

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

IN THE MATTER OF:)

WILLIAM WILLIS)

Appellant,)

v.)

DELAWARE DEPARTMENT OF)
TRANSPORTATION,)

Agency.)

DOCKET NO. 02-03-258

DECISION AND ORDER

COPY

BEFORE Brenda Phillips, Chairperson; John F. Schmutz, Paul Houck, and John W. Pitts,
Members, constituting a quorum of the Merit Employee Relations Board pursuant to 29 *Del. C.*
§5908(a).

APPEARANCES:

For the Appellant:

Roy S. Shiels, Esquire
108 E. Water Street
P.O. Drawer F
Dover, DE 19903

For the Agency:

Frederick Schrank, Esquire
Deputy Attorney General
Department of Transportation
U.S. Rt 113, 800 Bay Road
P.O. Box 778
Dover, DE 19903

PROCEDURAL HISTORY

This matter is before the Merit Employee Relations Board ("MERB" or "Board") pursuant to Merit Rule No. 20.9 as a timely filed appeal from a third step grievance decision adverse to the grievant. The matter was heard by MERB on January 29, 2003. While this grievance involves a

matter of employee discipline, the Appellant, with the advice of counsel, determined to go forward with a public hearing and order.

This is the decision and order of the Board on the basis of the evidence and arguments presented. For the reasons set forth below, the Board upholds the appeal and orders that all references to the written reprimand previously issued to William Willis on November 13, 2001 for alleged inappropriate and insubordinate behavior shall be removed from Mr. Willis' personnel records.

SUMMARY OF EVIDENCE

The following is a brief summary of the evidence presented at the hearing as required by the Administrative Procedures Act. See 29 *Del. C.* §10128 (b)(1).

The Board was presented with three witnesses and one jointly sponsored Exhibit consisting of a copy of the written reprimand received by William Willis from Christina J. Bell on November 13, 2001.

Christina J. Bell, in sworn testimony recounted that she is the Director of Financial Management and Budget for the Department of Transportation, a position she accepted early in April of 2001 at the invitation of the Secretary of the Department of Transportation. Ms. Bell related that she worked for the State of Delaware in the Budget office during the 1980s where she began her employment as a receptionist and worked her way up over an eight year period to a Senior Budget Official. Ultimately, she received a degree in Finance from the University of Wisconsin in 1986 and acquired an accounting degree from Delaware Technical & Community College in 1989.

In her capacity as Director, Financial Management and Budget ("FMB") for the Department of Transportation, Ms. Bell told the Board that she worked 6 days a week and 10 to 12 hours a day during the period from April through October 2001. In October 2001 FMB was working on the 6-year Capital Transportation Program. This was a project with deadlines which the FMB team members were expected to meet. Ms. Bell observed on the evening of Thursday, October 25, 2001, that Mr. Willis, one of the team members, was about to leave work. She had previously spoken with another member of the team, Bette VanKavelaar, the supervisor of Mr. Willis. Between 5:00 and 5:30 p.m. Ms. VanKavelaar had a conversation with her Director, Ms. Bell, in which she stated that she had to leave work for an appointment that evening. Ms. Bell did not recall any discussion with Ms. VanKavelaar about Mr. Willis leaving work that evening. Ms. Bell testified that she went to Mr. Willis' office. An intern was present in the area and Ms. Bell asked the intern to depart to allow her to have a private conversation with Mr. Willis. The intern left and Ms. Bell, according to her testimony, stepped into Mr. Willis' office where she told Mr. Willis that the project had to be completed that evening and that there would be adverse consequences if he left work without completing his portion of the project. After discussion of the status of the project, Mr. Willis got up from behind his desk where he was 5 to 6 feet away from Ms. Bell and came around the desk to stand in front of her at a distance which Ms. Bell estimated to be 1 and 1/2 feet. Mr. Willis' hands were at his side and his voice was not raised. Mr. Willis and Ms. Bell continued to talk and Ms. Bell observed that there would also be other team members held responsible for missing deadlines. She testified that Mr. Willis had entered her personal space. She did not back up but told him that if he was intending to intimidate her he was just throwing fuel on the fire. Ms. Bell testified that Mr. Willis just looked at her when she made that statement and then turned and went back to his desk. Ms. Bell testified

the project went to the printer the next day because the team members, John Nauman and Dunstan DeNoon, who remained, completed the project on Thursday evening. The material was scheduled to arrive at the printers by noon and was delivered approximately 1 hour late.

Ms. Bell testified that she later hand delivered the written reprimand (Joint Exhibit No. 1) to Mr. Willis. She noted that he had filed a grievance which progressed through the steps of the grievance procedure to the hearing before the Merit Employee Relations Board.

On cross examination Ms. Bell noted that previous FMB Directors did not take an active direct role in preparing the capital budget document. In the past the staff had met with other divisions and collected the information, but one of the changes she made was that she became the point for the collection of the information which she then relayed on the FMB staff for their work and input. She noted that the functions to be performed by Mr. Willis had not been completed and the components for which he was responsible had not been finished. Also, Ms. Bell testified that the intern working with her was uncomfortable approaching Mr. Willis. Ms. Bell recalled the conversation with Ms. VanKavelaar concerning her need to leave work and noted that she did not ask her to return because there was a core group and Ms. VanKavelaar did not indicate that Mr. Willis was also planning to leave. Ms. Bell related that she learned from one of the other staff members that Mr. Willis was planning on going home and she went to his office to discuss the situation. She testified that she told Mr. Willis that there would be adverse consequences from his leaving without the projects being completed. She was not aware at the time of her conversation with Mr. Willis that his supervisor had told him he could leave.

Ms. Bell testified that her conversation with Mr. Willis did not stop when he got up from his desk. She noted there were no verbal threats but she felt he was attempting to intimidate her. She

based her opinion on her attendance at workshops concerning non-verbal communication. She stated that he came into her personal space and that he intentionally stood too close to her intending to intimidate her, but his language was not intimidating. She observed that she believed Mr. Willis was difficult to work with because of his verbal and non-verbal behavior but he was not belligerent. She recalled one incident where she felt that he had referred to her in a disrespectful manner but there had been no other incidents of this nature. There were approximately 40 people on her staff at that time and she had expected Mr. Willis and others to work together as a team on the capital budget project.

Bette J. VanKavelaar provided sworn testimony to the Board in which she related that in October of 2001 she was the Assistant Director for FMB at the Department of Transportation and was the direct supervisor of William Willis. Ms. VanKavelaar testified that both she and Mr. Willis were familiar with the process of preparing the capital budget and had worked on the project through a number of different administrations at the Department of Transportation. In January of 2001 Nathan Hayward became Secretary of the Department and in April he brought Ms. Bell in as his Director of FMB. With the new Secretary there had been some format changes in the Budget preparation project. Ms. VanKavelaar testified that this was not uncommon when a new Secretary took over the Department. In October of 2001, according to Ms. VanKavelaar, the project was on the usual schedule but was seen as running behind because the schedule had been shortened by 2-3 months under the new Secretary. This was the first time Director Bell had worked on the project from the Agency side. She had seen it before from the viewpoint of the Budget office where she had worked. Under the revised process the Director was collecting and reviewing information from various projects and passing it on to the project members for further processing.

According to Ms. VanKavelaar, Mr. Willis had been a direct report to her for 5-7 years and he had been through the budget process many times. He was never disagreeable with her and he worked well under stress and was not disgruntled. Ms. VanKavelaar observed that Ms. Bell, as the new FMB Director with a new Department Secretary, was under considerable stress and was anxious to prove herself. On October 25, 2001, according to Ms. VanKavelaar, she was working on the project under a time line established by Director Bell. The information was not coming in on time and was difficult to gather. Director Bell sent out an e-mail to the project team members that certain tasks had to be completed so the information could go to the printer by noon on Friday, October 26, 2001. Ms. VanKavelaar testified that at approximately 5:45 p.m. on Thursday evening there was no information coming in to be processed by the team and so she went to Director Bell and asked if they should remain at work. According to Ms. VanKavelaar, she, her secretary, and Mr. Willis were all still at work. She told Director Bell that she had a 7:00 p.m. commitment out of the office and asked Director Bell what she should do. She asked if she should come back to the office after her meeting or if she should cancel her 7:00 p.m. meeting. Ms. VanKavelaar told the Board that she did not get a straight answer from Ms. Bell. She testified that she asked Director Bell if she wanted her to stay and Director Bell indicated "no". Ms. VanKavelaar further related that she then went into Mr. Willis' office and told him that she had talked to Director Bell and that she was leaving, but that Mr. Willis was to check with Ms. Bell before he left. According to Ms. VanKavelaar, Mr. Willis related to her that he was also getting ready to leave. Ms. VanKavelaar told him that he could leave unless Director Bell wanted him to stay. Ms. VanKavelaar could not recall the exact words exchanged, but thought that she had told Director Bell that Mr. Willis was also planning to go home.

Ms. VanKavelaar testified that she knew of others who had confrontations with Ms. Bell. She had one confrontation with Ms. Bell prior to this incident and a couple afterward. Ms. VanKavelaar also testified that Director Bell had given her a written reprimand for leaving work that evening and failing to make the deadline. Ms. VanKavelaar testified that was her first written reprimand in almost thirty years with the Department. Ms. VanKavelaar stated that she filed a grievance concerning the reprimand from Ms. Bell and noted that her grievance was upheld by the State Personnel Commission. Ms. VanKavelaar related that she knew individuals on staff and others who had worked with Director Bell who had expressed tension in some of their meetings with the Director.

William Willis, after being sworn, testified that he began working with the Department in 1995 after retiring in 1991 from the military with 24 years service and work in private industry for several years. He was hired to help in the development of a strategic plan, and this project was completed.

He reported directly to the Assistant Director, Ms. VanKavelaar, with whom he worked well. According to Mr. Willis there were always time pressures in his job. Ms. Bell had been in her new position as Director about 1 month when he had some tension with her because she had been forwarded an e-mail which he had sent to another employee in which he had referred to her by her last name only. She observed to him that this was disrespectful. Mr. Willis stated that he explained to Director Bell that was the way he normally communicated using last names.

Concerning the capital budget project in progress during October 2001, Mr. Willis testified that his responsibility was for four sections. His task was to attach financial information to projects and then pass the information on to Mr. DeNoon who checked the numbers and generally cleaned the presentation up for Director Bell. Mr. Willis recounted that he was supposed to have his part of the project finished on Wednesday, October 24, 2001. He indicated that he had completed all but his

final section by 2:45 p.m., but that Mr. DeNoon and Director Bell had not finished with the third section. Mr. Willis stated that the project was behind schedule but the delay was not as a result of his not fulfilling his part, but rather was caused by a bottleneck with the Director and Mr. DeNoon.

According to Mr. Willis, both he and his subordinate, Mr. Carver, were available all day on Thursday, October 24th while Mr. DeNoon was checking the numbers. As the day progressed Mr. DeNoon had fewer and fewer questions and at approximately 5:00 p.m. Mr. DeNoon indicated that he wanted to go and work in his own office. Mr. Willis replied that was fine and he would be available. Approximately 5:30 p.m. Ms. VanKavelaar came to his office, according to Mr. Willis, and told him that there was nothing for them to do and that she and Mr. Willis could go home. Mr. Willis stated that made sense to him. At approximately 5:40 p.m. Mr. DeNoon came to Mr. Willis' office to have him check a number and, according to Mr. Willis, at approximately 5:55 p.m. Ms. Bell appeared in his office doorway and stated that she understood that Mr. Willis was getting ready to leave. Mr. Willis noted that like a bolt from the blue, Ms. Bell stated that the reason they were behind was because Mr. Willis was late in getting his work done and that there would be consequences for his failure to perform. Mr. Willis acknowledged that he was "not a happy camper" at that point and felt that Ms. Bell did not have a full understanding so he got up from his desk and walked over to her to explain the facts of his involvement in the project. He stated that he explained that he was 6 hours late in getting something done but that it had no delaying impact because the person reviewing the material had not done their review. Mr. Willis explained that he got up from his desk and came over to Ms. Bell and was a "handshake" distance away from her to enhance communications. He testified that he did not intend to be insubordinate or to intimidate Ms. Bell and that there was no yelling and no standing toe to toe. He indicted that he thought she was being unfair to him. She stated that he

could not walk over and intimidate her. When she said that, according to Mr. Willis, he stated that "I can't imagine that you are intimidated by me" and then he turned and walked back to his desk.

Mr. Willis testified that he retired from the Coast Guard with the rank of full commander which he equated to a Lieutenant Colonel in the Army or Air Force. He stated that when he approached Ms. Bell he sought to explain the situation to her and to persuade her to his point of view on the delay in completing the project.

RELEVANT MERIT RULE

MERIT RULE NO. 15.1

Employees shall be held accountable for their conduct. Measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires:

- showing that the employee has committed the charged offense;
- offering specified due process rights specified in this chapter; and
- imposing a penalty appropriate to the circumstances.

FINDINGS AND DISCUSSION

At the hearing before the Board on this matter the parties agreed that the portion of the written reprimand (Joint Exhibit No. 1) relating to Mr. Willis leaving work on October 25, 2001 had been resolved by the State Personnel Office and was no longer at issue. The parties agreed that the determination by the State Personnel Office left for resolution by the Board only the existence or non-existence of just cause for the imposition of a written reprimand to Mr. Willis for his alleged inappropriate and insubordinate behavior which Ms. Bell found to be an attempt to intimidate her.

