

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

Chris R. Graham,

*Appellant,*

v.

Case No. 05-SUS-01-0020

Department of Rehabilitation and Correction,  
Pickaway Correctional Institution,

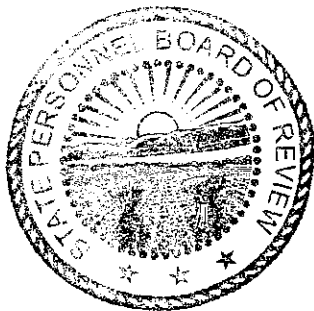
*Appellee.*

**ORDER**

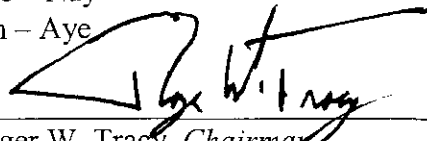
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant's five-day working suspension be **MODIFIED** to a written reprimand, pursuant to R.C. 124.34.



Tracy – Aye  
Lumpe – Nay  
Booth – Aye

  
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Roger W. Tracy, *Chairman*

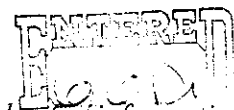
**CERTIFICATION**

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 6, 2006.

  
\_\_\_\_\_  
Clerk

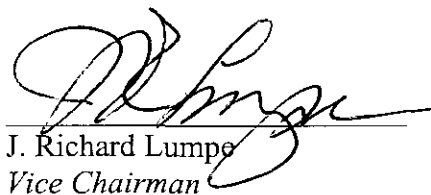
**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.



DISSENTING OPINION

I must respectfully dissent from the decision of the majority of the Board to modify Appellant's five-day working suspension to a written reprimand. The record supports a finding that Appellant exercised inadequate supervision regarding the events occurring on or around September 4, 2004. The record also supports a finding that Appellant was on notice regarding the need to exercise adequate supervision and, in fact, had already been suspended for a similar violation.

Therefore, for the reasons stated above and based on the principle of progressive discipline, I would affirm Appellant's five-day working suspension.

  
J. Richard Lumpe  
*Vice Chairman*

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

Chris R. Graham,

Case No. 05-SUS-01-0020

*Appellant*

v.

March 14, 2006

Department of Rehabilitation & Correction,  
Pickaway Correctional Institution,

*Appellee*

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on to be heard due to Appellant's timely appeal of a five-day working suspension he received in January 2005. A record hearing was held on September 15, 2005. Appellant was present at record hearing and was represented by Thomas M. Tyack, Attorney at Law. Appellee was present at record hearing through its designee Kathleen Butler, Deputy Warden of Administration, and was represented by Assistant Attorney Generals J. Quinn Dorgan and Joseph N. Rosenthal.

The R.C. 124.34 Order of Suspension issued to Appellant stated as grounds for his suspension:

(Rule 49) Any violation of ORC 124.34 - ... and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the Director of Administrative Services or th ecommission, or any failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office (Rule 27) Failure of a supervisor to properly supervise or enforce work rules (Rule 8) Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment.

You went on vacation knowing there was no milk truck driver for September 4, 2004. You have the proper licensure and have driven the truck in the past. The milk was picked up from Lebanon

Correctional Institution on Thursday and not again until Monday;  
which caused Lebanon to dump milk.

Appellee noted that a corrected Order of Suspension was provided to Appellant, which properly identified the Institution that dumped milk as Ross Correctional Institution, rather than Lebanon Correctional Institution.

The parties stipulated to the jurisdiction of the Board to hear the case, pursuant to R.C. 124.03(A) and 124.34.

### **STATEMENT OF THE CASE**

Appellant testified that he was employed by Appellee at the Pickaway Correctional Institution (PCI) as a Penal Industries Manager 1 at the time of his five-day suspension. He indicated that he reported directly to PCI's Deputy Warden of Administration and was responsible for overseeing the operations of the Ohio Penal Industries' Beverage Processing Center (BPC) located at PCI, training and scheduling employees, and making sure the plant ran in an efficient manner. Appellant noted that although the Deputy Warden of Administration was his immediate supervisor, PCI has very little impact on the operations of the BPC, which is an Ohio Penal Industries (OPI) operation. He explained that OPI managers assist with institutional duties as requested by the Deputy Warden, but that when dealing with a milk issue, he would have gone to OPI personnel.

Appellant confirmed that the BPC operated dairy tanker trucks to pick up milk from dairies at outlying institutions but observed that there were not sufficient employees to operate both of the tanker trucks at the same time. He stated that drivers are required to possess a Class A commercial drivers license (CDL) with a tanker attachment in order to operate the dairy trucks, as well as a license from the Department of Agriculture. Appellant stated that he was aware of five employees, including himself, who were licensed to drive the trucks and confirmed that three of those individuals were under his supervision in September 2004. He observed that he has personally driven the pickup routes in the past, but has not done so since he was placed in the Penal Industry Manager position because it is not one of the duties included in his job description.

Appellant explained that the tanker truck alternates milk pick-up days between a northern route and a southern route; he indicated that Ross Correctional Institution (RCI) and Lebanon Correctional Institution (LeCI) are on the southern route. He recalled that because they ran the southern route on Thursday, September 2, 2004, the next scheduled pick-up would have been Saturday, September 4, 2004, which fell during the Labor Day weekend.

Appellant indicated that Bryan Hoffman was originally scheduled to make the milk pick-up on Saturday, September 4, 2004. He explained that after the schedule had been made out and other employees had requested vacation time for that weekend, Mr. Hoffman changed jobs and went to work at the OPI warehouse. Appellant testified that because none of the other employees were available, due to previously approved vacations, he asked Lori Roberts-Wallace at the OPI warehouse if Mr. Hoffman could still do the milk run and she told him it was okay for Mr. Hoffman to do so. Appellant stated that he was not aware that he needed another driver until Friday, September 3, 2004, when the head of the OPI warehouse, Vince Branson, called him to tell him that Mr. Hoffman could not drive the following day.

Appellant testified that he made the decision to forego the milk pick-up on the southern route for Saturday, September 4, 2004. He explained that both RCI and LeCI have storage tanks for their milk, but RCI's tank is smaller; Appellant noted that RCI had enough capacity to store milk from their Friday, Saturday and Sunday milkings, but that the Monday morning milking would most likely cause them to exceed their storage capacity. He testified that he specifically instructed Jeff Ehman, the Correction Dairy Plant Operator, to have the Monday morning milk route driver go directly to RCI to pick up their milk before doing anything else, in order to avoid this problem. Appellant confirmed that he spoke directly with Mr. Ehman regarding the situation and Mr. Ehman understood how it was to be handled.

Appellant indicated that he did not make his supervisor, the Deputy Warden of Administration, aware of the situation on Friday because she was not at work that day; he did not recall whether or not he left a message for her or any other administrator. He stated that he believed at the time he had called RCI to let them know that there would be no Saturday pickup, but observed that he has since learned that telephone records do not show a call being made to RCI. Appellant noted that telephone records do show two calls being made to LeCI and speculated

that he and another employee may have called the same institution regarding the Saturday cancellation.

Appellant recalled that he left PCI on Friday, September 3, 2004, to go on a previously scheduled camping trip, returned home the following Monday, September 6, 2004, and returned to work on Wednesday September 8, 2004. He identified Appellee's Exhibit 6 as a copy of his time records. Appellant testified that he received a call on Monday morning from Mr. Ehman, who told him that he had passed Appellant's instructions on to Tam Hollon, the employee who was driving the milk truck that morning, but that Mr. Hollon wanted to go to LeCI first on the milk run. He stated that he instructed Mr. Ehman to put Mr. Hollon on the telephone, but Mr. Hollon had already left the facility and Appellant was unable to speak to him.

Appellant indicated that he first learned that Mr. Hollon had not followed his instructions approximately thirty days later. He confirmed that he forgot to follow up on the situation when he returned to work on Wednesday, September 8, 2004. Appellant testified that if Mr. Hollon had followed his instructions, there would have been no loss of product from RCI, and noted that no product was lost from LeCI. He observed that the loss of the milk that was dumped at RCI did not result in the BPC's failure to meet any production quotas.

Appellant acknowledged that he might have been able to order an employee scheduled to be off on Saturday to come in to drive the milk route, but believed that the procedure he instituted instead was sufficient. He noted that as a Penal Industry Manager 1, he can "freeze" an employee for overtime if they are at work, but cannot order a union employee to come in on his or her day off.

Vicki Cox testified that she is employed by Appellee as the acting Labor Relations Officer at PCI. She indicated that she is responsible for conducting pre-disciplinary hearings and talking with employees about disciplinary issues. The witness confirmed that she conducted a pre-disciplinary hearing with Appellant regarding the matter appealed to this Board. Ms. Cox observed that Appellant had previously been suspended for two days for failure to properly supervise or enforce work rules.

Kathleen Butler testified that she is employed by Appellee as Deputy Warden of Administration at PCI. She indicated that her duties include supervision of the administration area, the farm, the OPI shops located at PCI, and the maintenance,

food service, and laundry areas of PCI. The witness stated that she shares supervision of the OPI shops with the OPI supervisor and explained that she oversees the administration functions of the shops while OPI oversees the operations of the plant, including machinery maintenance, equipment repair and replacement, and billing systems. She acknowledged that she has very little knowledge regarding the actual processing of milk.

Ms. Butler confirmed that she has daily contact with the BPC and would expect to be made aware of anything occurring at the plant that was out of the ordinary. She stated that she reviews incident reports and employee evaluations, and signs leave forms and overtime forms. The witness confirmed that she was Appellant's direct supervisor and was familiar with his job duties. Ms. Butler testified that Appellant was responsible for ensuring that the BPC was operating in a cost effective and efficient manner, and had total authority with regard to plant employees.

The witness stated that she was not at work on Friday, September 3, 2004, and did not return to work until Tuesday, September 7, 2004. She recalled that she received a telephone call from RCI upon her return and was informed that RCI had to dump milk the previous day; the witness identified Appellee's Exhibit 4 as a report regarding the incident. Ms. Butler confirmed that RCI was the facility that had to dump milk, not LeCI, as originally stated in the R.C. 124.34 Order provided to Appellant.

Ms. Butler noted that she did not show a copy of the incident report to Appellant, but recalled that when she questioned Appellant about the incident, he told her that he believed that sending the milk truck driver to RCI on Monday morning was his only option at the time. She stated that Appellant had the authority to require the driver working on Friday to work overtime and make a special run to RCI to pick up milk, or could have driven the truck to RCI himself if no union employee wanted the assignment.

### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

At the time of his five-day suspension, Appellant was employed by Appellee at PCI as a Penal Industries Manager 1, and was responsible for overseeing the operations of Appellee's Beverage Processing Center, which is an OPI operation. Appellant was responsible for training and scheduling employees, as well as making sure the plant ran in an efficient manner.

In order to pick up milk from dairies at outlying institutions, the BPC operates tanker trucks. Drivers are required to hold a Class A CDL with tanker attachment and a Department of Agriculture license in order to drive the trucks; there are not sufficient qualified drivers at PCI to operate more than one truck at a time. Due to this limitation, the tanker truck alternates milk pick-up dates between a northern route and a southern route, which includes RCI and LeCI.

Both RCI and LeCI have storage tanks at their facilities, with RCI's tank being the smaller of the two. On days when a milk pick-up is not scheduled, milk is pumped into the storage tanks to await the next tanker pick-up. Milk was picked up on the southern route on Thursday, September 2, 2004, but was not picked up again until Monday, September 6, 2004. Because of the delay in picking up the milk, RCI's storage tank was filled to capacity and they were forced to dump approximately 165 gallons of milk on Monday morning.

Appellant originally scheduled Bryan Hoffman to drive the tanker truck on Saturday, September 4, 2004, to make the southern route milk pick-up over Labor Day weekend. The other employees who were qualified to drive the tanker truck requested and were approved for vacation time on that date. After the schedule had been set, Mr. Hoffman transferred to another OPI position outside the dairy processing plant. Appellant contacted Mr. Hoffman's new OPI employer to request that Mr. Hoffman be allowed to make the previously scheduled run and received approval for him to do so. On the day before the run, Friday, September 3, 2004, Appellant was notified that Mr. Hoffman was no longer available to drive the route.

Appellant made the decision to forego the Saturday milk pick-up for the southern route, and to have the route driver go immediately to RCI on Monday morning to empty their storage tank so they could accommodate the morning milking. He specifically instructed Jeff Ehman, the Correction Dairy Plant Operator, to have the driver go directly to RCI before doing anything else in order to avoid this problem.

After leaving work on Friday, September 3, 2004, Appellant went on a scheduled vacation and did not return to the facility until Wednesday, September 8, 2004. Appellant did not make his supervisor, the Deputy Warden of Administration, aware of the situation on Friday, September 3, 2004, because she was not at work that day. He did contact LeCI to make them aware of the arrangement, but failed to notify RCI.

Mr. Ehman contacted Appellant on Monday, September 6, 2004, to notify him that the route driver, Mr. Hollon, had argued with his instructions to go to RCI first, but the driver left the facility before Appellant could speak to him. Appellant failed to follow up on the situation upon his return to work on Wednesday and did not learn that Mr. Hollon had failed to follow his instructions until approximately thirty days later.

Deputy Warden of Administration Kathleen Butler was made aware of the situation on or about Tuesday, September 7, 2004, and also received a copy of a written incident report from RCI. Ms. Butler did not make Appellant aware of the incident.

The loss of the milk which was dumped at RCI did not result in the BPC's failure to meet any production quotas.

### **CONCLUSIONS OF LAW**

As in any disciplinary appeal before this Board, Appellee bears the burden of establishing by a preponderance of the evidence, certain facts. Appellee must prove that Appellant's due process rights were observed, that it substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in administering Appellant's discipline, and that Appellant committed one of the enumerated infractions listed in R.C. 124.34 and on the disciplinary order.

With regard to the infractions alleged, Appellee must prove for each infraction that Appellee had an established standard of conduct, that the standard was communicated to Appellant, that Appellant violated that standard of conduct, and that the discipline imposed upon Appellant was an appropriate response. In weighing the appropriateness of the discipline imposed upon Appellant, this Board

will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to be heard prior to the imposition of discipline, coupled with post-disciplinary administrative procedures as provided by R.C. 124.34. *Seltzer v. Cuyahoga County Dept. of Human Services* (1987), 38 Ohio App.3d 121. Information contained in the record indicates that Appellant was notified of and had the opportunity to participate in a pre-disciplinary hearing on November 15, 2004. Appellant had notice of the charges against him and an opportunity to respond to those charges. Accordingly, I find that Appellant's pre-disciplinary due process rights were observed. I further find that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in suspending Appellant for a period of five days.

This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellant's suspension was based upon his alleged violation of Appellee's rules #8, 27 and 49, specifically, that Appellant went on vacation knowing that there was no milk truck driver for September 4, 2004, and that as a result, RCI was forced to dump milk on Monday, September 6, 2004. As noted above, Appellee is responsible for demonstrating that it had an established standard of conduct that was violated by Appellant's behavior, and that the standard was communicated to Appellant. The rule violations cited by Appellee reference failure to properly supervise or enforce work rules (Rule 27), and failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment (Rule 8). Rule 49 recites the standard disciplinary cause language contained in R.C. 124.34, referencing incompetency, inefficiency, ... neglect of duty, ...any failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office.

Appellee produced Appellant's position description, but otherwise cited no specific policies or procedures purported to have been violated by Appellant's actions. The position description offered by Appellee provides that Appellant is responsible for controlling the operations of the Beverage Processing Center,


planning and implementing policies and procedures related to the operations of the Center, training and supervision of subordinate personnel and inmates, and for otherwise ensuring the efficient operation of the BPC. Testimony and evidence admitted at record hearing indicated that Appellant exercises discretion in accomplishing the tasks assigned to his position. Appellant testified, and Appellee produced no evidence to refute his testimony, that the loss of the milk which was dumped at RCI did not result in the BPC's failure to meet any production quotas. Appellant further testified, and again Appellee produced no evidence to refute his testimony, that his plan to send the Monday morning route driver immediately to RCI would have resulted in no loss of milk had it been implemented as instructed. While Appellee asserted that Appellant had other options available to him that would not have resulted in a loss of milk, Appellee failed to produce evidence to demonstrate that such options were either more efficient or more cost-effective than Appellant's plan. Accordingly, I find that Appellee has failed to prove by a preponderance of the evidence that Appellant exercised poor judgment in carrying out an assignment.

Testimony established that Appellant left clear instructions regarding the Monday morning milk route with Jeff Ehman, the individual acting as supervisor on Monday, September 6, 2004. Although Appellant was not at work on Monday, Mr. Ehman contacted him at home to make him aware that Mr. Hollon had disputed Appellant's instructions. Appellant testified that he did not remember to follow up on the matter on Wednesday, when he returned to work. Because Appellant had notice of a potential problem, he was responsible as a supervisor to follow up on the matter, therefore, I find that Appellee has produced sufficient evidence to support a finding that Appellant failed to properly supervise.

Appellee also noted that Appellant failed to communicate to his supervisor, Ms. Butler, the last-minute scheduling predicament that resulted in his cancellation of the Saturday milk run. Ms. Butler testified that she expected to be made aware of anything occurring at the plant that was out of the ordinary, however, she also testified that Appellant had total discretion and authority over the plant employees. While it would probably have been good business practice to make Ms. Butler aware of his scheduling decision, I find that Appellant was acting within his normal and ordinary authority in formulating his Monday route plan and instructing Mr. Ehman how to proceed. No evidence was provided to demonstrate that Appellant had a duty to seek prior approval for scheduling from Ms. Butler, nor was any specific policy or procedure produced to establish that he had a duty to make her aware of scheduling decisions at all.

In summary, I find that Appellee has produced sufficient evidence to support the singular charge that Appellant failed to properly supervise, by neglecting to follow up on the potential problem to which Mr. Ehman alerted him. However, upon a review of all of the information contained in the record, Appellant's prior disciplinary record, and a consideration of the totality of the circumstances, I find that the five-day suspension imposed upon Appellant by Appellee was too harsh.

Therefore, I respectfully **RECOMMEND** that the five-day working suspension imposed upon Appellant be **MODIFIED** to a written reprimand.



Jeannette E. Gunn  
*Administrative Law Judge*

JEG: