

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 86-107 Diann J. Morency v. NH Hospital .....

the court upon June 24, 1986. .... made the following order:

Decision below is summarily affirmed in accordance with Rule 25(1)(c).



Ralph H. Wood,  
Clerk

State of New Hampshire

*file copy*

PERSONNEL COMMISSION  
Edward J. Haseltine, Chairman  
Stephen M. Duprey  
Richard M. Flynn



DIRECTOR  
Mrs. Judy S. Bastian  
DEPUTY DIRECTOR  
David T. Rines

PERSONNEL COMMISSION  
State House Annex — Room # 1  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

February 7, 1986

Ms. Virginia Vogel  
Director of Human Resources  
New Hampshire Hospital  
107 Pleasant Street  
Concord, New Hampshire 03301

Dear Ms. Vogel:

At its January 30, 1986 meeting the New Hampshire personnel Commission considered your December 20, 1985 request for rehearing in the Diann J. Morency matter and unanimously voted to deny your request.

Very truly yours,

FOR THE PERSONNEL COMMISSION

JUDY S. BASTIAN, Secretary  
N. H. Personnel Commission

JSB/mas

cc: William Briggs, General Counsel  
State Employees' Association

Peter Foley, Esq.  
Office of the Attorney General

PERSONNEL COMMISSION  
EDWARD J. HASELTINE, Chairman

# State of New Hampshire

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## N. H. PERSONNEL COMMISSION DECISION

In the Matter of:

DIANN MORENCY

December 5, 1985

The New Hampshire Personnel Commission met in public session on Thursday, December 5, 1985 in the hearing room of the Department of Personnel. They considered the termination appeal matter of Ms. Diann Morency. Ms. Morency was represented by William Briggs, General Counsel of the State Employees' Association of New Hampshire. Testifying for the Appellant were James Van Keuren and the Appellant, Diann Morency.

New Hampshire Hospital, the agency for which Ms. Morency was formerly employed, was represented by Barbara Ashooh Markham. Testifying for the Hospital was Randy Proctor.

The decision in this matter was delivered orally by Commissioner Stephen M. Duprey. Following are pertinent sections of the verbatim recording of that decision.

"We have reviewed the Motion to Dismiss and the exhibits and the Request for Findings of Fact and Rulings of Law. We heard testimony from Mr. Proctor, the Supervisor, that the appellant showed up for work because she was out of sick time, but she had a doctor's note which advised her not to work. He therefore felt he had to honor the doctor's note and refused to let the appellant work. That put her in the position of not being able to do her work and she was voluntarily absent and considered to have terminated herself, or to have resigned more accurately stated, under the Department of Personnel's January 21, 1985 memorandum.

"Ms. Morency testified that she showed up at the emergency room. She was treated. She was not advised that it was a communicable or infectious disease that would affect others in the area where she works, and that she did show up for work, and that in her opinion she could have worked. And she intended to do so and would have done so but for being ordered to go home.

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"This is a difficult case. The Commission has taken a very strict view and continues to take a strict view in interpreting the January 21, 1985 policy. At the outset, we'd like to note that in light of the decision we're making here today, it should not be assumed by either employing agencies or by employees that if they run out of sick time, and they show up to do their work that that automatically gets around the January 21, 1985 policy. Inherent in showing up to work it is implied that you are ready, willing and able to fully perform your job, so that it will not be an excuse or a defense or a way around this policy in the future to have somebody show up and present themselves for work, and if they come in on a stretcher - because you're clearly not able, and it clearly is in the discretion of the appointing agency to determine you're not able and to send you home. However, in this case, Mr. Proctor did testify that he really didn't make that judgment. He couldn't say whether she could work or not. He simply followed the doctor's note, so we have no real negative evidence that says that the appellant could not work. She herself testified that she could.

'We therefore are going to give the benefit of the doubt to the employee and say that she showed up for work ready, willing and able. She was in a Hobson's Choice. She brought in the doctor's note because she'd been told she had to. The doctor's note said she couldn't work but she wanted to work to preserve her job. We also, while we have not decided the letter of warning case and we understand that's under appeal and will still be heard at some future point, there was discussion and testimony, and discussions by counsel that there are allegations, be they true or untrue, as develop I guess in the letter of warning hearing, as to whether or not there was an abuse of sick leave. We have weighed that into consideration and have concluded that we are going to order reinstatement of the appellant. We are also going to put a couple conditions on that. There have been a significant number of absences. Under the Department of Personnel's Rules and Regulations, now, an agency head or a supervisor can require a doctor's note for a less than three days absence. So, for the next year of your service to the State, if you are absent any day - any day - you need to bring in a doctor's note for that day from your regular physician that indicates what's wrong and why you can or cannot work. If you show up for work after having been absent one day, and you don't have that doctor's note, then we would consider that a violation of this reinstatement and you can be terminated.

'We would like both the representative of the appellant and the hospital at the end of a year's time to report back to the Commission by letter which you both can sign, or by memorandum, or you can show

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up one day in front of us to tell us how this employee has done over the course of the past year.

"To the extent our decision here today is inconsistent or consistent with Requests for Findings of Fact, if it's consistent they're granted, inconsistent, they're denied.

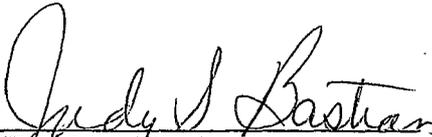
"Obviously, if either side wishes to appeal this decision they may do so and we will order typing of this part of the transcript anyway as the written decision...

"We will order back pay and benefits for a one month period and that is in keeping with our role to modify or amend decisions. We think that's a fair compromise."

[At this point, Barbara Ashooh Markham asked for a clarification.]

Ms. Markham: "I believe it goes without saying that there's a requirement for a note each time Ms. Morency is out. However, I just think we need to underscore that should she have no time, that a note does not make it okay to be out."

Commission response: "That is correct."

  
JUDY S. BASTIAN, Secretary  
N. H. Personnel Commission

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copy: Virginia Vogel, Director of Human Resources  
N. H. Hospital

William Briggs, General Counsel  
State Employees' Association of N. H.