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IN THE  
**Supreme Court of Virginia**

RECORD NO. 941955

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CLERK  
SUPREME COURT OF VIRGINIA

APR 04 1995

RICHMOND, VIRGINIA

**VIRGINIA DEPARTMENT OF CORRECTIONS,**

*Appellant,*

**v.**

**JAMES DILLON,**

*Appellee.*

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**JOINT APPENDIX**

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**James S. Gilmore, III**  
**Attorney General**

**Catherine C. Hammond**  
**Deputy Attorney General**

**Pamela F. Boston**  
**Senior Assistant Attorney General**

**Office of the Attorney General**  
**900 East Main Street**  
**Richmond, Virginia 23219**  
**(804) 786-3149**

*Counsel for Appellant*

**Robert P. Geary**  
**Attorney at Law**  
**The 21 Center - Suite 202**  
**2025 East Main Street**  
**Richmond, Virginia 23223**  
**(804) 643-8003**

*Counsel for Appellee*



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VIRGINIA :

IN THE CIRCUIT COURT OF THE COUNTY OF HALIFAX

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**RECEIVED**

MAY 4 1993

IN RE: GRIEVANCE OF JAMES DILLON

Serve: Edward W. Murray, Director  
Virginia Department of Corrections  
6900 Atmore Drive  
Richmond, VA 23225

MAY 18 1993

~~Office of the Director~~  
~~Department of Corrections~~

CORRECTIONAL LITIGATION

GRIEVANT'S PETITION FOR ENFORCEMENT OF GRIEVANCE PANEL DECISION

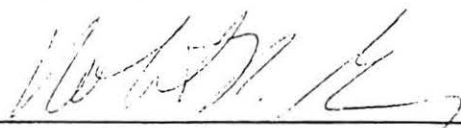
Comes now grievant James Dillon, by counsel, and says in this his  
Petition to Enforce a Grievance Panel Decision the following:

1. Petitioner was an employee of the Virginia Department of Corrections.
2. In 1992 he was twice discharged from his position with the Department of Corrections. He was employed at a Department of Corrections facility in Halifax County, Virginia.
3. Petitioner had two separate grievance panel hearings pursuant to the Virginia statute for employee grievances, Section 2.1-114:5 of the Code of Virginia.
4. He was the prevailing party in both grievance panel hearings and both panels ordered his reinstatement.
5. The second and most recent decision was on February 16, 1993. Since that time and despite repeated demands by petitioner, the Department of Corrections had not placed petitioner back into his previous position as Corrections Enterprises Supervisor at the Halifax County sign shop.
6. The decision of the grievance panel under the statute is final and binding. (Section 2.1-114.5:1D.4.d.)
7. Under the Virginia Supreme Court decision in Zicca v. City of Hampton, 240 Va. 468, 397 S.E.2d 882 (1990), petitioner must be reinstated to his former position.

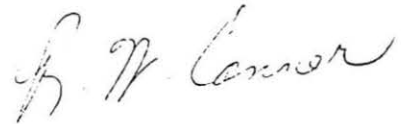
WHEREFORE, petitioner pursuant to Section 2.1-114.5:1E. moves this Court for an Order compelling the Virginia Department of Corrections to reinstate petitioner to his previous position as per the orders of the two grievance panels; and because of the refusal of the Department of Corrections to follow the law, petitioner moves for attorney fees against the Department of Corrections.

JAMES DILLON

BY

  
Counsel

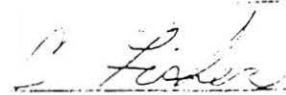
Robert P. Geary, VSB# 9165  
21 Center/Suite 202  
2025 East Main Street  
Richmond, VA 23223  
(804) 643-8003



THE CIRCUIT COURT

COUNTY, VA.

4-30-93





VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HALIFAX

IN RE: GRIEVANCE OF JAMES DILLON

JAMES DILLON,

Petitioner,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

RESPONDENT'S ANSWER TO GRIEVANT'S  
PETITION FOR ENFORCEMENT OF GRIEVANCE PANEL DECISION

NOW COMES Respondent, Commonwealth of Virginia, Department of Corrections, by counsel, and for its Answer to Petitioner James Dillon's "Grievant's Petition for Enforcement of Grievance Panel Decision" states as follows:

1. Respondent admits the allegations contained in paragraph 1 of the Petition.

2. Respondent admits that Petitioner was employed at Respondent's Department of Corrections' facility in Halifax County, Virginia. Respondent admits that on March 25, 1992 the Petitioner was issued a Group II written notice and discharged for failure to follow supervisor's instructions in that he failed to report to work on March 23 and 24, 1992 "after being verbally instructed to report to work by three levels of management and also by written memo from his supervisor for which he acknowledged receipt in writing" (Exhibit A). Respondent further admits that on June 24, 1992, the Petitioner was issued a Group II written notice and

discharged for "failure to adequately perform assigned work and comply with applicable written pay plan for shop..." (Exhibits B-1 and B-2).

3. Respondent admits the allegations contained in paragraph 3 of the Petition.

4. With respect to paragraph 4 of the Petition, Respondent admits that in regard to Petitioner's March 25, 1992 Group II written notice and discharged, the Grievance Panel upheld the Group II written notice, but instead of discharge, recommended a 30-day suspension of employment without pay and back pay for a period of three months (Exhibit C). Respondent admits that in regard to Petitioner's June 24, 1992 Group II written notice and discharged, the Grievance Panel upheld the Group II written notice, but instead of discharge, suspended Respondent for thirty days. The suspension was effective from the date that Petitioner could have returned to work. The Grievance Panel further denied Petitioner backpay for the months he was separated from his job (See Exhibits D and E).

5. With regard to paragraph 5, Respondent admits that the most recent Grievance Panel decision was dated January 4, 1993, and a Grievance Panel letter of clarification regarding no backpay was issued on February 16, 1993. Respondent further admits that Petitioner was not placed in his former position as Supervisor B of the Industrial Enterprise Halifax Sign Shop (Field Unit 23), but was instead assigned to the position of Building and Grounds Supervisor B in the Planning and Engineering group at Dillwyn Correctional Center. Respondent denies the rest of the allegations



contained in paragraph 5.

6. With regard to paragraph 6, respondent submits that the statute referred to in paragraph 6 speaks for itself and denies petitioner's characterizations of same. Respondent denies that the statute requires Respondent to return Dillon to his former position as Supervisor B of the Industrial Enterprises Halifax Sign Shop (Field Unit 23).

7. With regard to paragraph 7, Respondent submits that paragraph 7 constitutes a legal conclusion to which an answer is not required. To the extent an answer is required, Respondent denies that Petitioner must be reinstated to his former position.

8. Respondent denies any allegation not expressly admitted herein and demand strict proof thereof.

9. To the extent that Petitioner's request for relief requires an answer, Respondent denies the existence of any facts tending to give rise to Petitioner's demands and denies all claims for attorney's fees.

#### AFFIRMATIVE DEFENSES

Respondents, by counsel, set forth the following defenses to Petitioner's Petition for Enforcement of Grievance Panel Decision:

1. Petitioner failed to show he is entitled to judicial review under § 2.1-114.5:1F of the Code of Virginia, in that the Grievance Panel Decision did not require the Respondent to reinstate Petitioner in his former position.

2. Respondent has the right and duty to manage its

workforce, a right recognized by the Virginia Personnel Act which specifically exempts from the definition of "grievance" the transfer and assignment of employment. § 2.1-114.5:1A,B of the Code of Virginia.

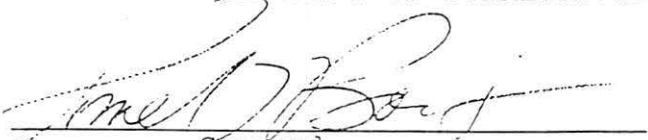
3. Petitioner has consistently demonstrated poor judgment and job performance in his former position as Supervisor B of the Industrial Enterprise Halifax Sign Shop (Field Unit 23). The most recent Group II written notice was the third written notice received by Petitioner within a two year period. The Grievance panels have upheld the issuance of the written notices. Petitioner's voluntary actions demonstrate that Respondent would be remiss in not re-assigning him to a more suitable position. The Grievance Panel decisions require that Petitioner be reinstated, but do not require that it be to his former position. Petitioner is still employed with the Virginia Department of Corrections and has no reduction in pay.

WHEREFORE, Respondent respectfully requests that Petitioner's Petition for Enforcement of Grievance Panel Decision be dismissed or denied with prejudice, and that the Respondent be granted such other relief as the Court may deem proper.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS

By:

  
Counsel

Stephen D. Rosenthal  
Attorney General of Virginia



Milton K. Brown, Jr.  
Deputy Attorney General

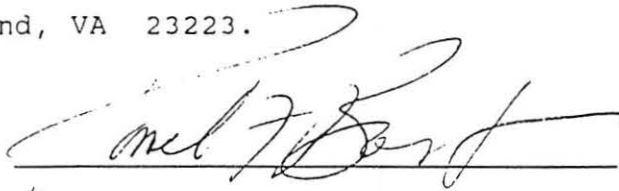
Neil A.G. McPhie  
Senior Assistant Attorney General  
Bar I.D. No. 22048

Ternon G. Burton, Bar I.D. No. 30023  
Pamela F. Boston, Bar I.D. No. 16730  
Assistant Attorneys General

Office of the Attorney General  
101 North Eighth Street  
Supreme Court Building  
Richmond, VA 23219  
(804) 786-3149

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer and Affirmative  
Defenses were mailed, first-class, postage prepaid, this 24<sup>th</sup> day  
of May, 1993, to Robert P. Geary, Esquire, 21 Center, Suite 202,  
2025 East Main Street, Richmond, VA 23223.

A handwritten signature in dark ink, appearing to read "Milton K. Brown, Jr.", is written over a horizontal line.

8:38-P76/224

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HALIFAX

IN RE: GRIEVANCE OF JAMES DILLON

JAMES DILLON,

Petitioner,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

RESPONDENT'S PRE-TRIAL MEMORANDUM OF LAW

I. INTRODUCTION

Petitioner James Dillon ("Dillon") is employed with respondent Virginia Department of Corrections (hereinafter "DOC" or "Respondent"). From 1982 to 1992, he was employed with Virginia Correctional Enterprises ("VCE"), a division of DOC, as the supervisor of the Halifax Correctional Sign Shop ("Sign Shop").<sup>1</sup> Dillon has a history of performance problems in this job. On three separate occasions, he was given Group Two written notices and disciplined for serious infractions. He grieved two of those disciplinary actions. Two separate grievance panels affirmed the

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<sup>1</sup>The Sign Shop is one of several plants under VCE's supervision. It manufactures, among other things, office signs, name tags, and traffic control signs for various customers, including the Commonwealth. Dillon's responsibility was to supervise the operation of the Sign Shop, to include manufacturing and shipping signs, supervising inmates that made the signs, and preparing production reports associated with the manufacturing process.



disciplinary findings, but reduced the penalty to suspension. Neither panel ordered DOC to reinstate Dillon to his "former position." Dillon filed this action under § 2.1-114.5:1F of the Code of Virginia asking this Court to reinstate him to his "former position." DOC filed an answer to Dillon's petition and submits this pretrial memorandum of law to acquaint the Court with the evidence and relevant legal arguments.

## II. ISSUE

Whether the DOC's Reinstatement of Dillon to a Position Other Than His Former Position Complies With the Grievance Panels' Decisions Overturning Dillon's Termination and Permitting Him to Return to Work

## III. STATEMENT OF FACTS

Dillon has a history of performance problems as Sign Shop Supervisor. On May 31, 1990, Dillon received a Group I written disciplinary notice for unsatisfactory job performance. See Exhibit 1.

On July 13, 1990, Dillon received a Group II written disciplinary notice and a three (3) day suspension for the unauthorized closing of the Sign Shop. See Exhibit 2.

On March 25, 1992, Dillon received a Group II written disciplinary notice for failure to report to work, which again resulted in the closing of the Sign Shop. See Exhibit 3. The specific events which led to the issuance of this Group II written notice are as follows:

Dillon requested annual leave for March 23-24, 1992, to attend a two day training seminar relating to his outside employment. Because management could not find a replacement for Dillon, management denied his leave request verbally and in writing. See Exhibits 4 & 5. Dillon then told management that "he was going to take leave...anyway. Furthermore, [he] would shut the [sign] shop down... and [management] could run the damn thing." See Exhibit 4. Fully aware that he had active disciplinary notices in his personnel file and that he would face disciplinary action should he fail to report to work on the days for which he was denied leave, Dillon did not report to work on March 23-24, 1992, and instead attended a two-day seminar unrelated to his position with DOC. Because he failed to follow the instructions of his supervisor and report to work, Dillon received a Group II written notice. In accordance with the personnel policy and procedures manual, Dillon was terminated effective March 25, 1992. See Exhibits 3, 4, 5 and 12.

Additionally, on June 24, 1992, Dillon was issued a Group II written notice for failure to perform work and comply with applicable written pay plans for the Sign Shop. See Exhibit 6. The specific events which led to the issuance of this Group II written notice are as follows:

An internal audit of the Sign Shop revealed that the shop's monthly production/shipment sales records were inflated. This resulted in overpayments to the inmate workers. Inmates employed at the Sign Shop during Dillon's supervision received incentive pay

based on the number of signs they produced and shipped (sold). Dillon was officially responsible for reporting production and shipments (sales). As a result an investigation by the DOC Inspector General was initiated. The DOC Inspector General Report ("Report") found, among other things that the inmates were grossly overpaid from December 1991, through March 1992. See Exhibit 7F. During this period, Dillon over reported sales by \$432,630 or 137.7%. In fact, the Report noted that "there was no evidence that [Dillon] had verified the reported sales orders used to calculate the inmate payroll for the period questioned." See Exhibit 7F. Further, the report noted:

Investigation revealed that during the aforementioned period, the overall production organization was poor. There was no tracking system in place to determine the status of work/sales orders and there was entirely too much paperwork on the floor. The filing and retrieval system was inadequate. In all, it was difficult at best to find any paperwork. The inmates, obviously acting in concert, ran the sign shop, controlled the paperwork, and prepared it for Dillon's signature. Dillon in return signed the monthly reported sales, without verifying it, and forwarded it to Correctional Enterprises where only the addition was checked. There was virtually no check and balance system in place; therefore, allowing this fraud to be perpetrated.

See Exhibit 7E.

Because Dillon failed to perform his duties and comply with applicable written pay plans for the shop, DOC issued him a Group II Notice on June 24, 1992. Again, in accordance with the State Personnel Policy and Procedures, Dillon's receipt of this notice



along with the active Group II notices he received prior to June 24, 1992 resulted in his termination effective June 24, 1992. See Exhibits 6 and 12.

All of the aforementioned disciplinary written notices have been sustained. Except for the May 31, 1990, Group I notice, all of the aforementioned notices were active in Dillon's personnel file when DOC terminated him.<sup>2</sup> The case before this Court involves the two most recent Group II disciplinary notices DOC issued to Dillon.

In accordance with the Commonwealth's grievance procedures promulgated pursuant to § 2.1-114.5:1 et seq. of the Code of Virginia, Dillon appealed both the March 25, 1992, and the June 24, 1992 DOC's disciplinary actions. Specifically, he requested reinstatement and backpay as relief from both actions. See Exhibits 8 and 9.

With respect to the March 25, 1992 Group II written notice, by decision dated October 20, 1992, a grievance panel ("Panel 1"), by a 3 to 0 vote, upheld the disciplinary finding. Dillon's termination, however, was modified to a thirty (30) day suspension without pay due to what the panel termed "mitigating circumstances." Specifically, the pertinent part of the October 20, 1992 decision reads as follows:

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<sup>2</sup>The July 13, 1990 Group II notice became inactive July 13, 1993. See Exhibit 2.

The panel upholds the Group II written notice, but instead of termination, recommends a 30-day suspension of employment without pay [and] pay for a period of three months.

Further, Panel 1 stated, among other things, that "the written notice was warranted." Panel 1, however, did not direct DOC to return Dillon to his former position. See Exhibit 10. (Emphasis added).

In compliance with Panel 1's decision, Dillon was reinstated to the payroll and received paychecks from May 5, 1992, to June 24, 1992, the date of his last Group II notice and termination.

With respect to the June 24, 1992 Group II written notice, by decision dated January 4, 1993, and clarified February 16, 1993, the grievance panel ("Panel 2"), by a 3 to 0 vote, upheld the disciplinary finding. Dillon's termination however, was modified to a thirty (30) day suspension without pay. See Exhibit 11. Specifically, the pertinent part of Panel 2's decision reads as follows:

The panel upholds the finding that Mr. Dillon did commit a Group II violation. The Panel decision is to suspend Mr. Dillon for thirty (30) days. The panel overturns the agency's termination of Mr. Dillon. The 30 day suspension shall begin immediately on the date that he could have returned to work but for the Group II offense. (Emphasis added).<sup>3</sup>

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<sup>3</sup>Further, the February 16, 1993 letter clarifying the Panel 2's decision reads, in part, that "Mr. Dillon is entitled to no back pay." See Exhibit 11.

Like Panel 1, Panel 2 did not direct DOC to return Dillon to his "former position".

DOC complied with Panel 2's January 4, 1992 grievance decision and reinstated Dillon to the payroll effective January 1, 1993. Dillon, however, was not returned to his former position of Sign Shop supervisor for several compelling reasons:

- (i) Dillon's failure to follow applicable rules/policies and directives of his superiors;
- (ii) Dillon's failure to supervise the inmates employed in the Sign Shop; and
- (iii) Dillon's poor example to the inmates.

Moreover, prior to the issuance of Panel 2's January 4, 1993 decision, DOC filled Dillon's former position. This presented another compelling reason for not returning Dillon to his former position.<sup>4</sup>

From January 1, 1993 to April 13, 1993, Dillon received pay (at his pre-termination rate) for no work. It was during this period, DOC actively sought suitable placement for Dillon. When none could be found, DOC created for Dillon the classified position of Building and Grounds Supervisor B at the Dillwyn Correctional Center in Dillwyn (Buckingham County). In effect, the position is

---

<sup>4</sup>Dillon was first disciplined and remained as a dysfunctional (terminated) manager effective March 25, 1992. DOC could no longer tolerate the hardship imposed upon it of running the sign shop without a supervisor/manager. Therefore, it was necessary for management to fill the position as soon as possible so that a supervisor would be located at the shop operating it pursuant to applicable rules, procedures and policies. The position, however, was not filled until December 1992.



one of a building inspector and it does not require the supervision of other DOC's employees.

This position was created because of Dillon's experience in the trades and DOC's need for an employee with such skills. DOC was experiencing construction problems at its new facilities. DOC concluded that Dillon's knowledge and skills in the trades (construction, electricity, etc.) would be an asset to DOC in overseeing the construction of facilities being built for DOC. The nearest DOC construction project to Dillon's residence was the Dillwyn Correctional facility. Accordingly, Dillon was assigned to that facility. Although, DOC offered Dillon the position on April 13, 1993, Dillon chose not to return to work until some six (6) weeks later.

As other construction projects begin, there is a strong possibility that Dillon will be transferred to a project closer to his Halifax residence. For instance, DOC plans to build a correctional facility in Lunenburg County, which is approximately forty (40) miles from Dillon's residence. Dillon will be considered for an inspector's position for this project.

### III. ARGUMENT

#### A.

#### Management's Decision to Reassign Dillon Complies with Applicable Law and the Panel's Decision

Applicable law gives a grievance panel the authority to review disciplinary actions and to reinstate terminated employees. See §2.1-114.5:1D4b of the Code of Virginia. Further, the panel's decision is binding. See Angle v. Overton, 235 Va. 103, 106, 365 S.E.2d 758, 759-60 (1988). Moreover, according to Zicca v. City of Hampton, 240 Va. 468, 397 S.E.2d 882 (1990), where the panel directs the employer to reinstate an employee to his/her former position, the employer must reinstate the employee to that position and cannot reassign the employee to circumvent the panel's directive. Id. at 471, 397 S.E.2d at 883.

In Zicca, an employee of the city was terminated from his position as a golf course superintendent because he purportedly made inappropriate remarks to his supervisor. After a hearing, a grievance panel directed the city to:

Return the grievant [Zicca] to his former position as Golf Course Superintendent with full back-pay less thirty (30) working days which will be shown as a disciplinary suspension in his record.

240 at 469, 397 S.E.2d at 882 (Emphasis added). When the employee returned to work, however, he was reinstated at his former position for only one day, then assigned to a temporary position at the City's Aerospace Park, and later transferred to a newly created

position of maintenance manager. The employee filed suit, asking that the city be required to return him to his former position as golf course superintendent. The trial court found that the city had complied technically with the decision of the grievance panel and dismissed the employee's suit. Id at 470, 397 S.E.2d at 883. (Emphasis added).

The employee appealed. On appeal, the Supreme Court of Virginia reversed, finding that the grievance panel's decision was binding on the city. Specifically, the Supreme Court of Virginia found that "the purported reinstatement [of Zicca] and reassignment, were merely subterfuges by which the city sought to circumvent the panel's binding decision." Id. at 471, 397 S.E.2d at 883.

Dillon's situation is plainly distinguishable from the Zicca case.

First, in Zicca, the grievance panel specifically directed the employer to return the employee to his former position. In this case, neither Panel 1 nor Panel 2 gave such a directive, but instead directed DOC to return Dillon to work. See Exhibits 10 and 11. Because there was no directive to reinstate Dillon to his former position and because management reserves the exclusive right to manage the affairs and operation of state government, management had the right to transfer or reassign Dillon. See § 2.1-114.5:1B(vii).

Second, in Zicca, there were no compelling reasons for a post-decision transfer. In this case, as discussed above and further



below, Dillon had (i) two active Group II offenses in his file once Panel 1 upheld DOC's disciplinary finding and (ii) three active Group II offenses in his file once Panel 2 upheld DOC's disciplinary finding. Each of these findings reflects Dillon's inability to effectively and efficiently operate the Sign Shop. With such a record, Dillon's reinstatement to his former position would have been inappropriate.

Third, in Zicca the reassignment was mere subterfuge. The facts in this case show otherwise. As previously mentioned, DOC terminated Dillon twice, March 25, 1992, and June 25, 1992. When Panel 1 overturned Dillon's March 25, 1992 termination, Dillon was unable to return to work because by then he had been terminated again, June 25, 1992, for another offense. When Panel 2 overturned Dillon's June 24, 1992 termination, his former position had been filled. DOC immediately reinstated Dillon on the payroll and he began receiving paychecks for no work. Finally, once suitable employment was available, it was offered to Dillon at the same pay grade as his former position.

Accordingly, the facts show that this case is distinguishable from Zicca. DOC has complied with the panels' decisions which required DOC to return Dillon to work.

B.

Compelling Reasons Necessitate Dillon's Transfer

1. Dillon is Incapable of Performing  
Supervisory Responsibilities

It would have been irresponsible for management to return Dillon to his former position considering Dillon's recent disciplinary offenses for which Dillon received (1) two sustained, active Group II Written Notices within a two year period upon the issuance of Panel 1's decision, and (2) three sustained, active Group II Written Notices within a two year period upon the issuance of Panel 2's decision.<sup>3</sup>

In situation 1 referenced above the offenses were related to failure to follow a supervisor's instructions. Each involved the unauthorized closing of the Sign Shop during normal work hours for personal benefit. As previously mentioned, the Sign Shop operates to manufacture signs for the Commonwealth and other clients. The unauthorized closures of the Sign Shop resulted in lost sales and delayed products from being shipped to costumers on a timely basis.

In situation 2 referenced-above, the third offense committed by Dillon dealt with improper management of plant operations specifically related to inmate payroll. As discussed previously, inmates employed at the Sign Shop during Dillon's supervision received incentive pay based on the number of signs they produced

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<sup>3</sup>Normally, two active Group II offenses result in termination. See Exhibit 12: Department of Personnel and Training Policies and Procedures Manual § X C.

and sold. Dillon was officially responsible for reporting the number of sales. Dillon over reported sales by \$432,630 or 137.7% from December, 1991, to March, 1992. See Exhibit 7, Attachment B. In fact, the DOC's Inspector General Report reference previously noted that "there was no evidence that the [sign shop] supervisor had verified the reported sales orders used to calculate the inmate payroll for the period questioned." See Exhibit 7F.

The fact that the former supervisor failed to perform such a basic, but important, function is illustrative of the manner in which Dillon ran the Sign Shop. Overstatements of this magnitude should have been detected by the former supervisor even without mathematical verification, just by being familiar with the volume (which was low) of actual activity in the plant during this period.

Moreover, the Sign Shop in Halifax County where Dillon was formerly employed is remotely located from its Richmond based overseer, VCE. As such, it is critical that supervisors like Dillon adhere to policies and procedures and perform their duties prudently so that plants such as the Sign Shop will function efficiently and effectively. As the above illustrates, Dillon is incapable of performing a supervisor's normal responsibilities in this environment.

## 2. Dillon is a Bad Example.

One of the benefits of the VCE division of the DOC is that it provides, through operations like the Sign Shop, on the job



training to inmates in an environment that simulates real world work experiences. Dillon's behavior in the shop is inconsistent with expected organizational norms and performance. He should be a model that inmates can emulate. Reinstatement would be a signal that employees can close shop and other operating units, engage in dysfunctional behavior, and/or fail to follow supervisor's instructions with virtual impunity. DOC does not wish to send this message to its employees. This will decrease productivity and performance across the DOC, further hurt sales and negatively impact profits and employment at VCE, and provide inmate employees with an erroneous model to follow that may hurt their future employment possibilities upon release.

3. The Position Was Filled  
Prior to Dillon's Reinstatement.

As previously mentioned, the Sign Shop Supervisor is responsible for operating the shop, to include supervising inmates employed in the shop. Because DOC removed Dillon from his former position March 1992, it was necessary to fill the position to assure the shop's operation. After extensive recruiting,<sup>4</sup> DOC hired a supervisor for the Sign Shop on December 1992. The panel's January 4, 1993 decision directing DOC to return Dillon to work came after Dillon's former position was filled. Accordingly, Dillon could not be reinstated to his former position.

---

<sup>4</sup>The position was advertised three times before DOC filled it.

Considering the aforementioned reasons for Dillon's reassignment, which are set forth in argument A, management was compelled to reassign Dillon.

C.

DOC Has Complied With the Panels' Directive  
by Giving Dillon Suitable Employment.

The DOC's efforts to reinstate Dillon into an appropriate position were based in part on its judgment that he should not return to his former position due to his inability to supervise the Sign Shop properly.

In reviewing Dillon's employable skills, DOC determined Dillon had job training relating to, among other things, building trades. Moreover, DOC had experienced problems with the timely completion and quality construction of newly built DOC facilities. Accordingly, DOC created a building inspector position to address the construction problems referenced above. Because Dillon's trade skills and DOC's need to oversee the construction of DOC buildings were compatible, DOC offered Dillon the building inspector position.

Should a similar position become available at a location closer to Dillon's home, Dillon will be considered for it.

In summary, by reinstating Dillon to a suitable position, DOC has complied with the panels' decisions.

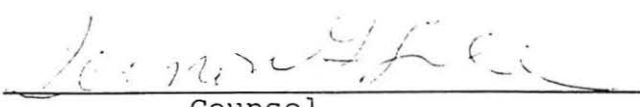
IV. CONCLUSION

For the reasons stated herein, DOC asks this Court to uphold its actions and deny petitioner's request.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS

By:

  
Counsel

Stephen D. Rosenthal  
Attorney General of Virginia

Milton K. Brown, Jr.  
Deputy Attorney General


Neil A.G. McPhie  
Senior Assistant Attorney General  
Bar I.D. No. 22048

Pamela F. Boston, Bar I.D. No. 16730  
Ternon G. Lee, Bar I.D. No. 30023  
Assistant Attorneys General

Office of the Attorney General  
101 North Eighth Street  
Supreme Court Building  
Richmond, VA 23219  
(804) 786-3149

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondent's Pre-trial Memorandum of Law was mailed, first-class, postage prepaid, this 22<sup>nd</sup> day of July, 1993, to Robert P. Geary, Esquire, 21 Center, Suite 202, 2025 East Main Street, Richmond, VA 23223.

