

Logic dictates that if the person being called was not in the office, the employee should leave a voice message. The Director (DOL) and Ms. Alford would most likely be performing their duties in the field, so they would be away from the office. Granted, they probably would not be available at 3 – 4:30 A. M. when Mr. Weatherman sometimes called. But he provided a plausible explanation. When he made emergency trips to care for his critically ill Mother, he would leave home before work hours. He also explained that the cell phone signal at his Mother's remote home was weak or non-existent. In any event, Mr. Weatherman attested that he consistently called whenever he had to be absent from work. And I accept his testimony as valid.

There are also several mitigating factors that should have been considered. First, he was employed for 25 years at the time of his removal. That length of service is reasonably long by any standard. Also, his performance reviews, according to Mr. Weatherman's unchallenged testimony were "exceptional" (a 1 rating) prior to Ms. Alford's arrival. Even Ms. Alford rated him (2) "successful". Thus, his performance seems to have been exemplary. Finally, Mr. Weatherman explained that he had won the Phillip A. Connolly award three times. His dining facility was first in the Southeast Region in 2004 and 2006 and was runner-up in 2005. Although Anthony Jones felt that he should have been the one recognized because he filled in for Mr. Weatherman so much, the fact remains that Mr. Weatherman was the recipient of these awards.

Had the Agency applied the Table of Penalties under progressive discipline, Mr. Weatherman would have been issued a suspension rather than being removed.

The Union urged me to conclude that age and racial discrimination was involved in Mr. Weatherman's removal. I am not convinced that this was the case. Agency Counsel elicited responses from witnesses on both sides that equal numbers of African American and white employees were promoted and were disciplined. There is no evidence of the Garrison's Office of Equal Employment Opportunity issuing a ruling

or a report suggesting that racial discrimination was present in DOL. In addition there is insufficient evidence that Mr. Weatherman's age was a basis for his removal.

I note that the Agency offered Mr. Weatherman the option of early retirement. He rejected the offer and he explained his reasons in his testimony. He said he was 57 when he was removed. The retirement plan reduces the pension five percent for each year of age short of 62. Thus, he would have suffered a 25 percent reduction in his pension which he felt was "not a very good deal".

In my opinion, Mr. Weatherman should be able to maintain reliable attendance. His family problems are behind him and he stated that his health problems are under control. He was enrolled in the Employee Assistance Program on 27 August 2008. I would hope that he would continue with EAP or re-enroll if he is not now active. His wife is employed and her health problem appears to have abated.

AWARD.

The grievant, Hal Weatherman, was not removed for just cause. His removal is commuted to a five day suspension. He is to be reinstated to his position of Food Service Advisor, GS - 11 or a comparable position that is acceptable to him. He is to be made whole for all lost wages (what he would have earned had he continued to be employed) and benefits. The amount of back pay is to be reduced by any interim earnings including Unemployment Compensation plus five day's pay (for the disciplinary suspension). His seniority is to be fully restored. I shall retain jurisdiction should there be any dispute regarding reinstatement or back pay.



Donald P. Crane

October 9, 2009