

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 99-35
JUDY CORROW	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 4, 1999, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Judy Corrow ("Grievant"). Therein, Grievant alleged that the State of Vermont Department of Corrections ("Employer") violated Article 14 of the collective bargaining agreement between the State and VSEA for the Corrections Bargaining Unit, effective July 1, 1997 to June 30, 1999 ("Contract"), by dismissing Grievant without just cause, improperly bypassing progressive discipline, and failing to apply discipline with a view toward uniformity and consistency. On August 30, 1999, Grievant filed a motion to amend her grievance to further allege that the Employer failed to apply discipline in a timely manner in violation of Article 14 of the Contract. On September 1, 1999, the Employer notified the Labor Relations Board that it did not oppose the motion to amend.

Hearings were held in the Labor Relations Board hearing room in Montpelier on December 17, 1999, and January 12 and 20, 2000, before Board Members Catherine Frank, Chairperson; Carroll Comstock and Richard Park. Assistant Attorney General William Reynolds represented the Employer. Mark Heyman, VSEA Deputy Legal Counsel, represented Grievant. The parties filed post-hearing briefs on February 18, 2000.

FINDINGS OF FACT

1. Article 14 of the Contract, entitled "Disciplinary Action", provides in pertinent part as follows:

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:

(a) act promptly to impose discipline . . within a reasonable time of the offense;

(b) apply discipline . . with a view toward uniformity and consistency;

(c) impose a procedure of progressive discipline . . .

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

(1) oral reprimand;

(2) written reprimand;

(3) suspension without pay;

(4) dismissal.

...

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

(1) bypassing progressive discipline . . .

...

2. The appointing authority or authorized representative . . . may dismiss an employee for just cause with two weeks' notice or two weeks' pay in lieu of notice . . . In the written dismissal notice, the appointing authority shall state the reason(s) for dismissal . . .

...

7. Whenever an employee is required, by his or her supervisor or management, to give oral or written statements on an issue involving the employee, which may lead to discipline against the employee, or whenever an employee is called to a meeting with management where discipline is to be imposed on an employee, he or she shall be notified of his or her right to request the presence of a VSEA representative and, upon such request, the VSEA representative shall have the right to accompany the employee to any such meeting. The notification requirement shall not apply to the informal initial inquiry of the employee by his or her supervisor without knowledge or reason to believe that discipline of the employee was a likely possibility . . .

...

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. Department of Corrections Work Rules provide in pertinent part:

...

4. Employees shall be honest and complete in their descriptions, whether given orally or in writing, to the employer of events occurring in the work place and in all other circumstances related to their employment.

5. Employees shall cooperate fully with any inquiry or investigation, whether formal or informal, conducted by the Department. This shall include answering fully and truthfully any questions related to their employment.

...

7. No employee shall engage in a sale or lease of property to or from an offender, hire offenders for work or provide services or goods to offenders, except with the permission of supervisory authority. No employee shall lend money to or borrow money from an offender or accept gifts or gratuities from and give gifts or gratuities to an offender.

...

9. No employee, whether on or off duty, shall comport himself or herself in a manner that reflects discredit upon the Department.

...

13. Romantic and/or sexual relationships between employees and offenders under any type of Department control or supervision are strictly prohibited. Actions are also prohibited which, in the opinion of the appointing authority, given the appearance of an improper relationship between an employee and an offender. These include, but are not limited to: hugging, kissing, hand-holding and unofficial correspondence . . .

(State's Exhibit 8)

3. In June, 1995, Grievant read the Department of Corrections Work Rules (State's Exhibit 8).

4. Grievant worked for the Employer from the fall of 1982 until she was dismissed in May, 1999. Grievant was first employed as a temporary correctional officer at the Northeast Regional Correctional Facility ("NRCF") in St. Johnsbury; she subsequently served as a Correctional Officer 1 and Correctional Officer 2 at the facility. In 1995, Grievant moved to the Caledonia Community Work Camp ("CCWC") in St. Johnsbury. She initially was a facility shift supervisor at CCWC, and subsequently worked as a Work Crew Foreman.

5. At the time Grievant began working at CCWC, it was jointly managed with the NRCF. In 1998, the Employer began operating CCWC as a separate entity from the NRCF. James Donnon started at CCWC in September 1997 as Camp Leader. He became

Superintendent of CCWC in June, 1998. Offenders incarcerated at the CCWC work on projects in the community under the supervision of a Work Crew Foreman. They also attend classes at the facility, perform maintenance work at the CCWC, and make signs at CCWC's sign shop for state government agencies. As Work Crew Foreman, Grievant supervised work crews on projects in the community. She also performed administrative tasks at the camp such as computer work and processing inmate grievances. Grievant's immediate supervisor was Christopher Owens.

6. Grievant has had a good performance record at CCWC. She received overall performance ratings of "excellent" on her performance evaluations for the rating periods October 24, 1994 to October 24, 1995, and October 24, 1995 to October 24, 1996 (Grievant's Exhibits 1, 2).

7. Carter Reeves was incarcerated at the CCWC from August, 1997, until June 25, 1998 for a violation of probation on a driving while intoxicated conviction. Reeves and Grievant met in the fall of 1997 when Reeves began going out on work crews. Grievant supervised Reeves in 1997 and 1998. Grievant liked Reeves and became friendly with him.

8. In March of 1998, Reeves was interested in purchasing a Harley-Davidson motorcycle. Reeves saw an ad in a magazine for a particular Harley-Davidson motorcycle and made plans to purchase it. Grievant was aware that Reeves was interested in purchasing a motorcycle. Reeves asked Grievant if he could telephone the dealership in Norton, Massachusetts, to see if the motorcycle was still available. On March 26, 1998, Reeves, using Grievant's State authorized telephone access code, called the dealership (State's Exhibit 7).

9. On April 25, 1998, Reeves, in Grievant's presence, used Grievant's State authorized telephone access code to call a Harley-Davidson shop in Littleton, New Hampshire to see if they would pick up the motorcycle in Norton, Massachusetts. Reeves was told that the Littleton shop could not pick up the motorcycle.

10. During the spring of 1998, beginning in late March, Grievant had several lengthy telephone conversations with Reeves' mother, Helga Reeves. Grievant placed calls from her residence in Lyndonville, Vermont, to Helga Reeves in New Smyrna Beach, Florida. Among the topics of discussion during these conversations was Helga Reeves purchasing the motorcycle in Massachusetts for Carter Reeves, and Grievant agreeing to pick up the motorcycle in Massachusetts (State's Exhibit 24).

11. At some point after April 15, 1998, Grievant and two of her co-workers, Nora Quinn and Laurie Cote, drove down to Norton, Massachusetts, in Quinn's truck to pick up Reeves' motorcycle. Grievant stored the motorcycle at Quinn's residence until Reeves' release from the work camp. Helga Reeves sent Grievant a check for \$300.00 to reimburse her for expenses in picking up the motorcycle. Grievant cashed the check and gave some of the money to Quinn for gas, food and storage.

12. By early May, 1998, Helga Reeves mailed Grievant a pair a jeans and a jacket for Carter Reeves. In early May, 1998, Grievant wrote a letter to Carter Reeves on Days Inn stationery and mailed it to Reeves at the work camp. The letter provided in pertinent part:

Hi! Got your jacket and pants that Mom sent the jacket is beautiful! Your (sic) going to love it. One thing is for certain – your (sic) going to be much too sexy looking to send out on the streets. Everyone will be after you! . . . The black jeans I want to wash before you wear them. Is that okay with you? . . . I hope they don't shrink. You don't need your pants to pull up on your boots. Or pull in your crotch! (Ha Ha) . . . By the way. – I've got something for you to think about. – Shoe size –

You never let me say that a 8 to 9 ½ is the perfect fit. Most will stay harder, longer and are much more easier to handle. You better be smiling – This knowledge is coming to you first hand! . . . I wish you could be here to try this stuff on! This is driving me crazy . . . You only have 56 more days . . . (emphasis in original) (State's Exhibit 1).

13. Grievant's reference to "shoe size" actually was a joking reference to penis size. Grievant's statement about Reeves only having "56 more days" was a reference to the number of days before Reeves' release from CCWC.

14. Reeves and Grievant agreed that Reeves would live at Grievant's house after his release. As part of the living arrangement, Reeves was to pay rent and do maintenance and repair work.

15. Helga Reeves purchased a red Dodge Ram truck for Carter Reeves to be used by him upon his release. Grievant arranged with Helga Reeves to pick up the truck and bring it back to her residence until Carter Reeves' release from the work camp. Grievant and her daughter drove to Montpelier in May, 1998, to pick up the truck at a garage. Grievant took the truck back to her residence. Grievant allowed Helga Reeves to use Grievant's address when Helga Reeves registered the truck with the Vermont Department of Motor Vehicles. On one occasion in May, 1998, Grievant washed and waxed the truck at her residence.

16. Prior to May 26, 1998, Helga Reeves mailed Grievant a package containing an air cleaner ring insert for Carter Reeves' motorcycle. Grievant wrote Carter Reeves a letter dated May 26, 1998, and mailed it to him at the work camp on May 27, 1998. The letter provided in pertinent part:

Got a package from Mom today. Got your air cleaner ring insert or what you call it! . . . As of this writing – 35 days to go! . . . I'm still looking for a driver for a truck! I had one application but he didn't sound too good. (Ha Ha). . . (State's Exhibit 2)

17. Grievant's reference to "35 days to go" was the number of days before Reeves' release from the work camp. The reference to looking for a driver for a truck was a reference to Reeves' Dodge Ram truck.

18. During the week prior to the Memorial Day weekend in 1998, Grievant wrote Reeves a letter that she delivered to him at the work camp. The letter states in pertinent part:

Hi!

I've got a nice pick-up truck sitting in my driveway. All it needs is a driver! Do you know of anyone who would be interested? I'm only picking on ya. The truck is beautiful! You'll be impressed. I washed + waxed it on Saturday! . . . Once again – I wish you were here to see it . . .

