Wright and Brian Beaudin
- H. Structured Interview Rating Forms, with questions asked, for Brian Beaudin and Dean Wright
- I. Qualifications Rating Form for candidates King, Pilotte, Dickinson, Wright, Beaudin and Duranty
- J. December 26, 1996, letter of non-selection to Brian Beaudin
- K. Supplemental Job Description for Highway Patrol Foreman
- L. Class Specification for Highway Patrol Foreman
- M. Departmental Posting for vacant positions

Appellant's Exhibits

(marked) Package of photographs, reports, hand-written notes, transcripts

- 1. letter from Douglas Moorhead, re: Brian Beaudin
- 2. letter from William Mellett, Superintendent of Public Works, Town of Woodstock, re: Brian Beaudin
- 3. June 28, 1997, letter from Michael D. Peltier, re: Brian Beaudin
- 4. July 31, 1997, letter from William Willey, re: Brian Beaudin
- 5. Structured Rating Form for All Applicants for Highway Patrol Foreman
- 6. June 4, 1994, memo from Thomas Considine to John Ross re: Highway Patrol Foreman vacancy (with handwritten notes by Mr. Beaudin)

7. Structured Interview Rating Form for King, Pilotte, Dickinson, Wright, Beaudin, Duranty, Hubbard and Charland for 1994 interview for Patrolman
8. Job Specification for Highway Patrol Foreman, revised 10111/90
9. Memo dated December 4, 1989, from Verna White to all patrolmen regarding time sheets and work class codes
10. Bi-Weekly Time Reports with attached equipment reports and hand-written notes by Mr. Beaudin
11. Bi-Weekly Time Reports with attached equipment reports and hand-written notes by Mr. Beaudin

Mr. Beaudin moved for sequestration of the witnesses, the appointing authority's representative Mr. Ross, and two of the observers, Mr. Gray and Ms. White. Mr. Beaudin argued that two of the witnesses had been threatened, and that neither their supervisors nor their supervisors friends or assistants should be permitted to hear the testimony. The Board granted the motion with respect to those expected to testify, but denied his request to have Mr. Gray, Ms. White or Mr. Ross removed from the hearing room.

The following persons gave sworn testimony:

| | |
|--------------------------|----------------|
| Brian Beaudin, appellant | Dean Wright |
| Thomas Francis Considine | Brian Charland |
| Rex Caulder | Reginald Howe |
| David Labrecque | John Ross |

The testimony of the witnesses is briefly summarized as follows:

Thomas Considine testified that contrary to the appellant's representations, he had never "snubbed" the appellant, although he did recall an incident during which the appellant had interrupted him and the Patrol Foreman in the fall of 1996. He believed that might have been the source of the complaint. However, he had no specific recollection of ever using derogatory language about the appellant as a result of it.

Mr. Considine did not recall telling Mr. Beaudin he had the qualifications to do the Patrol Foreman's job. He did recall telling Mr. Beaudin that it did not have the authority to select the candidate, only the authority to make a recommendation to Mr. Ross. When asked why he would not have recommended Mr. Beaudin for promotion, Mr. Considine recalled two or three instances that persuaded him the appellant wasn't ready to manage the patrol section. Mr. Considine testified that some of his concerns with the appellant's performance centered on Mr. Beaudin's response to questions about damage to a rail on the Kancamagus Highway during winter plowing. He testified that Mr. Beaudin shifted the blame to another employee rather than taking responsibility for dealing with how to avoid future damage. He stated that a foreman needs to take responsibility for anything that happens in his section and not shift the blame to a subordinate. He also testified that on several occasions when the appellant was directed to go out and check the condition of roads, he would be discovered in the shed working on the equipment instead.

Mr. Considine testified that the interview panel had met prior to the actual interviews, but that the purpose of the meeting was to review the questions the interviewers planned to ask to make sure there was no redundancy. He testified that after the interviews were completed, the panel summarized their notes and scores and forwarded their recommendations to John Ross. Mr. Considine said the forms submitted included a summary of the committee's findings, including a narrative of the panel's findings with respect to each of the candidates' readiness for more responsibility. He admitted that the form had created a lot of animosity, but said that it was meant for internal discussion only. Mr. Considine testified that on the basis of past performance and the candidates' responses to questions during the interview, he believed Mr. Wright was the better candidate.

