

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### APPEAL OF NANCY NOLIN

Docket #96-T-27

Department of Safety, Division of Motor Vehicles

August 21, 1996

The New Hampshire Personnel Appeals Board (Bennett, Rule and Barry) met Wednesday, August 8, 1996, under the authority of RSA 21-I:58, to hear the appeal of Nancy Nolin, a former employee of the Department of Safety, Division of Motor Vehicles. Ms. Nolin, who was represented at the hearing by SEA Legal Intern Heidi Ayes, was appealing her May 22, 1996, termination from employment as a Secretary/Typist I in the Bureau of Registrations. Ms. Nolin was discharged following her receipt of a third written warning, issued under the provisions of Per 1001.03 (a) (1) and Per 1001.03 (a) (6) of the Rules of the Division of Personnel. Sheri J. Kelloway-Martin, Esq., appeared on behalf of the Division of Motor Vehicles.

The following persons offered sworn testimony at the hearing on the merits of Ms. Nolin's appeal: Debra Jean Rule, Counter Clerk III; Marshall Newland, Supervisor of Registrations; Pam Blake, SEA Steward; Nancy Nolin, Appellant. The following documents were also admitted into evidence:

State's #1 - May 21, 1996, 3<sup>rd</sup> written warning issued to Ms. Nolin for failing to meet the work standard by exhibiting uncooperative and disruptive behavior

State's #2 - April 9, 1996, 2<sup>nd</sup> written warning issued to Ms. Nolin for failing to meet the work standard, exhibiting uncooperative or disruptive behavior, and exhibiting physically or verbally abusive behavior in the workplace

State's #3 - June 7, 1995, 1<sup>st</sup> written warning for failing to serve the public in an efficient and congenial manner, exhibiting verbally abusive behavior on the telephone

State's #4 - March 9, 1993, written warning for failing to serve the public in an efficient and congenial manner, more specifically for exhibiting verbally abusive behavior on the telephone

State's #5 - Ms. Nolin's performance evaluations dated 10/14/95, 8/16/94., 9/13/93, 8/12/92, 9/20/91, 8/28/90

State's #6 - May 21, 1996, notice of meeting with Ms. Nolin to discuss possible termination

State's #7 - May 22, 1996, notice of termination

Appellant's #1 - April 25, 1996, customer comment card (with name and address removed)

Appellant's #2 - positive customer comments received by Ms. Nolin

Appellant's #4 - May 20, 1995, letter of complaint written by Donna Rome addressed to Arthur Garlow

Appellant's #5 - April 9, 1996, letter from Christine Klucky

Appellant's #7 - Excerpts from the 1995 - 1997 Collective Bargaining Agreement

Ms. Ayer argued that the State put Ms. Nolin in harm's way, assigning her to the registrations counter at the Department of Safety where she would be unfamiliar with the work, and would be more likely to become frustrated in working directly with the public. She argued that the Department of Safety's warnings were not all issued for the same offense and, as such, they could not be used to legally dismiss Ms. Nolin. Finally, Ms. Ayer argued that the Department of Safety failed to notify Ms. Nolin when letters of complaints about her performance were received and placed in her personnel file, thereby depriving Ms. Nolin of a meaningful opportunity to refute any allegations arising out of those complaints.

## Findings of Fact and Rulings of Law

After presenting their evidence and argument, both parties submitted proposed Findings of Fact and Rulings of Law for the Board's consideration. Inasmuch as those offered by the parties were intermixed, the Board decided to issue its own Findings of Fact and Rulings of Law in addition to ruling on those presented by the parties.

### State's:

1 – 3, 5 – 11, and 13 – 25 are granted.

4 and 12 are granted in part.

4 – The customer complaint card discussed in the appellant's third letter of warning said that the appellant had told the customer to "be quiet" when the customer attempted to assist the appellant with the registration process. That fact was not corroborated by any live testimony.

12 – Similarly, the May 15, 1995, complaint about Ms. Nolin was not corroborated by live testimony on the question of who wrote the complaint and how detailed it was.

### Appellant's:

1, 3 – 5, 20 – 23 and 31 are granted.

10 is granted, but is irrelevant hereto.

2, 6 – 9, 11 – 18, 24 – 26, and 29 – 30 are denied.

14 is denied to the extent that failing to meet the work standard is one acceptable characterization of the offense alleged in the April 9, 1996, letter of warning. Appellant's 19 is denied in that the appointing authority provided all relevant portions of the comment card to Ms. Nolin prior to her termination.

27 is neither granted nor denied, as the Board need not rule on this issue to properly decide the appeal.

32 is granted in part and denied in part. The State has met the burden of production and has made a prima facie case for termination on the basis of a third warning for the same offense.

## Board's Findings of Fact

1. Approximately 18 months prior to her termination, Ms. Nolin had asked for the opportunity to cross-train on registrations, but her requests were denied by Marshall Newland, Supervisor of Registrations, because of documented concerns about the appellant's ability to communicate appropriately and effectively with the public.
2. In early 1996, Mr. Newland concluded that neither evaluating, counseling nor warning the appellant had been effective in correcting her communication and customer service skills. He granted the appellant's request for cross-training, believing it would be more difficult for Ms. Nolin to be rude to customers when she had deal with them face-to-face rather than over the telephone.
3. The warnings issued to Ms. Nolin on April 9, 1996, and May 21, 1996, describe incidents very similar to that described in the June 7, 1995, warning.
4. The warning dated June 7, 1995, alleged that the appellant failed "to serve the public in an efficient and congenial manner and more specifically [she exhibited] verbally abusive behavior on the telephone..."
5. The warning dated April 9, 1996, alleged that the appellant was, "...discourteous, uninformative, rude and not at all helpful." It also asserted that her communication with the customer was verbally abusive.
6. The warning dated May 21, 1996, alleged that the appellant was discourteous, uninformative, rude and not at all helpful."
7. Union Steward Pam Blake attended part of the May 21, 1996, meeting at which Ms. Nolin received her third letter of warning. At that meeting, Ms. Blake requested and received a copy of the customer comment card which had prompted the May 21, 1996, warning. The photocopy provided to Ms. Blake did not contain the name and/or address of the complaining party.
8. Arthur Garlow, Assistant Director of Motor Vehicles, asked Union Steward Pam Blake to attend the May 22, 1996, meeting to address Ms. Nolin's termination. In addition to Ms.

Blake and the appellant, Arthur Garlow, Marshall Newland and Claude Ouellette, H. R. Administrator for the Department of Safety, were present.

### Board's Rulings of Law

1. Per 1001.03 (a) of the Rules of the Division of Personnel authorizes an appointing authority to use the written warning as "the least severe form of discipline to correct an employee's unsatisfactory work performance for offenses including, but not limited to: (1) Failing to meet the work standard; ... (6) Exhibiting uncooperative or disruptive behavior; ... (8) Exhibiting physically or verbally abusive behavior in the workplace;..."
2. Per 1001.03(b) of the Rules of the Division of Personnel provides that, "If an employee fails to take corrective action as outlined in a written warning, the employee shall be subject to additional disciplinary action up to, and including, discharge from employment pursuant to Per 1000."
3. Per 1001.08(e)(1) provides that, "An appointing authority shall be authorized to dismiss an employee pursuant to Per 1001.03 by issuance of a third written warning for the same offense within a period of 2 years."
4. In accordance with Per 1001.08(f)(1) through (4), before an appointing authority may dismiss a classified employee under Per 1001.08(e)(1), the appointing authority must meet with the employee to discuss whatever evidence the appointing authority believes supports the decision to dismiss the employee prior to issuing the notice of dismissal, and provide the employee the an opportunity at that meeting to refute the evidence presented by the appointing authority. The appointing authority must also document in writing the nature and extent of the offense, as well as list the evidence the appointing authority used in making the decision to dismiss the employee.
5. Per 1001.08(g)(1) through (3) requires the appointing authority to prepare a written notice of dismissal specifying the nature and extent of the offense, to notify the employee in writing that the dismissal may be appealed under the provisions of RSA 21-I:58 within 15 calendar

days of the notice of dismissal, and to forward a copy of the notice of dismissal to tile director of personnel.

### Decision and Order

Ms. Nolin's difficulties in dealing appropriately with the public are well-documented. The evaluations which the appellant received during the last six years of her employment with the Department of Safety reveal a continuing effort by supervisory and managerial personnel to apprise Ms. Nolin that rude or abusive behavior by employees would not be tolerated. The warnings issued to Ms. Nolin clearly advised her that unless corrective action was taken, she would be subject to discipline, up to and including her termination from employment.

Both Ms. Nolin and Mr. Newland testified that it was the appellant who first requested the opportunity to cross-train in registrations. During the first several weeks of training, Ms. Nolin and her first trainer, Pat Abemathy, both complained that they were making no progress. Mr. Newland reassigned the appellant to train with Debra Jean Rule, who had successfully trained up to a dozen other clerks. Ms. Nolin had no complaints about Ms. Rule as a trainer or supervisor. When Ms. Nolin received a written warning in April, 1996, she did not request reassignment to a position where she would have reduced customer contact.<sup>1</sup> As such, the evidence does not support the appellant's allegation that the employer assigned Ms. Nolin to cross-training in order to make her work more difficult, or to increase the likelihood that she would receive customer complaints for which she could be disciplined.

The Division of Motor Vehicles took all the appropriate and essential steps to effect the lawful termination of a permanent employee under the Rules of the Division of Personnel. The Division apprised Ms. Nolin of her job requirements and the performance expectations upon which her work would be evaluated. The employer evaluated her performance regularly and gave her clear

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<sup>1</sup> Mr. Newland testified that there were no positions where Ms. Nolin's contact with the public could be eliminated completely.

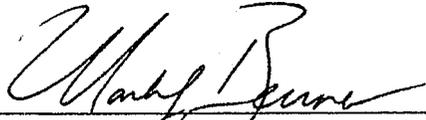
notice when her work did not meet expectations. The employer embarked on a course of progressive discipline by issuing letters of warning to the appellant when her performance was unsatisfactory. The employer notified the appellant that if she failed to take corrective action, she would be subject to additional disciplinary action up to and including her termination from employment.

When the employer issued Ms. Nolin a third letter of warning for the same offense, the appellant, with a Union steward present, was allowed to review the evidence supporting the warning. The appellant also was given written notification that a meeting had been scheduled to review the reasons supporting her termination from employment and allow the appellant to refute those allegations. The employer invited a Union steward to attend the termination meeting, although neither the Rules nor the Collective Bargaining Agreement require the agency to do so.

At the meeting prior to termination, the employer discussed the reasons supporting the dismissal, reviewed the evidence supporting the dismissal, and gave Ms. Nolin an opportunity to refute the allegations and evidence. Having failed to refute the basis for the termination, the appellant was given written notice of her dismissal. The notice of dismissal specified the reason for termination, cited the legal authority for the dismissal, and apprised the appellant of her right to appeal that termination to this Board.

Having considered the testimony, documentary evidence and oral argument, the Board voted unanimously to sustain Ms. Nolin's termination from employment, thereby denying her appeal. While the Board considers it unfortunate whenever a permanent employee must be dismissed, Ms. Nolin's discharge from her employment was a "textbook" termination. The record reflects that Ms. Nolin's communication and customer service skills failed to meet the work standard. As such, she was subject to discipline, up to and including termination from employment, under Per 1001.03 of the Rules of the Division of Personnel.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



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Mark J. Bennett, Acting Chairman



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Lisa A. Rule, Commissioner



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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Sheri J. Kelloway-Martin, Esq., Department of Safety  
Heidi E. Ayer, SEA Legal Intern