

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

**Appeal of Salvatore Rabbia – Docket #2011-D-011**  
**New Hampshire Department of Transportation**

April 18, 2012

The New Hampshire Personnel Appeals Board (Wood, Bonafide and Johnson) met in public session on Wednesday, January 11, 2012, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Salvatore Rabbia, an employee of the NH Department of Transportation, regarding a letter of warning issued to him on January 27, 2011, for disruptive, disorderly or disrespectful conduct in the workplace, including the use of insulting, abusive or obscene language or gestures [Per 1002.04 (b)(9)] and exhibiting physically or verbally abusive or threatening behavior, including spoken or written communication, toward any employee or any individual served by the agency [Per 1002.04 (b)(10)]. Specifically, the agency alleged that while working as a Toll Attendant I, the Appellant made inappropriate and demeaning comments to a motorist. Mr. Rabbia appeared *pro se*. Senior Assistant Attorney General Kevin O'Neil appeared on behalf of the agency.

The appeal was heard on offers of proof. The record of the hearing in this matter consists of pleadings submitted by the parties, the audio recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

State's Exhibits:

1. Letter of Warning dated January 27, 2011
2. Letter of Counsel dated August 16, 2010
3. Incident Report dated December 6, 2010
4. Performance Summary dated April 2, 2010
5. Standard Operating Guidelines – Turn Toll-001, section 3.3
6. Class Description – “Effective Front Line Customer Service Skills”
7. Directions to Class

*Appeal of Salvatore Rabbia*  
*Docket #2011-D-011*  
*Page 1 of 5*

Appellant's Exhibit A, Notice of Appeal dated February 9, 2011, with attachments:

- Letter of Warning dated January 27, 2011
- Performance Summary dated April 1, 2010
- Letter of Counsel dated August 16, 2010
- Notes from Telephone Conversation between Robert Christensen and Kathleen Martin signed by the Appellant on December 10, 2010
- Standard Operational Guidelines for Toll Operations Personnel dated July 17, 2007
- Effective Front Line Customer Service Skills course summary
- Email from Phyllis Haley to Linda Cate dated December 4, 2010
- Notes from a Telephone Conversation, dated December 6, 2010, between Robert Christensen and Kathleen Martin
- Email from Phyllis Haley to Linda Cate dated December 4, 2010
- Email exchanges between Robert Christensen to Mr. Stey dated December 6, 2010
- Email exchanges between Christopher Waszczuk, Robert Christensen and John Corcoran dated December 7 and December 7, 2010
- Email exchanges between Henry Stey, Cynthia Barlow and John Corcoran dated December 4 and December 6, 2010

After carefully considering the evidence, argument and the parties' offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The Appellant worked for the Department of Transportation in 2006 and 2007 as a seasonal laborer. He was selected in October, 2007, to work as a part-time Toll Attendant I, and was promoted to work as a full-time Toll Attendant I on September 25, 2009.
2. The probationary Performance Summary issued to the Appellant on April 2, 2010, indicated that the Appellant was meeting expectations for his position. The Appellant's communication with peers was described as excellent, but the supervisor did comment that, "On occasion Sal becomes upset when patrons do not have enough money or if a transponder does not read. We have discussed that although inconvenient and frustrating at times, it is part of the job and needs to be done in a consistent and friendly manner." In the "General Comments by Supervisor," the Appellant's supervisor wrote, "During this evaluation period Sal had two customer complaints that Linda and I reviewed with him. After meeting with Sal I feel he has a full understanding that motorist[s] will have no money, no license, and at times no transponder and that those transactions are to be handled in a friendly and professional manner. With this understanding I do not expect any re-occurrence of customer complaints." Ms. Cate, the Toll Supervisor

wrote, "Sal has a pleasant and positive attitude with all employees and myself. It is that same demeanor that needs to be present when not dealing with the ideal motorist."

3. On August 16, 2010, the Appellant was issued a letter of counsel for unsatisfactory performance in customer service as a result of reported inappropriate communications with motorists. The letter of counsel included descriptions of three separate complaints from motorists, two of whom identified the Appellant by his employee number on their receipts. The third complaint was from a supervisor who heard the Appellant speaking to a trucker who was traveling through the tolls.
4. On December 4, 2010, Phyllis Haley, a Toll Attendant II, sent an email message to Toll Supervisor Linda Cate, with a copy to Toll Manager Robert Christensen, describing in detail a complaint she had received that evening from the father-in-law of a female motorist regarding the way his daughter-in-law had been treated by one of the Toll Attendants. Although the caller did not identify the Appellant by name, Ms. Haley concluded from the description of the individual and the time of the event that the Attendant in question was the Appellant. The call had been transferred to Ms. Haley at the Toll Plaza by State Police personnel. The Department of Transportation also received complaints via telephone and email from the motorist's husband and father-in-law.
5. The Appellant conducts between a thousand and seventeen hundred transactions per shift, and handles ten or more pounds of change each day. He estimates that he has to count about three fourths of the tolls received. Some motorists are content to wait while he counts the tolls; others might say, "Don't you trust me?"
6. Toll Attendants are required to be courteous to customers. They also are responsible for accurate collection of tolls and must meet established audit performance guidelines; failure to do so may result in termination. Each shift is audited, and employees are required to certify that free passage was not given to any unauthorized vehicles. When equipment at the tollbooths malfunctions, Toll Attendants are required to perform manual traffic counts in addition to collecting tolls. Toll Attendants can only accept US and Canadian coins and currency, and they are directed to inspect coins and bills to ensure that the bills are whole, and the bills and coins are not foreign currency.
7. The incident on December 4, 2011, that generated a complaint about the Appellant involved a female motorist who had only pennies with which to pay the dollar toll. The Appellant counted out the pennies, finding that the toll was one cent short. He waited for the motorist to find another penny. The motorist insists that the Appellant was rude to her and called her an idiot as she drove away. The Appellant insists that the only thing he said to her was thank you.
8. Over a period of ten months, there were six complaints about the Appellant's behavior with motorists. During that same period, there was only one other complaint at another toll plaza, and no complaints about any other employee at the toll plaza where the Appellant was working.
9. It is unusual for the Department to receive formal complaints about Toll Attendants, and those motorists who do complain seldom leave their names or contact information. The Department considered it highly unusual to receive complaints from three separate family members about the same event. The behavior

described in the complaint about the incident on December 4, 2010, was very similar to that described in earlier complaints about the Appellant being rude to motorists.

#### Rulings of Law

- A. Before issuing a written warning to the Appellant, in conformance with Per 1002.03 (a) and (b) of the Personnel Rules, the Department of Transportation considered the fact that the Appellant had received training and counseling on customer service issues arising out of his interaction with motorists. In deciding to issue a written warning, the Department considered, "(a) The nature and severity of the conduct or offense in relation to the employee's position classification, responsibilities, and accountabilities, and the functions of the agency; and (b) The employee's past record of performance and discipline, including whether or not the employee has been disciplined in the past for the same or a similar offense."
- B. The conduct described in the warning could be considered failure to meet a work standard, in that it violated the Department's customer service requirements. It also was appropriately described as "Disruptive, disorderly or disrespectful conduct in the workplace, including the use of insulting, abusive or obscene language or gestures;" and, "Exhibiting physically or verbally abusive or threatening behavior, including spoken or written communications, toward any employee or any individual served by the agency," as described in Per 1002.04 (b)(9) and (b)(10)
- C. In appeals arising out of the issuance of a written warning, the Appellant has the burden of proof. In order to prevail in those appeals, the Appellant must prove by a preponderance of the evidence that, "(1) The disciplinary action was unlawful; (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal; (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or (4) The disciplinary action was unjust in light of the facts in evidence." [Per-A 207.12 (a)(1)-(4)]
- D. The appointing authority has the burden of, "producing evidence supporting the action under appeal," [Per-A 201.12(b)]

#### Position of the Parties

Senior Assistant Attorney General O'Neil argued that the Department of Transportation takes citizens' complaints very seriously, but rarely has an opportunity to address them directly with the complaining party, as motorists seldom give their name or contact information. In this case, he argued, the Department received calls from three different family members about the same incident, and their description of what occurred was very similar to previous complaints about the Appellant's rude behavior toward other motorists. Mr. O'Neil argued that the Appellant had received customer service training, as well as one-on-one coaching with his managers, and yet the Department received more complaints about him than it had received about all the

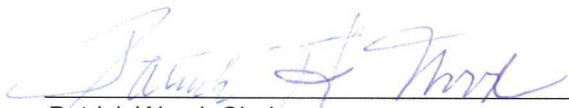
other Toll Attendants combined. Mr. Neil asked the Board to note that in a single ten month period, the Department received six separate complaints about the Appellant, and only one complaint about anyone else.

Mr. Rabbia argued that it was unfair for the Department to rely on the information from his probationary performance evaluation or prior letter of counseling to support its decision in this case to issue a written warning. Mr. Rabbia argued that without audio or video of the alleged interaction, the Department had no real evidence to support its conclusions. Mr. Rabbia insisted that he was never rude to the motorist, but was just doing his job when he offered to count the pennies she handed him in payment of her toll, and insisted on receiving the full payment of one dollar.

#### Decision and Order

After carefully considering the evidence and argument offered by the parties, the Board voted unanimously to uphold the Department's decision to issue the written warning to the Appellant. The Appellant failed to persuade the Board that the disciplinary action was unlawful, or that the appointing authority violated the rules of the division of personnel by issuing the written warning. The evidence reflects that the Appellant had been the subject of six of the seven complaints received about Toll Attendants in a ten month period, so the Board found that the written warning was warranted by the conduct described by the warning. The Board also found that, in light of the evidence, the decision to issue a written warning as the least severe form of discipline, was just. Accordingly, the Board voted unanimously to DENY the appeal of Salvatore Rabbia.

#### THE PERSONNEL APPEALS BOARD

  
\_\_\_\_\_  
Patrick Wood, Chair

  
\_\_\_\_\_  
Philip Bonafide, Vice-Chair

  
\_\_\_\_\_  
Robert Johnson, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Kevin O'Neil, Senior Assistant Attorney General, Transportation Bureau, Department of Justice, 33  
Capitol St., Concord, NH 03301  
Salvatore Rabbia, 437 Hanover St., Manchester, NH 03104