FILED
JUL 02 2012
EMPLOYEE APPEALS BOARD

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

AUTREY BOLDEN	**APPELLANT**
VS.	**DOCKET NO. 12-019**
MISSISSIPPI DEPARTMENT OF CORRECTIONS	**RESPONDENT**

ORDER

A hearing was held on Autrey Bolden's appeal on the 8th day of June, 2012. Autrey Bolden (hereinafter "Bolden" or "Appellant") represented himself. The Mississippi Department of Corrections (hereinafter "MDOC") was represented by David Scott.

FINDINGS OF FACT

1. At all material times, Bolden was an employee of the MDOC whose work station was Unit 29 Parchman, Mississippi.

2. Bolden began his employment with the MDOC on November 5, 2007.

3. At all material times, Mildred Rome was a Lieutenant of the MDOC, and was a supervisor of Bolden.

4. As a result of an allegation by Rome, Bolden was issued a Written Reprimand on March 13, 2012, by Deputy Commissioner of Institutions, E.L. Sparkman, for a violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the *State Personnel Board Manual of Policies, Rules and Regulations updated March, 2010.*

5. Sparkman's March 13, 2012, Reprimand of Bolden alleged that Bolden failed "to follow dining hall procedures for Division II on January 29, 2012, by allowing offenders to enter the dining hall out of alphabetical order."

6. At all material times, the MDOC had in effect at Unit 29 a policy that inmates should enter the dining hall in alphabetical order.

7. On January 29, 2012, to enter the dining hall, inmates at Unit 29 were required to go through Gate 16, walk approximately forty (40) feet and then turn right into the dining hall. Once the inmates went through Gate 16, there is a fence, on both their right side and left side. The distance between the left side of the fence and right side of the fence is wide enough for two inmates to walk side by side.

8. On January 29, 2012, Bolden checked each inmate's identification card as he entered through Gate 16 en route to the dining hall.

9. On January 29, 2012, at the time inmates entered through Gate 16 en route to the dining hall, they correctly entered through Gate 16 and were in proper alphabetical order.

10. Bolden did not allow any inmates to enter through Gate 16 out of alphabetical order.

11. Lieutenant Mildred Rome did not, from her position in the dining hall of Unit 29, see inmates as they came through Gate 16 en route to the dining hall, nor did Lieutenant Rome see the inmates as they walked the approximate forty (40) feet from Gate 16, before they turned right into the dining hall.

12. Lieutenant Rome saw inmates sitting in Unit 29's dining room out of alphabetical order.

13. Bolden timely appealed his March 13, 2012, written reprimand.

14. The Employee Appeals Board has jurisdiction of Bolden's appeal.

15. Three witnesses testified at the June 8, 2012, appeals hearing. These witnesses were Lieutenant Mildred Rome, Autrey Bolden and JaTedrick Flowers.

CONCLUSIONS OF LAW

Bolden, as the Appellant, has the burden of proof on his appeal. To prevail on his appeal, Bolden must prove either that (1) the allegation upon which his reprimand was based was not true or (2) if true, those facts were not sufficient grounds for the action taken against Bolden by the MDOC.

Having considered all documents introduced into evidence, the testimony of Rome, Bolden, and Flowers, and having evaluated their credibility as witnesses, I find that Bolden met his burden of proof and proved that the allegations that Bolden "on January 29, 2012 . . . failed to following dining hall procedures for Division II by allowing offenders to enter the dining hall out of alphabetical order" is untrue. The reasons for my opinion follow.

The allegation against Bolden was that he "failed to follow dining hall procedures for Division II by allowing offenders to enter the dining hall out of alphabetical order." Bolden testified at the appeals hearing that he specifically checked each inmate's identification card as they entered through Gate 16 and was certain that each inmate was in the proper alphabetical order as they entered through Gate 16. Bolden testified "he did his job."

Officer Flowers testified that on the date in question he was outside Gate 16 behind the inmates as they entered through Gate 16. Flowers testified he observed Bolden checking the inmates' identification cards to assure they were entering through Gate 16 properly. Flowers admitted that he was not present the entire time the inmates were entering Gate 16 and that he left his post to assist Lieutenant Rome in the dining hall before all the inmates went through Gate 16. However, to the extent Flowers was available to observe the inmates, he confirmed that Bolden properly checked their identification cards and that the inmates entered through Gate 16 in proper alphabetical order. Having considered the

testimony of Bolden and the testimony of Flowers, I find as a fact that Bolden's testimony that he checked the inmates' identification cards and made sure they entered Gate 16 in the correct alphabetical order to be true.

Lieutenant Rome testified that she saw inmates sitting in the dining room out of alphabetical order. Flowers said he did not see inmates sitting in the dining room out of alphabetical order. Flowers was not present in the dining room the entire time Rome was present. Accordingly, I find that Rome's testimony that she saw inmates sitting in the dining hall in an order which suggests they did not enter the dining hall in alphabetical order is true. However, the fact that Rome saw inmates sitting in the dining hall out of alphabetical order does not mean Bolden "[allowed] offenders to enter the dining hall out of alphabetical order," as alleged in his March, 13, 2012, written reprimand.

As noted in the findings of fact of this opinion, once the offenders entered through Gate 16, they were required to walk approximately forty (40) feet before entering the dining hall. It is undisputed that within the forty (40) foot area there was sufficient room for two offenders who had properly entered through Gate 16 to walk side by side to the dining hall. In essence, there was nothing preventing an offender from cutting in front of another offender one second before entering the dining hall even though Bolden had made certain that the inmates entered through Gate 16 in proper alphabetical order.

There was nothing introduced into evidence which suggested that Bolden was required to use extraordinary, or herculean efforts, to be sure that no offender cut in front of others once they entered through Gate 16, or that he should be "strictly liable" if one or more offenders unknown to Bolden cut in front of others after they exited through Gate 16. Such a requirement would be unreasonable, given the number of inmates who were

entering Gate 16, walking to the dining hall and entering the dining hall. Bolden could not see everything that occurred with the inmates once the inmates entered through Gate 16.

Black's Law Dictionary, 9th Edition, states there is no rigid or precise meaning for the word "allow," and that its import varies according to the context in which it is used. However, *Black's Law Dictionary* reflects one proper definition of "allow" is to "approve of" . . . "to sanction" . . . "to acquiesce in" and "to tolerate." In this case, there is no evidence that Bolden "approved of," "sanctioned," "acquiesced" or "tolerated" any inmate entering the dining hall out of alphabetical order.

In summary, I find that Bolden, as he testified "did his job" and that he met his burden of proof. He proved at the appeals hearing that he did not "[allow] offenders to enter the dining hall out of alphabetical order." Having met his burden of proof, the Mississippi Department of Corrections is directed to remove the March 13, 2012, Written Reprimand to Bolden from his file.

SO ORDERED THIS THE 2 DAY OF July, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: Michael Watts

MICHAEL N. WATTS
Presiding Hearing Officer