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State of New Hampshire

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APPEAL OF WILLIAM BAKUS

November 13, 1987

On August 20, 1987, the Personnel Appeals Board, Commissioners Haseltine, Allard and Platt sitting, heard the appeal of William Bakus, a Youth Counselor III at the Youth Development Center ("YDC"). Mr. Bakus was suspended without pay for one week by letter dated July 1, 1987, due to unsatisfactory work performance. Mr. Bakus appeared pro se at the hearing. Ronald Adams, Superintendent, represented the YDC.

In his letter of appeal, filed on his behalf by Field Representative Stephen McCormack of the SEA, Mr. Bakus contended that a suspension without pay for unsatisfactory work was "inappropriate" because it was inconsistent with the Rules of the Division of Personnel.

Neither party submitted requests for findings of facts and rulings of law. Accordingly, after considering all of the evidence presented, the Board made the following findings and rulings. Mr. Bakus had been employed by the YDC since 1979, with a one year break in service. On June 20, 1987, Mr. Bakus was the senior person on duty in East Cottage, working with three other Youth Counselors as well as an individual at the control booth in the cottage. Although Mr. Bakus testified that he was concerned about the level of experience of his co-workers, he chose to run errands off-campus and then work out in the cottage weight room with a few of the residents rather than assisting in the monitoring of resident activity in the yard. Mr. Bakus also testified that he had noticed the condition of the security fence surrounding the yard and had previously expressed concern about its state of repair. While Mr. Bakus was in the weight room, a resident escaped through the fence.[1]

[1] Two months earlier, Mr. Bakus had received an oral warning when another resident escaped from his care at the gym. In that case, Mr. Bakus had told the resident to take a shower while Mr. Bakus took another lap and "went to talk to someone."

The Board found that the appellant failed to exercise the requisite caution expected of a senior man on duty on June 20, 1987. As senior person, Mr. Bakus should have been reviewing the actions of the other less experienced workers and providing assistance at the area requiring the greatest supervision - the yard.

Mr. Bakus testified at the hearing that he was not present in the yard when the juvenile escaped and therefore should not have been held responsible. He also contended that because his supervisor was not on duty in the cottage with him, he should not have been held responsible. Finally, he argued that even if he should have been disciplined, a letter of warning would have been sufficient.

In this instance, Mr. Bakus knew he was the senior man on duty, knew that the other staff were less experienced and had expressed concern about the condition of the fence. Moreover, two weeks earlier he had been warned to exercise more caution in watching the yard. Regardless of where the supervisor on duty was located, Mr. Bakus, as senior man on duty in his cottage, had a responsibility to safeguard the security of the cottage, which he failed to do. Given these factors, the Board found the 4 day suspension was valid.

The Board found that Per 308.01 permits suspension "without pay for disciplinary reasons or other cause." The Board found that this rule provides a discipline alternative to those actions set forth in Per 308.03. Nothing in Per 308.03, governing actions classified as "mandatory discharge," "optional discharge" or "other offenses" bars the applicability of Per 308.01. If the Board were to find merit in the appellant's argument, then suspension could only be used for those offenses which specifically list suspension as a discipline alternative in Per 308.03. Because none of the enumerated categories list suspension as an alternative within Per 308.03, the Board found that Per 308.01 provides that suspension is a discipline alternative of general applicability to incidents classified as "optional discharge" or "other offenses." To find otherwise would render Per 308.01 (a) meaningless.

The Board further found that a letter of warning would not have been as effective as the suspension. Mr. Bakus had already been advised twice by his superiors that he had to be more careful about security. These sessions appeared to have little effect on the appellant's work habits. His employer testified that he did not want to fire Mr. Bakus because he had been a good employee, but that he had to take some action which would impress upon Mr. Bakus the seriousness of his actions. The Board found that this limited suspension was an appropriate action given the seriousness of the problem.

Accordingly, the Board voted unanimously to uphold the letter of suspension without pay issued by the YDC.

FOR THE PERSONNEL APPEALS BOARD

Mary Ann Steele

MARY ANN STEELE
Executive Secretary

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cc: Ronald Adams, Superintendent
Youth Development Center

Mr. William Bakus, Youth Counselor III
Youth Development Center

Virginia A. Vogel, Director
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