

State of New Hampshire

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PERSONNEL APPEALS BOARD

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APPEAL OF RAYMOND BEAUSOLEIL
Department of Transportation
Docket #91-T-9

August 28, 1991

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, June 12, 1991, to hear the termination appeal of Raymond Beausoleil, a former employee of the Department of Transportation. The appellant was represented by Attorney Joseph Krolikowski. Attorney Jeffrey W. Spencer of the Attorney General's Office appeared on behalf of the Department of Transportation (hereinafter "DOT").

On the appellant's behalf, Attorney Krolikowski moved that the witnesses be sequestered, which Motion was granted by the Board. Attorney Krolikowski also asked that the Board clarify the issue(s) under appeal, arguing that the central issue in Mr. Beausoleil's termination notice was the charge of willful destruction of State property, and his appeal should not turn on the question of threats Mr. Beausoleil allegedly made against co-workers at the DOT Merrimack Maintenance shed.

After discussion by the parties' representatives, the Chairman ruled that DOT had properly raised the issue of the threats in its letter of discharge and the Board would therefore allow testimony on that issue. The Board agreed, however, that the central thrust of the termination was the alleged destruction of State property.

The State offered the testimony of Richard Poitras, Richard Broderick, and Patrick Morris. Mr. Poitras testified that on October 30, 1990, the appellant was assigned to work with him on trash pick-up. Poitras was driving and Beausoleil was in the passenger seat of the 5-ton pick-up assigned to Poitras. They had nearly filled the vehicle with trash which had been collected when, at approximately 11:00 a.m., a pick-up truck carrying George Beland and Paul Richards, who had signs loaded in the back, pulled up behind them.

Poitras testified that he and Beland got out of their respective vehicles, went behind Poitras' truck, and Beland told Poitras that he and Beausoleil would be expected to pick up the remainder of the trash along the highway. Poitras went back to his own vehicle and told Beausoleil what they had been assigned to do. Poitras testified that at that point, Beausoleil made a fist of his left hand "crunched real heavy", that he "turned colors and his eyes got big". He said "f---ing bag lappers" and went to strike the window. Poitras testified he told Beausoleil, "Calm down, it's not worth it" meaning he could lose his job if he broke the window. He said Beausoleil responded, "Oh Dick, I know", relaxed a bit, then pick up his right fist and hit the dashboard on the passenger side, shattering it. Poitras said that in his opinion, because of the force with which Beausoleil struck the dashboard, he was convinced Beausoleil would have known the blow would break the dash.

He testified that he was sufficiently frightened by Beausoleil's behavior that upon return to the shed, he'd taken Jack Theodore aside and told him he had to talk to him, something he said he'd never done before in his two and one half years working for DOT. He also testified that had he been told to go out on the road again with Beausoleil that afternoon, he'd have gone home.

Mr. Poitras testified that in December, 1990, he had run into Dick Broderick late in the day and noticed that Broderick appeared visibly upset. When Poitras asked him what was wrong, Broderick responded, "...something just happened. I'll give you a call tonight. I can't talk here." Poitras said he called Bob Bergeron by C.B. radio on his way home and told him he'd better talk to "Little Dick", that he seemed upset. Later in the evening, he spoke with Broderick by phone, who told him that Beausoleil had talked about the dashboard incident, and has said if he got fired over it, he'd get back at everyone who was involved including Paul Richards and Bob Bergeron. He said he was so frightened by what Broderick told him that the following day he had his wife call in for him and say he wouldn't be reporting to work.

Mr. Broderick testified that on December 11, 1990, he was working with Raymond Beausoleil and Danny Carswell picking up trash including "big stuff and dead animals" from the roadside. He said that at about 11:00 a.m., Poitras drove by in his truck and Beausoleil started saying that "...if the fat son of a bitch got him fired there'd be hell to pay". He said Beausoleil mentioned an untraceable gun he had in his trunk and that he'd "shoot them all in the head", mentioning Paul Richards and Bob Bergeron by name, calling them "bag lappers". He testified that Beausoleil said to him, "If I got in his way or anybody else got in his way he'd take care of them, too." According to Broderick, Danny Carswell was out of the truck picking up trash when the first of three or four threats was made.

