

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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## *Appeal of Timothy LaRoche*

*Docket #97-T-12*

*Department of Transportation*

*February 12, 1998*

The New Hampshire Personnel Appeals Board (Bennett, Rule and Barry) met on Wednesday, June 4, 1997, under the authority of RSA 21-I:58, to hear the appeal of Timothy LaRoche, a former employee of the Department of Transportation. Mr. LaRoche, who was represented at the hearing by Attorney John Vanacore, was appealing his termination from employment, effective January 30, 1997, for allegedly violating the Department's Firearms Policy, a posted or published policy that in and of itself warns of possible dismissal [Per 1001.08 (b)(3), and for willful misuse of a supervisory position [Per 1001.08 (b)(8)]. Assistant Attorney General Kathryn Bradley appeared on behalf of the Department of Transportation.

The record in this matter consists of the pleadings submitted by the parties, the audio tape recording of the hearing on the merits, and exhibits admitted into evidence as follows:

### State's Exhibits

1. January 30, 1997 letter to Timothy LaRoche from Center Sanders notifying Mr. LaRoche of his termination from employment
2. Performance Summary for Timothy LaRoche
3. Performance Summary for Timothy LaRoche
4. Performance Summary for Timothy LaRoche
5. NH DOT Policy 1.36 entitled Firearms Prohibited

6. NH State Police Incident Report dated 1/10/97 summarizing the investigation by Sgt. James Kelly of an incident involving a handgun at DOT Patrol Headquarters in Nelson, New Hampshire

Appellant's Exhibits

- A. Drawing of Patrol Facility 407
- B. Drawing of Patrol Facility 407

The following persons gave sworn testimony:

Center Sanders, District Engineer, Maintenance District  
Sgt. James Kelly, NH State Police  
Jerry Kercewich, DOT Highway Patrol Foreman  
Frank Lackey, DOT Highway Maintainer II  
Terry Hall, Patrol Foreman  
Michael Pillsbury, Engineer  
Timothy LaRoche, Appellant

Before taking up the merits of the appeal, the Board voted to grant the Appellant's Sequestration Motion. The witnesses were instructed not to discuss their testimony with any other person who might be testifying in the case.

The State alleged that on January 7, 1997, shortly after 3:00 p.m., Mr. Frank Stuckey brought a loaded handgun into the Stoddard Patrol Headquarters, showed the gun to Mr. LaRoche, Frank Lackey, Jerry Kerkcewich, and Terry Hall. The State further alleged that Mr. Stuckey passed the gun for the men to look at, and that discussion ensued about what Mr. Stuckey might use for a target. The State alleged that after some discussion about using Terry Hall's lunch box as a target, or that Mr. Stuckey could shoot an apple off Mr. Hall's head, Mr. Stuckey went outside and, at Mr. Lackey's suggestion, shot a strobe light off a truck parked in the yard of the Patrol Headquarters. The State argued that Mr. LaRoche's involvement in the incident, including his having handled the gun and having taken no action to make Mr. Stuckey put the gun away, constituted a violation of the Department's policy prohibiting the use or bearing of firearms by personnel on duty, and constituted a willful misuse of his supervisory position.

The appellant argued that the incident took place so quickly, he had little or no opportunity to intervene, and that having done so could have created a more dangerous situation. He argued that although there was a clear violation of the DOT Firearms policy, Mr. Stuckey committed that violation and was disciplined accordingly. He argued that no witnesses saw Mr. LaRoche handle the gun, and that Mr. LaRoche did not participate in selecting a target for Mr. Stuckey to shoot at. He asked the Board to find that Mr. LaRoche was not responsible for Mr. Stuckey's action, that he did not violate the firearms policy, that he reported the incident to his superiors in a timely fashion, and that he was not guilty of misusing his supervisory position.

Having considered the evidence and arguments offered by the parties, the Board made the following Findings of Fact:

1. Prior to his dismissal, Timothy LaRoche was a Patrol Foreman assigned to the Stoddard/Nelson Patrol Headquarters.
2. On January 7, 1997, Mr. LaRoche called the District Four Office from his home and reported that a shooting incident had occurred at the Patrol Headquarters some time between 3:00 p.m. and 3:30 p.m. that afternoon.
3. Mr. LaRoche reported that Frank Stuckey, a member of his crew, had shot a strobe light off a truck in the yard. He reported that until he heard the gun being loaded and saw Mr. Stuckey exiting the building into the yard with the gun in his hand, he was unaware that there was a gun in the building. He also reported during the ensuing investigation that he had not handled the gun at any time during the incident.
4. The Department of Transportation initiated an investigation into the incident, which included State Police interviews of Mr. LaRoche, Terry Hall, Ken Fletcher, Frank Stuckey, and Jerry Kercewich.
5. State Police Sgt. Kelly concluded his investigation stating that Mr. Stuckey had committed criminal mischief, by destroying the property of another, and unauthorized use of firearms by having shot the handgun within the compact part of a town.
6. Following the investigation, Mr. Stuckey was terminated. All those involved in the incident who held supervisory positions were disciplined. Mr. LaRoche was dismissed, Mr. Lackey was

demoted from Assistant Patrol Foreman to Highway Maintainer II, and Jerry Kercewich was given a letter of warning. Terry Hall was not disciplined because he was not in a supervisory position.

7. Despite testimony by the State's witnesses that each of the men present had handled the gun, none of the witnesses could recall specifically handing the gun to Mr. LaRoche.
8. Mr. LaRoche did participate in banter about shooting an apple off Terry Hall's head.
9. Mr. LaRoche's position as supervisor of the crew made him responsible for ensuring compliance with the DOT policy prohibiting employees from bearing or discharging weapons on State property on State time.

#### Rulings of Law

- A. DOT Policy 1.36, Firearms Prohibited, states in pertinent part, "Use or bearing of firearms by personnel on-duty is prohibited. Violation of the foregoing shall be grounds for appropriate disciplinary action which may include termination of employment if warranted."
- B. Per 1001.08 (b) of the Rules of the Division of Personnel states, "In cases such as, but not necessarily limited to, the following, the seriousness of the offense may vary. Therefore, in some instances immediate discharge without warning may be warranted while in other cases one written warning prior to discharge may be warranted."
- C. Among the offenses listed in Per 1001.08 (b) are the following: "(3) Violation of a posted or published agency policy, the text of which clearly states that violation of same may result in immediate dismissal," and "(8) Willful misuse of a supervisory position."

#### Decision and Order

While testimony generally indicated that Mr. LaRoche was aware of the presence of the gun at the patrol headquarters prior to discharge of the weapon, and that he was one of the men who handled the gun, there was no direct testimony from any witness who actually recalled handing the gun to the appellant. Inasmuch as DOT Policy 1.36 does not warn of disciplinary action for the failure of any supervisor to enforce the policy, the Board found that Mr. LaRoche did not violate the policy prohibiting the use or bearing of firearms by personnel on-duty.

The appellant did fail to take any responsible action to enforce the firearms policy. While the Board is not persuaded that such inaction constitutes a willful misuse of a supervisory position, the Board finds that the appellant took no steps to keep the incident from occurring, and actively participated in the horseplay surrounding the incident. Despite Mr. LaRoche's testimony that he knew Mr. Stuckey well enough not to interfere while he was holding a loaded gun, the evidence reflects that he was not sufficiently concerned about his personal safety or that of the crew to keep him from participating in the horseplay associated with the incident.

Accordingly, while the Board found that Mr. LaRoche's conduct did not rise to the level of offenses warranting his immediate termination for willful misuse of a supervisory position, the Board found that the appellant's failure to take appropriate action threatened the safety of another employee or client of the agency as described by Per 1001.07 (b)(2)a of the Rules of the Division of Personnel. The Rules also provide for immediate suspension without pay, without prior warning, of any employee whose offense threatens the safety of another employee or client under the provisions of Per 1001.05 (b)(3).

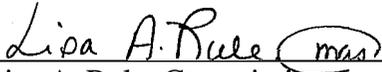
Given the very serious nature of the incident, the fact that property was damaged during the course of the incident, and that such damage occurred when another employee, with the appellant's knowledge, brought a loaded handgun into the workplace, discharged that weapon on State property on State time, and discharged the weapon within the "compact area of a city or town," the Board voted to order the appellant suspended without pay for a period of not less than 120 days, and to direct the Department to demote him to a position outside the management structure of the crew. In accordance with RSA 21-I:58, I, any compensation to which the appellant may be entitled upon his reinstatement shall be calculated by subtracting any compensation earned or benefits received during the period following the suspension and prior to actual reinstatement. Such reinstatement shall occur within 30 days of the date of this order at a time mutually convenient to the parties.

THE PERSONNEL APPEALS BOARD



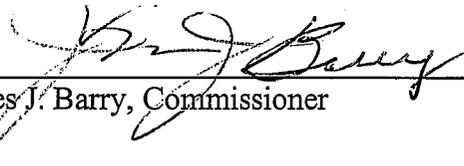
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Mark J. Bennett, Chairman



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Lisa A. Rule, Commissioner



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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Kathryn Bradley, Assistant Attorney General, Transportation Bureau  
Frances Buczynski, Human Resources Administrator, Dept. of Transportation  
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