
JOSEPH W. JACKSON,

Petitioner,

MEMORANDUM DECISION

v.

STATE PERSONNEL BOARD,

Respondent.

Case No. 164-086

BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

This is a ch. 227 review proceeding by petitioner Jackson to review the decision and order of the respondent State Personnel Board (hereafter the board) dated June 16, 1978, which affirmed the denial of Jackson's request that he be reclassified Real Estate Agent 3 for Civil Service purposes.

STATEMENT OF FACTS

Jackson has been employed by the Department of Transportation, (hereafter D.O.T.), Division of Highways, and the predecessor Wisconsin Highway Commission, since 1955, and his Civil Service classification since April 15, 1973, has been Real Estate Agent 2 and his working title that of Right-of-Way Plat Coordinator. For some years prior to that Jackson was classified Right-of-Way Agent 2. For the period material to this review he has been employed in the Bureau of Real Estate, the Director of which is Bernard J. Mullin. Mullin has 26 employees under his supervision at the Division's central office at Madison, one of whom is Jackson. Jackson's immediate supervisor is Donald Topp (misspelled "Tobb" in the transcript) whose working title is that of Chief of Research Development Section.

On or about March 25, 1976, Jackson submitted to the Bureau of Personnel Management of D.O.T. a request that he be reclassified from Real Estate Agent 2 to Real Estate Agent 3 (Board's Exhibit 3). This request was typed on an official form of the State Bureau of Personnel entitled "Classification Request/Report," and bore the signatures of both Mullin and Topp

indicating their approval of the request. The respondent's brief states that pursuant to sec. 16.03(2), Stats., the Director of the Bureau of Personnel had delegated his functions of passing on such a request for reclassification. The court assumes this delegation was to the executive in charge of the Bureau of Personnel of D.O.T. whose working title is Chief of Personnel Services, who at times material to this review was Robert B. Barnes.

Barnes denied Jackson's request for reclassification June 16, 1976 (Board's Exhibit 2, Tr. 89). Jackson then timely appealed such denial to the respondent Board. A prehearing conference was held in the matter before an attorney for the Board on October 13, 1976, and a Conference Report dated October 14, 1976, signed by such attorney constitutes part of the record returned this court. A hearing was held before this same attorney for the Board as Hearing Officer on March 23, 1977, at which testimony of witnesses was taken and exhibits received into the record.

Further facts will hereafter be stated in connection with the court's discussion of the issues.

THE BOARD'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board's material findings of fact read:

"4. Appellant's duties and responsibilities are accurately reflected in his position description:

- 80% Coordinates Relocation Order activity between the Central Office of the Bureau of Real Estate, District offices of the Division of Highways, the Division Office of the Federal Highway Administration, Facilities Development Section, Maintenance Section and the Highway Commission.
1. Reviews right of way plats for compliance with standards set forth in the Design Manual and for sufficient information to permit writing of accurate description of land to be acquired, and for appraisers who will appraise the land to be acquired.
 2. Prepares formal submittals of Relocation Orders and Right of Way plats for presentation to the Highway Commission by the Director, Bureau of Real Estate.

3. Prepares and submits Relocation Orders and Right of Way plats from Counties, Cities, etc. to the Facilities Development Section and the Division Office of the Federal Highway Administration to obtain their approvals.
 4. Maintains records of all Relocation Order activity on an individual project basis by county and district.
 5. Orders and distributes prints of all Right of Way plats to interested parties and maintains a file of all current right of way plats.
- 18% Coordinates sign acquisition activity between the Central Office of the Bureau of Real Estate, District Offices of the Division of Highways, Division Office of the Federal Highway Administration, The Maintenance Section and The Highway Commission.
1. Reviews sign acquisition plats for compliance with standards set forth in the Design Manual and to accurately show the location of each sign to be acquired.
 2. Prepares formal submittals of Sign Acquisition Orders and Sign Acquisition Plats for presentation to the Highway Commission by the Director, Bureau of Real Estate.
 3. Maintains records of all Sign Acquisition Order activity on an individual project basis by county and district.
 4. Orders and distributes prints of all sign acquisition plats to interested parties and maintains a file of all current sign acquisition plats.
- 2% Orders prints of plats and sends them out in response to requests from individuals, firms, and district offices.
5. Appellant reviews all but design aspects of relocation plats.
 6. Appellant works independently under the general direction of his supervisor.
 7. Appellant reviews relocation orders and the accompanying right of way plats. However, he does not do any field review. A relocation order is an instrument by a government body, permitting acquisition of lands and interests in land so that highway improvement can proceed. A right of way plat is a pictorial representation developed by a district officer or government unit for submission. A relocation order is developed from the right of way plat.
 8. Appellant has the authority to challenge a proposed order but not to change it.

9. The only guidelines appellant has is a single chapter, 'Standards for Development of Right of Way Plats,' in the Design Manual which was prepared by the facilities development section.
10. Appellant works directly with district employes, giving informal guidance as needed. He does not conduct formal training sessions.
11. In the late 1960s and early 1970s there were federal legislative changes which increased the amount of money available to state and local governments for the building of highways. The state is responsible for overseeing the use of the funds. The result of the changes was an increase in the volume and complexity of appellant's job.
12. Appellant is the only person who is performing these duties and responsibilities."

THE ISSUES

The court does not understand that counsel for petitioner Jackson are raising any issue with respect to whether the findings of fact quoted above are supported by substantial evidence. The respondent's brief sets forth citations from the record which support these findings. Furthermore, the court has carefully read the transcript and is satisfied that the portions of the record cited by respondent's brief as supporting such findings do so. The court, however, will cite other evidence which it deems to be material in passing on the Board's conclusions of law 3 and 4.

The court deems the issues it is required to resolve are:

- (1) Did the Board employ an erroneous standard of evidence in its review?
- (2) Is there substantial evidence in the record to support the determination made by the Board, "Appellant's position is properly classified as a Real Estate Agent 2," embodied in conclusion of law 4?

THE COURT'S DECISION

A. Board's Alleged Application of Erroneous Standard of Evidence in its Review.

The court finds no error in the Board having stated in

conclusion of law 2 that the burden of proof was on Jackson to show that he be reclassified as he requested. The Conference Report of the prehearing conference stated, "Appellant has the burden of proof." This prehearing conference was attended by Jackson's counsel, and no objection was voiced to this. Furthermore the burden of proof in an administrative proceeding is generally on the party seeking affirmative relief in the absence of any statute or administrative rule to the contrary.

The court further finds no error in this conclusion of law's statement that the standard of judgment is that of a reasonable certainty, by the greater weight of the evidence, citing Reinke v. Personnel Board, 53 Wis. 2d 123, 191 N.W. 2d 833 (1971). This refers to the standard of proof to be exercised by the Board in making its findings as the finder of fact. It has no authority to determine if there was substantial evidence to support the action of the appointing authority. Reinke v. Personnel Board, supra, at page 137.

Counsel for petitioner sharply attack conclusion of law 3 which states, "The appellant has failed to meet his burden." The court has been troubled by this conclusion which might reasonably be interpreted to mean that Jackson failed to present sufficient evidence upon which the Board could ground a finding that he should be reclassified as a Real Estate Agent 3. This is the interpretation made by Jackson's counsel. The court is satisfied that the testimony of Jackson, Mullin, and Topp constituted substantial evidence upon which the Board could have based a finding that Jackson's position would be more properly classified as Real Estate Agent 3 than Real Estate Agent 2. In this sense Jackson did meet his burden of proof. However, in view of conclusion of law 4 and the reasons advanced by the Board in the opinion portion of its decision for reaching this finding, the court has concluded that conclusion of law 3 should be interpreted as stating that Jackson failed to convince the board by the greater weight of the evidence, as the board evaluated it, that he should be reclassified as a Real Estate Agent 3. If, however, conclusion of law 3 is to be interpreted

as counsel for Jackson has, it would at most be harmless error which did not affect the Board's ultimate conclusion stated in conclusion of law 4. The court would only have the right to remand the matter to the Board for further action because of such an error if it affected the result so as to have constituted material error. Sec. 227.20(4), State.

B. Substantial Evidence to Support Board's Determination that Jackson's Position is Properly Classified as a Real Estate Agent 2.

The test of what constitutes substantial evidence in court review of administrative agency findings under former sec. 227.20(1), Stats., which is equally applicable to present sec. 227.20(6), Stats., was stated in Reinke v. Personnel Board, supra, at pages 138-139, as follows:

"[T]he term 'substantial evidence' should be construed to confer finality upon an administrative decision on the facts when, upon an examination of the entire record, the evidence, including the inferences therefrom, is found to be such that a reasonable man, acting reasonably, might have reached the decision; but, on the other hand, if a reasonable man, acting reasonably, could not have reached the decision from the evidence and its inferences then the decision is not supported by substantial evidence and it should be set aside

. . .

"We deem that the test of reasonableness is implicit in the statutory words "substantial evidence." However, in applying this test the crucial question is whether a reviewing court is only to consider the evidence which tends to support the agency's findings, or whether it is also to consider the evidence which controverts, explains, or impeaches the former. Use of the statutory words "in view of the entire record as submitted" strongly suggests that the test of reasonableness is to be applied to the evidence as a whole, not merely to that part which tends to support the agency's findings."

Further, as stated in Robertson Transport Co. v. Public Service Comm., 39 Wis. 2d 653, 658, 159 N.W. 2d 636 (1968):

"Substantial evidence is not equated with preponderance of the evidence. There may be cases where two conflicting views may each be sustained by substantial evidence. In such a case, it is for the agency to determine which view of the evidence it wishes to accept."

With these principles in mind the court will now review the material testimony and evidence appearing in the exhibits.

The definitions of Real Estate Agents 2, 3 and 4, as defined in the Civil Service class descriptions are as follows:

Real Estate Agent 2

This is responsible professional real estate work performed in connection with state improvement projects. Employees in this class function at the full performance level in a major real estate program, such as appraisal and negotiation, lands management, and/or relocation assistance. Work at this level can be differentiated from that of the preceding level, by the variety and complexity of real estate activities performed and the independence of action in performing these activities. The real estate functions are carried out in accordance with state and federal guidelines and the final product is generally subject to the review of a higher level agent and/or supervisor.

(Respondent's Exhibit 1B)

Real Estate Agent 3

This is advanced professional real estate work performed in connection with state improvement projects. The employees in this class function as a real estate specialist responsible for handling the most complex situations in the area of appraisal and negotiation, lands management and/or relocation assistance. The work in this class differs from that of lower level real estate agents in the complexity and sensitivity of real estate situations encountered with the employees in this class functioning as professional staff experts providing judgmental guidance in areas where no guidelines or standards currently exist. Work is performed independently under the general direction of a real estate supervisor.

(Respondent's Exhibit 1C)

Real Estate Agent 4

This is lead and advanced professional real estate work performed in connection with state improvement projects. The employees in this class function as either: 1) district project leaders on major and complex real estate projects; or 2) central office coordinators for a specialized real estate program. Duties and responsibilities of employees functioning as district project leaders include: guiding a staff of agents involved in the appraisal and negotiation, lands management, or relocation assistance activities of a major real estate project; and providing district-wide coordination in specialized real estate area, such as utilities and litigation. Employees who function as central office coordinators provide statewide coordination between the central office coordinators provide statewide coordination between the central office and district operations in a specialized real estate program, such as scenic easements, roadside development, and administrative services. Work is performed in accordance with program and/or project guidelines and is reviewed through program reports and progress conferences with a real estate supervisor.

(Respondent's Exhibit 1D)

Jackson testified that the nature of the work performed by him was as follows (Tr. 6-8):

"I handle all relocation activities. I'm the coordinator for all relocation activities. I coordinate that activity between the central office Bureau of Real Estate and the nine district offices of the Highway Commission and the division office of the Federal Highway Administration and the Facilities Development Section and Maintenance Section and the Highway Commission. I review all right-of-way plats and all aspects other than the design aspect. I review them for completeness, clarity, accuracy, overall acceptability. I prepare formal submittals of these relocation orders and right-of-way plats for the--for action by the Highway Commission, the State Highway Commission. I also prepare formal submittals to go to our Facilities Development Section and the Federal Highway Commission, Federal Highway Administration, to obtain their approvals on relocation orders and plats involving cities, villages, and counties. I create and maintain records of all relocation order activities and I order and distribute prints of plats for all interested parties and I create and maintain plat files of all right-of-way plats.

. . .

I also do the similar work at times in connection with our sign acquisition program. I prepare the--I act similarly as coordinator between the above mentioned offices and I prepare sign acquisition submittals for action by our Highway Commission, and I also maintain files for all sign acquisition projects and I order all necessary prints and distribute them, and I create and maintain files for all sign acquisition projects, plats of sign acquisitions. I also in connection with more recent form of work involving the Interstate Highway 43, I do all of the above mentioned work in connection with the interstate project. I also prepare submittals on federal aid urban and federal aid rural projects. I prepare submittals for our Facilities Development Section and for submittal to the Federal Highway Administration to obtain approvals from those two offices on the plats and relocation orders which have been submitted to us after the relocation orders have been issued by cities, counties, villages, and the like."

Jackson further testified his work is part of the real estate acquisition program of the Highway Commission of D.O.T. (Tr.9). He is the statewide coordinator for all relocation orders and right-of-way plats (Board's Exhibit 1). The relocation orders are the orders which authorize the acquisition of real estate for highway purposes (Tr. 27). Some relocation orders are prepared by counties, villages and other units of government in addition to the Highway Commission (Tr. 27). The Hearing Officer asked Jackson how he went about reviewing reloca-

tion orders and right-of-way plats, and he answered (Tr. 28):

"I will look first at the relocation order and verify that the information on it is complete and correct, based on what I find on the right-of-way plat. I will confirm the accuracy of the basic information by reviewing what is called the Form 218 setup sheet, which is made up by--It is sent to us from our Program Management Section. I will then commence review of a plat to verify it for completeness, accuracy, clarity, deviations from established practices, innovations, corrections, ambiguities, and general proper application of all established rules, practices and procedures. I make judgmental decisions in these frequently found instances where there is nothing in the guidelines, that is, the standards for preparation of right-of-way plats. If I find that the plat is not acceptable in some aspect, I will contact district personnel and ask that the plat be brought into conformity with what is required."

Jackson further testified that new highway programs evolved from the Federal Highway Act of 1973 which he referred to as "federal aid urban" and "federal aid secondary", and that the plats covering these "tend to be more complex and approval of those plats required my maximum skills" (Tr. 21). Mullin in his testimony corroborated this, stating that the complexity of Jackson's job had increased in the last three or four years (tr. 31). (This testimony was given March 23, 1977).

Mullin gave this additional significant testimony (Tr. 61-62):

"Q . . . And, I assume there's many other guidelines?

A Oh, there's all kinds of them.

Q But, with respect to the ones that--with respect to that type of a guideline, you indicated that as an example of the problems that Mr. Jackson may encounter, and it's his responsibility to initiate or raise questions about them where there's a shift in a boundary line--a right-of-way line, rather, to avoid the Highway Commission having to purchase a building. I gather from the example you gave you said that the guidelines--that his work goes far beyond than just observing whether the correct symbol for a river or a bush is used on a map?

A Right.

Q He's to raise questions that require judgmental decisions?

A Right. Questions that alude to the appraisal process. You have to know something about the appraisal process to know whether you've got a problem in the first place.

Q Does Joe's work--Mr. Jackson's work require a basic knowledge of the appraisal business?

A I would certainly think so, yes, sir. He doesn't necessarily have to be prepared to go out some afternoon and make an appraisal someplace, but he certainly has to know how you go about the process and some of the stuff that has to be existent for an appraiser to take over.

Q Are these plat maps important to appraisals?

A Absolutely. They're one of the basic tools that an appraiser, whether he's a staff or federal person, has at the start of the process."

Probably the most important testimony given by Mullin was (Tr. 35-38):

"Q I wonder if you would be so good as to read those definitions [those of Real Estate Agents 2, 3 and 4 set forth supra] and tell us which definition most closely proximates or equates to the work that Mr. Jackson is doing, and then when you tell us that, tell us why.

A Would you like me to read them out loud?

Q No. Just so you're aware of them.

A Okay. I am aware of the three.

Q All right. Go ahead, then.

A In reviewing the three descriptions for Agents 2, 3, and 4, my best impression is that Real Estate Agent 3 fits the situation as perhaps as close as necessary. There are elements in Agent 4 that may offer some consideration with respect to Mr. Jackson's current job, particularly in the Agent 4 classification--Would you rather I refer to exhibits in contrast to the Agent 4?

Q I think either one is equally good for us.

