

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

CHANDRA Y. MONTGOMERY,

Appellant

v.

Case No. 11-REM-07-0249

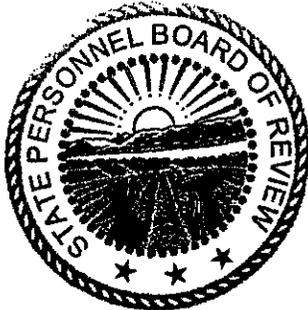
REHABILITATION SERVICES COMMISSION,

Appellee

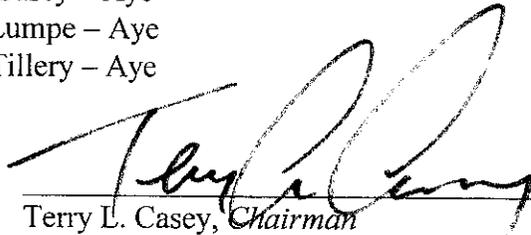
ORDER

This matter came on for consideration before the full Board. Based upon the reasoning set forth in the Board's Opinion attached hereto, the Board hereby **MODIFIES** the removal of Appellant.

Wherefore, it is hereby **ORDERED** that Appellant's removal be **MODIFIED** for the reasons set forth in the Board's Opinion attached hereto.



Casey – Aye
Lumpe – Aye
Tillery – Aye


Terry L. Casey, *Chairman*

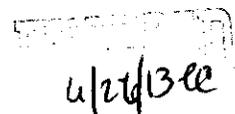
CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that the foregoing is (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, June 26, 2013.


Erin E. Conn
Clerk

NOTE: Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.


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**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

CHANDRA Y. MONTGOMERY,

Case No. 11-REM-07-0249

Appellant

v.

June 26, 2013

REHABILITATION SERVICES COMMISSION,

Appellee

Full Board

OPINION

From the State Personnel Board of Review:

This cause came to be heard on February 15, 2012 at 65 East State Street, Columbus, Ohio, 43215, 12th Floor, Hearing Room #2. Present at the hearing was Appellant, who was represented by Marc E. Myers, Attorney at Law. Appellee, Ohio Rehabilitation Services Commission (RSC), was represented by Julie B. Smith and E. Linda Ubokudom, Assistant Attorneys General, with three additional staff members attending from the Ohio Rehabilitation Services Commission.

This cause comes on as a result of Appellant's timely filing of an appeal for her removal from the position of Administrative Assistant 3 with Appellee. The pertinent Order of Removal was effective June 30, 2011. The parties had discussed settlement options on a limited basis. However, the parties were not able to resolve their differences and the matter then went to hearing, as noted and detailed below before the Full Board.

Jurisdiction over the subject matter of this appeal was established pursuant to Ohio Revised Code Sections 124.03 and 124.34.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

In the June 30, 2011 Order of Removal, two specific violations of Ohio Revised Code Section 124.34 were cited as the reasons for Chandra Y. Montgomery being terminated from her job after eleven years working for the Ohio Rehabilitation Services Commission and five years as an Administrative Assistant 3. Those violations cited were:

A violation of 124.34 of the Ohio Revised Code by an act of nonfeasance for violating work rule 18-Failure to follow policies or procedures, or use poor judgment in carrying out a work assignment and 28 Violations of the Ohio Revised Code Section 124.34. You were given a directive by the Assistant Deputy Director to complete a project by May 27, 2011 in which you did not complete as instructed. The information you provide was incomplete and confusing. You were told to correct it by the end of the day, which you failed to do. Due to your actions the assignment had to be reassigned to other staff for

completion. It was proven as well that you continued to fail to perform schedule and calendar maintenance for the Deputy Directors office. It was shown you double book them multiple times causing major disruptions to their work day.

This summary focuses on these two issues:

I. REPORT/RESEARCH FAILURE:

On doing and preparing a “*work assignment*”, the Appellant allegedly failed to “*follow policies or procedures, or use poor judgment in carrying out a work assignment*”.

II. POOR SCHEDULING:

The violation involved a failure “*to perform schedule and calendar maintenance for the Deputy Directors office . . . causing major disruptions*”.

