

# State of New Hampshire



## PERSONNEL APPEALS BOARD

25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### *APPEAL OF ROGER TROPF*

*Docket #00-D-8*

*New Hampshire State Port Authority*

**March 19, 2001**

The New Hampshire Personnel Appeals Board (Rule, Johnson and Bonafide) met on Wednesday, January 17, 2001, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the Code of Administrative Rules, to hear the appeal of Roger Tropf, an employee of the New Hampshire State Port Authority. Mr. Tropf, who was represented at the hearing by Attorney Peter C. Phillips, was appealing a March 24, 2000 written warning issued to him for allegedly failing to meet the work standard. Geno Marconi, Interim Director of the Port Authority appeared on behalf of the state.

In accordance with Per-A 207.02(b), 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, pleadings submitted by the parties, orders and notices issued by the Board, and documents admitted into evidence as follows:

#### State's Exhibits

1. March 24, 2000 Written Warning issued to Roger Tropf by Geno Marconi
2. Correspondence dated 1/11/2000, 4/17/2000 and 5/12/2000 from Geno Marconi to Roger Tropf concerning inventory at the Port Authority

Appellant's Exhibits

- A. Letter dated March 28, 2000 from Chief Harbormaster Tropf to Interim Director Marconi, titled "Response to Written Warning Dated March 24, 2000"
- B. Memorandum dated April 21, 2000 from Geno Marconi to Roger Tropf titled "Written Warning"
- C. Memorandum dated April 26, 2000 from Geno Marconi to Roger Tropf titled "Committee Meeting"
- D. Letter dated May 1, 2000 from Attorney Peter C. Phillips to Dr. Wayne Burton Re: New Hampshire State Port Authority v. Roger Tropf with attachments including 2 memoranda dated March 28, 2000 from Chief Harbormaster Tropf to Interim Director Marconi concerning the written warning dated March 24, 2000
- E. Memorandum dated May 11, 2000 from Robert Snover to Recipients of Dr. Burton's May 10, 2000 Findings
- F. Letter dated May 25, 2000 from Attorney Peter C. Phillips to Personnel Director Thomas Manning Re: Roger Tropf v. New Hampshire State Port Authority, Step IV Appeal of Written Warning with attached May 10, 2000 Memorandum from Wayne M. Burton to Roger Tropf, c/o Peter C. Phillips
- G. Letter dated June 8, 2000 from Thomas Manning to Peter C. Phillips Re: Roger Tropf - NH Port Authority Letter of Warning

Having reviewed the documentary evidence and having considered the parties' arguments and oral arguments in light of the above standard of review, the Board made the following findings of fact and rulings of law:

Findings of Fact

- 1. Roger Tropf is employed by the New Hampshire State Port Authority as the Chief Harbormaster assigned to the Port Authority facilities in Portsmouth, New Hampshire; he has

been so employed in a full-time capacity since 1996. Between 1990 and 1996, Mr. Tropf's employment with the Port Authority was part-time.

2. On December 28, 1999, following the resignation of the former Director of the Port Authority, Geno Marconi, Chief Operations Officer, was appointed by the Port Authority's Board to serve as Interim Director of the NH State Port Authority.
3. During his preliminary review of Port Authority affairs, Mr. Marconi determined that a full audit of the Port Authority would be necessary.
4. Mr. Marconi asked Mr. Tropf to complete an inventory of equipment and assets assigned to harbor operations.
5. On January 11, 2000, in a memorandum from Mr. Marconi, Mr. Tropf was advised in writing that he would be required to complete an inventory of the Port Authority's assets and equipment.
6. Although the memo provided no specific deadline for completion of the inventory, it did include explicit instructions for Mr. Tropf to: 1) use the date of his appointment as full-time Chief Harbormaster as the inventory starting date, 2) review the payment vouchers, which were available and in chronological order, for that period of time, 3) record purchases of equipment, (tools, boats, electronics, safety gear, etc.) and other items such as aids to navigation and wake/speed signs that are not expendable, 4) match the purchased inventory with the physical inventory on hand, and 5) record serial numbers, make and model. (State's Exhibit 2)
7. The inventory did not need to include consumables, or account for any of the equipment or assets associated with the office function.
8. The Port Authority's entire inventory, excluding office equipment and supplies, is less than 1000 pieces, and includes 5 boats, 5 boat trailers, safety equipment assigned to each boat, safety equipment assigned to each of the Harbormasters, some tools, and buoys.
9. The requirement for completion of an inventory as part of the audit process was reviewed with Port Authority staff on February 10, 2000 in a pre-audit meeting with members of the LBA's staff.

10. On several occasions between January 11, 2000 and February 29, 2000, Mr. Marconi asked Mr. Tروف for the status of the inventory and was informed that it had not been completed.
11. On or about March 20, 2000, some two months after his original request, Mr. Marconi asked Mr. Tروف for the status of the inventory and was informed by Mr. Tروف that it was being typed.
12. By March 24, 2000, when the written warning was issued to Mr. Tروف, the completed inventory still had not been submitted to Mr. Marconi.
13. The original draft inventory that Mr. Tروف provided to Mr. Marconi was incomplete, and the quality of the inventory was unacceptable given the specificity of Mr. Marconi's directions and the amount of time available to Mr. Tروف to complete the task.
14. When Mr. Marconi assumed his duties as Interim Director of the Post Authority, he discovered that a snow plow and plow frame had been purchased with funds from an "off the record" checking account held by the Port Authority.
15. Mr. Marconi learned that the plow was in a storage building, but that the plow could not be mounted on any Port Authority vehicles as none of them was equipped with the frame to which the plow could be mounted.
16. Upon further inquiry, Mr. Marconi discovered that the plow frame had been mounted on a vehicle belonging to the former Director of the Port Authority.
17. Mr. Marconi directed Mr. Tروف to obtain estimates for removing the frame from the former Director's vehicle and having it installed on one of the Port Authority vehicles.
18. Mr. Tروف reported that it would cost approximately \$500.
19. Mr. Marconi approved installation of the plow on the Port Authority's 4-wheel drive vehicle, but instructed Port Authority staff that the plow was not to be used until Mr. Marconi could get the issue "sorted out."
20. On or about January 13, 2000, Mr. Marconi found Mr. Tروف plowing snow on the Post Authority's property.
21. Mr. Tروف indicated that he felt it was important to "test" the new equipment.
22. Port Authority employees are neither required nor authorized to engage in any snow removal activities at the Port.

23. Mr. Marconi directed Mr. Trof to remove the plow from the truck and return it to the storage building.
24. Several days after the plowing incident, Mr. Trof asked Mr. Marconi for permission to take the Port Authority's 4-wheel drive vehicle home as there was a large snowstorm and he was having difficulties with his own vehicle.
25. Mr. Marconi approved his request.
26. On January 18, 2000, Mr. Marconi discovered Mr. Trof returning to the Port Authority with the plow still attached to the vehicle.
27. By "testing" the equipment on January 13<sup>th</sup>, and by using the Port Authority's vehicle with the plow still attached to it after that date, Mr. Trof violated the Interim Director's instructions.
28. The Port Authority's governing board decided that the plow should be returned to the dealer.
29. Due to the fact that it had been used for plowing, the dealer treated it as a used rather than a new piece of equipment and its value was reduced accordingly

#### Rulings of Law

- A. Per 1001.03 (a) (1) of the Rules of the Division of Personnel provides that, "An appointing authority shall be authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance or misconduct for offenses including, but not limited to: (1) Failure to meet any work standard..."
- B. Per-A 202.12 (b) of the Rules of the Personnel Appeals Board provides that, "In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves 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."

## Position of the Parties

Attorney Phillips argued that the State had the burden of proving that it had given the appellant clear and adequate instructions with respect to the tasks he had been asked to perform, and notice of any deadlines associated with those tasks. Attorney Phillips argued that there was no question that Mr. Marconi had the authority to assign tasks, issue directives, and make reasonable requests. However, he argued, Mr. Marconi's directions were not sufficiently specific for Mr. Trof to understand and follow.

Attorney Phillips argued that while Mr. Trof clearly realized that no decision had been made whether to keep the plow or return it to the dealer, Mr. Marconi never gave the appellant a specific order or instruction not to use the plow. Mr. Phillips asked the Board to note that disciplinary action arising out of the use of the snow plow was not discussed with Mr. Trof until March, some two months after the incident itself. He argued that if Mr. Trof had committed an offense sufficient to warrant a written warning, the discipline should have been timely. He argued that the agency's failure to take timely action suggested that the agency may have been "gathering ammunition to use at a later date and spring it on him, depriving him of the opportunity to respond to it." He also argued that if there had been some misunderstanding about use of the plow, instead of waiting two months to issue a written warning, Mr. Marconi could have simply discussed the issue with the appellant when the incident occurred.

Attorney Phillips argued that Mr. Trof never received detailed directions about how Mr. Marconi expected the inventory to be completed, or the form in which he expected the inventory to be reported. He also argued that Mr. Trof never was apprised of a deadline by which the inventory should have been completed. He argued that throughout the months that the inventory was being compiled, Mr. Trof was never informed that his progress was too slow, or that he could be disciplined as a result. Mr. Phillips argued that in issuing the warning to Mr. Trof, Mr. Marconi gave no consideration to exigent circumstances that might have delayed its completion,

or to the fact that completing the inventory was a large and complex task with which Mr. Trof was unfamiliar.

Mr. Marconi argued that the inventory was not as complicated a project as Mr. Trof would have the Board believe. He argued that Mr. Trof was told to identify equipment and assets belonging to the Port, and to review purchase orders that had been processed during the three years that Mr. Trof had served as Chief Harbormaster. He argued that the Harbormasters had helped in identifying equipment assigned to them and their boats, and that the Administrative Assistant had completed keying of the hand-written information into an Excel spreadsheet. He argued that Mr. Trof had been told specifically to review and identify purchase orders processed in the three years since he had been named Chief Harbormaster. Mr. Marconi argued that the Port Authority processes approximately two payment vouchers per week, and that reviewing those vouchers to identify and record information about equipment that had been purchased over a three-year period was not a monumental task, particularly since the payment vouchers were already organized in chronological order.

Mr. Marconi argued that the Port operator, not Port Authority staff, was responsible for removing snow at the facility. He argued that even if Mr. Trof had not been aware of that arrangement, he certainly knew that plowing had never been his responsibility as Chief Harbormaster. Mr. Marconi argued that his instructions to leave the plow alone should have been sufficiently clear, and he never gave permission for Mr. Trof to "test" the plow after it had been installed. He asserted that he told Mr. Trof to stop plowing immediately, to remove the plow from the truck, and to return the plow to the storage building. Nevertheless, when Mr. Trof borrowed the Port Authority's pick-up truck several days later, the plow was still attached.

Mr. Marconi noted that in his appeal to Personnel Director Thomas Manning, Mr. Phillips had suggested that, "Mr. Marconi may have a personal agenda against [Mr. Trof]." Mr. Marconi argued that he had no idea what that suggestion meant. He asked the Board to find that in this case, Mr. Trof had failed to meet the work standard, and that the Port Authority had applied the

Personnel Rules appropriately in using the written warning as the least severe form of discipline to correct the employee's unsatisfactory work performance.

### Decision and Order

Per-A 207.12 (b) of the Personnel Appeals Board's Procedural Rules establishes the following standard of review:

In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves 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.

Although the appellant may have had an unblemished work record prior to the incidents cited in the written warning, the evidence reflects that Mr. Trof did fail to meet the work standard. Mr. Trof failed to persuade the Board that the resulting disciplinary action was unlawful, unjust, unwarranted, or unsupported by the facts in evidence.

The Board found that Mr. Marconi gave clear enough instructions about the use of the snow plow and about completion of the inventory that Mr. Trof should have understood what was expected of him. When Mr. Trof decided to "test" the plow blade, he knew that a decision had not yet been made whether to keep the plow or return it for a refund. Had he been unclear about the Interim Director's instructions following installation of the plow on Port Authority equipment, Mr. Trof could easily have asked for clarification, particularly since Port Authority staff had not been responsible for snowplowing prior to that date. The fact that he took it upon himself to use the equipment without first securing approval to do so represented an error in judgment, and a failure to meet the work standard. After having been instructed to remove the

plow from the vehicle and return it to the storage building, Mr. Trof subsequently drove the Port Authority truck to his home with the plow attached. According to the appellant, he was unable to remove the pins holding the blade in place and was therefore unable to remove the plow. He obviously knew that he did not have permission to leave the Port Authority property with the plow attached. Nevertheless, he used the vehicle without first apprising Mr. Marconi of the fact that he had been unable to remove the plow.

A similar situation exists with respect to the Port Authority inventory. Mr. Trof knew that the inventory was an important step in the audit process. Mr. Marconi gave specific instructions about reviewing the purchase orders and providing a complete report of all equipment and assets under the Chief Hasbormaster's control. If Mr. Trof was unsure of the manner in which the inventory was to have been completed, or if he was uncertain about the date by which Mr. Marconi had expected the inventory to be completed, he had a responsibility to ask for clarification.

Taken together, these incidents formed the basis for Mr. Marconi's decision to issue a written warning for failure to meet the work standard. Although the appellant argued that charges associated with the plowing incident should be dismissed as untimely, Mr. Marconi would have been justified in issuing a warning for that single incident at that time. When Mr. Trof failed to follow instructions regarding completion of the inventory, a second warning could have been issued. Rather than issuing two separate warnings, by combining the offenses into a single warning, Mr. Marconi actually kept the impact of the discipline to a minimum, making it, in fact, the least severe form of discipline recognized by the Rules of the Division of Personnel.

Therefore, on the evidence, argument and offers of proof, the Board voted unanimously to DENY Mr. Trof's appeal. The Board notes that in earlier proceedings within the agency, the chairman of the personnel committee for the Port Authority agreed to revise the written warning so as not to include an additional charge of violating the chain of command. The New

Hampshire State Port Authority should correct the written warning to be consistent with that agreement and with the findings of this Board.

THE PERSONNEL APPEALS BOARD



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Lisa A. Rule, Acting Chair



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Robert J. Johnson, Commissioner



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Philip P. Bonafide, Commissioner

cc: Thomas F. Maiming, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Geno Marconi, New Hampshire State Port Authority, 555 Market St. Portsmouth, NH  
03801  
Attorney Peter C. Phillips, 400 Lafayette Road, PO Box 804, Hampton, NH 03843-804

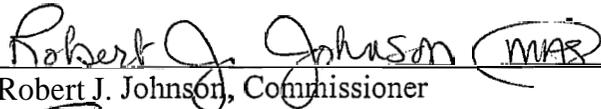
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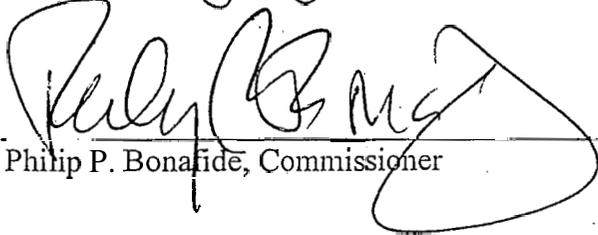
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