A Well, I'll speak in terms of the real estate classifications. In the Agent 4 statement class description, the statement indicates that the employe should function as central office coordinator, provide statewide coordination between the central office and district operations in specialized real estate programs such as administrative services and so forth. At this point I would pause for a second by indicating that I think that perhaps myself and the rest of our people were a little bit deficient when we created this series of not considering Mr. Jackson's operation and attempting to work some verbiage into this thing. What I'm trying to say is that I think in terms of appraisals and big stuff relocating people, selling excess real estate and so forth--You forget sometimes the nicities of some of the other functions that have to happen. I think in my opinion that Mr. Jackson's occupation is a specialized real estate activity. The whole thing starts and stops with the real estate plat as to all of the things that we do, and there's, I suppose, debateable question as to whether or not his activity is the same as, for instance, the advertising sign removal program or the appraisal program or the big programs or what have you.

The definition under Real Estate Agent 3, which is what I recommended, as I said, fits closer than anything else. The statement is made in the Agent 3 classification that 'Employees in this class function as real estate specialists responsible for handling the most complex situations in the area of appraisal and negotiating land management and relocation assistance.' Where I'd reconstruct or assist in reconstructing the description of this job, I very definitely would have placed in here that the complexity also alludes to the business of real estate plats and their proper construction and so forth. The Real Estate Agent 3 classification further describes the fact that the person in Mr. Jackson's job provides judgmental guidance in areas where no guidelines or standards currently exist, and this work is performed under--is performed independently under the general direction of a real estate supervisor. The last sentence is absolutely correct. It is complete independence with the exception of some very substantial flap that may develop in the family someplace with respect to his business, and then I get in the act and conceivably the Highway Commission gets in the act. To back up the previous sentence, judgmental guidance in the areas where no guidelines or standards currently exist, we have discussed the fact that the design manual is created and it has some guidelines with respect to right-of-way plat preparation. They are strictly guidelines. There are many things above and beyond the guidelines that Mr. Jackson is responsible for with respect to reviewing the plats." (Emphasis added.)

It must be remembered that Mullin is the Director in D.O.T.'s Bureau of Real Estate. While at the time of testifying he had no Real Estate Agent 3 under his supervision in the Bureau he had had one by the name of Black who had been promoted to an Agent 4 within the last year or so (Tr. 41, 42). He did have under his supervision four or five Real Estate Agent 4s, and Jackson was the only Real Estate Agent 2 (Tr. 41).

Topp, Jackson's immediate supervisor, testified he had signed the request for Jackson's reclassification to Real Estate Agent 3, (Board's Exhibit 3), had reviewed it in his preparation, and was "very definitely in agreement in recommending Jackson's reclassification" (Tr. 65-66). He stated his reason for this as follows (Tr. 66):

"Well, I felt that Mr. Jackson's responsibilities had increased and I thought it was only fitting that he be reclassified to a higher classification, because he was doing more complex work, he had more responsibility, and that was the reason that I recommended the reclassification."

Topp further testified that in his opinion Jackson's was a

"professional position" and stated his reason for this opinion as follows (Tr. 68-69):

"Well, as Mr. Mullin pointed out, the right-of-way plat is a very important tool for the appraiser or the negotiator who must go out and acquire the property. The information on it must be accurate, it must be complete, and there must be enough information on there for an appraiser to go out and make an intelligent appraisal of the property, that he's been assigned to make. The negotiator uses it when he contacts the property owner so that he can lay it down on the table and show the property owner exactly what we are going to acquire from him or propose to acquire from him. And I would say that because of these reasons just in themselves would require a professional."

When asked what was the supervision of Jackson's work, Topp stated (Tr. 72):

"I would say it is practically nill. He operates independently. He consults with me on matters where there might be a new procedure coming up that we want to make sure that he and I both interpret this the same way, or you might have a question at the district level where someone will question his criticism or something. If they don't accept his word for it, well then I get into the picture, he and I consult, and he will either call them back and direct them to do what he originally asked them to do or I will do that. Now, that's the type of supervision I'm talking about. I mean, he works as an independent agent primarily."

Topp further testified he would very definitely categorize Jackson's work as being a complex real estate function (Tr. 72).

Barnes testified he had been working for the same "Personnel Director" for eleven years and all reclassification requests go across his ^{desk,} and his involvement in handling Jackson's request for reclassification was considerably greater than the usual requests (Tr. 85-86). He assigned LaVerne Beitz to review this request, who was responsible for all classification decisions in the Real Estate series and approved her denial of the request (Tr. 89-91). Barnes gave these reasons why he considered Jackson was not a Real Estate Agent 3 (Tr. 97):

"A The Real Estate Agent 3 by concept, as found in the definition and also the examples of work performed, is somebody who is making a professional real estate judgment in very complex situations based upon their professional background, as opposed to reviewing work already done by real estate people and making sure that their work is accurate. The conceptual difference between what Mr. Jackson's position is responsible for and what a Real Estate Agent 3 in the field is responsible for is considerable, in my opinion."

Q We have heard some testimony today about specialized nature of the area in which Mr. Jackson functions. Is the specialization differentiating criteria between a 2 and a 3?

A No. The differentiating criteria is the level at which the individuals are performing, the complexity of what they're doing, the independence of action. The word specialization can appear at a very low level or at a very high level in a specification, and that itself is not a criteria."

It is clear from the opinion portion of the Board's decision that the Board largely grounded its decision on the expert opinion testimony of Barnes and disregarded the testimony of Mullin and Topp, in making the factual determination embodied in conclusion of law 4. Frankly, this court, if it had been the finder of facts would have arrived at the opposite conclusion. The court believes that the amount of skill and professionalism embodied in Jackson's position is every bit as great as that of a Real Estate Agent 3 who goes out and does appraising of, or negotiating for the purchase of, the real estate embodied in a relocation order.

Unfortunately, however, the position specifications for a Real Estate Agent 3 applies to one "handling the most complex situations in the area of appraisal, negotiation, lands, management and/or relocation assistance." Jackson's position requires him to do none of these four things. On the other hand his position does require him to work at a higher level than the concluding sentence of the position definition specifications of a Real Estate Agent 2.

The court's considered conclusion is that the Board's factual determination in conclusion of law 4 is supported by substantial evidence in the record within the meaning of sec. 227.20(6), Stats., and, therefore, the Board's decision and order should be affirmed.

The court, however, would recommend that those in authority in the Highway Commission, whose function it would be to revise the definition specifications of the Real Estate Agent 3 position, consider the advisability of revising them as recommended by Mullin in his testimony so as to encompass petitioner Jackson's position.

Let judgment be entered affirming the Board's decision and order which are the subject of this review.

Dated this 26th day of February, 1979.

BY THE COURT:



Reserve Circuit Judge

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Personnel
Commission

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

JOSEPH W. JACKSON,

Petitioner,

v.

NOTICE OF ENTRY OF JUDGMENT

STATE PERSONNEL BOARD,

Case No. 164-086

Respondent.

To: Bakken, Feifarek & Taylor
Attention: James F. Bakken
310 Price Place
Madison, Wisconsin 53705
Attorneys for Petitioner

PLEASE TAKE NOTICE that JUDGMENT, a copy of which is attached was entered in the office of the clerk of courts for Dane County, Wisconsin, on the 5th day of March, 1979.

Dated this 7th day of March, 1979.

BRONSON C. LA FOLLETTE
Attorney General

By: 

ROBERT J. VERGERONT
Assistant Attorney General

Attorneys for Respondent

P.O. Address:
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Madison, Wisconsin 53702

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Personnel
Commission

JOSEPH W. JACKSON,

Petitioner,

JUDGMENT

vs.

STATE PERSONNEL BOARD,

Respondent.

Case No. 164-086


BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

The above entitled review proceeding having been heard by the Court on the 12th day of February, 1979, at the City-County Building in the city of Madison; and the petitioner having appeared by Attorney James A. Bakken of the law firm of Bakken, Feifarek & Taylor; and the respondent State Personnel Board having appeared by Assistant Attorney General Robert J. Vergeront; and the Court having had the benefit of the argument and briefs of counsel, and having filed its Memorandum Decision wherein Judgment is directed to be entered as herein provided;

It is Ordered and Adjudged that the Decision and Order of respondent State Board of Personnel dated June 16, 1978, entered in the matter of Joseph W. Jackson, Appellant, v. Secretary, Department of Transportation and Deputy Director, Bureau of Personnel, Respondent, Case No. 76-159, be, and the same hereby are, affirmed.

Dated this 26th day of February, 1979.

BY THE COURT:


Reserve Circuit Judge
filed: 3/5/79

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