



Administrative Services
Division of Personnel
State House Annex—Room #1
Concord, New Hampshire 03301
Telephone: (603) 271-3261

PROMOTION APPEALS TRIBUNAL DECISION

In the Matter Of:

Michelle McManus

April 20, 1987

On March 26, 1987, the Promotion Appeals Tribunal heard the appeal of Michelle McManus, an employee of the Department of Employment Security. Ms. McManus, a Data Control Clerk III, was appealing her non-selection to the position of Computer Operator II. She was represented by SEA Field Representative Stephen McCormack. The Department of Employment Security (hereinafter "DES") was represented by Attorney Michael Black.

The appellant had also filed a complaint with the Commission for Human Rights based on her non-selection for the Computer Operator II position. At a prehearing conference on March 24, 1987 before Commissioner Loretta Platt, the appellant's request to continue the matter before the Tribunal pending the outcome of her appeal before the Commission was denied. The Tribunal based its decision on several factors including the estimated length of time required for the Human Rights Commission to process the appeal to conclusion, observing that if the appellant prevailed before the Tribunal, the Tribunal might decide that the applicant selected by the Department should be removed from the position. Given this possible result, the Tribunal determined that the matter before it should be resolved as expeditiously as possible. The appellant had also filed her complaint before the Tribunal prior to instituting an action before the Commission for Human Rights.

At the hearing, the appellant limited the grounds for her appeal to a violation of the "Rules of the Department of Personnel." The appellant did not pursue a discrimination complaint before the Tribunal in order to preserve her rights before the Human Rights Commission. See RSA 354-A:13.

The appellant contended that the Department of Employment Security had violated the "Rules of the Department of Personnel" in selecting an employee from another State agency to fill the position. She contended that she was qualified for the position and should have been selected pursuant to Per 302.03(a).

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After considering the evidence presented, the Tribunal made the following findings of fact and rulings of law. Ms. McManus had been a full-time employee with the Department of Employment Security since 1980. She was certified by the Division of Personnel as meeting the minimum qualifications for the position sought. She also had knowledge of the DES data entry and data control functions. She had, however, been counselled by her superior in December, 1986 concerning her attendance record. At the time of the hearing, her attendance record had not changed from that for which she had been counselled.

The Tribunal further found that Ms. McManus was one of six or seven employees holding the position of Data Entry Operator and that there was only one position of Computer Operator on the shift in question. The Tribunal further found that the applicant selected had experience as an operator.

Based on the evidence presented, the Tribunal found no violation of the Division of Personnel's rules concerning promotion. Given the appellant's attendance record (an issue raised with her at least one month prior to the posting of this position) and the lack of back-up Computer Operator positions for the shift in question, the Tribunal concluded that the Department had properly exercised its prerogative in denying the promotion to its in-house candidate. See Per 302.03(b)(2). The Tribunal therefore denies the appeal.

In so ruling, the Tribunal again notes that it did not consider those issues applicable only to Ms. McManus' discrimination complaint.

FOR THE PROMOTION APPEAL TRIBUNAL



MARY ANN STEELE
Executive Secretary

N. H. Personnel Appeals Board

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cc: Stephen McCormack, Field Representative
State Employees' Association

Joan Day, Personnel Officer
Department of Employment Security

State of New Hampshire

PERSONNEL APPEALS BOARD
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EXECUTIVE SECRETARY
Mary Ann Steele

PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
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April 20, 1987

Stephen J. McCormack
Field Representative
State Employees' Association of N.H.
163 Manchester Street
Concord, New Hampshire 03301

re: Michelle McManus

Dear Mr. McCormack:

Enclosed please find a copy of the Promotion Appeal Tribunal's decision dated April 20, 1987 in the above-noted appeal of non-selection as heard by said Tribunal on March 26, 1987. A copy of this decision has also been forwarded this date to Joan Day, Personnel Officer for the Department of Employment Security.

Very truly yours,

FOR THE PROMOTION APPEALS TRIBUNAL

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary
N. H. Personnel Appeals Board

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cc: Joan Day, Personnel Officer
Department of Employment Security