

State of New Hampshire

**PERSONNEL APPEALS BOARD**

State House Annex
Concord, New Hampshire 03301
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APPEAL OF JAMES NELSON
Docket #91-P-12
Department of Transportation

February 27, 1992

The Personnel Appeals Board (McNicholas and Rule) met Monday, January 20, 1992, to hear the promotional appeal of James Nelson, an employee of the Department of Transportation. Mr. Nelson, who was represented at the hearing by SEA Field Representative Jean Chellis, was appealing his non-selection for promotion to the position of Highway Patrol Foreman. The Department of Transportation was represented by Attorney Karen Levchuk, Transportation Bureau, Department of Justice.

Prior to receiving testimony, the Board received a Joint Stipulation of Facts filed by the parties.

Ms. Chellis argued on the appellant's behalf that Mr. Nelson was well qualified for promotion, but had not received fair and equal treatment during the promotional process because the successful candidate's uncle was one of the three-member selection panel. Ms. Chellis argued that the Department of Transportation failed to make use of Division of Personnel structured oral examination procedures or forms. She also suggested that Brian Charland's promotion was based at least in part on the experience he had gained during his temporary promotion to the position of Acting Highway Patrol Foreman. She stated that Mr. Nelson had requested an opportunity to fill-in as Acting Patrol Foreman but had been denied the opportunity.

Mr. Nelson testified that the only question he had been asked during his interview was whether or not he felt he would be able to work for Brian Charland, the successful candidate. He testified that he was given the opportunity to discuss what he thought he would do in the position of Highway Patrol Foreman. He also testified that he was informed during the interview that he probably would be promoted at some point, leading him to believe that the selection decision had already been made. He said he believed the promotion decision was based on "who [Charland] was", and that Charland had a number of family members employed by the Department.

Mr. Nelson testified that he had almost five years more experience in Section 125 than the successful candidate. He noted that Brian Charland was

temporarily assigned to be the Acting Highway Patrol Foreman while the appellant was away at summer camp. He said formal notice of the temporary promotion occurred when he had returned from camp.

On cross-examination, Mr. Nelson admitted that he also had two brothers employed by the Department in roughly the same geographical area of the State. He also admitted that having several family members employed by the Department is not uncommon.

Robert Reinhard, another unsuccessful candidate for promotion to the position of Highway Patrol Foreman, testified that he had been asked during the interview if he felt he could work for Brian Charland. He testified he was never asked if he could work for any of the other candidates for promotion. He said he believed the selection process was influenced by the presence of Mr. Charland's uncle, Richard Thompson, on the selection panel.

f- Richard Morneau, Assistant District Engineer, testified that he had been involved in between 30 and 50 promotional decisions during his employment with the Department. He testified that selecting a candidate for promotion to the position of Highway Patrol Foreman involved requesting approval to fill the position, posting the position, having the applications certified, and setting up an interview committee. He testified that during the interviews and the selection process in general, the committee was looking specifically at job fitness, past performance and knowledge of the patrol area. He testified that length of service was considered, but that the Department generally used length of service to select between two equally qualified candidates.

Mr. Morneau testified that the committee was unanimous in its selection of Brian Charland for promotion. He said that in rank order, the committee's recommendations for promotion were as follows: Brian Charland, Reginald Howe, James Nelson and Robert Reinhard. He explained that both Brian Charland and James Nelson had served as Assistant Patrol Foreman in the same patrol area. He also testified that Charland's temporary promotion to Acting Highway Patrol Foreman had been based on the recommendation of the retiring Patrol Foreman.

Richard Thompson, the successful candidate's uncle testified that he had been uncomfortable sitting on the selection panel. He testified that his preference would have been to promote Reginald Howe to Highway Patrol Foreman. He said his personal preference in order of selection for promotion would have been as follows: Reginald Howe¹, Brian Charland, James Nelson and Robert Reinhard.

1/ Reginald Howe appealed his non-selection for promotion to Highway Patrol Foreman, but subsequently withdrew his appeal.

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In consideration of the record before it, the Board found the following:

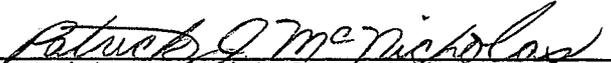
There is currently no requirement that the Department of Transportation or any other State agency use the resources of the Division of Personnel in interviewing applicants for promotion. While the assistance of the Division of Personnel would undoubtedly be beneficial to the process, failing to request or use such aid does not render the promotional process invalid.

The successful candidate undoubtedly gained valuable experience during his temporary promotion to the position of Acting Highway Patrol Foreman. When faced with selecting an employee for temporary promotion, however, the Highway Patrol Foreman recommended Brian Charland, and that recommendation was accepted by the District Engineer John Ross. At the time that decision was made, both Mr. Charland and Mr. Nelson had served as Assistant Patrol Foremen in the same section and would have had comparable experience in that patrol area.

In the event that Brian Charland had not been selected for promotion, the record reflects that the selection committee would have unanimously selected Reginald Howe for promotion. In spite of his assertion that he believed himself to be as qualified for promotion as Mr. Howe, the record will not support **such** a finding.

In consideration of the foregoing, the Board voted unanimously to deny Mr. Nelson's appeal of non-selection for promotion to Highway Patrol Foreman.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Karen A. Levchuk, Attorney, Transportation Bureau, Dept. of Transportation
Richard D. Williams, Human Resource Coordinator, Dept. of Transportation
Jean Chellis, SEA Field Representative