

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

BRENDA CRUZ

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DOCKET NO. 82-62

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 20, 1982, Attorney Edwin Free of Richard E. Davis Associates filed a grievance on behalf of Brenda Cruz ("Grievant"). The grievance alleged the dismissal of Grievant as an employee of the State Agency of Transportation, Department of Motor Vehicles, was without just cause and was in violation of Article 15 of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association, effective July 1, 1982 - June 30, 1984 ("Contract").

A hearing was held before Board Members Kimberly B. Cheney, Chairman, and William G. Kemsley, Sr., on May 19, 1983. Member James S. Gilson was absent. At the hearing, the Board Chairman stated Member Gilson would review the record and participate in the decision if necessary. Additional hearings were held before the full Board on June 2, 1983, and June 20, 1983. Grievant was represented at the hearings by Attorney Edwin Free. Special Assistant Attorney General Scott Cameron represented the State.

At the conclusion of the June 20, 1983, hearing, the record was left open so that a deposition of a witness who was in the hospital could be taken. However, no deposition of the witness was subsequently taken.

On June 24, 1983, the State filed a Motion to Reopen Hearing to introduce newly discovered evidence, i.e., the original copy of a batch ticket relating to the March 26, 1982, transaction of John Ploof at the Department of Motor Vehicles. On July 1, 1983, the Board informed Mr. Free that if he had any objection to the admission of the original batch ticket to notify the Board by July 8, 1983, and that if no objection was filed, the original batch ticket would be admitted. No objection was filed by Mr. Free and the Board admitted into evidence the original batch ticket.

The Board established July 19, 1983, as the date for submission of Requested Findings of Fact and Memoranda of Law. The State filed Requested Findings of Fact and Memoranda of Law on July 19, 1983. No brief was submitted by Grievant.

FINDINGS OF FACT

1. Grievant was employed by the Department of Motor Vehicles ("DMV") from 1974 until her dismissal effective October 8, 1982. At the time of her dismissal, Grievant was employed as a Motor Vehicle Customer Service Representative, earning a salary of \$6.17 per hour for a 40-hour week. The position she occupied is commonly referred to as either a "Counter Clerk" or a "Rater".

2. A counter clerk in the DMV processes the normal transactions brought to that Department by persons of the State, in person or through the mail. Types of actions processed by the counter clerks include new and renewal license and registration requests, requests for special plates, title documents, and other necessary transactions. In the

course of performing these duties, the counter clerk is responsible for accepting cash and checks from the public, and properly accounting for all funds received.

3. Grievant was dismissed from State service effective October 8, 1982, by letter dated October 5, 1982, to Grievant from William H. Conway, Jr., Commissioner of the DMV. The dismissal was based upon a determination by the Commissioner that Grievant was guilty of gross misconduct by misappropriating funds from either the State or from customers of the State in four separate transactions. Specifically, Grievant was charged with misappropriating \$15.00 in connection with a transaction involving customer Rod Stone on June 2, 1982; misappropriating \$15.00 from the State in connection with a transaction occurring on March 26, 1982, involving customer John Ploof; misappropriation of an undetermined amount of cash from customer Martha Keough in a transaction occurring March 9, 1982; and the misappropriation of \$3.00 from customer Ryamond Duval on or about March 12, 1982 (State's Exhibit 1).

4. During hearings on this matter the State dropped its allegations regarding the Duval transaction after it was unable to produce Mr. Duval as a witness.

5. Prior to the determination to dismiss Grievant from State employment, an investigation of the charges related in Finding No. 3 above was conducted by Carol Kostelnik, a DMV investigator.

6. The investigation of Grievant's actions resulted from a complaint submitted by a citizen, Roderick Stone, who claimed by letter

of June 14, 1982, in response to notification by the DMV that he owed a registration fee of \$15.00 for a special plate request, that he had already paid the registration fee (State's Exhibits 17, 18). Subsequent to Stone's letter, Investigator Kostelnik investigated the transaction involving Stone, and also investigated other transactions engaged in by Grievant prior to June, 1982. As a result of that investigation, the charges against Grievant relating to the Stone, Keough and Ploof transactions were made. Our findings in regard to these transactions are listed in chronological order of their occurrence and not in the order they were investigated by the DMV.

7. On the morning of March 9, 1982, Martha Keough drove from East Hardwick to Montpelier, accompanied by her mother, to register her recently-acquired Fiat. Keough thought her husband had given her \$75 in cash to pay for the new registration, tax and title, but she had not counted the money when her husband gave it to her.

