

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-538

NOVEMBER TERM, 2003

In re Grievance of Merrill Cray	}	APPEALED FROM:
	}	
	}	Labor Relations Board
	}	
	}	DOCKET NO. 01-61, 01-62
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In the above-entitled cause, the Clerk will enter:

Grievant was dismissed from her job as an investigator for the Secretary of State's Office of Professional Regulation (OPR) for repeated acts of dishonesty. The Labor Relations Board (VLRB) upheld the dismissal, finding that the employer had just cause to discharge her. Grievant appeals the VLRB's order and argues that the VLRB's findings do not support its decision. We affirm.

The facts of this case are somewhat lengthy, but can be summarized as follows. Before joining OPR, grievant was employed as a State trooper with the Vermont State Police. She has been a certified law enforcement officer since 1990. Her position at OPR required her to investigate complaints against licensed professionals regulated by OPR. Licensing boards decide to take action against licensees based primarily on the investigative work performed by OPR's investigators. Investigations are confidential unless formal action is instituted against a licensee, and at that point the matter becomes public.

In 1998, Ron West was appointed as Chief Investigator of OPR and became grievant's supervisor. Grievant's relationship with West began to deteriorate in 2000. Concerned about her treatment by West and certain actions he had taken with respect to her employment, grievant filed

a series of grievances in accordance with the bargaining agreement governing her employment with OPR. The VLRB found that grievant lied during two of those grievance meetings. One dishonest statement related to her schedule on a day West told grievant he wanted to meet with her. Grievant told West that she had an 8:00 a.m. appointment in Rutland, the same time West wanted to meet with her. It was later discovered that her appointment in Rutland was at 10:00 a.m. not 8:00 a.m. as she stated during the grievance meeting. The lie was material because it caused the hearing officer to consider rescinding the oral reprimand at issue in the grievance. The second instance of dishonesty during a grievance meeting concerned statements grievant made about West's treatment of her investigation reports generally and one investigative report in particular.

The VLRB found that grievant's dishonesty extended to interactions with her superiors outside the grievance process, including being dishonest to West and the employer's business manager/personnel officer about having released a confidential investigation report to an attorney for the Vermont State Employees Association (VSEA). In fact, she had not provided the VSEA attorney a copy of the report. At some point, grievant did provide two pages of a report, with redactions, to VSEA. Grievant also told the Secretary of State that she had shown the report to friends who were attorneys. That statement caused the employer concern that grievant had breached the statutory confidentiality of OPR investigation reports, although the VLRB ultimately found insufficient evidence of such a breach.

Grievant's conduct was detailed in a letter to her from the Secretary of State on July 16, 2001. The letter put grievant on notice that her employer was contemplating disciplinary action against her up to and including dismissal. The conduct described in the letter included additional allegations of misconduct. The allegations were the subject of a meeting between representatives of the employer and grievant's VSEA attorney on July 19, 2001. Grievant was finally dismissed from her job at OPR on August 13, 2001 after an additional meeting between grievant's VSEA counsel and the employer's representatives.

Grievant appealed the dismissal to the VLRB. In its decision upholding the employer's decision, the VLRB recognized that grievant's relationship with West was tense, stressful, and may have adversely affected her health. The VLRB noted that the employer had offered mediation on several occasions to resolve disputes between grievant and West but that grievant declined the offers. It also found that two of the allegations justifying grievant's dismissal were not proven, but, nevertheless, found that the remaining allegations of repeated dishonesty were proved and sufficiently supported her termination. This appeal followed.

We review the VLRB's decision with deference. In re Hurlburt, 2003 Vt. 2, & 18, 820 A.2d 186. Normally, we will sustain the VLRB's decision if its findings support it. Id. Grievant argues that the VLRB's findings do not support its conclusion that the employer had just cause to dismiss her. She characterizes her dishonesty as a lapse in judgment due to the working climate which she describes as unbearable. Grievant faults the VLRB for failing to consider her dishonest statements in that context. We find no merit to grievant's claims.

As we have stated on numerous occasions, " ' Just cause means some substantial shortcoming detrimental to the employer's interests, which the law and a sound public opinion recognize as a good cause for . . . dismissal.' " Id. at & 20 (quoting In re Brooks, 135 Vt. 563, 568 (1977)). The analysis focuses on the nature of the misconduct, and ultimately turns on whether the employer's actions were reasonable. Id.

The reasonableness of the employer's decision in this case is manifest from the VLRB's findings of grievant's repeated dishonesty. Employees have an implicit duty to act honestly in their dealings with their employers. In re Carlson, 140 Vt. 555, 560 (1982). Fulfilling that duty is particularly important for OPR investigators because their work forms the basis for actions against licensed professionals subject to OPR jurisdiction, and investigators often testify under oath about their investigations. Thus, OPR must be able to rely on the veracity of its investigators.

We are unpersuaded that the VLRB failed to consider grievant's misconduct in the context in which it took place. The decision reflects that the VLRB was fully aware of the difficult circumstances facing grievant at her workplace, but those circumstances did not excuse or justify grievant's decision to lie to her employer. Although we agree with grievant that her dishonesty demonstrates a lapse in judgment, we disagree that the lapse was not significant enough to warrant dismissal. In sum, we conclude that the evidence introduced at the hearing supports the VLRB's findings, and those findings, in turn, are sufficient to support the VLRB's conclusion that " [g]rievant engaged in repeated acts of dishonesty, a characteristic that constitutes a substantial shortcoming for an investigator."

Grievant also contends that the VLRB impermissibly based its decision on her refusal to mediate her issues with West. We do not accept grievant's characterization of the VLRB's decision. As we explained above, the VLRB's order, like the employer's termination decision, was based on the VLRB's findings that grievant made dishonest statements to her employer that were wholly unacceptable for an OPR investigator.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice