BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

HOLLIS AYERS, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. DEMO-02-0022 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at the University of Washington, South Campus Center, Seattle, Washington, on April 22 and 23, 2003. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Hollis Ayers was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr & Younglove. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for Appellant's alleged failure to demonstrate good judgment, follow supervisor's directives and established procedures and work effectively with colleagues.

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1.4 Citations Discussed. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Johnson v. Lower Columbia College, PAB No. D93-077 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Hollis Ayers is a permanent employee for Respondent University of Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on July 27, 2002.

2.2 Appellant began her employment with the Transportation Services department as a part-time Truck Driver II in March 1988. Appellant later promoted to a full-time Truck Driver position.

2.3 On February 13, 2001, the department promoted Appellant to a position as a Truck Driver Lead.

2.4 As a Truck Driver Lead, Appellant provided oversight to Property and Transport Services staff assigned to the Health Sciences Express Bus Service, the Disabled Persons Shuttle Service and the Solid Waste and Litter Collection Services. Appellant's shift began at 5:30 a.m., and she was responsible for scheduling staff and available buses to cover various routes on campus. The morning bus drivers arrived at 5:40 a.m. and left at 6 a.m. for the first bus runs of the day. Appellant and motor pool staff communicated on a daily basis about the status of bus maintenance and repairs.

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2.5 As a part of her duties, Appellant also worked closely with the motor pool department, which provided the majority of maintenance to University buses used on the routes scheduled by Appellant.

2.6 Prior to his retirement, Ken Guillory, Transportation Supervisor, directly supervised Appellant. Teresa Seyfried was the Program Operations Manager. Anne Eskridge was Manager for Property and Transportation Services, and she had overall responsibility of the department.

2.7 On October 29, 2001, Mr. Guillory issued Appellant a Letter of Expectations. Mr. Guillory directed Appellant to, in pertinent part, improve her working relationships with motor pool staff members David Carr, Tom Wood and Addley Tole. Mr. Guillory issued the directive after he received complaints regarding Appellant's "failure to be courteous and considerate with motor pool staff ..."

2.8 Following the October 29 Letter of Expectations, Mr. Guillory and Anne Eskridge met with Appellant on a weekly basis in an attempt to assist Appellant with the performance of her job responsibilities.

2.9 On January 11, 2002, Mr. Guillory and Ms. Seyfried met with Appellant to discuss a number of concerns related to Appellant's performance and complaints of missed bus runs. Mr. Guillory also informed Appellant that he had concerns that she was not arriving to work on time, and he directed her to use a time clock to punch in and out of work. Mr. Guillory also changed Appellant's work schedule to begin at 5 a.m. to allow her extra time to perform her morning duties prior to the arrival of the bus drivers. Following the meeting, Mr. Guillory issued Appellant a

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Letter of reprimand on February 11, 2002 confirming their discussion and his expectation that she arrive to work on time and punch in and out.

Failure to clock in and out of work

2.10 In April 2002, Mr. Guillory audited Appellant's time cards and found she had numerous instances where she punched in late: February 1, February 5, February 13, February 14, February 15, and February 28, 2002. In addition, Mr. Guillory discovered three time cards (January 28, February 11 and 20) where Appellant punched in late and wrote notes explaining that she had "forgotten to punch in." On January 25 and February 22, 2002, Appellant departed work early, however, she failed to submit the requisite leave forms as required by University policy.

2.11 Appellant admits she understood her responsibility to use the time clock on a daily basis. She claims, however, she arrived to work early and began working immediately, became preoccupied with work and occasionally forgot to clock in at 5 a.m.

Failure to work effectively with motor pool staff

2.12 In January 2002, Appellant expressed to motor pool staff, Mr. Guillory and Ms. Seyfried concerns that bus #628 was unsafe and should not be driven. At that time, bus #628 was used as a back-up when other buses were out of service.

2.13 Thomas Wood, Motor Pool Supervisor, spoke to Appellant about the condition of bus 628 and he assured her that the bus was "roadworthy." Mr. Wood confirmed his conversation in an email to Appellant, Mr. Guillory and Ms. Seyfried. In his email, Mr. Wood acknowledged that bus 628 had some "body flex" that can create a safety hazard if the body of the bus pulls away from the frame. Mr. Wood had previously asked a staff person to drive the bus and they determined the bus

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was safe to drive and carry passengers. Mr. Wood also had driven bus 628 on the highway and noted nothing that would make the bus unsafe to operate.

2.14 Appellant continued to believe that bus 628 was unsafe and she refused to schedule the bus for routes. Appellant and motor pool staff continued to disagree on the subject. Their opposing views created conflict and strained their working relationships. Mr. Guillory attempted to intervene by speaking to Mr. Wood about Appellant's concerns. Mr. Wood assured Mr. Guillory that bus 628 was safe to drive.

2.15 Mr. Guillory subsequently informed Appellant that bus 628 was safe and could be used for runs. However, Appellant was still not convinced and she continued to disagree with motor pool's opinion that bus 628 was safe to operate. On February 4, 2002, Appellant wrote Mr. Guillory, Ms. Seyfried and Ms. Eskridge, asking for a waiver releasing her from any liability if they were going to require her to send out bus 628.

2.16 Although the exact date was not established, sometime prior to April 3, Mr. Guillory directed Appellant to "back off" and that he would deal with motor pool staff. Consequently, Appellant interacted less frequently with Mr. Wood and instead communicated directly with motor pool mechanics. Later, Mr. Wood and Mr. Carr, Motor Pool Manager, complained that Appellant was not communicating with them about vehicle repairs. Appellant's reluctance to communicate directly with Mr. Wood and Mr. Carr, however, was in compliance with the directive she received from Mr. Guillory.

Improperly parking vehicle and leaving it unattended while idling

2.17 On a regular basis prior to April 3, 2002, Appellant parked her work vehicle in front of the trailer where she shared an office with motor pool staff. Appellant parked the vehicle in front of a

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wheelchair access ramp in such a manner that it blocked the ramp and created difficulties for others to maneuver their vehicles in and out of the parking stalls. At times, Appellant left the vehicle idling while she was in the trailer.

2.18 Mr. Wood complained to Mr. Guillory that Appellant failed to abide by a request from Carl Peter, Equipment Mechanic Lead, that she not leave the vehicle unattended and idling. Mr. Wood also claimed that both he and Mr. Peter asked Appellant not to park in front of the wheelchair ramp and that she disregarded their requests. Mr. Wood claimed that he forwarded Appellant an email citing a law that it was illegal to leave a vehicle unattended while idling. Appellant denies having received an email to that effect. In addition, Mr. Peter printed a copy of the email and placed it on Appellant's desk, which was located in a common area of a trailer that she shared with motor pool staff. The email was not addressed to Appellant, and she does not recall seeing the memo.

2.19 After reviewing the evidence, we find no evidence to support that the email was sent to Appellant, that Appellant found a memo on her desk, or that Appellant had any clear notice to cease parking in front of the wheelchair ramp.

Failure to require subordinates to submit leave slips for arriving to work late or departing early

2.20 On April 3, 2002, Mr. Guilliary and other University representatives met with Appellant and her union steward to discuss their concerns regarding her failure to regularly clock in, failure to work cooperatively with motor pool staff and concerns about where she was parking. During the meeting, Mr. Guillory learned that Appellant was not notifying him when other employees arrived to work late and that she was not requiring them to submit leave slips if they arrived late or departed early. Appellant acknowledged her understanding of the University's leave policy that requires all employees to complete leave forms for tardy arrivals and early departures from work.

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Verbal abuse of coworkers

2.21 On April 24, 2002, Mr. Guillory left Appellant a voicemail message stating he and Ms. Seyfried wanted to meet with her the following day to discuss a complaint he had received concerning her. After Appellant heard the message, she became concerned because she still had not heard whether any discipline would result from the April 3 meeting.

2.22 Appellant immediately went to the Bryant Building, where Mr. Guillory's office was located. Appellant approached Aaron Rowe, a Program Coordinator, and asked what she had done wrong. Appellant was visibly upset. Mr. Rowe told her to ask Ms. Seyfried. Appellant went in search for Ms. Seyfried in the staff break room. Appellant was talking in a loud voice and a preponderance of the credible testimony supports she slammed her keys down on a table.

2.23 Ms. Seyfried was not in the break room, and Appellant entered the ladies restroom, where she found Ms. Seyfried standing at the sink. The restroom was a small area and Appellant approached Ms. Seyfried from behind and stood within six inches of her. Appellant asked her in a raised voice what she had done wrong. Appellant appeared agitated and angry and Ms. Seyfried became "extremely uncomfortable" being alone with her in the confined area. Ms. Seyfried backed away from Appellant and exited the restroom. Appellant continued to talk in a loud voice, which could be heard by Mr. Guillory from the adjacent break room.

2.24 Ms. Seyfried backed out of the restroom and into the break room where Mr. Guillory was lying on a couch. Appellant yelled to him that he was just pretending to sleep and that he should learn to speak out at meetings. Mr. Guillory did not respond and Appellant eventually left.

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that as a lead worker, Appellant had a duty to provide guidance to others, model appropriate behavior, abide by agency policies and positively support her department in all interactions with motor pool staff. Respondent asserts that Appellant had a duty to report to work on time and to clock in as directed, but that she routinely failed to comply with this requirement. Respondent argues that Appellant's complaints about bus 628 were unfounded. Respondent argues that motor pool staff, who were qualified to make the determination, found the bus was "roadworthy." Respondent argues that Appellant, nonetheless, continued to challenge their judgment and refused to send out the bus.

Respondent argues that Appellant exercised poor judgment when she left her truck engine running while unattended, despite attempts by motor pool staff to get her to stop.

Respondent argues that Appellant's angry outburst on April 24 was unwarranted and constitutes verbal abuse of her coworkers.

Respondent argues that demotion is the appropriate sanction based on Appellant's failure to follow supervisory directives, failure to work well with motor staff, and for an inappropriate display of anger in the Bryant Building.

3.2 Appellant asserts that she was the only employee required to clock in and that it was a habit she had difficulty developing. Appellant contends she did not understand the importance of clocking in until the April 3 meeting and that after the meeting it was never an issue again. Appellant argues that April 3 was also the first time she was put on notice about requiring her subordinates to fill out leave slips for late arrivals.

Appellant contends that she had a reasonable belief, which was substantiated by others who expressed similar concerns, that bus 628 was unsafe. Appellant argues that she is being disciplined for continuing to talk about the safety of bus 628 and for not accepting motor pool's opinion.

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Appellant contends that she continued to dialogue with motor pool staff about the issue, but she was later directed by her supervisor to "back off." Appellant asserts that despite this directive, she was later disciplined for not communicating with motor pool staff.

Appellant asserts that she was unaware that motor pool staff did not want her to park in front of the trailer and that once the expectation was made known to her, it never occurred again.

Appellant admits that she lost her temper on April 24, but she asks the board to consider the circumstances under which she engaged in that conduct, including her concern that she was in trouble again but did not know why.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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4.5 Appellant understood the requirement that she clock in and out of work on a daily basis. Appellant's forgetfulness does not mitigate her responsibility to follow Mr. Guillory's directives. Respondent has met its burden of proving that Appellant's failure to clock in and out of work constitutes a neglect of her duty and insubordination.

4.6 Respondent has met its burden of proving that Appellant failed to work effectively with motor pool staff. Although Appellant had a reasonable belief that bus 628 was unsafe to operate, she reported this concern to Mr. Wood, the motor pool supervisor, and to her supervisor, Mr. Guillory. Both Mr. Wood and Mr. Guillory took Appellant's concerns seriously and made efforts to determine whether the bus was safe to drive. Mr. Wood gave his professional opinion that the bus was safe and "roadworthy." There was no credible evidence to support that the bus was unsafe or that motor pool staff erred in its assessment that the bus was safe to operate. Once Appellant's concerns were addressed, she had a duty to rely on motor pool's expertise. Her insistence to the contrary exacerbated the strained relationship between Appellant and motor pool staff and constitutes a neglect of her duty to work cooperatively with colleagues.

4.7 As a lead, Appellant had a responsibility to provide appropriate direction to staff to act professionally and to model appropriate and acceptable behavior. Respondent has met its burden of proving that Appellant neglected her duty and willfully violated University policy when she failed to require that staff submit leave slips for arriving to work late or for departing early.

4.8 Gross misconduct is flagrant misbehavior that adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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4.9 Abuse of fellow employees is established when it is shown that the employee wrongfully or unreasonably treats another by word or deed. Johnson v. Lower Columbia College, PAB No. D93-077 (1994).

4.10 Appellant's reaction to the phone message she received from Mr. Guillory on April 24 showed a lack of self control and was unreasonable. Respondent has proven that Appellant displayed an inappropriate outburst of anger when she entered the Bryant Building and began yelling at others. Furthermore, Appellant engaged in threatening and intimidating behavior when she angrily confronted Ms. Seyfried in a confined space. Appellant's behavior was unprofessional and inappropriate and her actions constitute mistreatment of a coworker and interfered with Respondent's ability to provide a safe and secure workplace for its employees. Appellant's misconduct also rises to the level of gross misconduct.

4.11 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.12 Appellant was promoted to a Lead position that requires the use of sound judgment, ability to follow supervisors' directives and established procedures, cooperation with colleagues, and to model good behavior. Appellant's inability to meet the demands of this position is evidenced by the facts and circumstances of this case, except for allegations concerning illegal parking. Given these

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facts and the seriousness of the offenses, we conclude that Respondent has proven that the sanction of demotion is appropriate, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Hollis Ayers is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

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