

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

Tim Mahaffey,

Appellant,

v.

Case No. 2012-REM-05-0088

Circleville Juvenile Correctional Facility, Department of Youth Services and
Central Office, Department of Youth Services,

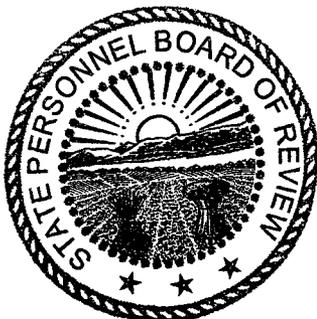
Appellee.

CORRECTED LIFTING OF STAY AND ISSUANCE OF FINAL ORDER

This matter came on for consideration upon the issuance of a Report and Recommendation of the Administrative Law Judge in the above-captioned appeal, upon this Board's issuance of a final Order in this matter, upon this Board's issuance of a Stay Order in this matter pursuant to a timely filed request for reconsideration, and upon this Board's issuance, thereafter, of Lifting of Stay and Issuance of Final Order in this matter.

In the Board's final Order, the Board modified Appellant's removal to a 30-day suspension and ordered Appellant reinstated to his position. However, the Board's more recent issuance of its Lifting of Stay and Issuance of Final Order inadvertently contained a modification of removal to a 60-day suspension, *et cetera*. That language should have essentially tracked the language the Board employed in its final Order and should have, instead, referenced the 30-day suspension as stated in the Board's final Order in this matter. Accordingly, the Board hereby **CORRECTS** its Lifting of Stay and Issuance of final Order on this item and **CLARIFIES** that Appellant's removal is to be modified to a 30-day suspension and that Appellant is to be reinstated to an Operations Administrator position, consistent with the language contained within this Board's requisite final Order issued in this matter.

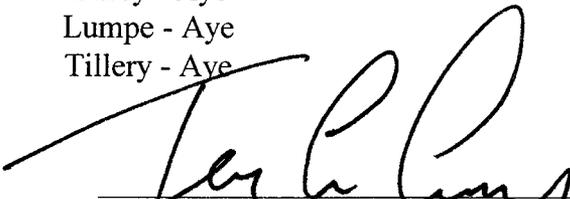
Wherefore, it is hereby **ORDERED** that Appellant's **REMOVAL** be **MODIFIED** to a **30-DAY SUSPENSION** and that Appellant be **REINSTATED** to an Operations Administrator position effective 30 days after the effective date of Appellant's removal, pursuant to R.C. 124.03 and R.C. 124.34.



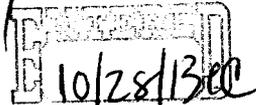
Casey - Aye

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 this document and any attachment thereto constitutes ~~(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, October 28, 2013.

Elin E. Conn
Clerk

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

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

Tim Mahaffey,

Appellant,

v.

Case No. 2012-REM-05-0088

Department of Youth Services Circleville Juvenile Correctional Facility
Department of Youth Services Central Office,

Appellee.

LIFTING OF STAY AND ISSUANCE OF FINAL ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal. Following the filing of objections and responses thereto, the Board issued a Procedural Order for the parties to supplement the record and setting the instant matter for Oral Argument before the Board. Once the parties timely filed their respective supplementations, the Board heard oral argument from the parties on various issues, including on the issue of Appellee's alleged disparate treatment of Appellant *vis a vis* similarly situated employees.

Thereafter, this Board issued a final Order that modified the Recommendation of the assigned Administrative Law Judge and, instead, reinstated Appellant to his Operations Administrator (OA) position following a 60-day suspension. Following the issuance of that final Order, Appellee timely moved for the Board to reconsider its final Order and asked the Board to consider, or further consider, whether Appellant's position fell within the unclassified service pursuant to R.C. 124.11 (A) (9).

The Board then issued a Stay and also issued a Procedural Order for the parties to, again, supplement the record. This supplementation focused on the specific four-week time frame prior to Appellant's removal. Information sought included the status of all of Appellee's OAs during this time period as well as the status of all of Appellee's employees in Pay Range 13 (Appellant's Pay Range at the time of his removal). Further, the parties were provided with, and utilized, an additional opportunity to provide this Board with each party's respective narrative interpreting and commenting on Appellee's submission.

