

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 84-21
EDWARD ENO	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On May 2, 1984, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Edward Eno ("Grievant"), Park Ranger C with the State Department of Forests, Parks and Recreation ("Department"). The grievance alleged the requirement by the Department that Grievant pay a \$628 shortage in collected public fees violated Articles 15 and 24 of the Agreement between the VSEA and the State of Vermont, effective for the period July 1, 1982, to June 30, 1984 ("Contract").

A hearing was held before the full Board on January 3, 1985. Attorney Susan Dole represented Grievant. Assistant Attorney General Michael Seibert represented the State.

Requested Findings of Fact and Memoranda of Law were filed by the State and Grievant on January 17, 1985. Grievant filed a Reply Brief on January 24, 1985. The State filed no Reply Brief.

FINDINGS OF FACT

1. Grievant has been employed by the Department of Forests, Parks and Recreation for 21 years. Since 1974, Grievant has held the position of Park Ranger C, Pay Scale 9, and has been stationed at Emerald Lake State Park, where he lives in a State-owned house.

2. Grievant's immediate supervisor is Stewart Blacklock, who, in turn, is supervised by Edward Koenemann, Director of State Parks. Leo Laferriere is the Department Commissioner.

3. As the Park Ranger, Grievant is generally charged with the responsibility of overseeing the operation and maintenance of the park. In that connection, he hires and supervises approximately 12 seasonal employees who assist him in discharging the various responsibilities involved in park operation. The seasonal employees work approximately four months a year during the spring and summer. Grievant's wife is employed as a seasonal employee (Joint Exhibit 12).

4. Grievant's duties include supervising the collection of fees from the public for the use of the park's facilities and providing for the safeguarding of such fees until they are deposited in the bank or transmitted to the Department's headquarters in Montpelier (Joint Exhibit 12).

5. When Emerald Lake State Park is open to the general public, entrance fees are collected at a contact station which stands by itself at a point of entry into the park. The public pays for park use by both cash and checks. Grievant decided only his wife or Assistant Ranger William Gaudette would collect fees so there would be strict accountability for the money taken in. The contact station was open from 9:00 or 10:00 a.m. until sunset.

6. In June, 1983, the fees taken in at the contact station were kept in a cash drawer under the counter. At the end of the day, the fees were carried in a bank bag or manilla envelope to the Park Ranger's house, approximately 1/4 mile from the contact station, where the money collected was hidden until being deposited in the bank or sent to Montpelier. Grievant, his wife and Assistant Ranger Gaudette were the only people to handle the collected fees.

7. Grievant was responsible for sending all fees collected from park operation to Department headquarters in Montpelier. In June 1983, each ranger was required to total all fees collected and tickets used on a daily basis, to complete a daily sales account form which provided the specifics of such accounting, and to weekly send the monies and forms to Montpelier. With regard to cash fees, rangers deposited cash collected in a local bank and then wrote a single check covering all cash collected on a weekly basis. This was done so that cash would not be sent to Montpelier through the mail. The check covering the cash collected was then sent to Montpelier along with the checks collected that week (Joint Exhibit 11).

8. In June 1983, park rangers were required to go to their local banks at least once a week to deposit cash fees collected (Joint Exhibit 11, page 2). It was not unusual for rangers to go to the bank only once a week.

9. Grievant's practice in June, 1983, was to deposit park monies in the bank once per week, usually on Wednesday or Thursday. Grievant had opened an account in the park's name at Factory Point Bank, Manchester, Vermont, which was approximately nine miles from the park. When Grievant accumulated more than approximately \$3,000 in cash in his house, he generally made an extra trip to the bank. When it came time to send money to the Department, Grievant drew a check on the park account for the cash which had accumulated and mailed the bank check, along with the checks received from the public for park fees, to Montpelier.

10. In June 1983, Assistant Ranger Gaudette lived in Arlington, Vermont. He drove through Manchester to and from work each day.

Grievant did not have Gaudette deposit park receipts in the Factory Point Bank on any occasion. Grievant decided he would be the only one to deposit funds since he was accountable for them.

11. Grievant's residence was approximately four miles from the nearest post office, where Grievant could have bought money orders with cash park receipts so as to avoid accumulating large amounts of cash in his home. However, the post office frowned upon giving such large money orders.

12. On June 15, 1982, Edward Koenemann, Director of Parks, distributed a memorandum to all park rangers and regional managers entitled "Department Policy Regarding Accountability for Money". The memorandum provided in pertinent part as follows:

To respond to several requests, this memo reaffirms the Department policy regarding the handling and the accountability for money...

The present policy of this Department which has existed for more than 25 years and which complements the system of selling tickets, collecting fees for campsites, etc. particularly for the Parks Division, is that a clearly identifiable audit trail must be established. Each employee who handles receipts and deposits for the Department is required to sign for and account for all receipts and tickets by number. If a ticket or receipt is used, the value in cash or check must be accounted for in addition to all unused tickets and receipts. If an error is made and there is an overage, the accountable person will report the overage and turn it in with the weekly receipts. If an error is made and there is a shortage, the accountable person will make up the difference between unused tickets, receipts and cash or checks due. Each employee who receives money in the name of the State of Vermont is required to report and is accountable for the total amount.

(Joint Exhibit 3)

13. In May, 1983, the Department issued a revised Manual of Instruction for State Park Rangers and Employees. The Manual provided

in pertinent part:

Overage/Shortage Report

Each Ranger or whoever handles receipts for the Department is required to sign for and account for all receipts and tickets by number. If a ticket or receipt is used, the value in cash or check must be accounted for in addition to all unused tickets and receipts. If an error is made and there is an overage, the accountable person will report the overage and turn it in with the weekly receipts. If an error is made and there is a shortage, the accountable person will make up the difference using funds from wood or shower receipts. However, information regarding the incident must be forwarded to Montpelier with the next sales report and the overage/shortage report must be entered and filed.

(Joint Exhibit 11, page 8)

14. This manual did not change the Department policy regarding accountability for money as provided in Koenemann's June 15, 1982, memorandum, but applied only to daily minor shortages. It was unclear to rangers how much of a shortage could be made up by using funds from wood or shower receipts. Approximately \$800 is collected for each purpose in each State park on an annual basis.

15. Prior to May 1984, the Department left it up to the park rangers how they would safeguard monies collected at the park prior to depositing the money in the bank or sending it to Montpelier. The Department did not provide a safe or other equipment in the rangers' homes to assist in the safeguarding of such fees.

16. It was common practice for park rangers to hide their park receipts in such places as unused refrigerators, desk drawers, old wood stoves, bean pots, broom closets, and the like.

17. In the summer of 1983, approximately \$6,000 a week and approximately \$82,000 for the entire season was collected at Emerald Lake State Park.

18. It was Grievant's practice to keep his cash park receipts in a Factory Point Bank bag in his home until he took the cash to the bank. The bank bag was roughly 15 inches long and 10 inches tall, with a large zipper in the top. At the end of the zipper was a lock operated by a key. The bag was green with yellow letters reading "Factory Point Bank". When the bag was folded over, the bank lettering was not conspicuous.

19. To safeguard the fees collected, Grievant rotated hiding places around the house, leaving money in such places as a broom closet, an old woodstove, a bean pot and concealed on a dining room shelf. When Grievant's children were younger, he occasionally hid the money in a diaper pail.

20. On Tuesday, June 14, 1983, Grievant attended a hospitality workshop run by the Department in Springfield, Vermont. He was absent from his residence as a result between the hours of 7:00 a.m. and 5:00 p.m. At the time, Grievant had approximately \$1,000 in cash in the bank bag in his home containing fees collected from the previous Thursday until that time. The previous Thursday, June 9, 1983, was the last time Grievant had been to the bank. The bank bag was on a shelf in the dining room between a crock pot and the wall. The French double doors, which were at the entrance to the dining room, were open and blocked the view of the shelf from the outside of the house. The bank bag was folded over and its zipper was not locked. The bank bag was not noticeable to a person on the inside or outside of the house (Joint Exhibit 2).

21. Grievant's house had two entrances: one was the front door, and the other was a porch to the side of the front of the house. Only

Grievant's family had access to keys to the porch door. A key to the porch door was hung under a nearby window for the use of Grievant's school-age daughter. Numerous Department employees had keys to the front door, including Assistant Ranger Gaudette, maintenance employees, all other park rangers and various Department officials. Grievant was not responsible for distributing these keys (Joint Exhibit 2).

22. Grievant's house was locked on June 14, 1983, the day he attended the hospitality workshop. The key to the porch entrance was hung nearby for his daughter's use. Grievant's daughter came home at about 2:30 p.m. and remained in the thereafter-unlocked house until about 5:00 p.m. when Grievant and his wife returned home. Thus, the house was vacant between approximately 7:00 a.m. to 2:30 p.m. that day.

23. On June 21, 1983, while making up a bank deposit, Grievant discovered there was a shortage of \$628.00 in public fees collected in the bank bag (Joint Exhibit 10, Joint Exhibit 13). Prior to June 21, Grievant had not been to the bank since June 9.

24. Upon discovering the shortage, Grievant suspected a theft had occurred and called Stewart Blacklock, his immediate supervisor. Blacklock told Grievant not to contact the State Police but rather to let the Montpelier office do an audit first to determine whether the shortage was due to accounting errors.

25. The audits held between June 21 and June 27 or 28, 1983, revealed no accounting error.

26. On June 27 or 28, 1983, Corporal Shattuck of the Vermont State Police came to investigate the suspected theft, having received a call that day from Grievant (Joint Exhibit 10, page 2).

27. Corporal Shattuck's investigation resulted in a finding that a larceny had occurred anywhere from a week to two weeks prior to the date he investigated (Joint Exhibit 10, page 3).

28. The Department did not charge Grievant or any other employee with theft of the \$628.

29. We find the \$628 shortage resulted in a theft of the money from Grievant's house by an unknown person other than Grievant at some point between June 14 and 21, 1983. We further find, based on all the creditable evidence, the theft occurred on June 14 while Grievant was at the hospitality workshop and the house was unattended. While it is theoretically possible the money was taken later, between the 15th and 21st, , the State has not established by a preponderance of the evidence that it was.

30. On September 12, 1983, Koenemann informed Grievant by letter he would have to reimburse the Department for the \$628 loss. The letter provided in pertinent part:

Commissioner Laferriere and I have met with Corporal Shattuck of the State Police to discuss his investigation of your reported loss of \$628 in June...

The investigation showed that the park receipts were in a bank deposit bag on an open shelf near the front door in the living room. The amount of money and checks in the bag was not known because apparently you did not reconcile your accounts on a daily basis. It is not known if the house was locked at the time of the theft. A key to the house is left outdoors for the use of family members and there appears to be frequent use of the key each day... It appears that... location of the key is fairly common knowledge of friends of the family, staff at the park and perhaps even frequent users of the park...

...I'm sorry to report to you that we have no basis upon which to reimburse you for the loss as there are no official records to show that there is a loss or that there was any breakin or theft. State employees are not



bonded. Only the State of Vermont is bonded against employee theft. It has come to my attention, however, that you may be able to seek recovery through the Small Claims Commission by filing a claim and documenting the loss and the fact that there was no negligence or carelessness evident in handling the funds.

(Joint Exhibit 4)

31. On June 19, 1984, Grievant received an annual performance evaluation covering the period March 8, 1983 to March 7, 1984. The performance evaluation contained no reference to the loss of the \$628 (Joint Exhibit 9). Also, Grievant's personnel file contains no reference to the loss of the \$628.

32. The Department, even though it did not supply safekeeping equipment for its rangers, did not have a serious problem with respect to disappearing park fees. There were very few instances where Department employees had large shortages on their park receipts.