  
DJH\828-P20\224







Form 129-01-004 (Rev. 31-86)

## WRITTEN NOTICE

EXHIBIT

2

## Section I

Employee's Name James P. DillonDate of Offense June 27, 28 & 29Agency Bureau of Industrial EnterprisesDate of Issuance July 13, 1990Supervisor's Signature Herbert A. ParrThis notice will become inactive July 13, 1993

## Section II

Type of Offense: (Check one)

Group I \_\_\_\_\_

Group II X

Group III \_\_\_\_\_

Nature of Offense and Evidence: (Describe briefly the offense and give an explanation of the evidence).

Closing an operating shop during normal work hours and days for approximately 21 days without authorization from supervision, leaving work site without proper notice to supervision during work hours, and failure to report to work as scheduled without proper notice to supervision. (Employee did not dispute offense during verbal discussion July 10, 1990.)

## Section III

Disciplinary Action in addition to written notice:

Suspension from 07/16/90 to 07/19/90  
Date DateReturn to work 8 AM-07/19/90  
Date/Time

Removal \_\_\_\_\_

Effective Date

Due to: Termination, Demotion, Transfer  
(circle appropriate action)

## Section IV

Mitigating Circumstances: Describe any mitigating circumstances that were considered when determining the above corrective action.

Quality of shop productionLength of service

## Section V Notice to Employee

It is expected that the condition noted above will be corrected immediately. In the event this condition is not corrected, or another offense occurs, you may be subject to further disciplinary action as outlined in the Standards of Conduct and Performance Policy.

## Section VI

Employee's Signature

James P. Dillon

Date

7-13-90

If you wish to appeal the corrective action noted above, you may do so under the provisions of the State Grievance Procedure provided for this purpose.

25

(Your signature is intended only to acknowledge receipt of the notice; it does not imply agreement or disagreement with the notice itself. If you refuse to sign, someone in a supervisory position within the agency will be asked to initial the form indicating that you received a copy of the form.)

## WRITTEN NOTICE



## Section I

Employee's Name James R. Dillon 231-33-5827 Date of Offense March 23 & 24, 1992  
 Agency Bureau of Industrial Enterprises Date of Issuance March 25, 1992  
 Supervisor's Signature [Signature] This notice will become inactive March 25, 1995

## Section II

Type of Offense: (Check one)

Group I \_\_\_\_\_ Group II XX Group III \_\_\_\_\_

Nature of Offense and Evidence: (Describe briefly the offense and give an explanation of the evidence).  
Failure to follow supervisor's instructions, perform assigned work or otherwise  
comply with applicable established written policy. Failed to report to work on  
March 23 and 24, 1992, after being verbally instructed to report to work by three  
levels of management and also by written memo from his supervisor for which he  
acknowledged receipt in writing.

## Section III

Disciplinary Action in addition to written notice:

Suspension from \_\_\_\_\_ to \_\_\_\_\_ Date Date Return to work \_\_\_\_\_ Date/Time

Removal March 25, 1992 11:00 a.m. Due to Termination Demotion, Transfer  
 Effective Date (circle appropriate action)

## Section IV

Mitigating Circumstances: Describe any mitigating circumstances that were considered when determining the above corrective action.

## Section V- Notice to Employee

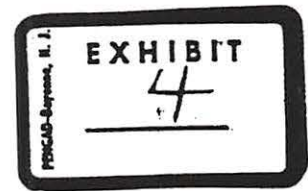
It is expected that the condition noted above will be corrected immediately. In the event this condition is not corrected, or another offense occurs, you may be subject to further disciplinary action as outlined in the Standards of Conduct and Performance Policy.

Section VI- Employee's Signature [Signature] Date 3-25-92

If you wish to appeal the corrective action noted above, you may do so under the provisions of the State Grievance Procedure provided for this purpose.

(Your signature is intended only to acknowledge receipt of the notice; it does not imply agreement or disagreement with the notice itself. If you refuse to sign, someone in a supervisory position within the agency will be asked to initial the form indicating that you received a copy of the form.)





COMMONWEALTH of VIRGINIA

OFFICE OF  
INSTITUTION SUPERINTENDENT

Department of Corrections  
Division of Institutions  
Halifax Correctional Unit #23

P. O. BOX 1733  
HALIFAX, VA 23053

MARCH 19, 1992

I HEREBY ACKNOWLEDGE RECEIPT OF THIS ELECTRONIC MESSAGE FROM  
MR. GENE ZIMMERMAN ON THIS DATE.

JIM DILLON  
HALIFAX SIGN SHOP - Corrections Enterprises

3-19-92

DATE

W. J. TOWNLEY  
SUPERINTENDENT

3-19-92

DATE



# COMMONWEALTH of VIRGINIA

TELEPHONE  
ADMINISTRATION 804-674-3600  
CITIZEN SERVICE 804-674-3160

*Department of Corrections*  
*Division of Administration*  
*Virginia Correctional Enterprises*

MAILING ADDRESS  
120 WYCK STREET  
RICHMOND VIRGINIA 23225  
or  
P O BOX 27423  
RICHMOND VIRGINIA 23261-7423

March 19, 1992

TO: James R. Dillon

FROM: Gene Timmerman

Your request to take Annual Leave on March 23 and 24, 1992, is denied.

I discussed with you on March 16, 17 and 18 that I could not find anyone to work in your place.

Dave Addington also advised you that he could not find anyone to work in your place.

You called me this morning and asked again. I told you that I could not find anyone to work in your place; therefore, your request for leave was still denied.

You then told me that you were going to take leave next Monday and Tuesday anyway. Furthermore, you would shut the shop down today, and I could run the damn thing.

Jim, I caution you. If you close the shop or fail to report without permission from this office, I will not hesitate to recommend that disciplinary action be taken against you.



DEPARTMENT OF CORRECTIONS  
INTEROFFICE MEMORANDUM

Date: 19-Mar-1992 11:38am EST  
From: Mary M. Wolfe  
WOLFEMM  
Dept: Correctional Enterprises  
Tel No: (304) 674-3603

TO: Hazel B. Conner

( CONNERHB )

Subject: Memo to Dillon

Per Mr. Zimmerman's conversation with Mr. Townley earlier today.



# COMMONWEALTH of VIRGINIA

TELEPHONE  
ADMINISTRATION 804-674-3600  
CUSTOMER SERVICE 804-674-3760

*Department of Corrections*  
*Division of Administration*  
*Virginia Correctional Enterprises*

MAILING ADDRESS  
120 WYCK STREET  
RICHMOND VIRGINIA 23225  
P O BOX 27423  
RICHMOND VIRGINIA 23261-7423

March 20, 1992

## Memorandum to File:

From: David S. Jones

On the afternoon of March 19th, I spoke with Jim Dillon, Manager of the Halifax Sign Shop, regarding his intent to be off on Monday and Tuesday of the following week. David Addington was present.

Mr. Dillon indicated that due to outside employment he needed to attend a training class in Charlottesville. His foreman was in the hospital and there was no one to run the shop. I advised him that Mr. Zimmerman and Mr. Addington had made me aware of his request but, regrettably, we had no one who could stay and keep the shop open.

Mr. Dillon then suggested that the officers who normally work in the shop be allowed to run it during his absence. I declined this suggestion because of its impropriety and suggested to Mr. Dillon that the company paying for the training should attempt to reclaim their money and reschedule for a later date.

I also asked Mr. Dillon if he was aware of the policy regarding outside employment and, if so, did he have authorization to have such employment. He indicated he was not aware of the requirement.

Before closing the conversation, I again instructed Mr. Dillon that it would be necessary for him to remain at Halifax and keep the shop open and it was unacceptable to close it down. He thanked me for my time and the conversation ended.

March 20th:

Again on the afternoon of March 20th, Mr. Dillon called shortly after Vi Bates made me aware of his continuing concern over this situation. He indicated that the situation was pushing him to a point of decision; that he was again asking that he be allowed to attend training as a resident manager of a Federal Housing project the following week. I again reiterated the instructions I had provided the previous day.

Mr. Dillon expressed anger that Gene Zimmerman, his supervisor, and Mr. Addington had not done more to alleviate this problem and that he was aware of active group offenses in his file. Mr. Dillon further stated that it was his intent not to be at the shop on Monday and Tuesday and that Mr. Zimmerman could proceed to issue a Group II or do whatever else he had to do. I again informed Mr. Dillon that he was to be at the shop on Monday and Tuesday, that we could not close it down. He then responded that I am notifying you that I will not be in the shop on Monday and Tuesday and you do what you have to do. He then hung up.

Subsequent checks with the Personnel Office and Messrs. Zimmerman and Addington revealed that Mr. Dillon had not submitted a leave slip for the period in question.

## WRITTEN NOTICE

Please print or type the information requested



(Rev. 8-90)

### Section I

Employee's Name James R. Dillon

Date of Offense 11/91 - 3/92

Agency Bureau of Industrial Enterprises

Date of Issuance 6-24-92

Date this notice will become inactive 6-24-95

Issued By: J. Gene Zimmerman, Group Manufacturing Manager  
(name) (title)

(signature)

### Section II

David S. Jones, Corrections Enterprises Director

Type of Offense: (Check one)

Group I \_\_\_\_\_ Group II X Group III \_\_\_\_\_

Nature of Offense and Evidence: Briefly describe the offense and give an explanation of the evidence.

Failure to adequately perform assigned work and comply with applicable written pay plan for shop  
During the period of November 1991 through March 1992, numerous errors were made in reporting  
shop production figures used in the computation of the shop's Inmate Payroll. Discrepancies  
included: (1) Using new metal prices when recycled metal was actually used. (2) Using full  
amount of sales order when only a partial shipment had been made. (3) Duplicating amount of some  
sales orders on more than one month's production listing. These discrepancies resulted in  
inmates being overpaid.

### Section III

Disciplinary action taken in addition to issuing written notice:

Suspension from \_\_\_\_\_ through \_\_\_\_\_  
Date Date

Return to work \_\_\_\_\_  
Date/Time

Demotion/Lateral Transfer to \_\_\_\_\_ Effective \_\_\_\_\_

Position/Location

(Circle above to indicate which action is being taken)

Removal June 24, 1992  
Effective Date

### Section IV

Mitigating Circumstances: Describe any mitigating circumstances that were considered when determining the above corrective action.

### Section V Notice to Employee

It is expected that the situation described above will be corrected immediately. In the event this situation is not corrected, or another offense occurs, you may be subject to further disciplinary action as outlined in the Standards of Conduct and Performance Policy.

### Section VI Employee's Signature Sent via Certified Mail

Date June 24, 1992

Article No. P 091 166 6'

(Your signature is intended only to acknowledge receipt of the notice. It does not imply agreement or disagreement with the notice itself. If you refuse to sign, someone in a supervisory position within the agency will be asked to initial the form indicating that you received a copy of the form.)

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If you wish to appeal the corrective action noted above, you may do so under the provisions of the Employee Grievance Procedure provided for this purpose.





DEPARTMENT OF CORRECTIONS  
Office of the Inspector General

REPORT OF INVESTIGATION



SUBJECT(S) OF INVESTIGATION ( ) EMPLOYEE INVESTIGATION NUMBER  
Patrick Rhodes #174792 (X) INMATE 9208112600TH  
Curtis Jackson #168733 ( ) NONEMPLOYEE

VICTIM(S) TYPE OF INVESTIGATION  
Commonwealth of Virginia  
( ) EMPLOYEE ( ) MURDER (X) FRAUD  
( ) INMATE ( ) ASSAULT ( ) SEX OFFENSE  
( ) NONEMPLOYEE ( ) THEFT ( ) ESCAPE  
( ) DRUGS ( ) NON-CRIMINAL  
( ) OTHER

TYPE OF REPORT  
( ) PRELIMINARY  
( ) SUPPLEMENTAL (X) FINAL

LOCATION DISTRIBUTION:  
Halifax Sign Shop See Attached Cover Sheet

POSITION AND GRADE (if applicable) RACE SEX DATE OF BIRTH

INTRODUCTION

This investigation was initiated after an internal audit of the Halifax Sign Shop revealed that the monthly sales records were inflated, which resulted in over-payment to the inmate workers. (Exhibit A)

DETAILS OF INVESTIGATION

The inmates' pay at the Halifax Sign Shop was based upon an incentive

REPORT SUBMITTED BY: TITLE: DATE OF REPORT  
*Thomas M. Quigley*  
T. M. QUIGLEY INVESTIGATOR November 12, 1992  
REPORT REVIEWED BY: TITLE: DATE OF REVIEW  
*Kenneth Moore*  
KENNETH MOORE CHIEF OF INTERNAL AFFAIRS 11-16-92 mc



program. A formula, that incorporated the monthly sales volume shipped and the yearly sales volume average, was used to determine the hourly rate. The greater the monthly sales volume shipped, the greater the hourly rate. The audit revealed that between December 1991, and March 1992, the inmate pay was overstated in the amount of \$4,884.

NOTE: Virginia Correctional Enterprises, at Halifax, consisted of three sign shops:

- The "071" sign shop - sign blanks (STOP, YIELD, ROAD etc.)
- The "151" sign shop - sign making
- The "152" sign shop - silk screen

The bulk of the production at the Halifax Sign Shop came out of the "071" shop. This shop would cut sign blanks primarily for the Virginia Department of Transportation. Actual sales during the aforementioned period were declining significantly due to the fact that the Department of Transportation was no longer going to use Correctional Enterprises for their sign blanks. As a result of this change, the "071" shop was being phased out.

NOTE: This was common knowledge among all who were employed at the Halifax Sign Shop. (Exhibit B)

On October 2, 1992, an interview was conducted with Mr. Joseph Gene Zimmerman, Group Manager, Virginia Correctional Enterprises. Zimmerman supervised Mr. James Dillon, Shop Supervisor, Halifax Sign Shop, for the last three to four years. Sometime, back in March of this year, Dillon requested two days off and it was denied. Although this request was denied, Dillon failed to report for work and as a result, he was terminated. Zimmerman was then directed to open the sign shop. While reviewing paperwork in Dillon's office, Zimmerman discovered what appeared to be discrepancies with certain entries. In particular, there were duplicate entries with regard to the use of recycled metal versus the use of new metals. There is a higher pay scale for the use of new metals. New metals are easier to handle and therefore, inmates are able to produce sign blanks faster. This was the first time that any discrepancies arose while Zimmerman supervised Dillon. Zimmerman concluded his interview by stating that he never monitored the inmate payroll system, and he was not required to sign or review any documents regarding how the inmates were paid. (Exhibit C)

On September 22, 1992, an interview was conducted with W. L. Moss, Shop Foreman. Until the closing of the 071 sign shop, Moss was the foreman for the production of sign blanks. Moss supervised the inmates who made the sign blanks, and he maintained the equipment that was used in the manufacturing of these signs. Moss did not handle any paperwork. Moss stated that Dillon and the inmate clerk did all of the paperwork, including the inmate payroll which was calculated on an incentive





basis. The paperwork was then signed by Dillon, and that is the way business had been conducted since 1980. Moss concluded his interview by stating that he was on medical leave during March and April of this year. (Exhibit D)

On November 9, 1992, an interview was conducted with Barry Boothe, Shop Manager. Boothe had been temporarily assigned to the Halifax Sign Shop since March 30, 1992. While reviewing the April inmate payroll, he discovered a gross overstatement of the months sales volume shipped. Boothe questioned Curtis Jackson, Inmate Clerk, regarding the payroll, but Jackson was not very knowledgeable and was not sure how he had accomplished this task. Boothe then realized that the payroll was conducted/calculated by inmates in the shop. (Exhibit E)

On October 14, 1992, an interview was conducted with inmate Curtis Jackson, #168733. Jackson was an Inmate Clerk at the Halifax Sign Shop from January 1992, until June 1992, when he was transferred to the James River Correctional Center. His responsibilities were to log in new work orders, make copies and distribute them to the lead men in the 071 shop, the 151 shop, and the 152 shop for production. Upon completion, Jackson would log the orders back in as "completed". Also if these orders were not completed, Jackson would so indicate in the log. Jackson would get the work orders from Dillon, who obtained them from outside agencies. In addition, on the 15th day of each month, Jackson would compile all completed work orders and calculate them for the total sales for the month. This paperwork was prepared for Dillon's signature at first, and then Boothe's signature afterwards. Jackson stated that he was in training, for the clerk's position, from January until mid-February when inmate Rhodes was paroled. Jackson concluded his interview by stating that under the inmate pay system, all of the inmates were paid the same, whether they produced the sign blanks or did the paperwork. Jackson would not physically check to see if the production of these sign blanks were completed. (Exhibit F)

On October 20, 1992, an interview was conducted with Patrick Rhodes, who was assigned as an Inmate Clerk at the Halifax Sign Shop from July 1991, until he was paroled on February 14, 1992. His responsibilities included making up cut sheets from the sales orders and giving these sheets to the inmates on the floor who would then cut the sign blanks, punch the necessary holes, and otherwise prepare these orders for shipment. Rhodes would not always verify if these orders were completed. Rhodes would not question the inmates or argue with them. He would accept a verbal confirmation that these orders were completed and ready for shipment. Rhodes stated that inmate pay was based upon the sales volume produced and shipped for the month. Rhodes further stated that Dillon would allow the paperwork to show that an order was ready for shipment, even though it was not completed so that the inmates could be paid. This would occur around the 15th of the month when the inmate payroll was computed. Rhodes would handle the inmate





time cards and type up part of the figures when payroll was due. Rhodes concluded his interview by stating that the paperwork was handled poorly, and that sometimes orders were duplicated. All the paperwork was prepared for Dillon to sign. According to Rhodes, the inmates basically ran the shop and there was one problem after another. (Exhibit G)

On October 19, 1992, an interview was conducted with inmate Cletis Swift, #165240. Swift worked at the Halifax Sign Shop for approximately two years and was assigned as a cutter, primarily for the 071 shop. Swift would get a copy of the order form and a cut sheet from the Inmate Clerk. From time to time, Swift would get together with Dillon or Moss and determine what would be placed on the cut sheet. This is the only paperwork that Swift got involved with. Once Swift completed the necessary cuts, he would give the cut sheet back to the Inmate Clerk. Sometimes paperwork would be misplaced and Dillon would be unable to find it. The inmates in the shop would do all the paperwork. Dillon would frequently allow an order form to show that the job was completed, even if it was not, so that the inmates would get paid. Swift concluded his interview by stating he realized that his salary remained the same even though the production of sign blanks declined, and that he had no reason to question it. (Exhibit H)

On November 11, 1992, an interview was conducted with inmate Jerry Divens, #130001, who was assigned to the Halifax Sign Shop from April 1990, until April 1992, as the quality control man. Divens would get a cut sheet from the Inmate Clerk and take it to the floor and see that the orders were filled. On the 15th of the month, the payroll would be calculated. If something on a particular order was not completed, Dillon would allow this order to indicate that it was completed, so that the inmates could get paid. Usually within the next few days the order would be completed. Dillon would allow the inmates to do all the paperwork and as he recalls, Dillon would also sign that paperwork without verifying it. The production of sign blanks were decreasing, yet the inmates pay remained the same. Divens was only concerned with the quality control of these signs. Divens concluded his interview by stating that there were several Inmate Clerks assigned to the sign shop when he worked there, and that half of the inmates were concerned about the money they were making. (Exhibit I)

On October 26, 1992, an interview was conducted with Karen Chenault. Chenault was a Fiscal Technician, assigned to the Richmond Offices of Correctional Enterprises, until September 1992. Monthly, Chenault would receive the inmate time cards, a listing of the sales order numbers, and their dollar value from the sign shops at Halifax. This information would be forwarded to her by James Dillon. Chenault would only check to see if the addition was correct. If she detected any errors in the paperwork, she would call the sign shop and have them make the necessary changes. In addition, Chenault would calculate the





hours from the inmate time cards and see that the inmates were properly compensated based on a formula of hours worked and the dollar value of the sign blanks produced. Chenault concluded her interview by stating that at no time did she notice any irregularities in the paperwork she received. (Exhibit J)

On October 30, 1992, Attorney Robert Geary was contacted at the request of James Dillon. Geary stated that Dillon did not wish to be interviewed until after his next panel hearing. As of the writing of this report, a date for that hearing has not been scheduled. (Exhibit K)

#### OTHER INFORMATION

The "071" sign shop has been officially phased out.

The inmate incentive pay program has since been disbanded. Inmates are now paid on a flat hourly rate.

During the aforementioned period, there were approximately twenty-three inmates assigned to the Halifax Sign Shop and they collectively benefited from the incentive pay program that was in place.

#### SUMMARY

Investigation revealed that during the aforementioned period, the overall production organization was poor. There was no tracking system in place to determine the status of work/sales orders and there was entirely too much paperwork on the floor. The filing and retrieval system was inadequate. In all, it was difficult at best to find any paperwork. The inmates, obviously acting in concert, ran the sign shop, controlled the paperwork, and prepared it for Dillon's signature. Dillon in return signed the monthly reported sales, without verifying it, and forwarded it to Correctional Enterprises where only the addition was reviewed. There was virtually no check and balance system in place; therefore, allowing this fraud to be perpetrated. Due to the fact that records were poorly maintained, coupled with the manpower turnover in the shop, it is difficult to pinpoint an individual inmate(s) who could be held responsible.

FINDING: INMATES FOR THE VCE HALIFAX SHOPS WERE OVERPAID BY \$4,884 (91.1%) FOR A FOUR MONTH PERIOD FROM DECEMBER 1991 THROUGH MARCH 1992. INMATE PAY FOR THE PERIOD SHOULD HAVE BEEN \$5,362 INSTEAD OF \$10,246, COMPUTED AS FOLLOWS:

\$10,246 VCE HALIFAX INMATE PAY (12/91 THRU 3/92)  
- 5,362 PAY RECALCULATED FOR THE SAME PERIOD  
\$ 4,884 OVERPAYMENT



SINCE INMATE PAY WAS INCENTIVE BASED, IT WAS OVERSTATED 137.7% FOR THE PERIOD MOSTLY BY REPORTING INFLATED SALES ORDERS SHIPPED BY THE 071 SIGN SHOP TO THE INMATE PAYROLL SECTION. ACTUAL SALES DURING THIS PERIOD WERE DECLINING SIGNIFICANTLY DUE TO THE SIGN SHOP BEING PHASED OUT. THE HALIFAX REPORTED SALES WERE COMPARED TO THE SYMAN REPORTED SALES THAT WERE COMPILED BY THE COST ACCOUNTING SECTION WITH THE FOLLOWING RESULTS:

DATE	HALIFAX REPORTED SALES	SYMAN REPORTED SALES	DIFFERENCE	PERCENT
DEC 91	172,944	106,669	66,275	62.1%
JAN 92	235,711	106,176	129,535	122.0%
FEB 92	211,526	68,438	143,088	209.1%
MAR 92	126,531	32,799	93,732	285.8%
TOTALS	746,712	314,082	432,630	137.7%

THERE WAS NO EVIDENCE TO INDICATE THAT THE VCE SHOP SUPERVISOR AT HALIFAX HAD VERIFIED THE REPORTED SALES ORDERS USED TO CALCULATE THE INMATE PAYROLL FOR THE PERIOD QUESTIONED.

STANDARD: VCE methodology for calculating Inmate pay.

RECOMMENDATION: Supporting documentation that is used to determine inmate pay must be verified and properly documented by the Shop Supervisor.

NOTE: The VCE Halifax Shop Supervisor was terminated on March 25, 1992, for failing to report to work after being directed to open the shop. According to the Chief Deputy Director, he was terminated a second time on June 24, 1992, for numerous errors in reporting shop production figures used to compute inmate payroll.



**RECEIVED**

FORM A

COMMONWEALTH OF VIRGINIA  
EMPLOYEE GRIEVANCE PROCEDURE

MAY 8 1992

GRIEVANCE

EXHIBIT

8Office of the Director  
Department of Corrections

EMPLOYEE JAMES R. DILLON Shop SUPERVISOR 711  
Name Job Classification Agency  
CREATION UNIT 25 HALIFAX, VIRGINIA 564-575-5276 914-575-5209  
Work Facility Geographic Location Work Phone No. Home Phone No.

DATE GRIEVANCE OCCURRED MARCH 25, 1992 NATURE OF GRIEVANCE TERMINATION of EMPLOYMENT  
I DO NOT FEEL THAT I HAVE BEEN FAIRLY TREATED  
IN THIS PROCESS THE TWO FOLLOWING PERSONS I GAVE MY  
SUPERVISOR 13 DAYS NOTICE OF MY NEED TO LEAVE HIS COMMENTS  
WE CAN'T SHUT SHOP DOWN BUT I'LL SEE WHAT I CAN DO  
TO GET SOMEONE TO COVER FOR YOU.

RELIEF REQUESTED REINSTATEMENT WITH FULL PAYMENT OF BENEFITS  
HAVE LESS TIME FOR WORK.

**MANAGEMENT STEPS****STEP 1**

- A. ORAL PRESENTATION TO IMMEDIATE SUPERVISOR 3-31-92 SUPERVISOR'S REPLY 4-7-92  
Date Date
- B. WRITTEN PRESENTATION  
Submitted to First-Step Respondent (date) 4-7-92 First-Step Respondent's Written Reply You have presented  
no new evidence that would justify your taking leave (which had been denied  
verbally and in writing) and closing the shop without authorization.  
The Group II remains as written.
- Signature (First-Step Respondent) Gene Zimmerman Date 4-13-92  
Name (print) Gene Zimmerman Telephone # 674-3680
- C. EMPLOYEE'S RESPONSE  
☒ I do not accept this reply and wish to advance my grievance to the next step.  
☐ I do not accept the nongrievable reply and request that the agency forward my appeal to the Dept. of Employee Relations Counselors.  
☐ I consider this grievance concluded.
- Employee's Signature James R. Dillon Date 4-16-92

**STEP 2**

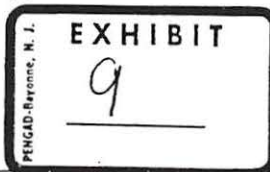
- A. SUBMITTED TO SECOND-STEP RESPONDENT MAILED 4-16-92 B. SECOND-STEP MEETING April 27, 1992  
Date Date
- C. SECOND-STEP RESPONDENT'S REPLY Mr. Dillon presented no information relevant to his  
failure to follow instructions from three levels of management. He admits that  
he failed to follow instructions and, therefore, the Group II stands as issued.
- Signature (Second-Step Respondent) David S. Jones Date May 4, 1992  
Name (print) David S. Jones Telephone # 804-674-3601
- D. EMPLOYEE'S RESPONSE  
☒ I do not accept this reply and wish to advance my grievance to the next step  
☐ I do not accept the nongrievable reply and request that the agency forward my appeal to the Dept. of Employee Relations Counselors.  
☐ I consider this grievance concluded.



COMMONWEALTH OF VIRGINIA  
EMPLOYEE GRIEVANCE PROCEDURE

GRIEVANCE

FORM A



EMPLOYEE Dillon, James R. Supervisor - B INDUSTRIAL ENTERPRISES  
Name Job Classification Agency  
Halifax Sign Shop Field Unit 23 575-5209  
Work Facility Geographic Location Work Phone No. Home Phone No.

