

STATE OF NORTH CAROLINA  
COUNTY OF RICHMOND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12OSP02320

<p>Larry Batton Petitioner,  v.  NC Dept of Public Safety Respondent.</p>	<p style="text-align: center;"><b>FINAL DECISION</b></p>
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THIS MATTER came on for hearing before the Honorable J. Randall May, Administrative Law Judge presiding, on November 29, 2012, in High Point, North Carolina.

**APPEARANCES**

For Petitioner: Larry Batton, *Pro Se*  
136 Rolling Hills Drive  
Rockingham, NC 28379

For Respondent: Kimberly D. Grande, Assistant Attorney General  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, NC 27602

**WITNESSES**

The following witness appeared and testified on behalf of Petitioner:

1. Larry Batton, Petitioner

The following witnesses appeared and testified on behalf of Respondent:

1. Larry Batton, Petitioner
2. Annie Harvey, Female Command Manager, N.C. Department of Public Safety, Division of Adult Correction
3. Kevin King, Assistant Superintendent of Operations, Southern Correctional Institution ("Southern"), N.C. Department of Public Safety, Division of Adult Correction

4. Doug Callicut, Correctional Captain, Southern, N.C. Department of Public Safety, Division of Adult Correction

### EXHIBITS

The following exhibits were admitted into evidence on behalf of Petitioner:

- A. (2 pages) Disciplinary Policies and Procedures, Department of Correction, Personnel Manual, Section No. 6, Page Nos. 14-15, Effective October 1, 1995
- B. (2 pages) Disciplinary Policies and Procedures, Department of Correction, Personnel Manual, Section No. 6, Page No. 16, Effective October 1, 1995; *also attached to Petitioner's Exhibit B*, Letter to Petitioner, dated October 13, 2011, incomplete copy, Bates-stamp No.: BS13
- C. (2 pages) Disciplinary Policies and Procedures, Department of Correction, Personnel Manual, Section No. 6, Page No. 3, Effective October 1, 1995; *also attached to Petitioner's Exhibit C*, Larry Batton - Dismissal Letter, dated December 2, 2011, incomplete copy, Bates-stamp No.: BS7
- D. (5 pages) Disciplinary Policies and Procedures, Department of Correction, Personnel Manual, Section No. 7, Page No. 22, Effective October 1, 1996, Revised April 1, 2011; *also attached to Petitioner's Exhibit D*, Letter to Petitioner from Tracey S. Perry, dated January 11, 2012; *also attached to Petitioner's Exhibit D*, Notice of Mediation from Tracey S. Perry, dated January 20, 2012; *also attached to Petitioner's Exhibit D*, Agreement to Mediate, dated January 31, 2012; *also attached to Petitioner's Exhibit D*, Notice of Mediation Impasse, dated January 31, 2012
- F. (2 pages) Letter to Petitioner, dated December 2, 2011, Re: Dismissal, incomplete copy, Bates-stamp No.: BS2, *also attached to Petitioner's Exhibit F*, Offender Information sheet, Pamela L. Nance, incomplete copy, dated 11-Sep-12
- G. (2 pages) Larry Batton - Dismissal Letter, dated December 2, 2011, incomplete copy, Bates-stamp No.: BS3; *also attached to Petitioner's Exhibit G*, Arrest Report by Randolph County Sheriff's Office, dated 6/29/11
- L. (7 pages) Letter to Petitioner, *also marked as Respondent's Exhibit 15*, Pre-Disciplinary Conference Letter, dated October 27, 2011, Bates-stamp Nos.: BS26-BS32

The following exhibits were admitted into evidence on behalf of Respondent:

1. (4 pages) Appendix to Disciplinary Policy and Procedures, Department of Correction, Personnel Manual, Section No. 6, Page Nos. 38-41, Effective October 1, 1995

2. (8 pages) Conduct of Employees, Division of Prisons, Policy and Procedures, Issue Date: 08/16/10, Bates-stamp Nos.: BS98-BS105
3. (4 pages) Personal Dealings with Offenders of the Department of Correction, Department of Correction, Personnel Manual, Section No. 8, Page Nos. 60-63, Effective date December 1, 1997, Bates-stamp Nos.: BS94-BS97
4. (1 page) Letter from Annie Harvey to James French, Re: Dismissal Package for Larry Batton, dated November 9, 2011, Bates-stamp No.: BS10
7. (7 pages) Letter to Petitioner, Re: Dismissal, dated December 2, 2011, Bates-stamp Nos.: BS2-BS8
8. (2 pages) Memorandum from Timothy Kimble to Annie Harvey, dated August 5, 2011, Re: Internal Investigation Involving Sgt. Larry Batton, Bates-stamp Nos.: BS33-BS34
9. (2 pages) Offender Information on Pamela L. Nance, Bates-stamp Nos.: BS81-BS82
10. (2 pages) Offender Information on Terry James Nicodemus, Bates-stamp Nos.: BS72-BS73
11. (2 pages) Offender Information of Roger C. Link, Bates-stamp Nos.: BS68-BS69
12. (2 pages) Memorandum from Kevin King to Timothy Kimble, dated July 22, 2011, Internal Investigation, Bates-stamp Nos.: BS42-BS43
13. (9 pages) Memorandum from Capt. Doug Callicut to Mr. Kevin King, dated July 21, 2011, Re: Internal Investigation - Sgt. Larry Batton, Bates-Stamp Nos.: BS44-BS52
15. (7 pages) Letter to Petitioner, Pre-Disciplinary Conference Letter, dated October 27, 2011, Bates-stamp Nos.: BS26-BS32
18. (4 pages) Richmond County Sheriff's Office Incident/Investigation Report, dated 06/14/2011, Bates-stamp Nos.: BS62-BS65
20. (6 pages) Larry Batton Training Record
21. (5 pages) Larry Batton Statement, dated July 1, 2011, Bates-stamp Nos.: BS83-BS87
22. (4 pages) Larry Batton Statement, dated July 15, 2011, Bates-stamp Nos.: BS88-BS91

25. (1 page) Information Security Polices Memorandum, dated February 14, 2011, Bates-stamp No.: BS317
26. (2 pages) Non-Disclosure Agreement, Signed October 11, 2011, Bates-stamp Nos.: BS315-BS316
30. (14 pages) North Carolina Department of Correction Office of Staff Development and Training Career Development Curriculum, Lesson Plan: Professional Ethics in the Workplace, Course Code: 0010146, Revised 01/01/2008
31. (3 pages) Completed, Acknowledgment Relationships Between Employees and Inmates, signed October 5, 1998
33. Taped Recording, Interview of Petitioner with Captain Doug Callicut, at time stamp 20:44 and 20:56

### **ISSUES**

- I. Whether there was just cause for Petitioner's termination?

THE FINDINGS OF FACT are made after careful consideration of the sworn testimony, whether visual and/or audio, of the witnesses presented at the hearing, and the entire record in this proceeding. In making the findings of fact, the undersigned has weighed all the evidence, or the lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony and the admitted evidence, or the lack thereof, the undersigned makes the following:

### **FINDINGS OF FACT**

1. The parties acknowledged proper notice of the date, time and place of the hearing.
2. Petitioner worked for Respondent as a correctional sergeant at Southern. Tr. 14. Petitioner began working for Respondent in 1998 and in 2010 was promoted to the position of correctional sergeant.<sup>1</sup> *Id.*
3. Petitioner's promotion to correctional sergeant in 2010 required that he take and pass Respondent's promotional exam for the position of correctional sergeant. Tr. 16. Preparatory to taking the exam, Petitioner attended a 16-hour training course and reviewed Respondent's policies and procedures. *Id.*

4. At the outset of Petitioner's employment with Respondent, he received a memorandum entitled, "Employment Process. Relationships between employees and inmates, probationers, and parolees." Tr. 20. Petitioner acknowledged receipt of the memorandum with his signature. *Id.* The memorandum notifies Respondent's employees, including Petitioner, that all employees are "required to promptly notify their supervisor" of any relationship with "an offender under the supervision of this agency" and that "offenders include inmates, probationers, or parolees." Tr. 21.
5. Petitioner admits that Respondent has a policy which required "any employee who learns that a person with whom they have had or have a personal relationship has come under the supervision of or incarcerated by the Department of Correction shall report this in writing to his or her supervisor within forty-eight hours of learning that the person is under supervision or incarcerated." Tr. 53.
6. Petitioner admits that, as Respondent's employee, he had a duty to be knowledgeable of all of Respondent's policies and procedures, including the aforementioned policy. Tr. 49. Petitioner also admits that Respondent's policies and procedures, including the aforementioned policy, applied to him. Tr. 53, 55.
7. Respondent has a policy which prohibited "employees and third-party providers" from releasing "confidential and highly sensitive" information and "records or information contained in records" to any other party or agency. Tr. 33.
8. On June 14, 2011, Petitioner made a report to the Richmond County Sheriff's Office regarding some items which had been stolen from his home. Tr. 23. Petitioner named two individuals as suspects to law enforcement - Terry Nicodemus and Roger Link. Tr. 24. Petitioner knew Nicodemus and Link through Pamela Nance and had previously allowed both Link and Nicodemus to stay overnight at his home. Tr. 25. Pamela Nance was a former inmate of Southern. *Id.*
9. Petitioner admitted in writing during the internal investigation and at the hearing that, prior to July 1, 2011, he knew both Nicodemus and Link were active probationers, which Petitioner verified by accessing Respondent's OPUS system. Tr. 32, 41. Petitioner also admitted to taking confidential information regarding Link and Nicodemus' status as probationers from Respondent's OPUS system and providing it, on or before 28 June 2011, to the Richmond County Sheriff's Office. *Id.*
10. Following Petitioner's report to the Richmond County Sheriffs' Office on June 14, 2011, Southern Assistant Superintendent Kevin King was notified by the Richmond County Sheriff's Office of Petitioner's report. Tr. 75. King notified Southern Superintendent Tim Kimble of the report. *Id.* Kimble then directed King to assign Captain Doug Callicut to investigate Petitioner's relationships with Nance, Nicodemus, and Link. *Id.*
11. At the hearing, Petitioner admitted that, between June 14, 2011 and July 1, 2011, he continued to work at Southern but failed to report the pending investigation or his relationships with Link or Nicodemus to his supervisors there. Tr. 37-38.

12. On July 1 and 15, 2010, Petitioner met with Callicut at Southern and provided him with a written statement in which Petitioner admitted to having a personal relationships with Nance, Nicodemus, and Link. Tr. 39, 47.
13. In the statement Petitioner provided to Callicut on July 15, 2010, Petitioner admitted that he failed “to comply with the reporting procedures after learning that Roger Link and Terry Nicodemus was on active probation.” Tr. 47.
14. Callicut recorded his interviews with Petitioner on July 1 and 15, 2010. Tr. 130. In the recorded interviews, Petitioner admitted he knew of Respondent’s policy regarding employees’ duty to report relationships with offenders and “should have” reported his relationships with Link and Nicodemus. Tr. 134-135, 138-139.
15. Following the investigation of Petitioner by Callicut, King reported to Kimble that the Petitioner had “violated policy for failure to disclose” his relationships with Nicodemus and Link. Tr. 76. King also recommended to Kimble that Petitioner be dismissed from Southern due to unacceptable personal conduct including “negative behavior and poor judgment” in “failing to report his involvement with individuals on active probation and his alleged relationship with a former inmate,” which put Southern and the public at risk. Tr. 77.
16. As King testified, Respondent’s policy requiring employees to disclose any relationships protects Respondent’s employees “from any harassment, from offenders, probationary family members, so there won't be any discrepancy of violating any policies.” Tr. 78.
17. King was Petitioner’s supervisor and, according to Respondent’s policies, King was the appropriate person for Petitioner to notify of his relationships with Nicodemus and Link. Tr. 78. Petitioner never notified King of his s with Nicodemus and Nance. *Id.*
18. Following the internal investigation, Petitioner was provided notice that a pre-disciplinary conference would be held on October 27, 2011, to provide Petitioner an opportunity to respond to the allegations that he had engaged in unacceptable personal conduct by failing to report his relationships with Nicodemus and Link. Tr. 168-169, 181.
19. On October 27, 2011, Petitioner's supervisors Kimble and King conducted a pre-disciplinary conference with Petitioner. Petitioner made verbal statements to Kimble and King at the conference. Petitioner was notified, both in writing, prior to and at the conference, that his discipline could include adverse employment action up to and including dismissal. Tr. 181-183.
20. On November 10, 2011, Respondent’s then-Deputy Secretary, James French, approved the dismissal of the Petitioner for Unacceptable Personal Conduct. Tr. 59.

21. By letter dated December 2, 2011, Kimble notified Petitioner that a recommendation for his dismissal from employment with Respondent for unacceptable personal conduct had been approved by Respondent's management. Tr. 184.
22. On December 16, 2011, Petitioner appealed his dismissal by filing an internal grievance with Respondent, and, in doing so, he requested mediation. By letter dated January 20, 2012, Respondent notified Petitioner that a mediation would be held at 9:30 am on January 31, 2012. Tr. 174, Petitioner's Exhibit D. On January 31, 2011, Petitioner's mediation resulted in an impasse. *Id.*
23. On April 11, 2012, Petitioner filed a petition for a contested case with the Office of Administrative Hearings, appealing his dismissal from employment and alleging that Respondent wrongfully discharged him from employment without just cause.
24. The preponderance of the evidence demonstrated that Petitioner had the ability to contact Respondent regarding his relationships with Link and Nicodemus but, for his own purposes, elected not to do so. Petitioner knowingly violated Respondent's policy prohibiting relationships between prison employees and offenders by failing to notify Respondent of his relationships with Link and Nicodemus.
25. Respondent's Personnel Manual, Section 8, "Personal Dealings with Offenders of the Department of Correction," informs Respondent's employees that they have a duty to report any personal relationship with an offender under the supervision of Respondent within 48 hours of learning that person is under Respondent's supervision. R. Ex. 3, p. 62. The policy also states that Respondent can terminate employees for failure to report personal relationships with offenders when required to do so. R. Ex. 3, p. 63.
26. Based on the Court's evaluation of documentary evidence, and the testimony and demeanor of Respondent's witnesses versus that of Petitioner, the Court finds that Petitioner willfully failed to notify Respondent of his personal relationships with Link and Nicodemus, who were offenders under Respondent's supervision. Petitioner's failure to notify Respondent of his personal relationships with Link and Nicodemus violated Respondent's policy requiring him to do so.

### **CONCLUSIONS OF LAW**

1. Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C.G.S. § 126-1 et seq. at the time of his discharge.
2. The State Personnel Act only permits disciplinary action against career state employees for "just cause." N.C. Gen. Stat. § 126-35. Although "just cause" is not defined in the statute, the words are to be accorded their ordinary meaning. *Amanini v. Dep't of Human Resources*, 114 N.C. App. 668, 443 S.E.2d 114 (1994) (defining "just cause" as, among other things, good or adequate reason).

3. Respondent has the burden of proof to show that it had just cause to dismiss Petitioner in accordance with N.C. Gen. Stat. § 126-35. *Teague v. N.C. Dep't of Transportation*, 177 N.C. App. 215, 628 S.E.2d 395, disc. rev. denied, 360 N.C. 581 (2006).
4. Administrative regulations provide two grounds for discipline or dismissal based on just cause: unsatisfactory job performance and unacceptable personal conduct. 25 NCAC 1J.0604 (b). Unacceptable personal conduct includes, inter alia, "conduct for which no reasonable person should expect to receive prior warning," "the willful violation of known or written work rules," and "conduct unbecoming a state employee that is detrimental to state service." 25 NCAC 01J .0614(8) (a), (8) (d), and (8) (e).
5. A single act of unacceptable personal conduct can constitute just cause for any discipline, up to and including dismissal. *Hilliard v. N.C. Dep't of Correction*, 173 N.C. App. at 597, 620 S.E.2d 17 (2005).
6. In this case, a preponderance of the evidence showed that Respondent complied with the procedural requirements for dismissing Petitioner from employment for unacceptable personal conduct in accordance with 25 NCAC 01J .0608 and .0613.
7. The importance of Respondent's policy requiring employees to disclose any relationships is self-evident to the Court. There is a great potential for collusion, extortion, or other inappropriate relationships between prison employees and offenders, including those on probation. As stated by Respondent's policy regarding personal dealings with offenders, "Employees may find themselves in compromising situations because of the offender's ability to manipulate individuals and initiate inappropriate relationships with those responsible for their supervision. Any inappropriate relationship between an employee and an offender may also threaten the security of the work unit or facility in that the offender may acquire information from the employee that could disrupt the facility or aid offenders in an escape from the facility. Employees need to understand that such relationships are inappropriate, are a reflection of poor judgment and may be considered a breach of security." R. Ex. 3, p.1. Thus, allowing Respondent's employees (including superior officers such as Petitioner) to fail to report prohibited relationships with offenders and violate this policy could have serious consequences for both other employees of Respondent and the public.
8. A preponderance of the evidence established that Petitioner willfully and knowingly failed to report his personal relationships with Link and Nicodemus, in violation of Respondent's reporting policy in Section 8, p. 62 of Respondent's Personnel Manual. Moreover, as the Court described above, Petitioner's failure to report constituted unacceptable personal conduct, as Petitioner's conduct was conduct unbecoming a state employee, was detrimental to state service, and was not the sort of conduct for which Petitioner would have expected to receive a prior warning before being dismissed. 25 NCAC 01J .0614(8) (a), (8) (d), and (8) (e).
9. Respondent proved by a preponderance of the evidence that it had just cause to terminate Petitioner from employment for unacceptable personal conduct.



## FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned AFFIRMS Respondent's dismissal of Petitioner because Respondent had just cause for this disciplinary action per N.C.G.S. § 126-35. The undersigned is satisfied that Respondent has successfully carried its burden of proof in justifying Petitioner's dismissal.

## NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 4th day of June, 2013.

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J. Randall May  
Administrative Law Judge