

State of New Hampshire

PERSONNEL APPEALS BOARD
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Appeal of James Hunt and Wayne Natti

June 22, 1988
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On June 8, 1988, Mr. George C. Jones, Commissioner of the Department of Resources and Economic Development, submitted to the Personnel Appeals Board the information requested of the Department in the Appeals of James Hunt and Wayne Natti. By decision dated May 17, 1988, the Promotion Appeals Tribunal had ordered the Department of Resources and Economic Development to "review all the factors giving rise to the successful applicant's July, 1987 promotion. If it is determined that he received any credit for time, knowledge, or experience gained as a result of his temporary promotion, his score should be recalculated. If this is not possible, a selection process which will not give credit for the temporary promotion should be recommenced for the three applicants. Nothing in this opinion should be construed as preventing the application by DRED of Per 302.03(b)(1)-(3)." The Department was then ordered to file a report with the Tribunal within 20 days of the May 17, 1988 decision for review by the Tribunal.

The Department of Resources and Economic Development thereafter submitted its June 8, 1988 response. Upon review of that submission, the Tribunal found that the Department of Resources and Economic Development complied with the Rules of the Division of Personnel in its selection of an employee to fill the vacant Aerial Lift Mechanic position, salary grade 14, position no. 11548. Therefore, the Tribunal voted to deny the appeals of Messers. Hunt and Natti.

FOR THE PROMOTION APPEALS TRIBUNAL

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE, Executive Secretary
N.H. Personnel Appeals Board

cc: Stephen J. McCormack
SEA Field Representative

George C. Jones, Commissioner
Department of Resources and Economic Development

Virginia A. Vogel
Director of Personnel

State of New Hampshire

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Telephone (603) 271-3261APPEAL OF JAMES HUNT AND WAYNE NATTI

May 17, 1988

On February 1, 1988, the Promotion Appeals Tribunal, consisting of Loretta Platt, Chairman, Joan Day, Human Resource Coordinator for the Department of Employment Security and Sharon Sanborn, Human Resource Coordinator at the New Hampshire Hospital, heard the appeals of James Hunt and Wayne Natti. The appellants, who were appealing their non-selection to the same position of Aerial Lift Mechanic at the Department of Resources and Economic Development (hereinafter "DRED") were represented by SEA Field Representative Stephen McCormack. William Carpenter, Supervisor of State Park Operations, appeared on behalf of DRED.

Neither of the notices of appeal filed by the appellants stated any grounds for the appeal, in violation of Per-A 202 of the Rules of the Personnel Appeals Board. The Tribunal, however, agreed to waive the rule in this matter, warning the parties and their representative that it would require stricter compliance in future appeals. Mr. McCormack agreed to notify his fellow staff members at SEA.

The appellants had requested that their cases be consolidated. Having received no objection, the Tribunal granted that request. In his opening remarks, Mr. McCormack further requested that if the Tribunal found that one of the appellants should have received the promotion, that the Tribunal "send the case back" to DRED for a final determination.

After considering all of the evidence presented, the Tribunal made the following findings and ruling. In July, 1987, the position of Aerial Lift Mechanic was posted. The four applicants who responded appeared before an Interview Committee consisting of four individuals including Mr. Carpenter. The committee addressed the following areas in its questions to the candidates: experience, methodology, and practical questions. The successful applicant received a score of 540, Mr. Natti received a score of 480, and Mr. Hunt, a score of 415.

The position in question had been previously occupied by an employee who, as of January, 1987, was out on sick leave. The testimony presented to the Tribunal indicated that DRED officials did not expect that employee to return to work. The position was not posted at that time as it had not been vacated. The individual who received the promotion to the position as a result of the subsequent July, 1987 posting began to exercise the responsibilities of the position in January, 1987, as a result of a temporary promotion.

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Although the Rules of the Division of Personnel do not require that the availability of temporary promotions be posted, those rules do require that vacant positions be posted. Per 302.02. The Tribunal found that to insure that the purpose of Per 302.02 is not frustrated, an agency cannot use a temporary promotion solely to give one employee increased familiarity and experience with the duties of a position prior to its posting.

In this case, it appears that the successful applicant had substantial credentials notwithstanding the experience which he gained from his temporary promotion. The appellants, however, also had relevant experience. It is unclear whether the successful applicant received the highest score in the selection process due to the additional experience gained as a result of his temporary promotion. When asked at the hearing, Mr. Carpenter indicated that he did not know if that possibility was in fact true.

To insure that no unfair advantage was given to the successful applicant by virtue of his temporary promotion, the Tribunal hereby orders that DRED officials review all of the factors giving rise to the successful applicant's July, 1987, promotion. If it is determined that he received any credit for time, knowledge, or experience gained as a result of his temporary promotion, his score should be recalculated. If this is not possible, a selection process which will not give credit for the temporary promotion should be recommenced for the three applicants. Nothing in this opinion should be construed as preventing the application by DRED of Per 302.03(b)(1)-(3).

DRED shall file a report with the Tribunal within 20 days of the date of this opinion indicating the results of its review and whether it will be necessary to recommence the selection process. The Tribunal suggests that if, in the future, a position is expected to become vacant, whose responsibilities are not currently being fulfilled due either to absence or otherwise, and a department wishes to have those responsibilities exercised by another individual in the interim by virtue of a temporary promotion, that the availability of that temporary promotion be posted.

¹ As noted earlier in this opinion, the Notice of Appeal filed in this matter did not provide the grounds therefor. Mr. Carpenter may therefore have been unaware that this issue concerning the temporary promotion would be raised and did not conduct as thorough a review of the promotion process with this issue in mind as the Board would have desired.

FOR THE PROMOTION APPEALS TRIBUNAL



MARY ANN STEELE, Executive Secretary
N.H. Personnel Appeals Board

APPEAL OF JAMES HUNT AND WAYNE NATTI
May 17, 1988

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copies:

Stephen J. McCormack
SEA Field Representative

William Carpenter
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George C. Jones, Commissioner
Department of Resources and Economic Development

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