Rex Caulder testified that prior to the hearing, Dean Wright had cautioned him to be careful of what he said, and he believed that one other witness, David Labrecque, had been warned that testifying on the appellant's behalf could jeopardize his preferred assignments. Mr. Caulder said that he didn't believe that the letter signed by the crew members had been solicited by the appellant, nor did he feel pressured into signing it. Mr. Caulder, who did not serve on the selection panel, believed Mr. Beaudin would have made a good foreman.

David Labrecque testified that the letter supporting Mr. Beaudin's promotion was suggested by the crew and that the crew members had volunteered to sign it. He testified that it was Mr. Beaudin who suggested that they not send the letter. He testified that in his opinion, Mr. Beaudin did a very good job on vehicle and shed maintenance, particularly in his efforts to get the ladders on the salt spreaders repaired or replaced. He testified that Mr. Beaudin frequently brought up concerns about the quality of the equipment assigned to their patrol area, and suggested having sweatshirts made with the slogan "A Notch Below the Rest" to highlight the concern. Mr. Labrecque testified that he did not know Mr. Wright prior to his promotion. He also testified that although he'd heard rumors that Mr. Wright had talked to some on the crew about testifying on Mr. Beaudin's behalf, Mr. Wright had never discussed it with him.

Dean Wright testified that he had never told the crew there would be problems if they testified on Mr. Beaudin's behalf. He said he did recall remarking to crew members who asked that they should be careful of what they said, and told them, "If you tell the truth you never have to worry about covering your tracks." He also testified that he did not recall ever being asked what he would do if Mr. Beaudin's appeal were successful. He said he tried to stay out of any discussions about the issue. When asked about performance reports, Mr. Wright said he had never received any instructions to make negative remarks about any crew members. He admitted that he was instructed to put the salt reports somewhere other than the drawer where they were normally kept, because the reports were being studied, since the quality of the salt received had been poor.

Brian Charland testified that he had not asked to be on the interview panel, believing that decisions about promotions should be made by employees at a "higher level." He testified that the selection panel did meet prior to the interviews to go over their questions, but there was no discussion about who should be selected. He testified that there were rumors circulating before the selection decision had been made, but the most prevalent rumor was that Scott Leslie would be promoted. He said that prior to the interviews, he had no personal preference with respect to the candidates.

Reginald Howe testified that there were several incidents that concerned him about Mr. Beaudin's performance. One arose from the appellant's tendency to shift blame when there was a problem. He described the incident in which some guard rail was damaged, and Mr. Beaudin blamed one of the drivers who worked in that area. The other arose from the appellant's decision to remain in the shed working on equipment when he should have been out on the roads performing maintenance.

Mr. Howe testified that he supervised both the crews that both Mr. Beaudin and Mr. Wright worked for. He said that Mr. Beaudin's crew seemed to have more problems with equipment and morale, and he believed that the crew needed some fresh direction. Mr. Howe testified that Mr. Wright should have been selected for promotion.

John Ross testified that he appointed the members of the selection committee, and that he had not asked the newest superintendent to serve because he was unfamiliar with the patrol section and not comfortable with his own position. He said HE asked Brian Charland to serve on the panel in his place because he considered Brian to be one of his most intelligent and capable foremen. Mr. Ross testified that he was looking for someone to "turn around" the crew because under the former patrol foreman's leadership, the crew suffered from low morale. He said he was very concerned with the lack of communication on the crew, and the crew leadership's tendency to engage in indoctrination rather than training. He testified that when Mr. Beaudin was serving as the Acting Patrol Foreman, he saw no real change. Mr. Ross said that when he was selecting individual's for leadership positions, his philosophy was, "Hire for attitude, train for skill." He said he had some real concerns with Mr. Beaudin, who always seemed to be highly critical of his supervisors.

Mr. Ross testified that Mr. Wright and Mr. Leslie were his preferred candidates because they showed the ability to have a compassionate attitude, they were knowledgeable, and they appeared to be people who could more easily be "brought up to speed" on policies and procedures. He testified that Dean Wright had more experience and leadership qualities than Scott Leslie. He said he knew that Mr. Beaudin would be upset about the decision, but that it was important for them to work together to make things better. He said that if, in fact, Brian Charland "moved along" there could be opportunities for Mr. Beaudin to advance.

Closing Arguments

Ms. Levchuk argued that there was no evidence to support Mr. Beaudin's theory of pre-selection for the vacancy, of any discussions among committee members about how not to promote the appellant, or of any personal bias on the part of committee members toward Mr. Beaudin. She argued that although there was ample evidence to support the interview scores, even if the appellant had received the highest score, the department was not obligated to promote him if they believed he was lacking in personal or professional qualifications for promotion. She argued that Mr. Beaudin was lacking in personal qualifications for promotion including communication skills, listening skills, and the ability to engage in effective two-way communications. She argued that Mr. Ross was looking for someone who would work to improve morale on the crew, and that during Mr. Beaudin's tenure as the Acting Patrol Foreman, he had not demonstrated the willingness or ability to do so. She argued that the appellant's reliance on claims that less salt was used by his crew when he was Acting Patrol Foreman were not supported by any figures but his own. Ms. Levchuk argued that the Department was obligated to find the candidate best suited for the vacancy, and that on all the facts, the department had selected Dean Wright.

Mr. Beaudin argued that if it weren't for the increased pay and access to a pick-up truck, he wouldn't have applied for the promotion, since the responsibilities were so great. However, he argued that he had always done a good job, that the crew supported his promotion, that people in the community supported his promotion, and he believed he had earned the promotion.

Findings of Fact

1. In selecting a candidate to replace Mr. Henderson as Patrol Foreman for the 115 Crew, the department was looking for someone to take an active leadership role where training, morale building and teamwork were a priority.
2. Candidates for promotion were asked a series of questions covering topics ranging from technical procedures to leadership and management issues.
3. Members of the interview panel were selected because of their familiarity with the needs of the patrol section.
4. The panel rated Mr. Beaudin scored 10% lower on the interview than the selected candidate.

5. Although Mr. Beaudin met the minimum qualifications for promotion to Patrol Foreman and had a good work record, the Department found him to lack certain personal qualifications for promotion. The Department found that while serving as Acting Patrol Foreman, Mr. Beaudin had not demonstrated the ability to communicate effectively, to share his knowledge and experience with his crew, to effectively manage shifting priorities, and to provide a positive influence on the crew's morale.

Rulings of Law

- A. Per 602.02 (a) of the Rules of the Division of Personnel provides that, "Whenever possible, selection by the appointing authority to fill a vacancy shall be made from within an agency and shall be based upon the employee's: (1) Possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position; and (2) Capacity for the vacant position as evidenced by documented past performance appraisals."
- B. Per 602.02 (b) of the Rules provides that, "The most qualified candidate for the position, in the opinion of the appointing authority, shall be selected from designated groups of employees..."
- C. Per 602.02 (c) provides that, "Candidates may be denied selection if, in the opinion of the appointing authority, they are deemed to lack personal or professional qualifications for promotion."

Decision and Order

There was no evidence to support the appellant's assertion that the department had already decided to promote Dean Wright prior to the interviews. In fact, the evidence reflects that Mr. Ross originally favored the promotion of Scott Leslie, and even suggested that Mr. Leslie apply for the vacancy. Although there were rumors of pre-selection before the interviews, the evidence reflects that Scott Leslie was rumored to have been the leading candidate.

The Board heard evidence supporting the department's assertion that Mr. Beaudin did not readily accept responsibility for problems in the patrol area when he was acting as Patrol Foreman. The evidence also reflects that during his tenure as Acting Patrol Foreman, rather than working to build

crew morale, he continued to complain about the quality of the equipment provided for the crew, even suggesting at one point that the crew get sweatshirts saying, "A Notch Below the Rest." While the evidence makes it clear that Mr. Beaudin works hard and takes his responsibilities seriously, there was insufficient evidence to persuade the Board that Mr. Beaudin should have been promoted to Foreman, or that the Department abused its discretion in selecting a candidate it believed to be better suited to the position.

Therefore, having considered the testimony, documentary evidence, oral argument and offers of proof, the Board voted unanimously to deny Mr. Beaudin's appeal.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

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