VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	DOCKET NO. 85-47
	)	
RANDY HURLBURT	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 30, 1985, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Randy Hurlburt ("Grievant"), alleging Grievant's suspension and dismissal violated Article 17 of the collective bargaining agreement between the State of Vermont and the VSEA for the Non-Management Unit, effective for the period July 1, 1984 to June 30, 1986 ("Contract").

Hearings were held before Board members Kimberly Cheney, Chairman; William Kemsley, Sr.; and Catherine Frank on June 26, 1986, and July 31, 1986. At the June 26 hearing, the Board granted the State's motion to exclude any evidence or argument which collaterally attacked the validity of Grievant's driver's license history on record at the Department of Motor Vehicles. At the hearing, the parties submitted a limited stipulation of facts and for admission of evidence. On July 30, the parties submitted a stipulation for admission of the telephone deposition of Douglas Baker into evidence.

Grievant filed Requested Findings of Facts and Conclusions of Law on August 14, 1986. The State filed a Memorandum of Law on August 14. Grievant and the State filed reply briefs on August 21.

FINDINGS OF FACT

1. Grievant was continuously employed by the State of Vermont, Agency of Human Services, from May 7, 1984 to October 2, 1985. From

May 7, 1984 to July 13, 1984, Grievant was employed as a temporary employee in the position of Support Services Worker. From July 13, 1984 until October 2, 1985, the latter being the effective date of his dismissal, Grievant was employed as a permanent status, full-time classified employee in the position of Support Services Worker (pay scale 4) (Exhibit C).

2. The position class of Support Services Worker (pay scale 4) was created in 1980. Support Services Workers are assigned to the Central Support Services Division of the Agency of Human Services. The class specification includes the following description of the duties of the class:

> "Clerical and manual work involving a variety of support services in areas of mail handling and delivery, operation of duplicating equipment, receiving and issuing materials and supplies in a central stockroom, and driving an automobile or van. Employees are expected to perform duties in all areas and assignments may vary on a daily basis."

Among the minimum eligibility requirements for entry into the class is the possession of a valid driver's license at the time of appointment (Exhibit B).

3. At the time the class was created, two of the 10 permanent classified employees in the class did not have driver's licenses, but they were "grandfathered" into the class, notwithstanding the requirement of a valid driver's license, because they had been incumbents of the antecedent position class.

4. At all times relevant herein, 3 Support Services workers were assigned to the mailroom, 3 were assigned to the copy center, 3 were assigned to the storeroom, and 1 was assigned to the administrative section of the Central Services Division.

5. At all times relevant, the division had two State-owned vans assigned to it; one assigned to the mailroom and the other assigned to the storeroom. The division vans are used for daily mail runs (pickup and delivery), supply deliveries to State offices and occasionally for moving furniture.

6. Prior to February, 1984, two Support Services Worker were convicted of driving while under the influence of intoxicating liquor (DWI) and had their driver's licenses suspended for 90 days. One of the workers lost his license again, this time for 18 months, by reason of another DWI conviction. As a result of these DWI convictions and the "grandfathered" employees who did not have driver's licenses, four of the Support Services Workers could not drive, even through their duties required it.

7. Due to the problems caused by the DWI convictions, Peter Profera, Director of Administrative Services for the division, instituted a policy on February 9, 1984, applicable only to Support Services Workers, which provided in pertinent part as follows:

> Although some personnel in this class have had few or no assignments which require them to drive, the specification for the subject class specifically requires a valid driver's license and defines the position as requiring employees to accept changing from one function to another. This condition is essential to insure that the overall program of central support services be performed as efficiently as possible. Consequently, the following conditions are established for Support Service Workers:
>
> 1. For each separate action or any combination of actions which results in a Support Services Worker having his/her license suspended for a cumulative period of up to 90 days will receive up to a one week suspension without pay and a mandatory referral to the Employee Assistance Program (EAP).
>
> 2. Any action or combination of actions which results in a Support Services Worker having his/her license suspended for a cumulative period of over 90 days will be terminated.

3. Any criminal conviction which results in a loss of license for activities which occur while an employee is on work duty will result in termination.

4. Citations or loss of license for speeding or other motor vehicle violations which occur while an employee is on duty will result in a form of disciplinary action which management deems appropriate for the circumstances (Exhibit F).

8. In early May 1984, the division was seeking to fill a vacant temporary Support Services Worker position. Douglas Baker, an Administrative Assistant A in the division, asked Teresa Lamos, a Clerk C who worked under his supervision (and the half-sister of Grievant), if she knew of anyone who might want the position. Lamos told Baker Grievant was out of work. Baker asked Lamps if Grievant had been in trouble with the law. Lamos told Baker, "I am certain you will find something in his motor vehicle record."

9. Grievant was hired to fill the temporary position, effective May 7, 1984. He had a valid driver's license at the time. During an interview before his hire, Baker asked Grievant about his driving record. Grievant told Baker he had a couple of speeding tickets. Grievant also told Baker he had taken a Fleet Safety examination, which is required for employees who operate State-owned vehicles, when he had worked for the Vermont State Hospital in 1978 or 1979.

10. The State of Vermont has a Fleet Safety Program in effect which applies to all employees whose duties require driving state-owned vehicles on official state business. The Fleet Safety Program requires appointing authorities to obtain a check of the applicant's motor vehicle operating record (Grievant's Exhibit 1).

11. Baker did not run a pre-hire driving check on Grievant before hiring him.

12. On Friday, July 13, 1984, Grievant resigned his temporary position to accept a permanent Support Services Worker position. Grievant's appointment to the permanent position was effective on Monday, July 16, 1984, and he continually held that position until the effective date of his dismissal.

13. On July 16, 1984, the effective date of his appointment to the permanent position, Grievant executed a typed application for employment. The answer "no" was marked to the following question on the employment application:

> In the past five years have you been imprisoned, on probation, or fined for any violation of any law or ordinance (except parking tickets)? Yes ( ) No ( ). A record of conviction is not an automatic bar to employment.

That application had been typed for Grievant by his half-sister, Teresa Lamos. Grievant had given the same answer to that question on a January 16, 1984 application for employment he had submitted at Vermont State Hospital (Exhibit E).

14. At the end of the employment application form, the following statement appears immediately above the applicant's signature space:

> The following statement must be read and signed in order for your application to be considered:
>
> I hereby certify that my application form and all attachments to it contain no false information and are complete to the best of my knowledge. I am aware that if an investigation discloses misrepresentations or falsification, my application may be rejected, my name may be removed from the register, and if already employed, I may be dismissed from State Service, and I may be disqualified from applying for any position covered by the Rules and Regulations of the State of Vermont (Exhibit E).

15. As of July 16, 1984, Grievant had the following motor vehicle convictions within the preceding five year period: 1) February 29, 1980: Vehicle not inspected ($35 fine); 2) January 6, 1983:

Vehicle not inspected ($35 fine); and 3) June 1, 1984: Exceeding speed limit ($30 fine) (Exhibit V).

16. In light of the three convictions within the five years preceding July 16, 1984 we find the answer "no" to the question concerning convictions, etc., was incorrect. However, we also find that, by answering "no" to the question, Grievant was not intending to conceal his convictions for the violations. Instead, he was unaware the violations were covered by the question. Baker was unclear whether such violations were covered by the question.

17. During Grievant's employment the chain of command in the division was as follows:

1) Profera;

2) Edward Turbitt, Business Manager;

3) Baker;

4) Charles Haskins (until July 1985), then Gordon Eldred (after July 1985), both Storekeeper A's; and

5) Grievant.

18. During his employment, Grievant received one performance evaluation (upon completion of original probation), wherein he received all "3's" ("consistently meets job requirements/standards"). In addition, Grievant's appointing authority, in a separate review of Grievant's performance, characterized Grievant as having "done quite well as an employee within the Central Support Services Unit," and as having "done well in meeting standards for the position." (Exhibit D; Exhibit K).

19. Other than the suspension and dismissal grieved herein, Grievant received no discipline during his employment.

20. Grievant was assigned to work in the storeroom during his tenure of employment. He spent most of his time in the storeroom itself. He drove the van approximately once a week on the average.

21. On April 11, 1985, Grievant, while driving a State vehicle, was cited for exceeding the speed limit. Immediately after returning to his workplace that date, Grievant informed Gordon Eldred he had been cited for speeding. On April 12, 1985, Grievant informed Baker of such citation.

22. On April 15, 1985, Baker showed Grievant, the February 9, 1984, memorandum from Profera, and requested that Grievant read it and sign an acknowledgement of receipt. Grievant did so. This was the first time Grievant had seen the memorandum and was his first knowledge of the existence of the policy (Exhibit F).

23. On April 22, 1985, Grievant paid a fine for the April 12, 1985 speeding offense (Exhibit V).

24. By letter dated May 1, 1985, from Douglas Baker, Grievant was informed of his suspension, without pay, for a period of four hours, on May 14, as a result of the April 11 speeding citation. The letter provided in pertinent part as follows:

> Referring to a memo from Peter Profera, Director of Administrative Services for Agency of Human Services dated February 9, 1985 regarding Driver's License Requirements for Support Service Workers which was given to you upon employment. Item number four (4) reads:
>
> > Citations or loss of license for speeding or other motor vehicle violations which occur while an employee is on duty will result in a form of disciplinary action which management deems appropriate for the circumstances.

> As you are in violation of item number four, and taking into account the fact that you informed me of this violation, I have no alternative but to suspend you without pay for a period of four (4) hours (Exhibit H).

25. Grievant was not informed of his right to VSEA representation when he was given the letter.

26. Grievant timely grieved the suspension through the grievance procedure, and was denied any relief (Exhibits I, K, L, U).

27. On April 12, 1985, the same day Grievant informed Baker of his speeding citation, another Support Services Worker, Robert Petrowski, told Baker he had been cited for speeding in a state vehicle in Waterbury. Petrowski also was suspended for four hours.

28. Baker suspended Grievant for four hours at the direction of Turbitt. At the time Grievant was given the suspension letter, Turbitt and Baker knew Grievant had not seen Profera's February 9, 1984, memorandum until April 15 and knew Grievant had been convicted of the April 11 speeding citation.

29. On April 14, 1985, while in an off-duty status and driving his own car, Grievant was cited for having no registration for his vehicle (Exhibit G).

30. On June 10, 1985, the Vermont Traffic Ticket Center notified the Department of Motor Vehicles Grievant had not paid the "no registration" citation of April 14. A copy of that form was mailed to Grievant (Exhibit J).

31. On June 28, 1985, Grievant gave $50 in cash to a friend, who on Grievant's behalf made out a check for $50, payable to the Department of Motor Vehicles, for payment of the "no registration" citation (Exhibit R).

32. On July 2, 1985, the Department of Motor Vehicles mailed a notice to Grievant, which notice informed Grievant that by reason of non-payment of the April 14, 1985 "no registration" citation, Grievant's driver's license would be suspended indefinitely, effective July 17, 1985. Grievant received that notice on July 5, 1985 (Exhibit M).

33. On July 9, 1985, the Vermont Traffic Ticket Center sent Grievant a notice explaining he was required to submit a new check, payable to the Traffic Ticket Center, rather than the Department of Motor Vehicles. By reason of Post Office errors, it was not received by Grievant until July 17, 1985 (Exhibit N, Exhibit S).

34. The Department of Motor Vehicles suspended Grievant's driver's license on July 17, 1985 pursuant to the July 2 notice. Grievant received no notice his license was suspended in addition to the July 2 notice.

35. Following his receipt of the July 9, 1985 notice from the Vermont Traffic Center, Grievant made payment in accordance with the instructions, which payment was received and processed on July 19, 1985 (Exhibit S).

36. On July 23, 1985, the Department of Motor Vehicles received notice from the Vermont Traffic Ticket Center Grievant had paid his $50 fine for the April 14, 1985 "no registration" citation.

37. On July 24, 1985, while he was in a non-duty status, Grievant was cited for driving while under the influence of intoxicating liquor (DWI), DWI (refusal to submit to a blood alcohol test), driving with license suspended (DLS), and simple assault. A plea agreement was arranged whereby the State dropped the charges of DWI (refusal), simple assault and DLS and Grievant pleaded guilty to DWI and "no license" on August 5, 1985 (Exhibit V).

38. Grievant was unaware his license was actually suspended until he was cited on July 24. On the following day, July 25, Grievant informed Baker of the citation the night before and the fact that his license had been suspended.

39. Grievant's license was reinstated on July 25, 1985, after payment of a reinstatement fee.

40. During the eight day period of Grievant's license suspension (i.e., July 17 - July 24, 1985), Grievant worked six days. Grievant did not drive a vehicle at work during this period. No evidence was presented of any work disruption which occurred due to the suspension or that Grievant consciously avoided driving during work.

41. As a result of his conviction for DWI, Grievant's driver's license was suspended for a period of 90 days, beginning August 17, 1985, and ending November 15, 1985 (Exhibit O).

42. As a further result of Grievant's August 5, 1985 conviction, Grievant's driver's license was suspended for a period of 10 days. That suspension ran concurrent with the 90-day suspension, and was by reason of Grievant having accumulated 12 points on his driving record (Exhibit O, Exhibit V).

43. By letter dated September 12, 1985, Profera notified Grievant he was contemplating dismissing him and advised Grievant of his right to a pre-termination hearing. Grievant and his representative responded both orally and in writing, to Profera's letter (Exhibits P, O, R S).

OPINION

I. Suspension

The first issue before us is whether just cause existed for the suspension of Grievant for four hours by reason of his April 11, 1985, citation for speeding in a state vehicle while on duty.

Grievant alleges the suspension violated Article 17 of the Contract in that 1) there was no just cause for suspension, 2) Grievant did not have notice of the policy providing that speeding citations which occur while an employee is on duty will result in disciplinary action until after he was cited for speeding, 3) the State inappropriately failed to follow the progressive discipline requirements of the Contract, 4) suspension was inconsistent with discipline imposed on other employees for similar transgressions, and 5) Grievant was not advised of his right to VSEA representation.

Article 17, Section 7 of the Contract requires that "specific reasons" for suspension be given in the notice of suspension. In past cases, we have consistently said we will not look beyond the reasons given by the employer in the disciplinary letter for the disciplinary action taken; Grievance of Regan, 8 VLRB 340, 366 (1985); Grievance of Swainbank, 3 VLRB 34, 48 (1980); a view supported by our Supreme Court. In re Murphy, 140 Vt. 561 (1982).

Here, the letter of suspension indicated Grievant was suspended for the reason of violating a policy memorandum providing, in pertinent part, that a speeding citation which occurs while an employee is on duty will result in disciplinary action. The letter informed Grievant the memorandum "was given to you upon employment."

44. By letter dated October 2, 1985, Profera announced Grievant's dismissal, effective that date. The cited reasons for the dismissal were as follows:

> 1. Your license has been suspended for an accumulated period in excess of 90 days. You signed a memorandum on April 15, 1985 which outlined the consequence of a license suspension in excess of 90 days.
>
> 2. Although driving is an integral part of your job, you did not notify your supervisor that your license was under suspension for the period 7/17-7/23/85. This failure results in a complete breakdown in trust between you and your supervisor.
>
> 3. You were warned regarding the direct relationship between your driving record and employment on April 15, 1985 and you have accumulated three (3) additional violations since that warning.
>
> 4. A review of your application reflects that you indicated you had no non-parking violations during the five (5) year period preceding 7/16/84, the date you signed the application. Records of the Vermont Department of Motor Vehicles indicates that you have three (3) such violations during the five (5) year period (Exhibit T).

45. In dismissing Grievant in part for failure to indicate his motor vehicle violations on his employment application, Profera was not accusing Grievant of deliberately falsifying the application. He faulted Grievant because the application was wrong.

46. The central reason Profera dismissed Grievant is because he was unavailable to drive for more than 90 days due to his license suspensions, which suspensions resulted in dismissal under the February 9, 1984, memorandum issued by Profera. Profera would have dismissed Grievant solely for that reason.

However, the facts indicate Grievant was not given the memorandum until after he received the speeding citation and he was not aware of the contents of the policy until then. Thus, the stated reasons for suspension cannot be supported.

It is inherently unfair to punish an employee for violation of a policy of which he was not aware. One of the required elements of just cause is that the disciplined employee have fair notice, express or fairly implied, that such conduct would be ground for discipline. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). Grievance of Colleran and Britt, 6 VLRB 235, 264-265 (1983). Here, an express policy existed but Grievant had no notice of it.

We recognize Grievant's superiors who fashioned the disciplinary action, Edward Turbitt and Douglas Baker, were aware at the time they suspended Grievant that Grievant had not been made aware of the policy memorandum until after he received the speeding citation. However, this does not in some way convert their action into an appropriate one. Instead, it is perplexing why they would support their action by a reason they knew to be false. In any event, they are bound by the reasons given in the suspension letter and that reason cannot be supported. Thus the suspension lacks just cause and should be rescinded.

Given our conclusion, it is unnecessary to address the remaining issues raised by Grievant concerning his suspension.

II. Dismissal

Grievant's dismissal from employment is the second disciplinary action grieved herein. The central reason Grievant was dismissed was

because he was unavailable to drive for 98 days during 1985 due to his driver's license suspensions, thus resulting in automatic dismissal under a policy calling for dismissal when a license suspension for a cumulative period of over 90 days occurs.

In determining whether just cause exists for dismissal, we must determine whether the dismissal of Grievant based on the rule fashioned unilaterally by management was reasonable. Our function is still to determine whether just cause exists under the standards set down by the Supreme Court in Brooks, supra, at 568:

> Just cause means some substantial shortcoming detrimental to the employer's interests which the law and a sound public opinion recognize as a good cause for his dismissal... The ultimate criterion of just cause is whether the employer acted reasonably in discharging the employee because of misconduct. A discharge may be upheld as one for "cause" only if it meets two criteria of reasonableness: one that it is reasonable to discharge employees because of certain conduct, and the other, that the employee had fair notice, express or fairly implied, that such conduct would be ground for discharge.

We conclude the "over 90-day" rule was unreasonable to apply under the circumstances herein. Clearly, Grievant was on notice of what the employer would do if his driver's license was suspended for a cumulative period of over 90 days. However, the mere fact a rule is promulgated does not give it presumptive validity. The rule itself must meet objective standards for "just cause" because this Board, rather than state management, is the ultimate determiner of "just cause".

To establish "just cause", there must be a nexus between the inability to drive and employment, which constitutes a "substantial shortcoming detrimental to the employer's interests." Grievance of Earley and Ibey, 6 VLRB 72, 81 (1983). Brooks, supra. Here,

management made no showing Grievant's lack of driving license impeded its work at all during his 8-day suspension and did not demonstrate the 90-day suspension, coupled with the 8-day suspension, substantially impeded management's operations. The employer simply did not demonstrate whether or not its operations would be adversely affected in a substantial way.

The employer relied exclusively on its own rule without presenting evidence of shortcomings. We cannot find that loss of license for more than 90 days is so egregious as to be a per se cause for dismissal, in contrast, say, with patient abuse. c.f. Grievance of Bishop, 5 VLRB 349 (1982). Thus, the seriousness of the offense was not established, a key factor relevant for consideration in determining the legitimacy of a disciplinary action. Colleran and Britt, supra, at 268. The rule's drawback of disregarding actual or potential impact on an employer's operations is further indicated by its failure to include a relevant time period for cumulative suspensions; thus creating the potential for an employee with cumulative suspensions far apart being disciplined similarly to an employee with suspensions close together, even though the impact on employer operations may be much different.

Management cannot usurp the function of the Board to determine whether a dismissal is for just cause by adopting a blanket rule to cover all situations. Each case involves a question of degree and we must look at all the circumstances of a case to determine whether a dismissal is just. Grievance of Sherman, 7 VLRB 380, 405 (1985). We concur with the following view of the D.C. Circuit Court of Appeals: "An agency must... select an appropriate disciplinary sanction based

on the specific facts of the particular case before it; it may not automatically impose a fixed penalty for a specific category of misconduct regardless of individual factors." Parsons v. U.S. Air Force, 707 F2d 1406, 1410 (D.C. Cir. 1983). citing Douglas, et al, 5 MSPB 313, 330, 333 (1981). Here, management failed in that duty by applying the automatic penalty without careful consideration of all the circumstances.

The Employer mentioned other areas of concern in the dismissal letter which, while not offered by the Employer to independently justify Grievant's dismissal, are alleged to accumulate into just cause for dismissal. We turn to addressing those areas.

First, the Employer faults Grievant for not notifying his supervisor of his 8-day suspension at the time the suspension was in effect; that this failure resulted in a "complete breakdown in trust" between Grievant and his supervisor. However, we have found Grievant did notify his superiors of the suspension, when he became aware he had actually been suspended. While Grievant perhaps should have been more careful about ensuring his fine had been paid, we do not believe he hid the license suspension from his superiors. Thus, we cannot conclude a breakdown in trust occurred.

Moreover, the evidence indicates Grievant was not called upon to drive during the period. If the evidence indicated Grievant drove a state vehicle on duty while aware his license was suspended or that he improperly transferred driving duties to other employees to evade reporting his license suspension, then Grievant could properly be faulted. Absent this evidence, we cannot fault Grievant.

Second, the Employer faults Grievant for accumulating three additional driving violations after he was warned on April 15, 1985 (by being shown the contents of the February 9, 1984, memorandum of Profera) regarding the direct relationship between his driving record and employment.

It is appropriate to consider this issue in conjunction with Grievant's license suspensions, since the additional violations resulted in an accumulation of "points" against Grievant's license which led to a 10-day suspension for accumulation of too many points. However, this suspension did not have an independent effect on Grievant's employment since it ran concurrently with his 90 day suspension. Given this lack of independent effect, we conclude the accumulation of points did not contribute substantially to the validity of Grievant's dismissal.

Third, Grievant was faulted in the dismissal letter for indicating on his employment application he had no non-parking violations during the preceding five years when, in fact, he had three such violations.

Falsification of an employment application can constitute just cause for dismissal since an employer has the right to expect employees to be honest in their dealings with and on behalf of the employer. Grievance of Bishop, supra, at 371-372. However, Grievant's employer was not accusing him of being dishonest and we have found he was not being dishonest. By its terms, the question on the employment application covers motor vehicle violations. However, the evidence establishes Grievant did not believe minor motor vehicle violations were included in the question and his superior was unclear whether

such violations were covered by the question. Thus, Grievant reasonably answered the question incorrectly. If management is going to hold an employee to a moral fault, we think the question should expressly refer to motor vehicle convictions.

More to the point of controlling significance, it is evident Grievant's incorrect answer played no significant part in hiring him or retaining him. Both Grievant and his half-sister had indicated to Grievant's supervisor at the time of hire that he had motor vehicle violations. Grievant's supervisor obviously considered this unimportant.

In sum, we conclude the dismissal of Grievant was not reasonable; that no "substantial shortcoming detrimental to the State's interests" were demonstrated. This is not to say Grievant should go unpunished. While the State failed to make the requisite showing his license suspensions constituted a substantial impediment to operations, it is reasonable to infer the suspensions were somewhat detrimental to management since Grievant did drive an average of once a week and would no longer be able to do so for a three month period.

In such cases, where the Board finds just cause for discipline, but determines the penalty was inappropriate or excessive, Article 17, Section 9 of the Contract provides the Board "shall have the authority to impose a lesser form of discipline." We look to the factors enumerated in Colleran and Britt, supra, at 268-269, for guidance.

The disciplinary policy established by management for motor vehicle violations essentially sets a table of penalties for various offenses. While we have found the "over 90 day" rule unreasonable to apply under the circumstances herein, we believe the policy sets a

valid rule for license suspensions of 90 days under the circumstances proved - i.e., one week suspension without pay and a mandatory referral to the Employee Assistance Program (EAP). The 90-day license suspension here had the potential to adversely affect Grievant's abilities to perform his duties since his duties required him to drive once a week on the average. It was for an alcohol-related offense. The potential for alcohol abuse to further impact on his work exists and warrants referral to EAP.

The remaining question is what, if any, additional penalty should be imposed for the 8 day license suspension. Judged on its facts, the suspension did not reflect on Grievant's driving behavior but rather on his ability to deal responsibly with government regulations. Nor did this suspension disrupt his work. Perhaps the lack of work disruption was fortuitous. However, Grievant has a poor driving record, driving is part of his job and loss of license impairs his ability to work. Some penalty is justified to deter such action in the future by Grievant and other employees. In view of these factors, we believe a day of suspension for each day of license suspension is a reasonable additional penalty. Thus, we impose a total suspension of 13 workdays and require Grievant be referred to the Employee Assistance Program.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED the grievance of Randy Hurlburt is SUSTAINED; and

1. The four hour suspension of Grievant on May 14, 1985, is rescinded; the State shall pay Grievant four hours wages at his pay rate effective May 14, 1985, plus 12 percent interest per annum, and the State shall remove all references to the suspension from Grievant's personnel file and other official records;

2. Grievant shall forthwith be reinstated to his position as Support Services Worker, Central Services Division, Agency of Human Services;

3. Grievant shall be awarded back pay and benefits from the date commencing 13 working days from the date of his discharge until reinstatement for all hours of his regularly-assigned shift, minus any income (including unemployment compensation received and not paid back) received by Grievant in the interim;

4. The interest due Grievant on back pay shall be at the rate of 12 percent per annum and shall run from the date each paycheck was due during the period commencing 13 regularly-scheduled workdays after Grievant's dismissal, and ending on the date of his reinstatement; such interest for each paycheck date shall be computed from the amount of each paycheck minus unemployment compensation received by Grievant during the payroll period;

5. Grievant shall be required to participate in the Employee Assistance Program forthwith; and

6. The parties shall submit to the Board by October 20, 1986, a proposed order indicating the specific amount of back pay and other benefits due Grievant; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board.

Dated this ___ day of October, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

Catherine L. Frank