

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 84-54
BERNARD SHABAN)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came before the Labor Relations Board for hearing on August 8, 1985. Subsequent to the close of evidence, the parties waived the filing of requested findings of fact and conclusions of law and submitted the matter for bench decision. The Board issued an oral ruling on August 8. Following are the Board's Findings of Fact, Conclusions of Law and Order which are consistent with the oral ruling.

FINDINGS OF FACT

1. The Grievant herein is Bernard Shaban, whose mailing address is Star Route #1, Windsor, Vermont 05089.
2. The Employer herein is the State of Vermont, Department of Corrections, 103 South Main Street, Waterbury, Vermont 05676.
3. At all times relevant herein, Grievant was a permanent-status employee, as that term is used in the Master Agreement between the State of Vermont and the Vermont State Employees' Association, Inc., in effect from July 1, 1982 to June 30, 1984, and in the Corrections Unit Agreement in effect from July 1, 1984 to June 30, 1986 (hereinafter collectively referred to as "the Contract"). As such permanent-status employee, Grievant was entitled to all rights afforded to such employees by statute, by the Rules and Regulations for Personnel Administration and by the Contract.
4. At all times relevant herein, Grievant's position title was Correctional Officer B, his pay grade was 9, and his workplace was the Windsor Correctional Facility, Windsor, Vermont.
5. On May 25, 1984, Grievant incorrectly performed an inmate headcount.

6. On May 29, 1984, Grievant received a written reprimand from Chief of Security and Operations Edson S. Pierce because of said incorrect headcount. At that time, Pierce was, by virtue of his position, a "supervisory employee", within the meaning of 3 VSA §902(16), and, as such, had the authority to impose discipline upon Grievant.

7. On June 8, 1984, Superintendent Thomas M. Coxon suspended Grievant without pay for a period of 10 days for the said May 25, 1984, incorrect headcount. The reason for the suspension was Coxon was of the opinion that the letter of reprimand imposed by Pierce was not severe enough as punishment.

8. At all times relevant, Superintendent Coxon was the appointing authority within the meaning of Article 16 of the 1984-86 Contract or, if the 1982-84 Contract is relevant, he was appointing authority within the meaning of Article 15 of that Contract.

9. At no time relevant did Coxon take any action that delegated his authority or removed from himself the exercise of the power of the appointing authority. Whatever other duties Pierce had, he did not have the power of appointing authority at the time in question.

CONCLUSIONS OF LAW

1. The analogy to a criminal sentence made by Grievant at the hearing is not appropriate here because in the criminal law a person who appeals cannot be penalized for exercising the right to appeal. Here, no appeal was involved. What occurred was an action taken by management to review what took place.

2. Pierce was the acting superintendent at the time in question in the sense he had the authority to run the institution in the absence of Superintendent Coxon, but he did not assume all the duties of an appointing authority at the time in question.

3. Estoppel is neither relevant nor established here.

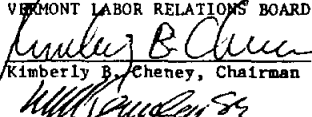
4. The State was not bound by Pierce's action of imposing a written reprimand and Superintendent Coxon did not violate the Contract by increasing the measure of discipline against Grievant.

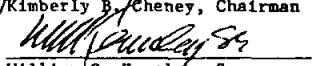
ORDER

Now therefore, based on the foregoing findings of fact and conclusions of law, the Grievance of Bernard Shaban is hereby ORDERED DISMISSED.

Dated this 24 day of October, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.

ORDER

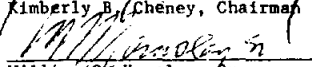
Upon review and consideration of the Motion for Reconsideration, and supporting memorandum filed by the Vermont State Employees' Association on behalf of Bernard Shaban ("Grievant") requesting the Labor Relations Board reconsider its Findings of Fact, Conclusions of Law and Order issued orally at the August 8, 1985, hearing on this matter, it is hereby ORDERED:

Grievant's Motion for Reconsideration is DENIED.

Dated this 24 day of October, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.