

Vermont Labor Relations Board

GRIEVANCE OF:

ALBERT BROOKS

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Docket # 77-6S

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This matter came before the Board as a grievance petition dated 4 September 1976, brought under 3 V.S.A., § 926. The petition alleged that the dismissal of grievant was arbitrary, capricious and was not equitable under the circumstances. The State filed its Answer dated 20 September 1976 admitting certain of the allegations in part and denying others. A hearing on the merits was held 22 October 1976 at the State Armory, Winooski, Vermont. The grievant was represented by Alan S. Rome, Esquire, counsel for the Vermont State Employees' Association, Inc., and the State by the Honorable Louis P. Peck, Chief Assistant Attorney General. A Stipulation as to certain matters of evidence was filed by the parties on 30 November 1976.

Discussion of Evidence and Credibility of Witnesses.

In general the evidence was related to the activities of grievant on a certain night when he was on duty at Camp Johnson, Vermont, National Guard Headquarters, as a Building Custodian B, and as to the events leading up to and following the incidents of that night. There was considerable difference

of opinion as to the character and scope of the incidents testified to, but no substantial disagreement as to the occurrence of these events.

Findings of Fact.

1. At all times material, Albert L. Brooks was employed as a classified employee of the Military Department of the State of Vermont.

2. At all times material, Albert L. Brooks was employed as a janitor (Building Custodian B) in the Department Headquarters Building at Camp Johnson, Winooski, Vermont.

3. The last prior performance evaluation for grievant was the year 1975-76, and indicated a satisfactory job performance.

4. On the evening of August 11, 1976, the grievant was on duty as a custodian in Building No. 1, Camp Johnson; during the course of the evening an argument developed between the grievant and one Carmen Davis, a secretary, and also on duty during the course of the evening in the regular performance of her employment. There was evidence to suggest, and we so find, that the grievant used abusive language and took actions which were not consistent with stable and friendly employee relationships.

5. There had been allegations of similar incidents involving several employees in the past. Performance reports had indicated a need for the improving of relationships with other employees on the part of grievant.

6. Grievant's immediate supervisor was Earle M. Stygles, Jr., and his supervisor was Lt. Colonel Howard R. Buxton,

Military Property and Installation Officer.

7. Following some of the incidents referred to above, Colonel Buxton changed grievant's work schedule from daytime hours to part daytime and part evening so that he could avoid direct contacts with other employees. It was suggested that he do such tasks as washing windows, mowing grass and so on during the daytime and such tasks as mopping floors, emptying wastebaskets in the nighttime.

8. Shortly after August 11, the grievant was informed that several complaints had been made concerning his conduct and asked to explain the situation.

9. On August 24, 1976 the grievant received a letter from Major General Cram, Adjutant General, dismissing him.

10. The State employee regulations normally call for a step discipline, that is to say, that the offender is normally counselled and advised, then if this does not work, he is reprimanded, then suspended in more serious cases, and finally discharged or dismissed if all other efforts at guidance and discipline fail. (Appellant's Exhibit D). There is a document entitled "Employee Discipline - A Guide for Supervisors" which was published by the Vermont State Department of Personnel December 1974. This document is not intended to establish or mandate procedures or policies which must be adhered to by agencies of the State. It is intended to contain suggestions based on experience and expertise of the Department of Personnel.

11. Any references in Appellant's Exhibit D to pre-termination hearings are no longer applicable (see Arnett v. Kennedy, 416 U.S. 134 and In Re Maher, 132 Vt. 560.) There

are no references to such hearings in the existing non-management unit contract between VSEA, Inc. and the State of Vermont.

12. There is a program which has been recommended by the Vermont Department of Personnel entitled "The Vermont Employee Assistance Program". It is a statewide program and designed to aid a troubled employee. Community social service agencies and mental health professionals are available to support and counsel the employee.

13. This program was not recommended for grievant Albert L. Brooks.

14. The counseling given to grievant was not counseling in the ordinary sense, but was more in the nature of an accusation or accusations and requests for explanations. There was some affirmative action taken by Colonel Buxton in the form of an attempt to insulate grievant from other employees.

15. Other than the counseling referred to, there was no attempt to apply the techniques of step discipline to the incidents of August 11. There was no counseling, reprimand or suspension. The dismissal of August 24 was the first step in the disciplinary procedure, and the last.

16. The exhibits and the transcript are made a part of these findings for purposes of review by the Supreme Court.

Conclusions of Law.

The Board feels that there definitely was an unwarranted interference by grievant with Carmen Davis' liberty and peace of mind on the night of August 11. The Board feels

that there were probably improper actions and language involved with prior incidents. The Board is deeply concerned, however, that no real effort was made to apply to grievant's situation the generally accepted principles of orderly, progressive discipline. He was fired out of hand, even though there was ample warning to the employer during the last several years that they had on their hands a psychologically troubled individual in need of guidance and support. The dismissal ~~was~~ too drastic and final an action to take by way of discipline for a first step, even considering all of the circumstances. It is the feeling of the Board that the situation was aggravated by the somewhat difficult relationships between the Federal employees, such as Carmen Davis, and the State employees employed under the same roof but with varying responsibilities and rates of pay.

As a result of the foregoing, it is ORDERED that the grievance be sustained in part and denied in part. The grievant is reinstated effective on October 22, 1976, with full pay and other emoluments, less any sums of money which he may have earned since that date. It is recommended that grievant be transferred to another work station to do work for which he may be qualified, and that he not be returned into the Camp Johnson situation. It is further ORDERED that he be offered counseling under the State Employees Assistance Program and whatever other psychiatric or psychological

assistance be deemed necessary by the employer.

Dated at Montpelier, Vermont this 4th day of March,
1977.

*Supl
Order
reversed
Oct '77*

VERMONT LABOR RELATIONS BOARD

By *John S. Burgess*
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