Broderick testified that it was not unusual for Beausoleil to gripe and complain, as well as to make threats. He said the threats this particular day were more forceful, however, and Beausoleil appeared angrier that day than he had before. He said he took the threats more seriously because he had seen

Beausoleil and Carswell the previous afternoon in the shed at the parking lot looking at a rifle, and that morning Beausoleil had mentioned having a gun in his car. Broderick testified that Beausoleil made essentially the same threat three or four times during the day that he had made at the first rest area stop. Mr. Broderick also testified that at least twice during the day, Danny Carswell, the third employee in the truck, must have overheard Beausoleil threatening to shoot Bergeron and Richards.

Patrick Morris, the Bureau Administrator, testified that because of the dashboard incident, he had decided to discharge Beausoleil for willful destruction of State property. He said that from the information he had received from Poitras, he was convinced that Beausoleil knew full well the amount of force he was using when he struck the dashboard of the truck, and had to have known that the blow would break or damage the dash. He said he was waiting for approval from the attorney general's office before effecting the discharge when he learned of threats allegedly made against Beausoleil's co-workers.

Mr. Morris testified that during his investigation into the alleged threats, he had spoken with Danny Carswell, believing he would have information about the threats. He said that Carswell declined to make any statement, refusing to confirm or deny that he had heard Beausoleil make any threats. He said he'd discussed "loyalty" with Carswell, and told him he should come forward with whatever information he might have, but Carswell continued to decline to make any statement, even after being told that his employment was not in jeopardy. Mr. Morris testified that when he had interviewed Beausoleil, the appellant denied making any actual threats, but admitted he may have said something about "knocking heads together". Mr. Morris, when questioned on the subject, said no mention of a VCR had been made during his interview with Beausoleil.

Mr. Morris said he had taken or reviewed statements from Jack Theodore, Robert Bergeron, George Beland, Richard Poitras and Richard Broderick. After considering all the statements, he said he was convinced that Beausoleil knew the force of the blow to the dashboard would break the dashboard, and that he had subsequently threatened his co-workers with bodily injury. He said he believed the discharge to have been proper under the Rules of the Division of Personnel.

In addition to testifying on his own behalf, the appellant offered the testimony of Donald Crete and Dan Carswell. DOT had objected to the Board taking Mr. Crete's testimony as the appellant had failed to notify DOT of his plan to call Crete as a witness. The appellant claimed that DOT had not been cooperative in complying with requests for access to the Merrimack crew for interviews. Mr. Crete admitted that he had been contacted the night before the hearing by Danny Carswell and informed that Mr. Beausoleil's attorney was looking for a witness to testify concerning the condition of the truck. The Board over-ruled DOT's objection, finding that neither party would

be prejudiced by late notice of Mr. Carswell's appearance on the appellant's behalf.

Mr. Crete testified that the dashboard in the truck which Beausoleil had allegedly destroyed was already damaged prior to Beausoleil's striking it. He said the truck in question was the oldest one at the Merrimack facility and therefore was the most poorly maintained. He testified that the vehicle was "in pretty poor condition" and the interior was "pretty well abused". He said the driver's side of the console was missing a few chunks of vinyl and that the passenger side had a few small cracks where the crew would drop their lunch boxes behind the plow controls located on the dashboard. He said he didn't think the dashboard was designed to withstand significant impact and really wouldn't offer much protection to the passenger in an accident.

Danny Carswell, appearing on the appellant's behalf, testified that he never heard the appellant make any threats during the course of the day on December 11, 1990. He said that he was riding in the passenger side of the vehicle, that Beausoleil was in the center, and Broderick was driving the truck. He said he had his hearing aids turned down half way to cut out the engine noise, but that he believed he was able to hear everything Beausoleil might have said, but probably would have been unable to hear Broderick about three feet away from him.

Carswell testified that at one point during the day, he had seen Poitras driving in the southbound lane while he, Beausoleil and Broderick were stopped at the Nashua rest area in the northbound lane. He said he had gotten out of the truck to get a box and had heard Beausoleil say something about "that son of a bitch", but that he'd heard nothing further. He said he was out of the truck about one minute.

Carswell said that he and Beausoleil were personal friends who see each other socially on occasion. Regarding Broderick's assertion that he and Beausoleil had been looking at a gun one afternoon in the parking lot at the Merrimack shed, he said they had done so, but he was unsure when that occurred.

Carswell testified that when he was first interviewed by Patrick Morris, he was in Bob Bergeron's office with Bergeron, Crummey and Morris. He testified that the way the "came on to him" was intimidating, particularly when Morris told him, "Either you're loyal or not". Carswell said he took that to mean that if he didn't take DOT's side in the controversy, he'd never get ahead in his job. He said he then told Patrick Morris that he had heard Beausoleil threaten Bergeron, but said he later told Attorney Spencer that he'd lied about hearing the threats made.

Carswell said he believed the discharge was a result of an incident involving a VCR which Dick Poitras and Raymond Beausoleil had found in the vicinity of Merrimack High School. He said Beausoleil thought the VCR might be stolen and wanted it turned in to the police. Jack Theodore was called to pick it up

from the site. Carswell testified that months later he saw the VCR being returned to Dick Poitras by the individual who repaired the automatic toll machines, and that this individual asked Poitras to thank Bob Bergeron for its use. Carswell said that after that, Beausoleil was assigned to trash pick up every day.

Raymond Beausoleil testified that when he and Poitras found the VCR, they also found a watch, coins, jewelry and 2 bags of clothing in good condition. He believed they were stolen and wanted Jack Theodore from the Merrimack shed to come pick the material up and give it to Bob Bergeron to turn in to the police. He explained that when Highway Maintainers have a "road find", they share it among the crew members who made the find. He said, for instance, that if a crew found ten dollars on the side of the road, they'd split the money. With larger or more valuable items, however, the "road find" would be turned in to the shed and held until its rightful owner could be found. If the owner did not come forward, the crew members could take the item.

Beausoleil testified that it was better than a year after the VCR was found that he Poitras approached Bob Bergeron to say they'd be willing to accept \$25 each and have the VCR left at the shed for use by the crew. Money for the VCR was taken from the soda machine and the VCR locked in Poitras' locker.

Several weeks before the discharge, Beausoleil asked for the VCR to use at home. It was locked up in the trunk of his car on the day he was discharged from employment,

Attorney Krolikowki argued that the discharge decision made by Patrick Morris was flawed in that it relied solely on information provided by Richard Poitras about the incident involving Beausoleil's damaging the truck dashboard. He asked the Board to find that Raymond Beausoleil, who had long complained of favoritism in the Merrimack facility, became angry when assigned additional trash pick-up, and hit the dashboard, but that at no time did he intend to damage it. He said the appellant had offered to pay for the damages at the time of the incident, and was still willing to pay for the damages. He suggested that the force with which the appellant struck the dashboard would have been insufficient to damage it were it not for the already poor condition of the dash. He also asked the Board to find that Richard Poitras embellished his testimony to bolster his claim that the damage to the dashboard had been intentional.

This appeal turns not so much on clear and uncontroverted facts, but on the credibility of the various witnesses, and what motivation each of them might have had to fabricate information about either the destruction of property or threats made against members of the crew.

The Board found Mr. Morris to be a very credible witness. Upon learning of the incident involving the dashboard incident, Mr. Morris undertook an investigation and was sufficiently persuaded that the appellant had willfully destroyed State property that he initiated proceedings to discharge him from his employment. Upon learning that additional allegations had been made

concerning the appellant threatening his co-workers, Mr. Morris conducted a further investigation. He did discuss the threats with Beausoleil, who said he had only made some remark about "knocking heads" together. The appellant made no mention to Morris about the VCR, nor did he make any claim that the alleged threats were fabricated in retaliation for his complaints of favoritism or misconduct on the part of supervisory staff.

Similarly, the Board found the testimony of both Poitras and Broderick to be credible. The Board could uncover no motive either employee might have had to lie about the damage to the dashboard or the seriousness of Beausoleil's threats about what he would do if he were discharged for destruction of property. They apparently enjoyed a reasonable working relationship with the appellant. Neither Poitras nor Broderick complained of any earlier problems with the appellant. Similarly, the appellant made no mention of difficulties with either employee. Both were sufficiently disturbed by Beausoleil's behavior during and after the incident involving the dashboard to report the incidents to supervisory personnel. Both were convinced that the rage he displayed, and the threats he had made, were serious and substantially different from the "gripes" they were accustomed to hearing.

The appellant argued that there were discrepancies between Poitras' testimony and the statements he had made during investigation of the charges, and that he had embellished the original story to make it appear that Beausoleil had intentionally broken the dashboard. There were similar discrepancies in the testimony of Danny Carswell, which the Board found to be more damaging.

Carswell, a personal friend of the appellant, testified that in his discussion with Patrick Morris he had admitted to hearing Beausoleil make threats against the lives of Bergeron and Richards, but that he later informed Attorney Spencer that his story was a lie. Morris, however, testified that Carswell refused to offer any information which might either confirm or deny the allegations against Beausoleil. The Board can find no reasonable explanation for why Mr. Morris would have testified that Carswell refused to offer any information if, in fact, Carswell had initially told him the threats were made.

The appellant pointed to a performance evaluation describing him as "meeting expectations" in every performance category, having an excellent attendance record and always looking for more work to do. Again, if Mr. Morris had any reason to suspect that the damage to the dashboard was not willful, or that the story of the threats was fabricated, the Board can find no reasonable explanation for why he would be inclined to discharge such an employee without cause.

The appellant has asked the Board to find that he acted "instantaneously" and in anger, and therefore had not committed the offense of willful destruction of State property. The appellant further asked the Board to consider his offer of restitution for the resulting damages in deciding his appeal.

On all the evidence, the Board found that the appellant, with reckless disregard for the State's property, struck the dashboard of the vehicle in which he was riding with sufficient force to break it. The Board also found that the appellant made threats against co-workers. Without offering any opinion on the appellant's intent to carry out those threats, the Board found the threats to have been convincing, and believes the appellant fully intended to dissuade his co-workers from cooperating with the agency in any disciplinary action arising from the dashboard incident.

Taken as a whole, the Board considered his actions sufficiently egregious to warrant his discharge under the optional discharge provisions of the Rules of the Division of Personnel.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett



Robert J. Johnson



Lisa A. Rule

cc: Attorney Joseph Krolkowski
Attorney Jeffrey W. Spencer
Virginia Vogel, Director of Personnel

Response to Appellant's Requests for Findings of Fact and Rulings of Law

Findings of Fact:

1 - 4 and 6 are granted to the extent that they are addressed by the Board's decision above.

5 is granted, however, the Board finds the appellant acted with reckless disregard for the State's property and struck the dashboard with sufficient force to shatter it.

7 and 8 are denied.

Rulings of Law

1 is denied. A willful act is one which is done deliberately or intentionally. In order to commit the offense of willful destruction of State property [Per 308.03(2)a.] an employee need not have the destruction of that property as his "ultimate purpose". The appellant intentionally and deliberately struck the dashboard with sufficient force to shatter it as an expression of anger. The result of that intentional and deliberate act was the destruction of State property.

2 is granted.

3, 4 and 5 are granted, but are not dispositive of this appeal. The Board found that the appellant did threaten his co-workers, including the direct threat made to Mr. Broderick.