At the all-day, in-depth hearing held by this Board starting at 10 a.m. on Wednesday, February 15, 2012, the three Board members were present to hear witnesses for both sides on these two issues as outlined in the original June 30, 2011, removal order. At hearing, Appellee called five witnesses: Appellant, Chandra Y. Montgomery; Labor Relations Manager Bobby Johnson; Deputy Director (DD) Daniel Connors; Deputy Director Susan Pugh; and Assistant Deputy Director Rose Reed.

At hearing, Appellant called one witness: Chandra Y. Montgomery, Appellant.

Attorneys for both sides made opening, summary statements and were allowed to ask questions, both direct and on cross-examination.

The February hearing followed a December 14, 2011 pre-hearing conducted by this Board where we heard summary viewpoints of this case from both sides and discussed with each party these two issues and questions related to alleged failures by Ms. Montgomery, witnesses to be called, evidence to be presented, etc. At the end of the February 15, 2012, hearing, respective counsel for both parties sides were allowed to summarize their positions and the important points for the Board’s final and summary consideration. Further, respective counsel for both sides were allowed to submit any additional briefs and/or evidence that would be pertinent to the facts, evidence and law on this case.

The Attorney General’s office requested added time and was granted it in order to have a full transcript prepared and an additional brief filed that arrived in our office late on the afternoon of Friday, March 9, 2012.

Under Ohio law and this Board’s standards, the burden of proof on these two allegations falls to the Appellee, the Ohio Rehabilitation Services Commission, to document and prove their case in order to be sustained on their removal of this employee.

A. MULTIFUNCTION DEVICES RESEARCH PROJECT:

This project, upon which a large part of this case has been built, involved Appellant being given a request to pull together information on the multifunctional devices (or MFD’s) that the

Rehabilitation Services Commission had in various offices and locations around Ohio. This assignment was given on Thursday, May 19, 2011, via an e-mail. This project was to be completed by Friday, May 27.

On the first two days, Thursday and Friday of her allowed time to start and complete this research, Ms. Montgomery was on a previously-scheduled vacation period. Then she was busy on her first returning day of Monday, May 23 catching up on other work projects (including “pinch-hitting” on a high-priority project from legal counsel involving near-term deadlines) and doing her normal daily duties in serving six staff members directly and approximately twelve to fourteen other persons indirectly. Ms. Montgomery commenced work on the MFD project that Tuesday and by the end of the week had assembled much of the needed information on these various machines. Appellant’s report covered approximately 40 machines and included completed fields in 14 of 15 categories. (This information is contained in transcript pages 206-219 and 226-227, plus other pages, as well as in Appellant’s Exhibit B.)

As was testified to by Assistant Deputy Director Rose Reed, one of Appellant’s several functional supervisors, this report was not as complete as desired. Among the “deficiencies” cited were that this report did not have the age of each machine purchased/used listed in a number out to the tenth of a decimal point. Due to using an Excel spread sheet, her report did show the exact day, month and year that the machine was acquired, but this software showed in another column the age in whole years with a negative/minus sign in front of it. Our Board examined the physical product presented in the format she had available for her use through the office software.

Much was made by Ms. Reed of this one column for age in years being rounded to a whole number with a negative sign in front of this data. While this Board is not composed of computer programming experts, our conclusion is that this employee is being blamed personally for a technical aspect of report summary software that she did not purchase or create. In fact, evidence in the record indicated that the appearance of the negative/minus sign before the age of the machines may have resulted from Ms. Reed’s subsequent instruction that this number must appear in years and from the concomitant fact that the only way Appellant could put that particular calculation in her spreadsheet was to use a negative number.

On this allegation, there are several, larger policy questions.

1. Ms. Montgomery had been hired and was working as an Administrative Assistant 3. The record does not reflect that Ms. Montgomery was hired, trained and/or experienced to be working and functioning as an Administrative Management Analyst. As testimony noted and confirmed, this was the first time she had ever been asked to prepare this type of report and make these types of Analyst reviews.
2. Ms. Montgomery was delayed in getting certain key data, as one of the vendors with such information was not available until that Friday, May 27, 2011, in spite of Appellant’s successful initial contact with that service vendor days before
3. Ms. Montgomery sought added time to gain additional data and to make changes as her supervisor

requested, but the Appellant was not given sufficient time, with all of her other duties and persons she served and supported. This request for added, reasonable time was denied.

4. Testimony presented was unpersuasive, failing to demonstrate that Ms. Montgomery's supervisors showed proper leadership and assistance in giving her the needed time, training and format model for doing this type of research and analysis. Without the requisite model, direction, training and proper timing, how would an employee be able to research, assemble, prepare and present such a report in a short time period?

CONCLUSION: While the testimony on pages 168 through 204 from Assistant Deputy Director Rose Reed indicated that she was unhappy with what Ms. Montgomery produced, there was insufficient testimony to show this supervisor being an effective leader in guiding, helping and directing an employee, doing something out of her expertise, job category and background. Accomplishing these new duties in a reasonable time period required more time, as indicated by what then happened when the remaining part of this work was re-assigned to two other employees to complete. The work done by these two other employees was completed in mid June, *more than two weeks after the original "must-have", inflexible deadline set by a supervisor.* In fact, during the many pages of testimony by Rose Reed, there were many different "I don't recall" and "I just don't remember" in her statements when asked a series of questions to determine whether this employee was the cause of these problems or the victim of insufficient management communications and supervision. Indeed, Ms. Reed did not know if there was a reason that she gave Appellant a date-certain deadline but did not give that same type of hard and firm deadline to the two other employees who completed certain portions of the assignment.

Our Board's conclusion is that any problems perceived or alleged on Ms. Montgomery's failure of performance on this project were in larger measure not of her making or fault to merit such a removal from her position.

B. SCHEDULING RESPONSIBILITIES & DUTIES:

The second half of this case centers upon the question of whether there were problems and confusion created in how the schedules were managed, maintained and monitored for Deputy Directors Susan Pugh and Daniel Connors, their top assistants in this office, and other staff members. It is clear from the various witnesses and the pages of testimony that there were problems and issues. The challenge for this Board, independent from the Rehabilitation Services Commission, is to determine what, if any, causal link existed between these problems and Ms. Montgomery's alleged failure to perform her job in an efficient and effective manner. Among the key factors that came out during testimony were these:

1. There was a practice, not determined or chosen by Ms. Montgomery, to have what was called "*blind acceptance*" for allowing any and all schedule requests for meetings, conferences, and appointments with these various officials to be accepted and placed on a schedule. The practice seems to have been to place these many and varied items on the schedule and then at a later point, it would be determined which specific ones merited how much time and the level of involvement by one or more of the Deputy Directors and/or one of the Assistant Deputy Directors and/or another staff member.

In his testimony on direct, Deputy Director Daniel Connors gave some detailed descriptions of the scheduling process. (Transcript at pages 94 through 97)

Deputy Director Daniel Connors:

As I said earlier, we – our meetings are oftentimes not something that we control.

We have meetings that we do control, but many of them are set on our calendar, so we receive – and there's also – we have meetings that we're not necessarily going to be a part of, but we want to know about that the meeting's taking place and different things.

So the issues are when you have a meeting that's – if you have two meetings at the same time period, for example, you need – you know, you need to know that because that may be – you know, there's different options for that. That may be a meeting that you're delegating someone to one of the meetings, you're going to attend the other meeting.

Assistant Attorney General Julie B. Smith:

Uh-huh.

Deputy Director Daniel Connors:

You might be attending neither meeting or you might be attending both and, obviously, you need advance notice to either reschedule one of the meetings and make a decision about what to do about that. So one of the things that frequently came up in our calendars is situations where you had a meeting that was double booked and didn't know about that until very, very early – or, you know, very – right before the meeting.

So you're reviewing your – your schedule for a day and again you might have a meeting with another state agency and at 9:00 o'clock in the morning you're realizing that you can't make both of those meetings, and now you've got to try to call, you know, several people. Sometimes the meetings involve multiple people from external agencies, so you have to then do a lot of work to try to reschedule those meetings. And then again, sometimes it's a matter of you don't have – you haven't delegated the appropriate person to that meeting because you don't know.

Another thing that was pretty common is not taking into account locations of a meeting. So if a meeting isn't – you know, isn't present in the office, where is the meeting, do I know how to get there, has there been appropriate time accounted for, you know.

So if I have an executive team meeting from 9:00 to 11:00 – these are just hypotheticals – but if I have a meeting from 9:00 to 11:00 and then, you know, at 11:00 I have a meeting with an agency downtown, there's no account for the half

an hour that I have to travel, you know, down. So then I have to talk to the Executive Director about leaving the meeting early.

Those types of – those were probably the routine, you know, issues that came up.

As reflected in the record, from June, 2010 to perhaps the first week of September, 2010, it appears that Appellant and DD Pugh met more or less on a weekly basis to discuss the calendar.

Yet, this changed with DD Pugh's issuance of her September 10, 2010 e mail to Appellant. That e mail basically terminated these weekly discussions and, instead, instituted the system whereby Appellant was now essentially required to independently "manage" DD Pugh's calendar; utilizing the "blind acceptance" and "divide and conquer" methodologies.

2. This "blind acceptance" practice made things very easy and simple, upfront, at the start of the process. Most all requests were placed on the schedule. BUT, at a later point, additional serious thought and determination needed to be done to decide the merits and priorities for each of these varied requests. During part of the testimony, it was noted that Ms. Montgomery was responsible for "**monitoring**" these various schedule requests and items. Then, at a later point in time from the testimony, it was established that, as of September 10, 2010, she was expected to be "**managing**" or fixing various calendars and their details. It also appears that Appellant had two monitors on her desk, one of which was solely dedicated to managing the schedules of Deputy Director Pugh, Deputy Director Connors, and others.
3. There is a major and significant difference between merely "monitoring" various schedules versus "managing" them to clear up and solve any and all conflicts, priority determinations, assigning of value judgments for the importance of each requested meeting, etc. Moreover, testimony reflected that, at one previous point, Appellant could not even see the full calendar of one or more of her assigned managers, because Appellant had not been given the privilege as a delegate to fully view or review same.

There were at least six and possibly up to twenty different people involved in having their schedules go through Ms. Montgomery, directly and indirectly. Accordingly, it appears highly problematic to expect an employee at Appellant's level to know ALL of the various program needs and policy differences to make those levels of time and value judgments herself within a major agency such as this one.

4. The agency's Director, Deputy Directors, and Assistant Deputy Directors are given the powers, responsibilities, and commensurate pay to know where the precise time allocations go and which meetings merit more or less or no time. The record reflects that these higher officials are in and at a "policy level" to see and know the overall needs of the agency, their various vendors and contract providers and how all of those many layers of issues impact those blind, disabled and those otherwise affected for the services required to be provided by federal and state law.
5. As it affects this employee, it was not, however, her decision to do such "blind acceptance" of any and all requested meetings, appointments, conferences and programs. That was a management

decision by those higher above her position and pay-grade. As referenced on transcript page 27, lines 14-16, an e-mail from Deputy Director Susan Pugh indicated that a “*divide and conquer*” strategy would be used for who attends or does not participate in these many meetings and conferences. Ms. Pugh stated to this Board that she was concerned with how missing any meeting or being late would reflect on her “professionally”. In the original removal order, it was stated that Ms. Montgomery’s failures were “causing major disruptions to their work day”.

There was testimony on confusions and minor personal inconveniences happening, but detailed documentation was simply not presented on the alleged “major disruptions” occurring and/or any serious consequences resulting therefrom. Another e-mail indicated and detailed that Deputy Director Pugh did not want to be bothered by looking in advance at or by reviewing printed copies of her overall schedule, nor did she want to take any effort to make suggestions in a meeting with Ms. Montgomery for fine-tuning any of these scheduling issues, questions and/or potential conflicts (transcript page 28, lines 16-20).

Moreover, the record reflects that some of these perceived scheduling issues may have been the result of the internet having a much faster update speed than did the internal RSC intranet/server, where Outlook scheduling was done. First, some of the schedule changes that Appellant made in Outlook via the intranet would not even show up. Secondly, for Appellant to have calendars open and then do her other work on Outlook, Appellant had to have the internet view of the calendars; so that she could continue to work on the RSC server view of Outlook.

This all appears to have resulted in some scheduling inconsistencies, overlaps, and possible widespread agency challenges when simultaneously using the respective scheduling data on the intranet and internet, as reflected in the record.

6. There were many other “smaller” issues raised and blame assigned to this one employee for failing in one case to not list the exact address on a schedule copy for the Youngstown office, one of the seventeen offices that the Ohio Rehabilitation Services Commission has in the state. The record reflects that Appellant listed this address, as well as the time the participants were expected, on both Deputy Director Pugh’s and Deputy Director Connors’ first Outlook appointment scheduling notice/e mail --when this meeting was originally planned. This information was not on the second scheduling notice, when the meeting was re-scheduled for approximately one week later. Deputy Director Connors indicated at hearing that he had the information for the meeting and knew the Youngstown office’s address.

Deputy Director Susan Pugh described the situation in this way:

Deputy Director Susan Pugh:

... And, quite frankly, my day is chaos as it is and I don’t have really time to work through these kinds of issues.

You know, if I’m driving I’ve got people calling. You know, I’ve got, you know, other things that I’m attending to while I’m in the car and I just do not have time to do a Google search of what our field office is or whatever. I – I need that

information at my fingertips.

Based on the testimony presented to this Board, RSC's Youngstown office is at a location and is an office Deputy Director Pugh had visited previously. In order to program her GPS in her car, Deputy Director Pugh wanted this specific address to be listed on a more current schedule listing.

Maybe this "failure" by her Administrative Assistant 3 was viewed as major and fatal by the Deputy Director at this moment in time; however, this Board views this type of complaint to be more of a question of proper communication and organization between a manager and a staff member. It would appear to have been relatively easy for Deputy Director Pugh simply to have placed one phone call to clarify and obtain that exact Youngstown office address if the Deputy Director had forgotten the location she had previously visited.

Another smaller issue covered in the testimony was about any problems that came up of a technical nature on telecommunications equipment during a teleconference and if any of that would have been the fault of the Administrative Assistant 3. A further area cited was blaming Ms. Montgomery for computer server issues involving the Commission's scheduled meetings. In this case, and as noted, above, there was testimony presented and genuine questions were raised on the lack of an ideal interface between the two scheduling-and-computer-networking systems.

7. During her testimony, Deputy Director Pugh apprised our Board both of the high level of her activity and of the importance of her particular schedule. She also testified that she had to deal with multi-million-dollar contracts and was involved hour-after-hour in back-to-back meetings, etc. But, at another point, she placed all of the blame on Ms. Montgomery for not dropping into her office on a regular basis to gain any and all clarifications for which meetings were more or less important, which staff members were the best to attend the various appointments, etc.

Accordingly, Appellee was unable to sufficiently satisfy the question of how, if one of Appellant's bosses was so rush-rush and important, could a lower-level person such as Appellant ever get the needed time to go in and get the proper guidance; in order to successfully unscramble all of the scheduling over-laps that were created by "blindly" placing all requests on the schedule and in order to attempt to effectuate a "divide and conquer" strategy in allocating top personnel for such meetings, conferences and appointments? Moreover, DD Pugh confirmed at hearing that she never told Appellant that DD Pugh expected Appellant to denominate who the delegate was going to be at a meeting, if DD Pugh could not attend; nor did she give Appellant that authority. It can be argued, then, that Appellant had the *responsibility* to "manage" these schedules but lacked the *authority* to do so effectively.

8. On page 20 of the transcript (lines 1-6), testimony was given that Ms. Montgomery was responsible for the schedules of Deputy Directors Susan Pugh and Dan Connors, plus Assistant DD Rose Reed and three to four other persons. That is a total of six to seven different persons where there was a need for Ms. Montgomery to deal with, monitor and/or manage schedules.
9. As noted, further testimony was presented to demonstrate that monitoring and/or managing these six to seven separate schedules was not Ms. Montgomery's only responsibility. Indeed, testimony was presented to the effect that Appellant also had a variety of additional duties.

These additional duties included: dealing with issues raised and connected with reviews by the Auditor of State's office; monitoring contracts with vendors and related billing; processing paperwork for the various employees in her area; serving as the Office Manager; and performing other miscellaneous duties.

10. In earlier filings, during the pre-hearing and at the hearing, plus in its post-hearing brief, the Attorney General's office has emphasized that Ms. Montgomery has been subject to previous disciplinary action and that she had received "in-person and written instruction and guidance". Further, Appellee argues that the record would support a finding that Ms. Montgomery was "given ample opportunities to show that she was capable of performing her job duties, but her poor performance made her completely ineffective and unreliable".

We expressly note that the Attorney General's office was allowed to present evidence into the record at hearing concerning these areas; despite strenuous objections from Appellant's counsel regarding the relevance of this evidence and regarding Ms. Montgomery's lack of any previous meaningful due process opportunity to vet and refute same. Ultimately, however, since these earlier allegations were not cited in the June 30, 2011 Order of Removal, our Board cannot fully evaluate the merits, validity, and substance of each and all of these prior allegations by management against this employee.

