

State of New Hampshire

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PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF HAROLD EICHEL Postsecondary Technical Education Docket #90-P-14

August 13, 1990

The New Hampshire Personnel Appeals Board (McNicholas, Cushman and Johnson) met Wednesday, July 25, 1990, to consider the appeal of Harold Eichel, an employee of the Department of Postsecondary Technical Education (NHTEC/Berlin). By letter dated June 18, 1990, SEA Field Representative Margo Hurley requested a hearing before the Promotion Appeals Tribunal, pursuant to the provisions of Per 302.03(f), to appeal Mr. Eichel's non-selection to the Chair of the Arts and Science Department at New Hampshire Technical College/Berlin. According to the appellant, he was not informed in writing of the reasons for his non-selection.

By letter dated July 12, 1990, Deputy Commissioner Willis S. Reed, Department of Postsecondary Technical Education, filed a Motion to Dismiss Mr. Eichel's appeal. As grounds for the motion, Mr. Reed argued that selection of an individual at the college for the added assignment of Department Chair is not related to promotion of an individual from one labor grade to another as defined by the Rules of the Division of Personnel (Per 101.28).

Appellant has cited Per 302.03(f) in his request for hearing. Per 302.03(f) provides that, "Any aggrieved employee failing of promotion may, within 5 working days after the date of his non-selection, appeal to an appeal tribunal..." Appellant must, however, read that rule in the context of Per 302.03 as a whole. That rule relates to selection of a candidate to fill a vacant position.

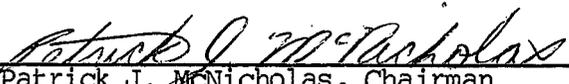
The Board finds no evidence or argument to support a finding that "Department Chair" is a vacancy to be filled by "transfer, promotion, demotion, reemployment, or original appointment" provided in Per 302.02(a). The Personnel Rule which appellant cited in his request for hearing applies only to the selection of a qualified candidate to fill a vacant position. "Department Chair" is not a position within the meaning of the personnel rules, but rather, it is an additional assignment, the compensation for which is defined by the Collective Bargaining Agreement.

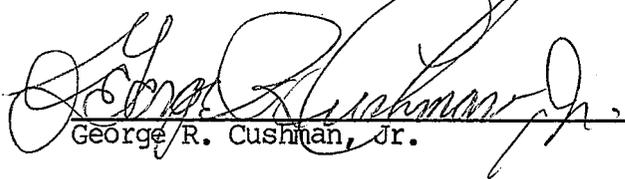
RSA 21-I:58, I, provides in pertinent part:

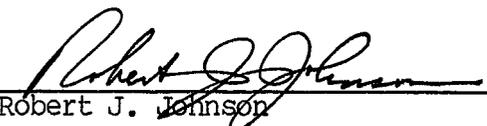
"Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal." (Emphasis added.)

In the absence of personnel rule applied in declining to appoint Mr. Eichel as Department Chair, the Board finds no basis upon which he might bring his appeal before this Board or the Promotion Appeals Tribunal. Therefore, based upon the foregoing, the Board voted unanimously to grant the State's Motion to Dismiss, finding that Mr. Eichel was not denied selection to a vacant position, nor was he affected by "any application of the personnel rules". Accordingly, his appeal is dismissed.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


George R. Cushman, Jr.


Robert J. Johnson

cc: Margo Hurley, SEA Field Representative
Dr. H. Jeffrey Rafn, Commissioner, Postsecondary Technical Education
Willis S. Reed, Deputy Commissioner, Postsecondary Technical Education
Virginia A. Vogel, Director of Personnel
Civil Bureau - Attorney General's Office

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APPEAL OF HAROLD EICHEL
 Ruling on Motion to Dismiss

89-0-6

By letter dated May 4, 1989, SEA Field Representative Stephen J. McCormack filed on behalf of the above-named employee of the Department of Postsecondary Education, an appeal of "Loss of Pay." Submitted with that appeal were documents to support Appellant's contention that he was, in fact, denied paid leave.

On May 8, 1989, Personnel Director Virginia Vogel filed with the Board a Motion to Dismiss, arguing that the denial of pay for annual leave did not constitute an application of the Personnel Rules appealable under the provisions of RSA 21-I:58, but rather a grievance to be pursued under the grievance procedures of the Collective Bargaining Agreement.

On June 6, 1989, the Board received Mr. McCormack's June 5, 1989 response to the Director's motion, requesting again that the Board schedule a hearing before the Board, claiming that denial of pay in this instance constituted a disciplinary action. "As such, to deny Mr. Eichel a days [sic] pay can only be construed as a disciplinary action on the part of President Larry Twitchell." (June 5, 1989 response from SEA re: Harold Eichel, p.1)

In consideration of the documents filed to date, the Board does not find that disciplinary action was taken against appellant. The Board (Commissioners Bennett, Cushman and Johnson) voted at its meeting of June 7, 1989, to grant the Director's Motion to Dismiss.

THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script, appearing to read "Mark J. Bennett".

Mark J. Bennett, Esq.

A handwritten signature in cursive script, appearing to read "George R. Cushman".

George R. Cushman

A handwritten signature in cursive script, appearing to read "Robert J. Johnson".

Robert J. Johnson

Ruling on Motion to Dismiss
APPEAL OF HAROLD EICHEL
Docket #89-0-6

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cc: Stephen J. McCormack, SEA Field Representative

Virginia A. Vogel, Director of Personnel

Mary P. Brown, Commissioner of Postsecondary Education

Thomas F. Manning, Manager of the Bureau of Employee Relations

State of New Hampshire



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Ruling on Motion to Dismiss APPEAL OF HAROLD EICHEL Docket #89-0-6

By letter dated July 5, 1989, Harold Eichel, through his representative the State Employees' Association, filed a Motion for Reconsideration of the Board's May 17, 1989 decision to dismiss his appeal of denial of a day's pay.

On July 10, 1989, Personnel Director Virginia Vogel filed an Objection to Motion for Reconsideration - Appeal of Harold Eichel, arguing that the instant appeal does not qualify as "a decision arising out of the application of rules adopted by the Director of Personnel" but rather was a matter more properly adjudicated through the grievance process provided as part of the Collective Bargaining Agreement.

In his original appeal (McCormack letter to Personnel Appeals Board, June 5, 1989), Mr. Eichel argued that "The current Collective Bargaining Agreement addresses employees' hourly salaries, based upon labor grade, and how absences from work will be compensated." In his request for reconsideration, Appellant argues that "Denying an employee a day's pay is not a matter covered by the Collective Bargaining Agreement. Thus, the only conceivable and proper way to address this matter is through the Personnel Rules of the State of New Hampshire." Finally, Appellant states, "If denying an employee a days pay is not a disciplinary action, then I request that the Personnel Appeals Board define what type of action this is and by what criteria this was determined."

The Rules of the Division of Personnel provide that an appointing authority may issue a letter of warning for "Absenteeism without approved leave" (Per 308.03(3)b). Mr. Eichel was not issued a warning for such absenteeism, although the record provides ample evidence, including Mr. Eichel's own statements and those of his representative, that he did not request the use of any type of leave and was, in fact, absent from his worksite on May 11, 1988.

The record also provides ample evidence that academic employees of the Berlin Technical College were expected to be on campus five days a week unless some other schedule had been accepted through an approved Professional Growth Plan. Mr. Eichel, by his own admission, did not have an approved Professional Growth Plan and was not on campus on May 11th. Under the provisions of Per 308.03 (2)c., Mr. Eichel could have been disciplined for refusal to accept job assignments by being absent from the campus without prior approval. No such disciplinary action was taken.

Motion for Reconsideration - Appeal of Harold Eichel
Docket 89-0-6

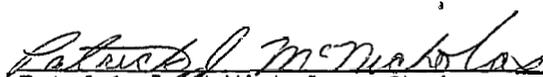
Finally, Appellant admits that President Twitchell asked him to complete a leave slip to cover the May 11th absence. He states in his August 3, 1988 letter to Stephen McCormack, "...when I had this discussion with Larry [Twitchell] I decided to hold one day back in case Larry was really serious about the day I was not in school. I discussed it with my department chair and I told him I didn't think Larry would really make me fill out a leave slip, that he was just letting me know he was boss. I talked with the registrar and she tore up my leave slip for the end of May, so that I would have a day for Larry if he notified in writing that I needed to fill out a leave slip for May 11."

Having been given the opportunity to utilize available leave for the absence from campus on May 11th, and having refused to complete such application for leave, Appellant was not in a paid leave status while absent. Despite the opportunity provided in the Rules of the Division of Personnel to discipline an employee for being absent without approved leave, or failing to appear at the worksite, the Technical College did not issue any warning or take any disciplinary measures. In the Board's judgment, the Technical College had no choice but to compensate the employee for only those days worked. Thus "docking" Appellant's pay was the only practical mechanism to ensure that this employee was not compensated for a day on which he neither appeared at the worksite, worked at an alternate site with the approval of the appointing authority, nor utilized approved leave.

Based upon the foregoing, the Board voted unanimously to deny the request for reconsideration.

DATED: November 15, 1989

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Esq.


George R. Cushman, Jr.

cc: Stephen J. McCormack, Field Representative
Larry B. Twitchell, President, NHTC/Berlin
Virginia A. Vogel, Director of Personnel
David. S. Peck, Asst. A.G., Civil Bureau