DATE GRIEVANCE OCCURRED 6-24-92 NATURE OF GRIEVANCE I FEEL THIS WRITTEN NOTICE IS TOTALLY UNFAIR. THE ALLEGED ERRORS WERE NOT ADDRESSED TO ME UNTIL 60 DAYS AFTER MY TERMINATION, MARCH 28, 1992. I ASK FOR THE PAPERWORK FROM MY SHOP WHICH WAS DENIED. I WAS OUT OF THE SHOP ON SICK LEAVE DURING THE MONTH OF DEC. WHY WAS THIS NOT ADDRESSED IN JAN.?  
RELIEF REQUESTED REMOVAL OF CHARGE - REINSTATEMENT - COMPENSATION FOR ALL TIME LOSS AND EXPENSES INCURRED.

MANAGEMENT STEPS

A. ORAL PRESENTATION TO IMMEDIATE SUPERVISOR 7-10-92 SUPERVISOR'S REPLY 7-17-92  
Date Date  
B. WRITTEN PRESENTATION  
Submitted to First-Step Respondent (date) 7-20-92 First-Step Respondent's Written Reply As soon as probable cause was found, I requested that the inmate payroll records be audited. The charge was issued in a timely manner once the audit had been completed. You were granted an opportunity to review all the records you specified. You have not presented any evidence that would counter the charge as written. Therefore, the charge stands as written.  
Signature (First-Step Respondent) J. G. Zimmerman Date July 28, 1992  
Name (print) J. G. Zimmerman Telephone # 674-3681

C. EMPLOYEE'S RESPONSE

- ☒ I do not accept this reply and wish to advance my grievance to the next step  
☐ I do not accept the nongrievable reply and request that the agency forward my appeal to the Dept. of Employee Relations Counselors  
☐ I consider this grievance concluded.

Employee's Signature James R. Dillon Date 7-30-92

STEP 2

A. SUBMITTED TO SECOND-STEP RESPONDENT August 3, 1992 B. SECOND-STEP MEETING August 10, 1992  
Date Date

C. SECOND-STEP RESPONDENT'S REPLY After meeting with you on August 10, 1992, I reviewed the Employee Standards of Conduct Written Notice and the supporting documentation. You did not present any information during our meeting that would justify a change in the charge as written. Therefore, the charge stands as written.

Signature (Second-Step Respondent) David P. Addington Date August 17, 1992  
Name (print) David P. Addington Telephone # (804) 674-3622

D. EMPLOYEE'S RESPONSE

- ☒ I do not accept this reply and wish to advance my grievance to the next step  
☐ I do not accept the nongrievable reply and request that the agency forward my appeal to the Dept. of Employee Relations Counselors  
☐ I consider this grievance concluded.

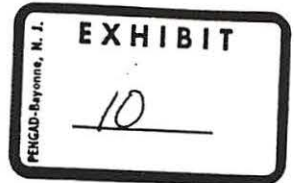
Employee's Signature James R. Dillon Date 8-19-92





Exhibit L

FORM B

COMMONWEALTH OF VIRGINIA  
EMPLOYEE GRIEVANCE PROCEDUREPANEL DECISION

James R. Dillon Virginia Correctional Correctional Unit 23  
Employee Agency Enterprise Work Facility

PLACE OF HEARING 416 W. Franklin Date 10-20-92  
Richmond, VA 23220ISSUE(S) QUALIFIED FOR HEARING Termination of employment,  
-following Group II Written Notice

The panel may by majority vote uphold or reverse the action which is the basis for the grievance or, in appropriate circumstances, modify the action. The panel decision, however, must be consistent with written policy.

PANEL DECISION The panel upholds the Group II Written  
Notice, but instead of termination recommends 30-day  
suspension of employment without pay + Back pay for a  
period of 3 mos.

#annulment  
3/25/92

REASON FOR PANEL DECISION (Attach additional sheets if more space is needed)

The panel felt that the Written Notice was unwarranted.  
However, because of mitigating circumstances felt that  
suspension was the more appropriate discipline. Mitigating  
circumstances include 1) length of Service; 2) work  
dedication; 3) lack of contingency planning by agency for  
absence of management; & 4) arbitrariness of agency  
decision in bringing in replacement.

PANEL VOTE (X) 3-0 ( ) 2-1 ( ) 2-0

SIGNATURES:

[Signature]  
Employee Panel Member

[Signature]  
Agency Panel Member

[Signature]  
Panel Chair

41

DATE: 10/20/92

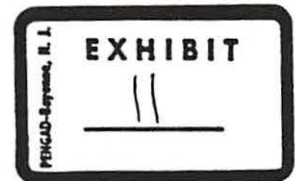
Note: Complete the reverse side of this form.

FORM B



COMMONWEALTH OF VIRGINIA  
EMPLOYEE GRIEVANCE PROCEDURE

PANEL DECISION



JAMES R. DILLON

Employee

BUREAU OF INDUSTRIAL  
INTERPRETATION AGENCY

HALL FAX CORPORATION  
Work Facility

PLACE OF HEARING Richmond Date 1-4-93

ISSUE(S) QUALIFIED FOR HEARING \_\_\_\_\_

The panel may by majority vote uphold or reverse the action which is the basis for the grievance or, in appropriate circumstances, modify the action. The panel decision, however, must be consistent with written policy.

PANEL DECISION The Panel upholds the finding that Mr. Dillon did not commit a Group II violation. The Panel decision is to suspend Mr. Dillon for thirty (30) days. The Panel overturns the Agency's termination of Mr. Dillon. The 30 Day

REASON FOR PANEL DECISION (Attach additional sheets if more space is needed)

suspension  
shall begin immediately on the date that he  
could have returned to work but for this Group II offense.  
The reason for overruling the termination and ordering a 30 day  
suspension was certain mitigating circumstances presented  
at the hearing.

PANEL VOTE (X) 3-0 ( ) 2-1 ( ) 2-0

SIGNATURES:

[Signature]  
Employee Panel Member

James M. [Signature]  
Agency Panel Member

William A. [Signature]  
Panel Chair

Exhibit E

HOUSE, DAVIDSON & TELEGADAS

ATTORNEYS AT LAW

KOGER EXECUTIVE CENTER

8100 THREE CHOPT ROAD

JEFFERSON BUILDING, SUITE 101

RICHMOND, VIRGINIA 23229

(804) 285-8601

MAILING ADDRESS

POST OFFICE BOX K-200

RICHMOND, VIRGINIA 23288

MEREDITH A HOUSE  
WILLIAM S DAVIDSON  
FROST B TELEGADAS

February 16, 1993

Mr. H. Paul Broughton,  
Administrator  
Employee Relations and  
Training  
Commonwealth of Virginia  
Department of Corrections  
P. O. Box 26963  
Richmond, VA 23261

Mr. James R. Dillon  
Cavalier Apartments, No. 7-A  
South Boston, VA 24592

Mr. Jim Sisk,  
Assistant Warden Treatment  
Virginia Correctional Center  
for Women  
P. O. Box 1  
Goochland, VA 23063

Ms. Dorthula H. Powell-Woodson  
Director  
Commonwealth of Virginia  
Department of Personnel and  
Training  
101 N. 14th Street  
Richmond, VA 23219

Mr. Don Madrey, Legal  
Assistant Senior  
Attorney General's Office  
101 North 8th Street  
Richmond, VA 23219

Mr. Mark Alderman,  
Regional Sign Shop Coordinator  
Virginia Department of  
Transportation  
1401 East Broad Street  
Richmond, VA 23219

Robert P. Geary, Esq.  
21 Centre, Suite 202  
2025 East Main Street  
Richmond, VA 23223

Ms. Phyllis C. Katz, Director  
Commonwealth of Virginia  
Department of Employee  
Relations Counselors  
700 E. Franklin Street  
Suite 910  
Richmond, VA 23219

Ms. Beatrice L. Anderson  
Employee Relations Specialist  
Commonwealth of Virginia  
Department of Corrections  
P. O. Box 26963  
Richmond, VA 23261

Ladies and Gentlemen:

I have now heard from both Mr. Sisk and Mr. Alderman. By a two to one vote, the panel decision is that Mr. Dillon is entitled to no back pay whatsoever. Should you have any questions, please do not hesitate to contact me.

Yours very truly,

2-17-93  
cc David Jones  
Mary Wolfe

Bill

William S. Davidson





DEPARTMENT OF PERSONNEL AND TRAINING  
POLICIES AND PROCEDURES MANUAL



POLICY NO.: 1.05  
ISSUE DATE: 09-18-89  
SUPERSEDES: 08-01-85

SUBJECT: STANDARDS OF CONDUCT  
AND PERFORMANCE

SECTION: GENERAL POLICIES

workdays. A fourth active written notice shall normally result in removal.

NOTE: Mitigating circumstances may justify the use of demotion, suspension for up to 30 workdays, and/or transfer as an alternative to removal (see Article VII).

3. A written notice for a Group I offense shall remain "active" for two years from the date of issuance (see Article XIII).

X. SECOND GROUP OFFENSE (GROUP II)

- A. These offenses include acts and behavior which are more severe in nature and are such that an additional Group II offense should normally warrant removal.

- B. Group II offenses include, but are not limited to:

- o Failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy.
- o Violating safety rules where there is not a threat of bodily harm.
- o Reporting to work when impaired by or under the influence of alcohol, or the unlawful use of controlled substances.
- o Leaving the work site without permission during working hours.
- o Failure to report to work as scheduled without proper notice to supervision.
- o Unauthorized use or misuse of state property or records.
- o Refusal to work required overtime.

- C. Procedures for Issuing a Group II Notice

1. When issuing an employee a Written Notice Form for a Group II offense, management should issue such notice as soon as practicable. Discipline shall normally take





DEPARTMENT OF PERSONNEL AND TRAINING  
POLICIES AND PROCEDURES MANUAL

POLICY NO.: 1.05  
ISSUE DATE: 09-18-89  
SUPERSEDES: 08-01-85

SUBJECT: STANDARDS OF CONDUCT  
AND PERFORMANCE

SECTION: GENERAL POLICIES

the form of the notice only or notice and up to 10 workdays maximum suspension without pay.

2. An additional Group II offense should normally result in removal. Further, a single Group II offense coupled with three "active" Group I offenses should normally result in removal.

NOTE: Mitigating circumstances may justify the use of demotion, suspension for up to 30 workdays, and/or transfer as an alternative to removal (see Article VII).

3. If the employee is not removed, due to mitigating circumstances, the employee is to be notified that any subsequent written notice issued during the "active" life period, regardless of level, may result in removal.
4. Written notices for Group II offenses shall remain "active" for three years from the date of issuance (see Article XIII).

XI. THIRD GROUP OFFENSES (GROUP III)

- A. These offenses include acts and behavior of such a serious nature that a first occurrence should normally warrant removal.
- B. Group III offenses include, but are not limited to:
  - o Absence in excess of three days without proper authorization or satisfactory reason.
  - o Falsifying any records. Such records include, but are not limited to, vouchers, reports, insurance claims, time records, leave records, or other official state documents.
  - o Willfully or negligently damaging or defacing state records, state property or other persons' property (to include employees, supervisors, patients, inmates, visitors, students, etc).
  - o Theft or unauthorized removal of state records, state property or other persons' property (to include employees, supervisors, patients, inmates, visitors, students, etc).



TENTH JUDICIAL CIRCUIT OF VIRGINIA

THE COURTHOUSE

CHARLES L. McCORMICK, III  
JUDGE

HALIFAX, VIRGINIA 24558

AREA CODE 804  
476-2882

August 5, 1993

OFFICE OF ATTORNEY GENERAL  
RECEIVED

AUG 7 1993

EEO SECTION

Robert P. Geary, Esquire  
21 Center Suite 202  
2025 East Main Street  
Richmond, VA 23223

The Honorable Pamela F. Boston  
Assistant Attorney General  
Supreme Court Building  
101 North Eighth Street  
Richmond, VA 23219

Re: James Dillon v. Virginia Department of Corrections

Dear Mr. Geary and Ms. Boston:

As you know, the above grievance appeal was heard on July 30 and I took the matter under advisement for further consideration. I have now reviewed the matter in some detail, including the Employee Grievance Procedure of the Commonwealth of Virginia and the Virginia Supreme Court cases of Zicca v. City of Hampton, 240 VA 468 (1990) and Jones v. Carter, 234 VA 621 (1988). I would point out that it is not my function to review the appropriateness of the panel decision rendered in this case, but only to construe the meaning and intent thereof.

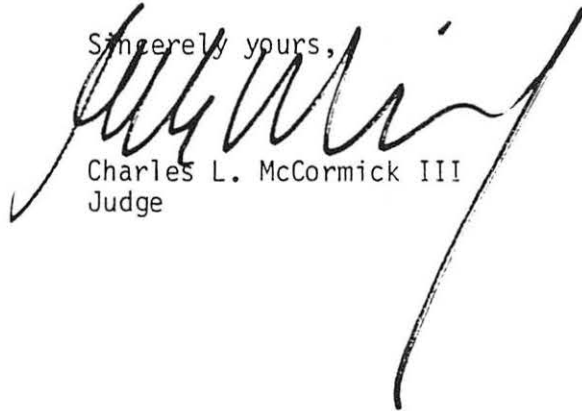
The issue in this case is whether the panel, in ordering reinstatement of the grievant, intended that he be reinstated to the position from which he had been terminated, without specifically designating that position in its opinion. Upon my review of this matter, I have found no authority for a panel reinstating a grievant to any position other than that from which he was discharged. The case of Jones v. Carter is significant on this point because, while there ruling that a panel has no authority to promote a grievant to a higher position, the Court noted that it would not, in the face of silence on this point in the Department's Rules for the Conduct of Panel Hearings, infer such power. Following then that reasoning, and noting that the Rules are likewise silent on the authority of a panel to transfer an aggrieved employee to another position, I can only conclude that the result of the panel opinion in this case is reinstatement of this employee to his former position.

Mr. Geary  
Ms. Boston  
August 5, 1993  
Page 2

Mr. Geary is requested to prepare an appropriate order and submit same for entry.

With best wishes, I am

Sincerely yours,

A large, stylized handwritten signature in black ink, appearing to read 'McCormick', with a long, sweeping underline that extends downwards and to the right.

Charles L. McCormick III  
Judge

CLMc/aec



V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF HALIFAX

IN RE: GRIEVANCE OF JAMES DILLON

ORDER

Upon the Petition of James Dillon seeking the enforcement a State of Virginia grievance panel decision, and the Court having heard the evidence and arguments of counsel, and good cause being shown therefore, it is hereby ORDERED that the grievant, James Dillon, is restored and reinstated to his position with the Virginia Department of Corrections which he held prior to his termination, Shop Supervisor at Virginia Department Correctional Field Unit #23, Halifax, Virginia.

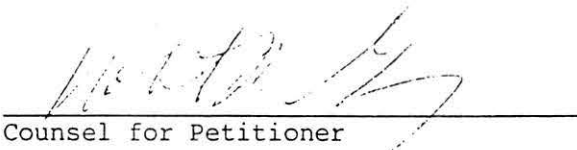
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8/23/93

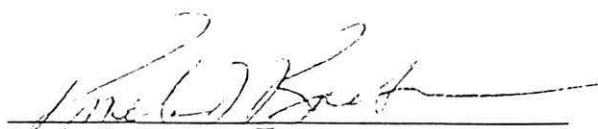



JUDGE  
CIRCUIT COURT OF HALIFAX COUNTY

I ask for this:

  
Counsel for Petitioner

Seen and Objected:

  
Counsel for Virginia Department of  
Corrections

Copy Teste:   
Circuit Court Halifax Co., Va.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HALIFAX

IN RE: GRIEVANCE OF JAMES DILLON

JAMES DILLON,

Petitioner,

v.

CASE NO. CL93000122-00

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

NOTICE OF APPEAL

Virginia Department of Corrections, respondent, by counsel, hereby gives notice of appeal to the Court of Appeals of Virginia from the final judgment order of this Court entered on August 23, 1993.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS

By:

  
Counsel

Stephen D. Rosenthal  
Attorney General of Virginia

Milton K. Brown, Jr.  
Deputy Attorney General

Neil A.G. McPhie  
Senior Assistant Attorney General

Pamela F. Boston  
Assistant Attorney General

Office of the Attorney General  
101 North Eighth Street  
Supreme Court Building  
Richmond, VA 23219  
(804) 786-3149

CERTIFICATE OF SERVICE

I, Pamela F. Boston, counsel of record for the Virginia  
Department of Corrections, hereby certifies that:

1. Appellant is Virginia Department of Corrections, 6900  
Atmore Drive, Richmond, VA 23261.
2. Counsel for Appellant is Pamela F. Boston, Office of  
the Attorney General, 101 N. 8th Street, Supreme Court  
Building, Richmond, Virginia. Telephone Number (804)  
371-7965.
3. Appellee is James R. Dillon, Cavalier Apartments, No.  
7-A, South Boston, Virginia 24592.
4. Counsel for Appellee is Robert P. Geary, Esquire, 21  
Centre, Suite 202, 2025 East Main Street, Richmond, VA  
23223. Telephone number (804) 643-8003.
5. A true copy of the foregoing notice of appeal was  
mailed to Robert P. Geary, Esquire, counsel for James  
R. Dillon at the address stated above, he being the  
only opposing counsel in this matter and to the Clerk  
of the Virginia Court of Appeals on this 20th day of  
September, 1993.

  
Pamela F. Boston  
Of Counsel

PFB\Appeal\224



VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HALIFAX

IN RE: GRIEVANCE OF JAMES DILLON

JAMES DILLON,

Petitioner,

v.

CASE NO. CL93000122-00

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

WRITTEN STATEMENT OF FACTS

Pursuant to Rule 5A:8(c) of the Code of Virginia, Respondent submits the following Written Statement of Facts in the above matter:

1. Petitioner James Dillon ("Dillon") is employed with respondent Virginia Department of Corrections (hereinafter "DOC" or "Respondent"). From 1982 to 1992, he was employed with Virginia Correctional Enterprises ("VCE"), a division of DOC, as the supervisor of the Halifax Correctional Sign Shop ("Sign Shop").<sup>1</sup>

2. On May 31, 1990, Petitioner was issued a Group I written disciplinary notice for unsatisfactory job performance.

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<sup>1</sup>The Sign Shop is one of several plants under VCE's supervision. It manufactures, among other things, office signs, name tags, and traffic control signs for various customers, including the Commonwealth. Dillon's responsibility was to supervise the operation of the Sign Shop, to include manufacturing and shipping signs, supervising inmates that made the signs, and preparing production reports associated with the manufacturing process.

3. On July 13, 1990, Petitioner was issued a Group II written disciplinary notice and a three (3) day suspension for the unauthorized closing of the Sign Shop.

4. On March 25, 1992, Petitioner was issued a Group II written disciplinary notice for failure to follow supervisor's instructions report to work and, in accordance with the personnel policy and procedures manual, was terminated effective March 25, 1992.

5. On June 24, 1992, Petitioner was issued a Group II written notice for failure to perform work and comply with applicable written pay plans for the Sign Shop and, in accordance with the State Personnel Policy and Procedures, was issued a second notice of termination effective June 24, 1992.

6. In accordance with the Commonwealth's grievance procedures promulgated pursuant to § 2.1-114.5:1 et seq. of the Code of Virginia, Petitioner filed a grievance appealing both the March 25, 1992 and June 24, 1992 disciplinary actions. Specifically, Petitioner requested reinstatement and backpay as relief from both actions.

7. With respect to the March 25, 1992 Group II written notice, by decision dated October 20, 1992, a grievance panel ("Panel One"), by a 3 to 0 vote, upheld the disciplinary finding. Petitioner's termination, however, was modified to a thirty (30) day suspension without pay due to what the panel termed "mitigating circumstances." Specifically, the pertinent part of the October 20, 1992 decision reads as follows:

The panel upholds the Group II written notice, but instead of termination, recommends a 30-day suspension of employment without pay [and] pay for a period of three months.

8. In compliance with Panel One's decision, Petitioner was reinstated to the payroll and received paychecks from May 5, 1992, to June 24, 1992, the date of his last Group II notice and termination.

9. With respect to the June 24, 1992 Group II written notice, by decision dated January 4, 1993, and clarified February 16, 1993, the grievance panel ("Panel Two"), by a 3 to 0 vote, upheld the disciplinary finding. Petitioner's termination however, was again modified to a thirty (30) day suspension without pay. Specifically, the pertinent part of Panel Two's decision reads as follows:

The panel upholds the finding that Mr. Dillon did commit a Group II violation. The Panel decision is to suspend Mr. Dillon for thirty (30) days. The panel overturns the agency's termination of Mr. Dillon. The 30 day suspension shall begin immediately on the date that he could have returned to work but for the Group II offense.<sup>2</sup>

10. Neither Panel One or Panel Two directed Respondent to return Petitioner to his "former position."

11. Respondent reinstated Petitioner to the payroll effective January 1, 1993, but did not return him to his former position of

---

<sup>2</sup>Further, the February 16, 1993 letter clarifying the Panel 2's decision reads, in part, that "Mr. Dillon is entitled to no back pay."



Sign Shop supervisor. Respondent gave Petitioner the following reasons:

- (i) Petitioner's failure to follow applicable rules/policies and directives of his superiors;
- (ii) Petitioner's failure to supervise the inmates employed in the Sign Shop; and
- (iii) Petitioner's poor example to the inmates.
- (iv) Petitioner's position had been vacant since March 25, 1992. Respondent could no longer tolerate the hardship imposed of running the sign shop without a supervisor and filled the position in December, 1992.

12. From January 1, 1993 to April 13, 1993, Petitioner received pay (at his pre-termination rate) for no work. During this period, Respondent actively sought suitable placement for Petitioner. When none could be found, Respondent created for Petitioner the classified position of Building and Grounds Supervisor B at the Dillwyn Correctional Center in Dillwyn (Buckingham County). In effect, the position is one of a building inspector and it does not require the supervision of other DOC employees.

13. On April 30, 1993, Petitioner filed a Petition for Enforcement of the Grievance Panel Decision requesting the Court enter an Order compelling the Respondent to reinstate Petitioner to his "former position."

14. On May 24, 1993, Respondent filed an Answer to Grievant's Petition for Enforcement of Grievance Panel Decision and affirmatively plead that (1) Petitioner failed to show he is

entitled to judicial review under § 2.1-114.5:1F of the Code of Virginia in that the grievance panel did not require the Respondent to reinstate Petitioner to his former position, (2) Respondent had the right and duty to manage its workforce, a right recognized by the Virginia Personnel Act which specifically exempts from the definition of "grievance" the transfer and assignment of employment (§ 2.1-114.5:1A.B of the Code of Virginia), and (3) Petitioner had (a) consistently demonstrated poor judgment and job performance in his former position, (b) both grievance panels upheld the issuance of the written notice, (c) Petitioner's voluntary actions demonstrate that Respondent would be remiss in not re-assigning him to a more suitable position, (d) the grievance panel decisions require reinstatement, but did not require it be to his former position and (e) Petitioner was still employed with Respondent and had no reduction in pay.

15. On July 22, 1993, Respondent filed a Pre-trial Memorandum of Law along with exhibits. This Pre-trial Memorandum of Law provided both Respondent's legal arguments and compelling reasons for Petitioner's transfer to another position within the Department of Corrections and its reasons for asserting compliance with the grievance panel's decision.

16. On July 30, 1993, a hearing was held in the Halifax Circuit Court before the Honorable Charles L. McCormick, III. The hearing proceeded as follows: Dave Jones, Virginia Correctional Enterprises Director, appeared on behalf of the Department of Corrections with counsel. In addition to Dave Jones, there were

three witnesses present to testify in support of the facts stated in Respondent's Pre-trial Memorandum of Law. They were Paul Broughton, DOC Personnel Director; Dave Addington, Program and Development Manager of Virginia Correctional Enterprises, and Gene Zimmerman, Group Manager and Petitioner's immediate supervisor at Virginia Correctional Enterprises. Petitioner was present with counsel. Petitioner had no other witnesses present. Petitioner requested that the witnesses be separated. Respondent's witnesses were then sequestered from the courtroom.

Petitioner's counsel submitted several exhibits to the Court. Respondent did not object. Petitioner argued his motion for reinstatement to his former position for the reasons stated in his petition.

Respondent's counsel was then allowed to respond. Respondent advised the Court that it had filed Respondent's Pre-trial Memorandum of Law and was ready to call its first witness in support of the facts stated therein. The trial judge advised that he had read Respondent's Pre-trial Memorandum and looked at the exhibits and it was not necessary to call the witnesses to testify to the facts stated therein unless Petitioner's counsel desired to cross-examine the witnesses. Petitioner's counsel did not object nor did he cross-examine the witnesses. The facts as submitted in Respondent's Pre-trial Memorandum of Law were presented without opposition to the Court. The trial judge then asked questions of both counsel and allowed further argument from both counsel. The court then took the matter under advisement.



17. On August 5, 1993, a letter was issued from the trial court stating that the issue in the case was whether the panel, in ordering reinstatement of the grievant, intended that he be reinstated to the position from which he had been terminated, without specifically designating that position in its opinion. The Court concluded that the result of the panel opinion in this case is reinstatement of this employee to his former position and requested Petitioner's counsel to prepare an appropriate order for entry.

18. On August 17, 1993, Respondent filed a Petition to Rehear requesting that the Court reconsider its opinion and clarify for all parties whether or not Respondent has the right to immediately transfer grievant to another position based on the compelling reasons presented in Respondent's pre-trial memorandum of law which was argued before the Court on July 30, 1993.

19. On August 19, 1993, Petitioner filed a Memorandum in Opposition to the Respondent's Petition to Rehear.

20. On August 23, 1993, the trial court entered an Order restoring and reinstating the Petitioner to his position with Respondent which he held prior to his termination as Shop Supervisor to the Virginia Department of Corrections Field Unit No. 23, Halifax, Virginia.

21. On September 2, 1993, Respondent filed a Motion to Suspend requesting that the Court suspend its Order of August 23, 1993 until such time as a decision has been made by the Virginia Court of Appeals.

22. On September 13, 1993, the trial court entered an Order denying Respondent's Petition to Rehear.


23. On September 16, 1993, Petitioner filed Petitioner's Memorandum in Opposition to Respondent's Motion to Suspend.

24. On September 20, 1993, Respondent filed a Notice of Appeal to the Court of Appeals of Virginia from the final judgment order of the trial court entered on August 23, 1993.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS

By:

  
Counsel for Respondent  
Virginia Department of Corrections

JAMES DILLON

By:

\_\_\_\_\_  
Counsel for Petitioner  
James Dillon

ENTERED this \_\_\_\_ day of October, 1993.

\_\_\_\_\_  
JUDGE  
CIRCUIT COURT OF HALIFAX COUNTY

Stephen D. Rosenthal  
Attorney General of Virginia

Milton K. Brown, Jr.  
Deputy Attorney General

Neil A.G. McPhie  
Senior Assistant Attorney General  
Bar I.D. No. 22048

Pamela F. Boston  
Assistant Attorney General  
Bar I.D. No. 16730

Office of the Attorney General  
101 North Eighth Street  
Supreme Court Building  
Richmond, VA 23219  
(804) 786-3149

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Written Statement of Facts was hand-delivered, this 14<sup>th</sup> day of October, 1993, to Robert P. Geary, Esquire, 21 Center, Suite 202, 202<sup>nd</sup> East Main Street, Richmond, VA 23223.

A handwritten signature in cursive script, appearing to read "Pamela F. Boston", is written over a horizontal line.

DJH\838-P20a\224



V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF HALIFAX  
IN RE: GRIEVANCE OF JAMES DILLON

JAMES DILLON,

Petitioner,

v.

Case No. CL93000122-00

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

PETITIONER'S OBJECTIONS TO  
RESPONDENT'S WRITTEN STATEMENT OF FACTS

Comes now petitioner, by counsel, pursuant to Rule 5A:8(c) of the Rules of the Supreme Court and states the following objections to respondent's written statement of facts:

1. Petitioner objects to the allegations set forth in paragraphs 2, 3, 4, 7 and 8 on the ground that such allegations of fact are not relevant to this matter and were not proven by the respondent. The hearing held before this Court was an argument based on the Petition which had been filed in regard to a different matter and not anything involving other disciplinary action.

2. Petitioner objects to the factual allegations set forth in paragraph 10, as they are not accurate and do not reflect the record made in this case.

3. Petitioner objects to the factual allegations set forth in paragraph 11, as not being accurate.

4. Petitioner objects to the factual allegations set forth in paragraph 12, as they were not proven or put in the record.

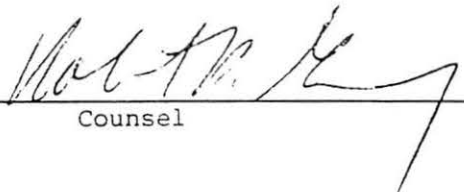
5. Petitioner objects to the factual allegations set forth in paragraph 15, as Memorandums of Law are not portions of statement of facts. Respondent can set forth in the forth in the written statement of facts what the arguments were.

6. Petitioner objects to the factual allegations set forth in paragraph 16. Counsel appeared at the hearing. Mr. Jones was present. There was no appearance entered on his behalf by any party.

The entire record made in this matter was based upon the exhibits introduced by the parties and the arguments made by counsel.

JAMES DILLON


BY

  
Counsel

Robert P. Geary, VSBN 9165  
21 Center/Suite 202  
2025 East Main Street  
Richmond, VA 23223  
(804) 643-8003

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing was mailed to Pamela F. Boston, Assistant Commonwealth's Attorney, 101 N. 8th Street, Richmond, Virginia 23219 on this the 27th day of October, 1993.

  
Robert P. Geary

File

**VIRGINIA:**

*In the Court of Appeals of Virginia on* Tuesday *the* 15th  
*day of* November, 1994.

Virginia Department of Corrections,

Appellant,

against Record No. 1871-93-2

James Dillon,

Appellee.

From the Circuit Court of Halifax County

Before Judges Barrow, Koontz and Elder

For reasons stated in writing and filed with the record, this Court lacks jurisdiction to review the judgment of a circuit court entered pursuant to Code § 2.1-114.5:1(F). Accordingly, this matter is hereby transferred to the Supreme Court of Virginia pursuant to Code § 8.01-677.1.

This order shall be certified to the trial court and to the Supreme Court of Virginia.

A Copy,

Teste:

Richard R. James, Clerk

By:

*Mary W. Ring*

Deputy Clerk

RECEIVED

NOV 15 1994

THE EMPLOYMENT LAW SECTION



COURT OF APPEALS OF VIRGINIA

Present: Judges Barrow, Koontz and Elder  
Argued at Richmond, Virginia

NOV 17 1994

VIRGINIA DEPARTMENT OF CORRECTIONS

v. Record No. 1871-93-2

MEMORANDUM OPINION\* BY  
JUDGE BERNARD G. BARROW  
NOVEMBER 15, 1994

JAMES DILLON

FROM THE CIRCUIT COURT OF HALIFAX COUNTY  
Charles L. McCormick, III, Judge

Pamela F. Boston, Assistant Attorney General (James S. Gilmore, III, Attorney General; Catherine C. Hammond, Deputy Attorney General; Neil A. G. McPhie, Senior Assistant Attorney General, on brief) for appellant.

Robert P. Geary for appellee.

This appeal is from an order of the circuit court ordering the Virginia Department of Corrections to reinstate an employee to his former position. Following the employee's successful resolution of a grievance arising from his termination, the Department transferred him to a new position upon his return to work, rather than reinstating him to his former position.

Pursuant to Code § 2.1-114.5:1(F), the employee petitioned the circuit court to implement the panel decision and to reinstate him to the position he held prior to his dismissal. The circuit court agreed and ordered the employer to reinstate the employee. The employer appeals to this Court. However, we do not have jurisdiction to review the judgment of a circuit

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\*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

court entered pursuant to Code § 2.1-114.5:1(F). Virginia Dept. of Taxation v. Daughtry, \_\_\_ Va. App. \_\_\_, \_\_\_, \_\_\_ S.E.2d \_\_\_, \_\_\_ (October 11, 1994); see also Zicca v. City of Hampton, 240 Va. 468, 397 S.E.2d 882 (1990).

Therefore, we transfer this appeal to the Supreme Court of Virginia pursuant to Code § 8.01-677.1.

Transferred.

### **ASSIGNMENT OF ERROR**

The Trial Court erred in ruling that the grievance panel's decision to modify Appellee's termination to a suspension required Appellee's return to his former position in total disregard of the employer's compelling reasons and management prerogative under state law to transfer him.



**WRITTEN NOTICE****Section I**

Employee's Name James R. Dillon 231-38-3827 Date of Offense March 23 & 24, 1992  
 Agency Bureau of Industrial Enterprises Date of Issuance March 25, 1992  
 Supervisor's Signature J. J. [Signature] This notice will become inactive March 25, 1995

**Section II**

Type of Offense: (Check one)

Group I \_\_\_\_\_ Group II XX Group III \_\_\_\_\_

Nature of Offense and Evidence: (Describe briefly the offense and give an explanation of the evidence).  
Failure to follow supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy. Failed to report to work on March 23 and 24, 1992, after being verbally instructed to report to work by three levels of management and also by written memo from his supervisor for which he acknowledged receipt in writing.

**Section III**

Disciplinary Action in addition to written notice:

Suspension from \_\_\_\_\_ to \_\_\_\_\_ Date Date Return to work \_\_\_\_\_ Date/Time

Removal March 25, 1992 11:00 a.m. Effective Date Due to: Termination, Demotion, Transfer  
 (circle appropriate action)

**Section IV**

Mitigating Circumstances: Describe any mitigating circumstances that were considered when determining the above corrective action.

**Section V Notice to Employee**

It is expected that the condition noted above will be corrected immediately. In the event this condition is not corrected, or another offense occurs, you may be subject to further disciplinary action as outlined in the Standards of Conduct and Performance Policy.

**Section VI** Employee's Signature James R. Dillon Date 3-25-92  
 If you wish to appeal the corrective action noted above, you may do so under the provisions of the State Grievance Procedure provided for this purpose.

(Your signature is intended only to acknowledge receipt of the notice; it does not imply agreement or disagreement with the notice itself. If you refuse to sign, someone in a supervisory position within the agency will be asked to initial the form indicating that you received a copy of the form.)



RECEIVED

FORM A

COMMONWEALTH OF VIRGINIA  
EMPLOYEE GRIEVANCE PROCEDURE

MAY 8 1992

## GRIEVANCE

Office of the Director  
Department of Corrections

EMPLOYEE JAMES R. DILLON Shop SUPERVISOR 711  
 Name Job Classification Agency  
CRENSHAW UNIT 23 Hamlin, VIRGINIA 564-575-5270 564-575-5209  
 Work Facility Geographic Location Work Phone No. Home Phone No.

DATE GRIEVANCE OCCURRED MARCH 25, 1992 NATURE OF GRIEVANCE TERMINATION of EMPLOYMENT  
I DO NOT FEEL THAT I HAVE BEEN FAIRLY TREATED  
IN THIS PROCESS. FOR THE FOLLOWING REASONS: I GAVE MY  
SUPERVISOR 13 DAYS NOTICE OF MY NEED TO DEEF HIS COMMENT  
WE CAN'T SHUT SHOP DOWN BUT I'LL SEE WHAT I CAN DO  
TO GET SOMEONE TO COVER FOR YOU.  
 RELIEF REQUESTED REINSTATEMENT WITH FULL PAYMENT of BENEFITS  
HAVE LESS TIME FROM WORK.

## MANAGEMENT STEPS

## STEP 1

- A. ORAL PRESENTATION TO IMMEDIATE SUPERVISOR 3-31-92 SUPERVISOR'S REPLY 4-7-92  
 Date Date  
 B. WRITTEN PRESENTATION  
 Submitted to First-Step Respondent (date) 4-7-92 First-Step Respondent's Written Reply You have presented  
no new evidence that would justify your taking leave (which had been denied  
verbally and in writing) and closing the shop without authorization.  
The Group II remains as written.  
 Signature (First-Step Respondent) Gene Zimmerman Date 4-13-92  
 Name (print) Gene Zimmerman Telephone # 674-3680  
 C. EMPLOYEE'S RESPONSE  
☒ I do not accept this reply and wish to advance my grievance to the next step.  
☐ I do not accept the nongrievable reply and request that the agency forward my appeal to the Dept. of Employee Relations Counselors.  
☐ I consider this grievance concluded.  
 Employee's Signature James R. Dillon Date 4-16-92

## STEP 2

- A. SUBMITTED TO SECOND-STEP RESPONDENT MAILED 4-16-92 B. SECOND-STEP MEETING April 27, 1992  
 Date Date  
 C. SECOND-STEP RESPONDENT'S REPLY Mr. Dillon presented no information relevant to his  
failure to follow instructions from three levels of management. He admits that  
he failed to follow instructions and, therefore, the Group II stands as issued.  
 Signature (Second-Step Respondent) David S. Jones Date May 4, 1992  
 Name (print) David S. Jones Telephone # 804-674-3601  
 D. EMPLOYEE'S RESPONSE  
☒ I do not accept this reply and wish to advance my grievance to the next step.  
☐ I do not accept the nongrievable reply and request that the agency forward my appeal to the Dept. of Employee Relations Counselors.  
☐ I consider this grievance concluded.  
 Employee's Signature James R. Dillon Date 5-5-92



**STEP 3**A. SUBMITTED TO THIRD-STEP RESPONDENT Filed 5-5-92 B. THIRD-STEP MEETING May 27, 1992  
DateC. THIRD-STEP RESPONDENT'S REPLY After a thorough review of all facts surrounding  
Mr. Dillon's termination, I find no reason to reverse the decision as  
rendered. No mitigating circumstances were identified in my review that would  
outweigh the Standard of Conduct issues that led to the termination.

Signature (Third-Step Respondent)

Date June 5, 1992Name (print) John W. McCluskeyTelephone # 674-3018

( ) I do not request a panel hearing and consider this grievance concluded.

Employee's Signature

Date

**RECEIVED****QUALIFICATION FOR PANEL HEARING****Office of the Director  
Department of Corrections****REQUEST**

- ( ) I have received a nongrievable ruling from the Dept. of Employee Relations Counselors and I request a panel hearing.
- 
- (
- ☒
- ) I do not accept the third-step respondent's reply and wish to request a panel hearing.

Employee's Signature

Date

**AGENCY HEAD'S DETERMINATION**Based on my review, it is my determination that this grievance does X does not \_\_\_\_\_ qualify for a panel hearing.

(N.B. Written disciplinary notices under the "Standards of Conduct" shall be qualified for a panel hearing.)

REASONS Disciplinary Actions are grievable.

Agency Head's Signature

Date

**APPEAL TO CIRCUIT COURT**

- ( ) I do not wish to appeal the agency head's disqualification determination and consider this grievance concluded.
- 
- ( ) I wish to appeal the agency head's disqualification determination to the Circuit Court.

Employee's Signature

Date

DEPARTMENT OF EMPLOYEE RELATIONS COUNSELORS  
700 East Franklin Street, Suite 910, Richmond, Virginia 23219  
(804) 786-7994 or (toll-free) 1-800-552-9720



FORM B

COMMONWEALTH OF VIRGINIA  
EMPLOYEE GRIEVANCE PROCEDUREPANEL DECISIONJames R. Dillon  
EmployeeVirginia Correctional  
Agency EnterpriseCorrectional Unit 23  
Work FacilityPLACE OF HEARING 416 W. Franklin Date 10-20-92  
Richmond, VA 23220ISSUE(S) QUALIFIED FOR HEARING Termination of employment,  
following Group II Written Notice

The panel may by majority vote uphold or reverse the action which is the basis for the grievance or, in appropriate circumstances, modify the action. The panel decision, however, must be consistent with written policy.

PANEL DECISION The panel upholds the Group II Written  
Notice, not instead of termination recommends 30-day  
suspension of employment without pay & back pay for a  
period of 3 mos.

REASON FOR PANEL DECISION (Attach additional sheets if more space is needed)

The panel felt that the written notice was unwarranted.  
However, because of mitigating circumstances felt that  
suspension was the more appropriate discipline. Mitigating  
circumstances include 1) length of service; 2) work  
dedication; 3) lack of disciplinary planning by agency for  
absence of management; & 4) subtleties of agency  
decision in bringing in replacement.

PANEL VOTE (X) 3-0 ( ) 2-1 ( ) 2-0

SIGNATURES:

James R. Dillon  
Employee Panel MemberJames R. Dillon  
Agency Panel MemberCarol B. Gentry  
Panel Chair69 DATE: 10/20/92

Note NO. 3 reverse side of this form.



**WRITTEN NOTICE***Please print or type the information requested***Section I**Employee's Name James R. DillonDate of Offense 11/91 - 3/92Agency Bureau of Industrial EnterprisesDate of Issuance 6-24-92Date this notice will become inactive 6-24-95Issued By: J. Gene Zimmerman, Group Manufacturing Manager

(name)

(title)

(signature)

**Section II**

David S. Jones, Corrections Enterprises Director

Type of Offense: (Check one)

Group I \_\_\_\_\_ Group II X Group III \_\_\_\_\_

Nature of Offense and Evidence: Briefly describe the offense and give an explanation of the evidence.

Failure to adequately perform assigned work and comply with applicable written pay plan for shop.  
 During the period of November 1991 through March 1992, numerous errors were made in reporting  
shop production figures used in the computation of the shop's Inmate Payroll. Discrepancies  
included: (1) Using new metal prices when recycled metal was actually used. (2) Using full  
amount of sales order when only a partial shipment had been made. (3) Duplicating amount of some  
sales orders on more than one month's production listing. These discrepancies resulted in  
inmates being overpaid.

**Section III**

Disciplinary action taken in addition to issuing written notice:

Suspension from \_\_\_\_\_ through \_\_\_\_\_  
Date DateReturn to work \_\_\_\_\_  
Date/TimeDemotion/Lateral Transfer to \_\_\_\_\_ Effective \_\_\_\_\_  
Position/Location

(Circle above to indicate which action is being taken)

Removal June 24, 1992  
Effective Date**Section IV**

Mitigating Circumstances: Describe any mitigating circumstances that were considered when determining the above corrective action.

**Section V Notice to Employee**

It is expected that the situation described above will be corrected immediately. In the event this situation is not corrected, or another offense occurs, you may be subject to further disciplinary action as outlined in the Standards of Conduct and Performance Policy.

**Section VI Employee's Signature Sent via Certified Mail**Article No. P 091 166 654  
Date June 24, 1992

(Your signature is intended only to acknowledge receipt of the notice. It does not imply agreement or disagreement with the notice itself. If you refuse to sign, someone in a supervisory position within the agency will be asked to initial the form indicating that you received a copy of the form.)

**70**  
 If you wish to appeal the corrective action noted above, you may do so under the provisions of the Grievance Procedure provided for this purpose.

EMPLOYEE COPY

**PLAINTIFF'S  
EXHIBIT**

NO. 4

COMMONWEALTH OF VIRGINIA  
EMPLOYEE GRIEVANCE PROCEDURE

## GRIEVANCE

EMPLOYEE Dillon, James R. Job Classification Supervisor - B Agency INDUSTRIAL ENTERPRISES  
Halifax Sign Shop Field Unit 23 Work Facility 575-5209 Home Phone No.  
 Geographic Location Work Phone No.

DATE GRIEVANCE OCCURRED 6-24-92 NATURE OF GRIEVANCE I FEEL THIS WRITTEN NOTICE IS TOTALLY UNFAIR. THE ALLEGED ERRORS WERE NOT ADDRESSED TO ME UNTIL 60 DAYS AFTER MY TERMINATION, MARCH 28, 1992. I ASK FOR THE PAPERWORK FROM MY SHOP WHICH WAS DENIED. I WAS OUT OF THE SHOP ON SICK LEAVE DURING THE MONTH OF DEC. WHY WAS THIS NOT ADDRESSED IN JAN.?  
 RELIEF REQUESTED REMOVAL OF CHARGE - REINSTATEMENT - COMPENSATION FOR ALL TIME LOSS AND EXPENSES INCURRED.

## MANAGEMENT STEPS

- PERSONNEL  
STEP 1  
A. ORAL PRESENTATION TO IMMEDIATE SUPERVISOR 7-10-92 SUPERVISOR'S REPLY BY TELEPHONE 9:30 AM 7-17-92  
 B. WRITTEN PRESENTATION  
 Submitted to First-Step Respondent (date) 7-20-92 First-Step Respondent's Written Reply As soon as probable cause was found, I requested that the imate payroll records be audited. The charge was issued in a timely manner once the audit had been completed. You were granted an opportunity to review all the records you specified. You have not presented any evidence that would counter the charge as written. Therefore, the charge stands as written.  
 Signature (First-Step Respondent) J. G. Zimmerman Date July 28, 1992  
 Name (print) J. G. Zimmerman Telephone # 674-3681  
 C. EMPLOYEE'S RESPONSE  
☒ I do not accept this reply and wish to advance my grievance to the next step.  
☐ I do not accept the nongrievable reply and request that the agency forward my appeal to the Dept. of Employee Relations Counselors.  
☐ I consider this grievance concluded.  
 Employee's Signature James R. Dillon Date 7-30-92

## STEP 2

- A. SUBMITTED TO SECOND-STEP RESPONDENT August 3, 1992 B. SECOND-STEP MEETING August 10, 1992  
 C. SECOND-STEP RESPONDENT'S REPLY After meeting with you on August 10, 1992, I reviewed the Employee Standards of Conduct Written Notice and the supporting documentation. You did not present any information during our meeting that would justify a change in the charge as written. Therefore, the charge stands as written.  
 Signature (Second-Step Respondent) David P. Addington Date August 17, 1992  
 Name (print) David P. Addington Telephone # (804) 674-3622  
 D. EMPLOYEE'S RESPONSE  
☒ I do not accept this reply and wish to advance my grievance to the next step.  
☐ I do not accept the nongrievable reply and request that the agency forward my appeal to the Dept. of Employee Relations Counselors.  
☐ I consider this grievance concluded.  
 Employee's Signature James R. Dillon Date 8-19-92





FORM B

COMMONWEALTH OF VIRGINIA  
EMPLOYEE GRIEVANCE PROCEDUREPANEL DECISIONJames R. Dillon  
EmployeeBureau of Industrial  
Intelligence AgencyHalifax Correctional Unit  
Work FacilityPLACE OF HEARING Richmond Date 1-4-93

ISSUE(S) QUALIFIED FOR HEARING \_\_\_\_\_

The panel may by majority vote uphold or reverse the action which is the basis for the grievance or, in appropriate circumstances, modify the action. The panel decision, however, must be consistent with written policy.

PANEL DECISION The Panel upholds the finding that Mr. Dillon did commit a Group II violation. The Panel decision is to suspend Mr. Dillon for thirty (30) days. The Panel overturns the Agency's termination of Mr. Dillon. The 30 Day

REASON FOR PANEL DECISION (Attach additional sheets if more space is needed)

suspension  
shall begin immediately on the date that he  
could have returned to work but for this Group II offense.  
The reason for reversing the termination and ordering a 30 day  
suspension was certain mitigating circumstances presented  
at the hearing.

PANEL VOTE (✓) 3-0 ( ) 2-1 ( ) 2-0

## SIGNATURES:

[Signature]  
Employee Panel MemberJames N. Sisk  
Agency Panel MemberWilliam A. Dandrea  
Panel Chair

72

DATE: 1-4-93

Note: Complete the reverse side of this form.

PLAINTIFF'S  
EXHIBIT

NO. 7



HOUSE, DAVIDSON & TELEGADAS

ATTORNEYS AT LAW  
KOGER EXECUTIVE CENTER  
8100 THREE CHOPT ROAD

MEREDITH A. HOUSE  
WILLIAM S. DAVIDSON  
FROST B. TELEGADAS

JEFFERSON BUILDING, SUITE 101  
RICHMOND, VIRGINIA 23229  
(804) 285-8601

MAILING ADDRESS:  
POST OFFICE BOX K-200  
RICHMOND, VIRGINIA 23288

January 5, 1993

Mr. James R. Dillon  
Cavalier Apartments, No. 7-A  
South Boston, VA 24592

Mr. Edward W. Murray, Director  
Commonwealth of Virginia  
Department of Corrections  
P. O. Box 26963  
Richmond, VA 23261

Ms. Phyllis C. Katz, Director  
Commonwealth of Virginia  
Department of Employee  
Relations Counselors  
700 E. Franklin Street  
Suite 910  
Richmond, VA 23219

Ms. Dorthula H. Powell-Woodson  
Director  
Commonwealth of Virginia  
Department of Personnel and  
Training  
101 N. 14th Street  
Richmond, VA 23219

Re: Grievance of James T. Dillon  
Hearing Date: January 4, 1992

Ladies and Gentlemen:

You will find enclosed Form B - Commonwealth of Virginia Employee Grievance Procedure Panel Decision for the grievance panel hearing held on January 4, 1992. The panel decision states as follows:

"The Panel upholds the finding that Mr. Dillon did commit a Group II violation. The Panel decision is to suspend Mr. Dillon for thirty (30) days. The Panel overturns the Agency's termination of Mr. Dillon. The 30 days suspension shall begin immediately on the date that he could have returned to work but for this Group II offense. The reason for overruling the termination and ordering a 30 days was certain mitigating circumstances presented at the hearing."

Page 2  
January 5, 1993

Should you have any questions, please do not hesitate to contact me.

Yours very truly,

*Bill*

William S. Davidson

WSD/ksn

Enclosure

cc: Mr. Jim Sisk, Agency Panel Member  
Mr. Mark Alderman, Employee Panel Member  
Mr. Don Madrety, Legal Assistant Senior, Attorney General's  
Office  
Robert P. Geary, Esq., Counsel for the Grievant

**ROBERT P. GEARY**

ATTORNEY-AT-LAW

21 CENTER/SUITE 202

2025 EAST MAIN STREET

RICHMOND, VIRGINIA 23223

(804) 643-8003

April 26, 1993

Edward Murray, Director  
Virginia Department of Corrections  
6900 Atmore Drive  
Richmond, VA 23225

Re: James Dillon

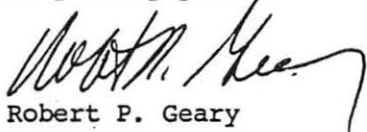
Dear Mr. Murray:

On April 20th I mailed you a letter along with a copy of the Zicca opinion from the Supreme Court holding that a terminated state employee who is reinstated must be returned to his position.

For further support of my client's position I enclose to you a copy of a letter opinion dated April 13, 1993 from Judge Mink restoring a public employee to his position from which he was terminated from.

I would appreciate your agency acting on this immediately and putting Mr. Dillon back into his position.

Very truly yours,

  
Robert P. Geary

RPG:ddc

cc: H. Paul Broughton  
Phyllis Katz  
Don Maddrey

Enclosure



TWENTY-SEVENTH JUDICIAL CIRCUIT  
OF VIRGINIA

DUANE E. MINK, JUDGE  
MUNICIPAL BUILDING  
619 SECOND STREET  
RADFORD, VIRGINIA 24141  
(703) 731-3611



CIRCUIT COURT FOR THE COUNTIES OF  
BLAND, CARROLL, FLOYD, GILES,  
GRAYSON, MONTGOMERY, PULASKI AND WYTHE

CIRCUIT COURT FOR THE CITIES OF  
GALAX AND RADFORD

COMMONWEALTH OF VIRGINIA

April 13, 1993



[REDACTED]  
Attorneys at Law

[REDACTED]  
Assistant Attorney General

Re: [REDACTED]


v. [REDACTED]

Gentlemen:

Please be advised that I have given due consideration to the evidence and the memorandums filed in the above referenced case.

In consideration of all of which, the Court is of the opinion that it cannot distinguish the current set of facts from those recited in the Zicca v. City of Hampton decision. The relief sought by Mr. [REDACTED] when he filed his grievance was to "be reinstated as [REDACTED] with back pay and all benefits". The Panel granted the reinstatement. The record further reflects that following receipt of the initial panel decision the [REDACTED] Center requested a recommendation for a transfer to a position out of the [REDACTED] Department. When that was not granted the Center reinstated the grievant as [REDACTED] but as in the Zicca case, this was a sham reinstatement. He was immediately told that he was going to be transferred to another position and he had no contact with [REDACTED] personnel and assumed no duties with regard to [REDACTED] operations at the Center.

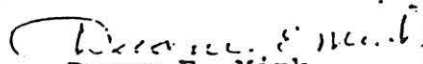
Accordingly, the Center is directed to reinstate the grievant, in accordance with the Panel decision, to his original position.

  
Page 2  
April 13, 1993

I request that Mr. Osborne prepare an appropriate order in accordance with the Court's ruling.

With best regards.

Yours very truly,

  
Duane E. Mink

DEM:nc





# COMMONWEALTH of VIRGINIA

EDWARD W. MURRAY  
DIRECTOR

*Department of Corrections*

P.O. BOX 26963  
RICHMOND VIRGINIA 23261  
(804) 674-3000

May 7, 1993

Robert P. Geary  
Attorney-At-Law  
21 Center/Suite 202  
2025 East Main Street  
Richmond, Virginia 23223

Dear Mr. Geary:

I am in receipt of your letter dated April 20, 1993, containing the Zicca opinion from the Supreme Court concerning a terminated city employee who was reinstated. I am further in receipt of your April 26, 1993 letter containing an opinion from Judge Menk.

Although you are of the opinion that the Department must return Mr. Dillon to the position he formerly held within the Department, it is the Department's position that the facts in Mr. Dillon's grievance are significantly different from those in the Zicca opinion and that management has the right to manage the affairs of state government and; therefore, the assignments of its employees.

The panel in the James Dillon case did overturn his termination although agreeing that he was guilty of the Group II for which he had been charged. While we must follow the panel's decision on placing Mr. Dillon back to work, it is within the Department's discretion as to where this placement should be. We can also differentiate this panel's decision from the Zicca case in that the panel did not specify that Mr. Dillon should be returned to his former position.

The Department has broad latitude in determining where an employee should be assigned and may transfer an employee at any time. While we have reinstated Mr. Dillon with pay from the date of the panel's decision until the day he was offered employment at Dillwyn Correctional Center, we were only recently able to determine the proper placement for him.

In our deliberations, we considered that Mr. Dillon received three Group II notices in his position as the manager of the Sign Shop at Halifax within a 24 month period, none of which has been overturned. We would not be exercising sound management to return Mr. Dillon to that position, given his most recent work record there.



Robert P. Geary  
May 7, 1993  
Page 2

The position which we are placing Mr. Dillon in is needed in order to ensure that construction projects in the Department are completed in accordance with the contract in both timing and quality. It is the same grade level as his former position.

In choosing this assignment for Mr. Dillon, we looked closely at his past experiences to determine that he, in fact, would be qualified to fulfill such duties. While we recognize that this position will require some travel time, Mr. Dillon's previous position is no longer available because it has been filled.

We would hope that you would advise your client to report to Dillwyn Correctional Center as soon as possible in accordance with Mr. Broughton's letter of April 19, 1993. The time from the day of the offer of employment until Mr. Dillon will report will be considered leave with or without pay depending upon Mr. Dillon's leave balances. Mr. Dillon will not be receiving further paychecks until he has reported to work.

If you need further clarification concerning the Department's position on this matter, please contact our Legal Counsel, Mr. Guy W. Horsley, Jr.

Sincerely,


  
E. W. Murray

cc: H. Paul Broughton  
Guy W. Horsley, Jr.  
James Dillon

CLERK'S CERTIFICATE

I, Robert W. Conner, Clerk, Circuit Court of Halifax County, do hereby certify that the foregoing is the true record in the case styled IN RE: GRIEVANCE OF JAMES DILLON ordered in the Circuit Court of Halifax County on the 23rd day of August, 1993.

Given under my hand and seal this the 27th day of January, 1994.

 Clerk  
Circuit Court of Halifax County