CONCLUSION: It is certainly possible that Ms. Montgomery was not as forceful and direct as she could have been in communicating back to her superiors that their scheduling plan was leading to and creating added confusion and chaos. However, the larger problem seems to be top management's lack of recognition of the apparent adverse consequences of implementing this extremely daunting scheduling system which was, after all, of their own design and creation. State employees, especially at the Administrative Assistant 3 level, should not be expected to intuit or glean the exact hierarchies of importance on various meeting and appointment requests and priorities presented in this manner.

We recognize that Appellant did receive some ongoing earlier training regarding attempting to monitor the schedules in the Deputy Directors' suite; albeit she received scarcely any training on how to actually "manage" same. Yet, at bottom, Appellee failed to demonstrate by a preponderance that anyone, other than RSC's higher-level managers, had in their possession the appropriate information and background to know how to successfully prioritize these competing and disparate requests on the final schedule; particularly during the time frame at issue in this appeal.

The record clearly reflects that RSC's higher-ranking management knew these issues, on a week-to-week basis, and best understood the merits of how much time and attention should therefore be applied by these top managers and their assistants.

It is a truism that we might expect a high-ranking Deputy Director to take some limited time *each week* to review and communicate with her Administrative Assistant regarding how various upcoming schedules could and should be adjusted to reflect the proper priorities and needs of the agency as they evolve on a week-to-week basis. At a minimum, in this case, we can say that Deputy Directors Pugh and Connors' use of the "blind acceptance" and "divide and conquer" scheduling methodologies might not have ultimately offered them the best opportunity to utilize their scarce

time resources; during times pertinent to this appeal.

C. CHAIN OF DUTIES, RESPONSIBILITIES:

On transcript pages 228-234, there were detailed questions from Board Member Dwight Tillery that explored the confusing environment and large number of people to whom Ms. Montgomery was to respond, help, and provide assistance. The bottom line was that there were at least six and up to eight staff members directly to be served and from whom Ms Montgomery would get requests and a total of twenty people, directly and indirectly, making requests to her. (This figure included two Deputy Directors and others for whom she had to manage schedules.)

This testimony included (per page 230, lines 2-3) that Deputy Director Daniel Connors told Appellant "it was inappropriate for me to ever tell someone no". From an outside viewpoint, this type of "organizational structure" would seem to challenge an employee's ability to function effectively and to serve successfully all of that employee's various managers and functional supervisors.

CONCLUSIONS OF LAW

For Appellee to prevail in a disciplinary appeal before this Board, Appellee must demonstrate the validity of a sufficient number of the factual allegations contained in the pertinent R.C. 124.34 Order to justify its discipline of the pertinent employee. In the instant appeal, Appellee has not met its burden for either of the two allegations contained within the instant R.C. 124.34 Order of Removal.

R.C.124.34 provides for the removal of a classified employee for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of R.C. Ch. 124. or the rules of the director of administrative services or of a pertinent civil service commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony.

The main thrust of Appellee's argument on the first charge is that Appellant failed to prepare an analysis and report in a manner desired and failed to complete it in the style and timing sought.

First, and as found, above, the testimony presented and evidence admitted show that such an analysis did not appear to be in the normal scope of Appellant's job position and may well have been beyond her scope of training and experience.

Secondly, and unfortunately, the record at least raises a question as to the motivation of certain employees at RSC who required Appellant to successfully complete this report in such a short time period without adequate guidance. We understand that RSC may have had some mitigating circumstances to counter-point the appearance of an inflexible and challenging deadline.

These circumstances include the following:

Assistant DD Reed might not have known that Appellant was out of the office on a previously scheduled vacation when Ms. Reed e mailed the MFD assignment to Appellant;

Ms. Reed might not have realized that one of the two Executive Secretaries whom Ms. Reed suggested Appellant contact was unreachable by e mail at this time; and

Ms. Reed might not have realized that Appellant was, at this same time, effectuating a time-sensitive equally high-priority project for legal counsel, etc.

Nonetheless, the predictable result of this situation, Appellant's inability to complete fully the task in the short time provided, made it easier for RSC to build a case to justify Appellant's removal.

The main thrust of Appellee's argument on the second charge is that Appellant failed to keep and manage the various schedules in a manner desired and failed to complete these tasks in the detailed style sought.

First, and as found, above, the facts in evidence strongly suggest that it is more probable than not that many of these issues and problems were caused by high-ranking management's utilization of a scheduling system based upon "blind acceptance" and upon a "divide and conquer" approach.

Moreover, there is a dearth of testimonial or other evidence to support an allegation that Appellant failed to monitor these scheduling overlaps. Her alleged "failure" was in not being at a management level of knowledge and skill to grasp the overall priorities, in order to assign properly the various key officials, week-by-week, to the various meeting, conferences, appointments, etc.

Appellant was employed by Appellee for over a decade. Interesting, then, is the fact that there is no evidence in the record of any *independently reviewed and verified* problems with Appellant's performance at RSC (particularly before Deputy Director Pugh assuming her top management position) to merit escalating Appellant's discipline to the level of a removal.

Certainly, Appellee has a legitimate interest in wanting operations performed in an efficient and effective manner. It is also true that Appellee has recently faced significant downsizing and operations relocations. Yet, managers in high-ranking positions have a responsibility to clearly communicate operational needs and goals to subordinates and to establish a fair and honest system that is practical and reasonable for those at lower operational levels to follow and in which to perform to the best of their abilities.

The Board notes that, in its March 29, 2012 issued initial Opinion and Stay Order, the Board asked RSC to supply a follow-up mutually-agreed-to plan and report (and optional supplemental narrative). The plan and report were to have addressed where within RSC Appellee might reinstate Appellant and also were to have addressed what RSC might do to alleviate the possibility that Appellant might face an adverse consequence for exercising her right to appeal her removal to this Board. RSC chose not to submit such a mutually-agreed-to plan and narrative. Conversely, RSC filed an appeal off of this Board's Stay Order with the Court of Common Pleas of Franklin County.

We further note that, following the Honorable Judge Michael Holbrook's issuance of a

Decision and Entry in that appeal, this Board conducted a follow-up Status Conference on May 13, 2013. On May 31, 2013, counsel for Appellant filed a follow-up letter with this Board and on June 5, 2013, counsel for Appellee filed a follow-up letter with this Board. In its letter, RSC indicated that it has **once again chosen not to submit a mutually-agreed-to plan**. RSC has, instead, requested that this Board simply issue its final Order and Opinion in this matter.

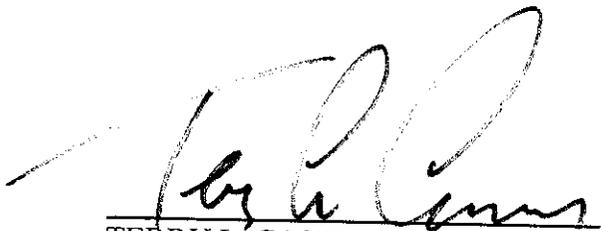
The Board is fully cognizant and appreciative of the rights of parties appearing before SPBR to seek further review of SPBR's final Orders pursuant to R.C. Ch. 119. Yet, we still believe it would have been a useful exercise **for the parties to have attempted to resolve this matter in an amicable and expeditious manner**. This would have avoided further exacerbating the one-year delay caused by RSC's premature appeal of this Board's Stay Order.

While we do not wish to appear presumptuous, should RSC again appeal, the possibility at least exists that RSC may, once again, fail to prevail in that endeavor. Should that occur, RSC would be required by law to reinstate Appellant and the amount of back pay resulting from that possible outcome would be quite substantial.

Thus, the Board merely asks respective counsel if they could, at this juncture, discuss an amicable resolution of this matter one final time. However, given the potential back pay that has, by this point, accumulated, this Board will do absolutely nothing to hinder the issuance of a final appealable Order in this case.

DISPOSITION

A review of all of the testimony presented and evidence admitted reveals that Appellee has failed to demonstrate by a preponderance of the evidence that just cause existed for Appellant's removal, in conformance with the requirements set forth in R.C. 124.34. Therefore, the State Personnel Board of Review hereby **MODIFIES** the removal of Appellant and orders her reinstatement to a position at RSC with a Classification in the State of Ohio's Class Plan most similar to the Classification of Administrative Assistant 3, effective one calendar week following the effective date of her removal listed in the instant June 30, 2011 R.C. Order of Removal. Because Appellant failed to be more aggressive in detailing and outlining problems to her superiors regarding management's scheduling system, Appellant should be **SUSPENDED FOR ONE WORK WEEK WITHOUT PAY**, as reflected, above, and as reflected in the final Order accompanying this Opinion.



TERRY L. CASEY, *Chairman*