

# State of New Hampshire



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

**Appeal of William Allore, III – Docket #2013-T-005**  
**Department of Resources and Economic Development**  
**February 28, 2013**

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Casey) met in public session on Wednesday, February 6, 2013, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to consider the request for hearing filed in the above-titled appeal and the Department of Resources and Economic Development's Motion to Dismiss Without a Hearing.

On December 27, 2012, the Board received Mr. Allore's Notice of Appeal in which he alleged that he had been dismissed in violation of the Rules of the Division of Personnel, specifically that the agency failed to follow the administrative rules and procedures in dismissing him, that he was dismissed without warning, and that his dismissal represented a conflict of interest and preferential treatment. Attached to his Notice of Appeal was correspondence from Mr. Allore concerning his dates of employment, hours worked, and an unsigned letter titled "Letter of Understanding."

On January 16, 2013, the Board received the Department of Resources and Economic Development's Motion to Dismiss Without a Hearing. In that Motion, the State argued that as a temporary, part-time seasonal employee, Mr. Allore did not have standing to appeal to this Board under the provisions of RSA 21-I:58, and that the Board lacked jurisdiction to hear the appeal. Attached to that motion were the Affidavit of Linda A. McFarland (Exhibit A), a document titled "DRED Breakdown of William Allore Work Days 2011-2012 and 2012-2013 Seasons (Exhibit B), and a copy of a letter to Mr. Allore dated December 30, 2012, describing the basis for the Department's decision to dismiss him from his position as a part-time Maintenance Mechanic I (Exhibit C). The State's Attorney, Richard M. Fogal, certified that a copy of the Motion and attached exhibits had been mailed, postage prepaid, on January 16,

2013, to the Appellant at the address appearing on the Notice of Appeal. The Appellant did not file an objection to that Motion.

After careful consideration of the information contained in the Notice of Appeal and in the State's Motion to Dismiss, the Board voted unanimously to GRANT the Motion for the reasons set forth in the Motion, and to DISMISS the Appeal of William Allore (Docket #2013-T-005). In so doing, the Board found that it lacked jurisdiction to hear the appeal, as the Appellant was not a permanent full-time employee at any time during his employment as a Maintenance Mechanic I, and therefore did not have standing to appeal his separation from employment under the provisions of RSA 21-I:58.

THE PERSONNEL APPEALS BOARD

18/ Philip Bonafide  
Philip Bonafide, Acting Chair

18/ Robert Johnson  
Robert Johnson, Commissioner

18/ Joseph Casey  
Joseph Casey, Commissioner

cc: Karen Hutchins, Director, NH Division of Personnel  
Attorney Richard M. Fogal, Civil Bureau, NH Department of Justice  
Linda McFarland, Human Resources Administrator, Dept. of Resources and Economic  
Development  
William Allore, III

NOTICE OF APPEAL

2013-T-008

To: NH Personnel Appeals Board
Attention: MaryAnn Steele
25 Capitol St. Room 14
Concord, NH 03301

From: William M Allore III
Address: 5 Cotton Farm Rd
City, State & Zip Sandown, NH 03873

Date: 12/24/12

Please accept this as my request for a hearing to appeal the following action:

- Dismissal/Termination
Demotion
Suspension without pay
Withholding salary increment
Letter of warning
Non-selection for a vacancy
Lay-off or Involuntary Transfer
Conflict of interest
Other

Personnel Appeals Board
Original Record Copy
Received: 12/27/12
Before During Hearing
# of copies received on above date: 6

1. Appealing party:

Please describe yourself below:

Name: William M Allore III
Mailing Address: 5 Cotton Farm Rd Sandown, NH 03873
Daytime Telephone Number(s): 941 724 1101
Fax number (if any) -
Email address (if any): SKIMIKSKI@hotmail.com

2. Representative:

If you are to be represented by someone else (i.e., union steward, union field representative, attorney, personal friend) please provide the following information about that person:

Name of your representative:
Representative's company, organization or affiliation:
Mailing Address:
Daytime Telephone Number(s):
Fax number (if any)
Email address (if any):

3. Party Whose Decision is Being Appealed

Person, party or agency's decision that you are appealing:

Name: John DeVivo, Gareth Slattery, Matt Mackinnon, Rhonda Gadenksy
Name of Agency or Department: Cannon Mountain
Mailing Address: 9 Franconia Notch State Park Franconia, NH 03580
Daytime Telephone Number(s): 823-8600 x 750, x 703, x 726, x 721
Fax number (if any) 823.8080
Email address (if any): John.Devivo@Dico.state.nh.us Matt.Mackinnon@Dico.state.nh.us
gareth.slattery@Dico.state.nh.us rhonda.gadenksy@Dico.state.nh.us

4. Date of the Decision That You Are Appealing: Dec 14

**5. ATTACH A COPY OF THE DECISION BEING APPEALED.**

I requested, orally and through my letter of understanding, a written clarification as to why I was terminated. My request was not furnished.

**6. Rules Violated or Improperly Applied:**

What personnel rule(s) do you believe were violated or applied improperly in the decision that you are appealing:

Per 303.07 A-F, Per 601.05; 405.01-401<sup>301.03</sup>, Per 601.01; 301.05 A-F, Per 603.01

**7. Reasons the Action was Inappropriate:**

Please list specifically the reason(s) that you believe the action under appeal was inappropriate. Attach additional sheets if necessary.

Failed to follow Administrative Procedures & Rules

I have never seen or signed a written warning

Conflict of Interest

Preferential Treatment

NO WRITING NOTICE

**8. Supporting Facts**

Please provide a detailed statement of facts supporting your assertion that the action taken was inappropriate. Attach additional sheets if necessary.

Attached sheets [Labeled Fact List]

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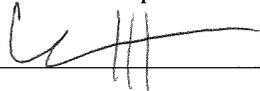
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9. **Attestation:**

By signing in the space provided below, I attest that to the best of my knowledge and belief, all of the statements and representations made in this appeal are truthful.

Signed 

10. **Certificate of Service:**

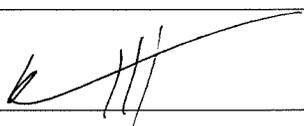
By signing below, I certify that a copy of this appeal and any documents submitted in support of this appeal have been served on every other party to the appeal as follows, and in the manner indicated:

Please circle the manner of method of service: hand-delivered first-class mail certified mail  
registered mail express mail  
priority postal delivery  
facsimile electronic submission

Date of service: 12/26/12

Person(s) and address(es) to which service was made:

<u>John DeVivo</u>	<u>4 Princeton notch state PARK Princeton, NH 03300</u>
<u>Graham Slattery</u>	<u>" "</u>
<u>Matt Mackinson</u>	<u>" "</u>
<u>Rhonda Gredinsky</u>	<u>" "</u>

Signed 

Attachments (listed separately)

Letter of Unreconstructing  
Fact List

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This appeal is being submitted to the NH Personnel Appeals Board in an original and five copies (six complete sets of documents).

William M Allore III

Fact List for Appeal

2004/2005- 1<sup>st</sup> shift snowmaker  
2006/2007- 1<sup>st</sup> shift snowmaker  
2007/2008- 1<sup>st</sup> shift snowmaker  
2008/2009- 1<sup>st</sup> shift snowmaker  
2009/2010- 1<sup>st</sup> shift snowmaker  
2010/2011- 1<sup>st</sup> shift snowmaker  
2011/2012- 2<sup>nd</sup> shift snowmaker  
2012/2013- 3<sup>rd</sup> shift snowmaker (Shift-Leader & Pump House Operator)

Fall 2012- Receive Cannon Re-Employment Packet for 2012/2013 winter season. Complete all needed documents and returned via mail to Cannon.

Early November 2012- Received phone call from Matt Mackinnon asking if I would like to be Third-Shift Shift-Leader, with the promise of increase pay and the availability/opportunity to work overtime: I accept. Nothing was mentioned stating that I must fill out paper work so that my wage would increase, as well as, my re-classification to an MM1 would be effective.

November 13, 2012- Received phone call from Matt asking if I would be able and willing to begin work early this season. I accept.

November 13, 2012- 11pm-7:30am - Worked with Jeff Collins.  
November 14, 2012- 9pm-7:30am- Worked with Jeff Collins.  
November 15, 2012- 8am-11:45am- Attended Cannon University. (Received Cannon Handbook)  
November 15, 2012- 11pm-7:30am- Worked with Jeff Collins.  
November 16, 2012- 11pm-7:30am- Worked with Jeff Collins.  
November 17, 2012- 11pm-7:30am- Worked with Ethan Stroup.  
November 18, 2012- 11pm-7:30am- Worked with Edward Pinsky Jr.  
November 19, 2012- 11pm-7:30am- Snowmaking officially begins. Worked with Monday crew.  
November 20, 2012- 11pm-7:30am- Worked with Tuesday crew.  
November 21-23, 2012- No Snowmaking.  
November 24, 2012- 11pm-7:30am- Worked with Saturday crew.  
November 25, 2012- 11pm-7:30am- Worked with Sunday crew.  
November 26, 2012- 11pm-7:30am- Worked with Monday crew.  
November 27, 2012- 11pm-7:30am- Worked with Tuesday crew.  
November 28, 2012- 11pm-7:30am- Worked with Wednesday crew.  
November 29, 2012- 11pm-7:30am- Worked with Thursday crew. I ran the Pump-House.

