

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

COPY

IN THE MATTER OF)	
)	
Appellant,)	DOCKET NO. 98-12-136
)	FINAL DECISION AND
v.)	ORDER
)	
DELAWARE DEPARTMENT OF)	
TRANSPORTATION,)	PUBLIC ORDER

BEFORE Chairperson Susan L. Parker, Esquire, Vice Chairperson Robert Burns and Board members John F. Schmutz, Esquire and Dallas Green constituting a quorum of the Merit Employee Relations Board ("Board") pursuant to the provisions of 29 *Del. C.* §5908(a). Board member John W. Pitts, while present for much of the testimony in this case, was unable to be in attendance for the entire hearing and did not participate in the Board determination of this matter.

NATURE AND STAGE OF THE PROCEEDINGS

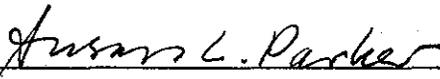
This matter came before the Board as the appeal of the imposition of a 5-day disciplinary suspension imposed upon the appellant on August 21, 1997 for allegedly sleeping on duty on several occasions between August 11 and August 15, 1997. The grievance appeal was filed with the Board on December 12, 1997 and has been the subject of previous proceedings before the Board concerning motion to dismiss the appeal filed by the Department of Transportation (hereinafter "Agency" or "Department"). The Board, after hearing from the parties, determined that the grievance appeal was properly filed under the circumstances presented and denied the motion to dismiss in a separate Order mailed to the parties on June 25, 1998. The evidentiary hearing in this case was held on March 18, 1999 before the members of the Board identified above. The appellant requested that the hearing be

conducted as a non-public disciplinary proceeding and the Board, by unanimously approved motion voted to go into executive session pursuant to 29 Del. C. §10004(b)(8) to conduct the hearing. At the conclusion of the hearing after deliberations, the Board announced its decision to uphold the action of the appointing authority and to dismiss the grievance on the basis that the appellant had failed to carry the burden of establishing that the discipline was imposed without just cause as that term is defined in Merit Rule No. 15.1. The Board has issued a more detailed non-public decision and order in this case to the parties which contains a summary of the evidence presented and specific findings of fact and conclusions reached by the Board.

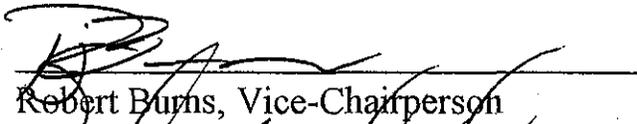
ORDER

For the reasons set forth in the non-public order of the Board in this Docket, the action of the appointing authority is upheld and the appeal denied.

BY ORDER OF THE BOARD :



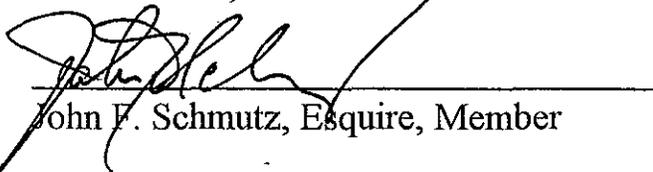
Susan L. Parker, Esquire, Chairperson



Robert Burns, Vice-Chairperson



Dallas Green, Member



John F. Schmutz, Esquire, Member

John W. Pitts, Member

APPEAL RIGHTS

29 Del. C. § 5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof of any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court are to be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 Del. C. § 10142 provides:

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing Date: May 5, 1999 *J*

Distribution:

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Agency's Representative

Merit Employee Relations Board

Susan L. Parker, Esquire, Chairperson

Robert Burns, Vice Chairperson

Dallas Green, Member

John F. Schmutz, Esquire, Member

John W. Pitts, Member