Appellee's data indicate that, during the four-week period immediately prior to Appellant's removal, Appellee carried four OAs on its payroll. Of those four, three were carried in the classified service and one was carried in the unclassified service. Appellant was one of the three OAs carried in the classified service.

Appellee's data also indicate that, during that same four-week period, Appellee carried 33 employees in Pay Range 13. Of those employees, 30 employees (including Appellant) were carried in the classified service and three were carried in the unclassified service.

10/17/3ec

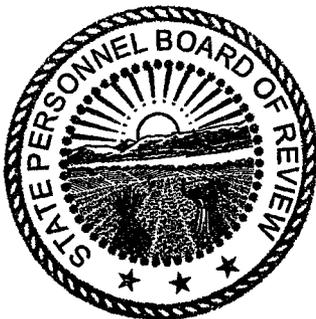
In their respective narratives, the parties also engaged in some analysis of the actual duties that Appellant performed as an OA.

After thoroughly reviewing the entirety of the extant record, including Appellee's motion for reconsideration, and the supplementation and narratives filed in response thereto, the Board cannot find that Appellant's position fell within the unclassified service at the time of his removal. The record does not support a contention that Appellant's position and the demands of same were so categorically different from any of the other of Appellee's OAs that Appellant's position should be exempted from the classified service. Further, there is at least some evidence in the record that Appellant's duties were actually *more* restricted than were those of other OAs. As well, there may have been some standard OA duties that Appellant previously performed. At or about the time of his removal, Appellant was actually prohibited from performing those same standard OA duties.

Moreover, Appellee's own records show that most of Appellee's OAs and nearly all of its Pay Range 13 employees were carried as classified at and near the time of Appellant's removal. Indeed, only 25 percent of Appellee's OAs were considered to be unclassified and fewer than 10 percent of all of its Pay Range 13 employees were considered to be unclassified at that time. Additionally, there is nothing in the record to indicate that Appellee ever carried Appellant as unclassified during any portion of his long tenure with Appellee and nothing in the record to indicate that Appellant ever agreed to serve in the unclassified service.

As well, while this Board's consideration of Appellant's duties focused more on the performance of those duties *vis a vis* the allegations that Appellee lodged against Appellant, that review does not suggest that Appellant performed duties at a categorically higher level of trust, fidelity, and responsibility than any of the other three OAs carried on the payroll at the time of Appellant's removal, with three out of four of those OAs being carried in the classified service. Finally, the un rebutted suggestion in the testimony presented at hearing that Appellant's duties were actually more restricted than all the other OAs further militates against Appellee's assertion that Appellant served as a fiduciary to the agency pursuant to R.C. 124.11 (A) (9), and was imbued with a special trust and confidence far above the average OA at the Department of Youth Services.

Wherefore, it is, again, **ORDERED** that that Appellee's **REMOVAL** of Appellant from his position of Operations Administrator is hereby **MODIFIED TO A 60-DAY SUSPENSION** and that Appellant be **REINSTATED** accordingly 60 days following the effective date of Appellant's removal, pursuant to R.C. Chapter 124.



Casey - Aye
Lumpe - Aye
Tillery - Aye

A handwritten signature in black ink, appearing to read "Terry L. Casey", is written over a horizontal line. Below the line, the name "Terry L. Casey, Chairman" is printed in a serif font.

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 this document and any attachment thereto constitutes (~~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, October 17, 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.

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

TIM MAHAFFEY,

Case No. 12-REM-05-0088

Appellant

v.

March 4, 2013

DEPARTMENT OF YOUTH SERVICES,
CIRCLEVILLE JUVENILE CORRECTIONAL FACILITY and
DEPARTMENT OF YOUTH SERVICES, CENTRAL OFFICE,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This instant case came on for a status conference on June 11, 2012 and for a mediation conference on November 13, 2012. This case came to be heard at record hearing on November 13, 2012 and December 14, 2012. Present at the hearing was Appellant, who was represented by C. Raphael Davis-Williams, Attorney at Law. Appellee, Department of Youth Services (DYS), Circleville Juvenile Correctional Facility (CJCF), was present through its designee, Amy Ast, DYS Bureau Chief of Operations, and was represented by Linda Ubokudom and Robert E. Fekete, Assistant Attorneys General. By agreement of the parties, post hearing briefs were timely filed on or before February 22, 2013 and the record was thereafter closed concerning a determination regarding the merits of Appellant's instant removal.

This cause comes on due to Appellant's May 8, 2012 timely filing of an appeal from his removal from the position of Operations Administrator (OA) at CJCF. The pertinent R.C. 124.34 Order of Removal was signed, hand delivered to Appellant, and effective on May 1, 2012. Appellee also offered Appellant a Last Chance Agreement but Appellant chose not to accept same and Appellee then effectuated the instant removal.

Appellant has stipulated that Appellee has complied with the requisite constitutional and statutory due process procedural prerequisites in this matter.

During an October 2, 2012 mediation conference in this matter held before this Board's then-Senior Administrative Law Judge, Marcie M. Scholl, Appellee apparently first raised the issue of whether Appellant's position may have fallen within the unclassified service pursuant to R.C. 124.11 (A) (9).

Subsequently, in its post hearing brief, at p. 1, Appellee petitions this Board for the following determination:

In light of the gravity of his actions and his prior discipline, Mahaffey's removal was warranted and justified. As such, this Board should deny Mahaffey's appeal and affirm his removal.

Further, in its post hearing brief, at p. 14, Appellee requests:

For the foregoing reasons, Appellee Department of Youth Services respectfully requests that this Board affirm Appellant's removal for his involvement and authorization of the improper release of a Youth from DYS custody.

Based on the entirety of the extant admitted record in this matter, the undersigned has determined that this Board has subject matter jurisdiction over this matter, pursuant to R.C. 124.03 and R.C. 124.34; to the extent that a determination can be made regarding the merits of Appellant's removal, as reflected in the pertinent R.C. 124.34 Order of Removal that Appellee served on Appellant on May 1, 2012. Appellee's assertion, that Appellant's position may have fallen within the unclassified service, will be further addressed as an Alternative or Further Recommendation in the final section of this Report and Recommendation.

Counsel are also to be commended for their respective presentations and briefing on a case that involves numerous, complex, interrelated facts and for their application of same to the pertinent legal provisions in this matter.

Finally, it is noted that considerable time was spent in this matter ensuring compliance with the confidentiality-of-youth provisions that are applicable to the youths under the custody and control of DYS. Respective counsel are to be commended for their diligence in ensuring that the name of the pertinent youth in this matter has not appeared in the instant record.

Accordingly, by agreement of the parties and the undersigned, **certain portions of the record in this matter are under seal.**

Further, the name of the pertinent youth involved in the underlying facts of this case is not to appear in any SPBR document pertaining to this matter or in any transcript of this matter produced by or at the behest of SPBR, unless otherwise ordered by a Court of competent jurisdiction.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

The R.C. 124.34 Order in this matter removing Appellant from his position of Operations Administrator at CJCF **reads, in pertinent part:**

Specifically: Including, but not limited to such offenses as incompetence, inefficiency, neglect of duty, and violation of any policy or work rule of the officer's or employee's appointing authority.

On February 24, 2012 you gave authorization to release youth [name redacted] from court without receiving proper authorization (Invest. # 1001120022) (Continue on Page 2)

Your actions are in violation of the following Policy 103.17 Rule(s) effective July 8, 2009, specifically:

Rule 5.01P Failure to follow policies and procedures
(Specifically: ODYS Standard Operating Procedure 301.07.03 – Youth Transportation to Court Hearings and 701.01 Release Authority)

Rule 5.09P Violation of Ohio Revised Code 124.34 – performance related
Including, but not limited to such offenses as incompetence, 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 the rules of the

Director of Administrative Services, any other failure of good behavior, any other acts of misfeasance, malfeasance or nonfeasance in office or conviction of a felony.

Rule 5.28P Failure to follow work assignment or the exercise of poor judgment in carrying out an assignment

Failure to perform assigned duties in a specified amount of time or failure to adequately perform the duties of the position or the exercise in poor judgment in carrying out an assignment.
(emphasis in original)

Witnesses testifying at hearing

At hearing, seven witnesses testified, with Appellant testifying separately regarding as if on cross examination and regarding direct and re-direct.

First to testify was **Timothy Mahaffey, Appellant**, testifying on as if on cross.

Next to testify was **David Haynes**, DYS Senior Investigator.

Next to testify was **Dwayne Costa**, a Youth Specialist (YS) at CJCF.

Next to testify was **Elizabeth Zinn-Watson**, an Operations Manager (OM) at CJCF and one of Appellant's immediate subordinates.

Next to testify was **Tom Sanders**, another OM at CJCF and another of Appellant's subordinates.

Next to testify was **Amy Ast**, DYS Bureau Chief of Operations, who also served as Appellee's designee at hearing.

Next to testify was **Damita Peery**, DYS Assistant Director.

Last to testify was **Timothy Mahaffey, Appellant**, testifying on direct and re-direct.

Appellee's general allegations

Appellee's allegations regarding the offenses Appellant is alleged to have committed and the resultant alleged harm caused by those alleged offenses are fairly simple to summarize. Appellee has alleged that Appellant, while acting in his capacity as the Operations Administrator at CJCF, authorized the release of a youth assigned to CJCF. Specifically, it is alleged that, when OM Zinn-Watson asked Appellant if there was any reason to hold the youth, Appellant is alleged to have said there is no reason to hold the youth. Appellant is also is alleged to have responded affirmatively when OM Zinn-Watson repeated Appellant's response and asked if it was correct that CJCF was not holding the youth for any reason and to release him.

The youth was at that time appearing before Municipal Court Judge [Nanette D.] VonAllman in the New Philadelphia Municipal Court on a fifth degree felony charge of Harassment with Bodily Fluids (*i.e.* spitting on an officer), which charge Judge VonAllman apparently withdrew. It is undisputed that Appellant lacked authorization to release any youth from the custody of DYS.

Further, Appellee alleges, the released youth in question posed a potential risk to himself and the community by being released without placement or the proper controls being in place. Additionally, Appellee alleges that considerable time and effort went into re-apprehending the youth. Finally, Appellee alleges that the youth's improper release and DYS' subsequent remediation efforts caused considerable embarrassment to DYS *vis a vis* its relationship with state and local law enforcement and, perhaps even more importantly, with the Juvenile Judge of the Tuscarawas County Juvenile Court, who had statutory control over the youth in question.

Appellant's general allegations

Understandably, Appellant sees things differently. Appellant asserts that Appellant answered a telephone in the CJCF library after the phone rang numerous times during a department heads' meeting and spoke on the phone with his subordinate, OM Elizabeth Zinn-Watson, for 22 seconds. Appellant additionally alleges that Appellant was asked about the youth's behavior, namely was the youth causing any problems. Appellant states that he indicated to OM Zinn-Watson that there was no reason that he knew of to hold the youth, because of the lack of any

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YS Costa makes two unsuccessful attempts to contact Superintendent Edwards through Mr. Edwards' Administrative Assistant (now Administrative Professional), Charlotte Matthews.

YS Costa then calls the CJCF Control Center, speaks with YS Daryl Hardy, and asks to be connected to someone in Operations.

YS Hardy puts YS Costa on hold and calls the Operations Center and OM Elizabeth Zinn-Watson answers the phone. However, YS Costa's call has been dropped.

OM Tom Sanders, a 30-year DYS veteran, was in the Operations Center with Ms. Zinn-Watson, sitting perhaps five feet away from her during this course of events.

At about this same time, YS Hardy contacts OM Brian Mays and apprises Mr. Mays that YS Costa is trying to reach Superintendent Edwards. OM Mays then tells YS Hardy that the Superintendent is in a meeting and asks YS Hardy what YS Costa wants. YS Hardy responds that he does not know what Mr. Costa wants and Mr. Costa did not say.

