



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

5-7-2013

Department of Transportation vs. Chris Lauderdale

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

**BEFORE THE CIVIL SERVICE COMMISSION OF THE
STATE OF TENNESSEE**

IN THE MATTER OF:

DEPARTMENT OF TRANSPORTATION,

v.

CHRIS LAUDERDALE,
Grievant.

DOCKET NO: 26.22-115888J

INITIAL ORDER

This matter was heard on February 6, 2013, at the Region 1 Office for the Tennessee Department of Transportation (TDOT) in Knoxville, Tennessee, before Administrative Judge Kim Summers assigned by the Secretary of State, Administrative Procedures Division, to sit for the Civil Service Commission of the State of Tennessee. The Department was represented at the hearing by Tremecca Doss, Esq. The Grievant was represented by Katherine Young, Esq.

The issue presented in this matter is whether the Grievant was properly terminated based upon the improper conduct alleged by the Department. After consideration of the evidence and argument of the Parties, it is determined that the termination was not proven to be appropriate by a preponderance of the evidence and should therefore be **OVERTURNED**. This decision is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

The following individuals presented live testimony at the hearing – Christopher Lauderdale, Materials Assistant 3 prior to termination; Dexter Justis, Operations Specialist Supervisor II ; Rick Stansberry, former supervisor with the Department, now retired; Bryant Stansberry, Materials Assistant 4 prior to retirement; Steven Borden, Director, Region 1; and Frederick Williams, Highway Maintenance 3.

Mr. Lauderdale testified, in part, to the following – recording 9.5 hours on his timesheet for Wednesday was accurately reflecting his time since he was following the instructions of his supervisor and the 9.5 hours was always approved in Edison; the approval of his time in Edison by either Mr. Justis or Mr. Goins was tacit approval of entering 9.5 hours for his time on Wednesday; the roundtrip between Region 1 and Region 3 on Wednesday would typically take 8.5 – 9 hours, not including a lunch break, which he would often not take; the TDOT truck used for the delivery run had a governor which prevented speeds in excess of 60 – 65 miles per hour; he was never specifically told that he had to work a full 9.5 hours on Wednesday in order to claim the 2 hours of overtime time on his timesheet.

Mr. Justis testified, in part, to the following – the 2 extra hours offered to employees for making the Knoxville to Nashville run was previously used as a “carrot” but, when he became supervisor, it is was not meant as 2 hours of *free* overtime but an opportunity to *work* two hours of overtime; the roundtrip from Region 1 to Region 3 (Nashville) takes no more than 7.5 hours; he approved the 9.5 hours claimed by the Grievant on Wednesday but did not know at first that the two hours of overtime were not being worked; during the discussion of the Grievant’s Interim Review on July 14, 2011, he explicitly informed the Grievant that he must actually work 9.5 hours on Wednesday in order to claim two hours of overtime.

The following fourteen exhibits were entered into evidence – EXHIBIT 1, August 9, 2010 Interim Work Review; EXHIBIT 2, December 7, 2010 Interim Work Review; EXHIBIT 3, Mapquest printout from Nashville, TN to Knoxville, TN; EXHIBIT 4, February 22, 2011 Performance Evaluation; EXHIBIT 5, July 14, 2011 Interim Work Review; EXHIBIT 6, Notice of Eligibility and Rights & Responsibilities under the Family and Medical Leave Act; EXHIBIT 7, Medical Certificate; Collective EXHIBIT 8, timesheets, pages 1 – 58; Collective EXHIBIT 9, timesheets, pages 59 – 66; Collective EXHIBIT 10, photographs from August 31, 2011; EXHIBIT 11, September 21, 2011 notice

of disciplinary action; EXHIBIT 12, October 21, 2011 correspondence recommending termination; EXHIBIT 13, October 28, 2011 correspondence regarding termination; and EXHIBIT 14, Notice of TDOT Conduct Standards.

PROCEDURAL HISTORY

1. A request for a Level V hearing in this matter was received by the Administrative Procedures Division of the Secretary of State's Office on February 28, 2012. The case was assigned to Judge Bunch and initially set for hearing on July 27, 2012.

2. The Grievant's attorney filed a Notice of Appearance and issued discovery requests on June 20, 2012, resulting in a delay of the hearing.

3. Thereafter, the matter was transferred to Judge Summers and reset for hearing on November 30, 2012. Counsel for TDOT requested another continuance because of a death in her family, and the matter was reset for hearing on February 6, 2013.

FINDINGS OF FACT

1. The Grievant was employed by TDOT for nineteen years and was a Materials Assistant 3 in the Materials and Test Division of Region I at the time of his termination.

2. One of the Grievant's job duties was making a delivery run in a TDOT truck every Wednesday between Region 1 in Knoxville and Region 3 in Nashville, covering approximately 195 miles one way.

3. Upon arrival at the Region 3 compound, the Grievant would be responsible for unloading the truck and then reloading the truck with items to be delivered back to Region 1.

4. The Grievant would refuel and make a mail run and before returning to Region 1.

5. Before the Grievant volunteered to assume sole responsibility for the delivery run, the duty was rotated among the employees in the Grievant's work unit.

6. The employee making the delivery run was instructed by the supervisor of the Materials and Test Division to enter 9.5 hours on his timesheet for the day. The 2 hours over the normal work day of 7.5 hours were not always worked by the employee but had been offered as incentive / bonus for making the run.

7. The roundtrip between Region 1 and Region 3 could take more than 7.5 hours depending on road conditions and could exceed 9.5 hours if traffic was bad or the truck had mechanical difficulties.

8. The truck had a “governor” which would limit the speed at which it could be driven.

9. When he first assumed the responsibility, the Grievant would load the truck Tuesday night, often after his regular work hours, and drive the truck to his home which was about thirteen miles west of the Region 1 compound on Interstate 40. He would leave for Region 3 from his home on Wednesday morning and would return the truck to the Region 1 compound on Thursday morning.

10. The Grievant routinely entered 9.5 hours on his timesheet for Wednesday, notwithstanding the actual time worked on that day.

11. Mr. Rick Stansberry was the Grievant’s supervisor when he first started making the delivery run to Region 3. On occasion, Mr. Stansberry would ride along with the Grievant and, on those days, would record 9.5 hours on his timesheet.

12. An employee is not paid for overtime recorded in Edison, the state system for recording employee work time, unless the overtime was approved by the supervisor.

13. Dexter Justis was promoted to Operations Specialist Supervisor 2 in August 2010 and was the Grievant’s direct supervisor from September 2010 until December 2010 when Joseph Goins, Materials Associate 2, became the Grievant’s direct supervisor. Mr. Goins is under the direct supervision of Mr. Justis.

14. In June 2011, the Grievant was directed to begin his trip to Region 3 from the Region 1 compound on Wednesday morning. In the beginning of August 2011, the Grievant was instructed to take a lunch break, at some point during the work day, and to return the truck to the Region 1 compound on Wednesday.

15. During a staff meeting in September 2010, Mr. Justis informed all employees under his supervision that time worked should be accurately recorded on the timesheet and entered into Edison.

16. Overtime is generally available to all employees as needed to complete job duties.

17. Prior to the Grievant's termination, Fred Williams would make the Wednesday delivery run when the Grievant was unavailable, as he did on March 9, 2011, March 16, 2011, March 23, 2011, March 30, 2011, and July 27, 2011. On each of these days, 9.5 hours was entered into Edison as his time for the day.

18. Mr. Williams has now assumed responsibility for the Wednesday delivery run. He typically leaves the Region 1 compound at 7 a.m. and returns to the Region 1 compound no later than 3 p.m., absent bad road conditions. He typically will take 30 to 60 minutes for lunch on these days. He will leave work for the day when he completes the run or has worked 7.5 hours for the day, whichever is later. Mr. Williams followed this same routine when he made the run on behalf of the Grievant.

19. The August 9, 2010 Interim Review provided to the Grievant by Supervisor Pamela Porter makes no mention of any failure to accurately enter time into Edison but does say that the Grievant "Always arrives on time and stays to the end of the work day."