33. For a year prior to the \$628 shortage in June 1983, Koenemann had begun to study alternatives which would generally improve the Department's system of accounting for the handling of monies. In May 1984, the Department implemented a new system whereby each ranger has a bank account in the Department's name, each ranger has a safe in his home, and monies are remitted to the Department by rangers by electronic transfer, instead of through the mails. The Department did not place safes in rangers' homes earlier because it was not seen as a priority problem.

34. At all times relevant, the Department did not insure its park rangers against theft.

35. In over 21 years of park service, Grievant never experienced a single theft of fees collected prior to the incident in question.

36. The evidence indicated no comparable situation to the one existing here; where there was a shortage in a similar large sum of money and the ranger was required to reimburse the Department for the shortage. However, a temporary ranger had a shortage, the amount of which is unclear, and made up that shortage after requested to by the Department. In another instance, money was lost through no fault of the ranger when a contact station was destroyed as a result of an explosion, and the ranger was not required to make up the shortage. Twenty two dollars was stolen from boat rentals in another case, and the ranger made up the shortage by taking money from the wood/shower receipts (Joint Exhibit 11, page 9).

37. It is the Department's position that rangers are accountable for shortages where they have control over the circumstances leading to the shortage.

38. Koenemann believes Grievant was accountable for the \$628 shortage because it was within his control to prevent, although he believes there is some shared responsibility for the shortage by the Department as well as Grievant.

39. The Department collects over \$1 million in revenues annually from all of its parks.

40. Article 15 of the Contract provides in pertinent part:

#### DISCIPLINARY ACTION

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.

41. Article 24 of the Contract provides in pertinent part:

AGENCY, DEPARTMENT AND  
INSTITUTION WORK RULES

...3. Reasonableness and Application of Rules

a. An employee or the Association may grieve the reasonableness of any rule promulgated under this Article and, further, may grieve any action taken against an employee based upon any such rule. In either case, the grievance may include a claim that the rule is unreasonable in its application to the employee or group of employees so aggrieved. The time limits for any claim that the rule is inherently unreasonable shall run from the date the rule becomes effective.

42. During the pendency of this dispute, the Department has frozen 7.5 days of Grievant's annual leave (the equivalent of \$628). The parties have agreed that if Grievant is held responsible for the \$628, his annual leave will be reinstated at the same rate he reimburses the Department, and if he is not liable for the shortage, the Department will immediately restore the frozen time.

OPINION

At issue is whether Department of Forests, Parks and Recreation management violated Articles 15 or 24 of the Contract by requiring Grievant to reimburse the Department for a \$628 shortage in collected public fees.

Article 15 of the Contract concerns disciplinary action. Grievant contends a request for reimbursement of State funds, regardless of the reason, constitutes disciplinary action against the employee falling outside of Article 15's permitted disciplinary penalties.

We disagree. Disciplinary action results from alleged employee misconduct. The issues here are more akin to performance deficiencies, although we admit there is no bright line between the two in all cases. The Department rule requiring reimbursement by employees "if an error is made and there is a shortage" in monies collected, if applied consistently with this opinion, is a valid rule. The rule provides a necessary condition for accountability by employees handling public monies. Safeguarding of park receipts is an inherent part of a Park Ranger's job duties. When the rule is applied this way, no disciplinary action is being taken against the employee since no misconduct is alleged.

Here, the Department is not punishing Grievant for alleged misconduct. There is no allegation Grievant misappropriated monies. Management claims Grievant was negligent in the handling of funds, which given the nature of events here is more a performance issue than a misconduct issue. We see no reason under these circumstances why a negligent employee should not reimburse management for losses caused by him or her.

Our conclusion management did not take prohibited disciplinary action falling outside of permitted disciplinary penalties is bolstered by the shortage nowhere being mentioned in Grievant's personnel file and thus cannot be used against him in any future actions.

We turn to determining whether management violated Article 24 of the Contract, relating to work rules, by requiring Grievant to reimburse the Department for the shortage. There is no claim here under Article 24 that the Department rule on shortages is inherently unreasonable. The question we must decide is whether the "rule is unreasonable in its application" to Grievant.

The rule provides "(1)f an error is made and there is a shortage, the accountable person will make up the difference between unused tickets, receipts and cash or checks due". In interpreting this rule, the Commissioner holds rangers "accountable" if they have control over the circumstances leading to the shortage, otherwise not. Thus accountability, in the sense of reasonable responsibility for the loss under all the circumstances, is the test to be applied.

The State contends Grievant should be held accountable because his handling of the money was negligent and Grievant's negligence was directly related to the disappearance of the money. The State claims it is inconveivable a reasonably prudent person would leave a house with over \$1,000 in cash on a shelf in the dining room, in an unlocked bank bag, having ignored the opportunity to take a trip to the bank to deposit the money. The State contends a Board decision in Grievant's favor would effectively license dereliction of duty in the handling of the State's money.

We do not believe our contrary holding will have such sweeping results or that Grievant's shortcomings are so clear that he should be held accountable for the shortage. Management has a responsibility to provide employees with the proper tools to accomplish their work. It failed to do that by not providing Grievant with an adequate system for safeguarding monies. A safe would be a simple answer. Instead, protocol left it up to park rangers to determine how to safeguard park receipts.

Yet management criticises Grievant's hiding places. Perhaps it might have been more sagacious to hide funds in the stove, or under a floor board, or even better in a diaper pail. It certainly was common practice for park rangers to hide their park receipts in

various places around the house; a practice known by and encouraged by management. To now criticize Grievant for the particular place he hid the money is whimsical given management acceptance of an archaic security system. True, he could have gone to the bank, and we discuss that issue separately.

We have accepted the State's contention that Grievant discovered the shortage on June 21, 1983, rather than June 15, 1983, as he testified. However, we fail to see what difference this makes in our decision. The Department rule requires there must be a connection between employee "error" and the shortage. If Grievant had done his accounting differently and had totalled all fees collected on a daily basis as required, it would have made no difference as to the money being stolen.

We are bothered by the fact Grievant did not go to the bank between June 9 and June 21, 1983. Department policy requires park rangers to deposit monies in the bank at least once a week. However, it is apparent there was no causal connection between this failure and the theft of the money. The evidence indicates the money was stolen on June 14, 1983, a date less than one week after Grievant's last trip to the bank. Thus, at the time of the theft, Grievant had not violated any Departmental policy. In any event, the theft could have been prevented if management had supplied Grievant with proper safekeeping equipment.

The State invites us to weigh the degree of negligence of Grievant, and Department management, and conclude the Department's degree of complicity fell well short of the lapses of judgment on the part of Grievant. We conclude the theft here could have been prevented if

management provided Grievant with a safe bolted to the floor. Accordingly, any "error" Grievant may have made in handling funds is outweighed by management's failure to provide him with the tools necessary to do his job. Grievant did not control the circumstances leading to the theft.

At the hearing, Department Manager Koenemann placed considerable emphasis on a waiver issue; that the Department Commissioner had no authority to waive the reimbursement of the money and absorb the loss. Such an argument is irrelevant. What management really needed to do was analyze the facts better relating to the shortage before requiring an employee to absorb a substantial loss.

We also are not impressed by the State's contention that our upholding this grievance will open the floodgates to employees mishandling or misappropriating State funds without being held accountable. The Department can ensure necessary employee accountability by reasonable application of its rules regarding safeguarding of money and providing employees with adequate safekeeping equipment.

#### ORDER

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

The Grievance of Edward Eno is ALLOWED and the requirement by the Department of Forests, Parks and Recreation that Grievant reimburse the Department for a \$628 shortage in public fees collected is RESCINDED; and the Department shall immediately restore the 7.5 days of annual

leave to Grievant's accrued annual leave frozen during the pendency of this dispute.

Dated this 31<sup>st</sup> day of January, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney  
Kimberly B. Cheney, Chairman

William G. Kemsley, Jr.  
William G. Kemsley, Jr.

James S. Gilson  
James S. Gilson