1-29-2008

DEPARTMENT OF TRANSPORTATION, Petitioner, Vs. JAMES R. LAYNE, Grievant

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This matter came to be heard on 29th day of January, 2008, before Lynn M. England, Administrative Judge, sitting for the Tennessee Civil Service Commission. The State of Tennessee, Department of Transportation (hereinafter “TDOT”) was represented by attorneys Katherine K. Layhew and Tremecca Doss. The Grievant was represented by attorney Marshall Raines of Jasper, Tennessee.

Grievant, an employee of the State of Tennessee, Department of Transportation, is contesting a demotion to Highway Maintenance Worker 2 from Highway Maintenance County Supervisor for violation of Tennessee Department of Personnel Rules 1120-10-.06 (3), (10) and (18) EXAMPLES OF DISCIPLINARY OFFENSES which states the following causes are examples of those considered for disciplinary action and should not be considered the only causes of action:
(3) Careless, negligent or improper use of State property or equipment.

(10) Willful abuse or misappropriation of State funds, property or equipment.

(18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

Grievant properly appealed this disciplinary action, and this hearing constituted Grievant’s 5th step hearing before the Civil Service Commission.

After due consideration of the evidence and the record as a whole it is DETERMINED Grievant was properly suspended for fifteen (15) days without pay and his demotion to Highway Maintenance Worker 2 should remain in effect.

This determination is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant is employed with the Tennessee Department of Transportation’s Region II Maintenance Division, District 22, Marion County as a Highway Maintenance Worker 2.

2. On or about February 15, 2006, Grievant was suspended for fifteen days without pay and on March 3, 2006 was demoted from his position as Highway Maintenance County Supervisor to Highway Maintenance Worker 2 for careless, negligent or improper use of State property or equipment, willful abuse or misappropriation of State funds, property or equipment and refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).
3. Grievant was also a volunteer with the Whitwell High School Softball Booster Club.

4. Over the period of approximately a year and a half, Grievant used TDOT equipment to perform work on the land where the Booster Club was building a softball field. Further, on occasion, he operated this equipment during state business hours and even used state employees during those working hours to perform work on the field.

5. In the summer of 2005, Grievant’s supervisor, Dale Angel, witnessed the Grievant using a TDOT backhoe on the softball field property during TDOT business hours and instructed him to remove the TDOT equipment from the softball field. He was issued an oral warning at this time.

6. Grievant admitted to his use of the equipment on the softball field but denied being instructed not to use it, only acknowledging that his supervisors were aware of his actions.

7. Ricky Byrd and Bill Chandler, TDOT employees, both testified they performed work on the softball field during TDOT business hours at the instruction of the Grievant.

7. The TDOT equipment and employees were utilized sparingly to perform work on the high school softball field, but utilized just the same.

8. On January 28, 2006, Grievant was observed once again using TDOT equipment on the softball field.

9. On February 15, 2006, Grievant was notified of his suspension and demotion as a result of his actions.
CONCLUSIONS OF LAW

The Department of Transportation bears the burden of proof in this matter to show that the Grievant violated the Department’s written rules, policies or procedures, and that the discipline imposed was the appropriate discipline for his violation of such rules.

*Tennessee Department of Personnel Rule 1120-10-.06 (3), (10) and (18)*

EXAMPLES OF DISCIPLINARY OFFENSES states the following causes are examples of those considered for disciplinary action and should not be considered the only causes of action:

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(10) Willful abuse or misappropriation of State funds, property or equipment.

(18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

*Tennessee Department of Personnel Rule 1120-10-.07, PROGRESSIVE DISCIPLINARY ACTION,* states, in relevant part:

(1) The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the appropriate step as described.

(2) Oral Warning

(3) Written Warning

(4) Suspension Without Pay

(5) Dismissal
   (a) After minimum due process is provided, an employee may be dismissed for unacceptable conduct.
(6) Transfer or Demotion – If it is determined by the appointing authority that an employee’s ability to satisfactorily perform his duties is beyond the capabilities of the employee or the employee has been compromised by notorious conduct to the extent that he is ineffective in his position, the employee may be demoted or transferred to a position that is more appropriate after minimum due process has been provided.

ANALYSIS

While testimony was contradictory as to who knew what when, the most important fact is not in question. The Grievant admitted to using TDOT equipment and employees to perform work on the softball field without obtaining proper authorization from TDOT. Grievant seems to be operating under the theory that since it was for a “good cause” then bending the rules is acceptable. This is not true. As a supervisor, he compromised his position by “bending the rules”. Further, the Grievant relied on the theory of “acquiescence of his supervisors” as justification for his actions. Again, as a supervisor, he should not need instruction regarding misuse of state equipment.

The work he performed on the softball field was tireless and he is to be commended for all his efforts. However, he knowingly misused state equipment and state employees. And for that he should be disciplined.
It is therefore ORDERED that the fifteen day suspension without pay and the
demotion to Highway Maintenance Worker 2 should be UPHELD.

IT IS SO ORDERED.

This Initial Order entered and effective this 13th day of May, 2008.

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Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 13th day of May, 2008.

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Thomas G. Stovall, Director
Administrative Procedures Division