

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

BRENDA THAMES

FILED

APPELLANT

VS.

NOV 18 2014

NO.14-029

MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY

EMPLOYEE APPEALS BOARD

APPELLEE

ORDER

This cause came on for hearing on October 9, 2014, and October 20, 2014, in Jackson, Mississippi. The Appellant, Brenda Thames, was represented by William Kirksey, and Timothy Smith represented the Mississippi Department of Public Safety ("MDPS").

SUMMARY

Brenda Thames was employed as a Branch Director II with the MDPS. On June 30, 2014, MDPS sent Special Order 2014-107 to Thames, notifying her that a Performance Review Board had found that she " did violate 23 /01, III, B., 3., k. (One Group III Offense), in view of General Order 68/09." Specifically, James was charged with recording a conversation with her supervisor and another employee without their consent. As a result of the Performance Review Board finding Thames was notified that she was being demoted from a Branch Director II to a Branch Director I and would be suspended for five days without pay.

This tribunal finds that the MDPS' demotion of Thames was not supported by the evidence and that Thames did not commit a Group III, No. 14 offense. However, Thames did commit a Group II number Two Offense of insubordination, in that she failed to comply with applicable established written policy. Thames five day suspension is upheld but her demotion is reversed and Thames is reinstated to the position of Branch Director I.

FINDINGS

On May 2006, MDPS distributed General Order 68/09 to all Employees. General Order 68/09 states as follows:

I. POLICY

The Policy of this General Order is to facilitate open communication between employees without concern as to whether any given conversation is being recorded and this recording being later utilized to harm the employee in any way. It shall be permissible to record conversations with the mutual consent of both parties. . .

II. UNAUTHORIZED RECORDINGS OF EMPLOYEE CONVERSATIONS

No employee shall record conversations or other activity of another employee without the mutual consent of all parties . . .

III. COMPLIANCE

Failure to comply with the provision of this General Order shall be cause for disciplinary action.

Thames was the Branch Director II in the Accounts Payable Department. As the Branch Director of the Accounts Payable

Department she supervised three employees and the Department was responsible for making sure all payments for goods and services provided to MDPS were made. On May 13, 2014, Thames met with her supervisor Carla Hutson and the MDPS Director of Human Resources, Wendy Crumpton. In that meeting Thames was formally placed on a Performance Improvement Plan. Thames recorded that meeting on her cell phone. Thames did not ask Hutson and Crumpton for permission to record the meeting, nor did she tell them that she was recording the meeting. On May 15, 2014, Thames met with Hutson and Captain Creed Mansell concerning Thames' work performance. During that meeting Thames disclosed to Mansell and Hutson that she had recorded the May 13th meeting with Hutson and Crumpton. Following the May 15th meeting, Thames did not receive any additional documentation or attend any additional meeting regarding the PIP.

This violation of MDPS policy was reported to the MDPS, Internal Affairs Division and it was investigated by Internal Affairs Investigator, Jaime Flake. When Flake interviewed Thames she admitted that she had recorded the meeting with Hutson and Crumpton without their permission.

Thames testified that she was unaware of the General Order prohibiting the recording of conversations without permission. Mansell, Hutson, and Flake testified that Thames indicated that she was aware of

the General Order.

Prior to her suspension and demotion Thames was provided with appropriate due process.

OPINION

MEAB Rule XX provides that "[a]n appealing party shall have the burden of proving that the reasons stated in the notice of the agency's final decision are not true or are not sufficient grounds for the action taken." Thames met her burden of proof.

This tribunal finds it irrelevant whether Thames was in fact aware of General Order 68/09. MDPS presented evidence that General Order 68/09 was distributed to all employees in the normal course of business. As an employee of MDPS, and particularly as a supervisor, Thames is responsible for being familiar with MDPS policies and procedures.

Given that Thames did violate General order 68/09 this tribunal must then determine if that violation constituted an act of conduct which is of such a nature that to continue her in her assigned position could constitute negligence in regard to the agency's duties to other state employees. There is no doubt that, both by policy and as a matter of common courtesy, Thames should have asked for permission to record the conversation with Hutson and Crumpton. There was no evidence that recording the meeting on May 13th could have harmed any of the

participants in the meeting in any way. Furthermore, there is no evidence that keeping Thames in her position of Branch Director II, after she made the recording, without permission, under these circumstances, where she was being placed on a Performance Improvement Plan and her work performance was being discussed and evaluated, would constitute negligence on the part of MDPS to any MDPS employee.

It appears that Thames failure to follow policy in this instance provided her supervisors with a short cut for demoting Thames rather than following through with the Performance Improvement Plan. But as Thames did fail to comply with a written and published policy, MDPS is entitled to discipline her for that failure, with a five day suspension.

For the foregoing reasons Thames' five day suspension is affirmed but her demotion to Branch Director I is reversed. Thames is reinstated to the position of Branch Director II and she is awarded all back pay and attendant benefits.

SO ORDERED THIS THE 18th DAY OF November, 2014.

MISSISSIPPI EMPLOYEE APPEALS
BOARD

BY:


INGRID DAVE WILLIAMS
Hearing Officer