

COMMONWEALTH OF PENNSYLVANIA

Ronald J. Dornetta : State Civil Service Commission

v. :

Pennsylvania : Appeal No. 30903
Department of Transportation :

Ronald J. Dornetta Ryan A. Cardillo
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Ronald J. Dornetta challenging his one-day suspension from regular Highway Equipment Manager 1 employment with the Pennsylvania Department of Transportation (hereinafter “appointing authority”). A hearing was held on July 27, 2022, via video, before Commissioner Bryan R. Lentz.¹

The Commissioners have reviewed the Notes of Testimony, the exhibits introduced at the hearing, and the closing statements of the parties. The issue before the Commission is whether there is good cause for appellant’s one-day suspension.

¹ Bryan Lentz’s service as a Commissioner ended December 16, 2022, before this adjudication was issued.

FINDINGS OF FACT

1. By letter dated February 10, 2022, appellant was notified of his one-day suspension from Highway Equipment Manager 1, regular status employment. Comm. Ex. A.
2. The appointing authority's February 10, 2022, letter stated the following regarding the reason for the one-day suspension:

The reason for the suspension is failure to perform supervisory duties. Specifically, on January 12, 2022 you were in contact with Tunnel Manager Todd Caddy and you informed him that since you requested delaying moving the Department Fleet vehicles up to Auction due to awaiting parts for the towing mechanism by (1) day, that you would call Brian Gidos who is a Garage Mechanic to hook both cars up and have them ready for the start of the shift on January 13, 2022 for the Tunnel operator who was coming in on a regular scheduled day off and working overtime. However, you failed to call and notify Brian Gidos and the equipment was not hooked up at the start of the shift causing a delay and unnecessary overtime for an operator.

Comm. Ex. A; AA Ex. 3.

3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.
4. In December 2021, appellant, Assistant Highway Maintenance Manager Todd Caddy, and District Equipment Manager William Cleaver started an email chain to coordinate the transport of two cars to auction in Harrisburg, Pennsylvania. N.T. pp. 25-26, 54-55, 154-155; Ap. Ex. 2.
5. It was decided the transport of the two cars would be scheduled for the morning of Tuesday, January 11, 2022. N.T. pp. 26-29.
6. Caddy planned to have one of his operators, Tunnel Maintainer David Prough, drive the two cars on a flatbed tow truck to auction on January 11, 2022. N.T. pp. 26-27, 31-32, 52.
7. Caddy planned to schedule overtime for Prough to complete the transport of the two cars to auction. N.T. p. 26.
8. Prior to the January 11, 2022, transport date, the two cars needed to be loaded onto the flatbed tow truck. N.T. pp. 26-27.

9. On January 10, 2022 or January 11, 2022, Diesel Mechanic Brian Gidos asked Caddy if the transport could be delayed one to two days due to missing pins that were needed to load the two cars onto the flatbed tow truck. N.T. pp. 27-29, 32, 38-41.
10. Due to the missing pins, Caddy made the decision to delay the transport to Thursday, January 13, 2022, at 5:30 a.m. N.T. pp. 27-31, 40, 54-55.
11. On January 11, 2022, appellant suggested using bolts instead of the pins to load the two cars onto the tow truck. N.T. pp. 156-157.
12. On January 11, 2022, appellant told Caddy he would have Gidos help two trainees load the two cars onto the tow truck with the bolts. N.T. p. 157.
13. On Wednesday, January 12, 2022, the day before the two cars were rescheduled to be towed to auction, appellant was out of the office on approved sick leave. N.T. p. 134.²

² The parties stipulated to this fact. N.T. p. 134.

14. On January 12, 2022, appellant and Caddy had a phone conversation regarding work that was scheduled for the morning of January 13, 2022. N.T. pp. 28-30, 156-157.
15. One of the work-related issues discussed by appellant and Caddy was installing radios in two vehicles. N.T. pp. 28-30, 156-157.
16. The radio installation was scheduled to take place on January 13, 2022, at 6:30 a.m., approximately the same time as the two cars were rescheduled to be transported to auction. N.T. pp. 28-30, 156-157.
17. On Thursday, January 13, 2022, at 5:20 a.m., Prough arrived at the garage to pick up the flatbed tow truck to transport the two cars to auction. N.T. p. 54.
18. When Prough arrived one car was loaded on the flatbed tow truck, and the other car was sitting off to the side. N.T. p. 55.

19. Prough called Caddy and Caddy told Prough to wait for the mechanic to show up at 6:00 a.m. to load the other car. N.T. pp. 31-32, 55-56.
20. When Diesel Mechanic Gidos arrived, they found the correct pins, and Gidos and Prough loaded the car onto the flatbed tow truck. N.T. pp. 56-57, 135-136.
21. On January 13, 2022, at approximately 6:30 a.m., appellant and Caddy arrived at the garage, and appellant told Caddy, “I’m sorry. I was off sick yesterday. I couldn’t do anything from home to help him on --- or excuse me, the 12th.” N.T. pp. 31-32, 159.
22. After the second car was loaded onto the flatbed tow truck, Prough left the garage around 7:00 a.m. to transport the two cars to auction. N.T. p. 57.
23. Prough was approved for sixteen hours of overtime starting at 5:30 a.m. to complete the transport. N.T. pp. 29-30, 60.

24. It took Prough thirteen hours to complete the transport. N.T. pp. 29-30, 60.

25. On January 21, 2022, a Pre-Disciplinary Conference (hereinafter, “PDC”) notice was hand delivered to appellant stating:

This is to inform you that an investigation is being conducted into the following allegation:

1. Failure to perform managerial duties on Thursday January 14, 2022.

A Pre-Disciplinary Conference (PDC) has been scheduled for you on **Wednesday, January 26, 2021 at 9:00 a.m. via Microsoft Teams. You will be emailed a meeting invite.**

AA Ex. 2.³

26. Appellant attended and participated during the January 26, 2022 PDC. N.T. pp. 78-81.

27. The PDC was administered by Allegheny County Manager Benjamin DeVore. N.T. pp. 71, 78-81.

³ The PDC Notice contains two incorrect dates. First the date of the alleged “Failure to perform managerial duties” occurred on January 13, 2022 and not January 14, 2022. Second, the PDC was scheduled for January 26, 2022 and not January 26, 2021. N.T. pp. 72-73, 90; AA Ex. 2.

28. Following the PDC, DeVore decided to issue a one-day suspension for appellant's "failure to perform managerial or supervisory duties." N.T. pp. 81-82.

DISCUSSION

The issue before the Commission is whether there is good cause for appellant's one-day suspension.

The appointing authority presented the testimony of Assistant Highway Maintenance Manager Todd Caddy⁴, Tunnel Maintainer David Prough, Allegheny County Maintenance Manager Benjamin DeVore⁵, and Employee Relations Coordinator Jason Luker. Appellant presented the testimony of Diesel Mechanic Brian Gidos and Mechanic Supervisor Dennis King. Appellant testified on his own behalf.

In an appeal challenging the suspension of a regular status employee, the appointing authority bears the burden of establishing good cause for the personnel action. *White v. Commonwealth, Department of Corrections*, 110 Pa. Commw. 496, 532 A.2d 950 (1986); 71 Pa.C.S.A. §§ 2603(c), 3003(7)(i). Good cause must be based upon meritorious criteria and be related to one's competency and ability to execute job duties properly. *White*, 110 Pa. Commw. at 498, 532 A.2d at 951.

⁴ At the time of this incident on January 13, 2022, Caddy was Acting Tunnel Manager. N.T. p. 122.

⁵ At the time of this incident on January 13, 2022, DeVore was Acting Allegheny County Maintenance Manager. N.T. p. 66.

We will begin by reviewing the facts not in dispute. In December 2021, appellant, Caddy, and District Equipment Manager William Cleaver started an email chain to coordinate the transport of two cars to auction in Harrisburg, Pennsylvania. N.T. pp. 25-26, 54-55, 154-155; Ap. Ex. 2. It was decided the transport of the two cars would be scheduled for the morning of Tuesday, January 11, 2022. N.T. pp. 26-29. Caddy planned to have one of his operators, Prough, drive the two cars on a flatbed tow truck to auction on January 11, 2022. N.T. pp. 26-27, 31-32, 52. Additionally, Caddy planned to schedule overtime for Prough to complete the transport of the two cars. N.T. p. 26.

Prior to the January 11, 2022, transport date, the two cars needed to be loaded onto the flatbed tow truck. N.T. pp. 26-27. On either January 10, 2022, or January 11, 2022, Gidos asked Caddy if the transport could be delayed one to two days due to missing pins that were needed to load the two cars onto the flatbed tow truck. N.T. pp. 27-29, 32, 38-41. Due to the missing pins, Caddy made the decision to delay the transport to Thursday, January 13, 2022, at 5:30 a.m. N.T. pp. 27-31, 40, 54-55.

On January 11, 2022, appellant discussed with Caddy using bolts instead of the pins to load the two cars onto the flatbed tow truck. N.T. pp. 156-157. Appellant told Caddy he would have Gidos help two trainees load the cars onto the flatbed tow truck with the bolts. N.T. p. 157. On Wednesday, January 12, 2022, the day before the two cars were rescheduled to be towed to auction, appellant was out of the office on approved sick leave due to a stomach virus. N.T. p. 134.⁶ On

⁶ The parties stipulated to this fact. N.T. p. 134.

January 12, 2022, appellant and Caddy had a phone conversation regarding work-related issues scheduled for the morning of January 13, 2022. N.T. pp. 28-30, 156-157. One of the work-related issues discussed by appellant and Caddy was installing radios into two vehicles. N.T. pp. 28-30, 156-157. The radio installation was scheduled to take place on January 13, 2022, at 6:30 a.m., approximately the same time as the two cars were rescheduled to be transported to auction. N.T. pp. 28-30, 156-157

On Thursday, January 13, 2022, at 5:20 a.m., Prough arrived at the appointing authority's garage to pick up the flatbed tow truck with the two cars loaded for transport to auction in Harrisburg, Pennsylvania. N.T. p. 54. When Prough arrived one car was loaded on the flatbed tow truck, and the other car was sitting off to the side. N.T. p. 55. Prough called Caddy to inform him the one car was not loaded onto the flatbed tow truck. N.T. pp. 31-32, 55-56. Caddy told Prough to wait for the mechanic to show up at 6:00 a.m. to load the other car. N.T. pp. 31-32, 55-56. When Gidos arrived, they found the correct pins, and Gidos and Prough loaded the car sitting off to the side onto the flatbed tow truck. N.T. pp. 56-57, 135-136. On January 13, 2022, at approximately 6:30 a.m., appellant and Caddy arrived at the garage, and appellant told Caddy, "I'm sorry. I was off sick yesterday. I couldn't do anything from home to help him on . . . the 12th." N.T. pp. 31-32, 159.

After the second car was loaded onto the flatbed tow truck, Prough left the garage around 7:00 a.m. to transport the two cars to auction in Harrisburg, Pennsylvania. N.T. p. 57. Prough was approved for sixteen hours of overtime

starting at 5:30 a.m. to complete the transport. N.T. pp. 29-30, 60. It took Prough thirteen hours to complete the transport. N.T. pp. 29-30, 60. On January 21, 2022, a Pre-Disciplinary Conference (hereinafter, “PDC”) notice was hand delivered to appellant stating:

This is to inform you that an investigation is being conducted into the following allegation:

1. Failure to perform managerial duties on Thursday January 14, 2022.

A Pre-Disciplinary Conference (PDC) has been scheduled for you on **Wednesday, January 26, 2021, at 9:00 a.m. via Microsoft Teams. You will be emailed a meeting invite.**

AA Ex. 2.⁷ Appellant attended and participated during the January 26, 2022, PDC. N.T. pp. 78-81. DeVore conducted the PDC. N.T. p. 71. Following the PDC, DeVore decided to issue a one-day suspension for appellant’s “failure to perform managerial or supervisory duties.” N.T. pp. 81-82. By letter dated February 10, 2022, appellant was notified of his one-day suspension from Highway Equipment Manager 1, regular status employment. Comm. Ex. A.

⁷ The PDC Notice contains two incorrected dates. First the date of the alleged “Failure to perform managerial duties” occurred on January 13, 2022, and not January 14, 2022. Second, the PDC was scheduled for January 26, 2022 and not January 26, 2021. N.T. pp. 72-73, 90; AA Ex. 2.

Having reviewed the undisputed facts, we will now review the evidence presented by the appointing authority in support of appellant's one-day suspension. Caddy testified to the conversations between himself and appellant leading up to January 13, 2022. Caddy testified he had a phone conversation with appellant on either Tuesday January 11, 2022, or the day before the rescheduled date for the transport.⁸ N.T. pp. 27-31. Caddy described the conversation as follows:

Talked to Ron [Dornetta], and he said that he had it set up in the morning to get the radio guys in there to get my truck in, and we talked about the pins not being in and they were going to use bolts, and he would have Brian [Gidos] get everything ready for my guy in the morning. So, I scheduled Mr. Prough to come in at 5:30 a.m. [Prough] would just go.

N.T. pp. 29-30. Caddy testified he and appellant discussed more than one item of work during the above conversation. N.T. p. 30. On cross examination, Caddy acknowledged he did not know what date he and appellant discussed the proposal to use the bolts as an alternative to the pins. N.T. pp. 41-42.

DeVore testified regarding the events leading up to the PDC and the PDC itself. On January 24, 2022, DeVore received a phone call from appellant. N.T. pp. 73-74. Appellant had received the PDC Notice and wanted to know why he was being PDC'd. N.T. p. 74. DeVore explained it was regarding the incident where appellant was to install bolts on the flatbed tow truck. N.T. p. 74. DeVore testified appellant then stated, he made one mistake and he forgot to make a phone

⁸ The rescheduled date for the transport was January 13, 2022. Therefore, this phone conversation would have possibly taken place on Wednesday, January 12, 2022. N.T. p. 30.

call to Caddy. N.T. p. 74-77. DeVore further testified during the PDC appellant mentioned something about training but did not say anything about loading vehicles for auction. N.T. pp. 78-79. Appellant also said he did not handle any work-related duties that day. N.T. pp. 78-79.

Luker testified to the general policies and the process the appointing authority uses when addressing disciplinary matters. N.T. p. 111. Luker testified the appointing authority utilizes progressive discipline when determining the proper level of discipline. N.T. pp. 112-113. Under progressive discipline the initial step would be a written reprimand, followed by a one-day suspension or Level 1 Alternative Discipline in Lieu of Suspension (hereinafter, “ADLS”), and continues up to discharge for subsequent offenses. N.T. pp. 112-113. Luker testified appellant had a written reprimand on June 7, 2021, for a prior “failure to perform managerial duties.”⁹ N.T. p. 115; AA Ex. 1. Luker testified to the following as why there was good cause for the one-day suspension:

Based on the fact that the testimony that was provided to me showed that he had prior knowledge to the fact that these vehicles --- there was a bit of a communication leading up to this, so it wasn’t like this was sprung on him the day that he was off sick. To my knowledge, there was no indication during that phone conversation that he relayed to Mr. Caddy that he was off when that phone conversation took place, and that’s when the commitment

⁹ The June 7, 2021 disciplinary letter stated,

Specifically, on April 29, 2021, you failed to perform your managerial duties when you allowed a subordinate employee to sit in close proximity to you in your office for a period of time without the required personal protective equipment (facemask) and without practicing social distancing, in violation of the Department’s safety guidelines.

to ensure that one of his subordinates in the garage were going to go ahead and hook up those vehicles. So, based on those circumstances in the case is the reason why I recommended the action that took place.

N.T. pp. 117-118. Luker neither testified what the appointing authority's policy was as to "failure to perform supervisory duties" nor what facts must be proven to substantiate a violation for "failure to perform supervisory duties." N.T. pp. 111-118. Additionally, the appointing authority's actual policies governing "failure to perform supervisory duties" and progressive discipline were never entered into the record.

We will now turn to appellant's response. Appellant testified on January 11, 2022 he spoke with Caddy before leaving work for the day. N.T. p. 157. During that conversation, appellant discussed the option of using bolts instead of the pins, and appellant would have Gidos help two trainees load the cars. N.T. p. 157.

On January 12, 2022, the day appellant was out on approved sick leave, appellant received an email on his personal phone from a third-party contractor, Mike Redin, from Centre Communications about the installation of radios into two of the appointing authority's vehicles. N.T. pp. 155-156; Ap. Ex. 2. The installation of the radios was to occur on the morning of January 13, 2022. N.T. pp. 155-156; Ap. Ex. 2. Appellant's response to Redin's email was, "Hello Mike, sorry I am off today I will make sure the vehicles are there in the morning. Thanks Ron." N.T. pp. 155-156; Ap. Ex. 2. The two vehicles were used by Caddy and another employee Eugene Clifton. N.T. pp. 156-157; Ap. Ex. 2. On January 12, 2022, appellant sent

an email to both Caddy and Clifton informing them they needed to drop their vehicles off on the morning of January 13, 2022, to install the radios. N.T. pp. 156-157; Ap. Ex. 2. Appellant also left voicemails for both Caddy and Clifton about the radio installation. N.T. pp. 156-157; Ap. Ex. 2. Appellant received a phone call back from Caddy approximately twenty minutes after appellant left the voicemails about the radio installation. N.T. pp. 156-157. Appellant told Caddy he was at home sick, and Caddy needed to bring his vehicle to the garage by 6:30 a.m. on January 13, 2022, for the radio installation. N.T. pp. 156-157. Appellant testified he did not recall having any conversation with Caddy about having the two cars loaded for transport to auction. N.T. pp. 156-157.

Based on the above, we find the appointing authority presented sufficient evidence to establish appellant did tell Caddy he would have the two cars loaded and ready for transport for the morning of January 13, 2022. Caddy credibly testified on either January 11, 2022, or January 12, 2022, he had a conversation with appellant, and appellant said he would have the two cars loaded and ready for transport.¹⁰ We find Caddy's statement credible mainly because appellant acknowledges he told Caddy on January 11, 2022, he would have Gidos help two trainees load the two cars onto the flatbed tow truck with the bolts. N.T. p. 157. Appellant is a management employee. N.T. p. 111-112. An appointing authority can require managerial employees be held to the highest-level of conduct. *Woodbridge v. Commonwealth, Department of Revenue*, 435 A.2d 300, 302 (Pa.

¹⁰ It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 505 A.2d 339, 341 (Pa. Commw. Ct. 1986).

Commw. 1981). Furthermore, a management employee must strictly adhere to standards and set an example for his subordinates. *Id.* As a manager, appellant had the responsibility to follow through with his statement to Caddy to have the two cars ready for transport. We find, as detailed above, there existed good cause for discipline because appellant's failure to have the two cars ready for transport hampered or frustrated the execution of appellant's duties as a Highway Equipment Manager 1. *McCain v. Department of Education*, 454 A.2d 667 (Pa. Commw. 1983). Having found good cause for discipline, we will now turn to whether a one-day suspension was the appropriate level of discipline.

We have reviewed the record and noted a number of factors weighing against the imposition of a one-day suspension. First, Caddy's January 11, 2022 decision to delay the transport two days from January 11, 2022 to January 13, 2022 was made at the last-minute, and only gave appellant one day to find the missing pins and load the two cars. Second, on January 12, 2022, appellant was unexpectedly out on approved sick leave. Despite appellant's illness, he continued to check and respond to work emails. On January 12, 2022, appellant successfully coordinated the dropping off of two vehicles on January 13, 2022, for radio installations. Third, the transportation of the cars to the auction was only delayed by one and one-half hours. The total time for the transport was only thirteen hours, which was three hours under the total sixteen overtime hours Prough was allotted to complete the transport. The delay did not cause the appointing authority any costs beyond those anticipated when they allotted the sixteen hours of overtime for the transport. Fourth, appellant has been employed at the appointing authority for thirty years and has no prior discipline besides the prior written reprimand for an incident factually

dissimilar from the present incident. N.T. pp. 168-169; AA Ex. 1. Finally, we do not know if the one-day suspension is appropriate because the appointing authority failed to provide us their specific policies governing progressive discipline and the charge of “failure to perform supervisor duties.”¹¹

In addition to the above outlined factors, we are also convinced appellant’s failure to have the two cars loaded and ready for transport was not intentional. We find credible appellant’s testimony he does not recall discussing the transport with Caddy when he spoke to him on January 12, 2022. During that conversation, appellant recalls discussing the January 13, 2022, radio installation, but not the transport. Caddy agrees they discussed the radio installation. Additionally, the January 13, 2022, conversation took place while appellant was out on approved sick leave. Considering the circumstances, it is likely appellant’s failure to coordinate the transport of the two cars to auction was not intentional but simply an oversight due to his illness and other job responsibilities. Accordingly, we find the facts and circumstances do not warrant a one-day suspension.

¹¹ The failure to provide the specific policies is significant because they contain not only what facts are needed to establish an alleged policy violation, but often include mitigating and aggravating factors to be considered when determining the level of discipline. The only evidence the appointing authority presented regarding its disciplinary policies was through Luker’s extremely general testimony regarding progressive discipline. The burden of proof is on the appointing authority, and without the specific policies as a guide we are left to decide what facts to consider when determining the appropriate level of discipline.

The Commission has authority to modify the penalty to make it consistent with the charges proven.¹² We find the behavior substantiated by the appointing authority when taken into consideration with the mitigating factors noted above merits a written reprimand. Therefore, pursuant to Section 3003(8)(iii) of the Act, 71 Pa.C.S.A. § 3003(8)(iii), the Commission will order that appellant's discipline be modified to a written reprimand. Accordingly, we enter the following:

CONCLUSION OF LAW

The appeal is sustained because the appointing authority has failed to present evidence sufficient to establish good cause for suspension under Section 2603(c) of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of two of its members,¹³ sustains the appeal and orders the one-day suspension imposed by the Pennsylvania Department of Transportation against Ronald J. Dornetta be reduced to a written reprimand. We further order the appointing authority amend its records to reflect the written reprimand and the appellant be reimbursed such wages

¹² The Commission has the power to modify the penalty imposed by the appointing authority, even where the charges brought against the employee are proven. *Bosnjak v. State Civil Service Commission*, 781 A.2d 1280 (Pa. Commw. 2001).

¹³ Commissioner Pamela M. Iovino, who took office on December 22, 2022, did not participate in the discussion of or decision for this appeal.

and emoluments as would have been received during the one-day suspension, less wages earned and benefits received, if any, under the Public Laws of Pennsylvania as established by a sworn statement to be submitted by appellant. We further order that within thirty (30) calendar days of the mailed date of this opinion, the appointing authority shall submit written notice of compliance with the modification of the one-day suspension to the Executive Director of the State Civil Service Commission.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Mailed: 1/25/23