OM Mays then goes to the library to seek out Superintendent Edwards, who is attending a department heads' meeting. OM Mays gets Appellant out of the meeting and tells Appellant that YS Costa is on the line and Appellant tries to speak to Mr. Costa. Yet, by this time, YS Hardy has already transferred the call to Operations, and the call has been dropped. Thus, Appellant tells OM Mays to contact YS Costa, give him Appellant's cell phone number, and have YS Costa call Appellant back on Appellant's cell phone.

YS Costa calls back to the Operations Center on a direct line and speaks with OM Zinn-Watson, who determines the purpose of Mr. Costa's call and indicates to Mr. Costa that Ms. Zinn-Watson does not know the answer to his question (namely whether there was any reason CJCF was keeping the youth, because the Judge is dropping the charge and is going to release the youth). Ms. Zinn-Watson further tells Mr. Costa that she will find out the answer and call him back and she takes Mr. Costa's phone number.

While he is waiting for OM Zinn-Watson's return call, YS Costa goes down to the Court's Parole office with YS Person and the youth.

Further, at this time, while a Parole Officer is completing her paperwork for the youth, YS Costa asks if Costa he can have a copy of the Journal Entry Notes that place the youth on probation. The Parole Officer informs Mr. Costa that the Judge will not be signing the Journal Entry until the next day.

YS Costa then asks the Parole Officer if she could sign the detainer for Mr. Costa showing that she is the youth's Parole Officer and the Parole Officer declines to do so. YS Costa is cognizant that he always gets a Journal Entry, except here, and he is perplexed by this course of events.

OM Zinn-Watson (who was permanently appointed as an OM the previous month and who served as an OM in a Temporary Working Level since August 2011) hangs up her phone and repeats to veteran OM Tom Sanders what YS Costa wants, in case Mr. Sanders knows something about these types of situations that OM Zinn-Watson does not.

Next, OM Zinn-Watson tries unsuccessfully to reach Superintendent Edwards by radio and then tries unsuccessfully to reach Appellant by radio.

OM Zinn-Watson then calls the library extension several times. On either OM Zinn-Watson's second or third attempt, Appellant picks up the phone and the aforementioned 22 second conversation ensues.

There is a dispute about what Appellant and Ms. Zinn-Watson respectively said during the conversation.

Appellant recalls that, after a greeting, Ms. Zinn-Watson indicates to Appellant that she has YS Costa on the phone and that the Judge wants to know if the youth has been causing any problems during his stay at CJCF, with Appellant responding not that I know of, which basically completes the conversation. Appellant recalls OM Zinn-Watson specifically mentioning the youth's behavior.

OM Zinn-Watson recalls that she told Appellant that YS Costa just called from New Philadelphia where DYS has the youth at Court, stating that the Judge is dropping the charge and is going to release the youth, and if there is any reason DYS is holding him at CJCF. Ms. Zinn-Watson further recalls that Appellant then states no, that we are not holding here for any reason. She then recalls that she indicated, and Appellant responded in the affirmative, that she would thus be telling YS Costa

that we are not holding the youth for any reason and to release him. OM Zinn-Watson indicates that YS Costa did not ask her about the youth's behavior and she would have had no reason to ask anyone else about the youth's behavior, because she, herself, has daily contact with these youths.

OM Zinn-Watson then calls YS Costa back and, in the presence of OM Sanders, tells YS Costa that there is no reason to hold the youth and to release him.

[YS Costa believes and hopes that Superintendent Edwards has been consulted. He further trusts and follows the direction of his own supervisor, OM Zinn-Watson.]

At about this same time, YS Costa gives the Parole Officer the CJCF fax number so that the probation papers can be sent to the institution; since there is no Journal Entry.

The youth is un-cuffed, signs for himself, and is released to the Parole Officer, essentially on the youth's own recognizance.

YS Costa and YS Person leave the Court and drive back to CJCF.

Either later that morning or the next morning, YS Person calls YS Costa and informs Mr. Costa that "This is not the end of this thing." or words to that effect.

Shortly thereafter (and still on February 24, 2012), Superintendent Edwards is informed that YS Specialists/Transportation Officers Costa and Person returned to CJCF without the requisite paperwork.

[The required paperwork to effectuate a youth's release includes a **Journal Entry** – saying the Court has ordered a pertinent youth to be released -- and a **Change of Custody** form – indicating where a pertinent youth is to be placed.]

At around 1:00 p.m. Superintendent Edwards' Administrative Assistant, Charlotte Matthews, calls OM Zinn-Watson at home and indicates that Ms. Zinn-Watson is to call Superintendent Edwards at work.

OM Zinn-Watson then attempts to call Superintendent Edwards at his office. She also speaks with YS Costa and Appellant soon thereafter, although perhaps after Mr. Edwards called Appellant.

When she does reach Mr. Edwards, he tells Ms. Zinn-Watson that the youth has been released and that the youth was not supposed to be released. Mr. Edwards then takes her cell phone number in case he needs to call her back. Ms. Zinn-Watson has no additional involvement in getting the youth back into custody.

CJCF Operations is also told that, for the next few days, Superintendent Edwards is to be informed immediately regarding a youth's return to CJCF.

At around 2:20 p.m. to 2:30 p.m., Superintendent Edwards calls Appellant and tells Appellant that the youth has been released without the proper paperwork.

Appellant and Mr. Edwards have from four to six conversations and Appellant is instructed to find out what is going on.

At about this same time, Appellant gets further background information regarding the events in question. This includes contacting the New Philadelphia Municipal Court Bailiff.

Superintendent Edwards' next step is to inform DYS Bureau Chief of Operations Amy Ast that the youth was released without authorization and that he is unsure of the youth's location. Superintendent Edwards also informs Bureau Chief Ast that the youth was transported to adult Court (*i.e.* the New Philadelphia Municipal Court) and that the Judge in that Court dropped the charge pending against the youth. Mr. Edwards further informs Ms. Ast that (in Mr. Edwards' opinion) Appellant authorized the release of the youth at the facility level.

[Testimony generally reflects that a **Juvenile Court Judge** may release a youth up to the minimum sentence release date and that, thereafter, the release must be effectuated through the prior approval of the release by DYS' **Release Authority**. In this particular case, the youth was in adult Court (here, Municipal Court) for a criminal charge that the youth incurred while out on parole. Thus, the youth was not before the Juvenile Court Judge who ordered the youth into the custody and control of DYS.]

Bureau Chief Ast then contacts DYS Legal Counsel and also the Bureau Chief of Parole, who then contacts DYS Assistant Director Damita Peery.

The Ohio State Highway Patrol (OSHP) Trooper who was assigned to CJCF is then contacted; however the Trooper refuses to initiate efforts to find and detain the youth; since it was DYS that had essentially released the youth.

DYS then attempts unsuccessfully to contact the Court.

Still on Friday, February 24, 2012, the Sheriff is contacted but refuses to begin the process to obtain a warrant to apprehend the youth; basically for the same reason that the OSHP Trooper refused to seek apprehension of the youth.

Someone at Court is finally reached and contact is made at home with the Juvenile Court Judge who has authority over the youth.

The Judge is characterized as very upset that the youth had been released without a proper pre-approved plan in place, especially since the youth's parole has already been revoked. The Judge then issues the warrant for the youth and apprises DYS that, once custody of the youth is regained, then DYS will have to make an accounting to the Judge.

The youth is then apprehended while walking on the street and is held until Monday, when CJCF can retrieve him.

On Saturday, February 25, 2012, YS Costa is informed that the youth was not supposed to be released. [Mr. Costa could not recall, at hearing, why this was the case.]

On Monday, February 27, 2012, YS Costa and YS Anthony Bridges go to Court in New Philadelphia to pick up the youth. Superintendent Edwards follows YS Costa and YS Bridges on this trip in a separate vehicle.

During the Court proceeding regarding DYS' re-obtaining the youth from the Court, the Magistrate Judge or Juvenile Judge who presides at that proceeding is characterized as yelling at YS Costa regarding who gave permission to release the youth.

YS Costa and YS Bridges then re-obtain custody of the youth, place him in cuffs, and take him back to CJCF.

The Office of DYS Chief Inspector Jennifer Fears then initially screens the matter. Thereafter, Ms. Fears assigns the matter to DYS Senior Investigator David Haynes, who initiates an investigation on February 28, 2012. (Please see Appellee's Exhibit 16.)

On March 15, 2012, Senior Investigator Haynes concludes (as summarized in his testimony) that the youth was released without the proper authorization and that it was Appellant who gave the authorization to release the youth. (Please see Appellee's Exhibit 16. at p. 12)

Appellant's matter is scheduled for a pre-disciplinary conference and the DYS Hearing Officer concludes there is "just cause" for discipline.

Following a series of meetings held among Operations Bureau Chief Ast, the DYS Human Resources Bureau Chief, Assistant Director Peery, and Director Harvey J. Reed, the Director determines that Appellant is to be removed, but is also to be offered a Last Chance Agreement, in lieu of removal.

Appellant refuses to accept the Last Chance Agreement, because he feels it is too severe, would force him to withdraw a current grievance he has already filed against his supervisor, Donovan Workman, and would prevent him from filing any additional grievance for two years.

Appellant is removed effective May 1, 2012 *via* a properly executed and properly served R.C. 124.34 Order of Removal.

Additional pertinent policies and procedures

In the pertinent R.C. 124.34 Order of Removal in this case, Appellant is alleged to have violated four Rules and one Standard Operating Procedure (SOP).

Appellant is alleged to have violated **SOP 301.07.03 ("Youth Transportation to Court")**. According to the testimony of Operations Bureau Chief Amy Ast, Appellant is alleged to have failed to determine: where the youth was taken; to which court the youth was taken; and why the youth was taken to that particular court. For example, according to Ms. Ast, Appellant could have attempted to determine if the youth was going for a judicial release point before a Juvenile Judge.

Here, Ms. Ast pointed out, the youth was to appear for a trial or a pre-trial at Municipal Court, where the Judge had no authority to release the youth. Ms. Ast indicated that Appellant could have at least cursorily reviewed the paperwork for this youth's transportation or at least contacted the Transportation Officers or others with knowledge to see what the transportation paperwork packet said.

Appellant is also alleged to have violated **Policy 701.01 ("Release Authority")**. According to Bureau Chief Ast, the DYS Release Authority is to approve of all releases of all youths in the custody and control of DYS who have reached a certain point in their respective commitments to DYS' custody and control.

Paragraphs 1. and 2. of Policy 701.01 read:

It is the policy of the Ohio Department of Youth Services to provide a standard release and discharge decision making process that focuses on the best interest of the youth and considers public safety and the rights of crime victims. The process shall use accurate and current information about a youth's risk and needs, include due process, provide ongoing communication to the youth, his/her family, the court, and staff working with the youth to ensure that the decisions rendered are fair and consistent and that the youth are reviewed for release when they are first legally eligible for release consideration or on completion of required programming.

The Ohio Department of Youth Services shall maintain a 5 member Release Authority appointed by the Director with qualifications and terms as specified in Ohio Revised Code 5139.50. **The Release Authority Board shall serve as the final and sole authority for making release and discharge decisions for youth committed to the legal custody of the Department of Youth Services and who have completed the prescribed minimum sentence.** (emphasis added)

Policy Number 103.17 sets forth the General Work Rules for DYS. Appellant is alleged to have violated General Work Rules 5.01P, 5.09P, and 5.28P. Those Work Rules are entitled, respectively:

“Failure to follow policies and procedures”;

”Violation of Ohio Revised Code 124.34 – performance related”; and

“Failure to follow work assignment or the exercise of poor judgment in carrying out an assignment”).

The record reflects that Appellant has received the requisite training on SOP 301.07.03, Policy 701.01, and General Work Rules 5.01P, 5.09P, and 5.28P.

The pertinent DYS disciplinary grid applicable to Appellant’s position indicates that all of Appellant’s alleged offenses are considered Level 5 offenses. All Level 5 offenses (for employees with prior disciplines of either two or three days) carry a penalty of either a five-day suspension or removal, at the Director’s discretion. Here, as noted above, the Director chose removal, after Appellant rejected DYS’ offer of a Last Chance Agreement.