Hey, how would you like to share a king size bed? I don't know how long your (sic) staying or what your plans are. I hate to go buy a bed because you may not like it. I have a TV, phone and an air conditioner in my room. Think about it. If that doesn't suit you, then you may have a bed that you hate. Besides – you (sic) 30 now. Its not as if you've never slept with a woman before. Besides that I trust you. . . . Tonite (sic) I (sic) sending you a hug and a kiss to get you to go to sleep and stop worrying . . . (State's Exhibit 3)

19. Approximately three weeks before Reeves was released from work camp, Grievant delivered a note to Reeves at the work camp providing in pertinent part:

. . . The person that you are now is the one I like a whole lot! . . . You have a person who likes you for being you. I ask again – What more do you want?! I would try to make sure you have it. Think about it – if there's more you want and need let me know and you'll have it! (emphasis in original) (State's Exhibit 4)

20. Grievant delivered a letter to Reeves at the work camp providing in pertinent part:

. . . I really can't wait to spend some private time with you. I really really would like a squeeze from you. Like – right now! You better smile about that one. By listening to you today – I really do think I'm going to like and enjoy having you around. We do have a lot in common. You seemed surprise (sic) when I said – Do what you want – I trust you. Seriously – I do. . . (emphasis in original) (State's Exhibit 5)

21. Helga Reeves sent Grievant a check dated June 15, 1998, for \$250.00 as payment in advance for Carter Reeves' rent. Grievant cashed the check (State's Exhibit 28).

22. Shortly before Reeves' release from the work camp, Grievant drove Reeves' truck to the work camp and parked it in the lower parking lot at the camp, which is the visitors' parking lot. Employees regularly park in the upper parking lot at the camp. Grievant brought Reeves out of the work camp to show him the truck and allow him to put on the license plates.

23. On Sunday, June 21, 1998, Grievant was not scheduled to work. She went to the CCWC that day. She was leaving the following day to go to a bowling tournament in Iowa, and was not scheduled to return home for a week and a half. While at the work camp on June 21, Grievant completed the logging of work on the computer. She notified Donnon and Owens by e-mail that this work had been completed. Grievant also went to the building where Reeves was lodged. Grievant told Reeves that she was taking him to the sign shop because he was going to be working on signs for State agencies when she was on vacation. She brought Reeves out of the side gate of the work camp and led him to the building where the sign shop is located. It is unclear what occurred between Grievant and Reeves in the sign shop (Grievant's Exhibit 13).

24. There is no evidence that Reeves completed any work on signs while Grievant was on vacation. Reeves was released from the work camp on Thursday, June 25. There are no records indicating that Reeves performed any work on signs between June 21 and his release. During that time, he spent some of his time working at a fire department and a park. On August 5, 1998, Grievant wrote a monthly report to Owens which



accounted for all the work done by inmates for the month of June 1998. The monthly report did not indicate that any work was done by inmates on signs. If any significant work had been done on signs, it would have been indicated on the monthly report (State's Exhibits 26, 29, 30, 32).

25. Reeves was released from the CCWC on June 25, 1998. Grievant's daughter, Stacy Corrow, picked Grievant up at the work camp and drove him back to Grievant's house.

26. Grievant returned home from her Iowa vacation on July 3 or 4, 1998. Reeves lived with Grievant and her daughter in Grievant's home until July 14, 1998. While Reeves was staying at Grievant's residence, he typically slept in the living room, either on the floor or the couch. During the time Reeves stayed with Grievant, she had many arguments with him about his drinking and not doing tasks around the house. Grievant and Reeves had consensual sexual intercourse on July 8 or 9, 1998.

27. On the evening of July 13, 1998, Grievant brought Reeves to a CRASH meeting in Newport, Vermont. After the meeting, Grievant and Reeves returned to Grievant's home. Reeves was intoxicated. Grievant and Reeves argued about Reeves' drinking problem. At one point, Reeves entered Grievant's bedroom. Grievant asked him to leave the bedroom, and Reeves refused. Grievant told Reeves that she wanted him to leave her house. Reeves refused. Grievant then called Reeves' mother, who was staying with her daughter in South Carolina, and told her that she wanted Reeves out of her home the next day. Reeves talked to his sister and mother on the telephone; he became agitated with them and made threats against them. After the telephone call, Reeves made threats and engaged in threatening behavior towards Grievant. He also said he was going to go on

a shooting spree and kill police officers. Grievant attempted to leave but was not allowed to by Reeves. Reeves sexually assaulted Grievant. Reeves did not allow Grievant to leave her bedroom until the following morning.

28. On the morning of July 14, 1998, Grievant left her home to go to work. On the way to work, she became upset and instead went to the Vermont State Police barracks in St. Johnsbury. When she arrived there, she called the CCWC and indicated that she was at the State Police barracks and was not coming to work that day. Grievant spoke with Trooper Gordon Lambert and informed him of Reeves' threats to go on a shooting spree and kill police officers. Grievant did not tell Lambert at that time that Reeves had sexually assaulted her. Lambert advised Grievant to go to the courthouse to obtain a temporary restraining order against Reeves. At some point while Grievant was at the barracks, Gail Dwyer, a coworker, came to the barracks to be with her.

29. Dwyer and Grievant went to the District Court in St. Johnsbury. Grievant completed an affidavit in support of a request for emergency relief from abuse. In the affidavit, Grievant detailed Reeves' drinking problem and the threats Reeves had made the previous night against her, Reeves' sister and police. She requested the immediate removal of Reeves from her home and a prohibition on Reeves contacting her. Grievant did not mention in the affidavit that Reeves had sexually assaulted her. Grievant obtained a temporary restraining order against Reeves (Grievant's Exhibit 10).

30. Reeves was served with a restraining order later that day. In the afternoon, the State Police brought Reeves to Grievant's residence to remove his personal property. As he was leaving the house, Reeves told Grievant "I'll have your fucking job", or words to that effect.

31. After obtaining the restraining order, Grievant told her mother and Dwyer that Reeves had sexually assaulted her the previous night. After conversations with her mother and Dwyer, Grievant told State Police Detective Walter Goodell on July 15, 1998, of the sexual assault (Grievant's Exhibit 11, pages 6 – 12).

32. On July 28, 1998, Reeves was arrested and charged with one count of sexual assault, felony, and one count of unlawful restraint 2<sup>nd</sup> degree, felony (Grievant's Exhibit 11).

33. On July 15, 1998, Dwyer and caseworker Linda Britt told CCWC Superintendent Donnon that Reeves had sexually assaulted Grievant. Donnon knew at this time that Reeves had been living in Grievant's house since his release. Sometime after July 15, Donnon informed Jackie Kotkin, the Employer's Assistant Director of Correctional Services, of the reported assault on Grievant and that Reeves had been living with Grievant since his release. Kotkin asked Donnon if there were any allegations of an improper relationship between Grievant and Reeves prior to Reeves' release. Donnon responded that there was no such information.

34. Grievant returned to work approximately a week after the sexual assault. At some point thereafter, Grievant discovered that a coworker, Elizabeth Rice, had information that another employee had been discussing the assault with an inmate at CCWC. Grievant asked Owens that the matter be investigated. Owens questioned Rice on two occasions seeking information on who the employee and inmate were that were discussing the assault. Rice refused to provide the information to Owens. Donnon told Owens to inform Rice that she would be reprimanded if she continued to refuse to provide the information. Prior to Owens again questioning Rice, Rice left employment at the

CCWC. No disciplinary action was taken against Rice for her refusal to provide the information to Owens.

35. On October 8, 1998, David Williams, Reeves' attorney for the criminal charges against him, deposed Grievant. Grievant testified as follows about her relationship with Reeves:

Williams: What kind of relationship did you develop with him from the time you first met him until Carter got out in June of 1998.

Grievant: A very professional relationship.

Williams: What do you mean by that?

Grievant: Carter was treated like any other inmate down there.

Williams: You treated Carter just like you treated the other however many inmates that are down there?

Grievant: That's correct.

Williams: Between 90-100?

Grievant: That's correct.

Williams: Did you take any special interest in Carter?

Grievant: What do you mean by special interest?

Williams: Well, you say you treated him the same as all the other inmates. Did you take any particular kind of special interest in Carter?

Grievant: No.

Williams: And it's your testimony today that you treated him like any other inmate down there. Professionally, you mean like at arms length.

Grievant: Yes.

Williams: Did you develop any kind of personal interest in Carter?

Grievant: No.

Williams: At all?

Grievant: No.

Williams: You're sure about that?

Grievant: Yes, I'm sure about that.

...

Williams: Did you have any personal feelings for him?

Grievant: As in?

Williams: Any at all. You said you had a professional relationship.

Grievant: I did have a professional relationship with him.

Williams: Okay, did you have any personal feelings for him?

Grievant: Can you be more specific?

Williams: Did you like him?

Grievant: Yes I liked him.

Williams: Okay. When you say liked him, could you explain what you mean by that?  
Grievant: He was a decent person, he was a good worker, he was a role model inmate.  
Williams: Okay, anything else?  
Grievant: No.  
Williams: Did you have any expectation that you and he would start a relationship of any sort?  
Grievant: None.  
Williams: None at all?  
Grievant: No.  
Williams: You're sure of that?  
Grievant: Yes I'm sure of that.  
...  
(State's Exhibit 6, pages 5-6, 20-21)

36. In the fall of 1998, Assistant Attorney General Marie Salem received a request for Grievant's training records from Reeves' attorney, David Williams. As a result of that request, Salem came into possession of Grievant's affidavit concerning the sexual assault by Reeves. Salem asked Kotkin if she knew that Reeves was living with Grievant at the time of the assault. Kotkin responded that she was aware Reeves was living with Grievant. Salem advised Kotkin to speak further with Grievant about her relationship with Reeves.

37. On November 2, 1998, Kotkin instructed Donnon to speak with Grievant about her relationship with Reeves. On November 3, 1998, Donnon met with Grievant. Donnon did not tell Grievant that she had a right to VSEA representation during this meeting. Donnon asked Grievant if there was anything else in the background that he should know. Grievant responded that there was nothing else. There is no evidence that, in asking this question, Donnon made it clear to Grievant that he was asking her about her relationship with Reeves prior to his release from CCWC. There also is no evidence that Donnon asked Grievant whether her relationship with Reeves violated Work Rules.

38. Reeves' criminal trial was scheduled for December 28, 1998. Prior to the trial, there were many rumors at CCWC stemming from the upcoming trial concerning misconduct at the CCWC. Owens spoke with Donnon in December about allegations he had heard from employees that employees John Duquette and Marshall Cote had borrowed money from Reeves while he was an inmate at the facility. Owens also reported to Donnon that it had been alleged that there was a gambling pool in the kitchen of the work camp. Shortly thereafter, Donnon informed Kotkin of the allegation concerning Reeves loaning money to employees. The Employer did not initiate an investigation into these allegations at that time. At the time of the hearings in this case, there was an ongoing investigation by the Employer concerning the allegations that Reeves had loaned money to employees.

39. Prior to Reeves' trial, Reeves accepted a plea bargain in which he pleaded no contest to three misdemeanor charges. The sexual assault felony charge was reduced to a domestic assault misdemeanor charge (Grievant's Exhibit 11).

40. The Employer did not gain possession of the five letters Grievant delivered to Reeves at the work camp in the spring of 1998 until mid-January 1999. By letter dated January 26, 1999, Donnon informed Grievant that the Employer had initiated an investigation into whether Grievant had violated Department Work Rules as a result of her relationship with Reeves (State's Exhibit 11).

41. On February 16, 1999, Grievant and her attorney, Mark Heyman, met with Donnon and Candy Beyer in an investigatory meeting in Donnon's office. At the meeting, Grievant characterized her relationship with Reeves as professional while he was at the work camp. She indicated that she did not believe she had a romantic relationship with Reeves while he was an inmate at the camp. Grievant indicated that she had delivered two

letters to Reeves while he was at the work camp, and had left other letters for him at her home for Reeves to review when he was released from the camp. Grievant admitted that she had picked up Reeves' truck at the dealership, brought it to her home, and washed and waxed it in preparation for Reeves' release. Grievant indicated that she did not lie to Donnon at the November 3, 1998, meeting with him but did not confide in him concerning circumstances of her relationship with Reeves. Grievant told Donnon that she accepted responsibility for her actions and stated that nothing similar would happen in the future (State's Exhibit 10).

42. By letter dated February 23, 1999, Donnon informed Grievant that she was temporarily relieved from duty with pay until the Employer completed its investigation (State's Exhibit 12, Grievant's).

43. The Employer obtained possession of the October 8, 1998, deposition Grievant had given in Reeves' criminal case in mid-March 1999 after having a subpoena issued to produce it (State's Exhibit 6).

44. On April 12, 1999, Donnon sent Grievant a *Loudermill* letter providing in pertinent part:

As result of your behavior described below, the Department of Corrections is contemplating your dismissal from the position of Correctional Work Crew Foreman. You have the right to respond to the specific allegations listed below, either orally or in writing, before the final decision is made. You have the right to be represented by VSEA, if applicable, or private counsel, at your own expense, during proceedings connected with this action.

The reasons dismissal is contemplated are as follows:

1. It appears that you had a romantic, sexual and/or inappropriate relationship with offender CR prior to his release from custody in June, 1998. That relationship included, but was not limited to, the following:

a. You wrote CR at least five letters prior to his release from DOC custody. You mailed at least one such letter to CR and hand-delivered at least one other letter to him. You appear to have written at least three other letters prior to his release that you gave him after his release.

b. One such letter reflects that it was written 56 days before CR's release from custody. It also reflects that CR's mother had sent you a jacket and pants intended for CR's use after his release. You wrote to CR that, while wearing such clothing, he would be "much too sexy to send out on the streets." Some statements, purportedly regarding "shoe size", appear to have actually been veiled references to male sexual anatomy, and to prior conversations between you and CR regarding his sexual anatomy.

c. Another such letter was apparently written shortly before Memorial Day, and reflects that you had a pickup truck in your driveway that was apparently intended for CR's use upon his release. Among other things, this letter also states that you missed CR a lot and that you would see him no matter where he was. The letter makes statements that appear to contemplate that you and CR would be sleeping together after his release. They include asking him, "Hey, how would you like to share a king size bed?" It also says that you would hate to buy a bed that CR may not like, and states, "(i)ts not as if you've never slept with a woman before." This letter ends by saying, "(t)onite (sic) I (sic) sending you a hug and a kiss."

d. Another letter states: "I really can't wait to spend some private time with you. I really would like a squeeze from you like – Right Now! You Better smile about that one. By Listening to you today – I really do think I'm going to Like and Enjoy having you around." (emphasis in original)

e. In about May, 1998, CR's mother bought a pickup truck for his use after his release. You agreed that she could provide the Vermont Department of Motor Vehicles your address on the registration documents for the truck. You traveled to Montpelier and picked up the truck and stored it at your residence until CR's release. Once at your residence, you washed and waxed the truck for CR.

f. When you received the license plates for such truck, you drove it to the Caledonia Work Camp and allowed CR to attach the plates to the truck.

g. Some time before CR's release from custody, you traveled to Massachusetts to pick up a motorcycle that was intended for his use after his release.

h. On at least one occasion in the Spring and/or Summer of 1998, you visited CR on a day off, a Saturday. CO Dane opened the side gate to "C" building for you and CR, and observed you take CR to "C" building and go inside. You and CR were apparently alone inside "C" building at that time. CO Dane estimates that he did not see CR back inside the fence for at least an hour.

i. After his release from DOC custody, CR moved into your residence while your (sic) were on vacation. Within one week of the time you returned from vacation and began living with CR, you had consensual sex with him.

This evidence appears to indicate that you had an inappropriate, unprofessional, romantic and/or sexual relationship with CR at least two months prior to his release from DOC custody. Your actions appear to have violated: (1)



DOC Work Rule 13, which strictly prohibits romantic and/or sexual relationships between offenders and employees, including actions which give the appearance of an improper relationship; (2) DOC Work Rule 7, which prohibits employees from providing services or goods to offenders, except with permission of supervisory authority, and forbids employees from providing gifts or gratuities to offenders; and (3) DOC Work Rule 9, which forbids employees from conducting themselves in a manner that reflects discredit on the DOC. These actions have also severely undermined the confidence that I must have, and other DOC managers must have, in your judgment, character, integrity and overall credibility, and your ability to continue to honestly, reliably, and satisfactorily perform your duties as a DOC employee.

2. On about November 3, 1998, I asked you questions regarding the nature of your relationship with CR prior to his release. You denied having a relationship with CR prior to his release that violated DOC Work Rules, and did not provide any of the above-referenced facts to me at that time.

Your actions appear to have violated: (1) DOC Work Rule 4, which requires you to be honest in all circumstances related to your employment; (2) DOC Work Rule 5, which requires you to cooperate fully with a DOC inquiry or investigation, and to answer fully and truthfully any questions related to your employment; and (3) DOC Work Rule 9, which forbids employees from conducting themselves in a manner that reflects discredit on the DOC. These actions have also severely undermined the confidence that I must have, and other DOC managers must have, in your judgment, character, integrity and overall credibility, and your ability to continue to honestly, reliably, and satisfactorily perform your duties as a DOC employee.

3. On October 8, 1998, you sat for a Deposition by David J. Williams, Esq., in the matter of State of Vermont v. CR. Your sworn testimony did not appear to truthfully and accurately describe your relationship with CR.

Your actions appear to have violated: (1) DOC Work Rule 4, which requires you to be honest in all circumstances related to your employment; and (2) DOC Work Rule 9, which forbids employees from conducting themselves in a manner that reflects discredit on the DOC. These actions have also severely undermined the confidence that I must have, and other DOC managers must have, in your judgment, character, integrity and overall credibility, and your ability to continue to honestly, reliably, and satisfactorily perform your duties as a DOC employee.

...  
(State's Exhibit 13)

45. On May 7, 1999, Grievant and Heyman met with Donnon and Kotkin in the *Loudermill* meeting. At the meeting, Grievant gave Donnon and Kotkin a statement.

Therein, she stated that she was “scammed and conned by” Reeves. She said that she “deeply regretted” writing the letters to Reeves, but that it was never her intent to give the impression of having a romantic, sexual or inappropriate relationship with Reeves. Grievant indicated that she did not fully understand the Work Rules when she was given a copy of them to review in 1995, and that no training or explanations were ever given on them. Grievant requested that she be given credit for her work record since 1982. She stated that “I alone am responsible and accept the responsibility for my actions”, and indicated that she would not place herself or the Employer in such a position in the future (Grievant’s Exhibit 12, State’s Exhibit 16).

46. Shortly after the Loudermill meeting, Kotkin, Donnon, Director of Correctional Services Richard Turner, Personnel Administrator Sue Blair, and Attorneys Michael Seibert and Marie Salem met to discuss what disciplinary action to impose on Grievant. The decision was made to dismiss Grievant. By letter dated May 21, 1999, Donnon informed Grievant that she was dismissed from her position for the reasons enumerated in Donnon’s April 12, 1999, letter to her (State’s Exhibit 17, Grievant’s Exhibit 6).

47. In deciding to dismiss Grievant, the Employer considered Grievant’s offenses to be very serious on the grounds that establishing an inappropriate relationship made Grievant and the Employer vulnerable, and Grievant’s lack of truthfulness impacted the trust Grievant’s supervisors had in her. The Employer considered trust to be very important given Grievant’s independence in taking offenders out of the work camp to work in the community. The Employer weighed Grievant’s work record of satisfactory to excellent performance evaluations and no significant discipline. The Employer considered

several similar situations throughout the state occurring in the past year in which employees had romantic relationships with offender and lied about such relationships. In those situations, the employees resigned in the face of being threatened with dismissal. The Employer determined that Grievant had clear notice through the Work Rules that her behavior could result in her dismissal. The Employer considered that the notoriety of Grievant's offenses had a negative effect on CCWC operations as discussion among staff distracted them from their work. The Employer concluded that Grievant had a limited potential for rehabilitation because she did not take full responsibility for her actions by maintaining that her relationship with Reeves was "professional". The Employer ultimately concluded that the gravity of Grievant's misconduct, her failure to take responsibility and the notoriety of the offenses resulted in any lesser sanction than dismissal leaving the Employer vulnerable.

48. In 1988, a female NRCF employee became involved in a romantic relationship with an offender on furlough under the supervision of the Employer. The offender was living in an apartment in St. Johnsbury at the time. The romantic relationship lasted for approximately two or three months until the NRCF employee ended it. At the time the relationship ended, the NRCF employee told the NRCF Assistant Superintendent of the relationship. During an Employer investigation, the NRCF employee admitted to the relationship with the offender. As a result of the relationship, the NRCF employee was suspended for twenty days, she was placed in a warning period, she was placed in a different position for several months, and restrictions were placed on her interactions with offenders under the supervision of the Employer. The NRCF employee did not provide goods and services to the offender. She did not lie during the investigation in an attempt to

cover up the relationship. In deciding what disciplinary action to take against Grievant, the Employer considered this 1988 case and concluded that it was different because the offender was outside of the facility and the NRCF employee was forthright about her relationship with the offender (Grievant's Exhibit 15).

### OPINION

Grievant alleges that the Employer violated Article 14 of the Contract by dismissing her. Specifically, Grievant contends that the Employer improperly bypassed progressive discipline, failed to apply discipline with a view toward uniformity and consistency, failed to apply discipline in a timely manner, and dismissed her without just cause.

A threshold issue is whether the Employer violated the requirement of Article 14 of the Contract that "the State will act promptly to impose discipline . . . within a reasonable time of the offense". Grievant contends that the discipline imposed on her was untimely because the conduct engaged in by Grievant resulting in her dismissal occurred a year prior to her dismissal. Grievant contends that the Employer should have investigated any potential misconduct of Grievant in July 1998 when the Employer became aware that former offender Carter Reeves had assaulted Grievant and had been living with her since his release from CCWC.

We disagree. The Employer does not prohibit, by work rule or otherwise, an employee from living with a former inmate released from the Employer's supervision. Further, we cannot fault the Employer for not initiating an investigation of an employee who was sexually assaulted by a former offender absent any information coming to light at

the time indicating that the employee had an inappropriate relationship with the offender while he was incarcerated. It was reasonable for the Employer to not initiate an investigation of Grievant until January 1999, when the Employer came into possession of the letters Grievant wrote to Reeves in the Spring of 1998 while Reeves was incarcerated at the CCWC. The Employer acted appropriately based on available information.

Nonetheless, Grievant contends that, even from the time the investigation began in January 1999, discipline was imposed in an untimely manner because this was a simple investigation that could have been completed much sooner than May 1999. We conclude that the Employer conducted its investigation and imposed discipline in a reasonable time. The details of Grievant's relationship with Reeves involved a significant amount of information, and were complicated by Grievant's lack of forthrightness in describing the relationship. Further, the Employer did not come into possession of one significant piece of information – Grievant's deposition in Reeves' criminal matter – until mid-March 1999 after having a subpoena issued to produce it. Also, the investigation took longer due to two meetings held with Grievant to investigate and provide her with an opportunity to respond to the charges. Under these circumstances, the Employer acted reasonably in completing its investigation in approximately four months.

We turn to discussing the merits. 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).

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. Colleran and Britt, 6 VLRB 235, 265 (1983). Once the underlying facts have been proven, we must determine whether the discipline imposed by the employer is reasonable given the proven facts. Id. at 266.

The Employer has made various charges against Grievant, and we will discuss each of them in turn. The Employer charged Grievant with appearing to have an inappropriate, romantic and/or sexual relationship with offender Carter Reeves prior to his release from custody. The Employer contended that Grievant's relationship with Reeves violated Work Rules that: 1) prohibit romantic and/or sexual relationships between employees and offender, and actions which give the appearance of an improper relationship; 2) prohibit employees from providing goods and services to offenders; and 3) provide that no employee shall act in a manner that reflects discredit upon the Employer.

We conclude that the Employer has proven the substance of this charge against Grievant by a preponderance of the evidence. The letters Grievant wrote to Reeves in the Spring of 1998 while Reeves was incarcerated give the appearance of an improper relationship. There are several sexual references in the letters directed at Reeves. Grievant referred to him as "sexy", made a veiled reference to his penis size, asked him if he wanted to share a bed with her after he was released, told him she was sending him a "hug and a kiss", and stated that "I really can't wait to spend some private time with you". Such statements by Grievant gave the appearance of a romantic or sexual relationship with Reeves.

Further, the Employer established that Grievant provided services to Reeves while he was incarcerated. Grievant traveled to Massachusetts to pick up a motorcycle for Reeves and had it stored at her friend's house until Reeves was released; services for which she received reimbursement from Reeves' mother. Grievant also provided services to Reeves in connection with a pickup truck Reeves' mother had purchased for him to use after his release. She picked up the truck in Montpelier, allowed her address to be used for registration purposes, stored the truck at her residence, and washed and waxed it.

There was other evidence indicating an appearance of an improper relationship between Grievant and Reeves while he was incarcerated. An example of this was Grievant allowing Reeves to leave the secure perimeter of the facility to put license plates on his new truck which Grievant had driven to a parking lot of the work camp. Also, Grievant's behavior towards Reeves while he was incarcerated reflected discredit on the Employer. Grievant's action towards Reeves, and bestowal of services on him, was contrary to the Employer's interest in non-preferential treatment of inmates under the Employer's custody.

Another charge that the Employer made against Grievant was that she gave sworn testimony in a deposition in Reeves' criminal case that did not truthfully and accurately describe her relationship with Reeves. The Employer contended that Grievant's dishonest testimony violated Work Rules requiring employees to be honest in all circumstances related to their employment, and providing that no employee shall act in a manner that reflects discredit upon the Employer.

Grievant contends that, when looked at in its entirety, Grievant's deposition testimony was truthful. We disagree. Grievant made statements in the deposition that she had a professional relationship with Reeves while he was at the work camp, that she treated

him like any other inmate, that she did not take any particular kind of special interest in him at the camp, and that she did not develop any kind of personal interest in him while he was at the work camp. These statements are belied by the letters Grievant wrote to Reeves while he was at the work camp, and the services she provided to him concerning his motorcycle and truck while he was incarcerated. As charged, Grievant was dishonest in reporting her relationship with Reeves developed in the course of her employment, and her dishonest testimony stemming from her employment reflected discredit on the credibility of employees of the Employer.

The final charge against Grievant is that CCWC Superintendent Donnon asked her questions in a November 3, 1998, meeting regarding the nature of her relationship with Reeves prior to his release, and that Grievant denied having a relationship with Reeves prior to his release that violated Work Rules and did not provide any details of the relationship to Donnon. The Employer has presented insufficient evidence to prove this charge against Grievant. The evidence before us is that, at the November 3 meeting between Donnon and Grievant to discuss her relationship with Reeves, Donnon asked Grievant if there was anything else in the background that he should know. Grievant responded that there was nothing else.

It is unclear by Donnon's vague question that he expected Grievant to tell him whether her relationship with Reeves prior to his release violated Work Rules. Grievant could have thought Donnon was referring to the sexual assault by Reeves on Grievant after Reeves' release. It was unreasonable for the Employer to charge Grievant with untruthfulness in response to such a vague question. It is incumbent on the Employer to



ask specific questions eliciting specific answers before charging an employee with dishonesty.

The fact that one of the charges against Grievant has not been proven does not necessarily mean that her dismissal lacked just cause. Failure of an employer to prove by a preponderance of the evidence all the particulars of a dismissal letter does not require reversal of a dismissal action. Grievance of McCort, 16 VLRB 70, 121 (1993). In such cases, the Board must determine whether the remaining proven charges justify the penalty. Id.

We look to the factors articulated in Colleran and Britt, 6 VLRB at 268-69 (1983), to determine whether the proven charges justify dismissal. The pertinent factors here are: 1) the nature and seriousness of the offense and its relation to the employee's duties and position, 2) the effect of the offense upon supervisors' confidence in Grievant's ability to perform assigned duties, 3) the clarity with which Grievant was on notice any rules that were violated in committing the offenses, 4) the notoriety of the offense, 5) the consistency of the penalty with those imposed upon other employees for the same or similar offenses, 6) Grievant's past work record, 7) the potential for Grievant's rehabilitation, and 8) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future.

Grievant's misconduct was serious. Grievant's interactions with Reeves undermined her ability to objectively and fairly supervise him. Her actions placed herself and the Employer in a vulnerable position to be taken advantage of by Reeves. Further, her dishonesty with respect to her relationship with Reeves seriously damaged her credibility.

Grievant's offenses understandably impacted the trust her supervisors had in her and greatly reduced supervisors' confidence in Grievant's ability to perform assigned

duties. Grievant severely damaged her ability to supervise inmates through her actions creating the appearance of an improper relationship with an inmate, improperly providing services to the inmate and lying about the relationship. The nature of a correctional officer's duties requires the officer to independently supervise inmates in a fair and evenhanded manner, and to provide testimony concerning interactions with offenders in various forums where credibility is crucial. Grievant's actions seriously undermined supervisors' confidence that she would fairly supervise inmates and provide truthful testimony.

Grievant had fair notice through her receipt of the Employer's Work Rules that the misconduct she engaged in would result in disciplinary action. As discussed above, Grievant's offenses were explicitly prohibited by provisions of the Work Rules. The notoriety of Grievant's offenses also is of some significance where her relationship with Reeves generated discussion among staff in an environment where professional interactions between offenders and employees are crucial to the smooth functioning and security of the work camp.

Grievant contends that the Employer did not discipline her in a consistent fashion compared to discipline imposed on other employees for similar offenses. Grievant cites the case occurring in 1988 in which a female NRCF employee was not dismissed, but instead received a lengthy suspension and other sanctions, after having a romantic relationship with an inmate on furlough under the supervision of the Employer. Leaving aside the weight to be placed on an occurrence 11 years before Grievant was dismissed and under different management, we do not find the two cases comparable. Unlike Grievant, the NRCF employee came forward and fully admitted her culpability with respect to the

relationship with the offender, did not provide the offender with goods and services and the offender was not incarcerated.

Grievant also cites Elizabeth Rice, a CCWC employee who refused to answer her supervisor's questions concerning information she had that an employee had been discussing Reeves' assault on Grievant with an inmate. Grievant contends that the Employer's failure to impose discipline on Rice demonstrated inconsistent treatment of Grievant. We do not concur. Rice left employment at the CCWC immediately following this incident, resulting in the Employer not following through on disciplinary action against her. Further, Rice's offense was not similar to Grievant's offenses.

Grievant also cites the Employer's failure to investigate an allegation made in late 1998 that two employees had borrowed money from Reeves while Reeves was an inmate at the facility. We question why the Employer did not timely investigate such an allegation, but we do not find it sufficiently similar to Grievant's offenses to affect the imposition of discipline on her. We reach the same conclusion with respect to Grievant citing an uninvestigated rumor that an employee was running a gambling pool in the CCWC kitchen. In sum, we conclude that the Employer did not impose discipline in an inconsistent manner on Grievant.

In determining whether Grievant's offenses were sufficient for the Employer to reasonably bypass progressive discipline and dismiss her, we need to weigh her good work record. We also consider her potential for rehabilitation and the adequacy and effectiveness of alternative sanctions. Grievant has not demonstrated that she is good candidate for rehabilitation due to her dishonesty and her failure to take full responsibility for the consequences of her interactions with Reeves. Ultimately, we conclude that just

cause existed for Grievant's dismissal. The seriousness of her offenses outweigh her good work record, and the Employer acted reasonably by concluding that a lesser sanction than dismissal would not be effective or adequate.

ORDER

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

Dated this \_\_\_\_ day of April, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Catherine L. Frank, Chairperson

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Carroll P. Comstock

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Richard W. Park