

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-176

DECEMBER TERM, 2002

	}	APPEALED FROM:
	}	
	}	Labor Relations Board
	}	
In re Grievance of Scott Camley	}	
	}	DOCKET NO. 00-37
	}	
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In the above-entitled cause, the Clerk will enter:

The Department of Corrections appeals the Vermont Labor Relations Board's order reinstating grievant Scott Camley to his position as shift supervisor at the Chittenden Regional Correctional Facility. We affirm.

Camley's dismissal stemmed from an incident that occurred on the evening of October 24, 1999. Camley was co-leader of an emergency response team that was called after two inmates assaulted Officer Thomas Charnley and a nurse who was dispensing medications. One of the inmates had stabbed Charnley twice in the cheek with a sharpened toothbrush. While being transported from one correctional facility to another, that inmate was kneeed in the abdomen several times by Charnley and struck in the face with a closed fist by Camley and another officer, Mark LeClair. An investigation ensued. During his interview, Camley admitted that he had struck the inmate with a closed fist, but contended that the inmate was about to spit on him, and that he was attempting to knock the inmate's face away to avoid being spat upon. All three officers were eventually dismissed and filed grievances, which were consolidated in a single proceeding before the Labor Relations Board.

The Board upheld the dismissals of Charnley and LeClair, but concluded that Camley's dismissal was a disproportionately severe penalty. Noting that Camley was being disciplined for using excessive force against a secured inmate and then lying about the incident afterwards, the Board determined that the Department failed to prove that Camley had been untruthful during the investigation. The Board credited Camley's testimony that he struck the inmate because he believed that the inmate was about to spit on him rather than because he wanted to retaliate for the inmate's earlier assault against his fellow officer. The Board described Camley's conduct as an isolated act in a tense situation, and concluded that, considering his commendable work history and the lesser penalties previously imposed by the Department for similar offenses, there was no just cause for his dismissal. Instead, the Board reduced the penalty to a thirty-day suspension, reinstated Camley, and awarded him back pay beginning thirty days from the effective date of his dismissal.

The Department appeals, arguing that the Board abused its discretion by reducing Camley's dismissal to a thirty-day suspension and reinstating him. The Department contends that there was no credible evidence, including Camley's self-serving testimony, to support the Board's finding that Camley did not strike the inmate in retaliation for the inmate's earlier assault. In making this argument, the State asserts that (1) the testimony of other eye-witnesses contradicted

Camley's testimony; (2) the Board's finding that Charnley and LeClair struck the inmate in retaliation for the inmate's earlier assault undermines its conclusion that Camley did not do likewise; (3) Camley lied about Charnley's conduct; (4) Camley never told another officer that he struck the inmate to avoid being spat upon; and (5) Camley failed to file a use-of-force report, as required by Department regulations. None of these assertions compel us to overturn the Board's decision, to which we accord substantial deference. See In re Lilly, \_\_\_ Vt. \_\_\_, \_\_\_, 795 A.2d 1163, 1167 (2002) (Board's decision is presumed to be correct, valid, and reasonable, and Board's findings will be upheld as long as credible evidence supports them, even if this Court would not have reached same decision).

The Department relies upon the testimony of one of the officers that he did not observe the inmate move his head before Camley struck him. But that officer was not able to observe the inmate's face just before Camley struck the inmate, and thus his testimony was not directly contradictory to Camley's testimony that the inmate was about to spit at him. Further, the Board's conclusion that Charnley and LeClair struck the inmate in retaliation for the assault on Charnley did not compel the Board to conclude that Camley also struck the inmate based on the same motive. Nor was such a conclusion compelled by Camley's failure to file a report of the incident or his testimony that he believed Charnley acted appropriately in kneeling the inmate to get him into the van. It is for the Board, not this Court, to consider the credibility of witnesses and weigh the evidence. See P.F. Jurgs & Co. v. O'Brien, 160 Vt. 294, 300 (1993). Camley's testimony may have been self-serving, but the Board chose to believe it, and nothing in the record requires us to overturn the Board's findings in that regard.

The Department also argues, in the alternative, that the Board abused its discretion by denying the Department's motion, filed two months after the Board's decision, to reopen the hearing to allow the testimony of two witnesses claiming that Camley admitted to them that he had falsely told investigators he hit the inmate to avoid being spat upon. We find no abuse of discretion. The witnesses were neighbors of Camley who had not seen Camley strike the inmate, but rather offered testimony regarding what they claimed Camley said to them months later. After examining the tape-recorded interviews of the witnesses, the Board concluded that the proffered testimony would not affect its determination that Camley struck the inmate to avoid being spat upon, insofar as much of the testimony was general in nature and inconsistent with any of the versions of the incident presented at the hearing. The Board acted within its discretion in declining to reopen the proceedings to hear testimony that would not affect its decision.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice