

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF LEO LAROCHELLE
PLUMBERS' LICENSING BOARD
DOCKET #98-T-~~21~~ 22

October 15, 1998

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Barry) met on September 2, 1998, and on October 7, 1998, under the authority of RSA 21-I:58, to hear the appeal of Leo Larochelle, a former employee of the Plumbers' Licensing Board. Mr. Larochelle was represented at the hearing by SEA General Counsel Michael Reynolds. Assistant Attorney General Winn Arnold appeared on behalf of the State. The State asserted that Mr. Larochelle resigned from his position rather than "face the music" of a hearing that could have resulted in his termination for cause. The appellant alleged that the State actually effected an illegal termination by claiming to accept a resignation he never gave.

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

State's Exhibits

- A. April 17, 1998 letter signed by Leo R. Larochelle titled, "AN OPEN LETTER TO NH PLUMBERS - LET'S SET THE RECORD STRAIGHT"
- B. March 31, 1998, letter to Ralph Mead signed by Leo Larochelle listing items of State property returned to the Board
- C. March 30, 1998, letter to Ralph Mead from Leo Larochelle concerning the issue of resignation
- D. March 27, 1998, letter fi-om Nancy Allen, Plumbing Inspector to Ralph Mead

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- E. March 27, 1998, letter from Ralph Mead to Leo Larochelle; Mr. Mead's notes of a conversation between himself and Mr. Larochelle on March 27, 1998; March 30, 1998, letter fi-om Rhonda Theriault to Ralph Mead; March 30, 1998, statement of Joan Zito
- F. March 26, 1998, memo signed by Ralph Mead retracting his approval of performance evaluations for Nancy Allen, James Canney, Roy Pender and Fred Galietta
- G. March 26, 1998, letter fi-om Ralph Mead to Leo Larochelle requiring his presence at an Executive Meeting of the Board, to carry out the requirements of Per 1001.08(f) of the Rules of the Division of Personnel
- H. March 27, 1998, letter from Nancy Allen to Ralph Mead
- I. March 26, 1998, document, with attachments, titled "Chairman's Questions to Leo Larochelle re: Fred Galietta's Complaint"
- J. March 26, 1998, document, with attachments, titled "Chairman's Questions to Leo Larochelle re: Joan Zito's Complaint, dated March 19, 1998"
- K. March 26, 1998, document, with attachments, titled "Chairman's Questions to Leo Larochelle Re: James Canney's Complaints dated March 18, 1998"
- L. March 26, 1998, document, with attachments, titled "Chairman's Questions to Leo Larochelle Re: Jean Tear's Complaint dated March 18, 1998"
- M. March 26, 1998, document, with attachments, titled "Chairman's Questions to Leo Larochelle Re: Nancy Allen's Complaint dated March 18, 1998"
- N. March 26, 1998, memo fi-om R Roy Pender to Ralph Mead concerning Leo Larochelle
- O. March 25, 1998, "Overview of events 3/9/98 through 3/25/98" written by Ralph Mead
- P. March 24, 1998, Memo from Ralph Mead to James Canney, Nancy Allen, Roy Pender and Fred Galietta requesting their attendance at the Plumbing Board's meeting on Monday, March 30, 1998 to meet with the Board to discuss a personnel matter.
- Q. Formal Complaint dated March 17, 1998, by Ralph Mead against Leo Larochelle
- R. July 1, 1997, second written warning issued to Leo Larochelle for failure to meet the work standard
- S. November 20, 1996, letter from Ralph Mead to William Trombly concerning Leo Larochelle and other staff members
- T. July 11, 1996, letter to Personnel Director Virginia Lamberton from Thomas Hardiman concerning Mr. Larochelle's acceptance of the terms of the Director's decision regarding his role as Chief Inspector
- U. July 1, 1996, letter from Personnel Director Virginia Lamberton to Thomas Hardiman responding to a request for informal settlement of Mr. Larochelle's demotion from Chief Plumbing Inspector to Plumbing Inspector
- V. Handwritten letter from Leo Larochelle to Nancy Allen dated September 11, 1996
- W. June 10, 1996, letter fi-om Leo Larochelle to Virginia Lainberton concerning his request for reinstatement to the position of Chief Plumbing Inspector
- X. January 17, 1996, letter from William Trombly to Leo Larochelle, demoting Mr. Larochelle to Inspector
- Y. January 16, 1996, letter fi-om Richard Zannini to the Plumbers' Licensing Board concerning an incident involving Mr. Larochelle on the evening of November 19, 1995, at Capitol Supply

- Z. May 6, 1996, letter to Virginia Lamberton from Thomas Hardiman appealing a letter of warning and immediate demotion issued to Leo Larochelle, and attached performance evaluation dated 1/3/95
- AA. March 30, 1998, Executive Board Meeting minutes
- BB. April 7, 1998, letter from Ralph Mead to Leo Larochelle

Appellant's Exhibits

- 1. Personnel Action Form dated 4/2/98 effecting Mr. Larochelle's separation from employment with attached listing of "Personnel Action Reason" codes

The following persons gave sworn testimony:

Virginia A. Lamberton	Jean Tear
Ralph Mead	Richard Zannini
Rhonda Theriault	Leo Larochelle
William Trombly	Fred Galletta
Raymond Welch	

The State argued that Mr. Larochelle was not dismissed, but resigned from his position as Chief Plumbing Inspector on Friday, March 27, 1998, as a means of avoiding a hearing before the Plumbers' Board the following Monday to refute allegations against him supporting his termination from employment. Mr. Larochelle argued that Ralph Mead, Chairman of the Plumbers' Board, and William Trombly, his predecessor, had tried unsuccessfully to have him removed from his position for years. He argued that none of his conduct, either on Friday, March 27, 1998, or any day thereafter, was indicative of, or consistent with, a resignation. The appellant also argued that even if his conduct could have been construed as a resignation, the meeting at which he resigned was not properly noticed and violated the provisions of RSA 91-A; therefore, any action taken by the Board at that meeting, including acceptance of the appellant's resignation, must be considered illegal.

Factual Background of the Appeal

1. Mr. Larochelle was employed by the State Board for the Licensing and Regulation of Plumbers ("Plumbers' Board") from September 3, 1982, through March 30, 1998, as the Chief Plumbing Inspector.
2. In recent years, Mr. Larochelle's conduct, specifically with respect to his inter-personal relationships, had been the source of complaints from subordinates, other Board staff and members of the Plumbers' Board itself.
3. Mr. Larochelle was notified by letter dated January 17, 1996, of his immediate demotion from Chief Plumbing Inspector to Plumbing Inspector. Mr. Larochelle timely filed a request for informal settlement of that dispute.
4. On July 1, 1996, after a meeting with Mr. Larochelle, Jean Tear, Nancy Allen, William Trombly and Thomas Hardiman, SEA Director of Field Representatives, Personnel Director Virginia Lambertson issued a decision reducing the immediate suspension to a letter of warning because the appellant had not previously received two written warnings for similar misconduct or poor work performance.
5. In her July 1, 1996, decision, Director Lambertson wrote, "Mr. Larochelle can return to his former level of responsibility as the Chief Inspector. The disciplinary letter of demotion shall be changed to a letter of warning under Per 1001.08 (h), Optional dismissal. This means that if Mr. Larochelle repeats any of the problems outlined in the disciplinary demotion letter, he shall be terminated from employment with the State."
6. On July 1, 1997, Mr. Larochelle received a second written warning pursuant to Per 1001.03, for failure to meet the work standard. The written warning included the caution that any further failure to meet the work standard would result in a final warning, and the appellant's termination from employment.
7. On the morning of March 27, 1998, Mr. Larochelle received written notification from Chairman Mead to attend a meeting of the Plumbers' Board, where the appellant would be permitted an opportunity to refute allegations supporting his dismissal from employment.

8. Mr. Larochelle called Chairman Mead shortly after 9:00 a.m., asking Chairman Mead to list the allegations against him, saying that he would be unable to answer the complaints if he didn't know what they were.
9. Chairman Mead advised the appellant that the allegations would be presented at the meeting the following Monday.
10. Mr. Larochelle then asked why these things always happened on a "f---ing Friday," and complained that this would "f--- up his weekend." Mr. Larochelle said that it was unlikely that he would be able to have an SEA representative at the meeting on such short notice, and that it probably would not matter because it sounded like he was going to be fired anyway. Mr. Larochelle ended the conversation by telling the Chairman that he could "...take the job and shove it." He abruptly hung up the phone, announced to the personnel in the office that he was going home, and left the office.
11. The Board met as scheduled on Monday, March 30, 1998, and Mr. Larochelle attended.
12. The members of the Board were each given information relative to the allegations against the appellant. Before taking up the complaints, however, Chairman Mead informed the other members of the conversation he had had with Mr. Larochelle on Friday morning, and advised them that they needed to take up the question of Mr. Larochelle's resignation instead.
13. Mr. Larochelle denied having told Chairman Mead he could "...take this job and shove it." He took the letter from Chairman Mead accepting the appellant's resignation.
14. At approximately 2:00 p.m. on March 30, 1998, while the Board was still convened to meet with other members of the staff, Mr. Larochelle telephoned Chairman Mead to ask whether the Board had accepted his resignation. Chairman Mead consulted with the Board, and informed Mr. Larochelle that the Board was still willing to accept his resignation.
15. Raymond Welch, a member of the Plumbers' Board, was present at the March 30, 1998, Board meeting.
16. Based on the information provided by Chairman Mead, Mr. Larochelle's appearance before the Board on March 30, 1998, and Mr. Larochelle's telephone call to the Board later that day, Mr. Welch concluded that Mr. Larochelle had resigned his position. Mr. Welch voted with the Board to accept his resignation.

17. On April 2, 1998, Chairman Mead received a letter from Mr. Larochelle that stated, in part, "Pursuant to our telephone conversation on Monday, March 30, 1998 at 2:00 p.m. and after further advice from legal counsel, I have decided against honoring your request for my resignation as Chief Plumbing Inspector for the State Plumbers Board."

Findings of Fact

On the evidence as presented by the parties, the Board made the following findings:

1. On March 27, 1998, Mr. Larochelle received notice by letter dated March 26, 1998, that he was to appear before the Plumbers' Licensing Board to answer complaints and refute allegations supporting his dismissal from employment.
2. Mr. Larochelle, who had received two earlier warnings for failure to meet the work standard, was aware that he could be terminated by issuance of a third and final warning.
3. In a telephone call with Plumbers' Board Chairman Ralph Mead on the morning of March 27, 1998, Mr. Larochelle told Chairman Mead that he could "take this job and shove it."
4. Rhonda Theriault and Fred Galietta, who were within earshot of Mr. Larochelle during his call to Mr. Mead on March 27, 1998, heard Mr. Larochelle tell Mr. Mead, "You can take this f---ing job and shove it!"
5. If, as Mr. Larochelle asserted during his testimony, he had qualified his remark to Mr. Mead about the job with language such as "if this harassment continues," he did not do so at his meeting with the Plumbers' Board on March 30, 1998. Rather, when Chairman Mead outlined the conversation he had had with Mr. Larochelle on March 27, 1998, Mr. Larochelle flatly denied ever having made such a statement.
6. Mr. Larochelle called the Plumbers' Board during their meeting to verify that they had accepted his resignation rather than voting to terminate his employment involuntarily.
7. Mr. Larochelle's actions on March 30, 1998, are consistent with a resignation.
8. Mr. Larochelle's actions on the days following his resignation, including his letter to Chairman Mead indicating that he had decided not to "honor [Chairman Mead's] request for [his] resignation" are inconsistent with the testimony and evidence.

9. Mr. Larochelle resigned his position, and was unsuccessful in persuading Chairman Mead or the members of the Plumbers' Board to allow him to retract it once given.
10. The fact that Mr. Larochelle subsequently had a change of heart and wished that he had not resigned does not negate or invalidate the resignation once given.

The appellant argued that the Plumbers' Board's acceptance of Mr. Larochelle's resignation violated Per 1001.08 (e) (4) because the Board did not wait the required 3 consecutive work days from the notice of dismissal before accepting the resignation. The Board does not agree. Per 1001.08 (e) states:

“Nothing in this rule shall prohibit an appointing authority from allowing an employee to request that he or she be allowed to resign in lieu of discharge provided that:

- (1) The employee makes such request in writing;
- (2) The employee certifies that the resignation was given after review and consideration of the evidence used to support the decision to dismiss the employee;
- (3) The employee certifies in writing the employee's understanding that a resignation given in lieu of dismissal for cause may not be resolved through the settlement of disputes, pursuant to Per 202, or by appeal to the board pursuant to the provisions of RSA 21-I:58; and
- (4) The employee waits 3 consecutive work days from the notice of dismissal before submitting the written resignation.”

The Board finds that Per 1001.08 (e) is not applicable in this instance, as Mr. Larochelle had given his resignation before the Board could present the evidence supporting his dismissal. The Board finds the appellant's suggestion that the resignation violated Per 1001.08 (e) to be without merit.

The appellant also argued that the resignation must be considered unlawful and in violation of RSA 91-A because the Plumbers' Board failed to record a roll call vote to meet in Executive Session, and failed to amend its notice of an Executive Session to indicate the change in “focus” from reviewing allegations against Mr. Larochelle to acceptance of his resignation. The Board considers this argument to be without merit as well. Mr. Larochelle's resignation was given on Friday, March 27, 1998, and confirmed on Monday, March 30, 1998, by him through his conduct. The appellant failed to offer any evidence that a meeting of the Board was necessary in

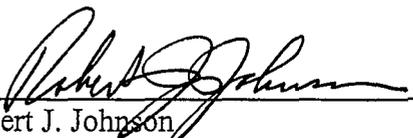
order for the Chairman to accept his resignation, Nonetheless, as the Board was already convened and did accept his resignation. Ms. Tear gave uncontroverted testimony that notices for the meeting were properly posted, and that the subject of the executive session was listed as "a personnel matter."

The Board found that the appellant had an opportunity at the Plumbers' Board meeting on March 30, 1998, to explain his conduct the previous Friday, and to persuade the members of the Plumbers' Board that he had not resigned and should be permitted to answer the allegations supporting his dismissal. Having failed to do so, Mr. Larochelle confirmed that Chairman Mead was correct in his belief that Mr. Larochelle had resigned. On the evidence, the Board voted unanimously to deny Mr. Larochelle's appeal, finding that he resigned from his position as Chief Plumbing Inspector.

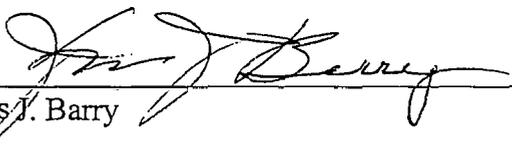
THE PERSONNEL APPEALS BOARD



Mark J. Bennett



Robert J. Johnson



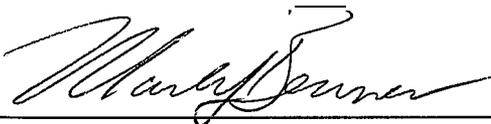
James J. Barry

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The Board found that the appellant had an opportunity at Plumbers Board meeting on March 30, 1998, to explain his conduct the previous Friday, and to persuade the members of the Plumbers' Board that he had not resigned and should be permitted to answer the allegations supporting his dismissal. Having failed to do so, Mr. Larochelle confirmed that Chairman Mead was correct in his belief that Mr. Larochelle had resigned. On the evidence, the Board voted unanimously to deny Mr. Larochelle's appeal, finding that he resigned from his position as Chief Plumbing Inspector.

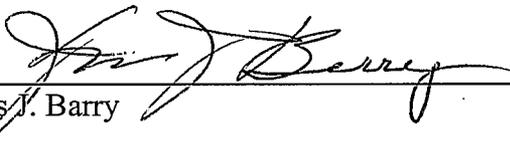
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