

## **Board's Authority Generally to Remedy Improper Dismissals and Authority to Modify Penalties**

The Vermont Supreme Court has held that if the VLRB finds lack of just cause, its authority is limited to remedying the improper dismissal; with the proper remedy generally being reinstatement with back pay and other emoluments from the date of the improper discharge less sums of money earned or that without excuse should have been earned from that date.<sup>1</sup> The Board lacks authority to award attorney's fees, or to award compensatory and punitive damages.<sup>2</sup>

Also, lack of just cause for dismissal may not always result in reinstatement of the employee. In one case where the Board concluded that just cause did not exist for an employee's dismissal at the time he was dismissed, the Board remanded to provide the employer with an opportunity to decide whether to discipline the employee based on conduct for which the employee was warned prior to his dismissal would result in disciplinary action if corroborated, and the conduct was not corroborated until after the employee was dismissed.<sup>3</sup> However, management may not gather evidence after a discharge to add an entirely new offense; the Board has concluded that is inappropriate.<sup>4</sup>

In two cases, the Court questioned the VLRB's authority to fashion a remedy of its own when just cause was not found, an authority which the VLRB always considered it had.<sup>5</sup> Subsequent to these decisions, the Vermont State Employees' Association and the State explicitly gave the Board the authority under the collective bargaining contracts to impose lesser forms of discipline.

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<sup>1</sup> Grievance of Brooks, 135 Vt. 563, 570 (1977).

<sup>2</sup> Grievance of Warren, 10 VLRB 154, 157 (1987). Grievance of Russell, 7 VLRB 60, 93 (1984).

<sup>3</sup> Grievances of Ackerson, 17 VLRB 105, 129 (1994).

<sup>4</sup> Grievance of Boucher, 9 VLRB 50, 57 (1986).

<sup>5</sup> See In re Grievance of Janes, 141 Vt. 648 (1984); In re Grievance of Murphy (Vermont Supreme Court, Unpublished decision, December 30, 1985).

The contract between the State Colleges and the State Colleges Staff Federation did not explicitly give the Board this authority, and the Board indicated that, absent the explicit authority, it would remand the grievance to the Colleges for such further action as may be appropriate under the contract.<sup>6</sup>

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<sup>6</sup> Grievance of Griswold, 12 VLRB 252, 265 (1989). *Reversed on other grounds*, (Vt. Supreme Court, Unpublished Decision, 1991).