

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

GARY WARREN

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DOCKET NO. 82-69

MEMORANDUM AND ORDER

At issue is the appropriate remedy to grant Gary Warren ("Grievant") as a result of the Vermont Supreme Court's August 22, 1986, Order, reversing the Labor Relations Board decision of September 19, 1983. The Board had affirmed the dismissal of Grievant from employment as a correctional officer at the Woodstock Community Correctional Center. 6 VLRB 305 (1983).

The Supreme Court decision provided in its entirety as follows:

Having given the reasons for Grievant's immediate dismissal in one letter, the State may not change and add to the reasons in a subsequent letter. "To permit such post hoc amendment would effectively alter the terms of the parties' contract." D'Aleo v. Vermont State Colleges, 141 Vt. 534, 540, 450 A.2d 1127, 1131 (1982). The Board found that grievant's actions did not constitute gross misconduct or conduct jeopardizing anyone's life or health which were the reasons outlined in the State's first letter of dismissal. Therefore, the Board's affirmance of the dismissal based on negligence and poor judgment cannot stand. Reversed.

Oral argument in this matter was held before Board members Charles H. McHugh, Chairman; William G. Kemsley, Sr. and Catherine L. Frank on January 29, 1987. Attorney Susan Dole represented Grievant. Assistant Attorney General Michael Seibert represented the State of Vermont, Department of Corrections ("Employer"). Briefs were filed by the Grievant and the Employer on February 5 and 9, 1987, respectively.

Grievant contends that, as a result of this order, he is entitled to be reinstated to his position with backpay and other rights and benefits as though he had not been dismissed. Grievant also requests the payment of attorney fees and costs incurred in defending against the refusal of the Employer to reinstate him. The Employer contends that the failure of the Court to explicitly order the reinstatement with back pay of Grievant means the Court intended the Board to determine what remedy is appropriate in light of the Court's Order. The Employer contends the appropriate remedy is the reinstatement of Grievant only for the period of time between receipt of the first dismissal letter and the addendum he received two weeks after his dismissal. The Employer contends the addendum essentially constituted a separate and sufficient notice of dismissal which cured the defective dismissal action resulting from the first dismissal letter, and since the Board has already concluded that the reasons stated in the Addendum provided just cause for Grievant's dismissal, such a remedy would be appropriate.

The threshold issue is whether the Board has jurisdiction over this matter since the court has not explicitly ordered remand to the Board. As a public administrative body, the Board only has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). Under the State Employees Labor Relations Act, the Board is authorized to "make final determination on the grievances" of State employees, 3 VSA §926; and is "authorized to enforce compliance with all provisions of a collective bargaining agreement upon complaint of either party." 3 VSA §982(g).

Pursuant to these provisions, the Board must decide upon the proper remedy in grievance appeals. Vermont State Colleges Faculty Federation and Peck v. Vermont State Colleges, 139 Vt. 329, 333-334 (1981). At this point in the proceedings, no final determination has been made as to the remedy to which Grievant is entitled to enforce the provisions of the collective bargaining agreement. Thus, the Board has jurisdiction to decide the appropriate remedy.

The Board's power in dismissal cases is limited to remedying an improper dismissal, absent provisions in the collective bargaining agreement providing for further action. Brooks, supra, at 570. Generally, the proper remedy for improper dismissal is 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 since that date. Id.

In determining the appropriate remedy herein, essential to our task is interpreting the Order of the Supreme Court. Contrary to the arguments advanced by the Employer, we conclude the Supreme Court decision clearly provides that the addendum given Grievant two weeks after his dismissal may not be considered in determining the validity of Grievant's dismissal. When it referenced the parties' Contract in its decision, the Court was evidently referring to the following language in Article 15 of the Contract between the State and Vermont State Employees' Association applicable at the time of Grievant's dismissal:

"Written notice of dismissal must be given to the employee within twenty-four hours of verbal notification. In the dismissal notice, the appointing authority shall state the reason(s) for dismissal..."

The Court essentially stated that any reasons given for dismissal outside of reasons stated in the dismissal letter, which letter was provided the employee within 24 hours of verbal notification of dismissal, could not be used in defending the dismissal of an employee. Thus, the Court concluded it was inappropriate for the Board to uphold the validity of Grievant's dismissal based upon any reasons stated in the Addendum which were not stated in the first dismissal letter.

The only reason for dismissal mentioned in the first dismissal letter was that Grievant's actions in bringing a can of mace into the correctional facility "constituted gross misconduct and conduct which placed in jeopardy the life or health of a coworker and an inmate." 6 VLRB 326, Finding #48. In its original decision, the Board concluded that Grievant's actions concerning the mace incident did not jeopardize anyone's health or life and did not constitute gross misconduct. 6 VLRB 320-321. The Board further stated that "(i)f Grievant's actions concerning the mace incident were the only misconduct he engaged in, we would not find that action serious enough to support his dismissal as a reasonable action."

Thus, the Board concluded there was insufficient reason for dismissal based on the reasons stated in the first dismissal letter. The Court concluded that the reasons given in the first letter were the only reasons which could be considered in determining the validity of Grievant's dismissal. The logical conclusion to be drawn from

these conclusions of the Board and the Court is that the dismissal of Grievant was improper.

Absent any indication to the contrary in the Supreme Court decision, we see no reason why the remedy generally applied for improper dismissal should not be applied in this case. Thus, Grievant should be reinstated with back pay.

We reject Grievant's claim that he is entitled to attorney fees and costs in addition to reinstatement and back pay. To so order would be in excess of our authority under law, which is limited to remedying improper dismissals. Brooks, supra, at 570.

Now therefore, based on the foregoing reasons, it is hereby ORDERED:

1. Grievant shall be reinstated to his position as Correctional Officer B at the Woodstock Community Correctional Center; and

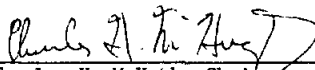
2. Grievant shall be awarded back pay and benefits from the effective date of his discharge until his reinstatement for all hours of his regularly-assigned shift, minus any income (including unemployment compensation received and not paid back) received by Grievant in the interim; and

3. 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 with 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, and

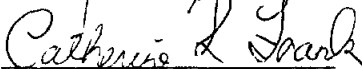
4. The parties shall submit to Board by April 8, 1987, a proposed order indicating the specific amount of back pay and other benefits due Grievant; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board. Any evidentiary hearing necessary on these issues shall be held on April 30, 1987, at 9:00 a.m. in the Labor Relations Board hearing room.

Dated this 26th day of March, 1987, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


William G. Kemsley, Sr.


Catherine L. Frank