

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

MICHAEL BREYSSE

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

Respondent.

Case No. R-SUSP-16-001

FINDINGS, CONCLUSIONS AND
ORDER OF THE BOARD

INTRODUCTION

Hearing.

This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair, and VICKY BOWDISH, Member. The hearing was held on February 1 and 2, 2017, in Room 110 Capitol Court, Olympia, WA; and February 21, 2017, at the General Administration Building, Room 460, Olympia, WA. Appellant and Respondent submitted their closing arguments on April 3, 2017.

Appearances.

Present was Appellant Michael Breysse represented by Darryl Parker, Attorney at Law. Thomas Knoll, Assistant Attorney General, represented the Respondent, Washington State Department of Transportation (WSDOT).

Nature of Appeal.

This is an appeal of a suspension. Respondent alleges that Appellant failed to complete his subordinate's performance management plans (PMPs) on a timely basis; failed to regularly conduct one-on-one meetings with his subordinates; and displayed poor supervisory communication skills.

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2 **MOTIONS**
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4 **Subpoena Duces Tecum.**

5 On February 17, 2017, Appellant submitted a Subpoena Duces Tecum to Respondent. The
6 subpoena requested of Steve Rockwell, Safety and Health Manager, a variety of information,
7 including copies of all records, documents and materials referring or relating to all known issues
8 and problems associated with the current PMP software; disciplinary actions taken related to annual
9 evaluations; thorough records for eleven (11) employees; records relating to position
10 reclassification filings; personnel files; and position descriptions for specific employees. All
11 documents were to be present with Mr. Rockwell on day three of the hearing, February 21, 2017.

12
13 Respondent requested a Motion to Quash Appellant's Subpoena Duces Tecum. Appellant stated
14 they did they not have enough time to obtain these documents and the request for discovery had
15 long passed.

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17 The Board approved Respondent's Motion to Quash, denying Appellant's Subpoena Duces Tecum.
18 The Board stated Appellant had ample time to gather information prior to the hearing by complying
19 with discovery cutoff dates; and asserted four days is not a reasonable amount of time to obtain a
20 large amount information.

21
22 **FINDINGS**
23

24 Appellant has been employed as a Safety Officer 3 (SO 3) in the Shoreline Office since November
25 2012, and reports to Steve Rockwell, Western Washington Health and Safety Officer,
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1 Appellant supervises Eric Summers, SO 2; Sue Tellesbo, SO 2; and Becky Jones, SO Assistant.
2 Mr. Summers works south of Shoreline in the Corson DOT Office. Ms. Tellesbo works north in
3 the Burlington DOT Office. Ms. Jones works with Appellant in the Shoreline Office.
4

5 Employee evaluations are due at the end of the employee's appointment month, however a three-
6 month extension is allowed if needed.
7

8 Appellant received a Performance Improvement Plan (PIP) in February, 2015. Two of the PIP's
9 directives were to submit Performance Management Plans (PMP) to his subordinate staff on time;
10 and conduct bi-weekly one-on-one meetings with each of Appellant's three staff. One of those
11 meetings was to be in-person. Lack of significant changes in Appellant's performance resulted in
12 below standard ratings in three areas of Appellant's Employee Performance Review for the period
13 of February 24, 2015 through November 30, 2015. The three areas were Communications
14 Effectiveness; Tact and Diplomacy; and Performance Leadership.
15

16 Appellant received a Letter of Reprimand (LOR) dated December 17, 2015, which directed him to
17 complete all past due evaluations by December 31, 2015, and to conduct bi-monthly meetings with
18 his staff, one of which was to be an in-person, one-on-one meeting. The LOR also directed
19 Appellant to start new evaluations within thirty (30) days of delivering prior evaluations; and attend
20 new evaluation system training. The LOR stated that Appellant's failure to follow the directives
21 could amount to further discipline up to and including termination. Appellant was given an
22 informational brochure for the Employee Assistance Program (EAP).
23

24 A pre-disciplinary meeting was held on April 18, 2016.
25

26 By letter dated May 24, 2016, Appellant received notice of his suspension to be effective May 29,
27 2016, through June 4, 2016. The letter stated Appellant failed to complete past due evaluations by
28 December 31, 2015, and failed to conduct one-on-one meetings with two of his subordinate staff.
29

1 The letter further stated Appellant did not meet the performance standards of his position as
2 supervisor, outlined in his Employee Performance Review.

3
4 Appellant is an overtime exempt employee and, as such, suspensions must be given in one week
5 intervals, per the Fair Labor Standards Act (FLSA). Appellant works four 10-hour shifts and, since
6 his week of suspension included a Monday holiday, he was suspended a total of three days without
7 pay.

8
9 Appellant completed the following training relevant to this case:

- 10 • New Supervisor Training
- 11 • Supervision Essentials – Phase 1
- 12 • PMP for Supervisor Training

13 14 **ARGUMENTS OF THE PARTIES**

15 16 **Appellant.**

17 Respondent contends the suspension was too severe and the allegations against him are unfounded.

18
19 Appellant asserts he had difficulty with the PMP system in August 2015, the month Ms. Tellesbo's
20 evaluation was due. Appellant further asserts he gave Mr. Rockwell a copy of Ms. Tellesbo's
21 evaluation in August to review, further proving he was finished on time and well before the
22 December 31, 2015, deadline. Appellant contends he sent Ms. Tellesbo's evaluation to Mr.
23 Rockwell again in November 2015, at which time a meeting was scheduled for December 29, 2015,
24 to review and discuss Ms. Tellesbo's PMP. However, due to Mr. Rockwell's cancellation of the
25 meeting, Appellant argues Mr. Rockwell is partly to blame for the late evaluation. Further adding
26 delay to the PMP, Appellant states his partner's health condition combined with a death in his
27 family in December and January further pushed the meeting with Mr. Rockwell to February 10,
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1 2016. In light of the above, Appellant contends the faulty PMP System and Mr. Rockwell's delay
2 on the meeting both contributed to Ms. Tellesbo's late evaluation.

3
4 Appellant maintains that documentation supporting below standard ratings on Ms. Tellesbo's
5 evaluation mysteriously disappeared from his filing cabinet. Because of the missing
6 documentation, Appellant states he contacted Noelle Biard, Senior HR Consultant, who agreed the
7 best way to handle missing documentation was to omit the sections of the evaluation that had no
8 supporting documentation. Appellant contends he worked with Ms. Tellesbo to edit her evaluation
9 as a good faith effort to start a fresh relationship. Appellant further contends Mr. Rockwell agreed
10 to the changes in Ms. Tellesbo's evaluation.

11
12 Appellant argues he conducted one-on-one meetings with his staff, both by telephone and in person.
13 Appellant further argues that because his meetings with Ms. Jones were on a drop-in basis does not
14 mean they were not one-on-one meetings, especially given they frequently discussed workplace
15 issues. Appellant contends one-on-one meetings were scheduled, but since Ms. Jones is often gone
16 from her desk and is not always available at the scheduled times, the meetings often do not happen
17 as scheduled.

18
19 **Respondent.**

20 Respondent asserts the suspension was not too severe and should remain in tact. Respondent
21 further asserts Appellant was given ample opportunity to rectify his performance, as outlined in the
22 PIP, issued in February 2015; and an LOR, issued in December 2015. Respondent states the next
23 step after the PIP and LOR was taking disciplinary action.

24
25 Respondent asserts Appellant failed to demonstrate significant changes in his performance six
26 months after receiving the PIP in February 2015, leading to the "below standard" on his
27 performance review for the period of February 24, 2015 through December 31, 2015.

1 Respondent argues the LOR directed Appellant to complete all past due evaluations by December
2 31, 2015, yet he still had an outstanding evaluation for Ms. Tellesbo by this date, which was not
3 delivered and discussed with Ms. Tellesbo until March 10, 2016. Further, argues Respondent,
4 according to the testimony of Noelle Baird, Senior HR Consultant, there was no evidence, i.e., no
5 system footprint in the PMP system, that Appellant started a PMP in August 2015.
6

7 Respondent states Appellant's LOR directed him to conduct in-person, one-on-one meetings with
8 his three subordinate staff once per month for the purposes of discussing possible issues in the
9 workplace. Of those three staff, only one reported the meetings occurred. Ms. Jones states the
10 check ins with Appellant were not the official one-on-one meetings. Ms. Tellesbo states the one-
11 one meetings were not occurring at all.
12

13 Respondent contends Mr. Rockwell met with Appellant on February 10, 2016, and directed
14 Appellant to make certain edits to Ms. Tellesbo's evaluation. Respondent asserts the edits were not
15 incorporated into the evaluation.
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19 CONCLUSIONS

