

# State of New Hampshire

PERSONNEL APPEALS BOARD  
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Gerald Allard  
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## APPEAL OF JOSEPH REDA

April 4, 1988

On July 28, 1987, the Personnel Appeals Board, Commissioners Haseltine, Allard, and Platt sitting, heard the appeal of Joseph Reda, formerly Assistant Director of Administration for the New Hampshire Liquor Commission. Mr. Reda was discharged during his probationary period (by letter dated January 26, 1987) for unsatisfactory work. The letter of termination referred to Mr. Reda's insufficient self-motivation and lack of knowledge in administrative matters. Mr. Reda was represented by Attorney John Wilson. Assistant Attorney General Daniel Mullen represented the Liquor Commission.

As grounds for his appeal, Mr. Reda alleged in his letter of Appeal dated February 6, 1987, that his discharge was based on incorrect factual assumptions, that he was given no notice of deficiencies in his job performance, and that given his previous professional job experience, his discharge was arbitrary.

Given the lack of specific information provided concerning the events leading up to Mr. Reda's discharge, the Board voted to solicit and/or accept additional information from both parties prior to determining whether the appellant was entitled to a hearing before the Board.

Upon review of the additional information, the Board voted to grant Mr. Reda a hearing, which was scheduled for July 14, 1987. At the request of appellant's counsel, that hearing was rescheduled for July 28, 1987. On or about July 8, 1987, the appellant filed a Motion for Formal Discovery, seeking, *inter alia*, certain documents from Liquor Commission staff meetings and the depositions of certain employees. In its response, State agreed to make the documents available and objected to the depositions. The Board denied the remainder of the motion noting no special circumstances requiring the taking of depositions and the timing of the hearing.

At the hearing the appellant requested that the record be left open to allow him to contact additional witnesses. The Board voted to allow him to move to reopen if he were successful in obtaining additional information from the witnesses he had listed. The appellant also requested additional time to submit requested Findings of Fact and Rulings of Law, a request which the Board also granted.

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Upon review of the evidence presented, the Board found that Mr. Reda was hired by the Liquor Commission as Assistant Director Marketing - Administration effective November 14, 1986. The November 12, 1986 letter informing him of this employment also advised him that he would begin a six-month probationary period on the first day of his employment.

Mr. Reda's immediate supervisor was Robert Herlihy, Director of Marketing, Merchandising and Store Operations. Mr. Reda was informed that he was being trained to assume Mr. Herlihy's position upon the latter's retirement. He was also advised as part of this training that he would spend six months working on stores' operations and six months doing purchasing, distribution and transportation.

In December, 1986, Mr. Herlihy asked Mr. Reda to prepare a memo for the stores concerning the placement in the stores of certain liquors. When the memo was sent out without their notification, the Commissioners sent Mr. Reda a memo asking him not to take such action in the future without Commission approval. Upon receipt of the memo, Mr. Reda went to Commissioner Herson's office where he angrily informed him that he would not be intimidated. Although Mr. Reda apologized for his behavior the next day, the confrontation was itself nonproductive and unprofessional.

During his two and one half months employment at the Commission, Mr. Reda was expected to exercise increasing independence and judgment. He and Mr. Herlihy had regularly scheduled Wednesday morning meetings which sometimes consisted only of Mr. Reda informing Mr. Herlihy that there was nothing new to report. In December, 1986, Mr. Herlihy also told Mr. Reda to work with the Store Supervisors present at a meeting to develop an appropriate allocation of Class 50 funds before adjourning. Mr. Herlihy left the meeting and was informed by Mr. Reda after the meeting that the supervisors and he had decided it would be better to complete the report in January as they would have more information after the holidays. On January 21, 1987, Mr. Reda asked Mr. Herlihy to intervene at the subsequent meeting of the store supervisors because they still would not give Mr. Reda the necessary information to complete the report. The issue was resolved after Mr. Herlihy attended the meeting for approximately 10 minutes.

Mr. Herlihy informed the appellant that he was unhappy about being asked to intervene in a meeting to report information which he had already given to Mr. Reda. Although not regularly scheduled meeting day, Mr. Reda had stopped

<sup>1</sup> The Board notes that one of Mr. Reda's contentions at the beginning of his appeal hearing was that he had received no written notice of any deficiencies or mistakes in job performance. Yet at one point during the hearing contended that his written communication from the Commission angered him because his desk was only steps away from the Commissioners' offices and they could have come to speak to him about this incident.

by Mr Herlihy's office on January 22, 1987, to discuss the events of the day before and to inform Mr. Herlihy that he was not going to intimidate Mr. Reda.<sup>1</sup> After the January 22, 1986, meeting, Mr. Herlihy prepared a memo to the Commissioners recommending Mr. Reda's termination. That recommendation was accepted and Mr. Reda was discharged effective February 6, 1987.

Based on the foregoing, the Board concluded that Mr. Reda's discharge from State service during his probationary period was not arbitrary, capricious, illegal, or made in bad faith. The appellant having failed to satisfy his burden of proof, the Board voted to deny his appeal.

The Board ruled as follows on the Requests for Findings and Ruling submitted by the parties:

Liquor Commission's Request for Findings and Rulings:

Paragraphs 1,2,4,6,7,8,9,10: Granted

Paragraphs 3,5: Granted to extent discussed in decision.

Appellants Requests for Findings and Rulings:

Paragraph 1:

1st and 2nd sentence: Granted.

3rd sentence: Granted to extent discussed in decision.

Paragraph 2: Denied

Paragraph 2: Denied

Paragraph 4: Denied.

The Board's questioning was directed to the existence of an alleged rift between Mr. Herlihy and the appellant.

Paragraph 5: Granted in part; denied in part.

No request was made to do so, no objection was noted, and the appellant had earlier indicated he did not wish to question Mr. Hersom.

Paragraph 6: Denied

Paragraph 7: Denied

Paragraph 8: Denied

Paragraph 9: Granted

Paragraph 10: Granted

Paragraph 11: Denied

Paragraph 12: Granted

Paragraph 13: Granted

Paragraph 14: Denied

Paragraph 15: Granted

Paragraph 16: Denied

Paragraph 17: Denied

Paragraph 18: Denied

Paragraph 19: Denied

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FOR THE PERSONNEL APPEALS BOARD

*Mary Ann Steele*

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Executive Secretary

cc: John R. Wilson, Esq.

Daniel J. Mullen, Asst. Attorney General

Virginia A. Vogel  
Director of Personnel