

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)
)
CLIFFORD A. MADRU)

DOCKET NO. 79-31S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On May 23, 1979, the Vermont State Employees' Association, Inc., filed a grievance on behalf of Clifford A. Madru, a member of the Association's non-management bargaining unit, claiming that there was no just cause for grievant's dismissal from State service on April 27, 1979. The State answered this grievance on June 12, 1979. A hearing on the merits was held before Board members Robert Brown and William Kemsley in Montpelier, Vermont, on July 23, 1979. Mr. Cheney, the Board's chairman, took no part in the hearing or deliberations on this matter.

On August 2, 1979, the State filed a motion to reopen evidentiary hearings to present newly discovered evidence.

At all stages of the proceedings, the grievant was represent by Alan Rome, Esq. and the State was represented by Bennett E. Greene, Esq., Assistant Attorney General.

For the reasons stated below, the Board has dismissed the grievance and denied the State's motion to reopen.

FINDINGS OF FACT

1. Grievant was until April 27, 1979, employed by the State of Vermont as a Maintenance Mechanic B for the Military Department at Camp Johnson in Winooski, Vermont.

2. The grievant's duties included maintenance of the heating plant, including the boilers therein. This maintenance required grievant to make regular, periodic inspections of equipment, to make chemical tests of boiler fluids, and to add appropriate chemicals to forestall corrosion and scale buildup.

3. In his performance evaluation for the six-month period ending January 23, 1979, grievant was rated "3" out of "5" or better in all rated categories except absenteeism, tardiness, and dependability. In this latter category, grievant was rated "2". His overall rating was "consistently meets job requirements/standards."

4. In late January, 1979, grievant and fellow maintenance employees at Camp Johnson were required to perform so-called barrier duty for the Air National Guard. This work involved maintenance of chains and nets to hold planes which overshoot runways and related snow and ice removal.

5. Grievant and his co-worker, Herbert Nash, complained to the State through the Vermont State Employees' Association that the barrier duty was outside their job description and that they were being paid less than the federal employees who formerly did this work. This dispute was resolved by negotiations which resulted in relieving the grievant and his co-workers of responsibility for barrier duty and the creation of a new federal position to perform this work.

6. Grievant's relations with his superiors deteriorated markedly during and after the barrier duty dispute.

7. On March 30, 1979, grievant was warned in writing by his immediate supervisor, Roland Smith, that leave should be requested 24 hours in advance and that unauthorized early departure from work would result in disciplinary action; that further tardiness would not be tolerated; and grievant's

record as to absenteeism must improve during the next three months or disciplinary action, including suspension, may be imposed.

8. On April 27, 1979, grievant's supervisor, Roland Smith, gave grievant written notice of grievant's immediate dismissal from State employment. This dismissal letter had been approved by Mike Lynch, Roland Smith's supervisor, and through Lynch by Lynch's own supervisor.

9. The Board is unable to find from the evidence that Roland Smith was not an authorized representative of the appointing authority as that term is used in Article X of the applicable collective bargaining agreement. The only testimony as to Roland Smith's authority, or lack of it, was provided by witness Michael Lynch whose testimony on this subject was inconclusive.

10. Smith's dismissal letter to grievant dated April 27, 1979, specified the following reasons for dismissal:

- (a) You have worked only 5 full days since your last letter.
- (b) Item (a) is a combination of tardiness, leaving early and signing leave slips, and telling no one you would not be in the following day. (Dates are documented.)
- (c) The breaking of a valuable (\$125) instrument in your possession and not letting anyone know it was broken.
- (d) All the furnace rooms on this installation are in a sad state (one of your previous requests was that you be allowed to have this responsibility); apparently you have changed your mind.
- (e) One instance on 10 April 1979 steam was pouring from the top of building 150 and from the condensate pumps and you had to be told by Captain Lynch to repair it. Another building was wasting condensate and apparently you didn't know why it was coming from the roof as someone else adjusted the switch.
- (f) Today a chemical inspection was made of your boilers by the contractor and he relates that we will have enough chemicals for next season; so your boilers have not been treated properly.

11. After the March 30, 1979, warning letter, grievant was late for work without permission by about 1/4 hour on three occasions; grievant was

absent with permission of Roland Smith on April 2 and April 6, and grievant was on sick leave with proper clearances on April 17. Grievant was also absent from work on April 10. Grievant's supervisors received notice of this absence on April 10 from base security which relayed a message about the absence which grievant had telephoned to security that morning. There was no evidence explaining to the Board's satisfaction the reasons for this absence or the reasons why grievant notified security rather than his supervisor.

12. Grievant was fully informed as to proper procedures for leave requests at least by March 30, 1979.

13. Following March 30, 1979, grievant often took off one or two hours during the work day to park in remote areas and "goofed off."

14. During the week of April 10, 1979, a problem developed with a rooftop steam condensate trap, an appurtenance to the heating plant. Repairs to such traps were within the grievant's area of responsibility. Grievant disputed with his supervisors whether the repairs then needed could be performed without a special work order authorizing the work to be done. Grievant's immediate supervisor, Roland Smith, directed him to do the necessary work without a special work order since Smith interpreted the needed work as falling within a pending "collective work order" for the month. This collective work order authorized all routine heating system maintenance and trouble calls.

