VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 83-41
WILLIAM GRAVES	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 21, 1983, the Vermont State Employees' Association ("VSEA") filed a grievance with the Vermont Labor Relations Board on behalf of William Graves ("Grievant") alleging the dismissal of Grievant from his position as Tax Field Examiner A with the State of Vermont, Department of Taxes ("Department") violated Articles 15 and 40 of the collective bargaining agreement effective between the State and VSEA for the period July 1, 1982 to June 30, 1984 ("Contract").

Hearings were held before the full Board on October 6, 1983, and January 12, 1984. Michael Seibert, Special Assistant Attorney General, represented the State. Grievant was represented by VSEA Staff Attorney Michael R. Zimmerman.

Requested Findings of Fact and Memoranda of Law were filed by VSEA and the State on February 2 and 3, 1984, respectively. Reply briefs were filed by both parties on February 9, 1984.

FINDINGS OF FACT

1. Grievant began working for the Department on April 12, 1982, in the position of Tax Field Examiner A, Pay Scale 14. Prior to that time, he had worked, except for two breaks in service totaling approximately one year, since 1972 for the State as an accountant for the Governor's

ARTICLE 40
EXPENSES REIMBURSEMENT

1. All State Employees, when away from home or office on official duties, shall be reimbursed for actual expenses incurred for... reasonable subsistence as detailed below...

2. The maximum allowable reimbursement for subsistence is as follows:

Effective July 1, 1982:

INSTATE: Lunch $3.95

3. Employees shall be expected to make a reasonable effort to procure lodging and meals with as little expense as possible while not unreasonably sacrificing personal convenience and comfort.

6. An appointing authority may revoke midday meal reimbursement privileges where there is continuing indication of abuse.

7. The State may require the submission of receipts for any of the above expenses.

(Grievant's Exhibit 2, Page 4)

7. Effective November 6, 1981, the Department of Taxes adopted a "Standard Operating Procedure" relating to travel. Among other things, that SOP adopted Agency of Administration Bulletin 3.4, entitled "Regulations for Reimbursement of Personal Expenses". Bulletin 3.4 contains, in pertinent part, the following language:

1. General Regulations...

d. Reimbursable Claims

Only those actual and necessary expenses which were incurred in the conduct of the State's business by persons acting for the State will be reimbursed...

5. Meals

a. General Provisions

> 1) Employees required to be away from their permanent duty station or residence (if their home is their office) at the time of a meal, shall be entitled to reimbursement for the expense of the meal, subject to the maximum amounts allowed...
>
> 5) The State may require receipts to be submitted to support any individual claims.
>
> 6) An appointing authority shall revoke midday meal reimbursement privileges where there is continuing indication of abuse.
>
> (State's Exhibit 13)

8. At all times relevant herein, Grievant was aware of and understood the above-cited provisions of the Contract and Bulletin 3.4 regarding meals reimbursement.

9. Until May 9, 1983, Grievant did not keep records (i.e., notes or receipts) of the amount he spent for lunch, although he did keep accurate track of his daily mileage. Grievant's practice was to claim the maximum amount (i.e., $3.95) for lunches.

10. Donald Sheehan was Grievant's immediate supervisor from April 1982 until January, 1983. In August of 1982, Grievant submitted a claim for expense reimbursement for the period August 5, 1982 to August 13, 1982. Included on that claim form were claims, each in the amount of $3.95 (the contractual maximum allowable amount), for lunches on August 9, 1982 and August 10, 1982. Sheehan, who had eaten lunch with Grievant on those dates, knew that Grievant had not spent that much for lunch on those dates.

11. Sheehan did not approve Grievant's claim for lunch reimbursement for August 9 and 10, 1982. Sheehan met with Grievant and told him he refused to approve those claims because they were in excess of what

Grievant actually spent for lunch those days. Sheehan told Grievant to resubmit the claims and indicate the amount actually spent. At no time during his discussions with Grievant did Sheehan say that coffee breaks could be reimbursed, although he did tell Grievant purchases of lunches from vending machines were reimbursable. As a result of this discussion, Grievant resubmitted claims for lunch for August 9 and 10, 1982, and Sheehan approved those claims (State's Exhibit 9).

12. During his employment by the Tax Department, Grievant received only one performance evaluation report, which covered the period from April 14, 1982 to October 14, 1982. In that report, Sheehan rated Grievant's overall performance as "3" ("consistently meets job requirements/ standards")(Grievant's Exhibit 5).

13. In January 1983, Gordon Sykes, a Tax Field Supervisor, was assigned to be Grievant's immediate supervisor. In that capacity, he reviewed Grievant's expense claims as they were submitted (every two weeks).

14. Shortly before April 3, 1983, Sykes and George Phillips, a Tax Examiner C, had a casual conversation, during the course of which Phillips mentioned to Sykes the location of his current field assignment. Sykes knew that the taxpayer Phillips mentioned had a subsidized cafeteria (i.e., one with reduced prices), and he asked Phillips if the price of food at that cafeteria was still reasonable. Phillips said that it was.

15. On (or shortly after) April 3, 1983, Grievant submitted a claim for reimbursement for the period March 28 through March 31, 1983 (State's Exhibit 1, Page 1). For each of those four days, Grievant claimed $3.95 for lunch. On March 29, 30 and 31, Grievant worked at the

same location as Phillips (i.e., the taxpayer with the subsidized cafeteri Sykes was aware of that and thought Grievant had probably had lunch in the subsidized cafeteria on each of those days. Sykes thought Grievant's claims for $3.95 on those dates were probably excessive given his knowledge of the cafeteria's prices.

16. As a result of his suspicions, Sykes telephoned Phillips on the morning of April 6, 1983. Sykes told Phillips that he had received Grievant's expense claims for March 29, 30 and 31 and that Grievant had claimed $3.95 for lunch each day. Sykes asked Phillips if he had seen what Grievant had eaten on those days. Phillips informed Sykes that he had not eaten with Grievant on those dates, but that there was no way to spend the maximum (i.e., $3.95) at the subsidized cafeteria. Sykes then asked Phllips to eat lunch with Grievant whenever they worked together to observe how much Grievant spent and to report back to him.

17. Sykes did not approve Grievant's claim, as submitted, for the period March 29 through 31, but did not inform Grievant of his disapproval until May 9, 1983.

18. On April 4 and 5, 1983, Grievant worked at the location with the subsidized cafeteria. Neither Phillips nor anyone else from the Department of Taxes ate with him on those days. On April 18, 1983, Grievant submitted a Personal Expense Claim on which he claimed reimbursemer of $3.95 for lunch on April 4 and 5 (State's Exhibit 1, Page 2).

19. Based on a preponderance of the evidence, we find Grievant ate lunch at the subsidized cafeteria on three of the five days of March 29, 30 and 31, 1983, and April 4 and 5, 1983, and ate at a location other than the cafeteria on two of those days. On those days Grievant ate

at the subsidized cafeteria, he spent less than $3.95 for lunch. Therefore, he submitted false reimbursement claims for lunch on those days. On the two days Grievant ate at a location other than the cafeteria, the State has not demonstrated by a preponderance of the evidence that Grievant spent less than $3.95 for lunch on those days. Therefore, we do not find Grievant submitted false lunch reimbursement claims for those days.

20. On April 6, 1983, Phillips was working at the same location as Grievant (i.e., the location with the subsidized cafeteria). Both Grievant and Phillips ate lunch in the subsidized cafeteria. Phillips followed Grievant through the cafeteria line, sat at the same table with him, and returned to work with Grievant. He observed that Grievant spent $2.25 for lunch that day. Within a few days therafter, Phillips reported his observations to Sykes.

21. On April 7, 1983, Grievant and Phillips again worked at the same location as the previous day. Phillips again ate lunch with Grievant at the same inexpensive cafeteria, and observed that Grievant spent $1.85 for his meal. Once again, within a few days thereafter, Phillips reported his observations to Sykes.

22. On April 18, 1983, Grievant submitted a Personal Expense claim in which he claimed reimbursement of $3.95 for lunch on both April 6 and 7, 1983 (State's Exhibit 1, Page 2). We find Grievant actually spent $2.25 for lunch on April 6 and $1.85 for lunch on April 7. Therefore, Grievant submitted false claims for lunch reimbursement for those days.

23. On April 14 and 15, 1983, Grievant worked at another location (i.e., one without a subsidized cafeteria). Neither Phillips nor anyone else from the Department of Taxes ate lunch with Grievant on those dates.

24. On April 18, 1983, Grievant submitted a Personal Expense Claim in which he claimed reimbursement of $3.95 for lunch on both April 14 and 15, 1983 (State's Exhibit 1, Page 2). The State has not demonstrated by a preponderance of the evidence that Grievant spent less than $3.95 for lunch on those days and, therefore, we do not find Grievant submitted false lunch reimbursement claims for those days.

25. Sykes did not approve Grievant's lunch claims for April 4, 5, 6, 7, 14 and 15, 1983, but did not inform Grievant of his disapproval until May 9, 1983.

26. On April 18, 19 and 20, 1983, Grievant and Phillips worked at the same location and ate lunch together at the restaurant where Grievant had eaten on April 14 and 15. On each day, Grievant and Phillips ordered the "special" which cost $2.89 (including tax). Grievant ordered nothing besides the "special". Each day Phillips saw Grievant leave a group of coins for a tip which, Phillips estimated, was somewhere in the 50 cent range. Phillips reported Grievant's expenses for lunch on April 18, 19 and 20 to Sykes on a daily basis, and on May 5, 1983, prepared a written report (State's Exhibit 11) which he gave to Sykes.

27. On May 4, 1983, Grievant submitted a Personal Expense Claim in which he claimed reimbursement of $3.95 for lunch on each of the days April 18, 19 and 20 (State's Exhibit 1, Page 3). We find Grievant's actual lunch expense for each of those days was less than $3.95. Therefore Grievant submitted false claims for lunch reimbursement for those days.

28. On April 28, 1983, Sykes told Grievant that he wanted to have a meeting with him, that the meeting may involve discipline, and that Grievant had a right to have a representative of VSEA or private counsel attend this meeting. Grievant, realizing that he had not yet been paid for a couple of previously submitted expense claims, asked Sykes if perhaps the meeting had to do with expense claims. Sykes said that it

did. Sykes did not tell Grievant that the meeting had to do specifically with meal claims.

29. On April 29, 1983, Sykes gave Grievant a letter confirming that the meeting, which they had discussed on April 28, would be held on May 4, 1983 (State's Exhibit 7).

30. On April 29, 1983, Grievant and Sykes ate lunch together at Norm's Deli, in Montpelier, Vermont. Sykes observed Grievant at the cash register and saw that his lunch cost $2.79.

31. On May 4, 1983, Grievant submitted a claim for $3.95 for his April 29, 1983, lunch (State's Exhibit 1, Page 3). We find Grievant's actual lunch expense for April 29 was $2.79. Therefore, Grievant submitted a false claim for lunch reimbursement for that day.

32. On May 2, 1983, Grievant, Sykes and Phillips ate lunch together at the Statehouse cafeteria in Montpelier. Grievant ate the special of the day and a beverage, for a total cost of $3.00.

33. On May 16, 1983, Grievant submitted a claim for $3.95 for his May 2, 1983, lunch (State's Exhibit 1, Page 4). We find Grievant's actual lunch expense for May 2 was $3.00. Therefore, Grievant submitted a false claim for lunch reimbursement for that day.

34. On May 4, 1983, the meeting, about which Grievant was informed on April 28 and 29, was held. Present at that meeting were Grievant, VSEA Representative Barbara Morrissey, Thomas Phillips, Chief Field Examiner; Earle Fennessey, Director of Tax Audits; Gloria Covey, Personnel Officer of the Department; and Sykes. Sykes showed Grievant his expense claim forms for the periods March 28 to March 31 (State's Exhibit 1, Page 1) and April 4 to April 15 (State's Exhibit 1, Page 2), and asked him if they were correct and legitimate expense claims. Grievant

confirmed they were accurate expense claims. Sykes then read aloud the following statement, which was printed on the expense claims just above the signature space:

> I certify under the pains and penalties of perjury that the foregoing is a correct statement of the time actually spent, mileage actually and constructively traveled, and amounts necessarily incurred or paid by me in the performance of my duties. (32 VSA §464)

Sykes also asked Grievant if he understood Bulletin 3.4, and Grievant said that he did. Grievant asked if there was a problem because he had claimed mileage of 31 miles for travel between Waterbury (Grievant's home) and Montpelier on two days. Fennessey answered by saying that they were questioning everything, but that there was no particular problem with his mileage claims. There was no specific mention at that meeting that Grievant's meal claims were being questioned.

35. On May 5, 1983, Sykes, by letter, advised Grievant of another meeting on May 9, 1983 "to continue our discussion on the subject we discussed on May 4, 1983" (State's Exhibit 8).

36. On May 9, 1983, the meeting took place. Present were Grievant, Morrissey, Fennessey, Phillips, John Lackey, Business Manager for the Department of Taxes, and Sykes. Sykes showed Grievant his expense claim form for the period April 18 to April 29 (State's Exhibit 1, Page 3) which Grievant had submitted after the May 4 meeting. Sykes asked Grievant if the form was true and accurate. Grievant said that it was. Sykes then produced a sample menu from the subsidized cafeteria (State's Exhibit 6), showed it to Grievant, and told him specifically for the first time that his lunch reimbursement claims were being questioned. Sykes told Grievant the Department had knowledge of exactly what Grievant

spent on certain days for lunch. Sykes, referring to the sample menu, told Grievant that in light of the prices at the subsidized cafeteria, he could not have spent $3.95 for lunch there. Grievant looked at the sample menu, and said it was possible he had included coffee breaks in his expense claims. Grievant first stated his prior supervisor, Donald Sheehan, had indicated that he could put his coffee break expenses on his claims for lunch, but then stated he realized coffee breaks were not reimbursable. Grievant said that while he kept accurate records of mileage traveled each day, he had never kept track of the amounts spent for lunch, and that his lunch claims were based on reconstructions from memory. Grievant, after consultation with Morrissey, offered to reconstruct his questioned lunch claims. Fennessey told Grievant the Department would accept a resubmission but in no way would that resolve the problem.

37. Sykes and Fennessey were aware, at the May 4 and 9 meetings, that the Contract and Bulletin 3.4 allowed the employer to require employees to produce receipts as a prerequisite to reimbursement. They did not, on either occasion or at any other time, tell Grievant that he had to have receipts for noon meals. Sykes and Fennessey were aware, at the May 4 and 9 meetings, that the Contract allowed the employer to revoke noon meal reimbursement privileges when there was evidence of abuse, and that Bulletin 3.4 provided the employer "shall" revoke lunch reimbursement privileges in such an instance. They did not, on either occasion or at any other time, revoke Grievant's lunch reimbursement privileges (Grievant's Exhibit 2, Page 4; State's Exhibit 13, Page 22).

38. Following the May 9 meeting, Grievant changed his practice concerning lunch expenses by keeping accurate records of his lunch expenses.

39. Grievant's effort at reconstruction was based on guesswork primarily because of Grievant's failure to keep accurate records of his lunch expenses.

40. On May 16, 1983, Grievant delivered his reconstructed expense accounts to Sykes. For the dates March 29, 30 and 31, and April 4, 5, 6, 7, 14, 18 and 29, Grievant claimed reimbursement amounts for lunch less than he had originally claimed. Grievant claimed the same amount, $3.95, on resubmission for the dates April 15, 19 and 20 as he had originally claimed (State's Exhibits 3, 4).

41. In May, 1983, the chain of command in the Department was as follows: Sykes was Grievant's immediate supervisor, Thomas Phillips was Sykes' immediate supervisor, Fennessey was Thomas Phillips' immediate supervisor, and Department Commissioner Elaine Hoiska was Fennessey's immediate supervisor.

42. Prior to May 4, 1983, Hoiska was not involved in the Department questioning of Grievant's expense claims. Between May 4 and 18, however, Fennessey met with Hoiska on two or three occasions to discuss the matter.

43. Hoiska and Fennessey jointly decided to terminate Grievant's employment, although Hoiska retained the final authority with regard to that decision. The initial decision to terminate Grievant was made by Fennessey and Hoiska concurred. Hoiska approved of Grievant's termination after hearing Fennessey's versions of the facts. She did no independent investigation of the facts. The final decision was made to terminate Grievant's employment on May 10 or 11, 1983. Hoiska directed Fennessey to prepare the letter informing Grievant of his termination. This authorization to write and sign the dismissal letter was not reduced to writing.

44. Fennessey concluded Grievant should be terminated because he believed Grievant was dishonest, that Grievant had consistently misrepresented lunch claims although he was aware that he was entitled to reimbursement only for expenses actually incurred. Fennessey believed Grievant's offense to be extremely serious, given the need for a tax examiner to have a high degree of integrity because the position is one with extensive public contact. Fennessey did not consider Grievant's past disciplinary record and work performance. Fennessey did not consider Grievant's potential for rehabilitation because he believed his offenses had destroyed his credibility. In making his decision, Fennessey considered both the dates when the Department verified by witnesses Grievant's lunch expense claims were false, and the dates when the Department suspected Grievant may have falsified his lunch claims but had no verification. However, although the unverified dates weighted his decision somewhat, the decision to terminate was made basically on the verified dates.

45. Hoiska concluded Grievant should be dismissed because if, as she concluded, he was susceptible to cheating on expense claims he would also be susceptible to accepting bribes from taxpayers. Hoiska saw no performance evaluation reports, was unaware of whether there had been any previous discipline against Grievant, had no knowledge of his ability to get along with co-workers, had no understanding of his ability to get along with members of the public, was unaware that he had been a State employee since 1972, and was unaware of Grievant's May 9 offer to reconstruct the questioned expense claims.

46. On May 18, 1983, Fennessey gave Grievant a letter which offered Grievant the "opportunity to resign in lieu of being dismissed". Fennessey informed Grievant he had to notify the Department by May 23, 1983, of his decision. As reasons for the action, the letter provided:

> A review of your expense claims reveals a pattern of submitting claims for noon meals in excess of your actual expenditures. We have 14 lunch claims in question for the period March 29 though May 9, 1983, seven of which we have verification of overcharging the State of Vermont. We discussed six of these lunches on May 11(sic), 1983.
>
> (State's Exhibit 16)

47. On May 23, 1983, Grievant's VSEA attorney, Michael Zimmerman, informed the Department that Grievant declined to resign. As a result of Grievant's refusal to resign, Fennessey, by letter dated May 24, 1983, informed Grievant of his dismissal for gross misconduct. That letter provided, in pertinent part, as follows:

> The gross misconduct charge is based on repeated falsification of your expense claims for noon meals. Our investigation concludes you overcharged the State in as many as 14 instances, seven of which we have verification of overcharging. Specifically, we question your claims for the $3.95 lunch maximum on the following dates:
>
> March 29 to 31, 1983
> April 4 to 7, 1983
> April 14 to 15, 1983
> April 18 to 20, 1983
> April 29, 1983
> May 2, 1983
>
> We have verification of overcharging on the following dates:
>
> April 6 through 7, 1983
> April 18 through 20, 1983
> April 29, 1983
> May 2, 1983

Despite discussions concerning your expense claims in August, 1982, with your previous supervisor and May, 1983, with your present supervisor, you continued to submit lunch claims in excess of your actual expenses.

We consider one, some or all of these overcharges to be sufficient cause to bypass the progressive disciplinary steps and warrant dismissal for gross misconduct. The offense becomes even more serious in light of the nature of the duties of a Tax Field Examiner where you are in a position of trust to the taxpayers of Vermont.

Since your dismissal is for gross misconduct, you will not receive two weeks' notice or two weeks' pay in lieu of notice...

(State's Exhibit 17)

48. At all times relevant, the Contract has defined the term "appointing authority" as follows:

(T)he person authorized by statute, or lawfully-delegated authority, to appoint and dismiss employees...

(Grievant's Exhibit 2, Page 1)

49. At all times relevant herein, Article 15 of the Contract, entitled "Disciplinary Action", provided, in pertinent part, as follows:

1. The parties jointly recognize the deterrent value of disciplinary action. Accordingly, the State will:

a. act promptly to impose discipline within a reasonable time of the offense;
b. apply discipline with a view toward uniformity and consistency; and
c. impose a procedure of progressive discipline, in increasing order of severity:
   i. oral reprimand;
   ii. written reprimand;
   iii. suspension without pay;
   iv. demotion;
   v. dismissal.

