

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-180

FEBRUARY TERM, 2007

In re Grievance of Valinda Sileski

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APPEALED FROM:

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Labor Relations Board

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DOCKET NO. 05-17

In the above-entitled cause, the Clerk will enter:

Grievant Valinda Sileski appeals the Vermont Labor Relations Board's decision rejecting her claim that the Department of Public Safety terminated her employment based on discriminatory and retaliatory reasons. We affirm.

Grievant worked as a dispatcher for the Department for approximately ten years before she was fired in May 2005. In August 2004, grievant submitted a letter to her superiors stating that, pursuant to her rights

under the collective bargaining agreement, she wished to be excluded from further consideration for overtime, except in emergencies. Shortly before noon on the morning of December 4, 2004, a dispatcher scheduled to work the next eight-hour shift beginning at 3:00 p.m. called in to say that her husband's grandmother had died and she needed to stay home that day and possibly the next day to take care of her children while her husband made funeral arrangements. Grievant was one of three dispatchers working the current shift at the time of the call. The shift supervisor asked the other two dispatchers if they could extend their shift to cover for the dispatcher who was not coming in for the next shift. Neither one wanted to extend her shift. One of them had already volunteered to come in two hours early that day and had been up since 5:00 a.m., and the other one had worked twelve hours the previous day. After making several other calls and exhausting her alternatives, the shift supervisor was able to cover the last four hours of the three-to-eleven shift that day and the entire shift the next day, but she still needed coverage for the first four hours of the next shift.

The shift supervisor called the administrator, who told the supervisor to tell grievant that she was assigned to work the first four hours of the next shift. When the shift supervisor informed grievant of the administrator's decision, grievant stated that she was not staying. The administrator then called grievant directly to tell her that she was being assigned to work the first four hours of the next shift. Grievant stated "That's fine," but asked that the order be put in writing. Grievant then telephoned the commander of the barracks and told him that the administrator had commanded her to stay, but that she was not staying. The commander told her that she had no choice if she was being commanded to stay. Grievant responded that she supposed it meant she would be fired. The commander stated that he did not know whether she would be fired, but that her leaving was going to be an issue. Shortly before the next shift began, one of the other dispatchers agreed to cover the vacancy. When grievant left at the end of her shift, she took her personal belongings with her.

Approximately one week after this incident, grievant filed a grievance contending that the administrator and commander had retaliated against her by commanding her to stay and work overtime on December 4. The grievance was denied, and there was no appeal. On January 6, 2005, a personnel investigator conducted an investigative interview with grievant concerning the events of December 4. In April 2005, after reviewing the investigative report, the newly assigned commander of the barracks sent grievant a letter informing her that the

Department was contemplating her dismissal because of her insubordination on December 4 and her untruthfulness during the follow-up investigative interview. In May 2005, after grievant had responded to the letter, the commander sent grievant another letter informing her that she was being dismissed for the reasons stated in the first letter. In June 2005, grievant filed a grievance with the Board contesting the termination of her employment. Following a two-day hearing, the Board dismissed the grievance, concluding that the Department had proven its allegations of insubordination and misconduct by a preponderance of the evidence, and that grievant=s actions justified her termination.

On appeal, grievant does not raise any specific legal arguments, but rather provides her view of a long history of interactions with various employees of the Department, stating that for several years leading up to her termination she had been the victim of continuous retaliation, discrimination, and harassment. Grievant devotes much of her brief to detailing allegations raised in a previous grievance that the Board found to be lacking in merit. With respect to the instant grievance, she contends that she never left her position unattended, that she never jeopardized the safety of the general public or Department employees, and that she never intentionally or deliberately lied to the investigator regarding the incident that led to her dismissal.

The Board, on the other hand, found that grievant had failed to demonstrate that her prior conduct or condition had been a motivating factor in the Department=s decision to dismiss her. The Board further found that grievant had wilfully disobeyed a lawful and reasonable order, considering that (1) diligent efforts were made to find substitute dispatchers to fill a sudden and unexpected vacancy; and (2) grievant was ordered to work overtime only when no other dispatcher could reasonably be found to provide coverage, and immediate attention was required to ensure public safety. The Board also found several instances in which grievant had been untruthful in speaking to the investigator by providing false information concerning policies and statements made by her superiors. The Board concluded that the Department was justified in dismissing grievant for her willful insubordination and her subsequent untruthfulness, considering the relevant factors, including (1) the nature and seriousness of her insubordination, which had the potential to endanger the public and Department personnel; (2) the effect of the offenses on the supervisors= confidence in grievant=s ability to do her job; (3) the clarity with which grievant was on notice of the prohibited conduct; and (4) the lack of potential for

grievant=s rehabilitation.

Upon review of the record, which includes recorded conversations between grievant and the shift supervisor, the administrator, the barracks commander, and the investigator, among others, we conclude that the evidence fully supports the Board=s decision to uphold grievant=s termination. See In re Verderber, 173 Vt. 612, 614 (2002) (mem.) (noting Alimited@ nature of judicial review of Labor Relations Board decisions, which are presumed to be correct, valid, and reasonable as long as they are within the Board=s expertise); In re Butler, 166 Vt. 423, 425 (1997) (noting Asubstantial deference@ given to Board decisions, and stating that Board findings will stand as long as there is any credible evidence to support them). The record does not demonstrate, as grievant alleges, that she was fired based on retaliatory or discriminatory reasons.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice