Specific Notice of Disciplinary Action

In reviewing a disciplinary action, the VLRB will not look beyond the reasons given by the employer in the disciplinary letter for the action taken.[1] However, the Board will not turn disciplinary letters into dialectic exercises.[2] Due process considerations require that a notice of dismissal be sufficiently specific to allow adequate preparation for the employee's defense.[3] A letter which adequately puts an employee on notice of the misconduct will not be considered deficient.[4]

The Vermont Supreme Court has indicated that, having given the reasons for dismissal in one letter, the State may not change and add to the reasons in a subsequent letter; that to permit such ad hoc amendment would effectively alter the terms of the parties' contract.[5]

The Board discussed in a dismissal case whether it would rely on post-dismissal evidence gathered by an employer. The Board stated:

> In deciding this issue, we draw a distinction between evidence gathered after discharge which supports the reason given for discharge . . . and evidence gathered after a discharge to add an entirely new offense. The latter is clearly inappropriate. The Contract requires the Employer to state the reasons for dismissal in the dismissal letter . . . and our review does not go beyond the reasons given by the employer for its action in the dismissal letter. . .
>
> However, with regard to post-dismissal evidence supporting the stated reasons for disciplinary action, we believe the relevant consideration is really one of fairness and surprise. As a general rule, we believe an employer may investigate further to substantiate facts known to exist at the time of dismissal to support action already taken, as long as an entirely new charge is not added and the discharged employee is given an adequate opportunity to contest it.[6]

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[1] Grievance of Swainbank, 3 VLRB 34, 48 (1980); *Reversed on Other Grounds*, 140 Vt. 33 (1981). Grievance of Regan, 8 VLRB 340, 365-366 (1985). Grievance of Rosenberger, 28 VLRB 284, 296 (2006).
[2] Grievance of Erlanson, 5 VLRB 28 (1982). Rosenberger, 28 VLRB at 296.
[3] Grievance of Morrissey, 149 Vt. 1, 10 (1987). Rosenberger, 28 VLRB at 296.
[4] Erlanson, 5 VLRB at 39. Rosenberger, 28 VLRB at 296.
[5] In re Grievance of Warren, (Unpublished decision, August 22, 1986).
[6] Grievance of Boucher, 9 VLRB 50, 56-57 (1986).

In another case, an employer sought through discovery information that could lead to additional evidence of a dismissed employee's misconduct beyond the reasons stated in the dismissal letter. The Board indicated that the employer was acting contrary to precedents that the Board's review does not go beyond the reasons given by the employer for its action in the dismissal letter, and concluded that evidence is not relevant to the extent that it involves alleged improper conduct by an employee of which management was unaware at the time of the employee's dismissal.[7]

[7] Grievance of Westbrook, 25 VLRB 130, 134 (2002).