The parties agree that there are appropriate cases that may warrant the State bypassing progressive discipline or applying discipline in differing degrees so long as it is imposing discipline for just cause.

2. The appointing authority or his authorized representative may dismiss an employee for just cause with two weeks' notice or two weeks' pay in lieu of notice. Written notice of dismissal must be given to the employee within 24 hours of verbal notification. In the dismissal notice, the appointing authority shall state the reason(s) for dismissal...

3. Notwithstanding the provisions of Paragraph 2 above, an employee may be dismissed immediately without prior notice or pay in lieu of notice for any of the following reasons:

b. gross misconduct...

(Grievant's Exhibit 2, Pages 2 and 3)

50. We find, by a preponderance of the evidence, Grievant knew he was entitled only to reimbursement for lunch expenses actually incurred and as an accountant, knew of the importance of accurate record keeping. We, therefore, find Grievant intentionally and dishonestly submitted excessive false claims for reimbursement for his lunches on April 6, 7, 18, 19, 20, 29, 1983; May 2, 1983; and three of the five days of March 29, 30, 31, 1983, and April 4 and 5, 1983.

OPINION

At issue is whether there is just cause for the dismissal of Grievant. In determining whether just cause exists for Grievant's dismissal, we look to the standards described in Grievance of Colleran and Britt, 6 VLRB 235 (1983).

Grievant was discharged for gross misconduct based on alleged falsification of his expense claims for lunch reimbursement in as many as 14 instances, seven of which were verified. Clearly, Grievant was guilty of misconduct which deserved severe disciplinary measures. While the State was not able to establish Grievant's submitted false claims for lunch reimbursement in 14 instances, the facts demonstrate Grievant knowingly and dishonestly submitted false expense claims for lunch reimbursement for 10 different lunches.

Grievant invites us to find that his discrepancies were honest oversights. He claims to have been operating under a policy where he could claim the maximum amount for lunch even though some lunches did not cost the maximum; that these things "wash" (i.e., some lunches are over the maximum and some lunches are under the maximum.) We cannot accept this. In the first place, there is no entitlement to anything beyond the maximum so there is no "wash". Second, we conclude Grievant's offenses were deliberate because his job duties required him to be persnickity about records, amounts and rules.

In determining whether the penalty of dismissal imposed against Grievant for his proven misconduct was justified, the Board will not require that the State prove by a preponderance of the evidence that the choice of discipline imposed by Commissioner Hoiska and Director Fennessey was proper. Colleran and Britt, supra. If the State establishes Hoiska and Fennessey balanced the relevant factors and struck a balance between tolerable limits of reasonableness, their penalty decision will be upheld. Id. The Board will only alter the penalty selected by the employer if we conclude either that the facts of

the underlying incident are different than those relied on by management when it imposed the penalty and the proven facts do not justify the penalty, or we find the facts to be as relied on by management, but do not find the penalty meets the requisite standards of reasonableness. Id. Here, the facts of the underlying incident are slightly different than those relied on by management because four of the 14 alleged instances of falsification of lunch expense claims were not proven by a preponderance of the evidence. We must determine whether the proven facts justify the penalty.

We look to the specific factors enunciated in Colleran and Britt, supra, to determine the legitimacy of the disciplinary action. The pertinent factors here are the nature and seriousness of the offense and its relation to the employee's job duties, the effect of the offense upon supervisors' confidence in the employee's ability to perform assigned duties, and the notice to the employee, express or fairly implied, that such conduct would be grounds for dismissal.

Grievant's offense of repeated acts of dishonesty in submitting expense claims was extremely serious; particularly given the nature of his position as Tax Examiner. Tax Examiners are the main public representative of the Department and are responsible for ensuring taxpayers are honest with the State. A person in Grievant's position who must determine honestly and carefully a taxpayer's obligations to the State must remain scrupulously honest in his personal financial dealings with the State, otherwise both his employer and the taxpayers will question his integrity. cf. Grievance of David Newton, 1 VLRB 378 (1978)(Dismissal upheld of Department of Social Welfare employee whose

job included dispensing food stamps for accepting food stamps which he knew he had received through a technical mistake). Commissioner Hoiska and Director Fennessey justifiably were concerned Grievant had shown a lack of integrity.

However, we do not want to be understood as holding that punishment for dishonesty necessarily turns on the employee's job duties because we believe dishonesty by employees is grounds for serious punishment regardless of the position they hold. Grievance of Brenda Cruz, 6 VLRB 295 (1983). Grievance of Barre, 5 VLRB 10 (1982). Here, Grievant's actions indicate a pattern of dishonest financial dealings which justifiably destroyed supervisors' confidence in his ability to honestly perform his assigned duties. Grievant's dishonesty, engaged in time and again at public expense, justifies dismissal as a reasonable discipline. Surely, if any case is "appropriate" for "bypassing progressive discipline", it is this one. In re Grievance of Carlson, 140 Vt. 555, 559 (1982). Dismissal is certainly justified by a pattern of fraud. Id. at 559. Grievant's repeated acts of dishonesty constitute gross misconduct, as charged in his dismissal letter.

Grievant claims lack of fair notice that his conduct would be grounds for dismissal because he had learned during his years of State service that lunches generally cost over the maximum, that most employees routinely claimed the maximum for lunch, and that supervisors generally were not fussy about the rules for lunch claims. Grievant's claim of lack of fair notice cannot be supported. The law is clear that honesty is an implicit duty of every employee, and notice that fraud is proscribed can never be vitiated. In re Carlson, supra, at 560. Moreover, Grievant

was aware of the provisions of the Contact and Bulletin 3.4 which provided that an employee was entitled to reimbursement for the actual expense of the meal up to a specified maximum. Further, Grievant had claims for lunch reimbursement for two days disapproved by a Department supervisor because they were in excess of what Grievant actually spent for lunch only months before the occurrence of the repeated falsifications of lunch expense claims leading to his dismissal.

Grievant further alleges his dismissal violated Article 40 of the Contract in that the employer did not invoke the sanction of revocation of mid-day meals under Section 6, and did not require Grievant to produce receipts for meals under Section 7, notwithstanding doubts as to the accuracy of lunch expense claims made by Grievant. Section 6 provides the employer "may" revoke midday meal reimbursement privileges where there is continuing indication of abuse, and Section 7 provides the State "may" require the submission of receipts for any of the above offenses. The word "may" is permissive, not mandatory language, and gives the employer absolute discretion. In re Stacey, 138 Vt. 68, 71 (1980). Accordingly, we cannot fault Commissioner Hoiska and Director Fennessey for not employing these contractually-permissive sanctions rather than dismissing Grievant.

Nonetheless, Grievant contends that the Department adoption of Bulletin 3.4 in 1981 required it to revoke midday meal reimbursement privileges in cases of suspected abuse because Bulletin 3.4 provides the State "shall" revoke midday meal reimbursement privileges where there is continuing indication of abuse. Thus, Grievant asks us to rule that Bulletin 3.4, which was unilaterally adopted by the Department.

supercedes Article 40, Section 6 of the Contract. Clearly, we cannot so rule. The Supreme Court has determined that we may not look to unilaterally-adopted employer policy where the collective bargaining agreement clearly and unambiguously addresses the involved subject matter. In re Grievance of Muzzy, 141 Vt. 463, 476 (1982). Article 40, Section 6, deals directly with revocation of meal reimbursement privileges, and thus supercedes Bulletin 3.4.

The final Contact violation asserted by Grievant is that the dismissal letter is defective under Article 15 in that it was not signed by Grievant's appointing authority. Article 15 provides the "appointing authority or his authorized representative may dismiss an employee" and "in the dismissal notice, the appointing authority shall state the reason(s) for dismissal". Here, the decision to dismiss was a joint decision by the "appointing authority", Commissioner Hoiska, and Director Fennessey. However, Hoiska retained the final authority to dismiss Grievant and then authorized Fennessey to write the dismissal letter and inform Grievant of the dismissal. Fennessey signed the dismissal letter.

Given such circumstances, we believe Fennessey was Hoiska's "authorized representative" to dismiss Grievant as contemplated by Article 15. We do not believe it violated the intent of the Contract for Fennessey alone to sign the dismissal letter, although it would probably be a better practice for both persons involved in the dismissal decision to sign in such instances. In any event, no harm to Grievant was established by this action.

ORDER

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

The Grievance of William Graves is DISMISSED.

Dated this 3rd day of May, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson