

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex

Concord, New Hampshire 03301

Telephone (603) 271-3261

Appeal of Phillippe T. Parent New Hampshire State Liquor Commissioner

Docket #95 -D-7

October 3, 1995

On May 12, 1995, the Personnel Appeals Board received a memo dated May 6, 1995 from Phillippe Parent in which he stated, "I wish to appeal my case of the charges brought against me on April 19, 1995 by the N.H.S.L.C. of selling alcohol to a minor." Mr. Parent did not indicate what action the appointing authority took as a result of those charges.

RSA 21-I:58 I states:

"I. 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. ..."

Per-A 202.01 (a) - (c) of the Rules of the Personnel Appeals Board also states:

"(a) Any notice of appeal shall be filed within fifteen (15) days of the action giving rise to the appeal.

"(b) Such notice of appeal shall state the action complained of, and shall contain a detailed description of why the appellant believes the action was inappropriate.

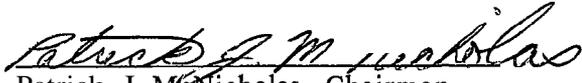
"(c) Such notice of appeal shall be filed in accordance with Part Per-A 206."

Mr. Parent has represented that the "action" he wished to appeal had occurred on April 19, 1995. Therefore, in order to be timely filed in accordance with RSA 21-I:58, a timely appeal must have been received by the Board not later than May 4, 1995. Therefore, Mr. Parent's May 6, 1995 memorandum, which was not received by the Board until May 12, 1995, does not appear to be timely. Furthermore, while Mr. Parent's memorandum specifies the grounds cited by the Liquor Commission for the action taken and states that his appeal "...is based on reasonable doubts surrounding this incident," it fails to specify what action was taken by the Liquor Commission.

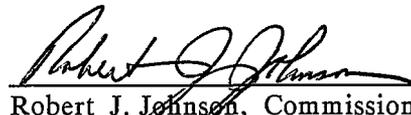
Upon its own motion, under the authority of Per-A 202.02 "Order for More Specific Facts", the Board voted to allow Mr. Parent fifteen calendar days from the date of this order in which to submit to the Board and to the Liquor Commission a statement specifying the nature of the action under appeal (i.e., letter of warning, demotion, suspension), the date of that action, and why Mr. Parent believes that action was inappropriate. Mr. Parent shall also show cause why his appeal should not be dismissed as untimely. Upon receipt of that statement, if the Liquor Commission wishes to file a response, it shall have fifteen calendar days in which to submit its response to the Board and the appellant.

Appeal of Phillipe Parent
Docket #95-D-7
page 2

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
George E. Liouzis, Human Resources Administrator, N.H. State Liquor Commission
Phillipe T. Parent, New Hampshire State Liquor Commission

State of New Hampshire



PERSONNEL APPEALS BOARD

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APPEAL OF PHILIPPE T. PARENT

Docket #95-D-~~8~~ 7

New Hampshire Liquor Commission

August 15, 1996

The New Hampshire Personnel Appeals Board (Miller, Rule and Barry) met -Wednesday, July 17, 1996, under the authority of RSA 21-I:58, to hear the appeal of Philippe T. Parent, an employee of the New Hampshire State Liquor Commission. Mr. Parent, who appeared *pro se*, was appealing a one-week suspension without pay for allegedly having sold alcohol to a minor on March 17, 1995, during a "sting" operation at the store where he works as a Retail Store Clerk. George Liouzis, Human Resources Administrator, appeared on behalf of the Liquor Commission.

In support of his appeal, Mr. Parent argued that he was the victim of a bungled investigation; that the methods used to document his sale of alcohol to a minor constituted entrapment; and that the Liquor Commission had no absolute proof that he had made a sale of alcohol to a minor. Mr. Parent argued that Liquor Commission Compliance Check should be considered improper because it had been authorized for March 10, 1995, but was not actually conducted until March 17, 1995. He argued that the Liquor Investigator's report was inaccurate, identifying both the minor and the clerk who allegedly made the illegal sale as "Tim." He also argued that the register receipt which the Commission considered proof of the illegal sale should be viewed as unreliable evidence, since it

would have been possible for someone participating in the "sting" to pick up a register receipt from the trash outside of the store and later claim that it was proof of an alcohol sale to a minor.

Mr. Parent argued that he would have no reason to require a purchaser to produce positive identification if the person claimed to be of legal age and the person appeared to be the age he or she claimed to be. Although Mr. Parent asserted that he had no clear recollection of the incident reported in the investigation, in his written appeal to the Liquor Commission, Mr. Parent stated, "Asked why did I make the sale? The purchaser said he was 22 years old and I believed him. Buying a bottle of wine in the late afternoon to go with a fish dinner [was] rather innocuous.. ."

Mr. Parent suggested that the "sting" operation was the Commission's way of countering adverse publicity it had received following a Liquor Commission audit. Mr. Parent asked the Board to find that the Commission did not have sufficient evidence to prove conclusively that he had sold alcohol to a minor. In the alternative, he asked the Board to find that even if there were proof of such a sale, suspending him for one week without pay was much too harsh a punishment for the infraction.

Mr. Liouzis argued that the appellant had misstated the standard of proof, and that the Commission was not required to prove beyond the shadow of a doubt that the appellant had sold alcohol to a minor. We argued that the Commission's investigation was both reasonable and proper, and that on a preponderance of the evidence, the Commission had found that Mr. Parent violated State law and Liquor Commission policy by selling alcohol to a minor. Mr. Liouzis argued that the Commission's policy on prohibited sales clearly requires employees to refuse a sale whenever the clerk has reason to believe that a purchaser is under 21 years of age, and the purchaser can not produce positive ID and proof of age. Mr. Liouzis argued that the moment Mr. Parent questioned the purchaser's age, he demonstrated that he had doubts, however slight, that the individual was not of legal age to purchase alcohol. He further argued that the policy prohibits the sale of alcohol to an individual who is unable

to produce proof of age after being asked for such proof. Mr. Liouzis argued that a one-week suspension was appropriate for the seriousness of the offense.

Upon review of the documentary evidence and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The appellant works as a clerk at the New Hampshire Liquor Commission Store #3 in St. Mary's Plaza in Manchester, New Hampshire.
2. On March 17, 1996, as part of an authorized Alcohol Compliance Check, the Liquor Commission sent a minor into Store #3 with instructions to attempt to purchase alcohol. He was further instructed that if asked for identification, he was to say that he had forgotten to bring it with him.
3. The minor entered the store at approximately 5:00 p.m., and asked a clerk for assistance selecting a bottle of wine. After having assisted in the selection, the clerk asked the minor to produce identification and proof of age. When the minor replied that he had forgotten it, the clerk asked him how old he was. The minor replied that he was 22 years old. The clerk made the sale.
3. The minor left the store and gave the purchase and proof of purchase to a Liquor Investigator waiting in a vehicle outside the store.
5. The appellant was identified on the sales receipt as the individual who made the sale to a minor. He matched the minor's physical description of the clerk who made the sale, as well as the physical description given by the Liquor Investigator supervising the Compliance Check.
6. Mr. Parent would neither confirm nor deny the fact that the sale had been made.
7. State Liquor Store Policy, approved on 3-15-95 by State Personnel Director Virginia Lamberton, specifies that any liquor store employee who sells to a minor or to an intoxicated person will be subject to disciplinary action up to and including termination from the Liquor Commission. The policy also states, "No sale is to be made if there is the slightest doubt in the clerk's mind that the customer is under the legal age or appears to be intoxicated."

8. By asking for the minor's identification, Mr. Parent demonstrated that he had some doubt, however slight, that the purchaser might not have been of legal age to purchase alcohol.
9. By selling alcohol to an individual who was unable to produce identification after having been asked for that identification, Mr. Parent violated New Hampshire Liquor Commission Policy regarding Prohibited Sales.

Rulings of Law

1. The sale of alcohol to a person under 21 years of age constitutes a violation of RSA 179:5. (State's Exhibit 1)
2. RSA 626:5 provides, in pertinent part, that "...conduct merely affording a person an opportunity to commit an offense does not constitute entrapment."
3. The New Hampshire State Liquor Commission's Prohibited Sales Policy provides for disciplinary action, up to and including termination from employment, whenever, "Any liquor store employee ... sells to a minor or to an intoxicated person..."
4. Per 1001.05 (3) of the Rules of the Division of Personnel provides for immediate suspension without **pay**, without prior warning, for a period of up to 20 days when an employee commits an offense which threatens the safety of another employee or client.

Decision and Order

Upon review of the evidence and in consideration of the oral argument and offers of proof made by the parties, the Board voted unanimously to uphold Mr. Parent's one week suspension without pay. Although Mr. Parent may have had only a slight suspicion that the purchaser was not of legal age, he was not entirely certain of the young man's age when he made the sale. Mr. Parent's sale of alcohol under these circumstances constituted a serious violation of New Hampshire State Liquor Commission Policy on Prohibited Sales. The policy warns employees that any violation will subject the employee to disciplinary action, up to and including termination from employment. The Board concluded that under the provisions of Per 1001.05 (3) of the Rules of the Division of Personnel, Mr. Parent was subject to immediate suspension without prior warning for selling alcohol to a minor.

None of the facts as presented by the appellant persuaded the Board that the discipline should be reduced.

Accordingly, Mr. Parent's appeal is denied.

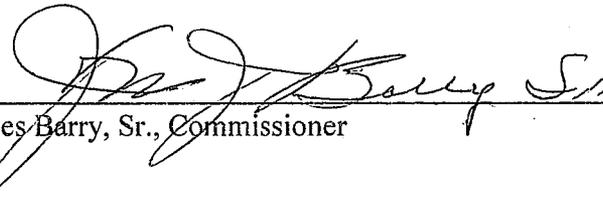
The Personnel Appeals Board



Lawrence H. Miller, Chairman



Lisa A. Rule, Commissioner



James Barry, Sr., Commissioner

cc: Virginia A. Lamberton, Director of Personnel
George Liouzis, Human Resources Administrator, N.H. State Liquor Commission
Philippe T. Parent