

STATE OF WISCONSIN

BEFORE THE PERSONNEL BOARD

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Paul L. Marlett,

Appellant,

vs.

Edward E. Estkowski, Chairman  
Department of Industry, Labor  
and Human Relations,

Respondent.

# 422

MEMORANDUM DECISION

The facts in this case tend to be buried in the very voluminous record made by the parties and by the fact that many witnesses testified in the same general area from the viewpoint of their respective involvement in the affair.

Appellant was employed by the Department of Industry, Labor and Human Relations, hereafter referred to as DILHR. His civil service classification was Personnel Administrative Officer 2. This position is in salary range 1-17 (\$1258 to \$1638 per month). He was first employed in this capacity on December 18, 1967 and was discharged as of December 11, 1970. As such employe, he was director of DILHR's functions of personnel, payroll and collective bargaining. He was immediately subordinate to Stephen Reilly, Administrator of the Administrative Division of the Department.

There was initial concern about the specification of reasons for the termination and Appellant was accorded an opportunity to request a Bill of Particulars, but decided not to on the assurance that Respondent could put in his case first, that there could be deferred cross examination of Respondent's witnesses and sufficient recesses to enable Appellant to defend against specific charges. This format was generously followed.

Appellant was a high level state employe and except for Brown of the Investment Board, was the most responsible employe that has been involved in a disciplinary hearing in over a decade.

Brown v. Personnel Board, Dane County Circuit Court, Case No. 122-378, Oct. 17, 1967, is cited frequently in the briefs of the parties to this Board. Brown is indeed a landmark case in the employment performance of top public employes. The Board is of the opinion that this case stands for the proposition that a division director cannot be discharged for just cause because his superior who has the burden of running an entire agency does not subjectively regard the director as performing adequately.

The Board, however, does not believe that Brown condones incompetency in high position as a normal incident of civil service. The Board does believe that if there be substantial convincing objective evidence that a director has not competently managed the programs and personnel within his bureau that he should be subject to discipline.

Numerous charges have been made against Appellant. These include poor housekeeping, permitting a noisy and disruptive office, lack of harmony among his staff and failing to do things requested by the State Bureau of Personnel that he had agreed to do. There was no real denial of these derelictions by the Appellant.

While none of these specifications or the cumulation of them would warrant discharge, they are a part of the totality of the picture of the Appellant's performance as a Bureau Director.

Where Appellant really got into trouble was in the conversion from the old payroll system to a new one.

The conversion to the new payroll system involved creating two turnabout documents for each of the 1800 to 2000 employes of DILHR. One document related to personnel, the other to payroll.

The creation of the turnabout documents is a big job requiring a great deal of clerical work by people who understand payroll. It, however, is not an impossible job or even one of difficulty if handled properly.

It was the expectation of the State Department of Administration that DILHR could "go live" on the new system with September, 1970 "A" payroll. The State Department of Administration administers central payroll. The Board believes that Appellant was aware of this expectation.

From the record it would appear that the conversion work began in June. DILHR was not ready to "go live" in September; it was not ready to "go live" in October. As a matter of fact it was not parallel with the old and new systems as of those times.

This delay was not academic. It was costing DILHR about \$2000 a month to proceed as it was.

Reilly became convinced that DILHR would not be able to "go live" in November. This was critical because if the November deadline was missed, the department could not, because of the schedules of the State Department of Administration, "go live" until sometime in 1971.

Reilly then and about October 15, 1970, took drastic action. He removed Appellant from direction of the payroll function. He put one Kemmerer, a systems analyst, in charge. Kemmerer with the assistance of Reilly, two accountants brought in and the utilization of the entire staff of Appellant's bureau, put on a crash program that somehow was sufficiently able to accomplish the conversion so as to "go live" on the November "A" payroll.

Appellant as a bureau director failed to bring to fulfillment a program that it was his duty to have completed. He cannot take refuge behind the members of his staff or shove the responsibility off on his superiors. A reasonable adequate manager could have accomplished the conversion of the payroll of DILHR to the new system at least for the November payroll.

It really is immaterial to inquire why the Appellant failed even though the record is full of detail. However, the more important ones other than Appellant's lack of appreciation of the importance or urgency of completing conversion were:

Permitting the initial work to be done by a group of summer YOC young people who had no experience or real supervision;

Initially having a supervisor of payroll who was antagonistic to the conversion and hostile toward those involved in it;

In July, assigning the conversion to one girl with no background in payroll and who virtually did not know what she was doing;

By refusing or failing to utilize the training offered to his people by the State Department of Administration;

By refusing to accept the services of a systems analyst to aid in the conversion;

By neglecting to implement the several steps agreed upon to expedite the conversion;

By lulling Reilly out of directive action by telling him that the conversion was proceeding well and that the old and new systems were parallel when actually things were bad and there was no parallel.

The Board concludes that Respondent made a record of substantial objective evidence of the failure of the Appellant to manage a significant and important program assigned to him. Such establishes just cause for his discipline.

To argue extenuation because other departments were also tardy in conversion is without point. There is no evidence as to why the other departments were late.

Appellant contends that he was not accorded due process of law.

He was aware of the urgency of the program that he failed. He was aware of the deadlines. Reilly was "on him" for at least six weeks to complete the conversion. He must have known that he was taken off of payroll because he had not handled it well. He had an opportunity to tell his side of the story to the Commissioners in a meeting with Reilly. If due process requires more than what was done, a court and not this Board must make that determination.

It is interesting to note that Appellant's discharge did not come about until nearly two months after he was removed from payroll direction. Apparently at the meeting with the Commissioners he convinced them that he believed that there was nothing wrong with the way he had administered the conversion. That was fatal to him as a director.

Counsel for the Respondent shall draw Findings of Fact and Conclusions of Law consonant with this decision.

Dated October 8, 1971.

STATE PERSONNEL BOARD

BY

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John DeLorge  
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William R. Brown