

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 96-78
MICHAEL COFFIN	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 17, 1996, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Michael Coffin ("Grievant") against the State of Vermont Department of Motor Vehicles ("Employer" or "DMV"), alleging that the Employer violated the collective bargaining agreement between the State and the VSEA for the Non-Management Bargaining Unit, effective for the period July 1, 1996 to June 30, 1997 ("Contract"). Specifically, Grievant alleges that the Employer violated Article 14 of the Contract by dismissing him because the dismissal was not based in fact, the Employer improperly bypassed progressive discipline, the Employer failed to apply discipline with a view toward uniformity and consistency, and Grievant was dismissed without just cause.

Hearings were held on April 10 and 18, 1997, in the Vermont Labor Relations Board hearing room in Montpelier before Board Members Louis Toepfer, Acting Chairman; Leslie Seaver and Richard Park. Assistant Attorney General David Herlihy represented the Employer. VSEA Assistant Legal Counsel Mark Heyman represented Grievant. The Employer and Grievant filed post-hearing briefs on May 2, 1997.

All evidence presented at the hearings in this case, and the arguments submitted by the parties, have been considered and weighed by the Board. The

following Findings of Fact made by the Board majority are based on the preponderance of the evidence, and are those necessary to a determination of the material issues presented. To the extent that the testimony of certain witnesses is not in accord with the findings herein, such testimony conflicts with the preponderance of the evidence.

#### **FINDINGS OF FACT**

1. The Contract provides in pertinent part as follows:

#### **ARTICLE 14 DISCIPLINARY ACTION**

1. No permanent . . . employee covered by this agreement shall be disciplined without just cause. The parties jointly recognize the deterrent value of disciplinary action. Accordingly, the State will:

. . .

b. apply discipline . . . with a view towards uniformity and consistency;

c. impose a procedure of progressive discipline . . .

d. In misconduct cases, the order of progressive discipline shall be:

- i. oral reprimand;
- ii. written reprimand;
- iii. suspension without pay;
- iv. dismissal.

. . .

f. The parties agree that there are appropriate cases that may warrant the State:

- i. bypassing progressive discipline . . .

3. . . . The appointing authority or authorized representative . . .  
. . . may dismiss an employee immediately without 2 weeks' notice  
or 2 weeks' pay in lieu of notice for . . .

b. gross misconduct . . .

10. In any misconduct case involving a suspension or dismissal, should the Vermont Labor Relations Board find just cause for discipline, but determine that the penalty was unreasonable, the Vermont Labor Relations Board shall have the authority to impose a lesser form of discipline.

2. *Grievant was employed by the Employer for approximately six years.*

He became a Motor Vehicle Customer Service Representative for the Employer in the Summer of 1994, and remained in that position until his dismissal effective September 28, 1996. Prior to becoming a Customer Service Representative, Grievant worked in the Department's mail operations where he had some experience processing applications. Prior to his dismissal, Grievant was not disciplined. During the period he was a Customer Service Representative, Grievant received excellent overall performance evaluations. Grievant also received several letters of commendation for his work (Grievant's Exhibits 1 - 7).

3. In his position as a Customer Service Representative, Grievant began working as a counter representative in August, 1994, and was working in that capacity on September 16, 1994. Counter representatives are responsible for processing numerous types of transactions, including applications for driver licenses and non-driver identification cards.

4. In processing an application for a non-driver identification card with a photograph, a counter representative is required to use a computer to access the Employer's database. The counter representative has the duty to verify the information presented by the applicant by comparing it to information entered into the database from a previous identification card transaction. The applicant is located

on the DMV database by entering the applicant's personal identification number ("PID") or by identifying various other identifying data such as the applicant's name and address. The PID is a unique number that appears on each DMV record associated with an individual. It is generated when a person first is involved in a DMV transaction. The DMV database contains the information which appears on a license, including the person's birth date, address, etc. If a PID number exists, the counter worker verifies that the personal information, such as mailing address, date of birth, etc., in the system is the same as the information contained on the current application being processed. Any changes need to have supporting documentation, such as a birth certificate for a date of birth. The counter representative makes no changes to the information on the DMV database during the transaction with the customer. If no PID number exists, the computer will generate a PID number for that individual's record.

5. Once the information is verified or any changes from the DMV database are appropriately noted, the counter representative calculates the fee and uses a separate piece of equipment, an audit machine, when payment for the transaction is accepted. The audit machine consists of a numeric keyboard, a cash drawer, and a printer which prints information on the "audit line" on the document being processed. The audit line contains the date the transaction was processed, the identifying number of the machine, the number of the batch of transactions currently being processed, the number of the transaction within that batch, the PID of the customer, and the fee collected. The audit machine automatically prints all the information except the PID and the dollar amount, both of which must be keyed in

by the employee. The audit machine is not electronically linked with the DMV database or the computer that generates the photograph identification cards.

6. The counter representative then moves to a different machine to take the applicant's photograph and make the identification card. A separate computer and photo-imaging machine is used to make the card. A photo is taken and the counter representative types in the verified information contained on the application onto a template contained in the computer. The computer then generates an identification card which is then laminated and issued to the applicant.

7. The process of reviewing an application is referred to as "rating". *Rating consists of reviewing the application for errors and omissions, verifying any information that must be verified, and calculating the fee to be collected for the transaction.* Each DMV employee, including counter representatives, that rates documents is assigned a "rater number" that is supposed to be entered on each document processed to identify the rater who processed the document.

8. Once a transaction is completed, the application and any supporting documents are then forwarded to the Quality Control section of DMV for data entry processing. In the case of an initial non-driver identification application, the Quality Control employee must verify the presence of necessary supporting documentation. When a renewal of a non-driver application is involved, the Quality Control employee looks for documentation only if a change requiring documentation has been indicated by the rater. The Quality Control employee relies on the rater to check off the appropriate boxes on the form if there have been changes to the information

that is on the DMV database. If changes are not noted by the rater, the Quality Control employee does not make any data entry changes.

9. On May 13, 1991, Lisa Ormiston applied for and received a non-driver identification card. She presented documentation which showed her birth date to be September 22, 1974. Her mailing address was listed as Box 871 in Montpelier, and she indicated her legal residence was Monsignor Crosby Avenue in Montpelier. Her height was listed as 5'4" and her weight as 130 pounds. The information was entered into the DMV database. The expiration date for the non-driver identification card issued to Ormiston was September 22, 1994 (State's Exhibits 5, 6).

10. As of September, 1994, Ormiston was involved in a relationship with Leonard Gallagher, a DMV employee. Gallagher was the father of Ormiston's child. Grievant was a friend of Gallagher's and knew Ormiston. Shortly before September 16, 1994, Ormiston, Gallagher, Grievant and others made plans to go to the Tunbridge Fair which was being held the weekend following September 16. The plans included going into the beer tent at the fair. Shortly before September 16, Gallagher, Ormiston and Grievant had a discussion about Ormiston getting a "fake" non-driver identification card allowing her to get into the beer tent. At the time, Ormiston was 19 years old, several days shy of her 20th birthday. The legal drinking age in Vermont is 21 years old.

11. On September 16, 1994, Grievant was working as a counter representative in the Montpelier DMV office. Grievant was using audit machine #3 that day, along with counter representative Jennifer Ghouri-Gallegos. Ghouri-Gallegos had many years experience as a counter representative and was available

to answer questions from Grievant due to his relative inexperience in that position. Grievant and Ghouri-Gallegos each had their own counter position with a computer terminal to access the DMV database. Their stations were located back-to-back. The audit machine was between them.

12. On September 16, Ormiston applied for a renewal of her non-driver identification card at the Montpelier DMV office. Her application indicated a mailing address of 207 Barre Street in Montpelier, a change from her 1991 application. Her height was listed as 5'2" and her weight as 135 pounds, both changes from her 1991 application. She stated on the application that her birth date was September 22, 1973, one year earlier than indicated on the 1991 application (State's Exhibit 5).

13. Ormiston brought her application to Grievant's counter. Grievant accessed the DMV database and wrote Ormiston's PID number on her application. Ormiston did not present documentation to support the change in birth date. Contrary to the Employer's policy, Grievant did not ask her to present documentation. Grievant also did not check off the changes on the application concerning address, height and weight. Grievant further did not place his rater number on the application. Grievant processed Ormiston's application on audit machine #3. Grievant then used the separate computer and photo-imaging machine to make the non-driver identification card for Ormiston. In typing the information contained on the application onto the template contained in the computer to create the card, Grievant typed in Ormiston's birth date as September 22, 1972, even though Ormiston on the application had indicated September 22, 1973, as her birth date and the 1991 application had September 22, 1974, as Ormiston's birth date. Grievant then gave

Ormiston a laminated identification card with Ormiston's birth date indicated as September 22, 1972 (State's Exhibit 5).

14. Although it is not unusual for DMV employees to make errors in processing documents and applications, the number of errors made by Grievant in processing Ormiston's application was highly unusual. At the time he processed Ormiston's application, Grievant was sufficiently trained to adequately process non-driver identification cards independently (State's Exhibit 5, Grievant's Exhibits 13, 14).

15. At the time Grievant issued Ormiston the non-driver identification card, he knew that Ormiston was not 21 years old, and that neither September 22, 1973, nor September 22, 1972, were Ormiston's correct birth date. He typed in September 22, 1972, as Ormiston's birth date so that the non-driver's identification card would indicate that she was over 21 years old.

16. The Employer did not discover the problems with the non-driver identification card issued Ormiston in September, 1994, until June, 1996. A woman called the Montpelier DMV office then and spoke with Bonnie Rutledge, the Director of Operations for the Employer. The caller claimed that she was Lisa Ormiston's mother, and reported that her daughter had been issued a non-driver identification card with a false birth date. It was later determined that the caller was not Ormiston's mother.

17. Rutledge looked into the caller's claims by reviewing DMV records. Rutledge determined that there were discrepancies in the non-driver identification cards issued to Ormiston, most notably that there was a change in birth date from



September 22, 1974, on the 1991 application to September 22, 1972 on the 1994 application. Also, Rutledge discovered that the changes appearing on the 1994 application were not entered into the DMV database because the changes had not been checked off by the rater of the 1994 application. Two DMV investigators subsequently conducted an investigation of the situation (State's Exhibits 3, 4, 12).

18. On August 22, 1996, Richard Boulanger, Chief of Human Resources for the Employer, sent a letter to Grievant which provided in pertinent part as follows:

As a result of your behavior described below, the Agency of Transportation is contemplating your dismissal from the position of Customer Service Representative III . . .

The reason(s) dismissal is contemplated is as follows:

In September 1994 you processed the application for Lisa M. Ormiston to obtain a Non-Drivers Identification. You knew from DMV records that Ms. Ormiston already had such an ID card which established that her verified age was 19. Nonetheless, you issued her an ID indicating that she was 21 yrs. old, knowing that she could use that ID to violate the State's laws prohibiting consumption of alcohol by minors. You failed to place your worker code on related documents in violation of your training and the practice you otherwise consistently followed on other transactions. The investigation revealed that these actions may have been part of a pattern of behavior, since you have previously created at least one other bogus identification card - i.e., one for your dog.

1. These actions constitute a criminal violation of 23 VSA 202 in that you knowingly aided Ms. Ormiston in obtaining a Non-Driver's identification card by processing her application knowing she was falsely representing her age.
2. Your actions violate rules for state employee conduct which are stated in the Rules and Regulations for Personnel Administration . . .
3. Your actions, further, represent a violation of the public trust placed in you to administer your work with honesty and integrity; they have the potential of creating embarrassment for and undermining the effectiveness of

DMV; they may bring discredit to the reputation of DMV; and they may undermine public confidence in the integrity of the Identification Card system as a whole . . .

(State's Exhibit 1)

19. Boulanger provided Grievant with an opportunity to meet with him before the final decision was made whether to dismiss Grievant. Boulanger met with Grievant, Grievant's attorney and VSEA Field Representative Gary Hoadley on September 5, 1996. On September 25, 1996, Boulanger sent Grievant a letter which provided in pertinent part as follows:

The decision has been made to dismiss you from your Motor Vehicle Customer Service Representative III position for gross misconduct effective September 28, 1996 . . .

You are being dismissed for the reasons which are in the August 22, 1996 Loudermill (letter). This is a violation of State law, Rules and Regulations for State Personnel Administration as well as Department policy, and is sufficient to warrant dismissal. The adverse impact upon the Department of Motor Vehicles is considerable; your position was one of trust, and you have irrevocably violated that trust. Your fellow workers and Motor Vehicles management no longer have confidence in your ability to perform your duties accurately and honestly.

(State's Exhibit 2)

20. In February, 1995, Grievant made a "joke" commercial driver's license for his dog with the name "Sir Maxwell Coffin" on it. Grievant attached the "license" to his computer terminal so that it could be seen by other employees. Other employees had made similar joke identification cards in the past, and had not been disciplined for making or displaying such cards (Grievant's Exhibit 8).

21. Grievant knew during his employment that falsification of a license or identification card could result in his dismissal.

### MAJORITY OPINION

Grievant contends that the Employer violated Article 14 of the Contract by dismissing him because the dismissal was not based in fact, the Employer improperly bypassed progressive discipline, the Employer failed to apply discipline with a view toward uniformity and consistency, and Grievant was dismissed without just cause.<sup>1</sup>

The ultimate criterion of just cause is whether an employer acted reasonably in discharging an employee for misconduct. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). There are two requisite elements which establish just cause for dismissal: 1) it is reasonable to discharge an employee because of certain conduct, and 2) the employee had fair notice, express or fairly implied, that such conduct would be grounds for discharge. Id. In re Grievance of Yashko, 138 Vt. 364 (1980).

We first decide whether the Employer has established the charges made against Grievant in the dismissal letter. The burden of proof on all issues of fact required to establish just cause is on the employer, and that burden must be met by a preponderance of the evidence. Grievance of Colleran and Britt, 6 VLRB 235, 265 (1983). The Employer charged Grievant with knowingly issuing Lisa Ormiston a non-driver identification card bearing a false birth date indicating that she was 21 years old, when she was in fact 19 years old, knowing that Ormiston could use the

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<sup>1</sup> In addition to these issues, Grievant filed a Motion to Amend on March 31, 1997, seeking to amend his grievance to further allege that the Employer improperly denied him the opportunity to continue his insurance coverage after his dismissal in violation of Article 14 of the Contract. The parties have not briefed this issue, so it is not clear Grievant continues to pursue it. Nonetheless, we deny the motion. It states a cause of action separate from the dismissal. Grievant has not established this issue can be appropriately attached to a dismissal grievance without first pursuing it through the lower steps of the grievance procedure.

identification card to violate the State's laws prohibiting consumption of alcohol by minors. The Employer also charged Grievant with failing to place his worker code (i.e., his rater number) on the documents related to the Ormiston transaction. We have found by a preponderance of the evidence that the Employer has established these charges.

The charges against Grievant having been proven, we must determine whether the discipline imposed by the employer is reasonable given the proven facts. *Id.* at 266. We look to the factors articulated in Grievance of Collieran and Britt, 6 VLRB 235, 268-69 (1983), to determine the legitimacy of the particular disciplinary action. The pertinent factors here are: 1) the nature and seriousness of the offense, and its relation to Grievant's responsibilities, including whether the offense was intentional; 2) the effect of the offense upon supervisors' confidence in Grievant performing his duties; 3) the clarity with which Grievant was on notice that such conduct could lead to discipline; 4) the notoriety of the offense or its impact upon the reputation of the agency; 5) the employee's past work record and disciplinary record; 6) potential for the employee's rehabilitation; and 7) the adequacy and effectiveness of alternative sanctions.

Grievant's offense was serious. Dishonesty by employees is grounds for serious punishment, and dismissals for dishonesty have been upheld in several cases by the Board and the Vermont Supreme Court. Grievance of Graves, 7 VLRB 193 (1984); *Affirmed*, 147 Vt. 519 (1986). Grievance of Cruz, 6 VLRB 295 (1983). Grievance of Barre, 5 VLRB 10 (1982). Grievance of Carlson, 140 Vt. 555 (1982). As a customer service representative for the Department of Motor Vehicles, Grievant

had the responsibility to preserve the integrity of the identification system in completing transactions. In issuing a false identification card to a person under age 21 allowing her to illegally consume alcohol, Grievant intentionally and deceptively compromised the integrity of this system.

Grievant's conscious violation of departmental policy and the public trust was sufficiently egregious to undermine both the Employer's and the public's confidence in his continued ability to perform his duties. Grievance of Gregoire, \_\_\_ Vt. \_\_\_, Sup.Ct. Doc. No. 95-228, slip op. at 9-10 (1996). Grievant failed in his obligation to perform his duties with honesty and integrity. His supervisors understandably lost confidence in his ability to honestly perform his duties. His offense further had the potential for bringing discredit to the reputation of the Department of Motor Vehicles and undermining public confidence in the integrity of the identification system as a whole.

Grievant was on fair notice his dishonesty could be a cause for dismissal. Honesty is an implicit duty of every employee, and Grievant knew that dishonest conduct was prohibited. Carlson, 140 Vt. at 560. We recognize that Grievant had a good work record and previously had not received disciplinary action. Given the serious nature of the deceptive conduct in which he engaged, however, and there being no evidence indicating Grievant was treated differently than other employees committing similar offenses, the Employer acted reasonably in concluding that Grievant was not a good candidate for rehabilitation and that a lesser sanction would

not have been adequate. In sum, we conclude that just cause existed for Grievant's dismissal.

  
Leslie G. Seaver

  
Richard W. Park

DISSENT

I dissent from the Findings of Fact, Opinion and Order issued by the Board majority.

  
Louis A. Toepfer, Acting Chairperson


ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Michael Coffin is DISMISSED.

Dated this 26th day of June, 1997, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Leslie G. Seaver

  
Richard W. Park