

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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

### APPEAL OF WADE M. BURNETTE, SR.

Docket #96-T-19

Department of Transportation

May 13, 1996

On March 21, 1996, the New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) issued a Decision in the appeal of Wade M. Burnette, Sr., dismissing his appeal for lack of subject matter jurisdiction. On April 8, 1996, the Board received Appellant's Response Concerning Appeal Board's Decision. The Board received the Reply of the Department of Transportation to Appellant's Response to the Appeal Board's Decision on April 12, 1996, and the Appellant's Rebuttal... on April 23, 1996.

Having reviewed the additional pleadings in light of the Board's original decision in this matter, the Board affirmed its decision that it lacks subject matter jurisdiction to hear Mr. Burnette's appeal.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive.

Mark J. Bennett, Acting Chairman

Handwritten signature of Robert J. Johnson in cursive.

Robert J. Johnson, Commissioner

Handwritten signature of Lisa A. Rule in cursive.

Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Karen A. Levchuk, Assistant Attorney General, Transportation Bureau, Department of  
Justice, 33 Capitol Street, Concord, NH 03301  
Wade M. Burnette, Sr., 3.14 Pine St., Portsmouth, NH 03801

# State of New Hampshire



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

## **APPEAL OF WADE M. BURNETTE, SR.**

**Docket #96-T-19**

**Department of Transportation**

**March 21, 1996**

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, March 6, 1996, to consider the appeal of Wade M. Burnette, Sr., a former Spare Toll Attendant from the Department of Transportation. Mr. Burnette, whose appeal was filed by letter dated January 17, 1996, was appealing his termination, effective December 20, 1995, from his part-time position at the Hampton Toll Plaza.

On February 15, 1996, the Board received the Department of Transportation's Motion to Dismiss Mr. Burnette's appeal for lack of subject matter jurisdiction. The Department asserted that at the time of his termination, Mr. Burnette was a part-time employee, as defined by RSA 98-A:1, without standing to appeal his termination. The Department argued that RSA 21-I:58 limits the right to appeal to "[a]ny permanent employee who is affected by any application of the personnel rules..." The Department also cited the New Hampshire Supreme Court's decision in the Appeal of Higgins-Brodersen, 133 N.H. 576, 578 A.2d 868 (1990), in which the Court found that part-time employees do not have the same expectation or opportunity as permanent employees to challenge decisions affecting their employment.

On February 27, 1996, the Board received Mr. Burnette's Motion to Disqualify and Disallow New Hampshire Department of Transportation's Motion to Dismiss Appellant's Appeal for Wrongful Termination. In his Motion, Mr. Burnette argued that the Court's ruling in Higgins-Brodersen did not bar his appeal. He asserted that the decision simply acknowledged that "permanent employees" have "greater opportunity to appeal decisions affecting them."

The Board has reviewed the pleadings which have been filed by the parties in light of the

language of RSA 21-I:58 and the decision of the New Hampshire Supreme Court in the Appeal of Higgins-Brodersen, 133 N.H. 576, 578 A.2d 868 (1990), wherein the Court stated:

"After reviewing the record, we conclude that the legislature did not intend RSA 21-I:58 to confer upon such employees [part-time] a right to challenge all personnel decisions, but only those ones involving the application of a personnel rule which affects them while they hold their permanent status ...

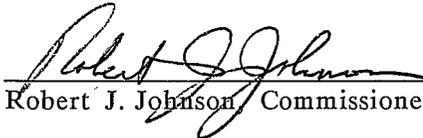
"...We hold that the Board did not err in ruling that it lacked jurisdiction, under RSA 21-I:58, over claims arising from the petitioners' part-time status."

In keeping with the Court's decision, the Board found that Mr. Burnette, a part-time employee who was terminated from his employment upon receipt of a third written warning for unacceptable work performance, does not have standing to appeal to the Board under the provisions of RSA 21-I:58. Therefore, the Board must deny his appeal for lack of jurisdiction.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner

---

Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Karen A. Levchuk, Assistant Attorney General, Transportation Bureau, Department of  
Justice, 33 Capitol Street, Concord, NH 03301  
Wade M. Burnette, Sr., 114 Pine St., Portsmouth, NH 03801