

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF WILLIAM CHANDLER Ruling on Motion for Discovery

At a hearing on February 15, 1989, the Promotion Appeals Tribunal (Peter Scott and George Liouzis) heard oral argument on Appellant's Motion for Discovery. For the reasons stated below, the Tribunal grants the motion, in part.

It appears that Appellant, a permanent employee within the Division of Water Resources, was one of several in-house applicants for the position of Principal Planner (Rivers Coordinator). Appellant was denied the promotion, and the Appointing Authority decided to advertise the position outside of the agency.

In response to Appellant's request for reasons for non-selection, the Appointing Authority stated:

The primary reason for his non-selection was his reluctance to perform other duties beyond the Rivers Program.

Simmers' letter dated December 7, 1988 (referring to para. 3 or Simmers letter dated October 12, 1988). The Appointing Authority also noted an "additional problem ... based on past performance":

Discussions with your present employer, as well as with other state employers who have worked with you, indicate a pattern of over-zealousness that may be a benefit in some jobs but would be a detriment in the position of Rivers Coordinator.

Simmers letter dated October 12, 1989 (para. 4).

Appellant desires to propound interrogatories, "to ascertain the source and substance of each and every statement made by third parties in regards to Department inquiries." Presumably Appellant desires information concerning only the discussions referred to above; but the request could conceivably be much broader than that.

Since no interrogatories have yet been propounded, however, the Tribunal is being asked to deal with the request in the abstract. The Tribunal would prefer dealing with concrete questions. Accordingly, in the future a party requesting permission to submit interrogatories should submit proposed questions to the Tribunal at the time of filing the motion.

The question posed goes well beyond what appears necessary and pertinent to the case. Accordingly, the Tribunal will provide what guidance it can in the hope that the parties can reach an understanding without having to come back for a further ruling.

Ordinarily, an Appointing Authority will not need to produce information about conversations or events on which it did not rely in reaching the decision under appeal. This information is irrelevant to the case before the Tribunal.

A corollary of this proposition is that the Appointing Authority need not produce information about conversations or events on which it does not intend to rely in support of its decision before the Tribunal. This should not be taken as permission for an Appointing Authority to pick and choose among alleged transgressions. An Appointing Authority that omits critical items runs the risk of failing to meet its own burden: See Desmarais v. Personnel Commission, 117 N.H. 582, 588 (1977); Appeal of Golding, 121 N.H. 1055, 1059 (1981). Indeed, the failure to produce evidence of an applicant's inability to "perform the functions of the position because of any unacceptable personal traits or attitudes" apparently provided sufficient grounds for the former Personnel Commission to overturn the promotion of a probationary employee in favor of a qualified permanent employee. See Melton v. Personnel Commission, 119 N.H. 272, 179 (1979).

The Tribunal notes with approval that the Appointing Authority in this case has provided specific examples of actions by the Appellant that give rise to doubts about the Appellant's ability to adhere to predetermined guidelines. To the extent that the Appointing Authority intends to rely on those incidents to support its conclusion, the Tribunal will require the Appointing Authority to identify the incident with enough specificity so that the Appellant can recognize it. While people may differ as to the interpretation to be placed on the event, at least all parties should understand which event is at issue.

The Tribunal is leery of unattributed statements or innuendo, especially when the source is another state worker. If that state worker is unwilling to be identified to the Appellant, it casts much doubt on the credibility of the source. This should hold true both for the Tribunal in considering the appeal, as well as the Appointing Authority in reaching its decision.

In conclusion, the Appellant is granted permission to submit interrogatories to the Appointing Authority within eight working days of the date of this order. The Appointing Authority is then required to respond to those interrogatories within eight working days of receipt of same, provided that the interrogatories comply with the guidelines discussed above.

FOR THE PRO MOTION APPEALS TRIBUNAL



Peter C. Scott, Chairman

cc: John Roller, Human Resource Coordinator
Department of Environmental Services

Jean Chellis, Field Representative
State Employees' Association

State of New Hampshire



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APPEAL OF WILLIAM CHANDLER RULING ON MOTION TO DISMISS

Following a hearing on February 15, 1989, before the Promotion Appeals Tribunal, the Appointing Authority filed a Motion to Dismiss. For the reasons stated below, the motion is denied.

At the hearing, Appellant stated that if the Appointing Authority argues that:

Mr. Chandler is therefore not appealing his own non-selection, but rather an agency's right to hire an outside candidate for a vacant position if the agency feels all in-house applicants are lacking in certain qualifications.

Motion dated February 16, 1989 at para. 2.

The Appointing Authority raises an interesting argument; but the record does not warrant the proposed conclusion. Appellant may have simply been expressing a natural tendency not to want to attack a successful in-house candidate with whom the Appellant may have established a good personal or professional relationship..

Alternatively, Appellant may have been expressing a feeling that the non-selection of any candidate means that his employer believes him to be unqualified, while the selection of another candidate might mean simply that he was less qualified. Ironically, the Motion raises the interesting issue whether an Appointing Authority must meet a higher burden when refusing to promote from among ostensibly qualified in-house candidates. Cf. Melton v. Personnel Commission, 119 N.H. 272,278-9 (1979). The Tribunal need not decide that issue at this time in order to rule on the Motion to Dismiss.

FOR THE PROMOTION APPEALS TRIBUNAL

A handwritten signature in black ink, appearing to read "P. C. Scott".

Peter C. Scott, Chairman

cc: John Roller, Human Resource Coordinator
Department of Environmental Services

Jean Chellis
SEA Field Representative

DATED: March 31, 1989