VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 84-35
RAYMOND GADREAULT	)	

MEMORANDUM AND ORDER

On May 2, 1985, the Labor Relations Board issued its Findings of Fact, Opinion and Order in this case. 8 VLRB 87 (1985). On May 10, 1985, Grievant filed a Request for Reconsideration. Grievant raised various issues, each of which will be discussed in turn.

Grievant takes issue with one passage in the second to last paragraph of page 135 in the opinion portion of the Board's decision.

Upon reflection, we have rewritten the paragraph. A revised page 135 containing the revision is attached and replaces the original page 135.

Grievant takes issue with the Board excusing the State for using conflicting terms (i.e., "probationary period" and "warning period") to describe Grievant's status following receipt of an adverse performance evaluation in February, 1984. In our view, while the Employer incorrectly used the term "probationary period" to refer to Grievant's status, the parties understood the effect of Grievant's status was to be in a warning period, Thus, Grievant was not prejudiced by the mischaracterization.

Grievant further contends that while the Board found Grievant guilty of a number of offenses as charged, the Board improperly found Grievant guilty of certain uncharged offenses. Specifically, Grievant cites the Board's handling of the February 4 cigarette incident, the February 18 chicken incident, the February 29 furlough incident, the March 17 kitchen incident and the mid-April Heywood incident.

Upon reconsideration, we have revised Findings of Fact #60 and #61 concerning the chicken incident and Findings of Fact #81 and #83 concerning the Heywood incident. We have also changed Findings of Fact #87, concerning the April 21 Corrow incident, and #92, concerning the April 21 Belanger incident, to conform to the change in Finding #83; namely, that Grievant's use of the telephone during these incidents did not constitute misuse of State property. We do not mean to condone Grievant's use of the telephone during these incidents. However, the essence of the charges against Grievant concerning these incidents are either engaging in harassment, horseplay or non-productive activity or a combination of these activities, not misuse of State property. While we have revised these findings of fact, we nonetheless still conclude Grievant engaged in improper conduct as otherwise charged concerning these incidents. The revised numbered pages containing our revised findings are attached.

We see no reason to change our findings regarding the March 17 kitchen incident. We also do not change our findings concerning the cigarette incident and the furlough incident, but we would like to elaborate on our reasoning concerning those incidents.

The essence of the cigarette incident is Grievant allowed inmates in the maximum security unit to exchange cigarettes in violation of a unit rule. To the extent it is material, we do not find this was a knowing violation by Grievant. Instead, he was derelict for not knowing the rule as was his responsibility. The dismissal letter put him on notice he was derelict and we so find.

With regard to the furlough incident, we found Grievant's action of not following Supervisor Tom Hunter's instructions demonstrated poor judgment, as charged in the dismissal letter. At issue is to what extent Grievant's suspicion and hostility toward superiors was reasonable. At the time of the incident, Grievant was in a warning period, partially for disobeying facility rules. Thus, Grievant was understandably concerned about following rules. Under the facility's rules, the only staff members authorized to sign an inmate's furlough authorization are the superintendent or designee and Hunter was an authorized designee. When Hunter asked Grievant to sign the furlough authorization and put "per Tom Hunter", he was making a request consistent with facility rules. When, as occurred here, a supervisor requests Grievant to do something which we understand to be consistent with facility rules, Grievant is required to perform that act. This is particularly so where the evidence indicates no reason why Grievant should have suspected Hunter was "setting him up". A correctional facility would be unable to function if subordinates did not comply with lawful requests of supervisors. By refusing to follow Hunter's instructions here without getting an order in writing, Grievant demonstrated his suspicions and hostilities towards superiors was so strong it adversely affected his relationship with the chain of command. This is what we understand the essence of the charge "poor judgment" to

be. The furlough incident is distinguished from the towel incident, where we did not find Grievant at fault, because Grievant did not refuse a request of a supervisor in the towel incident.

Finally, Grievant contends the Contract does not give the Board authority to increase a disciplinary penalty imposed by the Employer, and that is precisely what the Board did in sustaining Grievant's dismissal since some of the specific charges supporting Grievant's dismissal were not sustained by the Board. As stated in our original opinion, the fact all charges against Grievant have not been sustained does not mean management's dismissal action must be reversed. See Grievance of Bishop, 5 VLRB 347 (1982). If the proven charges are different than those relied on by the Employer, we will determine whether the proven charges justify the penalty. Here, we conclude that the total of proven charges against Grievant justify his dismissal.

Now therefore, based on the foregoing reasons, it is hereby ORDERED:

> The Findings of Fact, Opinion and Order of May 2, 1985, in the Grievance of Raymond Gadreault shall stand, except that Findings of Fact #60, 61, 81, 83, 87 and 92 and the second to the last paragraph of the Opinion are revised as indicated on the attached numbered pages, and such numbered pages shall be substituted in place of their numbered counterparts in the May 2, 1985, decision.

Dated this 24th day of May, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson