

SUPREME COURT OF NEW HAMPSHIRE

Appeal of Young

146 N.H. 216, 769 A.2d 338 (2001) · Decided March 29, 2001

SUMMARY

The New Hampshire Supreme Court held that an employee’s letter describing an intended transfer to another state department was not a voluntary resignation. Because the employee withdrew the intended transfer before its effective date, the Department of Agriculture’s treatment of the matter as a resignation constituted an involuntary separation. The court reversed because the department failed to follow required procedures for dismissing a classified employee.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Nadeau, J.; Brock, C.J.; Broderick, J.; Dalianis, J.; Horton, J., specially assigned
JURISDICTION	New Hampshire
DECIDED	March 29, 2001
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a decision of the New Hampshire personnel appeals board upholding the petitioner's termination.
STANDARD OF REVIEW	The court will overturn an agency decision when there is an error of law or when the order is unjust or unreasonable. Although the court accords deference to an agency's interpretation of its regulations, that deference is not total.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Kevin Young v. State of New Hampshire

TOPICS

- employment law
- administrative law
- judicial review of agency action
- appellate procedure
- standard of review

PRACTICE AREAS

- employment law
- administrative law
- public employment

QUESTIONS PRESENTED

1. Whether Young's letter announcing an intended transfer to another state department constituted a voluntary resignation.
2. Whether the commissioner improperly terminated Young by treating the attempted transfer as a resignation without following the administrative procedures required for an involuntary dismissal.

HOLDINGS

1. Young did not resign because his letter expressed an intent to transfer to another state department, not a voluntary intent to end his state employment.
2. Because Young did not resign, he was involuntarily separated from state employment, and the commissioner improperly terminated him without following the required dismissal procedures.

KEY QUOTATIONS

"We will overturn an agency decision when there is an error of law, or when the order is unjust or unreasonable" (217)

"These definitions indicate a "resignation" is necessarily voluntary." (218)

"Therefore, the only reasonable conclusion is that the petitioner was improperly terminated from State employment." (219)

FACTUAL BACKGROUND

Kevin Young, an Inspector II with the New Hampshire Department of Agriculture, wrote that he was transferring his state service to the Department of Corrections effective June 19, 1998, after receiving a tentative employment offer. Before that date, he learned the transfer would not occur, notified the agriculture commissioner that he intended to return to work, and delivered a letter memorializing the withdrawal. The commissioner nevertheless treated the original letter as an accepted resignation and refused to permit Young to rescind it; the commissioner did not follow the procedural steps required for an involuntary dismissal of a classified employee.

PROCEDURAL HISTORY

Kevin Young appealed to the personnel appeals board after the commissioner of agriculture treated his letter concerning a planned transfer to the Department of Corrections as a resignation and refused to allow him to rescind it. The board found that Young had resigned and that the commissioner had no obligation to restore him to his former position. Young appealed to the Supreme Court of New Hampshire, which reversed.

DISPOSITION

reversed

CASES CITED

- Appeal of Boulay, 142 N.H. 626, 627-628 (1998)
- Appeal of Morin, 140 N.H. 515, 518 (1995)
- Appeal of Swift, 134 N.H. 177, 180 (1991)
- Appeal of Dep't of Safety, 123 N.H. 284, 286 (1983)

OPINION

NADEAU, J.

NADEAU, J. The petitioner, Kevin Young, an Inspector II at the New Hampshire Department of Agriculture, appeals the decision of the personnel appeals board (board) upholding his termination. We reverse. The material facts are not in dispute.

After receiving a tentative offer of employment from the New Hampshire Department of Corrections, the petitioner, in a June 4, 1998 letter, informed the commissioner of agriculture that he was “transferring [his] State service to the Department of Corrections, effective June 19, 1998.” The petitioner’s letter did not indicate that the offer at the department of corrections was conditional.

On June 16, 1998, the department of agriculture forwarded the petitioner’s personnel file to the department of corrections. On June 17, 1998, the petitioner called the commissioner of agriculture to say that his anticipated transfer to the department of corrections was not going to take place, and that he intended to return to work at the department of agriculture.

The next day, the petitioner personally delivered a letter to the commissioner memorializing that phone conversation. Nevertheless, the commissioner issued a letter to the petitioner on June 19, 1998, indicating that the petitioner’s June 4, 1998 letter was accepted as a resignation, and that the commissioner was unwilling to permit the petitioner to rescind his resignation.

The petitioner considered the commissioner’s June 19, 1998 letter an improper dismissal and appealed to the personnel appeals board. See RSA 21-1:58, I (2000). The board found that the petitioner had resigned from his position, and that the commissioner was under no obligation to restore the petitioner to his former position. This appeal followed. See RSA 21-1:58, II (2000); RSA 541:6 (1997). “We will overturn an agency decision when there is an error of law, or when the order is unjust or unreasonable....” Appeal of Boulay, 142 N.H.

626, 627-28 (1998); see RSA 541:13 (1997). “While deference is accorded to an agency’s interpretation of its regulations, that deference is not total.” Appeal of Morin, 140 N.H. 515, 518 (1995). “Resignation” is undefined by the personnel rules. According to common usage, “resign” means “to give up deliberately,” and “resignation” means “formal notification of relinquishment.” *218Webster’s Third New International Dictionary 1932 (unabridged ed.

1961). These definitions indicate a “resignation” is necessarily voluntary. Our case law supports this notion. See Appeal of Swift, 134 N.H. 177, 180 (1991) (referring to “resignation” as when an “employee... voluntarily leaves employment”); see also Appeal of Dep’t of Safety, 123 N.H. 284, 286 (1983).

The petitioner did not resign from the department of agriculture. His letter to the commissioner indicated an intent to transfer from one State department to another. “Transfer” is defined in the personnel rules as “the change of an employee from one position to another position in the same or a different class without a break in service.” N.H. ADMIN. RULES, Per 102.64 (1998) (emphasis added).

Neither the commissioner nor the board could reasonably construe the petitioner’s letter as a voluntary end to his employment. That the petitioner did not intend to leave employment is demonstrated by his telephone call to the commissioner withdrawing his letter of transfer and his letter relaying the same information before the effective date mentioned in his initial letter.

In fact, despite the commissioner’s statements to employees within the department of agriculture that the petitioner was “gone,” he was aware that paperwork was being processed regarding the petitioner’s transfer. Having concluded that the petitioner did not resign, we need not address the State’s arguments that assume there was a valid resignation. Rather, we conclude that the petitioner was involuntarily “separated.” New Hampshire Administrative Rule, Per 102.54 defines “separation” as “the complete termination of an employee from state classified service for any reason.” The rules provide the necessary steps to be followed when a classified employee is involuntarily dismissed.

New Hampshire Administrative Rule, Per 1001.08 (c) provides that [n] o appointing authority shall dismiss a classified employee under this rule until that appointing authority... (1) [o] ffers to meet with the employee to discuss whatever evidence the appointing authority believes supports the decision to dismiss the employee...

(2) [o] ffers to provide the employee an opportunity to refute the evidence... [; and] (3) [documents in writing the nature and extent of the offense. The record reflects that the commissioner took none of these required steps. Further, nothing in the record indicates that the *219petitioner’s dismissal could be justified by any of the circumstances excusing these required steps as set forth in New Hampshire Administrative Rule, Per 1001.08 (a) or (b).

Therefore, the only reasonable conclusion is that the petitioner was improperly terminated from State employment. Reversed. BROCK, C.J., and BRODERICK and DALIANIS, JJ., concurred; HORTON, J., retired, specially assigned under RSA 490:3, concurred.