8. When Keough arrived at the DMV, she stood in line and was waited on by Grievant. Keough told Grievant she was there for a new registration for her car. Keough gave Grievant all of her cash and told Grievant she did not know how much the transaction would cost. Keough did not count the money before giving it to Grievant.

9. Grievant accepted the cash offered by Keough and processed her registration. The total charge entered on the documents processed by Grievant amounted to \$34.00 (\$5.00 title fee, \$5.00 transfer fee and \$24.00 tax)(Exhibit 23).

10. Grievant improperly processed Keough's registration. Grievant issued new license plates to Keough, yet documented a lesser charge for a transfer of plates. She should have documented charges of \$65.00 for the Keough transaction (\$5.00 title fee, \$36.00 new registration fee and \$24.00 tax).

11. Grievant then returned an undetermined amount of cash to Keough.

12. On the way back to East Hardwick, Grievant stopped in Montpelier to get gas for her car. The exact amount Keough paid for the gas is not known, but it was probably about \$5.00. Keough made no other cash purchases that day either before going to Montpelier or returning home from Montpelier.

13. When Keough returned home, she gave her husband all her remaining cash, a total of \$4.00.

14. Based on a preponderance of the credible evidence, we find that it is undetermined how much cash Keough actually gave Grievant for the registration transaction and how much cash Grievant returned to her and conclude Grievant did not misappropriate funds from Martha Keough and the State on March 9, 1982.

15. On March 26, 1982, John Ploof went from Burlington to the DMV in Montpelier to renew his registration and his special plate. He had been paid the previous day and had \$250 cash in his pocket. Prior to going to Montpelier he knew his registration renewal and special plate application would be \$51.00. Prior to going to Montpelier, he separated

\$51.00 from the rest of the \$250 and put the \$51.00 with the renewal notice (State's Exhibit 8) in his right front pocket. The rest of the money was in his back pocket.

16. Shortly before going to Montpelier, Ploof had purchased a new car, a Fairmont, and sold his Mustang. When he arrived at the DMV he was waited on by Grievant. Ploof asked Grievant whether the DMV had a record of the transfer of ownership. Grievant checked on the computer and told Ploof he was still listed as owning the Mustang.

17. Ploof then questioned Grievant about changing his special plate, which was "SPOOF" to "PLUFR". Grievant told him to do so would cost \$15.00 on top of the \$51.00. He decided this would be too much money and told Grievant he would keep the "SPOOF" plate.

18. Ploof then re-registered the Mustang. He gave Grievant \$51.00; \$36.00 for the registration and \$15.00 for the special plate. He counted out the money as he gave it to her.

19. Grievant recorded a transaction for a registration renewal and a special plate renewal, and recorded a charge in the amount of \$36.00. The correct amount should have been recorded as \$51.00 (\$36.00 for renewal, \$15.00 for special plates) (State's Exhibit 8).

20. Then Grievant gave Ploof an envelope containing his registration and stickers. Ploof did not notice that Grievant had recorded a transaction for \$36.00, rather than for the correct fee of \$51.00 (State's Exhibit 8).

21. Grievant returned no money to Ploof and did not give him a credit slip.

22. Subsequent to March 26, 1982, Ploof got a notice from DMV that he owed \$15.00 for his special plates. He called DMV and explained that he had paid \$51.00. The person at DMV told him there was probably a mixup in the computer and not to worry about it if he did not hear from DMV again. Ploof did not hear from DMV again about owing money.

23. Based on a preponderance of the credible evidence, we find Grievant misappropriated \$15.00 in connection with the Ploof transaction.

24. The transaction involving Roderick Stone occurred at the DMV office in Montpelier on June 2, 1982. On that day a friend of Stone's, Kristin Duchart, drove from Londonderry to Montpelier to renew the registration on Stone's vehicle, a 1973 Cadillac. In addition to the renewal forms, Duchart carried with her completed forms with which to apply for a special plate registration for Stone's vehicle. Stone wished to secure a special plate with the word "STONI" on it. Duchart also carried with her a personal check from Stone dated May 30, 1982, and issued to the DMV in the amount of \$51.00. The amount of \$51.00 was predetermined by Stone as the amount necessary to pay for the renewal of his registration (\$36.00) and the special plate application (\$15.00).

25. When Duchart arrived at DMV, she was waited on by Grievant. Duchart presented Grievant with Stone's completed renewal registration, Stone's completed application for special plates, and Stone's signed check in the amount of \$51.00 with which to cover the costs of both transactions. Duchart was told by Grievant that she could process the renewal but not the special plate request.

26. Grievant accepted Stone's check for \$51.00 and processed Stone's registration renewal. Cruz told Duchart that Stone should mail the special plate request form back in to the DMV and it would be processed.

27. In documenting the Stone transaction, Grievant recorded a payment of \$36.00 made by Stone, and a cash rebate of \$15.00 (State's Exhibit 16).

28. Duchart did not receive any refund or rebate for this transaction from Grievant. She did not receive any cash, credit or receipt for the \$15.00 even though the special plate application was not processed.

29. Subsequently, Stone mailed in his special plate request to DMV. Stone did not send in any check or other monies to pay for the special plate because he had been told by Duchart that the funds were on record at the DMV and that his plates would be processed upon receipt of the form.

30. On or before June 14, 1982, Stone received a letter from Mary J. LeBlanc, Chief of Customer Contact of DMV, informing him that the DMV was returning his special plate card application due to the fact that it was not accompanied by the required registration fee of \$15.00. LeBlanc requested that Stone submit his check in the amount of \$15.00 and return his application (State's Exhibit 17).

31. On June 14, 1982, Stone responded in writing to LeBlanc's letter and informed LeBlanc that he had already paid the required registration fee of \$15.00; that Duchart had paid it on June 2, 1982 (State's Exhibit 18).

32. After Stone's complaint was received by DMV, Grievant's supervisor, Bonnie Rutledge, discussed Stone's complaint with Grievant. Rutledge asked Grievant why she did not process the special plate request at the time of the transaction. Grievant responded that she did not process the special plate request at that time because she was on a machine at the "preprint counter" which did not have the capability of processing special plate requests.

33. Grievant falsely told Rutledge she was working at the preprint counter at the time. Grievant was on Machine No. 13 when the transaction was processed. Machine Number 13 was capable of processing the special plate request (State's Exhibits 13, 15, 16).

34. According to DMV policies and procedures, Grievant should have processed Stone's special plate request at the time of the transaction, taken his old plate and issued a temporary plate. Grievant did not do this. Instead, she renewed the old plate and advised Duchart to have Stone mail in his request for a special plate.

35. The check that Kristin Duchart presented Grievant on June 2, 1982, was issued by a third person, namely Roderick Stone.

36. DMV policies and procedures do not allow raters to make cash rebates to a person presenting a third party check. When a person presents a third party check to a rater which exceeds the amount required for the transaction, DMV policies and procedures require the rater to do one of two things in order to effectuate a refund. A rater may issue an "interdepartmental credit" (a departmental record recording the receipt of money) in a case where an application was not properly completed.

In that case, the "interdepartmental credit" would be on file waiting for the applicant to send in the properly completed form. In a case where the amount of the check was merely in excess of the amount of the transaction, the rater would be required to issue an "overpayment." This is a DMV record which is sent to a DVM cashier and processed through the State Treasurer's Office. The State Treasurer subsequently issues a State check to the person who issued the original check for the amount in excess of the transaction in question.

37. In a meeting with Investigator Kostelnik concerning the investigation of the Stone transaction in approximately July, 1982, Grievant asked Kostelnik what would happen if she gave Duchart the \$15.00.

38. Based on a preponderance of the credible evidence, we find Grievant misappropriated the \$15.00 indicated as a cash rebate in the Stone transaction of June 2, 1982.

OPINION

The State has proven by a preponderance of the evidence that Grievant misappropriated funds in the conduct of her job duties on two occasions.

Certainly, this demonstrates substantial shortcomings detrimental to the State's interests and constitutes just cause for Grievant's dismissal. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). Grievant's dishonesty, indulged in on two proven occasions, justifies dismissal as a reasonable discipline. Surely, if any case is "appropriate" for bypassing the progressive discipline requirements of Article 15 of the Contract, it is this one. Dismissal is certainly justified by a pattern

of fraud. In re Carlson, 140 Vt. 555, 559 (1982). Grievance of Barre, 5 VLRB 10, 26-27 (1982). Grievant's repeated acts of dishonesty constitute gross misconduct, as charged in her dismissal letter.

Grievant was on fair notice her dishonesty could be a cause for dismissal. Honesty is an implicit duty of every employee, and Grievant should have known that dishonest conduct was prohibited. In re Carlson, supra, at 560.

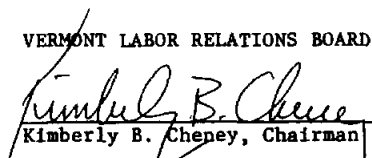
ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED.

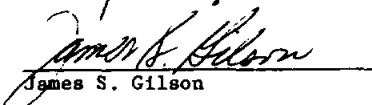
The Grievance of Brenda Cruz is DISMISSED.

Dated this 22nd day of September, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson