State of New Hampshire

PERSONNEL APPEALS BOARD
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APPEAL OF MURIEL FAULKNER
Docket #95-D-2

New Hampshire State Liquor Commission

August 31,1995

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, August 16, 1995, to hear the appeal of Muriel Faulkner, a cashier employed by the New Hampshire Liquor Commission. Ms. Faulkner, who was represented at the hearing by SEA Field Representative Stephen McCormack, was appealing a June 1, 1994 letter of warning which she received for unsatisfactory work performance. The letter alleged that Ms. Faulkner's improper cash handling procedures resulted in a cash shortage of $100.06 from her register. George E. Liouzis, Human Resources Administrator, appeared on behalf of the Liquor Commission. The appeal was made on offers of proof.

The record in this matter consists of the documents submitted by the parties prior to the hearing, including the following exhibits:

State's Exhibit #1 - Supervisor's recommendation for letter of warning
State's Exhibit #2 - Store Operations Manual Section 2-2
Appellant's Exhibit #1 - November 9, 1994 letter of appeal (with enclosures)
Appellant's Exhibit #2 - New Hampshire State Liquor Commission Store Operations Manual

The facts, which are not in dispute, are as follows:

1. Ms. Faulkner, a cashier, has been employed by the New Hampshire State Liquor Commission for approximately 8 years.

2. The Store Operations Manual states that when an employee has a cash discrepancy of $10 or more (overage or shortage), the cashier must write a memorandum to the Store Supervisor giving the reason, if possible, for the discrepancy. The memo must show the

amount of money taken in for the day by that cashier, any discrepancy in an amount of $10 or more which that cashier may have had in the previous 30 days, and the amounts of money taken in by the cashier on those days. To write the memorandum, the employee fills out a form entitled "New Hampshire State Liquor Commission Shortages/Overages Reporting Form." The information which the memo must contain is available on computerized register print outs.

3. The Store Operations Manual also requires the Store Manager to submit a memorandum explaining any overages or shortages to the Director of Stores Operations whenever there is a discrepancy in the store's gross receipts of $10 or more.

4. On April 27, 1994, when she cashed out the drawer of her register, Ms. Faulkner was $100.06 short. Ms. Faulkner completed a "Reporting Form" on which she explained that when she was "exchanging money for a customer" the customer must have "shorted" her.

5. By memorandum dated May 12, 1994, Store Supervisor Cynthia French reported the shortage to John D. Bunnell, Director of Store Operations, recommending that Ms. Faulkner receive a letter of warning. Mr. Bunnell and George Liouzis, Human Resources Administrator, concurred with the recommendation.

6. The Commission issued the warning to Ms. Faulkner by letter dated June 1, 1994.

7. Prior to receiving the warning, Ms. Faulkner had filed a grievance claiming that she was not being offered available over-time assignments. Ms. Faulkner's supervisor, Cynthia French, supported her in that grievance.

In her notice of appeal of the warning, Ms. Faulkner argued that the letter was improper, and that it had been used by the Commission in retaliation for the grievance which she filed concerning over-time assignments. Ms. Faulkner, through her representative the State Employees' Association, also argued that the Liquor Commission had not provided prior written notice to employees that cash shortages would result in disciplinary action, and had not adopted any standard to indicate how much of a cash shortage would result in the employee receiving a written warning. Ms. Faulkner offered to prove, through her own testimony, that she and her co-workers would be surprised to learn that they could be disciplined for any loss, even a loss as high as $1000. Ms. Faulkner argued that she had no prior pattern of cash handling problems, that she had received no prior oral warnings or counselling memos about overages or shortages which had been reported.

Ms. Faulkner argued that the Commission is not consistent in its application of discipline when a cash shortage occurs, citing an instance in 1990 when there was a $500 loss which did not result in the imposition of discipline against any employee. She also argued that there had been

$100 losses in other stores, but that the Commission had not disciplined those employees. Ms. Faulkner argued that the Commission had not properly adopted their Store Operation Manual, and could not produce evidence that the manual had been reviewed and approved by the Director of Personnel as a policy which may be used as a basis for disciplining employees. Ms. Faulkner also suggested that she may have been the victim of a "scam", and that the customer may have purposefully confused her. She argued that the customer was a known licensee and the Liquor Commission had made no attempt to recover the monies from him.

Mr. Liouzis argued that the Rules describe the written 'warning as the least severe form of discipline to correct an employee's unsatisfactory work performance. He argued that no reasonable person could accept Ms. Faulkner's claim that Liquor Commission employees are unaware that they can be disciplined for discrepancies between their reported sales and their receipts. Mr. Liouzis noted that it would impractical, if not impossible, to list each and every offense for which an employee might be disciplined, and he argued that if the Liquor Commission put a dollar value on the size of a discrepancy which would result in discipline, it would require the Commission to discipline employees when mitigating or extenuating circumstances indicated that discipline was unnecessary.

Mr. Liouzis offered to prove that one reason the $500 loss did not result in discipline was because the loss was reported on a Megabucks machine, which all the employees used. He argued that when a single employee is responsible for a register, that employee's record of sales and receipts is tracked individually. However, with more than one person working a register, it may be impossible to'attribute shortages or overages to any one employee. Mr. Liouzis also offered to prove that while a large amount of cash had been lost, a letter of warning had been recommended, but that no warning was issued because the employee was one of a very large group of employees who were laid off shortly thereafter. Mr. Liouzis asserted that the other instances of large cash shortages cited by the appellant were undocuinented, and that none of those instances of alleged cash shortages had been brought to the Commission's attention.

Mr. Liouzis objected to the characterization of the warning as an act of retaliation, noting that the supervisors who recommended the warning to the Commission were actually the individuals who supported Ms. Faulkner's position in the grievance she had filed. He argued that the Commission does not tolerate poor performance any more than it would tolerate theft. He argued that employees understand the importance of cash handling, and that proper cash handling is evaluated as part of their over-all performance. Mr. Liouzis asserted that when an employee's receipts show regular errors, it often means that the individual simply is not able to perform satisfactorily as a cashier. However, he argued that when mistakes can be attributed to employee negligence or carelessness, discipline is warranted. He said that in Ms. Faulkner's case, her carelessness was extremely costly, and that a written warning was the most appropriate response.

After considering the evidence and offers of proof, the Board voted unanimously to affirm the letter of warning and to deny Ms. Faulkner's appeal. In so doing, the Board made the following Rulings of Law.

~~RULINGS OF LAW~~

A. Per 103.03 (a) of the Rules of the Division of Personnel states the following:

> "Appointing authorities shall submit to the director those internal agency policies, such as posted rules applying to classified employees, that <u>in and of themselves warn of automatic discharge</u>. The Director shall investigate, review and comment on these policies in accordance with RSA 21-I:42, IV (f)., prior to distribution or enforcement."

Insofar as the Store Operations Manual does not warn of automatic discharge, the Commission is not required to submit it for review by the Director of Personnel prior to distribution or enforcement. Mr. McCormack's assertion that the Store Operations Manual must contain cautionary language, and be previously approved by the Director of Personnel if the agency intends to rely upon it for disciplinary action, is unpersuasive.

B. Per 103.03 (b) of the Rules of the Division of Personnel states the following:

> "Any agency which develops employment-related handouts, such as an employee handbook, shall, with the approval of the Commissioner of Administrative Services, submit such documents to the director for review and comment prior to distribution."

The Store Operations Manual is not an employee handbook. It does not explain employee rights and benefits, or internal agency personnel policies. Rather, it is a retail liquor sales "how-to" manual, and it details <u>how</u> employees are expected to complete the work they are assigned.

RSA 21-I:42, IV (f)., as enacted., neither requires nor authorizes the Director to approve or disapprove methods of operation for each of the units in State government.

C. Per 1001.03 (a) provides that an appointing authority may use the written warning "as the least severe form of discipline to correct an employee's unsatisfactory work performance for <u>offenses including, but not limited to</u>..." those listed in Per 1001.03 (a) (1) - (11).

The appellant's argument that the Liquor Commission failed to inform her that substantial cash losses would be considered "unsatisfactory work", is unpersuasive. Ms. Faulkner has been employed in a retail environment at the Liquor Commission for more than eight years. She knows that the Liquor Commission monitors her sales and receipts, and requires her to advise them in writing whenever there is a discrepancy of $10 or more on her register, whether the discrepancy is over or under the amount she should have collected. The appellant's primary function is retailing and involves cash and credit transactions. A reasonable person would conclude that employees who fail to properly conduct or report those transactions would be subject to discipline.

D. Per 1001.03 of the Rules of the Division of Personnel does not require an appointing authority to list each and every possible offense for which disciplinary action may be taken, nor has the Liquor Commission violated Per 1001.03 by exercising a degree of discretion in deciding when an employee's overages or shortages may be considered unsatisfactory work, or failing to meet the work standard.

Shortages and overages must be considered on a case by case basis. In the Board's opinion, assuring an employee that he or she will not be disciplined for losing up to a specified amount would establish an extremely poor management practice. For the dishonest or unscrupulous employee, such a practice could be tantamount to a license to steal, provided the theft did not exceed the established disciplinary threshold.

E. There is insufficient evidence to support a finding that the Liquor Commission has been inconsistent in disciplining its employees for improper cash handling. The appellant cited only one documented case of a large cash loss in the previous five years. The loss, involving a $500 discrepancy, was not attributable to any one employee, and the Liquor Commission correctly determined that it could not discipline all the employees for the shortage unless it could demonstrate that all of the employees were at least partially responsible. The record reflects that disciplinary action had been recommended in that instance, but that the employee was laid off before a warning was administered. The appellant failed to document any instance sufficiently similar to her own where disciplinary action was not taken.

F. There is insufficient evidence to support a finding of retaliatory intent in the issuance of Ms. Faulkner's letter of warning. The record reflects that the individuals who recommended that Ms. Faulkner receive a written warning were the same individuals who supported her position in the grievance which she filed. The timing of the warning might raise more of a concern on the Board's part,' but for the fact that the shortage Ms. Faulkner reported was considerably larger than any of her other shortages, it was a substantial amount of money, representing almost 4% of her gross receipts for the day, and it was directly attributable to poor cash handling. As such, her performance was unsatisfactory, and a written warning was appropriate as the least severe form of discipline to correct her poor performance.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson, Commissioner

Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
George E. Liouzis, Human Resources Administrator, N.H. State Liquor Commission
Stephen J. McCormack, SEA Field Representative