

State of New Hampshire



PERSONNEL APPEALS BOARD
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Appeal of James Lagace

Department of Safety - Division of State Police

Docket #98-T-20

October 28, 1998

The New Hampshire Personnel Appeals Board (Bennett, Wood and Johnson) met on Wednesday, July 15, 1998, under the authority of RSA 21-I:58, to hear the appeal of James Lagace, a former employee of the Department of Safety, Division of State Police. Mr. Lagace was represented at the hearing by Attorney James Donchess. Attorney Sheri J. Kelloway-Martin appeared on behalf of the State.

The record in this matter consists of the audio tape recording of the hearing on the merits, notices and orders issued by the Board, pleadings submitted by the parties prior to the conclusion of the hearing, and documents entered into evidence as follows:

State's Exhibits

1. February 12, 1998 memo from Col. Barthelmes to Trooper Lagace scheduling a meeting for February 13, 1998 to review evidence supporting Trooper Lagace's termination from employment
2. February 13, 1998, memo from Col. Barthelmes to Trooper Lagace advising him of his immediate termination from employment
3. Pages 3 and 4, State Police Professional Standards of Conduct
4. Pages 13 and 14, State Police Professional Standards of Conduct
5. Division of State Police Code of Ethics
6. Pages 6 and 7, State Police Professional Standards of Conduct
7. State Police Mission Statement and Vision Statement

Appellant's Exhibits

- A. Annual Performance Summary dated 1/8/98 for James Lagace
- B. Annual Performance Summary dated 1/6/96
- C. Letter from Donald Bartlett to Lt. Hunter dated September 6, 1996
- D. Letter from Peter Ryner to Lt. Barry Hunter dated August 26, 1996
- E. Letter from Robert Stein to Trooper Lagace dated February 21, 1997
- F. Letter from Col. Barthelmes to Mrs. Babette Stein dated February 10, 1997
- G. Memo from Col. Barthelmes to Trooper Lagace dated February 10, 1997

The following persons gave sworn testimony:

Trooper Michael Gorecki
Sgt. Edward M. Kokoski
Col. John Barthelmes
James Lagace, Appellant

Both parties submitted proposed findings of fact and rulings of law. The material facts are not in dispute. Therefore, to the extent that the parties' proposed findings and rulings are consistent with the decision below, they are granted. Otherwise they are denied.

On the afternoon of December 28, 1997, shortly after starting his shift, Tr. Lagace received a phone call in his cruiser from Tr. Martha Kidder, one of his patrol partners. Tr. Kidder, who had been away on leave visiting her family for the Christmas holiday, was upset. During the visit home, she had learned that she would likely have to transfer to a barracks closer to her family's home so that she would be available to assist in caring for her father who had been paralyzed after a skiing accident. The appellant told Tr. Kidder that he would come visit with her.

Tr. Lagace was sensitive to rumors throughout the area that he and Tr. Kidder were romantically involved. Instead of telling his shift supervisor of his plan to visit Ms. Kidder, Tr. Lagace called the barracks and told the sergeant that his pregnant wife was not feeling well, and that he needed to be placed on leave for the evening to take care of her. His supervisor agreed to place the appellant on dependent sick leave.

At approximately 9:00 p.m., Tr. Michael Gorecki, another of the appellant's patrol partners, went to the Troop C barracks to complete some paperwork. Upon learning that Tr. Lagace was home on dependent care leave, Tr. Gorecki called the Lagace home to ask how Mrs. Lagace was feeling. To his surprise, Mrs. Lagace answered the phone, and when Tr. Gorecki asked to speak with the appellant, Mrs. Lagace informed him that her husband was at work. Sgt. Kokoski, the shift supervisor, entered the work area during the phone conversation between Mrs. Lagace and Tr. Gorecki, and he overheard Tr. Gorecki apologizing and saying that he would check the schedule more carefully. He also believed from the expression on Tr. Gorecki's face that something was wrong. When Sgt. Kokoski inquired, Tr. Gorecki explained that Tr. Lagace was not at home with his wife as he had said he would be.

Unable to reach him by radio or car phone, Tr. Gorecki paged the appellant. When Tr. Lagace returned the call, Tr. Gorecki explained that he had called the appellant's home and had learned that the appellant was not actually on dependent sick leave. Tr. Lagace, claiming to be upset about the impending birth of his child, said he needed to get away and had gone to a friend's house in Rindge. During one of two subsequent calls that Tr. Lagace made to Tr. Gorecki, the appellant said that he had called his wife and that everything was fine at home. Tr. Gorecki told the appellant that he should call and talk to Sgt. Kokoski, who was aware of the situation.

The appellant called Sgt. Kokoski at the Troop C Barracks and said that he had gone to a friend's house in Rindge after having had a fight with his wife. Sgt. Kokoski told the appellant they would discuss the matter in the morning. Knowing the appellant was in his cruiser, Sgt. Kokoski told him to sign on the radio "10-1 no patrol" and go directly to his residence. The appellant did not sign on immediately, knowing that a radio transmission would reveal that he was in Keene rather than in Rindge.

At the appellant's request, Sgt. Kokoski agreed to meet with him in the parking lot of a business in Dublin, New Hampshire. Rather than admitting that he had lied about his need for leave and his location during his absence, the appellant confronted Sgt. Kokoski saying he felt that he was being "babysat." When Sgt. Kokoski asked where the appellant had been, he insisted he had been at a friend's house in Rindge. When pressed about whether the friend could vouch for his whereabouts, Tr. Lagace finally admitted that he had been at Martha Kidder's residence in Keene the entire time.

The State Police conducted an internal investigation, ultimately finding that the appellant had committed numerous violations of the agency's Professional Standards of Conduct. A recommendation was made to State Police Director Col. John Barthelmes that the appellant be dismissed from the Division of State Police.

Discussion

Col. Barthelmes testified that in his 22 years in law enforcement, he had never seen a trooper, "...become so involved in such a tangled web of deception over such a period of time." Col. Barthelmes testified that if the Division were to allow Tr. Lagace to remain employed, whenever he was involved in a criminal prosecution, the Division would be required to disclose information about his conduct to defense attorneys that they could then use to discredit him as a witness. He stated that nothing is more embarrassing than having a prosecutor say he won't allow a trooper to testify because there are questions about his/her veracity. He testified that although he had considered other forms of discipline short of termination, he concluded that the offense was so significant and Tr. Lagace's credibility so badly damaged that the appellant could never again function effectively as a member of the State Police.

The State argued that the Board should give deference to the appointing authority and not substitute its judgment for that of State Police Colonel Barthelmes if the facts support a finding that the appellant violated the Division's rules and could support termination. The State argued that

regardless of the circumstances, and regardless of the fact that similar conduct might have been tolerated in the past by prior administrations, Col. Barthelmes should not be prohibited from "raising the bar" and holding his officers to a higher standard. The State argued that the Division of State Police has properly adopted and published standards of conduct. The State argued that officers are warned of possible termination for violation of its rules and regulations, and that the State acted properly in dismissing the appellant under the facts in evidence.

The appellant argued that although he should be disciplined, the State should have considered the totality of the circumstances surrounding the offense, and should have imposed a lesser discipline. Tr. Lagace testified that his first serious mistake was not trusting Sgt. Kokoski enough to express his concerns about Tr. Kidder's emotional state, and his belief that she needed his support. He admitted that there were rumors among law enforcement personnel in the area that there must be "something going on" between Tr. Kidder and himself, and that his wife would not have been comfortable knowing that he had gone to visit Ms. Kidder. He also did not want his supervisor or his other patrol partner to know how upset Tr. Kidder was. The appellant admitted that he requested dependent sick leave knowing that it would be granted without question.

The appellant argued that the Board should apply its equitable powers and reinstate him with some lesser form of discipline. He argued that although he had made a mistake, the events of that one day should not outweigh two years of good job performance, and should not be considered sufficient to support his termination.

There is no question that Mr. Lagace committed a series of offenses that should warrant severe discipline. There also is no question that the Director of the Division of State Police has the authority to establish standards of performance and conduct for his employees, and impose appropriate discipline when those standards are violated. The Board also agrees that poor decisions made by past administrations should not be binding upon the current administration. However, when an appointing authority decides to "raise the bar," before using that standard to discipline or

make an example of an employee for failing to take that standard seriously, he should communicate his intentions to do so to all of his staff. The Colonel's insistence that this case is the "worst case of deception" he has encountered in the last 22 years, and should be decided accordingly, flies in the face of the Board's own experience with State Police appeals throughout the years.

There is no dispute that the appellant was well-liked and respected by his fellow officers and by his superiors. There is also no dispute that the appellant's actions on December 28, 1997, represented a dangerous lapse in judgment. There is no dispute that the appellant lied repeatedly to obscure the truth about where he had been and what he had done that day.

Col. Barthelmes testified that the appellant could never be rehabilitated successfully, that the State Police would be required to disclose evidence about his lack of credibility to prosecutors and defense attorneys whenever he was involved in a criminal prosecution, and that the appellant would never again be able to function effectively as a member of the New Hampshire State Police. With all due respect to the Colonel, the Board does not believe that an internal matter of this nature rises to that level. Whether the appellant lied to protect himself from discipline by the State Police, or whether he did so to protect Trooper Kidder's reputation and standing within the Troop have some bearing upon the propriety of the discipline imposed. The very fact that Trooper Lagace admitted to his conduct before an actual investigation was initiated, and cooperated with the agency during their internal investigation of the matter, weighs in his favor.

Decision and Order

RSA 21-I:58, I, states, in part, "In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just."

After considering all the testimony, evidence and arguments offered by the parties, the Board unanimously voted as follows:

The Appeal of James Lagace is hereby GRANTED IN PART and DENIED IN PART.

Trooper Lagace shall be reinstated without benefit of back pay, seniority credit, retirement system contributions, accrual of leave, or other benefit to which he otherwise might have been entitled as an employee of the State. Such reinstatement shall be subject to a one year probationary period, during which Trooper Lagace may be discharged without warning should he fail to meet the work standard as set forth in the provisions of Per 1001.02 of the Rules of the Division of Personnel. The Division of State Police shall be entitled to require Trooper Lagace to complete such training and education as they deem necessary, and shall be entitled to assign him to any duty station or shift that they deem appropriate. Should Trooper Lagace elect to decline reinstatement under the conditions set forth above, he shall have the option of submitting his resignation, retroactive to the date of dismissal. Such resignation shall be deemed a resignation "for personal reasons" and shall not be recorded as a "resignation in lieu of dismissal for cause."

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Robert J. Johnson, Commissioner



Patrick H. Wood, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Atty. Sheri J. Kelloway-Martin, Department of Safety
Atty. James J. Donchess