20. The December 7, 2010 Interim Review provided to the Grievant by Supervisor Joseph Goins makes no mention of any failure to accurately enter time into Edison but does say that the Grievant "Always arrives on time and stays to the end of the work day."

21. The February 22, 2011 Annual Performance Evaluation provided to the Grievant by Supervisor Dexter Justis makes no mention of any failure to accurately enter time into Edison but does include the following comments –

- He doesn't always show up on time or let his supervisor know where he is first thing in the morning
- He is willing to do what is asked of him
- Chris's quality of work is very good but it is hard to say how affective [sic] he is with his work time
- Chris does a great job following directions as far as job performance issues are concerned
- Chris drives the truck to Nashville every week and has been very reliable
- Chris is very responsible in his work duties

22. The Grievant received a marginal rating on his July 14, 2011 Interim Review from Supervisor Goins, apparently, for failure to complete a work assignment and failure to contact his supervisor by 7:05 a.m. every work day but Wednesdays. The Review makes no mention of any failure to accurately enter time into Edison.

23. Mr. Justis and Mr. Goins conducted surveillance at the home of the Grievant for several Wednesdays in August 2011 and concluded that the Grievant was not working the full 9.5 hours recorded on his time sheet for these days.

24. The Grievant received notice of the recommendation for his termination in a September 21, 2011 letter from Mr. Borden.

25. The disciplinary offense cited in the letter was the "Falsification of an official document relating to or affecting employment."

26. The Grievant was informed of his termination in an October 28, 2011 letter from Commissioner John Schroer.

27. The Grievant was notified in a January 3, 2012 letter from Commissioner Schroer that his termination was upheld following a Level IV grievance hearing.

28. The Grievant timely requested a Step V hearing.

RELEVANT LAW

1. Level V Civil Service appeals are heard *de novo* before an Administrative Judge. No presumption of correctness is attached to the agency's action.¹

2. The Department, as the party seeking to "change the present state of affairs," has the burden of proof, pursuant to TENN. COMP. R. & REGS. 1360-4-1-.02(7), to prove by a preponderance of the evidence that the discipline imposed complies with state law.

3. TENN. COMP. R. & REGS. 1120-10-.01(45) specifies that causes for disciplinary action fall into two categories:

- (1) Causes relating to performance of duties.
- (2) Causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

4. TENN. COMP. R. & REGS. 1120-10-.05 provides the following examples of possible disciplinary offenses –

- (1) Inefficiency in the performance of duties;
- (2) Incompetency in the performance of duties;
- (3) Negligence in the performance of duties;
- (4) Misconduct involving public officials and employees pursuant to T.C.A., Title 39, Chapter 16, Part 4;
- (5) Careless, negligent, or improper use of state property or equipment;
- (6) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;
- (7) Habitual improper use of sick leave;
- (8) Habitual pattern of failure to report for duty at the assigned time and place;
- (9) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
- (10) Gross misconduct;
- (11) Conduct unbecoming an employee in state service;
- (12) Conviction of a felony;
- (13) Willful abuse or misappropriation of state funds, property or equipment;

¹ *Big Fork Mining Co. v. Tennessee Water Quality Control Bd.*, 620 S.W. 2d 515, 521 (Tenn. Ct. App. 1981).

- (14) Falsification of an official document relating to or affecting employment;
- (15) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department, or any other segment of the state service or that would interfere with the ability of management to manage;
- (16) Trespassing on the property of any state officer or employee for the purpose of harassment;
- (17) Damage or destruction of state property;
- (18) Acts that would endanger the lives and property of others;
- (19) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job;
- (20) Brutality in the performance of duties;
- (21) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination);
- (22) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job;
- (23) Sleeping or failure to remain alert during duty hours;
- (24) Unauthorized disclosure of confidential information;
- (25) Garnishment of wages for more than one indebtedness;
- (26) Political activity prohibited by T.C.A., Title 2, Chapter 19 (the "Little Hatch Act") or by U.S.C., Title 5, Chapter 15 (the "Federal Hatch Act"); and
- (27) For the good of the service as outlined in [T.C.A. § 8-30-326](#).

5. TENN. COMP. R. & REGS. 1120-10-.01 provides as follows:

A career [civil service] employee may be warned, suspended, demoted or dismissed by his appointing authority whenever legal or just cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act. An executive service employee serves at the pleasure of the appointing authority.

6. T.C.A. §8-30-330(a) and (c) sets forth the state's civil service progressive discipline system as follows:

- (a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.
- (c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions may result in more severe discipline in accordance with subsection (a).

7. Pursuant to Tennessee’s Civil Service statutes and rules, supervisors are expected to administer discipline beginning at the lowest appropriate step. An employee’s prior conduct, both good and bad, along with his entire work history, can be considered when determining what the appropriate disciplinary action should be.²

8. The Court in *Berning v. State Department of Correction*³ notes that the “key word in the statute [T.C.A. §8-30-330] is *appropriate*,” that “the language of these provisions does not mandate application of discipline in a routine fashion without regard to the nature or severity of the behavior it is intended to address,” and that the legislative mandate for progressive discipline should be “scrupulously followed.”⁴

ANALYSIS AND CONCLUSIONS OF LAW

1. For some time, it was standard practice in the Materials and Test Division of Region I for anyone making the Wednesday truck run to Nashville to record 9.5 hours of work time for the day even if the truck run to Nashville did not take the entire 9.5 hours.

2. The Grievant had routinely recorded 9.5 hours for his work time on Wednesdays for the truck run to Nashville.

3. The Grievant was aware of the September 2010 instruction from Mr. Justis to accurately record his time.

4. There has been no contention that the Grievant’s time was not accurately recorded on Monday, Tuesday, Thursday, or Friday – only on Wednesday.

5. Since the Grievant was following prior supervisory instructions when recording 9.5 hours for Wednesday, he could have reasonably believed that his time for that day was being accurately recorded.

² *Kelly v. Tennessee Civil Service Commission*, 1999 WL 1072566 (Tenn. Ct. App. 1999).

³ 996 S.W.2d 828, 830 (Tenn. Ct. App. 1999).

⁴ *Id.* at 830 (quoting the chancellor’s order with approval).

6. The Grievant could also have reasonably believed that the length and the timing of his lunch hour on Wednesday did not matter since, in any case, he would be recording 9.5 hours worked for that day.

7. The Grievant's performance reviews did document the Grievant's failure to consistently contact his supervisor first thing in the morning as instructed, but this conduct was not included as a reason for his termination.

8. Ironically, the conduct that did lead to his termination was never documented in any performance review and was never the basis for any prior disciplinary action.

9. Without this documentation, it is impossible to determine what notice was actually provided to the Grievant about recording his time for Wednesday and whether the Grievant understood his supervisor's instructions. However, by his own admission, Mr. Justis continued to monitor, and approve, the alleged infractions rather than attempt to correct the behavior or any misunderstanding the Grievant might have regarding his supervisor's expectations.

10. Since the Grievant was otherwise a generally good employee and was accurately recording his time on all other days, and no evidence was presented that the alleged infractions were either willful or intentional, it appears that the Grievant did, indeed, misunderstand his supervisor's expectations for recording his work time on Wednesdays.

11. This misunderstanding could easily have been corrected and any effort to do so should have been documented by his supervisor.

12. The lowest appropriate step in this case would have been a written warning which would have provided the necessary notice to the Grievant that recording a standard 9.5 hours for his time on Wednesday was not consistent with the directive to accurately record his time and would also have satisfied the requirements of progressive discipline.

Accordingly, it is **ORDERED** that the Grievant's appeal is **GRANTED**, his termination is reduced to a written warning, and his employment with the Department of Transportation is **REINSTATED**. The Grievant is to be made whole for salary and benefits lost during his termination. The costs of this proceeding are assessed against the Department.

The Policy reason for this decision is to protect the citizens and employees of the State of Tennessee and to protect the integrity of the civil service laws and applicable rules.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2013.

JKSummers

KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2013.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE