SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3789-20

IN THE MATTER OF
RONALD STUISO, BERGEN
COUNTY DEPARTMENT
OF PUBLIC WORKS.

———————————————

Submitted December 14, 2022 – Decided January 9, 2023

Before Judges Accurso and Natali.

On appeal from the New Jersey Civil Service Commission, Docket No. 2019-2591.

Eric M. Bernstein & Associates, LLC, attorneys for appellant Bergen County Department of Public Works (Brian M. Hak, on the briefs).

Kates Nussman Ellis Farhi & Earle, LLP, attorneys for respondent Ronald Stuiso (Michael Farhi, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Civil Service Commission (Pamela N. Ullman, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Appellant Bergen County Department of Public Works (the County) appeals from a final order of the New Jersey Civil Service Commission (CSC), which reduced respondent Ronald Stuiso's disciplinary sanction from termination to a twenty-day suspension. The CSC also awarded Stuiso back pay, benefits, and seniority, but denied his request for attorneys' fees under N.J.A.C. 4A:2-2.12. We affirm.

I.

The following facts are derived from the administrative record. On January 10, 2020, Stuiso, a maintenance worker for the County, filled out two vehicle repair tickets reporting safety concerns about a County vehicle and directed another County employee, Francesco Azzollini, to submit them. A department supervisor, Vincent Rothenburger, met with Azzollini and a mechanic to inspect the vehicle. When Rothenburger raised his voice at Azzollini, Stuiso intervened, got close to Rothenburger's face, raised his voice, and cursed. Stuiso and Rothenburger continued to yell at each other until separated by their co-workers.

The County served Stuiso with a Preliminary Notice of Disciplinary Action charging him under N.J.A.C. 4A:2-2.5(a)(1) with immediate suspension without pay, and N.J.A.C. 4A:2-2.3(a) with insubordination, conduct

unbecoming a public employee, and other sufficient cause. After a disciplinary hearing, the County served Stuiso with a Final Notice of Disciplinary Action (FNDA) and terminated his employment effective April 30, 2020. Stuiso appealed to the CSC, which transmitted the matter to the Office of Administrative Law as a contested matter. The parties thereafter appeared before an Administrative Law Judge (ALJ).

Before the ALJ, several witnesses testified regarding the January 10, 2020 incident, Stuiso's disciplinary history, and his general workplace behavior. Thomas Connolly, a road supervisor who worked with Stuiso for several years, stated Stuiso was a talented employee with potential to move forward in the department, but also that he "butt[ed] heads . . . with a lot of different people," including supervisors, and had a terrible attitude. Connolly also stated, it "just seem[ed] like there was issue after issue" involving Stuiso.

Gary Riccio, a County road inspector, also testified and, contrary to Connolly, described Stuiso as "very conscientious," a team player, and someone who "g[ot] the job done." He also explained it was not uncommon for employees to use inappropriate language while working in the maintenance yard. Edward Grieco, a supervising mechanic, similarly stated disputes between employees in the maintenance yard were common.

After considering the documentary evidence and testimony, the ALJ determined Stuiso was justified in approaching Rothenburger but did so in an excessive and insubordinate manner, thereby improperly initiating the altercation. The ALJ concluded, relying on N.J.S.A. 11A:2-21, N.J.A.C. 4A:2-1.4(a), and Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), the County established by a preponderance of the credible evidence Stuiso's actions constituted insubordination and conduct unbecoming a public employee, but did not qualify as other sufficient cause. The ALJ also reversed the N.J.A.C. 4A:2-2.5(a)(1) charge, explaining the regulation "[was] not an appropriate charge to be included in an FNDA[,] as it is not a cause or charge that a public employee may be subject to for discipline."

With respect to sanctions, the ALJ considered "the nature of [Stuiso's] offense, the concept of progressive discipline, and [his] prior record." Relying primarily on In re Herrmann, 192 N.J. 19, 33 (2007), the ALJ explained "[p]rogressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position," or its application would be "contrary to the public interest," and "[t]ermination is the penalty of last resort reserved for the most severe infractions." The ALJ concluded Stuiso's conduct was neither sufficiently severe nor habitual to bypass

progressive discipline principles under the applicable law. In this regard, the ALJ explained, "[w]hile Stuiso's conduct . . . was inappropriate, disrespectful, and unbecoming, it did not rise to the level of warranting termination given the context in which it occurred, and the absence of more significant prior discipline."

The ALJ then noted "Stuiso's prior disciplinary history consists of a one-day suspension in 2017, a three-day suspension in 2018, and an eight-day suspension in 2019," and "[t]he eight-day suspension in 2019 was in response to Stuiso using a permanent black marker to black out a spreader control panel in the cab of a new County truck[,] and for his failure to report to an alleged emergency," misconduct which she considered to be of a different kind than his January 10, 2020 conduct. She therefore concluded there was "no evidence . . . this type of behavior towards a supervisor was habitual, or that Stuiso had previously conducted himself in that manner."

In light of Stuiso's prior discipline, his charged conduct, and the surrounding circumstances, the ALJ determined a twenty-day suspension was an appropriate penalty. Accordingly, the ALJ sustained the charges of conduct unbecoming a public employee and insubordination, reversed the remaining

charges and termination, imposed a twenty-day suspension, and ordered the return of Stuiso's benefits.

The CSC accepted and adopted the ALJ's factual findings, legal conclusions, and sanction in a June 4, 2021 order. The CSC's decision became final on August 3, 2021. This appeal followed.

II.

"Our review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). Indeed, we defer to administrative agencies in recognition of their "expertise and superior knowledge of a particular field," Herrmann, 192 N.J. at 28, and presume the validity of an "administrative agency's exercise of its statutorily delegated responsibilities," Lavezzi v. State, 219 N.J. 163, 171 (2014).

For those reasons, we ordinarily do not "disturb an administrative agency's determinations or findings unless there is a clear showing . . . : (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). "The burden of demonstrating . . . the agency's action was arbitrary,

capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

Our review of disciplinary sanctions is limited by the same deferential standard. Herrmann, 192 N.J. at 28. "A reviewing court should alter a sanction imposed by an administrative agency only 'when necessary to bring the agency's action into conformity with its delegated authority.'" Ibid. (quoting In re Polk, 90 N.J. 550, 578 (1982)). The test when reviewing administrative sanctions is "whether such punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." Id. at 28-29 (quoting Polk, 90 N.J. at 578). "The threshold of 'shocking' the court's sense of fairness is a difficult one, not met whenever the court would have reached a different result." Id. at 29. As our Supreme Court has made clear, "so long as the discipline . . . falls within a continuum of reasonable outcomes, we must defer, for we have no charge to substitute our judgment for that of the statutorily authorized decisionmaker." In re Hendrickson, 235 N.J. 145, 161 (2018).

III.

The County argues Stuiso's termination should be reinstated because "the CSC's determination that progressive discipline principles required . . . a sanction less than termination was erroneous." Relying on Herrmann, 192 N.J.

at 33, it contends the court improperly relied upon progressive discipline principles as Stuiso's January 10, 2020 conduct, alone, was sufficiently severe and unbecoming of a public employee to render him unsuitable for continued employment.

The County further asserts, even applying progressive discipline, the ALJ misapplied the doctrine by failing to give adequate weight to Stuiso's three prior offenses, which occurred in three successive years. The County also maintains the ALJ erroneously determined the evidence failed to establish Stuiso's conduct was sufficiently habitual to warrant termination, as Connolly testified Stuiso had previously "butted heads" with other supervisors.

In the alternative, the County contends Stuiso should be suspended for six months, at a minimum, because "[t]he CSC's imposition of a twenty . . . day unpaid suspension is inconsistent with the record below and the ALJ's own factual findings." The County asserts a more severe penalty is warranted because the ALJ determined Stuiso's conduct in instigating an altercation with a supervisor was unwarranted and excessive.

When imposing penalties, the CSC has long considered progressive discipline principles, which are based on the notion that "past misconduct can be a factor in the determination of the appropriate penalty for present

misconduct." Herrmann, 192 N.J. at 29. The CSC has applied progressive discipline in two ways: (1) to "support the imposition of a more severe penalty for a public employee who engages in habitual misconduct," id. at 30; and (2) "to mitigate the penalty for a current offense," id. at 33. Progressive discipline, however, need not "be applied in every disciplinary setting." Ibid. Rather, progressive discipline may be bypassed "when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest." Ibid.

When progressive discipline is applied, "an employee's past record with emphasis on the 'reasonably recent past' should be considered." In re Stallworth, 208 N.J. 182, 199 (2011) (quoting West New York v. Bock, 38 N.J. 500, 524 (1962)). "This includes consideration of the totality of the employee's work performance, including all prior infractions." Ibid. (emphasis omitted). "The number and remoteness or timing of the offenses and their comparative seriousness, together with an analysis of the present conduct, must inform the evaluation of the appropriate penalty." Ibid.

As the County asserts Stuiso's January 10, 2020 conduct was sufficiently severe and habitual, we consider our previous decisions reversing agency

penalty reductions, and reinstating termination, based on progressive discipline principles. For example, in Klusaritz v. Cape May County, 387 N.J. Super. 305, 318 (App. Div. 2006), we reversed the Merit System Board's (MSB) penalty reduction and reinstated Cape May County's decision to terminate an employee. In doing so, we concluded the MSB's "application of progressive discipline . . . [was] misplaced and contrary to the public interest," as the charges against the employee pertained to his incompetence to perform his duties, rather than his misconduct. Id. at 317-18. Similarly, in In re Hall, 335 N.J. Super. 45, 48 (App. Div. 2000), we held the MSB improperly applied progressive discipline principles to reduce the City of Camden's dismissal of a police officer to a fifteen-day suspension. We reasoned the fifteen-day suspension was inconsistent with the officer's disciplinary record, the seriousness of his offenses, which included engaging in criminal behavior while in uniform, and a previous thirty-day sanction. Id. at 48-51.

Against this backdrop, we are satisfied the CSC's imposition of a twenty-day suspension was in accordance with the applicable law, supported by sufficient credible evidence, and was therefore neither arbitrary, capricious, nor unreasonable. As noted, the ALJ determined Stuiso was justified in approaching Rothenburger to discuss the truck's safety issues. Additionally, County

employees testified conflict between employees and the use of foul language is not uncommon in Stuiso's workplace, thereby undermining the County's assertion Stuiso's conduct was so severe as to render him unsuitable for continued employment.

The record further reveals the ALJ adequately considered Stuiso's prior disciplinary history before applying progressive discipline principles. As noted, the ALJ acknowledged Stuiso's prior offenses, but found insufficient "significant prior discipline" and "evidence . . . this type of behavior towards a supervisor was habitual" to warrant termination, a penalty of last resort. This finding was supported by the record, which revealed Stuiso's significant prior discipline resulted from his alteration of a County vehicle and failure to report to an emergency shift, conduct distinguishable from arguing with a supervisor.

The ALJ's determination was also supported by evidence in the record pertaining to "the totality of [Stuiso]'s work performance." Stallworth, 208 N.J. at 199. Although the record supports the County's argument Stuiso was a difficult employee, County employees also testified he was talented, conscientious, and a team player. The record therefore contained sufficient evidence for the ALJ to conclude Stuiso was competent to continue his employment.

Additionally, we are satisfied the CSC's twenty-day suspension falls within the "continuum of reasonable outcomes," Hendrickson, 235 N.J. at 145, and is not "shocking to one's sense of fairness," Herrmann, 192 N.J. at 28-29 (quoting Polk, 90 N.J. at 578). As noted, Stuiso had previously served suspensions of one, three, and eight days for conduct unrelated to the current charges. A twenty-day suspension was therefore consistent with progressive discipline principles, and the County has failed to meet its burden of demonstrating an alteration of this penalty is "necessary to bring the agency's action into conformity with its delegated authority." Ibid. (quoting Polk, 90 N.J. at 578).

Finally, we are satisfied our decision to affirm the CSC's penalty reduction fully accords with New Jersey Supreme Court precedent applying the deferential standard of review previously discussed to affirm agency penalty reduction. For example, in Hendrickson, 235 N.J. at 149, the CSC reduced the Department of Community Affairs' termination of an employee to a six-month suspension. The Court noted the employee's behavior – using "a highly offensive gender slur in a public place" – could "have a corrosive effect on morale in the workforce" and "must be firmly condemned." Id. at 161. The Court affirmed the penalty reduction, however, as the ALJ determined the employee was redeemable and,

"[b]ased on our deferential standard of review, [it could not] conclude . . . the ALJ's decision [was] shocking to one's sense of fairness." Id. at 162.

Similarly here, although we do not condone Stuiso's conduct in initiating an altercation with his supervisor, we cannot conclude the CSC's imposition of a twenty-day suspension, a not insubstantial penalty, was arbitrary, capricious, or unreasonable. To the extent we have not specifically addressed any of the parties' arguments, it is because we have concluded they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.