

SUFFICIENCY OF THE NOTICE OF DEMOTION

THE NOTICE OF DEMOTION TO THE APPELLANT IS A THREE-PAGE, SINGLE-SPACED LETTER DATED JUNE 13, 1972. THAT LETTER IS REPRODUCED AS AN APPENDIX TO THIS OPINION. NEVERTHELESS, APPELLANT CONTINUES TO ASSERT THAT THE NOTICE IS SO VAGUE THAT HE IS DENIED FAIR NOTICE OF THE CHARGES AGAINST HIM AND THE REASONS FOR HIS DEMOTION.

IN BEAUCHAINE V. SCHMIDT, NO. 73-38 (OCTOBER 18, 1973), WE INDICATED CERTAIN MINIMAL CRITERIA WHICH A NOTICE OF DISCIPLINE MUST MEET IN ORDER TO PROVIDE PROCEDURAL DUE PROCESS. THERE WE SAID THAT THE NOTICE ON ITS FACT, AT A MINIMUM, MUST TELL AN APPELLANT FIVE THINGS: FIRST, WHAT HE IS ALLEGED TO HAVE DONE THAT MERITS THE DISCIPLINE THE APPOINTING AUTHORITY DESIRES TO IMPOSE. SECOND, WHEN HE IS ALLEGED TO HAVE COMMITTED THE ACTS OF ALLEGED WRONG DOING. THIRD, WHERE THE ALLEGED ACTS OF WRONG DOING TOOK PLACE. FOURTH, WHO ACCUSES HIM OF THE ACTS OF WRONG DOING. FIFTH, WHY THE APPOINTING AUTHORITY PROPOSES TO IMPOSE THE DISCIPLINE INDICATED. IT IS OBVIOUS THAT THESE FIVE REQUIREMENTS ARE SIMPLY THE FIVE W'S THAT ANY GOOD NEWSPAPER REPORTER USES IN WRITING A NEWS STORY. IF THE FIVE W'S ARE THERE A PERSON READING THE ARTICLE WILL BE ABLE TO GRASP THE ESSENCE OF THE STORY AND MAKE INTELLIGENT DECISIONS CONCERNING IT. SIMILARLY, IF THE FIVE W'S APPEAR ON THE FACE OF A NOTICE OF DISCIPLINE, THE READER WILL BE ABLE TO GRASP THE ESSENCE OF THE SITUATION DESCRIBED AND MAKE INTELLIGENT DECISIONS CONCERNING HIS RESPONSE.

TESTED BY THE CRITERIA ESTABLISHED IN BEAUCHAINE, THE DISCIPLINARY NOTICE SENT TO APPELLANT KARETSKI IS SUFFICIENT UPON ITS FACE. IT IS NOT SO VAGUE AS TO DENY APPELLANT DUE PROCESS OF LAW. ON THE CONTRARY, IT IS IN PLACES QUITE DETAILED AND INTELLIGIBLE.

IT TELLS THE APPELLANT WHAT HE IS ALLEGED TO HAVE DONE THAT WAS WRONG. IT ALLEGES THAT THE APPELLANT FAILED TO SUPPLY TO ROBERT WALTER, HIS DIVISION ADMINISTRATOR, A WRITTEN STATEMENT BY JUNE 5, 1972, ALTHOUGH HE WAS REQUESTED TO DO SO BY DEPUTY SECRETARY GEORGE D. SIMOS. THE NOTICE ALLEGES FIRST GENERALLY, THEN SPECIFICALLY, THAT THE APPELLANT WAS A POOR MANAGER OF HIS BUREAU. THE NOTICE ALLEGES THAT THE APPELLANT CONSISTENTLY REFUSED TO ACCEPT POLICY DECISIONS AND ADMINISTRATIVE DIRECTIVES OF HIS SUPERIORS. THE NOTICE THEN GOES ON TO SET FORTH SPECIFICALLY THE EVIDENCE SUPPORTING THESE ALLEGATIONS. THAT EVIDENCE IS ALLEGED IN SHORT NUMBERED PARAGRAPHS WHICH ARE REASONABLY SPECIFIC. FIRST, IT IS ALLEGED THAT IN ONE INSTANCE (WE ASSUME AS AN ILLUSTRATION OF THE ALLEGATION THAT THE APPELLANT REFUSED TO ACCEPT THE POLICY DECISIONS AND ADMINISTRATIVE DIRECTIVES OF HIS SUPERIORS) THAT WITH REGARD TO THE DISCONTINUANCE OF THE "STATE STAFF OPTION", THE APPELLANT REFUSED TO ACCEPT THE DECISION AND ACTIVELY PROMOTED CONTINUANCE OF THAT CONCEPT AT THE REGIONAL PLANNING COMMISSION LEVEL. SECOND, EVIDENCE IS ALLEGED THAT THE APPELLANT DISOBEYED SPECIFIC INSTRUCTIONS GIVEN BY THE SECRETARY OF THE DEPARTMENT CONCERNING METHODS TO BE USED TO CUT EXPENDITURES. THIRD, IN A VERY SPECIFIC EVIDENTIARY PROP TO THE ALLEGATIONS OF WRONG DOING, THE NOTICE ALLEGES THAT THE APPELLANT DISREGARDED THE SPECIFIC CONDITIONS OF AN APPROPRIATION BY THE LEGISLATURE AND SUBMITTED PROPOSALS FOR EXPENDITURES IN EXCESS OF THAT APPROPRIATION. FOURTH, AS FURTHER EVIDENCE OF APPELLANT'S ALLEGED MISMANAGEMENT OF HIS BUREAU, THE NOTICE ALLEGES THAT THE APPELLANT RECOMMENDED SUPERIOR MERIT INCREASES FOR STAFF MEMBERS WHOSE PERFORMANCE DURING THE PAST YEAR WAS POOR. FIFTH, IN A FURTHER EVIDENTIARY PROP TO THE ALLEGATIONS OF WRONG DOING, THE NOTICE ALLEGES THAT THE APPELLANT FAILED TO ATTEND AN IMPORTANT STAFF MEETING ON MAY 12, 1972, AND FAILED TO SECURE AUTHORIZATION FOR HIS ABSENCE IN ADVANCE. SIXTH, THE NOTICE ALLEGES THAT AS

PART OF THE ABSENCE IN ADVANCE. SIXTH, THE NOTICE ALLEGES THAT AS PART OF THE APPELLANT'S POOR PERFORMANCE IN THE MANAGING THE DEPARTMENT, HE FAILED TO DELEGATE RESPONSIBILITIES TO HIS SUBORDINATES AND DID NOT MAKE FULL USE OF THEM TO HELP MANAGE THE DEPARTMENT. SEVENTH, AS FURTHER EVIDENCE OF APPELLANT'S ALLEGED MISMANAGEMENT OF THE DEPARTMENT, THE NOTICE ASSERTS THAT THE APPELLANT CONTINUED TO TRAVEL EXCESSIVELY ON STATE BUSINESS RATHER THAN TO DELEGATE TRAVELLING ASSIGNMENTS TO SUBORDINATE PROFESSIONALS AND THAT THE ACTIONS CAUSED BY HIS TRAVEL HAD AN ADVERSE EFFECT UPON THE MANAGEMENT OF THE BUREAU. FINALLY, THE NOTICE ALLEGES THAT THE APPELLANT'S MANAGEMENT OF HIS BUREAU WAS POOR BECAUSE HE FAILED TO COMPLETE EXISTING PROJECTS WITHIN PRESCRIBED TIME LIMITS DESPITE SPECIFIC INSTRUCTIONS TO DO SO.

THE NOTICE TELLS THE APPELLANT WHEN IT IS ALLEGED HIS WRONG DOING OCCURRED. IT IS TRUE THAT THE NOTICE DOES NOT SET FORTH WITH IDEAL DETAIL THE DATE OR TIME FOR EACH SPECIFIC EVIDENTIARY BASE SUPPORTING THE ALLEGATIONS OF MISMANAGEMENT. THE NOTICE DOES, HOWEVER, SUFFICIENTLY DEFINE THE TIME PERIMETER WITHIN WHICH THE WRONG DOING IS ALLEGED TO HAVE OCCURRED. IN AT LEAST ONE INSTANCE, IT GIVES A SPECIFIC DATE AND TIME (E.G. PAGE 2, ALLEGATION FIVE OF THE LETTER OF JUNE 13, 1972). IN SHORT, THE APPELLANT IS INFORMED THAT HIS PERFORMANCE WITHIN THE LAST THREE YEARS AS A BUREAU DIRECTOR IS BEING CALLED INTO QUESTION. WHILE IDEALLY, IT WOULD HAVE BEEN PREFERABLE, IF POSSIBLE, TO SET FORTH THE SPECIFIC DATES UPON WHICH IT WAS ALLEGED THAT THE APPELLANT COMMITTED THE ACTS STATED IN THE NOTICE. THE NATURE OF THIS CASE, AS REVEALED BY THE NOTICE OF DEMOTION, SUGGESTS THAT THE CONDUCT WAS CONTINUING, UNLIKE THE SITUATION IN BEAUCHAINE WHERE THERE WAS NO SUGGESTION OF CONTINUING CONDUCT AND NO DATES AT ALL MENTIONED IN THE NOTICE. ON THIS RECORD,

THEREFORE, WE ARE UNABLE TO SAY AS WE DID IN BEAUCHAINE V. SCHMIDT, SUPRA, THAT THE NOTICE IS DEFECTIVE BECAUSE IT FAILS TO SET FORTH THE DATE OR DATES UPON WHICH THE ALLEGED WRONG DOING OCCURRED.

THE NOTICE CLEARLY TELLS THE APPELLANT WHERE HIS ALLEGED WRONGFUL ACTS OCCURRED. IT ASSERTS THAT THEY OCCURRED AT THE DEPARTMENT OF LOCAL AFFAIRS AND DEVELOPMENT, BUREAU OF LOCAL AND REGIONAL PLANNING.

THE NOTICE CLEARLY SPECIFIES WHO ACCUSES THE APPELLANT OF WRONG DOING AND PROVIDES HIM THE NAMES OF THOSE ACCUSERS.

FINALLY, THE NOTICE TELLS THE APPELLANT WHY THE APPOINTING AUTHORITY INTENDS TO DEMOTE HIM. THE REASONS ARE SET FORTH CLEARLY. THE REASONS FOR THE CHOICE OF ONE PENALTY OVER ANOTHER WHICH THE APPOINTING AUTHORITY CONSIDERED EQUALLY APPROPRIATE ARE SET FORTH ON PAGE 3 OF THE LETTER OF DEMOTION.

WE FIND THAT THE NOTICE IS NOT DEFICIENT AND THAT THE APPELLANT HAS NOT BEEN DENIED PROCEDURAL DUE PROCESS WITH RESPECT TO THE NOTICE OF CHARGES AGAINST HIM.

FAILURE TO STATE A CLAIM

APPELLANT NEXT ARGUES THAT HE MUST BE SUMMARILY REINSTATED BECAUSE THE ALLEGATIONS OF THE NOTICE, EVEN IF TAKEN AS TRUE, DO NOT, AS A MATTER OF LAW, CONSTITUTE JUST CAUSE FOR HIS DEMOTION. IN DECIDING THIS ISSUE, WE MUST ASSUME THE TRUTH OF THE FACTUAL ALLEGATIONS IN THE NOTICE. HAVING DONE THIS, WE ARE UNABLE TO SAY THAT AS A MATTER OF LAW, THE ALLEGATIONS OF THE NOTICE FAIL TO ESTABLISH JUST CAUSE FOR APPELLANT'S DEMOTION. ALL THAT WE HOLD TODAY IS THAT THE FACTS AND REASONS ALLEGED IN THE NOTICE OF JUNE 13, 1972, IF TRUE, UNCONTROVERTED, AND UNMITIGATED, ARE SUFFICIENT TO PROVIDE JUST CAUSE FOR THE DEMOTION

THE APPOINTING AUTHORITY DESIRED TO IMPOSE. WE DO NOT REACH THE QUESTION OF WHETHER, IN FACT, THE ALLEGATIONS OF THE NOTICE OF JUNE 13, 1972 ARE TRUE, ARE UNCONTROVERTED, OR ARE UNMITIGATED. THOSE QUESTIONS, WHICH ARE HOTLY CONTESTED, CAN ONLY BE ANSWERED AFTER THE FACTUAL HEARING IN THIS CASE.

ORDER

ACCORDINGLY, FOR THE REASONS STATED IN THIS OPINION, AND ON THE BASIS OF THE ENTIRE RECORD HEREIN,

IT IS ORDERED, THAT THE MOTION FOR SUMMARY REINSTATEMENT THAT THE APPELLANT MADE, AMENDED, AND RENEWED HEREIN, BE AND IT HEREBY IS, DENIED.

DATED AT MADISON, WISCONSIN, THIS 18TH DAY OF OCTOBER, 1973.

BY THE PERSONNEL BOARD


PERCY L. JULIAN, JR.
BOARD MEMBER