November 30, 2012- Receive first paycheck. Inaccuracies' found within wage and hour. Speak with Rhonda Gadensky. We discuss the possible error and find it to be true. We both begin the process of fixing the error.

November 30, 2012- 11pm-7:30am- Worked with Friday crew. Rhonda sent a Long Application and a break down of my pay, yearly, to the snowmaking department. I had to fill out and return the Long application for processing (no other documents were given and asked to be re-signed or to be completed). Through this inquiry, I discovered that I needed to complete necessary documents for this agreement to be solidified. Since I was unaware prior to November 30<sup>th</sup> of these documents Cannon claims they will not retro my hours that I was inaccurately paid.

December 1, 2012- 11pm-3:30am- Clean-up around mountain. Worked with Saturday crew.  
December 2, 2012- Returned Long Application to Rhonda.  
December 2-4, 2012- No Snowmaking

December 4, 2012- Called Rhonda to assure receipt of my Long Application. It was in her inbox.  
December 5, 2012- 11pm-7:30am- Set-up the following trails: Easy Link, Upper Gremlin, Miceys, Bear Paw and Fan guns. Worked with Wednesday crew.  
December 6, 2012- 11pm-7:30- Worked with Thursday crew.  
December 7, 2012- I called Jennifer Townsend to confirm receipt of my Long Application. I left a message because she was out of her office.  
December 7-9, 2012- No Snowmaking  
December 10, 2012- 11pm-7:30am- Worked with Monday crew.  
December 11, 2012- 11pm-7:30am- Worked with Tuesday crew.  
December 12, 2012- 11pm-7:30am- Worked with Wednesday crew.  
December 13, 2012- I called and spoke with Jennifer Townsend to assure receipt of my Long Application.  
December 13, 2012- 11pm-7:30am- Worked with Thursday crew. I ran the Pump-House.  
December 14, 2012- 4:24 pm I Receive a call from Matt stating I am "no longer employed by the state of New Hampshire".  
December 15, 2012- 12pm. Meeting with John Devivo. Mentioned that he would hire me back if Matt and Garreth Slattery say yes, as well. Matt also said yes. Garreth was not in that day.  
December 16, 2012- 11:13am Received a phone call from Matt saying Garreth said "No" with regard to reinstating my employment. I verbally requested a letter of termination.  
December 17, 2012-12pm Meeting with John Devivo- John invited Garreth to join. I submit my Letter of Understanding to Garreth and John Devivo. Within my letter, I ask for clarification if my understanding was incorrect as to why I was fired. I asked for this to be answered by December 21<sup>st</sup> 2012.  
December 21, 2012- 11:00am- Meeting at park Headquarters with John Devivo, Garreth Slattery and Rhonda Gademsky. John relays the information that I am Banned from Cannon Property. Upon asking for my requested Letter of Termination-nothing is given to me. Rhonda- "We don't have to". John Devivo- "We will; Not today".

**\*\*Most individuals who have taken on the responsibility of Third-Shift Shift-Leader have continued working, following snowmaking, and throughout the winter and spring seasons at Cannon. I thought with the acceptance of the Third-Shift Shift-Leader position, I would be likely to incur the same opportunity.**

**\*\*Upon re-applying and filling out the Long Application (so that my wages and classification would be corrected), no temporary/seasonal employment disclosure was given to me for signature.**

## Letter of Understanding

Dec.16 2012

John Devivo, Garreth Slattery, Matt Mackinnon and Rhonda Gademsky  
9 Franconia Notch  
Franconia Notch State Park  
Cannon Mountain  
Franconia, NH 03580

Dear Mr.Devivo, Mr. Slattery, Mrs. Gademsky and Mr. Mackinnon

I'm writing to clarify the reason for my dismissal from employment at Cannon Mountain on Dec. 14, 2012.

On November 30th, I received my first pay check for the 2011-2012 season. I noticed many inaccuracies, including my hourly wage, and the number of hours worked within the first pay period. When I presented my curiosity to Rhonda Gademsky, the Financial Officer of Franconia Notch State Park, she felt attacked. After reassurance that I was not attacking her, but simply attacking the financial issue, we came to a consensus that I was inaccurately paid last season and this current season. Rhonda agreed to begin the process of correcting the inaccuracy. The first step, for me, was to fill out a Long Application. I returned the completed Long Application to Rhonda's office on December 2nd. Rhonda was not in her office, but I spoke with Kristy and Nicole, her human resources assistants, who promptly put it in Rhonda's inbox. I called Rhonda on December 4th to assure receipt of my Long Application.

By the end of our meeting on November 30th, Rhonda gave me her business card and on the back was Jennifer Townsends number; handwritten. I called Jennifer on Dec. 7 to assure receipt of my long application, and left a detailed message including my phone number. By December 13th, I had not heard back from her and decided to call again. Upon leaving a second message, she called me back later that afternoon. Jennifer told me what my correct hourly wage should be, which was incorrect from my current wage. She was very busy and I apologized for any inconvenience. Jennifer reassured me that I could call her anytime with concerns, specifically the next day.

Exactly two weeks later from November 30th, I was called at home six-hours prior to the start of my shift on Dec. 14, 2012 by Matt Mackinnon. Within the phone call, he relayed the message that I was "no longer employed by the State of New Hampshire." Feeling confused, and in a state of shock, I ended the phone call and shortly called him back to inquire as to why I was dismissed. There was no clear reason stated, although Rhonda's name was mentioned. Within the same conversation I asked Matt if he had any complaints or dissatisfaction with regard to my Third-Shift Shift-Leader position. He responded with a firm "No".

The following day, December 15th, John Devivo and I agreed to meet to discuss my termination. With a greater understanding by the end of the meeting, John agreed to reinstate my employment. Before an official decision, he needed two individuals' consent. From John's office, I went to speak with Matt (one of the two individuals that required consent). Matt also agreed to reinstate my employment, contingent upon Garreth

Slattery's decision. Since he was the only individual I had not met with about my dismissal, I was eager to speak with him. Unfortunately, he wasn't at Cannon this day. I was told that Matt and John would speak with Garreth the following day, in regard to my possible reinstatement of employment.

On Sunday, December 16th, at 11:13 am, Matt called me with news that Garreth did not consent to reinstate my employment. I immediately requested, in writing, clarification as to why I was terminated. Matt told me that he was unable to furnish this request, until all individuals involved could meet.

To this day, I have not been compensated for the inaccuracies that were found, upon my meeting with Rhonda on Nov. 30.

My understanding, as of today, is that I was terminated because I sought to correct wage inaccuracies. If my understanding is incorrect, please advise me, in writing, by December 21st. I request that any accusations in your written report be supported with the correct dated and signed documentation.

Cordially,

William M. Allore III  
5 Cotton Farm Road  
Sandown, NH 03873  
(941) 724 1101

STATE OF NEW HAMPSHIRE  
New Hampshire Personnel Appeals Board

NOTICE OF APPEARANCE

Appeal of William M. Allore

Department of Resources and Economic Development

Date: January 16, 2013

Please enter my appearance as the representative of record on behalf of

DRED

My name, title, business address and other contact information is as follows:

Name: Patrick J. Queenan

Mailing Address: Department of Justice, 33 Capitol Street, Concord, NH 03301

Daytime Telephone Number(s): (603) 271-3650

Fax number (if any) (603) 271-2110

Email address (if any): patrick.queenan@doj.nh.gov

**Certificate of Service:**

By signing below, I certify that a copy of this notice of appearance and any documents attached herewith in relation to this appeal have been served on every other party to the appeal as follows, and in the manner indicated:

Please check the method of service:

hand-delivered       first-class mail       certified mail  
 registered mail       express mail       messenger mail  
 priority postal delivery       facsimile       electronic submission

Date of service: January 16, 2013

Person(s) and address(es) to which service was made:

William M. Allore, III  
5 Cotton Farm Road  
Sandown, NH 03873

Signed /s/ Patrick J. Queenan

Attachments (listed separately, submitted to the Board in an original and 5 copies)

Personnel Appeals Board  
"Original" Record Copy

Received: 1/16/2013

Before: During Hearing  
# of copies received on above date: 1

via email

(K)

STATE OF NEW HAMPSHIRE  
New Hampshire Personnel Appeals Board

NOTICE OF APPEARANCE

Appeal of William M. Allore

Department of Resources and Economic Development

Date: January 16, 2013

Please enter my appearance as the representative of record on behalf of

DRED

My name, title, business address and other contact information is as follows:

Name: Richard M. Fogal

Mailing Address: Department of Justice, 33 Capitol Street, Concord, NH 03301

Daytime Telephone Number(s): (603) 271-3650

Fax number (if any): (603) 271-2110

Email address (if any): richard.fogal@doj.nh.gov

**Certificate of Service:**

By signing below, I certify that a copy of this notice of appearance and any documents attached herewith in relation to this appeal have been served on every other party to the appeal as follows, and in the manner indicated:

Please check the method of service:

hand-delivered       first-class mail       certified mail  
 registered mail       express mail       messenger mail  
 priority postal delivery       facsimile       electronic submission

Date of service: January 16, 2013

Person(s) and address(es) to which service was made:

William M. Allore, III  
5 Cotton Farm Road  
Sandown, NH 03873

Signed /s/ Richard M. Fogal

Attachments (listed separately, submitted to the Board in an original and 5 copies)

1/16/2013  
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THE STATE OF NEW HAMPSHIRE  
PERSONNEL APPEALS BOARD  
Docket No. 2013-T-0005  
IN RE: WILLIAM M. ALLORE, III

Personnel Appeals Board  
"Original" Record Copy  
Received: 1/16/2013  
Before During Hearing  
# of copies received on above date: 1  
VIA EMAIL / (P)

**DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT'S**  
**MOTION TO DISMISS WITHOUT A HEARING**

NOW COMES the Department of Resources and Economic Development, by and through counsel, the Office of the Attorney General, and respectfully moves the Personnel Appeals Board ("PAB") to dismiss this appeal pursuant to Per-A. 206.05(g)(2)<sup>1</sup> based on lack of standing and jurisdiction and in support thereof states as follows:

1. This appeal arises from personnel action taken in December 2012 against William M. Allore, III, ("Appellant"), a part-time, seasonal employee of the Department of Resources and Economic Development ("DRED").
2. During the 2012-2013 Winter season, Appellant was employed by DRED as a Class 50 Maintenance Mechanic I at Cannon Mountain. *See* Exhibit A, Affidavit of Linda A. McFarland. At all relevant times, Appellant was a part-time, seasonal employee of DRED. *See* Exhibit A.
3. Appellant only worked hours from November 13, 2012 through December 13, 2012. During this time period, he worked 179.75 hours, equating to twenty-one (21) 7.5-hour work days, in total. *See* Exhibit B, DRED Breakdown of William Allore Work Days.
4. In the past, Appellant has been employed in a variety of seasonal, part-time positions at Cannon Mountain, dating back to the 2004-2005 season. Consistent with the nature

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<sup>1</sup> This rule allows the PAB to summarily dismiss a matter, at any time, with or without a motion, if it concludes that it does not have jurisdiction over the appeal or the matters addressed therein.

of those positions, each year he was terminated at the end of the season and then subject to re-hire. *See* Exhibit A.

5. After a number of performance issues, Appellant was terminated on December 14, 2012. *See* Exhibit C, Letter of John DeVivo.

6. This matter is not presently scheduled for a hearing; however, this appeal should be dismissed as Appellant does not have standing to appeal this personnel action to the PAB pursuant to RSA 21-I:58, as he was not a permanent employee of the State at the time of his termination, and therefore, PAB does not have jurisdiction over this appeal.

7. RSA 21-I:58, I concerns classified employees of the State and sets forth who may appeal personnel actions to the PAB. This statute states in relevant part that, “[a]ny *permanent* employee who is affected by any application of the personnel rules [...] may appeal to the [PAB] within 15 calendar days of the action giving rise to the appeal.” RSA 21-I:58, I (emphasis added). Accordingly, in order to have standing to appeal, Appellant must have been a permanent employee of the State.

8. RSA chapter 98-A governs seasonal employees such as Appellant and defines how a seasonal employee becomes a permanent employee.

9. In particular, RSA 98-A:3 governs how a temporary or seasonal employee can become vested with the rights of a permanent employee. This statute states in relevant part that, “A person [...] appointed under a seasonal appointment who works the equivalent of 6 months or more, not necessarily consecutively, in any 12-month period shall be deemed to be [...] a permanent seasonal employee and entitled to all the rights and benefits of a permanent employee in the classified service of the state.” RSA 98-A:3 (1963). A period of “six months”, is defined as “the equivalent of 130 or more regularly scheduled work days.” RSA 98-A:1, III (1963).

10. A “seasonal appointment”, in turn, is defined as, “an appointment made to fill a seasonal position on a full-time basis for the period of appointment.” RSA 98-A:1, II (1963), while “full-time basis” is defined as employment lasting “not less than 37-1/2 hours work in a normal calendar week or calling for not less than 40 hours work in a normal calendar week with respect to positions for which 40 hours are customarily required.” RSA 98-A:1, IV (1963).

11. These statutes, when read together, indicate that Appellant therefore must work the equivalent of 130 or more regularly scheduled work days totaling at least 37.5 hours per week (or, at least 7.5 hours per day on average) for the State of New Hampshire in any twelve-month period in order to be deemed a permanent seasonal employee and become vested with all the rights and benefits of a permanent employee in the classified service of the State, including the right to appeal to the PAB under RSA 21-I:58, I. *See Portsmouth Country Club v. Town of Greenland*, 152 N.H. 617, 620 (2005) (*holding* that when interpreting two statutes which deal with a similar subject matter, the court will construe them so that they do not contradict with each other, and so that they will lead to reasonable results and effect the legislative purpose of the statute); *see also State v. Njogu*, 156 N.H. 551, 554 (2007) (*holding* that the legislature is presumed to know the meaning of the words it chooses and to use those words advisedly).

12. During the 2012-2013 season, Appellant only worked hours from mid-November to mid-December, equating to 21 regularly scheduled work days, nowhere near the minimum 130 workdays needed to be considered a permanent employee. Even considering the *pro-rata* portion of Appellant’s prior seasonal position for the 2011-2012 Winter season that fell during the first few months of 2012, which amounted to 30 work days from January 1, 2012 through February 23, 2012, Appellant still does not meet the threshold required by statute, *i.e.*, 130 work days on a full-time basis. *See Exhibit B.*

13. Moreover, Appellant only worked 51 work days on a full-time basis over the twelve-month period spanning his seasonal employment in calendar year 2012 and thus, as a part-time employee, did not obtain permanent status. *See* Exhibit B.

14. Therefore, based on the clear statutory language, Appellant is not a permanent employee of DRED and thus has no right of appeal to this Board under RSA 21-I:58 and this Board has no jurisdiction over this matter. As such, this appeal should be dismissed for lack of standing and jurisdiction. *See* PAB Decision on Pending Motions, Objections and Supplemental Correspondence, Appeal of Daniel Ryan, Docket #2009-D-004, dated Oct. 29, 2009 (finding that appellant, a lifeguard, was a temporary part-time employee not subject to disciplinary PAB rules and not entitled to an appeal before the PAB, and that therefore, PAB lacked jurisdiction to hear the appeal).

WHEREFORE, the State of New Hampshire, Department of Resources and Economic Development, respectfully requests that this Board:

- A. Dismiss this appeal due to the lack of the Appellant's standing and Board's lack of jurisdiction under the relevant RSA's to hear this appeal; and,
- B. Grant all other relief as is just and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES AND  
ECONOMIC DEVELOPMENT

By its attorney,

MICHAEL A. DELANEY  
ATTORNEY GENERAL

Dated: January 16, 2013

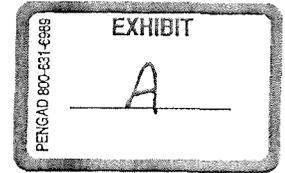
/s/ Richard M. Fogal  
Richard M. Fogal, Esq., NH Bar # 21159  
Attorney – Civil Bureau  
Patrick J. Queenan, Esq., NH Bar # 20127  
Attorney – Civil Bureau  
New Hampshire Department of Justice  
Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301  
Phone: (603) 271-3650

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion has been mailed, postage prepaid, on this 16<sup>th</sup> day of January 2013 to William M. Allore, III, 5 Cotton Farm Road, Sandown, NH 03873.

/s/ Richard M. Fogal  
Richard M. Fogal, Esq.

855485



THE STATE OF NEW HAMPSHIRE  
PERSONNEL APPEALS BOARD

Docket #

IN RE: William M. Allore III

AFFIDAVIT OF LINDA A. MCFARLAND

I, Linda McFarland, upon oath do hereby depose and state as follows:

1. I am employed by the NH Department of Resources and Economic Development ("the Department") as the Human Resource Administrator. I make this affidavit based on my personal knowledge.
2. During 2012-2013 season, the Department employed William M. Allore as a Maintenance Mechanic I.
3. Mr. Allore, like other Department Seasonal employees, is re-hired every season and let go from employment at the end of every season. Mr. Allore does not remain an employee of the State following his departure in March and/or April.

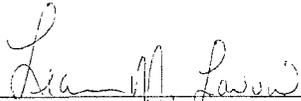
I hereby declare under the penalty of perjury that the foregoing testimony relating to this matter is true and accurate to the best of my knowledge and belief.

Date: January 2, 2013

  
Linda A. McFarland  
Human Resource Administrator  
DRED

STATE OF NEW HAMPSHIRE  
MERRIMACK CO

On January 2, 2013, Linda A. McFarland, New Hampshire Department of Resources and Economic Development, personally appeared before me and swore that she executed this Affidavit of her own free act and will.

  
\_\_\_\_\_  
Notary Public/Justice of the Peace

My Commissioner Expires:

LEANNE M. LAVOIE, Notary Public  
My Commission Expires October 3, 2017

DRED Breakdown of William Allore Work Days 2011-2012 and 2012-2013 seasons

PENGAD 800-631-6889  
 EXHIBIT  
B

2011-2012 Season		
Hired 11-17-11		
Week ending	# hours worked	Number of Full Time Days
11/17/11	3.00	0
11/24/11	32.00	4
12/01/11	8.00	1
12/08/11	16.00	2
12/15/11	32.00	4
12/22/11	37.00	4
12/29/11	38.25	5
01/05/12	26.00	3
01/12/12	39.75	5
01/19/12	32.75	4
01/26/12	35.50	4
02/02/12	34.00	4
02/09/12	38.75	4
02/16/12	30.50	4
02/23/12	20.00	2
<b>Total</b>	<b>423.50</b>	<b>50</b>

Terminated 2-21-12

2012-2013 Season		
Hired 11-13-12		
Week ending	# hours worked	Number of Full-Time Days
11/15/2012	30.25	3
11/22/2012	40.00	5
11/29/2012	48.00	6
12/6/2012	28.50	3
12/13/2012	33.00	4
	<b>179.75</b>	<b>21</b>

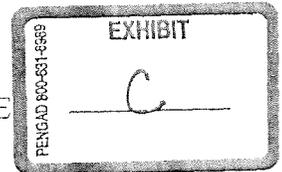
Terminated 12-13-12

Employee did not work 130 FT days in previous six months in the last 12 month period as required by RSA 98-A to be considered a full time employee



STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
DIVISION of PARKS and RECREATION  
CANNON MOUNTAIN

Franconia Notch State Park Franconia, New Hampshire 03580  
PHONE: (603) 823-8800 FAX: (603) 823-8088 E-MAIL: info@cannonmt.com  
WEB: www.cannonmt.com



December 30, 2012

William "Mick" Allore III  
4 Cotton Farm Road  
Randown, NH 03873

Mick,

This letter is a follow up to your December 16, 2012 Letter of Understanding (request) for written documentation regarding our decision to terminate your employment as a seasonal part time Class 50 Maintenance Mechanic I, effective December 13, 2012 from Cannon Mountain Aerial Tramway & Ski Area / Franconia Notch State Park.

You stated that both myself and Mr. MacKinnon responded that we would welcome you back from the December 13, 2012 termination depending on Mr. Slattery's decision, and that I agreed to reinstate you. That is not true. What I stated was that I had no problem in asking Matt MacKinnon and/or Gareth Slattery to have a discussion with you to determine whether to rescind your termination, and that it would be their decision.

Your letter also states that you felt you'd been terminated because you "sought to correct wage inaccuracies". When we discussed your termination on Saturday, December 15<sup>th</sup>, Monday, December 17<sup>th</sup> and Friday, December 21, 2012 I informed you (on each occasion) that neither Assistant Park Superintendent Gareth Slattery, Snowmaking and Construction Foreman Matthew MacKinnon (your department head), nor I attributed your termination to your questioning a discrepancy in your pay; but that there have been performance issues that have been addressed this season and we have not seen improvement.

There had been several discussions with your supervisor Mr. MacKinnon in recent years (including this past fall), regarding your communication skills, failure to follow proper procedures, lack of accountability and productivity. Mr. Slattery has spoken to you on at least two occasions regarding one or more of the concerns listed above.

Two other managers refused to hire you back in the past. You were not welcome to return to the rental shop after a spring layoff from snowmaking because that manager felt that your productivity was low compared to others he'd laid off nor were you welcomed to return to lift operations after a spring layoff from snowmaking because that manager felt that your productivity was low compared to others he'd laid off. However, you had shown enough personal growth during the 2011-2012 season on 2<sup>nd</sup> shift to earn an opportunity to return as our third shift crew leader due to your knowledge and skills regarding snowmaking. However, since your return on November 13, 2012 the above concerns once again became performance issues.

You've lacked reliability and/or accountability on the first and third shift snowmaking crews. Mr. MacKinnon has spoken to you regarding your attention to detail, your lack of focus, and your lack of attention to the task at hand and the ability to be where needed, when needed many times. You've been warned several times about skiing past snowmaking guns rather than checking it, skiing trails other than those trails with snow being made on them, and skiing closed trails that do not have current snowmaking activity on them.

Mr. MacKinnon has lost confidence in your ability to tell the truth, and feels that he cannot trust you. When you are addressed regarding an issue that occurred, you tell him one thing but upon research, it is

not as you made it out to be. For example, there was an episode this when you frightened a guest by speeding by him in a low speed zone. When Mr. MacKinnon informed you that there would be no more chances after that, you told him that you were done skiing anyway. However, upon follow up, it was discovered you instead went to the terrain park. There's a lack of confidence in you from your supervisor, Mr. MacKinnon. He asserts that while

Your knowledge is sound, you do not take accountability for actions or mistakes, and that when mistakes are addressed, you minimize their importance and/or continue repeat the behavior such as the skiing incident above.

There had been recent friction between you and the third shift pump house operator due to the way you communicated with him. You were new to that area and refused to listen to the much more experienced operator on the proper way to run the equipment. He would tell you how to do operate the machinery and you would not do it the way you were told. That employee felt overburdened and micromanaged while operating the pump house and assisting you in running the snowmaking system. You also told the 3<sup>rd</sup> shift team members that they could not read or sleep on their breaks.

Mr. MacKinnon has asked you to use "chain of command" on several occasions. However, when you sought to correct wage inaccuracies, you spoke with Supervisor I, Rhonda Gademsky, Payroll Officer, Jennifer Townsend, myself, Division of State Personnel, and Human Resource Administrator, Linda McFarland; not your supervisor, Mr. MacKinnon. This created confusion and Mr. MacKinnon being contacted by all of the above to obtain the accurate information. Had you started with your supervisor to begin with it could have been resolved swiftly, with no issues. This is failure to follow the directive of a supervisor.

It is also about the way you confronted both Ms. Gademsky and Ms. Townsend about your pay discrepancies. You were loud, rude and bullying, and would not listen to what they had to say.

You admit in your letter that the Supervisor I, Financial Officer felt attacked by you when confronting her about the pay discrepancies. While she was trying to research the pay issue, the DRED Payroll Supervisor indicated she felt you had accused her of making mistakes with your pay and you were demanding her to make the corrections, even after she informed you she did not have the authority to do so without my authorization. In addition, after I informed you I would bring the backup documentation to Payroll to further research, you called the Division of State Personnel in Concord and DRED's Human Resource Administrator, prior to me being able to bring the documentation you gave me to discuss your payroll with them. Human Resource Administrator Ms. McFarland walked through this with you and resolved the pay issue. A letter regarding the pay discrepancy will be forthcoming.

Due to the performance issues mentioned above, the numerous chances that you have been given and your inability to maintain working relationships and with no sign of improvement in sight, it was decided that in the best interest of the Department of Economic Development and Resources Division of Parks and Recreation, Cannon Mountain that your employment be terminated, effective December 14, 2012.

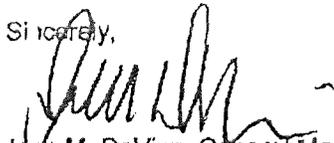
Lastly, after you were informed of your termination, you admitted to me on December 21, 2012 that you had recently texted two or more members of the third shift, encouraging them to "mess up the trail." You stated that this was essentially "words only," and not something you expected to happen.

You also admitted to a discussion with at least one third shift team member regarding the ease with which the equipment in the pump house could be "messed with", again stating it was "words only," and not something you'd carry through on.

In light of the texts you sent and the comments you admitted to making to the third shift members, you are no longer welcome on the property here at Cannon / FNSP in any capacity. You were made aware of that at our December 21, 2012 meeting, and you agreed to comply with our request that you refrain from further visits to any Cannon Mountain or Franconia Notch State Park venues.

We wish you the best in your future endeavors.

Sincerely,



Joim M. DeVivo, General Manager  
Cannon Mountain Aerial Tramway & Ski Area  
Franconia Notch State Park

**Hoyt, Robin A**

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**From:** Watt, Jane [Jane.Watt@doj.nh.gov]  
**Sent:** Wednesday, February 27, 2013 2:35 PM  
**To:** Hoyt, Robin A; Steele, Mary Ann  
**Subject:** Allore, William M.

**Attachments:** Motion to Dismiss.pdf



855530.pdf (200 KB)

Our agency/client is requesting a status on the Motion to Dismiss filed by this office on January 16th. Do you have any idea when it may be ruled upon? I am not sure of the customary time for the Board to rule.

When you get a chance - thanks!

\*\*\*\*\*

Jane M. Watt, Legal Secretary III  
Civil Bureau - NH DOJ - AG  
33 Capitol Street  
Concord NH 03301  
(603) 271-1264  
jane.watt@doj.nh.gov

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