It is clear that on the 25th of October in 2001, Director Bell was under considerable stress in her new position. Although apparently well qualified by education and prior experience with the

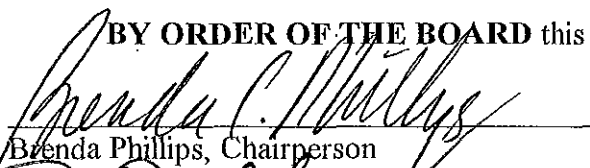
State Budget office for her new position as Director of Financial Management and Budget, she was working under a new Transportation Secretary on a major project with a revised approach to the information gathering process and distinct time pressures. It is also clear from the testimony that Ms. Bell was less than pleased with the level of cooperation she perceived she was getting from Ms. VanKavelaar and Mr. Willis. It was Ms. Bell's first time dealing with the Department of Transportation Capital Budget Plan from the Agency perspective, but Ms. VanKavelaar and Mr. Willis had been through the process numerous times albeit at a lesser level of responsibility and accountability. Ms. Bell confronted Mr. Willis in his office on the evening of October 25, 2001 after learning that he was planning to leave work with the project not yet completed. This was not a good time for Ms. Bell because her major responsibility was behind schedule and she was faced with two of her senior staff whom she sensed were not as engaged in the time line for the project as she would have liked them to be. Mr. Willis acknowledged that his portion of the work was not completed on time, but he was convinced that fact was not causally related to the project being behind schedule and he was trying to convince Ms. Bell of that fact when he came around his desk and stood in front of her. His arms remained at his side, his voice was not raised, and his demeanor was not belligerent, but nevertheless Ms. Bell perceived his action and demeanor as an insubordinate attempt to intimidate her and one deserving of a written reprimand. Ms. Bell felt that Mr. Willis had invaded her "personal space" and she believed it was done for the purpose of intimidating her. If Ms. Bell is correct then it would certainly be appropriate to hold Mr. Willis accountable. However, viewed objectively from the testimony and evidence presented to the Board, it does not appear that Mr. Willis was the one being confrontational in this particular situation. The background for this situation was colored by Ms. Bell's sense that on a prior occasion Mr. Willis was not sufficiently deferential or respectful to

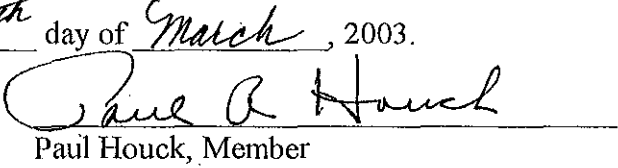
her in her new position as the Director of FMB when he used her last name in an e-mail to a co-worker. In this situation, when Ms. Bell came into Mr. Willis' office to express her displeasure with him and the team for being behind the established deadline, Mr. Willis' efforts and behavior was intended to emphasize and explain his viewpoint on his level of responsibility for the project delay. Ms. Bell saw intimidation where none was intended nor objectively apparent, and Mr. Willis, by the unanimous vote of the members of the Board hearing this matter, should not in this situation be held accountable for what was not intended.

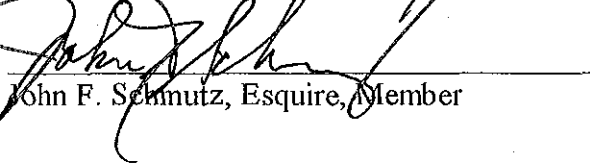
ORDER

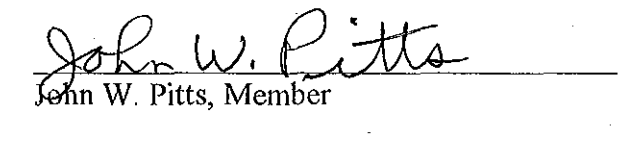
For the reasons stated above, by the unanimous vote of the undersigned members of the Merit Employee Relations Board, the grievance appeal of William Willis is granted and all records of the reprimand of November 13, 2001 from Christina J. Bell to William Willis shall be canceled and removed from Mr. Willis' personnel Records.

BY ORDER OF THE BOARD this 6th day of March, 2003.


Brenda Phillips, Chairperson


Paul Houck, Member


John F. Schmutz, Esquire, Member


John W. Pitts, Member

APPEAL RIGHTS

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:

March 17, 2003

Distribution:

Original:File

Copies: Grievant

Agency's Representative

Merit Employee Relations Board