

# State of New Hampshire

WPPID709



## PERSONNEL APPEALS BOARD

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### APPEAL OF PAUL KIROUAC

Docket #89-P-17

Dept. of Resources and Economic Development  
(Design, Development and Maintenance Bureau)

March 8, 1991

The New Hampshire Personnel Appeals Board convened a Promotion Appeals Tribunal on Wednesday, February 20, 1991, for the purposes of hearing Paul Kirouac's appeal of his non-selection for promotion to the position of Forestry Maintenance Mechanic in the Design Development and Maintenance Bureau in the Department of Resources and Economic Development. The Tribunal consisted of Patrick J. McNicholas, Chairman, N.H. Personnel Appeals Board; Sarah Hopley, Human Resource Coordinator, New Hampshire Technical Institute; and John Roller, Human Resource Coordinator, Department of Environmental Services. Kenneth Plourde, Business Administrator for the Department of Resources and Economic Development, and Christopher Klefos, Administrator of the Design, Development and Maintenance Bureau, appeared on behalf of the State. Mr. Kirouac appeared pro se.

**Mr.** Plourde testified that the appellant had been hired in the summer of 1989 to fill a full-time temporary/seasonal position in the Design, Development and Maintenance Bureau for the period of July 7, 1989 to September 29, 1989. Because of the workload, and because the agency still had funds available, **Mr.** Kirouac's employment was extended until November 3, 1989, when the funding for his position was depleted, at which time he was notified that his employment as a temporary seasonal was to be terminated, **Mr.** Plourde also testified that all seasonal employees received the same notification of termination on October 19, 1989, effective November 3, 1989, when available funding was depleted.

During October of 1989, the Department posted a vacant position of Forestry Maintenance Mechanic, for which there were three applicants. Each of the applicants was a full-time temporary/seasonal employee in the Design, Development and Maintenance Bureau. **Mr.** Plourde testified that selection of the successful candidate was based upon job performance during the 1989 summer maintenance season. He explained that the Design, Development and Maintenance crew consists of 7 to 8 full-time permanent employees, and that during the ~~summer~~ months, the crew adds another 3 to 4 full-time temporary employees.

**Mr.** Klefos testified that the successful candidate demonstrated an excellent work ethic, and that the selection was made upon the recommendation of the

crew supervisors. Mr. Klefos explained that Design, Development and Maintenance has a relatively small crew to maintain the complete State Park system. With that in mind, he contended that the ability of an employee to put in a full day's work, and to work cooperatively with the other members of the crew was essential. The Crew Foreman and Assistant Crew Foreman both recommended appointment of the same candidate, as all reports indicated that he was an exceptionally hard worker.

Messrs. Plourde and Klefos admitted that they had not interviewed any of the candidates, or requested pre-selection certification of their applications through the Division of Personnel. They testified that a hiring freeze was due to take effect immediately, and it was imperative that they place one of the candidates in the vacant Forestry Maintenance Mechanic position before the position became frozen.

Mr. Kirouac argued that he was more qualified than the candidate appointed to fill the full-time Forestry Maintenance Mechanic. He alleged that Mark Tibbetts, the crew foreman, had assisted the successful applicant in filling out his application, and that when Mr. Kirouac submitted his own application, Mr. Tibbetts had insisted that he correct it, including only information relative to his employment with Design, Development and Maintenance. Mr. Kirouac also questioned how an appointment could have been made without all the applications for the position being certified by the Division of Personnel as meeting the minimum qualifications.

Mr. Kirouac contended that the selection appeared to have been based upon an assumption by the supervisory staff that the successful candidate would be able to operate a backhoe, in spite of the fact that he did not possess a heavy equipment license. Mr. Kirouac indicated that he carried a light commercial license and, in his view, was "half way" toward a heavy equipment operator's license. He stated that when he was informed of non-selection, he had requested the reasons for same in writing, and had never received a response to his request. He argued that as the most qualified candidate, he should have been appointed to the position. He also contended that he had spent the season working in an unsupervised setting and often supervised another seasonal employee, while the successful candidate, he alleged, never worked without direct supervision.

Mr. Klefos countered that Mr. Kirouac was not working with another seasonal employee, and testified that he worked under the supervision of a permanent employee responsible for repair and maintenance of historic structures. Mr. Kirouac's assignment for much of the season had been roofing the Franklin Pierce Homestead. Regarding the certification issue, Mr. Klefos again pointed to the time constraints the agency was facing in selecting a candidate before the hiring freeze. Mr. Plourde testified that after the selection decision had been made, the candidate's application had been forwarded to Personnel for certification. The applicant did meet the minimum qualifications. He stated that if the applicant had failed to meet the minimum qualifications for certification, the candidate's notice of selection would have been withdrawn, and the appointment would not have been made.

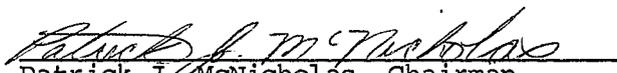
After testimony given by the parties, the Tribunal asked the appellant to clarify his original allegation that he had not been selected because of "unfair favoritism". In response, Mr. Kirouac testified it was his belief that the successful candidate was dating the daughter of the assistant crew foreman and it was like hiring "one of the family". After further questioning, however, Mr. Kirouac admitted, "I had heard he was dating a daughter. I don't know the facts." He then stated he understood that the successful applicant and the assistant supervisor were neighbors and that he may have spent some time at his home. Mr. Klefos and Mr. Plourde testified they had had no such information, and that this was the first they had heard of it.

On all the evidence and the record before it, the Tribunal voted unanimously to deny Mr. Kirouac's appeal of his non-selection for promotion to the permanent position of Forestry Maintenance Mechanic. Mr. Kirouac offered no evidence or corroborative testimony to support his allegation that favoritism formed the basis of his denial of promotion. He also offered no evidence to support his allegation that he was clearly the more qualified candidate for the position. He failed to meet his burden of proof by demonstrating that the selection decision was improper, illegal, or constituted an abuse of managerial discretion.

In so ruling, the Tribunal found that pre-certification of all the applicants and interviews of each candidate prior to selection would have improved the selection process. Clearly, however, the Department of Resources and Economic Development was under severe time constraints for filling the position and the Tribunal found that the Department made its best efforts under the circumstances to select upon the basis of performance, length of service, and suitability and capacity for the vacancy.

The Tribunal found that the appellant failed to demonstrate that pre-certification of all applicants by the Division of Personnel, and/or personal interviews prior to selection such a process would have altered the original selection decision. The appellant failed to provide competent evidence or corroborative testimony to persuade the Tribunal that he was denied promotion because of "unfair favoritism".

FOR THE PROMOTION APPEALS TRIBUNAL

  
Patrick J. McNicholas, Chairman  
Personnel Appeals Board

cc: Virginia A. Vogel, Director of Personnel  
Kenneth Plourde, Business Administrator,  
Department of Resources and Economic Development  
Commissioner Stephen Rice  
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