

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 20-19
KATINA FARNSWORTH)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 6, 2020, the Vermont State Employees’ Association (“VSEA”) filed a grievance on behalf of Katina Farnsworth (“Grievant”), a Correctional Officer II with the State of Vermont Department of Corrections (“Employer” or “DOC”). VSEA alleged that the Employer violated Article 14 of the collective bargaining agreement between the State of Vermont and VSEA for the Corrections Bargaining Unit, effective July 1, 2018, to June 30, 2020 (“Contract”), by: 1) dismissing Grievant without a basis in fact and without just cause, 2) improperly bypassing progressive discipline, and 3) failing to apply discipline with a view toward uniformity and consistency.

The Labor Relations Board conducted video hearings through the Microsoft Teams platform on October 22, and November 6, 2020, before Board Members Robert Greemore, Acting Chairperson; David Boulanger; and Karen Saudek. Assistant Attorney General Alison Powers represented the Employer. VSEA General Counsel Timothy Belcher represented Grievant. VSEA and the Employer filed post-hearing briefs on November 20, 2020.

FINDINGS OF FACT

1. The Contract provides in pertinent part:

...

**ARTICLE 14
DISCIPLINARY ACTION**

1. No permanent or limited status 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 designated representative . . . may dismiss an employee with just cause with two (2) weeks' notice or two (2) weeks' pay in lieu of notice. . .
3. Notwithstanding the provisions of paragraph 2 above, the appointing authority or authorized representative . . . may dismiss an employee immediately without two (2) weeks' notice or two (2) weeks' pay in lieu of notice for any of the following reasons:
 - (a) gross neglect of duty;
 - (b) gross misconduct;
 - (c) refusal to obey lawful and reasonable orders given by supervisors;
 - (d) conviction of a felony;
 - (d) conduct which places in jeopardy the life or health of a co-worker or of a person under the employee's care.

...
(State's Exhibit 6)

2. State of Vermont Personnel Policies and Procedures have provided as follows in pertinent part at all times relevant:

...
Number 5.6 EMPLOYEE CONDUCT

...
1. It shall be the duty of employees to fulfill to the best of their ability the duties and responsibilities of their position.

...
3. Employees shall conduct themselves in a manner that will not bring discredit or embarrassment to the State of Vermont, whether on or off duty.

...

Number 17.0 EMPLOYMENT RELATED INVESTIGATIONS

...

RESPONSIBILITIES

...

D. Employees shall:

- Cooperate with investigations, and provide truthful and complete information in accordance with State Personnel Policies and local Work Rules. Refusing to answer, answering incompletely, or answering untruthfully, questions related to work is considered misconduct for which an employee may be disciplined up to and including dismissal from their employment with the State.

...

(State's Exhibit 6)

3. DOC Work Rules, which Grievant was provided on September 22, 2005, provide in pertinent part:

1. No employee shall violate any provisions of the collective bargaining agreement or State of Vermont work rule, policy, procedure, directive, local work rule or post order.
2. An employees shall not use State property for his/her private use or for any other use than that which serves the public interest.

- ...
4. Employees shall be honest and complete in their descriptions, whether given orally or in writing, to the employer of events occurring in the workplace 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.

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

...

(State's Exhibit 6)

4. Grievant was hired as a Correctional Officer I at the Northeast Correctional Complex ("NECC") in St. Johnsbury in 2001. She was promoted to Correctional Officer II in 2007. During the time Grievant has been a Correctional Officer II, she has served as an acting Shift Supervisor on occasion. Grievant was a Correctional Officer II until her dismissal on March 24, 2020.

5. Grievant has owned the Border Motel in Derby, Vermont, since 2012. DOC instructed Grievant not to rent motel rooms to any person who is in DOC care and custody. Grievant has followed these instructions and has refused to rent rooms to released inmates whether they are released under supervision of the DOC or are no longer under DOC supervision.

6. NECC Superintendent Celeste Girrell sent a letter to Grievant dated February 1, 2006, stating:

As we discussed at our meeting on January 31, 2006, you admitted to being in violation of Work Rule Number One when you provided a cigarette to an inmate during a transport in a State vehicle.

I understand there were significant mitigating circumstances involved in that a far more tenured Officer began to smoke in the transport van in front of the inmate. You were placed in an awkward position and, rather than confronting a fellow Officer in front of an inmate, you provided the inmate a cigarette in fairness. When asked about this incident, you immediately reported the details to your supervisor. We have discussed alternatives you may use if you find yourself in a similar situation in the future. Once again, your honesty and willingness to learn from your mistakes are appreciated.

You are well aware that smoking in State Vehicles is prohibited, that smoking in front of inmates is prohibited, and that providing tobacco to inmates is a very serious rule infraction. In addition to these specifics, the role of a Correctional Officer is difficult and stressful. Behaving as a role model for inmates is a critical part of our responsibilities. In this situation, your decision and behavior did not meet that standard.

As a result of your violation of Work Rule Number One, you will be suspended for two days. . .
(State's Exhibit 1, p.1)

7. NECC Superintendent Alan Cormier sent a letter to Grievant dated April 6, 2015, stating:

This letter is to provide notification of your disciplinary suspension for seven (7) workdays for violation of DOC Work Rules, DOC Policy, Corrections Collective Bargaining Agreement and State Personnel Policies. You are receiving this suspension because you accessed confidential offender case notes for your own personal gain and without a legitimate need to do so to perform the duties of your job. . .

As a DOC employee, you are expected to comply with State Personnel Policies, DOC rules/policies, and the CBA which require integrity and credibility in representing the department. You will be subject to progressive discipline up to and including

dismissal for future violations of DOC Work Rules, Directives, State Policies, or for other misconduct.

I hope that you can put this behind you and focus on your position with the DOC. Please let me know if you have any questions on this matter.
(State's Exhibit 1, p.12)

8. At all times relevant, Grievant was one of seven disciplinary hearing officers at NECC. Grievant received training regarding due process hearings and the role of a hearing officer prior to being designated a disciplinary hearing officer. She was aware of the rules and guidelines for recommended sanctions for inmate offenses.

9. In October 2016, Grievant was relieved from duty with pay while the State investigated allegations that she improperly accessed database information about inmates. During the investigation, Grievant told investigator Charles Kirk that she looked at inmate records to view decisions by other disciplinary hearing officers in an effort to improve her performance as a disciplinary hearing officer. A memorandum dated March 28, 2017, to be issued by NECC Superintendent Cormier, was prepared, stating:

The investigation into the allegations that you violated DOC Work Rule #'s 1, 2 and 9 has been completed. The investigation has shown that the allegations were with merit. This letter is to document imposition of disciplinary action for violation of DOC Work Rules, Procedures and State Personnel Policies.

You are receiving this letter of disciplinary feedback because of an incident that occurred in September of 2016. Through the investigative process, it has been determined that you have engaged in clear boundary issues with inmates under your care and custody through the sharing of personal information. This has come in the form of information gathered through the review of incident reports in OMS, social media accounts, and your overall demeanor in which inmates refer to you as a "mother figure" because of your inability to recognize a clear delineation in your role as correctional officer.

Consequently, DOC has significant concerns in your ability to perform duties as a leader, utilize sound judgment and act as a role model for employees and offenders alike. As a result, it is imperative that you understand and recognize these deficiencies in your inability to set boundaries with the inmates under your control and understand that these deficiencies must be corrected immediately.

As a DOC employee, you are expected to comply with State Personnel Policies and DOC work rules and procedures, which require integrity in all professional representations. You will be subject to progressive discipline up to and including dismissal for future similar violations of DOC Work Rules, Directives, State Policies, or for other misconduct.

...

(State's Exhibit 1, p.19-20)

10. This memorandum was never sent to Grievant. Grievant first saw this memorandum on the first day of the hearing before the Labor Relations Board in this case. This was not considered part of Grievant's record when the Employer considered whether to dismiss Grievant.

11. As a Correctional Officer II , Grievant often was the lead employee in medium security housing units at NECC. Grievant sat at a desk where she was able to observe all three units.

12. The Offender Management System ("OMS") is the electronic database used by DOC to track all electronic information on individual inmates. Grievant had her own distinct user log-in information and access to OMS.

13. Users of the OMS system can click on icons to toggle between correctional facilities and thereby gain access to OMS records of all inmates within DOC facilities. The home page for each facility is referred to as the "greaseboard", which provides a list of names of all the inmates in the facility. A user can access an individual inmate's electronic records by clicking on the inmate's name on the greaseboard or conduct a search on OMS for a specific inmate's name. When viewing an inmate's electronic record on OMS, a user can click on different tabs to access specific information about the inmate, including an inmate's disciplinary history, incident reports, criminal history, correctional facility location history, and case notes.

14. The DOC has a detailed process governing the discipline of inmates. Staff who witness an incident prepare reports. An investigation is conducted that includes witness statements. A hearing is then held before a staff member designated as a disciplinary hearing officer who imposes a disciplinary sanction. The correctional facility Superintendent reviews the record in the case produced before the hearing officer to determine whether to uphold the sanction. All the records produced during this process are maintained in the inmate's OMS files, and can be viewed by a user accessing OMS.

15. During quiet times on her shift, Grievant logged into the OMS system and went through the greaseboards for her facility and other correctional facilities to review inmate files to see if there are any disciplinary reports in the files. She finds disciplinary reports that she locates helpful in her work as a disciplinary hearing officer to see what issues have come up and how other disciplinary hearing officers have handled them. Grievant's superiors encouraged her in the past to review inmates' disciplinary records to improve her performance as a hearing officer. There have been other staff serving as disciplinary hearing officers who also have reviewed inmate disciplinary records for the same purpose.

16. DOC Directive 254.06, Management Information Systems, provides in pertinent part:

..
PROCEDURAL GUIDELINES

1. Access of Offender Information

- a. A DOC staff member may only access an offender central file or other information about an offender when the staff member has an actual need to access the information to perform his or her official duties and responsibilities.
- b. Upon entry into a position, a staff member will be granted permission to access the Offender Management System appropriate to his or her position.

...

4. Violation of This Administrative Directive

- a. Any staff member who uses, accesses, or provides access to offender information in a manner that violates this administrative directive may be subject to disciplinary action.

(State's Exhibit 6)

17. OMS tracks which users access which offenders' records, but does not track what specific information is viewed once a user has accessed an offender's record. Correctional officers access OMS records of an inmate who is not at the correctional facility where the officer works for various reasons. Among the reasons are the officer needs to update the record of an inmate who used to be at that officer's facility, the officer is preparing for an inmate to be transferred to that officer's facility, or the officer reviews incident reports to learn of notorious incidents that occur at other facilities.

18. In June 2019, NECC Superintendent Norah Quinn became aware that Grievant had accessed the records of two offenders – Inmate 1 and Inmate 2 – who were not at NECC. Superintendent Quinn requested an investigation into the matter. Grievant was not relieved from duty when the investigation began, and she continued working as a Correctional Officer II at NECC. Charles Kirk, Department of Human Resources Investigator, was assigned to conduct the investigation (State's Exhibit 2).

19. In the course of looking up inmates on OMS to find disciplinary cases, Grievant opened the files of Inmate 1 and Inmate 2, as well as other inmates on multiple occasions. Grievant knew Inmates 1 and 2 as inmates but did not know them personally. Grievant opened the file of Inmate 1 on the following dates: June 26, 2017; June 29, 2017; July 30, 2017; August 8, 2017; May 6, 2018; December 10, 2018; December 16, 2018; and May 23, 2019. She opened the file of Inmate 2 on the following dates: December 10, 2017; December 11, 2017; March 11, 2018; and May 23, 2019 (State's Exhibit 2, p. 28 and 31).

20. DOC seeks to secure housing for inmates who are released from correctional facilities, whether they have completed their sentence or will remain under DOC supervision. Inmate 1 was scheduled to complete his sentence in the spring of 2019. There is no evidence that Inmate I rented rooms in the Border Motel after his release. Inmate 2 was scheduled to be released and remain under DOC supervision in the spring of 2019. In his Investigation Report completed on the allegations against Grievant, Kirk indicated that Correctional Services Specialist Dan Cushing called the Border Motel on June 5, 2019, attempting to find housing for Inmate 2, and was told by an employee there (not Grievant) that one of the owners was employed by DOC and the motel did not rent to anyone under DOC supervision. Inmate 2 did not rent rooms in the Border Motel after his release. There is no evidence that Grievant solicited Inmate 1 or Inmate 2 to rent rooms in the motel (State's Exhibit 2).

21. Grievant explained to Kirk during the investigation that she perused inmate files to look for disciplinary records to learn how other disciplinary hearing officers handle cases to guide her in carrying out responsibilities as a disciplinary hearing officer.

22. Kirk submitted his written investigation report to DOC management on July 26, 2019 (State's Exhibit 2).

23. Superintendent Quinn placed Grievant on temporary relief from duty with pay shortly after receiving the investigation report.

24. Superintendent Quinn sent a letter to Grievant dated September 4, 2019, providing in pertinent part:

As a result of your behavior described below, the DOC is contemplating imposing serious disciplinary action, up to and including dismissal from your position as Correctional Officer II. You have the right to respond to the specific allegations listed below, either orally or in writing, before a final decision is made. . .

The below charges are based on your conduct, discussed in an Investigative Report dated July 26, 2019, prepared by Department of Human Resources Investigator Charles Kirk, and related attachments, and an OMS log pertaining to Inmate 3. The report is attached, fully incorporated by reference, and it, the related attachments and the Inmate 3 OMS log may be consulted for further information regarding the charges summarized below.

A. Relevant Provisions of DOC Work Rules and Directives, Vermont Personnel Policies, and the Corrections Unit Collective Bargaining Agreement (“CBA”)

- Corrections CBA Article 14: Disciplinary Action
- Vermont Personnel Policy 5.6: Employee Conduct
- Vermont Personnel Policy 17.0: Investigations
- DOC Directive 254.06: Management Information Systems
- DOC Work Rule 1, 2, 4, 5 and 9

B. Potential Violations of DOC Work Rules, Vermont Personnel Policies, and the CBA

You are currently employed as a COII at Northeast Correctional Complex (“NECC”). It is alleged that while at work you repeatedly accessed the Offender Management System (“OMS”) multiple times on different days with no legitimate business reason to do so, and that the inmates whose records you accessed were housed at a separate facility from where you work. Additionally, it is alleged that you repeatedly shared sensitive information with offenders by leaving the OMS screens visible while inmates were at your desk. Also, it appears you lied during the investigation.

The State received notification that the NECC facility management received a report from Northern State Correctional Facility (“NSCF”) management advising them that you accessed the OMS records for Inmate 1 and Inmate 2.

On June 5, 2019, Correctional Services Specialist Dan Cushing (“Cushing”) contacted the Border Motel about the possibility of securing a residence for Inmate 2, who was going to be under the supervision of the DOC while in the community. The Border Motel is a business that is owned by you. Cushing said he spoke with management at the hotel, but said it was not you. He said that the hotel told him they do not take inmates who will be under supervision of the DOC.

Cushing also reported that on April 3, 2019 and May 21, 2019 Inmate 1 contacted the Border Motel about securing a residence at the motel when he was released. Inmate 1 was maxing out his sentence. Cushing, however, could not confirm whether Inmate 1 moved into the Border Motel because Inmate 1 was no longer under DOC custody.

Records show that you most recently accessed the OMS records for Inmate 2 and Inmate 1 on May 23, 2019. When you were asked about this, you stated that you

access inmate records to improve your ability to hear DRs and be consistent with what other facilities impose for sanctions. It was reported that neither Inmate 1 nor Inmate 2 received any DRs around May 23, 2019. You also stated that you accessed such records for “no particular reason,” and that if inmates are in the news, you will look at them to see what they look like.

It has also been reported that on July 24, 2019, subsequent to your interview, you accessed the OMS record for Inmate 3 (who is an inmate housed at NECC) with no legitimate reason.

DOC Work Rule 2 states that *“An employee shall not use property or equipment for his/her private use or for any other use other than that which serves the public interest.”* It appears that by using the OMS to gather information about a potential client of your private business, and by your admissions that you have accessed the OMS for “no particular reason” and to see what an inmate looks like if in the news for committing a crime, you violated this work rule. It also appears that you violated Work Rule 9 because your actions bring discredit to the NECC by another facility reporting your misconduct. Further, it appears that you violated DOC Directive 254.06 which states *“A DOC staff member may only access an offender central file or other information about an offender when the staff member has an actual need to access the information to perform his or her official duties and responsibilities.”*

Records show that you previously accessed the information of Inmate 2, however you said in your interview that you did not know the inmate. Your statement that you did not know Inmate 2 appears to be a lie, which is a violation of Vermont Personnel Policy 17.0 and DOC Work Rules 1, 4 and 5.

It appears that your conduct provides just cause for disciplinary action, up to and including dismissal from your position as a COII at NEC. Your disciplinary history will be taken into consideration when making a decision.

Process

You must notify me within twenty-four (24) hours after receiving this letter whether you wish to respond to the above allegations. . .
(State’s Exhibit 3)

25. The Employer submitted no admissible evidence to support the statement in the September 4, 2019, letter that “on July 24, 2019, subsequent to your interview, you accessed the OMS record for Inmate 3 (who is an inmate housed at NECC) with no legitimate reason.”

26. On October 25, 2019, Superintendent Quinn and Department of Human Resources staff met with Grievant and VSEA Representative Bob South to hear Grievant's response to the September 4, 2019 letter.

27. DOC Commissioner James Baker sent Grievant a letter dated March 24, 2020, providing in pertinent part:

This is to notify you of your dismissal from the position of Correctional Officer II with the Department of Corrections (DOC) effective at the close of business Tuesday March 24, 2020. . . In making my decision, I considered all the information you and your representative raised at (the October 25, 2019) meeting but did not find it overcame the seriousness of your misconduct.

I am terminating your employment because I find that you repeatedly committed misconduct as described in the above-referenced letters, which are incorporated herein. Specifically, you used the OMS to access information about offenders who were from the Orleans County area, where you own a bar and motel with no legitimate business need to do so even though you had received previous discipline for committing the same infraction. Further, you provided false statements in your interview by asserting that you accessed records to be consistent in the imposition of DR sanctions, however this assertion is not credible because the offenders whose records were accessed had not received any DRs near the time that you most recently improperly accessed OMS. Additionally, you admitted to accessing OMS for no particular reason and to see what an inmate looked like if in the news for committing a crime. You also used OMS inappropriately to gather information about inmates as potential clients for your private business, and finally, you lied during your investigation stating that you did not know one of the offenders whose information you accessed; however, you had previously accessed information on that same offender on multiple occasions.

The Department of Corrections has lost confidence in your ability to safely, professionally, and satisfactorily perform your duties. The State of Vermont and DOC must maintain the public trust in carrying out its mission, and your actions lack professional integrity, and undermine directives and policies that are in place to keep staff and local law enforcement safe. Therefore, I find that no lesser penalty than dismissal is sufficient to address your misconduct.

...
(State's Exhibit 5)

28. In deciding to dismiss Grievant, Commissioner Baker concluded that Grievant's misconduct was serious because she went into the OMS system without an appropriate business reason and violated inmates' privacy by accessing personal and sensitive information about

them. He did not find Grievant credible in asserting that she accessed the information on inmates due to her disciplinary hearing officer duties. He determined that Grievant's actions affected the trust inmates had in their privacy being protected.

OPINION

VSEA contends that the Employer violated Article 14 of Contract by: 1) dismissing Grievant without a basis in fact and without just cause, 2) improperly bypassing progressive discipline, and 3) failing to apply discipline with a view toward uniformity and consistency.

Just cause for dismissal is some substantial shortcoming detrimental to the employer's interests which the law and a sound public opinion recognize as a good cause for dismissal. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). The ultimate criterion of just cause is whether an employer acted reasonably in discharging an employee for misconduct. Id. 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).

In carrying out its function to hear and make final determination on whether just cause exists, the Labor Relations Board determines *de novo* and finally the facts of a particular dispute, and whether the penalty imposed on the basis of those facts is within the law and the contract. Grievance of Colleran and Britt, 6 VLRB 235, 265 (1983). 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. Id.

The Employer charges Grievant with various acts of misconduct. The Employer first charges Grievant with misconduct by using the OMS to access information about Inmate 1 and

Inmate 2 with no legitimate business need to do so even though she received previous discipline for committing the same infraction. Inmate 1 and Inmate 2 were two offenders housed at another correctional facility than Grievant who were from the Orleans County area where Grievant owns a motel. The Employer asserts that these actions violated DOC Directive 254.06, which states: "A DOC staff member may only access an offender central file or other information about an offender when the staff member has an actual need to access the information to perform his or her official duties and responsibilities."

The Employer has established that Grievant accessed information about Inmate 1 and Inmate 2 but has not established by a preponderance of the evidence that this constituted misconduct by Grievant. Grievant logged into the OMS system and went through the greaseboards for her facility and other facilities to review inmate files to see if there are disciplinary reports in the files. She finds helpful disciplinary reports that she locates in her work as a disciplinary hearing officer to see what issues have come up and how other disciplinary hearing officers have handled them.

Grievant claims this explains why she was accessing the files of Inmate 1 and Inmate 2 on the dates in question. The State has not established by a preponderance of the evidence that this did not constitute a legitimate business need to access the records. Grievant's superiors encouraged her in the past to review inmates' disciplinary records to improve her performance as a hearing officer. Also, there have been other staff serving as disciplinary hearing officers who also have reviewed inmate disciplinary records for the same purpose.

Further, the Employer has not established that Grievant received previous discipline for committing the same infraction. Grievant previously received a disciplinary suspension for using

OMH to access confidential offender case notes. This is not the same as accessing disciplinary reports on inmates.

Similarly, the Employer charges Grievant with violating DOC Directive 154.06 by accessing the record of Inmate 3 on July 24, 2019, subsequent to the investigative interview of her, with no legitimate reason. The Employer submitted no admissible evidence to establish that on July 24, 2019, Grievant accessed the OMS record for Inmate 3 with no legitimate reason. Thus, the Employer has not proven this charge.

The Employer next charges Grievant with providing false statements in the investigative interview by asserting that she accessed disciplinary reports of inmates in OMS to be consistent in the imposition of disciplinary sanctions against inmates. The Employer alleges that Grievant's assertion is not credible because the offenders whose records she accessed, Inmate 1 and Inmate 2, had not received any disciplinary sanctions near the time she most recently improperly accessed OMS.

The Employer has not established by a preponderance of the evidence that Grievant's assertion is not credible. As discussed above, the approach used by Grievant was to log into the OMS system and go through the greaseboards for her facility and other facilities to review inmate files to see if there were disciplinary reports in the files. This means that some of the files that she accessed may not contain any disciplinary reports. Given these circumstances, the fact that Inmate 1 and Inmate 2 did not have recent disciplinary actions does not indicate Grievant's assertion was not credible. The Employer would need to present more information to establish by a preponderance of the evidence that Grievant was not credible. The Employer has not done so.

The Employer additionally charges Grievant with misconduct for admitting to accessing OMS for no particular reason to see what an inmate looked like if in the news for committing a

crime. The Employer seeks to establish this charge in reliance on the investigation report that was submitted by the Department of Human Resources investigator. This is insufficient evidence to establish the charge. Investigation reports are admitted into evidence by the Board to indicate the information that was relied on by management in taking disciplinary action, but they are not admitted to establish the truth of charges against an employee. Hearings before the Board are *de novo*. Section 12.14, Board Rules of Practice. A *de novo* hearing means that “the case shall be heard the same as though it had not been heard before.” In re Danforth, 174 Vt. 231, 238 (2002). As such, the Board acts as an impartial trier of fact and is not bound by any findings or conclusions made during any earlier proceedings. Section 12.14, Board Rules of Practice. Accordingly, the Employer has not established this charge by a preponderance of the evidence.

The Employer further charges Grievant with misconduct by using OMS inappropriately to gather information about inmates as potential clients for her private business. This charge is not established because the evidence does not indicate that Grievant used OMS to gather information about inmates as potential clients for her private business.

The Employer charges Grievant with misconduct by repeatedly sharing sensitive information with offenders by leaving the OMS screens visible while inmates were at her desk. Once again, the Employer seeks to establish this charge in reliance on the investigation report that was submitted by the Department of Human Resources investigator. As stated above, this is insufficient evidence to establish the charge. The Employer submitted no admissible evidence to the Board to establish this charge.

Finally, the Employer charges Grievant with lying during the investigation by stating she did not know Inmate 2, whose information she accessed, although she had previously accessed information on that same offender on multiple occasions. The Employer has not established this

charge by the preponderance of the evidence. Grievant knew Inmate 2 as an inmate but did not know him personally. The fact that she had previously accessed information on Inmate 2 on multiple occasions does not indicate that she knew him personally. As discussed above, the approach used by Grievant was to log into the OMS system and go through the greaseboards for her facility and other facilities to review inmate files to see if there were disciplinary reports in the files. This means she may have accessed the files of the same inmates a number of times without knowing the inmates personally.

In sum, we conclude that the Employer has not established by a preponderance of the evidence any of the charges against Grievant. The Employer violated Article 14 of the Contract in dismissing Grievant and was not warranted in imposing any discipline on her. Accordingly, Grievant should be reinstated with back pay and benefits.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. The Grievance of Katina Farnsworth is sustained;
2. Grievant shall be reinstated to her position as Correctional Officer II at the Northeast Correctional Complex;
3. Grievant shall be awarded back pay and benefits from the effective date of her dismissal until her reinstatement, for all hours of her regularly assigned shift plus the amount of overtime Grievant would have worked, minus any income (including unemployment compensation received and not paid back) received by Grievant in the interim;
4. The interest due Grievant on back pay shall be computed on gross pay and shall be at the legal rate of 12 percent per annum and shall run from the date each

paycheck was due during the period commencing with Grievant's dismissal, and ending on the date of her reinstatement; such interest for each paycheck date shall be computed from the amount of each paycheck minus income (including unemployment compensation) received by Grievant during the payroll period;

5. The parties shall file with the Labor Relations Board by January 7, 2021, a proposed order indicating the specific amount of back pay and other benefits due Grievant; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board. A hearing before the Board on disputed issues, if necessary, shall be held on January 14, 2021, at 9:00 a.m., through the Microsoft Teams platform; and
6. The Employer shall remove all references to Grievant's dismissal from her personnel file and other official records.

Dated this 9th day of December, 2020, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

Robert Greemore, Acting Chairperson

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen F. Saudek

Karen F. Saudek