Based upon the account of OM Zinn-Watson of her conversation with Appellant regarding the potential/pending release of the youth in question, upon the substantiating testimony and account of OM Tom Sanders (who heard all of Ms. Zinn-Watson’s component of this conversation and also her component of her conversations with YS Costa), and upon the testimony and accounts of YS Costa, it appears more probable than not that Ms. Zinn-Watson’s recall and account of this conversation is accurate, and I so find.

Further, I find that Appellant had many years of experience as an OA and had extensive training regarding the security, transportation, and release of youth under the custody and control of DYS. Thus, Appellant knew or should have known either to check or to ensure that others checked to see if the youth in question could properly be released; before giving OM Zinn-Watson permission to communicate to YS Costa that the youth could be released.

By failing in this duty, Appellant violated Policy 701.01 and SOP 3.01.07. By doing so, he also violated General Work Rules 5.01P, 5.09P, and 5.28P, in exercising poor judgment in carrying out a work assignment and in failing to follow policies and procedures, thus also violating R.C. 124.34.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether Appellant's removal from his Operations Administrator position with DYS is appropriate given the offenses that Appellant has been found to have committed? Based on the findings set forth, above, and for the reasons set forth, below, this Board should answer this question in the affirmative and, so, should grant Appellee's petition and affirm Appellant's instant removal.

I have found, above, that Appellant violated Policy 701.01, SOP 3.01.07, and the series of General Work Rules alleged in the instant R.C. 124.34 Order of Removal.

These include "neglect of duty", which is a disciplinable offense specifically listed in R.C. 124.34.

Black's Law Dictionary defines "neglect" to mean:

... to omit, fail, or forebear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in the doing or omission of a given act. And it may mean a designed refusal, indifference, or unwillingness to perform one's duty. (further citations omitted) (Black's Law Dictionary, Deluxe 6th. p. 1032)

In Appellant's case, Appellee has demonstrated, by a preponderance of the evidence, that Appellant failed to do an act that should have been performed and was essentially required to be performed. Specifically, Appellant failed to personally check, or to instruct others to check, in an expeditious manner whether all necessary steps had been taken or secured on the part of DYS to qualify this youth for release.

Further, Appellant failed to act to ensure that the authority which wished to effectuate the release (here the New Philadelphia Municipal Court) was properly authorized under the pertinent statutes and administrative provisions to so effectuate that release.

Accordingly, Appellant committed a neglect of duty, an R.C. 124.34 disciplinable offense covered in DYS Work Rule 5.09P.

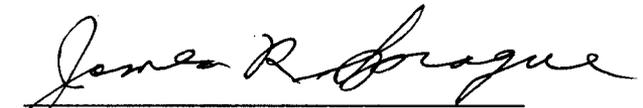
By Appellant's violating the above DYS Policy, SOP, and General Work Rules, Appellant has also been neglectful in his work performance. His neglect caused disruption and wasted staff time for DYS and caused DYS to be held in a poor light, not only by pertinent law enforcement personnel, but also by the Juvenile Court of Tuscarawas County, with whom DYS must interact on a regular basis.

In this case, DYS has justified the disciplinary action that it took in response to the events in question. Although removal is a harsh penalty, it seems appropriate; given the concomitant disruption, waste of staff time, embarrassment, and loss of good will that DYS incurred as a result of Appellant's neglect of duty. Further, we must keep in mind that DYS Director Reed did extend Appellant the opportunity to sign a Last Chance Agreement, which offer Appellant declined as was his right.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's petition and **AFFIRM** Appellant's removal from the position of Operations Administrator with the Circleville Juvenile Correctional Facility, pursuant to R.C. 124.03 and R.C. 124.34.

I **ALTERNATIVELY OR FURTHER RECOMMEND** that, should the State Personnel Board of Review find it appropriate, this Board **REMAND** this matter to the undersigned or to another of this Board's Administrative Law Judges for a determination of whether Appellant's Operations Administrator position fell within the unclassified service, pursuant to R.C. 124.11 (A) (9).



JAMES R. SPRAGUE
Administrative Law Judge

JRS: