

State of New Hampshire

WPPID1061



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

APPEAL OF RALPH E. BUSSIERE, III

Docket #92-T-23  
Department of Transportation

Response to Appellant's Motion for Reconsideration

April 28, 1993

By letter dated March 8, 1993, SEA General Counsel Michael Reynolds submitted to the Board a Motion for Reconsideration of the Board's March 4, 1993 decision denying Mr. Bussiere's appeal of his termination from employment for the Department of Transportation. In that Motion, Attorney Reynolds argued that the State had produced insufficient evidence of the charges contained in Mr. Bussiere's notice of termination. Mr. Reynolds argued there must have been proof of "something missing" in order to support termination of the appellant's employment. He argued that the Board had given too little weight to the "motive for revenge by the State's chief witness" in assessing their relative credibility. He also argued that the District Engineer was not the "appointing authority" and that his decision to terminate Mr. Bussiere therefore must be considered invalid.

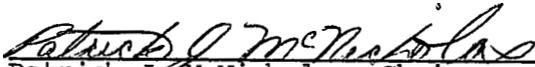
The Board reviewed the motion in conjunction with its decision in this matter and the evidence offered by the parties. The arguments raised by the appellant in his motion were all raised by the appellant during the hearing on the merits, and considered by the Board in reaching its decision to uphold Mr. Bussiere's termination. Contrary to the appellant's assertion, the weight of the evidence did not support the appellant's explanations.

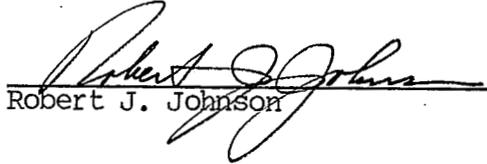
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Accordingly, the Board voted unanimously to deny the instant Motion and affirm its decision to deny Mr. Bussiere's appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson

  
Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
Karen A. Levchuk, Asst. Attorney General, Transportation Bureau  
Michael C. Reynolds, General Counsel, State Employees' Association

# State of New Hampshire

WPPID1033



## PERSONNEL APPEALS BOARD

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

### APPEAL OF RALPH E. BUSSIÈRE, III Docket #92-T-23

Department of Transportation

March 4, 1993

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, December 2, 1992, to hear the appeal of Ralph E. Bussiere, a former employee of the Department of Transportation. Mr. Bussiere, who was appealing his April 20, 1992 termination from employment, was represented at the hearing by SEA General Counsel Michael Reynolds. Assistant Attorney General Karen Levchuk appeared on behalf of the Department of Transportation. Mr. Bussiere was discharged from his employment as a Laborer, effective April 20, 1992, for attempting to steal diesel fuel from the Ossipee Patrol Shed.

The State alleged that on Saturday morning, April 18, 1992, Mr. Bussiere had entered the patrol shed at Ossipee during non-duty hours without the prior knowledge or consent of the Patrol Foreman, and had allowed an individual who was not an employee of DOT into the shed with him, in violation of agency policy. The State further alleged Mr. Bussiere was attempting to use a manually operated pump to take diesel fuel from one of the trucks and to pump it into an empty drum which he had taken from the shed. The State claimed the appellant was interrupted in the act of attempting to steal fuel from the shed by the arrival of Randall Gordon, another DOT Maintenance District 3 employee.

Mr. Gordon testified that during April, 1992, he was assigned to do carpentry work at the Gilford DOT office and the Belmont Patrol Shed. He said he rarely went to the patrol shed in Ossipee except for such tasks as completing leave slips. Otherwise, he seldom saw his fellow employees from the #307 shed. Mr. Gordon testified that on the morning of April 18, 1992, he went to the Ossipee shed to complete a leave slip. When he arrived, he saw a pick-up truck parked in front of the building. None of the doors appeared to be open, and the padlock was still on the entrance door. He said he entered the building and found Mr. Bussiere and another male inside the building, holding a manually operated pump with one end of the pump in the fuel tank of H-478 and the other end in a metal drum. Mr. Gordon said when he asked Mr. Bussiere what he was doing, the appellant responded he had run out of home heating oil and was getting some diesel. According to Mr. Gordon's testimony, Mr. Bussiere said he had permission from the Raymond Randall, Assistant Patrol Foreman, to take the fuel. Gordon finished completing his leave slip and left the building. He did not formally report the incident but mentioned it to his father, Hayden Gordon, another DOT employee.

On Monday morning, April 20, 1992, Gordon was approached by Scott Davis, Assistant District Engineer, to discuss the incident. Mr. Gordon said he didn't want to get involved and had no reason to want to see Bussiere in trouble.

Raymond Randall, Assistant Patrol Foreman at the #307 shed, testified he had received a call at approximately 11:30 a.m. on Monday, April 20, 1992, from the District Engineer, Ken Kyle, concerning the weekend incident. At Mr. Kyle's request, he set up a meeting with the appellant, the Patrol Foreman Dick Eastman, and the Assistant Patrol Foreman, Raymond Randall. He testified that during the meeting, Bussiere admitted being in the shed and taking the drum. He did not admit to taking any fuel.

Mr. Randall testified that after the meeting, Mr. Eastman mentioned the pump, which was fitted to a drum of chainsaw bar and chain oil. He testified that when the pump handle was first turned, instead of pumping out bar and chain oil, it pumped out approximately one cup of diesel fuel. He testified there was only one such pump in the patrol shed and that it would generally not be used to pump diesel, except perhaps in the summer months to fuel the loader when it was assigned to work out of the section and away from the tanks at the maintenance sheds. Although the fuel gauges on H-478 did not appear to show that fuel had been removed from the tank, as much as five to ten gallons could be siphoned from a tank without it registering on the gauge. He testified pumping ten gallons with the manual pump would probably take about five minutes. Mr. Randall testified he had never given Mr. Bussiere permission to take any fuel from the shed.

District Engineer Ken Kyle testified he had met with Mr. Bussiere to address the allegations that he had been in the building over the weekend with an unauthorized person, that he had taken a drum from the building without permission and had stolen fuel from one of the trucks. He said Mr. Bussiere claimed he had lost his key to the building and only managed to get in because one of the overhead doors had been left open. He said Mr. Bussiere admitted taking the drum but denied stealing any fuel.

Mr. Bussiere admitted he had been in the Ossipee patrol shed on Saturday, April 20, 1992, but said he was only there to borrow a drum in which he could transport fuel. Mr. Bussiere testified he had run out of home heating oil and, because of credit problems, was unable to have fuel delivered to his home. He also said he had spent all of the previous day's paycheck paying bills and had no cash with which to pay C.O.D. for a fuel delivery. He testified that he had a friend at Wolfeboro Oil who would allow him to charge heating oil if he provided his own drum in which to transport it. He testified that after leaving the patrol shed, he purchased 50 gallons of heating oil from his friend, Jim Sampson, at Wolfeboro Oil.

Mr. Bussiere, who lives approximately ten miles from the patrol shed, said he had no keys to the building when he drove to the shed on the morning of April 18, 1992, to borrow a drum. He said when he arrived he found one of the overhead doors open, and that finding the building unlocked was not that unusual. He testified he parked the truck in front of the building, entered through the unlocked overhead door, and closed the doors again to keep out the cold. Mr. Bussiere denied taking any fuel from the truck, or that he was near the truck when Mr. Gordon entered the building.

Mr. Bussiere testified that in handling the drum he was borrowing, he had gotten grease on his hands. He said that when Randall Gordon saw him, he was leaving the restroom where he had been washing his hands. Later in his testimony, however, the appellant said he didn't know where he was standing when Randall Gordon came into the building.

Mr. Bussiere admitted to telling Randall Gordon that he had run out of home heating oil. He also admitted to telling Mr. Gordon that Assistant Patrol Foreman Raymond Randall had given him permission to take fuel for that purpose from the shed. However, he testified that he had fabricated the story about such permission solely for the purpose of starting a rumor and finding out whether or not Mr. Gordon would "r[u]n back to the office" to report it.

Mr. Bussiere said that he and Mr. Gordon never had any real problems but that Mr. Gordon probably resented the fact that he had reported a co-worker of Gordon's for drinking on the job, ultimately leading to that individual being demoted.

The appellant testified that Freddy Briggs, the friend who had been in the shed with him on the day in question, had moved to Florida, and could not be reached. Mr. Bussiere also testified that Jim Sampson, the friend from Wolfeboro Oil, had moved to California, and couldn't be reached to corroborate his testimony concerning the fuel purchase. Although he testified that he had charged the oil purchase at Wolfeboro Oil, Mr. Bussiere said he couldn't get a receipt because Mr. Sampson had moved.

Trina Ritchings, the appellant's girlfriend, testified she had seen Randall Gordon on several occasions when she was waiting for Mr. Bussiere to finish work. She said she didn't believe Mr. Gordon liked Mr. Bussiere and didn't appreciate his sense of humor. She said Gordon seemed irritated with Bussiere on the few occasions she had seen him at the shed.

The parties' positions in this matter are easily summarized. The appellant maintained he did not steal fuel, or attempt to steal fuel, from the Ossipee patrol shed on the morning of April 18, 1992. The appellant contended that Randall Gordon's hostility toward him was obvious and provided the Board with a reasonable explanation of why he would be motivated to lie about the alleged theft. The appellant agreed that theft, if proven by the evidence, would be

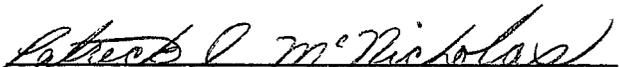
sufficient reason for immediate dismissal. However, the appellant argued that by failing to prove any diesel fuel was missing, the State had not met its burden of production, requiring that the termination be reversed.

The State argued the case turned solely on the issue of credibility. The State argued that the appellant's own testimony was arguably not very credible. The State suggested that the Board was obligated to assess the credibility of the witnesses, determine which version of events was more factual, and rule on that set of facts.

The Board agrees that Mr. Bussiere's testimony was not as credible as that offered by Mr. Gordon, Mr. Randall, and Mr. Kyle. Ms. Ritchings' testimony was essentially irrelevant. Mr. Bussiere failed to persuade the Board that Mr. Gordon had any reason to lie about the appellant, or stood to gain anything by accusing Mr. Bussiere of theft. The Board found Mr. Gordon reasonably concluded, based on his conversation with Mr. Bussiere and his observation of Mr. Bussiere, that the appellant was taking diesel fuel from a State vehicle for his personal use, without the knowledge or consent of his supervisor.

The Board found that Mr. Bussiere committed the offense of stealing from the State and therefore was subject to immediate dismissal from his employment without prior warning pursuant to PER 308.03 of the [former] Rules of the Division of Personnel. The Board voted unanimously to deny Mr. Bussiere's appeal, upholding the Department of Transportation's decision to terminate his employment effective April 20, 1992.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson

  
Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
Karen A. Levchuk, Asst. Attorney General, Transportation Bureau  
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