

State of New Hampshire



PERSONNEL APPEALS BOARD

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APPEAL OF GARY PITTS New Hampshire State Liquor Commission Docket #93 -D-3

(Letter of Warning Appeal)

October 21, 1993

The New Hampshire Personnel Appeals Board (Bennett and Rule) met Wednesday, September 8, 1993, to hear the appeal of Gary Pitts, an employee of the New Hampshire Liquor Commission. Mr. Pitts was represented at the hearing by Margo Hurley, SEA Field Representative. George Liouzis, Human Resources Administrator, and Michael Lafond, Area Stores Manager, appeared on behalf of the Liquor Commission.

On March 17, 1992, Mr. Pitts received a letter of warning for unsatisfactory work, arising out of an incident on March 7, 1992, for "poor customer courtesy". The Liquor Commission's letter of warning (SEA Attachment #1) described the alleged offense as follows:

"On Saturday, March 7, 1992, Retail Store Clerk II Blanche Winship reported that an irate customer complained about your rude behavior towards him. It seems the customer had parked his car near the curb during this rainy day, and was apparently in the fire lane. The customer claims you were extremely rude to him. When Supervisor/Manager Michael Lafond asked you about this incident, you explained that you told the customer to move his car, but that you were polite about it. You couldn't explain why the customer was upset. Ms. Winship claims the customer was very upset. This behavior towards customers and the public is unsatisfactory and will not be condoned."

During the hearing on the merits of Mr. Pitts' appeal, Store Manager Michael Lafond testified that he had not personally witnessed the alleged incident, and had gotten his information about interaction between Mr. Pitts and the customer from Ms. Winship. According to Mr. Lafond, Ms. Winship came to him to report that there was an irate customer in the store complaining that Mr. Pitts had been rude to him. When Mr. Lafond went to speak with the customer, he discovered the individual had already left the store. Mr. Lafond testified that Mr. Pitts had originally denied any incident with the customer had occurred, but later admitted to Lafond that he had asked the customer to move his car out of the fire lane and away from the ramp.

Mr. Pitts testified that he had asked the customer to move his car because it was parked on the ramp and in the fire lane in front of the liquor store. He said the customer may not have seen the signs prohibiting parking in the fire lane and that he tried to be polite about asking him to remove his vehicle, and that it was the customer who was rude. Mr. Pitts testified that the customer followed him into the store and asked, "Are you the guy that told me to move my car?". Mr. Pitts said he answered the question and went toward the back of the store. He

testified it was not until after Blanche Winship asked the customer what was wrong that the man started "hootin' and hollerin'". Mr. Pitts testified he had done nothing wrong, but agreed he had been told that any complaints from or problems with customers were to be referred to supervisory personnel, and that he should not try to handle those issues himself. He also testified he was most likely to take any issues of that nature to Mr. Lafond.

In disciplinary appeals, the appellant has the burden of proof. However, the agency has the burden of demonstrating that an offense occurred and that the disciplinary action taken was commensurate with the seriousness of the offense. In this case, there is sufficient ambiguity in the evidence to cast some doubt on the facts of the alleged incident. The warning arose from an allegation of extreme rudeness in an isolated incident rather than a continuing course of conduct. Without the opportunity to hear Ms. Winship's testimony and gain a clearer understanding of the extent of the customer's complaint, the Board is hesitant to affirm the warning. However, in light of the appellant's failure to adequately sustain his burden of proof, the Board is equally hesitant to grant the appeal and order that the warning be removed from Mr. Pitts' personnel file.

Mr. Pitts appears to now understand that in the future, any possible conflict with a customer should be referred immediately to his manager. The Board also trusts that the appellant now realizes that it is not his responsibility to enforce parking regulations on liquor store property, or direct the activity of the customers, regardless of how well-intentioned his actions might be. Mr. Pitts should consider himself duly warned that if he wishes to avoid disciplinary action for rude or inappropriate handling of customer relations, he should confine his activity to his job requirements, and maintain a calm, polite manner demeanor with visitors to his work area.

The Board voted that the March 17, 1992 letter of warning should cease to have any effect for the purpose of additional discipline after the date of this decision, although the Liquor Commission may retain a copy of the warning for Mr. Pitts' file. His appeal, therefore, is granted in part.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Vice-Chairman



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
George E. Liouzis, Human Resources Administrator, Liquor Commission
Margo Hurley, SEA Field Representative