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21 The Personnel Resources Board has jurisdiction over the parties and the subject matter.
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23 In a hearing of an appeal for a disciplinary action, Respondent has the burden of supporting the
24 charges upon which the action was initiated by proving by a preponderance of the credible evidence
25 Appellant committed the offenses set forth in the disciplinary letter and that the sanction was
26 appropriate under the facts and circumstances (WAC 357-52-110).
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1 When considering whether there was just cause for a disciplinary action, the Board considers
2 factors such as whether the employee was aware of the job expectations, rules or policies allegedly
3 violated; whether the employee was aware of the need to comply with the rules or policies or to
4 improve performance; whether the employee had an opportunity to demonstrate compliance or
5 improvement; whether the discipline was imposed for good reason; whether the disciplinary
6 process and procedures followed were appropriate and whether the sanction imposed was sufficient
7 to prevent recurrence, to deter others from similar misconduct and to maintain the integrity of the
8 program.

9
10 Appellant was aware of the rules he violated and had opportunity to demonstrate improvement.
11 Respondent provided Appellant with a PIP in February 2015, directing him to specific areas
12 needing improvement. The areas targeted for improvement included conducting PMPs with his
13 subordinates in a timely fashion and conducting scheduled one-on-one appointments with his staff.
14 Respondent desired to improve communication and conduct on time PMPs to foster good relations
15 between Appellant and his staff. Respondent offered training to Appellant and supplied him
16 information on the EAP in case he needed guidance or counsel in specific areas. Respondent also
17 extended Appellant's PIP review period from three months to six months.

18
19 DOT gave Appellant specific instructions to conduct scheduled, bi-weekly meetings with his staff,
20 with at least one of those meetings being in-person. Mr. Rockwell directed Appellant to have Ms.
21 Tellesbo's PMP completed by December 31, 2015, but it was not completed until March 10, 2016.
22 Ms. Tellesbo testified she did not receive scheduled one-on-one meeting requests with Appellant.
23 Ms. Jones testified the one-on-one meetings were scheduled but did not occur on a regular basis.
24 Instead, Ms. Jones testified that she and Appellant would talk on a sporadic basis, since both
25 worked in the same office.

26
27 The Board recognizes that Appellant performed much of his job to standard or above and that DOT
28 was concerned about Appellant's communication as a supervisor. The Board finds Appellant had
29

1 ample opportunity to improve his communication with his staff and was given due notice to make
2 changes and seek additional help. Appellant received a PIP and a three month extension to a PIP; a
3 Letter of Reprimand; below standard ratings on his August PMP; and finally, disciplinary action. In
4 addition, DOT provided resources for Appellant including training and counselling through the
5 EAP. The Board also recognizes the matters at hand are not major violations, rather an attempt to
6 improve the relationships between Appellant and his subordinate staff.

7
8 Given the counter information provided by Appellant, such as a faulty PMP system in August and
9 difficulty meeting with Mr. Rockwell in December, the Board does not understand why Appellant
10 was not able to utilize a four month period from August through December to complete Ms.
11 Tellesbo's evaluation on time. Further, no clear evidence exists proving Appellant conducted
12 regularly scheduled, monthly meetings with Ms. Tellesbo and Ms. Jones.

13
14 Respondent followed due course and resorted to disciplinary action after a PIP, training,
15 counseling, and an LOR. Given the FLSA laws require a one week, rather than individual day
16 suspensions for overtime-exempt employees, Respondent had no choice but to make the suspension
17 one week in length. However, to mitigate the impact of a one-week suspension, Respondent chose
18 a week containing a holiday so Appellant received one day's holiday pay.

19
20 The Board does not interfere with agency's discipline unless it is too severe. As such, the Board
21 finds the one-week suspension to be fair and just; and to deter others from similar action and
22 maintain the integrity of the program.

23
24 Respondent has met the burden of proof and established just cause for Appellant's one-week
25 suspension.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED the appeal of Michael Breysse is denied and the suspension from May 29, 2016 through June 4, 2016, is upheld.

DATED this ____ day of _____, 2017.

WASHINGTON PERSONNEL RESOURCES BOARD

NANCY HOLLAND YOUNG, Chair

VICKY BOWDISH, Member