

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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**APPEAL OF ROBIN KEMPTON**  
**Docket #92 -0-6**  
**New Hampshire State Liquor Commission**

September 21, 1994

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, August 10, 1994, to hear the appeal of Robin Kempton, an employee of the New Hampshire State Liquor Commission. Ms. Kempton, who appeared *pro se*, was appealing her involuntary transfer from the Newport Store (Store #24) to the New London Store (Store #64). Ms. Kempton alleged that there was no reason given to her for the transfer, and that transfer for any reason other than the good of the agency was a violation of the Personnel Rules. The Liquor Commission was represented at the hearing by George Liouzis, Administrator for Human Resources.

This matter was scheduled for hearing on offers of proof. However, in light of Ms. Kempton's status as a *pro se* appellant she was given the opportunity to make her statement under oath. Under those circumstances, Mr. Liouzis was also asked to make his statement under oath.

Ms. Kempton stated that at the time of her transfer, she was never given a reason for her relocation from Newport to New London. Ms. Kempton stated in her notice of appeal that she was happy in the Newport store which is in the town where she lives, that she had gotten to know the customers, and that she got along well with the other employees in the store. Ms. Kempton said that when she was transferred from Newport to New London, she understood that there had been a charge of sexual harassment against an employee in the New London store, and that he was subsequently transferred to Bristol. She stated that the Bristol employee was then transferred to Newport when Ms. Kempton was transferred to New London.

Mr. Liouzis asserted that under Per 302.04(5)(b) of the Rules of the Division of Personnel which were in effect at the time of the transfer, management retained the right to transfer employees whenever it was in the best interests of the agency. Mr. Liouzis explained that as a matter of policy, except in instances where it would create a hardship for the affected employee, the

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Liquor Commission routinely transfers employees within their own geographical area. Mr. Liouzis asserted that transfer gives employees wider exposure to work in other stores, improves their chances for employee development, and acts as a reminder that assignment to any store can not be considered a "lifetime" appointment. He said that transfers such as that which affected Ms. Kempton were not punitive and should not be seen as such.

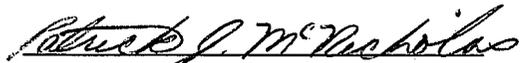
Mr. Liouzis said that he maintains a transfer list of Commission employees who wish to be relocated, and that Ms. Kempton is on that list. He stated that Ms. Kempton had originally been assigned to the store in Lebanon, but discovered that it was too far to travel. She had requested a transfer to either Newport, New London or Claremont. He said she had been promoted to a position in Newport, was transferred from there to a position in New London, and has since been transferred to Claremont. Although Mr. Liouzis wasn't certain which location had been Ms. Kempton's original first choice, each of her store assignments had been within the geographical area she had selected.

Mr. Liouzis argued that under the provisions of (former) Per 302.04(5)(b), appointing authorities may transfer employees when such transfers are in the best interest of the agency. He said that employees may appeal an involuntary transfer when they believe the transfer has been made for some other reason. He argued that Ms. Kempton had never alleged that the transfer was for any reason other than the best interests of the agency, and that each of her assignments had been on her list of choices for 'transfer. Mr. Liouzis said that until the date of the hearing itself, Ms. Kempton had never alleged that the transfer was'a result of charges of sexual harassment against another employee.

On the record before it, the Board voted unanimously to deny Ms. Kempton's appeal. Former Per 302.05(b) allowed employees to appeal a transfer if the employee felt the transfer was made for some reason other than the best interests of the agency, and it appears that there was no other motive behind Ms. Kempton's transfer. Even assuming that Ms. Kempton is correct, that another employee was charged with sexual harassment, that he was removed from his position, and that she was transferred to fill his position, she has failed to demonstrate why that would not be in the best interests of the agency.

Although the Board voted to uphold the Liquor Department's assertion that the transfer was not punitive and that it was entitled to make such a transfer, the Board sees no reason why Ms. Kempton or any other employee should be denied a written explanation of the reason(s) for the transfer. The Liquor Commission has offered a credible explanation of its policy and although the Board might not adopt a policy for the regular transfer of employees, the Board may not supplant its judgment in this matter for that of the appointing authority. The Liquor Commission should be responsible for providing employees with an explanation of that policy, and why the Commission believes that transfer of any employee is in the best interests of the agency.

THE PERSONNEL APPEALS BOARD



Patrick J. McNicholas, Chairman



Mark J. Bennett, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Robin Kempton, Appellant  
George Liouzis, Administrator, N.H. Liquor Commission