

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)
) DOCKET NO. #88-26
RALPH THURBER)

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On May 20, 1988, the Vermont State Employees' Association ("VSEA") filed a grievance of behalf of Ralph Thurber ("Grievant"). The grievance alleged that the dismissal of Grievant from his position as security worker at the Vermont Veterans Home in Bennington violated Article 17 of the collective bargaining agreement between the State of Vermont ("State") and VSEA for the non-management bargaining unit, effective for the period July 1, 1986 to June 30, 1988 ("Contract") in that there was no just cause for dismissal, there was no fair and complete investigation prior to the decision to dismiss, the State inappropriately bypassed progressive discipline and the penalty of dismissal was inappropriate or excessive.

On June 29, 1988, VSEA filed with the Board a motion to deem failure of the State to answer the grievance in a timely manner as an admission of the material facts alleged in the grievance and a waiver of an evidentiary hearing. On July 6, 1988, the State filed an answer to the grievance along with a motion to accept the late answer without sanction. A hearing on the motion was held on July 7, 1988, before Board Members Charles McHugh, Chairman; Catherine Frank and Louis Toepfer. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. Michael Seibert, Assistant Attorney General, represented the State. On July 22, 1988, the Board issued a Memorandum and Order

in which it denied Grievant's Motion and accepted the State's Answer to the grievance. 11 VLRB 223.

Hearings on the merits were held before the Board on July 26, 1988, and August 23, 1988. Members Charles McHugh, Chairman; Catherine Frank and Louis Toepfer were present. Attorney Zimmerman represented Grievant. Assistant Attorney General Seibert represented the State. The parties filed Memoranda of Law on August 31, 1988.

FINDINGS OF FACT

1. Grievant was employed by the State from April 1984 to April 1988 as a security worker for the Vermont Veterans Home in Bennington, Vermont.

2. One of the duties of a security worker is to guard against fire. As a security worker at the Veterans Home, Grievant was expected to respond to fire alarms within the Home (Grievant's Exhibits 2, 3).

3. The Home has standard procedures that should be followed by a security guard in the event of a fire alarm. Every security guard is expected to be aware, and Grievant was aware, of these standard procedures.

4. The Home has an "annunciator panel" at its main entrance. This panel contains a diagram of the layout of the building, and when a fire alarm rings, the panel will indicate in which section of the building is the source of the alarm. When a fire alarm rings in the Home, the security guard on duty is expected to go to the annunciator panel, find out where the source of the alarm is and then investigate the area where the alarm has sounded.

5. Besides the annunciator panel, the location of where the alarm is ringing in the building can be determined by counting the number of bells ringing when the alarm sounds and checking a corresponding chart which will indicate a certain wing of the building for that number of bells. After a certain period of time, the bells will stop ringing but the alarm will remain on and the lights will continue to flash.

6. When the fire alarm system at the Home is working properly, it is connected to the fire department within the Village of Bennington. The Bennington Fire Department will respond to the fire alarm at the Home.

7. According to the policy at the Home, the security guard should go to the source of the alarm and investigate it, then should go to the main front entrance of the Home, wait for the fire department to arrive, then either tell them where the fire is located within the facility and direct them to that area, or indicate to them that the alarm was false.

8. According to the policy at the Home, the fire alarm can only be shut off and reset after an investigation indicates that the cause of the alarm has been established and resolved and authorization is given to reset the alarm. Resetting the alarm can only be authorized by Philip Peterson, Commandant; Larry Routhier, Deputy Commandant; Edward Pleasant, Maintenance Supervisor; the Director of Nursing or the Night Supervisor. The security guard, according to the policy, may only reset the alarm upon being authorized to do so. Pleasant was Grievant's immediate supervisor.

9. To reset the fire alarm system at the Home, it is necessary to go to the basement of the building where there is a main panel for the system. The system can only be reset when there remains no fire or smoke in the affected area. If the system is reset while there is still a problem within the Home, the alarm system will be tripped again, and the alarm will sound. Resetting the alarm system ceases both the alarms inside the Home and at the Bennington Fire Department.

10. It is possible to put the Home's alarm system on "silent-run", whereby the alarm still rings within the Home but not at the Bennington Fire Department.

11. The Home installed a new fire alarm system in 1986. During 1986, after the new system was installed, the Home had a much higher incidence of false alarms than usual. The majority of these false alarms were caused by smoke detector malfunctions, such as an insect finding its way into the smoke detector (State's Exhibit 13).

12. As a result of the many false alarms at the Home, there were periods of time when the alarm system was disconnected from the Bennington Fire Department. During these periods of disconnection, if the fire alarm went off, employees of the Home would notify the Bennington Fire Department by telephone if they were needed (State's Exhibit 13).

13. There were occasions when Pleasant was not on duty that Grievant responded to an alarm which had gone off more than once, again discovered it was a false alarm, took the faulty smoke detector down and then reset the alarm before the fire department arrived. At least once, Grievant left the faulty smoke detector in a desk until Pleasant could check it out the next day when he arrived for work.

Grievant was under the impression that this was the policy as established by Pleasant when Pleasant was not working, and he believed that Pleasant had authorized the security guards to reset the alarm in such circumstances. Pleasant believed that he had never told Grievant to reset the alarm without authorization in such circumstances.

14. On the occasions where the fire department did respond to an alarm at the Home, the department was not always met at the main entrance by a security guard, contrary to the policy at the Home.

15. On April 15, 1988, at approximately 11:30 p.m., the fire alarm on the North Wing at the Home sounded. The alarm was caused by a fire in the fan motor or a heating unit on that wing. Smoldering dust and smoke were being emitted from the radiator (State's Exhibit 5).

16. At the time of this alarm, the Home was connected to the village fire station. The Bennington Fire Department is a volunteer unit, consisting of one chief, two assistant chiefs and other volunteers who carry pagers which sound when an alarm has gone off. The chief and assistant chiefs receive the necessary information from the dispatcher, and then head directly to the scene of the fire without first going to the fire station. The volunteers go to the fire station first, then take trucks to the source of the fire.

17. On the night of April 15, 1988, upon hearing the alarm for the Veteran's Home, Assistant Fire Chief Mark Sawyer headed directly to the Home. Other firefighters also responded and headed toward the fire department for the fire trucks. While Sawyer was enroute to the Home, the dispatcher notified him and the other firefighters that the alarm had been secured, or reset. Sawyer kept going toward the Home, but the fire trucks were held back.

18. That night, Martha Sue Leister, R.N., was the night supervisor at the Home. When she heard the alarm, she went to the North Wing, where she saw some aides and nurses looking for the problem. They then smelled smoke and noticed the problem in the radiator. Leister called the fire department to inform them of the fire. The dispatcher told Leister that the trucks had been stopped because the alarm at the Home had been reset.

19. Grievant was the security guard on duty the night of April 15, 1988. Grievant was aware that maintenance men Ed Pleasant, Daryl Witherall and Dan Harrington, were working on pipes within the building to correct a heating problem. When the alarm sounded, Grievant believed that the maintenance men had set off a false alarm by lowering the pressure of pipes within the building. Grievant, upon hearing the alarm, headed in the direction of the North Wing, but learned from either an orderly or nurse that everything was "OK". Grievant then proceeded to go downstairs to the basement and reset the alarm system at the main panel. He then went back up the stairs to the security guard's desk near the Home's administrative offices on B Wing. At some point after resetting the alarm, Grievant went to the basement under the dormitory where the maintenance men were working. Grievant told Pleasant that the fire department had arrived due to a fire alarm. Grievant was agitated, was swearing and said he did not want anything to do with it. Pleasant then went to the North wing to the scene of the problem.

20. Grievant never did go to the North Wing of the building that night, not did he attempt any further investigation of the source of the fire alarm after the orderly or nurse told him that everything was OK.

21. When Assistant Chief Sawyer arrived at the Home he went to the main entrance. He was not met at the door, but did meet a police officer at the scene. He then proceeded to North Wing where orderlies with fire extinguishers were attending to the radiator. Sawyer called for the fire trucks and disconnected the heater. A total of eight firefighters and two trucks reported to the Home. The smoldering radiator was extinguished easily.

22. After matters appeared to be under control, Night Supervisor Leister headed toward B Wing to attend to a patient. After doing so, she saw Grievant sitting at the guard desk on B Wing. Nurse Leister asked Grievant if he had gone to North Wing. Grievant replied that he had not, and that he had shut off the alarm because it was caused by the maintenance men working on the pipes. Sawyer also spoke with Grievant. Sawyer was upset and told Grievant that the alarm should not be reset because of the potential for someone getting hurt. Sawyer also told Grievant to check out the source of all alarms. Pleasant also spoke with Grievant after Pleasant left the scene of the problem. Pleasant asked Grievant why he had reset the alarm. Grievant told Pleasant that he had reset the alarm because he did not want the bells to keep ringing. Pleasant told Grievant that he knew what the proper procedure was when an alarm goes off and that he should follow this procedure.

23. On Saturday morning, April 16, Larry Routhier, Deputy Commandant of the Vermont Veteran's Home, called Philip Peterson, Commandant, and informed him of the incidents relating to the fire on the previous night as relayed to him by Pleasant. Routhier, after discussing the matter with Peterson, issued a letter to Grievant on

Peterson's instructions, which informed Grievant that his dismissal was being contemplated for the following reasons:

1. When the alarm went off, you did not investigate to determine the source of the trouble;
2. You silenced the alarm, thus shutting off the alarm at the fire house so no trucks responded when in fact the incident could have necessitated the need for trucks; and
3. You failed to go to the entrance to direct the Fire Chief and his assistant to the scene of the trouble.

This action on your part constitutes gross neglect of duty, gross misconduct and conduct which places in jeopardy the life or health of your co-workers and of the people under your care.

(Grievant's Exhibit 7)

24. Subsequently, prior to April 21, 1988, Peterson and Routhier met with Grievant and his VSEA representative, Gail Rushford. The purpose of this meeting was to allow Grievant to offer any appropriate arguments in response to the April 16 letter. At this meeting, Grievant said that as a result of the trouble the Home had with false alarms, Pleasant had instructed him to reset the fire alarm system when an alarm sounded. Grievant indicated that he thought the alarm was caused by a lack of pressure in the pipes due to the maintenance men working on the pipes.

25. Before making his final decision on whether Grievant should be dismissed, Peterson considered written statements from Pleasant, Leister and Witherall, which contained their versions of the events occurring on April 15, 1988. Peterson also considered the fact that Grievant had received three verbal warnings in the past year and that Grievant had signed off on a form indicating that he had reviewed the Home's fire and disaster plan (State's Exhibits 1, 2, 4, 7, 8 and 9).

26. On April 21, 1988, Peterson sent Grievant a letter informing him of his dismissal without two weeks notice or two weeks pay in lieu of notice. The letter provided in pertinent part as follows with respect to the reasons for Grievant's dismissal:

...you failed to respond appropriately when the fire alarm went off at approximately 11:30 p.m. on April 15, 1988, in that: you did not follow the posted fire plan, by not reporting to the fire scene, by silencing the alarm before determining the source or cause, and by failing to meet the fire department and direct the fire department to the fire scene.

The seriousness of your conduct provides just cause for bypassing progressive discipline or corrective action, thereby dismissing you. By silencing the alarm the fire department held the fire truck at the station when an actual fire emergency existed which could have resulted in injury and/or loss of life.

(Grievant's Exhibit 8)

27. In deciding to dismiss Grievant, Peterson considered his misconduct to be very serious; concluding that Grievant's actions could have resulted in several lives being lost given the nature of the Home which cared for 150 people who would have needed assistance in escaping from a fire. Peterson considered suspending Grievant but concluded that his actions were serious enough to warrant dismissal.

28. There is no evidence that, prior to April 15, 1988, any employees of the Home had reset a fire alarm without investigating the area where the alarm had sounded or without proper authorization to do so.

29. In the past, Peterson had informed an employee by letter that he was contemplating the employee's dismissal and then had ultimately decided not to dismiss the employee due to mitigating circumstances. Peterson did not make the final decision to dismiss Grievant until after he had talked to Grievant.

30. On April 27, 1988, Mark Sawyer sent a letter to Ed Pleasant detailing his view of the events of April 15, 1988. This letter was requested by Pleasant. In the letter, Sawyer stated that this was not the first time the alarm had been reset before the fire department arrived and he requested that Pleasant instruct his staff not to reset the alarm until the firemen have arrived on the scene, located the problem and told staff to reset the alarm. Sawyer did not provide any specific instances when employees had reset the alarm without investigating the area where the alarm had sounded. Prior to April 27, 1988, the Fire Department had not expressed their concerns to Peterson or Pleasant about resetting alarms (Grievant's Exhibit 9).

31. On June 24, 1988, a fire alarm went off at the Home. A security officer attempted to reset the alarm before the fire department arrived and was unable to reset it. There is no reason to believe that the security officer did not investigate the area where the alarm sounded before resetting the alarm or that the security officer did not have the authorization to reset the alarm.

32. On June 27, 1988, Pleasant, Peterson and two Bennington firefighters met to discuss the Home's fire policy. The firefighters expressed their concern about the need to be met at the main entrance by the Home's security guards and requested that the fire alarm not be reset until the firefighters had arrived. Peterson agreed that the security guards should meet the firefighters at the main entrance, but did not agree with the firefighter's views concerning the resetting of alarms prior to the firefighters arriving.

MAJORITY OPINION

Grievant alleges that his dismissal violated Article 17 of the Contract in that:

1. There was no just cause for dismissal in that a fair and complete investigation was not completed prior to the decision to dismiss being made;
2. There was no just cause for dismissal because the Employer failed to meet its burden with respect to the three specific charges against Grievant;
3. The progressive discipline requirement of the Contract was not followed; and this was not an appropriate case for bypassing it; and
4. The penalty of dismissal was excessive.

Pre-Dismissal Investigation

Grievant contends that just cause for dismissal did not exist because a fair and complete investigation was not completed prior to the decision to dismiss being made. Grievant contends that his due process rights were violated and management abused its discretion because the Commandant made his decision to dismiss without the benefit of any written statements, and without any statement at all from Grievant, and because management was not fair and impartial in the conduct of the investigation.

As previously stated by the Board, we are unwilling to call into question the sufficiency of the Employer's investigation in the absence of any specific Contract provision giving the Board such authority or in the absence of any violation of an established due process right; particularly where Grievant has an opportunity before

the Board for a complete, impartial review of the appropriateness of the disciplinary action taken. Grievance of Munsell, 11 VLRB 135, 145 (1988).

Here, no violation of an established due process right occurred. Grievant's right to a pre-termination hearing, where he had written notice of the charges against him and an opportunity to present his side of the story, was protected. Grievance of Johnson, 9 VLRB 94 (1986). Moreover, contrary to Grievant's claim, while Commandant Peterson had made a tentative decision to dismiss Grievant prior to the pre-termination hearing, it is apparent that Grievant had a genuine opportunity in the pre-termination hearing to change Peterson's mind prior to a final decision being made.

Establishment of Charges Against Grievant

Grievant contends that the Employer failed to meet its burden with respect to the three specified charges against Grievant. Grievant was charged with inappropriately not following the fire plan when the fire alarm went off on April 15 by not reporting to the fire scene, by silencing the alarm before determining the source or cause of the alarm, and by failing to meet the fire department and direct them to the fire scene.

We conclude that the Employer has met its burden of establishing by a preponderance of the evidence each of these charges against Grievant. Grievant did not report to the area when the alarm sounded in violation of the Home fire policy. He further silenced the alarm before determining the source or cause of the alarm. While he was proceeding to the alarm area when a nurse or orderly told him everything was "OK", this falls woefully short of the requirement of

the Home's fire policy that the security worker investigate the area where the alarm has sounded, and shut off and reset the alarm only after the cause of the alarm has been established and resolved and authorization is given to reset the alarm. Grievant reset the alarm before: 1) establishing the cause of the alarm, 2) resolving the problem, and 3) receiving authorization to reset the alarm. Finally, Grievant did not meet the firefighters and direct them to the scene of the problem, in violation of the Home's fire policy.

Progressive Discipline Bypass and Excessive Penalty

Grievant contends that, even if the charges against him are established, just cause for dismissal does not exist because this was not an appropriate case for bypassing progressive discipline. He contends that dismissal was an excessive penalty.

Article 17 of the Contract provides that no employee shall be dismissed "without just cause." Pursuant to the Contract, the State is required to "impose a procedure of progressive discipline", Article 17(A)(1)(c), although "there are appropriate cases that may warrant the State...bypassing progressive discipline". Article 17(A)(1)(f). In any misconduct case involving a dismissal, "should the...Board find just cause for discipline, but determine that the penalty was inappropriate or excessive, the...Board shall have the authority to impose a lesser form of discipline". Article 17(A)(10).

The Supreme Court has defined just cause as some substantial shortcoming detrimental to the employer's interests which the law and a sound public opinion recognize as a good cause for dismissal. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). A discharge may be upheld 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 implied, that such conduct would be ground for discharge. Id.

In determining whether just cause exists for Grievant's dismissal, we first discuss the Board's scope of review of management's disciplinary decisions. This is the first disciplinary case the Board has considered since the Supreme Court decision in Grievance of Gorruso, ___ Vt. ___ (May 27, 1988), where the Board's scope of review was discussed. In Gorruso, the Court disagreed with the Board's interpretation of the disciplinary provisions of the Contract with respect to the Board's scope of review. In construing the Contract language providing that if the Board found a penalty "inappropriate or excessive" it had "the authority to impose a lesser form of discipline", the Board concluded that the parties intended that the Board would make an independent judgment whether a penalty imposed was inappropriate or excessive; that the Board would substitute its judgment for management and not simply ensure management was exercising its discretion within tolerable limits of reasonableness. Grievance of Sherman, 7 VLRB 380, 398-404 (1984).

The Court concluded that, although the Contract language does indeed give the Board the authority to impose a lesser disciplinary penalty than that imposed by the State, the Board may exercise this power only after finding that the State had just cause for disciplining the grievant, but that there was no just cause for the choice of discipline imposed by the State. Gorruso, supra. The Board may not arbitrarily substitute its judgment for that of the State in determining what is "inappropriate or excessive" discipline. Id.

In Gorruso, the Court cited with approval the following statement by the Board in Grievance of Collieran and Britt, 6 VLRB 235, 266 (1983), with respect to the proper standard of review:

The Board will not require that the employer prove by a preponderance of the evidence that its choice of discipline was proper. On this issue, the Board recognizes that a range of choices is available to the employer. If the State establishes management responsibly balanced the relevant factors in a particular case and struck a balance within tolerable limits of reasonableness, its penalty decision will be upheld. The Board will only alter the penalty selected by the employer if the employer imposes a penalty so severe, given the facts, that its choice amounts to an abuse of discretion.

To be sure, we are not to substitute our judgment concerning the appropriateness of the penalty for that of the employer. I assume what the Court meant in Goddard, although not fully articulated, is that it is an inherent management function to control and direct the work force, and a necessary attribute of that function is to exercise discipline. Accordingly, as long as the exercise of that function is reasonable it will be sustained. Management is thus given broad discretion in disciplinary matters. It is the [B]oard's function only to assure that this discretion has been properly exercised within tolerable limits of reasonableness, i.e., "within the limits of law and contract".

In keeping this scope of review in mind, and already having concluded that the charges against Grievant have been established, we look to the specific factors enumerated in Grievance of Collieran and Britt, 6 VLRB 235, 268-269 (1983), to determine the legitimacy of the disciplinary action imposed based on the proven charges. The pertinent factors here are the nature and seriousness of the offense in relation to Grievant's responsibilities, the effect of the offense upon supervisors' confidence in Grievant's ability to perform assigned duties, the clarity with which Grievant was on notice of any rules that were violated in committing the offense, and the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by Grievant or others.

Grievant's offense was very serious in relation to his responsibilities. Responding to fire alarms appropriately was a crucial responsibility of Grievant's position as a security worker. Here, he grossly violated that responsibility by his actions. The result of his actions indicates the seriousness of Grievant's offense. By resetting the fire alarm without properly investigating the cause of the alarm, Grievant caused fire trucks responding to the alarm to be held back. Since there actually was a fire, this resulted in a delay in trucks responding to the scene of the fire as the trucks had to be called out once it became apparent there was a fire. Given the obvious importance of firefighters responding to a fire as quickly as possible, Grievant's actions potentially could have resulted in severe injury to residents of the Home. The fact that Grievant was able to reset the alarm, meaning the system was indicating no smoke or fire in the area, does not diminish the seriousness of Grievant's offense since the area may have had no smoke or fire only temporarily. In fact, Grievant was able to reset the alarm even though the fire had not been extinguished. Grievant also failed to meet firefighters at the door to direct them to the scene of the fire.

This serious offense certainly substantially diminished his supervisors' confidence in Grievant's ability to appropriately respond to fire alarms. Grievant's offense demonstrated a "substantial shortcoming detrimental to the State's interests". Brooks, supra, at 568.

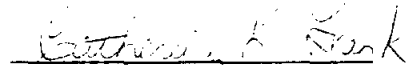
Grievant had fair notice that his actions were in direct violation of the Home's fire policy. Contrary to Grievant's claim that he was not on notice that resetting the alarm could result in

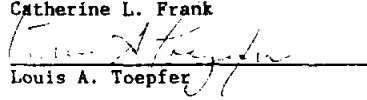
discipline because it was common for security workers at the Home to do precisely what Grievant did, the evidence indicates no other employees who had reset a fire alarm without establishing and resolving the cause of the alarm and without authorization. The fact that other security workers had reset an alarm on occasion prior to firefighters arriving on the scene, standing by itself, was not contrary to the Home's fire policy.

Also, the fact that firefighters were not met at the door by Home employees in all cases does not demonstrate lack of notice to Grievant concerning his failure to meet firefighters in this case. The evidence does not indicate that Grievant was acting in reliance on other employees' failures.

In analyzing these factors, we conclude that, by dismissing Grievant rather than imposing a lesser penalty, the Employer exercised its discretion within tolerable limits of reasonableness and did not impose excessive punishment. Ordinarily, dismissal should be the last step in a series of progressively severe sanctions. In re Muzzy, 143 Vt. 463, 476. However, this is a case where the bypass of progressive discipline was appropriate given the seriousness of Grievant's misconduct.

We need to address one final issue. Grievant was dismissed without two weeks notice or pay in lieu of notice. Article 17(A)(3) permits such action only for specified reasons. We conclude that two of the specified reasons exist here; that Grievant was guilty of "gross neglect of duty" and "conduct which places in jeopardy the life or health of a co-worker or of a person under the employee's care".


Catherine L. Frank


Louis A. Toepfer

DISSENTING OPINION

I concur with the views of my colleagues with respect to the pre-dismissal investigation, the establishment of charges against Grievant and the Board scope of review of disciplinary actions in light of the Supreme Court's Gorruso decision.

However, I disagree with the majority's conclusion that the Employer did not abuse its discretion and impose an excessive penalty by dismissing Grievant. I do not believe Grievant's actions were as serious as my colleagues believe and further conclude that he was not on fair notice that his actions may result in dismissal.

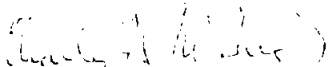
While his actions technically violated the Home's fire policy as charged and resulted in a delay of fire trucks arriving at the scene, mitigating circumstances lessened the seriousness of his actions. First, while he did not properly investigate the alarm as he should have, Grievant was proceeding toward the area of the alarm when he was told by an orderly or nurse that everything was "OK". Thus, he did not completely disregard the alarm. Second, the fact that he was able to reset the alarm indicates that there was no smoke or fire in the area of the alarm, which at least indicates that the necessity of a quick response was somewhat lessened. Third, other employees had responded to the alarm, meaning that Grievant's actions did not result in total neglect of the fire. In sum, while I do not intend to condone Grievant's actions, these mitigating circumstances indicate that no serious threat to the health or life of co-workers or Home residents existed.

Also, the lax enforcement of the fire policy at the Home indicates that Grievant was not on fair notice that his actions could

lead to dismissal. The fact that Grievant was operating under the understanding that he could reset an alarm and remove malfunctioning detectors without authorization in certain circumstances, and in fact did so without sanction, indicates that management was not enforcing its fire policy very strictly. A further indication that the policy was not being strictly enforced was that employees were not meeting firefighters at the door on some occasions, in violation of the fire policy, and management apparently was unaware of the problem. Given these circumstances, Grievant was not on notice that his first violation of the fire policy would result in the most severe sanction of dismissal.

The lack of fair notice, standing by itself, leads to the necessary conclusion that the employer abused its discretion by dismissing Grievant. In re Grievance of Yashko, 138 Vt. 364 (1980). The mitigating circumstances on the day of the incident lessening the seriousness of Grievant's actions reinforces my conclusion that the penalty of dismissal was excessive. I conclude that a lesser form of discipline would have been an appropriate penalty.

It strains credibility that in an institution the size of the Vermont Veterans Home the responsibility for insuring the protection against fire to the degree suggested by management should be the responsibility of the employee at the lowest pay grade, given the failure of personnel at higher levels to enforce what has been shown to be a confused set of standards.


Charles H. McHugh, Chairman

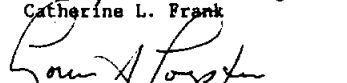
ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Ralph Thurber is DISMISSED.

Dated this 3rd day of November, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank


Louis A. Toepfer