

Timeliness of Discipline

Under contract language requiring the employer to “act promptly to impose discipline . . . within a reasonable time of the offense”, the Board concluded that this provision was violated in one case when management charged an employee with an offense that was brought to management’s attention three years earlier.¹ The Board decided the contract language was violated in another case when an employee was not charged with an offense until five and one-half months after an incident requiring a simple investigation.² In both cases, the Board concluded that management was precluded from disciplining the employees for the alleged offenses.

There have been several other cases where the Board has concluded this contract language was not violated. The Board determined that an employer acted reasonably in completing an investigation in five months into alleged misconduct by three correctional officers where the employer’s investigation was complicated because criminal charges were brought against the employees.³ Similarly, the Board determined in another case that imposition of discipline on an employee was not unreasonably delayed where dismissal occurred four and one-half months after criminal charges were brought against an employee and the employer commenced an investigation of his alleged misconduct.⁴ The Board determined in a further case that the dismissal of a correctional officer occurred within a reasonable time of the offense, even though the conduct engaged in by the officer leading to her dismissal occurred six and one-half months prior to her dismissal, because a significant part

¹ Grievance of Gorruso, 9 VLRB 14, 34 (1986), *Reversed on Other Grounds*, 150 Vt. 139 (1988).

² Appeal of Wells, 16 VLRB 52 (1993).

³ Grievances of Charnley, Camley and Leclair, 24 VLRB 119, 141-142 (2001).

⁴ Grievance of Brown, 24 VLRB 159, 174 (2001).

of the delay was caused by the employee's union representative and a disagreement of the parties which had to be resolved through the grievance procedure.⁵

The Board held in another case that a delay of four months after receiving the investigator's report did not provide a reasonable basis to rescind the dismissal of a correctional officer where the delays were substantially caused by unforeseen complications and the dismissed officer's claimed lack of memory.⁶ Elsewhere, the Board concluded that a six and one-half month period before discipline was imposed was reasonable where there were a number of allegations against the employee which resulted in an extensive investigation, including allegations on two issues which did not surface until the investigation of other allegations was well underway.⁷

Also, the Board had indicated in several cases that, absent demonstrated prejudice by the disciplined employee, it was not prepared to conclude that the time it took the employer to impose disciplinary action on the employee affected the validity of the disciplinary action. In these cases, employees were on temporary relief from duty with pay status during the investigation and did not demonstrate that they were prejudiced by the timing of the disciplinary action.⁸

⁵ Grievance of Kerr, 28 VLRB 264, 277 (2006).

⁶ Grievance of Abel, 31 VLRB 256 (2011).

⁷ Grievance of Richardson, 31 VLRB 359, 383 (2011).

⁸ Id. Grievance of Abel, 31 VLRB at 274. Grievance of Sileski, 28 VLRB 165, 191 (2006).
Grievance of Scott, 22 VLRB 286, 301-02 (1999).