15. While performing the repairs to this steam trap, grievant disputed with Mike Lynch the extent of the job necessary to effect repairs. Grievant contended that a complete shutdown of the system was required while his superior contended that only valve adjustments were needed which could be accomplished without shutting down the system. Lynch instructed

grievant to follow Lynch's recommended course of action after some contention on the matter, and the repairs were successfully carried out by this procedure.

16. Grievant in his duties made use of a so-called TDS meter to measure properties of boiler fluids and to indicate the amount of chemical additives needed. Grievant himself had recommended that this meter be acquired.

17. Grievant was aware that the TDS meter was defective and called this fact to the attention of his co-worker, Parizo. Grievant neither reported a defect in the meter to his supervisors nor requested that Parizo do so. His superiors first learned of the problems with this meter when inquiring into a consultant's report described below that boilers had not been properly maintained.

18. Grievant was required weekly to dump trash and rag containers in boiler rooms. Grievant had previously admitted neglecting this duty claiming that he had too little time for it.

19. Boiler room cleaning duties were included in grievant's collective work orders as part of his routine responsibilities.

20. At the hearing, grievant conceded that the complaint as to the cleanliness of boiler rooms were justified but stated that this condition did not impair their function.

21. Grievant's co-worker, Parizo, observed that during the last two weeks of grievant's tenure, grievant had not performed routine boiler tests but had made log entires which indicated that tests had been done.

22. During this two-week period, grievant and Parizo spent about ninety percent of their working time together but Parizo did not observe grievant add chemicals to any of the boilers. The boiler testing was to

determine the kinds and quantities of chemicals needed for proper boiler maintenance.

23. Parizo reported his concerns about tests which had not been done, apparently fictitious log entries, and the failure to add chemicals to the grievant's supervisor, Roland Smith. Smith requested that an outside contractor examine the boilers.

24. On April 27, 1979, this contractor stated that his boiler test readings were different from the readings shown in grievant's logs. The expert concluded that boilers were out of chemical balance and attributed the problem to failure to add sufficient chemicals and failure to "blowdown" the boilers.

25. At the time of his visit, the outside contractor observed that there was a sufficient amount of chemical additives on hand to last another year although a sufficient quantity for one year's use had originally been purchased sometime before his inspection.

OPINION

The reasons for grievant's dismissal as set forth in the letter of April 27, 1979, were amply supported in the evidence. The record and findings stated above shows that grievant continued to be absent from or late for work even after formal warnings. In addition, even when nominally at work, the grievant was, in fact, frequently not on the job but rather was shirking his responsibilities by hiding in out-of-the-way locations.

The Board does not feel that all of the reasons for grievant's dismissal cited in the April 27, 1979, letter would, by their own weight alone, justify dismissal of the grievant. The circumstances surrounding the broken TDS meter and the dispute about the authority and procedure for repair of the steam traps seem to the Board to be matters which could have

been resolved by better communication or by discipline short of dismissal. The other reasons cited for grievant's dismissal, however, are of a more grave nature in the Board's judgment. Despite specific warnings on the subjects, grievant failed properly to maintain cleanliness in the boiler rooms and failed to follow appropriate procedures for absences. Of particular concern to the Board is grievant's practice of "goofing off," to use his phrase, during working hours. And, finally, grievant's inattention to proper boiler maintenance as shown by the independent contractor's examination of the boilers, and grievant's entry of misleading and fictitious readings in his logs, constitute a serious failure of the grievant to carry out his responsibilities as an employee.

Grievant's persistence after due warning to carry out his responsibilities, and the lack of confidence in grievant's integrity and reliability inspired by his performance are sufficient to establish just cause for his dismissal.

The only issue in this matter not disposed of by the preceding discussion is the appropriate disposition of the State's motion to reopen evidentiary hearings.

In filing its motion to reopen, the State has anticipated that the grievant would raise as an objection to his dismissal an issue regarding the authority of the author of the dismissal letter to effectuate such a dismissal. But grievant has not raised this issue either in the initial grievance proceedings, his brief, or at the hearing on the merits of this cause.

In light of Board Rules 23.3(c) and (e), the State's anticipation of the issue of lack of authority is premature. These Rules require that the grievance pleadings provide notice of the nature of the grievance and require specific reference to applicable contract sections. The grievant's pleadings do not raise the issue of lack of authority.

It is, of course, this Board's policy as expressed in Rule 11.13 to construe pleadings liberally and this Board's Rule 11.18 offers litigants considerable latitude in that a variance between pleadings and proof is not material unless it substantially prejudices the proceedings. In the instant case, however, as the findings above indicate, grievant has failed to establish that Roland Smith lacked authority even if the pleadings are construed to place this issue before the Board for disposition.

ORDER

The grievance in this matter is dismissed. The State's motion to reopen is dismissed.

DATED at the City of Montpelier, County of Washington, and State of Vermont this 21st day of September, 1979.

VERMONT LABOR RELATIONS BOARD


William G. Kemsley, Sr.


Robert H. Brown

FILED 9/21/79

*Appeal dismissed
pursuant to \$tip
June - 1981*