

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF MAURICE GAUTHIER

DOCKET #97-D-9

DEPARTMENT OF ENVIRONMENTAL SERVICES

October 15, 1998

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met on Wednesday, April 23, 1997, to hear the appeal of Maurice Gauthier, an employee of the Department of Environmental Services. Mr. Gauthier, who was represented at the hearing by Attorney Susanna Robinson, was appealing an October 29, 1996, written warning. Randolph Monti appeared on behalf of the Department.

The appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the audio tape recording of the hearing on the merits, notices issued by the Board, pleadings submitted by the parties, and exhibits entered into evidence as follows:

APPELLANT'S EXHIBITS

1. Copies of Annual Performance Summaries with attached employee comments from 1990 through 1995
2. Affidavit of Richard Brock
3. Affidavit of Lori Pelletier
4. Correspondence related to a grievance concerning denial of overtime filed on behalf of Robert Bean
5. November 22, 1996, letter from Robert Peter to Moe Gauthier
6. January 13, 1997, second written warning issued to Maurice Gauthier
7. March 26, 1997, memo from Vicki Whittemore

8. April 10, 1997, memo from Randolph Monti
9. Human Resources Policy on Employee Harassment
10. April 22, 1997 letter from Kate McGovern

STATE'S EXHIBITS

1. Winnepesaukee River Basin Bureau organizational chart
2. September 2, 1992, Memo from Edward Schmidt to Randolph Monti
3. October 28, 1992, Evaluation of Maurice Gauthier by Art O'Connell
4. April 2, 1993, Memo to Moe Gauthier from Edward Schmidt
5. July 1, 1994, memo from Maurice Gauthier to Randy Monti
6. July 12, 1994, memo from Randolph Monti to Maurice Gauthier
7. Class Specification for Plant Maintenance Engineer IV
8. January 18, 1996, facsimile transmittal from Moe Gauthier to Joy O'Connor
9. January 19, 1996, staff interview notes compiled by Joy O'Connor
10. October 24, 1996, memo from John Bush to Edward Schmidt
11. October 9, 1996, handwritten memo from Randy Monti to unnamed staff members
12. September 25, 1995, Performance Summary for Kenneth Noyes prepared by Maurice Gauthier
13. September 18, 1996, Performance Summary for Kenneth Noyes prepared by Maurice Gauthier
14. March 15, 1996, memo from Steve Dolloff to Moe Gauthier
15. December 20, 1995, memo from Edward Schmidt to Moe Gauthier
16. Handwritten notes concerning a staff meeting
17. April 10, 1997, memo from Randolph Monti titled "Note to File"
18. December 17, 1996, letter from Steven Dolloff to Edward Schmidt
19. December 23, 1995, memo from Joy O'Connor to Maurice Gauthier
20. April 17, 1997, handwritten statement titled "What I think about Steve Dolloff" signed by Kenneth Noyes
21. April 17, 1997, letter from Stephen Young to Randy Monti titled "My personal assessment of Steven Dolloff"
22. April 16, 1997, letter from Randolph Monti to Vicki Whittemore with attachments
23. July 10, 1996, Performance Summary for Thomas Croteau by Steve Dolloff, with attached employee comments
24. August 4, 1995, letter to Safety Committee Members and system staff from Scott McDonald

The instant appeal arises out of a letter of warning issued to Mr. Gauthier on October 29, 1996, for failing to meet the work standard. Specifically, the department cited Mr. Gauthier for uncooperative and insubordinate behavior, and for deficiencies in his leadership practices. In his November 12, 1996,

letter to Steven Dolloff, Superintendent of the Winnepesaukee River Basin Waste Water Treatment Plant, Mr. Gauthier described the October 29, 1996, written warning as a means of harassment, characterizing Mr. Dolloff's criticism of his conduct and leadership as, "...trumped up incidents which have been misrepresented to support [Mr. Dolloff's] agenda."

Ms. Robinson argued that prior to Mr. Dolloff's appointment as Superintendent of the Wastewater Treatment Plant, Mr. Gauthier's work had always met performance expectations. She argued that Mr. Dolloff resented the fact that Mr. Gauthier was not a "yes man" and insisted on asking questions about his supervisor's decisions whenever those decisions affected his own work. She argued that Mr. Dolloff's leadership style included harassment, abuse of power, intimidation and heavy-handed supervision that he used to single out those employees who disagreed with him. She argued that because of Mr. Dolloff's management style, Mr. Gauthier felt humiliated, worthless, tired and useless in the workplace. She asserted that certain of his remarks that had been characterized in the warning as examples of insubordination were simply indications of his growing exasperation.

Mr. Monti argued that the department had worked with Mr. Gauthier to improve his conduct and management style, and had taken his complaints of heavy-handed supervision, harassment and intimidation seriously enough to involve the department's Human Resources Administrator in an investigation that had included two days of interviews with five of the seven plant employees and two of the section leaders. Mr. Monti argued that the appellant should not be allowed to defend his acts of insubordination by saying that his conduct could not be considered insubordinate as long as he eventually did what his supervisor directed him to do. He argued that as early as 1992, Mr. Gauthier's performance evaluations showed deficiencies in communication, cooperation and leadership.

Discussion and Findings

Per 1001.03 (a) of the Rules of the Division of Personnel describes the written warning as the "least severe form of discipline" to correct an employee's unsatisfactory work. In general, the evidence reveals that Mr. Gauthier's frequent disagreement with his supervisor on what work was important, what work should be performed, and how that work should be performed, lies at the heart of the

conflict; however, this disagreement resulted in workplace conduct and job performance that is best described as unsatisfactory.

As early as 1992, Mr. Gauthier had been counseled about his interpersonal relations and communications with his subordinate staff, his peers and his supervisors. Despite Mr. Monti's effusive praise of the appellant's technical abilities and work ethic, and his recognition of the appellant's contributions as "the best thing" that had happened to the treatment plant that year, the appellant focused upon the criticism and treated it as an unwarranted personal attack. Since the appellant believed that his approach got results, even when it included yelling at his subordinates or refusing to acknowledge their suggestions and recommendations, he saw no reason to change. When management remained critical of his supervisory style, and insisted that he develop a more cooperative approach to management of his section, the appellant simply dug in his heels, shifting the blame to his supervisor.

The documentary evidence and offers of proof demonstrate that when Mr. Gauthier disagreed with assignments given by his supervisor, he demanded an explanation or justification for the assignment before he would undertake those tasks. Work that he considered non-essential or inconsequential, including some reporting requirements, was not completed on schedule. He frequently refused to accept any responsibility for disputes between his supervisor and himself, engaging everyone from his own staff to the Director of the Division and the Human Resources staff, in airing his complaints.

For instance, Mr. Gauthier's supervisor directed him to submit monthly Discharge Monitoring Reports. DES Exhibit 14, a March 15, 1996, memorandum from Steven Dolloff to Mr. Gauthier, directs Mr. Gauthier to prepare Discharge Monitoring Reports on a Monthly basis, "...with the goal of the report being sent no later than the 10th day of each month." According to Mr. Monti's notes, offered into evidence without objection or contradiction, not a single report prepared in the ensuing twelve months was sent by the 10th of the month. The appellant argued that there was no actual deadline for sending the report, simply a "goal," and that his late filing of those reports should not be considered unsatisfactory work or insubordinate behavior. However, the fact that none of the reports was sent by the 10th of the month offers fairly compelling evidence of Mr. Gauthier's inability to have the task performed by his staff on a timely basis or, in the alternative, a passive refusal to do what was required of him within the timeframe or in a manner acceptable to his supervisor.

Mr. Gauthier's conduct also indicated his reluctance to take responsibility when he was unable or unwilling to complete the assignments given to him. For example, when initially reprimanded for his response to the problem of irregular Discharge Monitoring Reports, Mr. Gauthier attributed the absence of regular readings to difficulties getting his subordinates to take the readings. When that problem later was raised in the written warning as evidence of his failure to exercise appropriate leadership skills, he again attempted to shift the responsibility. In his November 12, 1996, letter to Mr. Dolloff, Mr. Gauthier wrote, "You bring up the process upset the plant experienced in March of 1996 and you point out that blanket readings of the secondary clarifier were not done on a regular basis and it is true that they were not done on a regular basis. You overstate the importance of such a parameter, however and its need to be taken regularly. You asked me to have it done daily at the time of our conversation and it is indeed a parameter that appears on the operation's data base for a daily entry, however it is a parameter which could be deleted. It is also a parameter that you did not deem to carry enough significance to be included on the monthly reports you requested that I generate."

Another example of Mr. Gauthier's response to directives he considered "non-essential" appears in the same letter to Mr. Dolloff. He wrote, "I also ask the same operator that US and NH flags fly on a daily basis, weather permitting, and have yet to resolve that although I continue to work with the Supervisor of Operators and the operator who is delegated that duty. It seems to me that all essential work does get completed and issues such as blanket readings or flags flying are considered, by at least some, as non-essential."

In his November 27, 1996, letter to Edward Schmidt, Director of the Water Division, Mr. Gauthier wrote, "Mr. Dolloff alleges that I fail to meet the work standard as demonstrated by 'uncooperative and insubordinate behavior' and 'deficiencies in leadership practices.' But I have always done what he has told me to do and I see nothing in his letter stating otherwise. What I have done is query Mr. Dolloff as to his reasoning for making some of the decisions he makes. I have always done as he has asked even when he cannot or does not justify his position."

Mr. Gauthier does not appear to understand that neither Mr. Dolloff nor any other of his supervisors are required to "justify" their position on issues related to management of the Wastewater Treatment Plant.

Nowhere in the documents submitted in connection with this appeal has Mr. Gauthier alleged that he was directed to undertake any activity that was unworkable, unsafe, or unlawful. The fact that he considered them unimportant is immaterial. Regardless of his personal or professional opinion concerning the operational decisions made by his supervisors, his job is to carry out their directives. While the Board would be reluctant to consider the above-described conduct as "willful insubordination" within the meaning of Per 1001.08, the Board does believe the incidents as described by both parties are representative of uncooperative behavior, and therefore subject to disciplinary action under the provisions of Per 1001.03 of the Rules of the Division of Personnel for failure to meet the work standard.

The issue of leadership is more difficult to assess. Clearly, Mr. Dolloff and Mr. Gauthier have different management styles, just as each has different supporters and detractors within the organization. However, the fact that Mr. Gauthier has been unable to "motivate" his employees to do what they are assigned to do on such basic tasks as taking readings for Discharge Monitoring Reports or raising the US and State flags at the facility would indicate, at the very least, ineffective supervisory and management practice. Again, the Board believes the incidents as described by both parties are representative of a failure to meet the work standard, subject to discipline under Per 1001.03 of the Rules of the Division of Personnel.

Mr. Gauthier's claim that he was harassed is unsupported by the evidence. A thorough reading of the performance evaluations completed by his supervisors, and an equally careful reading of Mr. Gauthier's "employee comments" reveals that Mr. Gauthier has difficulty accepting criticism. In October of 1992, as part of Mr. Gauthier's performance evaluation, Mr. Monti wrote:

"There have been several occasions I have observed over the past year when Moe thought a person did not have the best interests of the program at heart, or when he felt that an employee was either not performing to his/her capacity or had some animus personally against Moe, that in Moe's interaction with them his (Moe's) emotion and anger got in the way of his being able to work through the issue. In these situations, Moe has not communicated well, and I have had difficulty making him understand that such behavior is counterproductive and produces bad feelings among

everybody involved in it. Moe must learn to control his anger and realize that there will always be persons with whom he'll have to work and cooperate who will not be so blessed with talent and generosity as he is. And he must learn that judgments and suspicions about another's motives are inappropriate and counterproductive in the workplace. I must add that Moe does not agree with this comment, and in several conversations has told me that his actions are necessary to protect himself against persons who are trying to undermine his authority. We do not agree about this, and I have told him this on a number of occasions."

In his written response to that performance evaluation, Mr. Gauthier challenged his supervisor's suggestions for changing his management style. In his employee comments he wrote, "I am obligated to make the operators the best that they are capable of being. If an employee falls short of his potential or is working substandard then that employee can expect to raise my ire." He refused constructive criticism about being cooperative rather than confrontative with other section heads writing, "When I feel that I have made a strong enough effort to gain the cooperation of a section head or if I feel that a section head's actions or inactions has an adverse effect on my section then I'm obligated to affect a change. If I am asked by Randy in a meeting about such action or inaction and I confront a section head, it is deemed by Randy as counterproductive and as fostering bad feelings. The confrontation was at least one other thing -- very effective in achieving those things which had a positive impact on my section." He concluded his remarks by writing, "For my part I want to be part of the solution yet if Randy views me as counterproductive or a disruptive influence then I should leave and that is why I have offered to him my resignation. I have no desire to work someplace where I am part of the problem."

The very fact that Mr. Gauthier was unable to distinguish between counterproductive behaviors and being called counterproductive illustrates the appellant's unwillingness to accept constructive criticism, and his unresponsiveness to supervision. The fact that the department tolerated Mr. Gauthier's conduct as long as it did without taking formal disciplinary action against him offers evidence of a bona fide effort on the agency's part to rehabilitate a dedicated, talented, but otherwise difficult, uncooperative, stubborn employee.

DECISION

Having considered the documentary evidence, oral argument and offers of proof the Board voted unanimously to SUSTAIN the warning, and therefore voted to DENY Mr. Gauthier's appeal.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
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