

VERMONT LABOR RELATIONS BOARD

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| Grievance of: |) | DOCKET NO. 79-98S |
| |) | |
| ROBERT L. DEFORGE |) | Re: DISMISSAL FROM STATE SERVICE |

MEMORANDUM AND NOTICE OF DECISION

Statement of the Case

Effective December 11, 1979, Grievant was dismissed without notice, or pay in lieu of notice, from his position as Park Operations Chief with the State of Vermont Department of Forests and Parks, Agency of Environmental Conservation. On December 28, 1979, Robert L. DeForge, through his attorney, filed a petition with the Vermont Labor Relations Board (later amended on January 3, 1980) appealing his dismissal from state service. Grievant claims the reasons given by the State for his dismissal do not constitute "just cause" under the current Agreements between the State of Vermont and the Vermont State Employees' Association, Inc., and that the State was required to impose an alternative penalty in Grievant's case pursuant to the negotiated progressive discipline policy.

Answers filed by the State on January 3 and 7, 1980, maintained Grievant's actions did constitute just cause for dismissal, and that in his case, bypassing progressive discipline steps was appropriate.

Evidence was presented and prefiled testimony was admitted in three separate hearings held on April 10, 11, and 25, 1980. Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown were present at all three hearings. Attorney Gary D. McQuesten represented Grievant. Assistant Attorney General Bennett E. Greene represented the State.

By motion of Grievant's counsel, based on the state of the evidence at the close of these hearings and subsequent memoranda, we hereby issue the following notice of decision.

We uphold the State's action and find that in Grievant's case, just cause for dismissal existed. Moreover, Grievant's case was an appropriate instance in which progressive discipline may be bypassed. The grievance of Robert L. DeForge will be dismissed for the following reasons.

FACTUAL REVIEW

Grievant, employed as Park Operations Chief for more than twelve years, was dismissed without notice or pay in lieu of notice for "gross neglect of duty and gross misconduct." In its dismissal letter to Grievant (State's Exhibit #7), the State provided the following reasons for that action.

1. In the past several years you have had delivered to your home numerous truck loads of wood which were paid for by, or were the property of, the State of Vermont.

2. In the fall of 1978 you had installed on your personal residence bulkhead doors, constructed and installed by State employees on State time and utilizing State materials.

3. On or about November 30, 1978, you had an overhead door panel, paid for by the State of Vermont, installed on your personal residence by State employees on State time. Furthermore, the bill for the door panel (\$69.30) was, with your knowledge, improperly billed to Brighton State Park.

4. You were advised by a Departmental employee of the inappropriate use of State facilities, equipment and personnel for personal gain and failed to act accordingly. This is a violation of #3.01, 3.011, 3.012, and 3.013 of the Rules and Regulations for Personnel Administration.

Grievant admitted charge #1. It is uncontroverted that he did in fact, over several years, receive several loads of firewood for his personal use, all of which were transported by State trucks, in some instances over a

substantial distance. With respect to charge #4, while Grievant may have disapproved of the painting of an employee's personal vehicle at a park shop, it is uncontroverted that he failed to terminate immediately this inappropriate use of State personnel, facilities, materials, and equipment. These incidents are clear evidence of the State's position that Grievant knowingly engaged in, approved and/or encouraged his subordinates in widespread abuse and misappropriation of State resources and property over a long period of time.

At the close of extensive hearings in this case only two facts were seriously disputed. With respect to charge #3 there is a question whether Grievant knew that the bill for \$69.30 he initialled (and thus approved) for a door panel was the bill for the one that was replaced on the garage door of his personal residence. The Department has installed and maintains several garage doors of this type at many park sites throughout the State. It is plausible that Grievant may not have been aware at the time he signed Board's Exhibit #2 that it represented an invoice for his garage door in particular. Nonetheless, Grievant was aware that State materials, time, transportation, and personnel were used to repair the door.

Similarly, with respect to charge #2, Grievant maintains the bulkhead doors were installed at his home on a Saturday. Still, he was fully aware that State time, personnel, and transportation had been utilized before the doors were eventually installed. Grievant had previously brought repair work for his personal residence to a park shop, fully expecting his subordinates to do such work with State materials and on State time. Accordingly, we are persuaded Grievant was aware State materials were used in the construction of the bulkhead doors. In any event, he made no attempt to ensure

they were not, and did not offer to reimburse the State or his employee, Wilson Shields, for any expenses related to their construction and installation.

CAUSE

This brief review of the significant disputed facts shows our decision does not rest entirely on the credibility of State's witness Wilson Shields. Although we do find most of Mr. Shields testimony credible, Grievant's admissions and several other provable facts in evidence amply proved the incidents leading to his dismissal did occur and do constitute just cause for dismissal.

We conclude Grievant's style of management constitutes "gross neglect" of duty. What makes Grievant's conduct particularly disturbing and serious is his key supervisory position. As we read the contract at Article XV(3)(a), the State must establish "gross neglect of duty" in order to dismiss an employee without notice or pay in lieu of notice. We believe the findings of fact referred to in this notice which will be fully detailed in our opinion to follow constitute gross neglect of duty on Grievant's part. Likewise, we will treat fully in our forthcoming opinion the legal issues comparing this case to that of the Grievance of Paul Cook, 3 VLRB 105 (1980) where we found progressive discipline was warranted. Here however, not only did Grievant abuse his position and access to State property and services for his personal gain and convenience, but in so doing he often enlisted (and perhaps subtly required) the assistance of his subordinates. What the Grievant contended was a benevolent and brotherly network of mutual aid throughout the Department could just as well be characterized as a system of coercion and graft to those employees called upon to provide or receive such extraordinary "fringe benefits."

JURISDICTIONAL NOTE

We note that neither party has raised the issue as to whether or not Grievant DeForge is a "state employee" under 3 V.S.A. §902(5), not exempted by managerial employee status under 3 V.S.A. §902(18), and is thus entitled to grieve his dismissal before this Board. We conclude he is a state employee with appellate rights, principally because he has not been finally determined by this Board otherwise. See 3 V.S.A. §906 and Grievance of Karen Saudek, 3 VLRB 6 (1980) and 3 VLRB 21(a) (1980). See also Grievance of VSEA re: Personnel Designations of Managerial, Confidential and Supervisory Employees, 2 VLRB 129 (1979), now on appeal to the Vermont Supreme Court.

Findings of fact, opinion and appealable order to follow.

Dated this 19th day of May, 1980, at Montpelier, Vermont.

*Appeal dismissed
by Stip.
9/19/81
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VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William C. Kemsley, Jr.
William C. Kemsley, Jr.

Robert H. Brown
Robert H. Brown