

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1446-08T3

IN THE MATTER OF  
ANTHONY STALLWORTH

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Argued November 10, 2009 - Decided April 22, 2010

Before Judges Wefing and Grall.

On appeal from a Final Administrative Decision  
of the Merit System Board, DOP No. 2007-3236.

Scott W. Carbone argued the cause for appellant  
Camden County Municipal Utilities Authority  
(Peckar & Abramson, attorneys; Mr. Carbone, of  
counsel and on the brief).

Peter B. Paris argued the cause for respondent  
Anthony Stallworth (Mets Schiro & McGovern,  
attorneys; Jordan M. Kaplan, of counsel and on  
the brief).

Anne Milgram, Attorney General, attorney for  
respondent The Merit System Board (Andrea R.  
Grundfest, Deputy Attorney General, on the  
statement in lieu of brief).

PER CURIAM

This is an employee disciplinary matter. Camden County  
Municipal Utilities Authority ("Authority") appeals from the  
December 19, 2007, Decision of the Merit System Board accepting  
and adopting the Finding of Facts entered by an administrative  
law judge ("ALJ") following a hearing but declining to accept

the recommendation of the ALJ that the employee be removed.<sup>1</sup> The Board modified the penalty to a four-month suspension. After reviewing the record in light of the contentions advanced on appeal, we reverse.

The Authority is a regional authority, responsible for the treatment of waste water throughout Camden County. It has twenty-five pumping stations throughout the county and sixteen metering stations, all linked by more than one hundred miles of pipe line to a central treatment plant.

At the time of the incident giving rise to this appeal, Anthony Lamont Stallworth had been employed by the Authority for seventeen years. His position was that of unlicensed pump station operator, and as part of his job he was provided with a truck to travel between pump stations and pipe lines. The truck was marked as an Authority vehicle and equipped with a navigation system that can be monitored by the Authority. During his work day, Stallworth was allowed thirty minutes for lunch and a fifteen-minute break in the morning and again in the afternoon.

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<sup>1</sup> The Decision of the Board concludes with a notation that the parties were to resolve between themselves any issue of back pay. Thus the Decision of the Board was not captioned a Final Decision. The record before us, however, contains a letter dated November 10, 2008, from the Director of the Civil Service Commission (successor to the Board) stating that the matter was final. We are thus not called upon to consider whether this appeal is interlocutory in nature.

On November 15, 2006, Stallworth was assigned to work at the Bellmawr pumping station. He picked up an Authority truck at its main station and drove to Bellmawr station. The records of the truck's navigation system showed that it arrived at the Bellmawr station at 7:53:27 a.m. and left the Bellmawr station at 8:03:09 a.m. and arrived at a nearby convenience store, One Stop Shop, very shortly thereafter. It remained at the store for more than an hour and a quarter; the truck was not re-started until 9:19:37 a.m., and it arrived back at the Bellmawr station shortly thereafter.

Stallworth was served with disciplinary charges, alleging a violation of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)8, misuse of public property, including motor vehicles; and N.J.A.C. 4A:2-2.3(a)11, other sufficient cause. He was also charged with violating a number of Authority rules, including Critical Rule 36-2(I), falsification of official records; Critical Rule 36-2(L), leaving the work area without permission; and Critical Rule 36-2(Q), personal use of an Authority vehicle. Based upon the nature of these charges, and Stallworth's disciplinary history, the Authority sought his removal.

A two-day hearing was held before an ALJ. At that hearing, Stallworth testified that he suffers from diabetes and tries to eat in the morning before taking his medication. He admitted he

had never informed any of his current supervisors of this. He said that he does not take lunch and therefore takes all of his breaks at one time and had never had a problem with a supervisor for doing so.

He said that he left the Bellmawr station to go to the nearby One Stop Shop but did not tell his co-worker he was leaving. He said he ate two sandwiches at the store, played the lottery and talked with several people who were there. He did not keep track of the time but believed that occupied approximately thirty-five minutes. He said he returned to the truck and learned he did not have the keys. He then went back to the store and found that when he played the lottery, his keys had fallen near the cash register. He did not try to reach for them because he did not want the owner to think he was trying to steal from the register. He thus waited a period of time for the owner to return his keys. He said he did not call his supervisor on his cell phone because he did not have the supervisor's number and could not use the phone in the truck without the keys.

When he arrived back at the station, his supervisor questioned him about his prolonged absence. Stallworth admitted in his testimony that he did not tell his supervisor about his diabetes. His supervisor testified that Stallworth's

response on being questioned about his disappearance was "Yeah, whatever".

When Stallworth was asked at the hearing why he did not tell his co-worker he was leaving to get something to eat, he responded that he did not have to answer to him.

The ALJ rejected as not credible Stallworth's explanation that he combined his morning and lunch breaks. He found that Stallworth had violated Critical Rule 36.2(L) by leaving the work area without permission and Critical Rule 36.2(Q) because he was in possession of the Authority's vehicle for more than his fifteen-minute allotted break. The charge of violating Critical Rule 36.2(I) related to Stallworth not having adjusted his time record for this absence. The ALJ found Stallworth not guilty of this charge because he had never been instructed by a supervisor to make such an adjustment.

The ALJ reviewed Stallworth's extensive disciplinary history and listed numerous charges against Stallworth which had been sustained. These included six separate charges of violating Critical Rule 36.2(O), performing work of inferior quality; two earlier charges of violating Critical Rule 36.2(Q), personal use of a company vehicle; two charges of violating Critical Rules 36.2 (K) and (R), insubordination; and charges of violating Critical Rules 36 (R), harassment; 36.2(H), endangering the lives of others; 36.2(R), conduct reflecting

discredit on the Authority; and 36.2(P), sleeping on the job. Based upon the egregious nature of the charges, the ALJ agreed with the Authority that removal was the appropriate penalty.

The Board, while upholding the findings that Stallworth had committed the acts charged, concluded that removal was too harsh under the circumstances. It noted that Stallworth had, over the course of his employment history, received several suspensions, the longest of which was for fifteen days. It determined to modify the penalty from removal to a four-month suspension and directed that Stallworth be immediately reinstated, with the appropriate back pay. This appeal followed.

We first acknowledge the standard governing our review of this matter. The final decision of an administrative body such as the Merit System Board should not be disturbed on appeal unless it is "arbitrary, capricious or unreasonable." Karins v. City of Atlantic City, 152 N.J. 532, 540 (1998). An appellate court should undertake a "careful and principled consideration of the agency record and findings." Riverside Gen. Hosp. v. N.J. Hosp. Rate Setting Comm'n, 98 N.J. 458, 468 (1985). The agency's findings should be affirmed if they "could reasonably have been reached on sufficient credible evidence present in the record, considering the proofs as a whole . . . with due regard also to the agency's expertise . . . ." Close v. Kordulak Bros., 44 N.J. 589, 599 (1965) (citations omitted). "The burden

of showing the agency's action was arbitrary, unreasonable or capricious rests upon the appellant." Bowden v. Bayside State Prison, 268 N.J. Super. 301 304 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

While the parties recognize these principles, they draw opposing conclusions from them. The Authority characterizes the decision of the Board as an issue of law and proceeds to urge us to conduct a de novo review. Stallworth, on the other hand, appears to characterize it as a finding of fact, precluding a deeper review on our part. We reject both formulations in the context of this matter.

The Board accepted the factual findings of the ALJ, and there is no dispute before us as to the sufficiency of those findings or the adequacy of the record supporting them. The issue relates to the judgment and discretion of the ALJ and the Board in arriving at an appropriate punishment for an employee such as Stallworth.

In its decision, the Board stated the following:

In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. George v. North Princeton Developmental Center, 96 N.J.A.R. 2d (CSV) 463. In assessing the penalty in relationship to the employee's conduct, it is important to emphasize that the nature of the offense must be balanced against mitigating

circumstances, including any prior disciplinary history. In this regard, the Board notes that the appellant is a 17-year employee. Further, the appellant's disciplinary record only evidences one major disciplinary action, a 15-day suspension, and several minor disciplinary actions. While the Board agrees with the ALJ's determination that the appellant's actions adversely affected the public's perception of the appointing authority, the Board does not agree that the appellant's conduct was of such an egregious nature so as to impose a penalty of removal regardless of any mitigating factors. Accordingly, the Board finds that a four-month suspension is the proper penalty in this matter. Moreover, the Board recognizes that appellant's conduct is unacceptable and emphasizes that, in imposing a major disciplinary action, it is not acting to minimize the seriousness of the offense. The Board is mindful that this penalty should serve as a warning to the appellant that future offenses may result in his removal from employment.

We acknowledge that there is authority for the proposition that the Board has particular expertise in the area of employee discipline and that we should not lightly intrude upon a Board decision. We are cognizant that the Supreme Court recently reiterated that "courts should take care not to substitute their own views of whether a particular penalty is correct for those of the body charged with making that decision." In re Carter, 191 N.J. 474, 486 (2007) (reinstating a penalty of termination for a police officer for sleeping on duty which this court had reduced on the basis of progressive discipline). The Court also recognized in Carter, however, that "the theory of progressive

discipline [is not] a fixed and immutable rule to be followed without question." Id. at 484. Rather, the issue for the courts to resolve is "whether such punishment is 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" Ibid. (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)).

We are unable to reconcile Stallworth's disciplinary history, which we have summarized earlier, with the Board's characterization of it as evidencing only "one major disciplinary action", and several minor ones. It is particularly disturbing that there appears to be a pattern of repeatedly committing the same offense. The offenses, moreover, are not minor in nature. Robert Cornforth, the Director of Operations and Maintenance for the Authority, testified that any violation of a Critical Rule was deemed a major infraction.

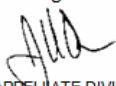
While employees of the Authority may not be as involved with issues of public safety as police or corrections officers, their job functions do touch directly upon public health and welfare. A breakdown anywhere along the miles of pipe line or in the pumping system could pose a significant risk to the public. Disappearing from the job site, with no notification to anyone, shows a complete disregard for any potential consequences.

Public employment, moreover, is not a sinecure. A public employee has the responsibility to attend to his or her job responsibilities in a business-like and serious manner. And a public employer such as the Authority is entitled to expect all of its employees to perform their functions diligently and competently. Respondent's disciplinary history shows a blatant disregard of his most basic obligations as a public employee. It is difficult to conceive how the Authority could be expected to maintain a competent and dedicated workforce if it is not permitted to remove an employee with the work history of respondent.

The Decision of the Merit System Board is reversed, and the matter is remanded for entry of an order affirming the decisions of the Authority and the ALJ that respondent may be removed from service.

Reversed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION