

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

NORRIS J. MORRIS

FILED

APPELLANT

VS.

APR 30 2015

DOCKET NO. 15-003

MISSISSIPPI DEPARTMENT OF CORRECTIONS

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

On January 27, 2015, Norris J. Morris ("Morris") filed his appeal with the Mississippi Employee Appeals Board ("MEAB") for his five (5) day suspension from duty without pay. Morris' Statement of Relief requested he be reimbursed for lost wages from the five (5) day suspension.

Specifically, by notice dated January 14, 2015, Earnest Lee, Superintendent of the Mississippi State Penitentiary, suspended Morris for five (5) working days from the Mississippi Department of Corrections ("MDOC") effective January 21, 22, 25, 26, and 27, 2015, for the following reasons:

1. On November 30, 2014, you failed to follow the feeding procedures by allowing Unit 29 B Building to escort both zones to the dining hall together, which resulted in nine offenders being stabbed.

Insubordination, including, but not limited to, resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor's instructions, perform assigned work, or otherwise comply with applicable established written policy is 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 July 2013.

Mississippi State Employee's Handbook, July 2013 edition, states that Group II Offenses may be disciplined by written reprimand and/or suspension without pay not to exceed five working days. Accumulation of two Group Two written reprimands within a one year period may result in demotion or dismissal. Accumulation of one written reprimand for a Group Two Offense and three written reprimands for Group One offenses within a one year period may result in demotion or dismissal.

A hearing was held on Morris' appeal on March 25, 2015. During the March 25, 2015, hearing, exhibits were introduced into evidence and testimony was taken of witnesses.¹ Morris represented himself. The MDOC was represented by David Scott.

To prevail on his appeal, Morris has the burden of proof. *See, Mississippi State Personnel Board Policy and Procedures Manual*, effective date 7/1/2014, Chapter 10, Section 20(B). Also, *see Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999). In *Richmond* the court stated:

The statute and administrative regulations clearly place the burden of persuasion on the aggrieved employee to demonstrate that the reasons given are not true. Rule 17, Administrative Rules of the Mississippi Employee Appeals Board; Miss. Code Ann. § 25-9-127 (1972). ... This is not mere semantics. Under our scheme, in a nutshell, ties go to the appointing authority. That is, unless the employee carries the burden of persuasion that the alleged conduct did not occur, the employee has no right to have the employment decision overturned. *Mississippi Employment Security Commission v. Collins*, 629 So. 2d 576, 580 (Miss. 1993); Miss. Code Ann. § 25-9-127.

Specifically, to prevail, Morris must prove, by a preponderance of the evidence, either (1) that the reasons stated in the notice of the MDOC's final decision are not [were not] true or the reasons for the MDOC's decision to suspend Morris are not sufficient grounds for Morris' suspension.

This tribunal, having considered all exhibits entered into evidence, the testimony of all witnesses, and having judged all witnesses' credibility, finds as a fact that Morris met his burden of

¹The record was left open through April 3, 2015, for the MDOC to submit any documents from the kitchen unit/dining room of Unit 29-B and MSP Central Control which addressed whether either of those entities were notified via radio that two units of 29-B were escorted to unit 29 dining room at the same time. On March 26, 2015, the MDOC submitted "Mississippi Department of Corrections Unit Register" for Unit 29 for November 30, 2014. This document is admitted into evidence as Exhibit 5.

proof that the allegation in his January 14, 2015, suspension letter that he was insubordinate and committed 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* is untrue. The reasons for this decision are set forth below.

Morris' January 14, 2015, suspension letter alleged that "On November 30, 2014, [Morris] failed to follow the feeding procedures by allowing Unit 29B Building to escort both zones to the dining hall together, which resulted in nine offenders being stabbed."

At Morris' appeal hearing, only two witnesses testified – Morris and MSP Superintendent Earnest Lee. Morris testified that on November 30, 2014, only he and one other male correctional supervising officer were on duty during the second shift. Further, Morris was the Watch Commander over Unit 29. The Watch Commander duties are numerous and include supervising twelve buildings, supervising mobile units, supervising the front gate of Unit 29, and supervising numerous offenders and MDOC employees.

November 30, 2014, was visiting day at the MSP, Parchman, Mississippi. MDOC policy required that a male supervisor correctional officer be present during visitation so male visitors could be searched. At all material times, and at the time the inmates at Unit 29-B were transported to the dining hall, Morris was at the visitation location and not in the area where the inmates from Unit 29-B building were simultaneously transferred to the dining hall. It was physically impossible for Morris to be present at visitation to coordinate the search of male visitors and also simultaneously at Unit 29 to be in a position to prohibit the simultaneous transfer of offenders to the dining hall.

The MDOC contends that the correctional officer who simultaneously transported Unit 29-B building offenders to the dining hall had advised the Unit 29 dining hall officers, via radio, that both

units were being brought to the Unit 29 dining hall at the same time. MDOC further contends that Morris should have heard the transfer via his radio and ordered the simultaneous transfer stopped. Having considered this argument by the MDOC, this tribunal finds that it is not well taken.

A review of Exhibit 5 reflects that on November 30, 2014, at 1142 hours that “(61) 29B entered DH#1 by Davis/Haywood.” Exhibit 5 does not, in any respect, indicate that the transporting officer, via radio, provided notice to Unit 29-B dining hall officers that all inmates from Unit 29-B were being transported to the dining hall. Exhibit 5 states “29B entered DH#1.” (Emphasis added). As the fact finder, this tribunal finds no support in Exhibit 5 for the MDOC’s position that the transporting of all Unit 29-B offenders to the dining hall was relayed, via radio, to Unit 29 dining hall officers. This tribunal also notes that Superintendent Earnest Lee testified that control at MSP would have been advised via radio of the offenders being transported to the dining hall. The record was left open for the MDOC to produce the register or other documents to confirm that notification was sent to control via radio, but no such document was produced by the MDOC. Thus, the inference this tribunal draws by the MDOC’s failure to produce documentation from control exhibiting that the transporting officer notified the dining hall or control of the simultaneous transfer of Unit 29-B’s offenders is that no such radio notification was made by the transporting officer and there was no radio notice to Morris that the simultaneous transfer was to occur.

At the conclusion of the hearing, arguments were heard from MDOC and Morris concerning each party’s position. The MDOC conceded in its argument that it would not be appropriate to hold Morris responsible for the simultaneous transfer of the offenders if this was a one time occurrence. The argument of the MDOC was that the simultaneous transfer of inmates was a routine occurrence, that the simultaneous transfer of the offenders had occurred on more than one occasion and Morris

had been aware of this alleged repeated conduct. And as a result, that fact was sufficient to sustain Morris' suspension as set forth in his January 14, 2015, suspension letter.

This tribunal rejects the MDOC's position for the following reasons:

1. Chapter 10.7.19.D of *The Mississippi State Personnel Board Policy and Procedures Manual* provides, "In the appeal of formal disciplinary action, the presiding hearing officer shall hear or receive evidence on only those reasons and allegations contained in the responding agency's final disciplinary notice to the employee of such action."

2. Morris' January 14, 2015, suspension letter does not allege that he was insubordinate or otherwise derelict in his duties by having previously allowed officers under his command to allow the simultaneous transport of prisoners to the dining hall or that he had not properly trained his subordinates. Further, there is no proof in the record that on the date that the MDOC contends that previous transports were allowed, that Morris was, in fact, even working those dates. For this, and other reasons that have been considered by this tribunal, it rejects the MDOC's position that Morris should be held responsible because of alleged previous simultaneous transportation of inmates to the dining hall.

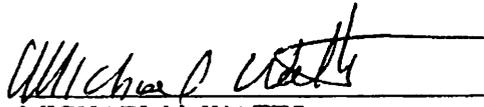
In conclusion, having considered all the evidence, the testimony of the witnesses, and having drawn certain inferences from the evidence, this tribunal finds as a fact that Norris Morris met his burden of proof that the allegations against him of being insubordinate on November 30, 2014, by failing "to follow the feeding procedures by allowing Unit 29 B Building to escort both zones to the dining hall together, which resulted in nine offenders being stabbed" is untrue. Accordingly, Morris' five (5) day suspension without pay is REVERSED and the MDOC is directed to take the necessary steps to pay him for the five (5) days of pay and to restore to Morris all of his rights and benefits

including medical leave and personal leave to the extent allowed by law. It is also ordered that Morris be restored to all of his retirement benefits he would have been entitled to had he not been erroneously suspended, provided the integrity of such benefits remain uncompromised in accordance with all applicable laws, policies, rules and regulations.

SO ORDERED, THIS THE 30 DAY OF APRIL, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:

A handwritten signature in black ink, appearing to read "Michael N. Watts", is written over a horizontal line.

MICHAEL N. WATTS
Presiding Hearing Officer