

To: Edward F. Manning
Administrative Judge
Merit Systems Protection Office
Washington Regional Office

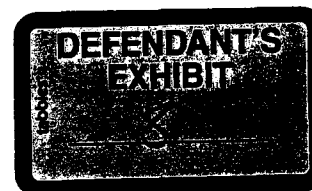
December 11, 2002

From: Ralph L. Wright
Representative
AFGE Local 1831

I Fred Dodge the Appellant through my representative and in compliance with the Order and Notice dated November 8, 2002 hereby submit these pre-hearing submissions.

MERIT SYSTEMS PROTECTION BOARD

PRE-HEARING SUBMISSIONS



INDEX

TAB: A.	STATEMENT OF ISSUES
TAB: B.	STATEMENT OF FACTS
TAB: C.	APPELLANT DEFENSES
TAB: D.	AFFIRMATIVE DEFENSES
TAB: E.	WITNESS LIST

EXHIBITS

Exhibit A.	Statement of Mark Teed	12-11-02
Exhibit B.	Appellants partial response to proposed removal.	08-6-02
Exhibit C.	Earl Powell nomination	06-13-02
Exhibit D.	Appellants response to Mr. Giambers question pertaining to a key incident.	04-15-02
Exhibit E.	Tom Valentine requesting a re-key for a key ring that was lost.	07-10-97

STATEMENT OF ISSUES

ISSUES

Whether the Appellant has been treated disparately in light of penalties imposed on other employees for similar offenses.

Whether the Appellant can be rehabilitated.

Whether the penalty imposed is too severe in light of the circumstances.

Whether the appropriate Douglas factors were considered.

Whether the alleged misconduct was harmful to the Agency.

STATEMENT FACTS

The Appellant was effectively removed from his position as a electrician on Friday August 30, 2002.

The Appellants supervisor who was involved in the same tampering with a key ring incident only received a ten day suspension.

The defective I.D. card was of no meaningful use to anyone because it could not gain anyone access into the Agency or into non public area's of the Agency.

Appellant Defenses

The following are the defenses that I Mr. Fred Dodge presents to MSPB in response to the alleged offenses of (1) Unauthorized Taking Of a NGA I.D. Badge, (2) Making A False Statement (3) Concealment Of Misappropriated NGA Property (4) Tampering With A Gallery Key Ring.

Unauthorized taking of a NGA I.D. badge.

I categorically deny having intentionally taken a NGA I.D. badge without authorization. With further regards to this alleged offense, on the day of this incident I went to the NGA I.D. department to have my I.D. badge renewed or updated. Mr. Brannock Reilly is the Agency's security specialist and is in charge of the I.D. department, upon my arrival and request Mr. Reilly immediately began to process a new I.D. card. Unfortunately the first I.D. card was unusable because the I.D. card did not come out clear. Mr. Reilly and I joked about how other employees at the Gallery would get a kick out of the defective ID card. While waiting for Mr. Reilly to produce a second I.D. card, I asked Mr. Reilly if I could have the first I.D. Card that was nothing more than a silhouette. Based on Mr. Reilly's response and demeanor I sincerely believed it was okay to have the ID card.

Making False Statements

I never made a false statement to Brian Thomas about the ID card because I openly displayed it to him and others and when Mr. Thomas asked me to return it I did so immediately. I even showed the I.D. card to employees in and around the Personnel Office. I maintain that these are not the actions of someone that is guilty of taking of unauthorized property.

With regards to making a false statement to Mike Giamber on April, 15, 2002, Mr. Giamber's never mentioned an elevator key or Mr. Thomas's WP-4 Elevator key. Mr. Giamber's questions pertained to a key incident that may have happened over a year and a half prior. The questions were very general and vague. I specifically informed Mr. Giamber's that I did not recall any incidents involving keys. I deny ever stating " I have no information about anybody removing keys from key rings". Again, my specific response to Mr. Giamber's general question regarding key incidents was that I do not recall any key incidents.

With regards to making a false statement to Enis Pinar on May 9, 2002, I maintain that I never made any false statements to Mr. Pinar. In spite of Mr. Pinar's questions being very general and vague I responded truthfully and to the best of my knowledge. At no time did I make any false statements to Mr. Pinar.

Concealment Of Misappropriated NGA Property

Respectively, I categorically deny ever having concealed misappropriated NGA property. I also deny ever having a WP-4 elevator key detached from my gallery key ring. At no time did I ever attempt to conceal or hide any misappropriated NGA property.

Tampering With A Gallery Key Ring.

Respectively, I categorically deny ever having tampered with a Gallery key ring. I strongly maintain that the Deciding Official, Ms. Tobin, has deliberately and or intentionally misrepresented the facts in this matter. Ms. Tobin has purposely misused the statements of the three employees referenced in her letter of decision. In fact, Ms. Tobin, is fully aware of the fact that a management witness, Mr. Brian Thomas, has accused another employee of tampering with his key ring.

AFFIRMATIVE DEFENSES

Affirmative defense No. 1., is disparate treatment.

The key incident is nothing more than an effort by Management to create a reason to terminate the Appellant. The truth of the matter is that there are employees currently walking around with elevator keys that were issued to them by Management, this is an established practice that can be verified by various employees.

The appellant maintains that the penalty of removal is seriously disparate because Brian Thomas, the Appellant's immediate Supervisor Mr. Brian Thomas, was caught concealing a detached WP-4 elevator key, from the very same key ring that I have been accused of tampered with. Mr. Thomas has also admitted to making false statements. Mr. Thomas was only given a suspension for his actions, even though he was in a position of higher trust and responsibility.

The appellant maintains that the penalty of removal is seriously disparate because, David Schott, Deputy Chief of Security, was caught taking a truckload of Gallery property without authorization and only received a 5-day suspension

The appellant maintains that the penalty of removal is seriously disparate because there are other bargaining unit employees that have lost and or misplaced entire key rings and no disciplinary or adverse action was taken. In particular we reference an incident that occurred in July 1997 in which Ms. Jeannie Bernhards lost an entire key ring, no investigation was conducted and no disciplinary or adverse action was taken. See Appellant's tab?

In a second incident that occurred in April 2002 Mr. James Phillips reported that the WP-4 elevator key had been lost from his key ring. Again no investigation was conducted and no disciplinary or adverse action was taken in this matter. See Agency files tab 4J page 4 paragraph 2.

Finally we reference the fact that the two incidents referenced above, in both incidents not even an incident report was made which is required in all matters of this nature.

Affirmative Defense No. 2. is that the charges are stale.

In establishing that the alleged offenses were stale, we reference the fact that the alleged offense of tampering with a Gallery key ring occurred in January 2001 and Supervisor, Brian Thomas was directly involved. Therefore, management was fully aware of the alleged tampering with the Gallery key ring from the beginning. This would be approximately a year and a half prior to the Agency bringing the charge against the Appellant. In spite of Management's awareness of the incident as early as January 2001 the Agency did not bring a charge against the Appellant until July 2002, thus it is at least 18 months after the alleged incident, therefore we maintain the charge is extremely stale.

It's unreasonable to assume that the Appellant could defend himself with a vivid memory and be able to produce witnesses for something that occurred more than 18 months prior.

Affirmative Defense No. 3, Retaliation for Union Activity

The Agency did not bring a charge against the Appellant, who is the Vice President of the Union AFGE 1831, until after he had filed an Unfair Labor Practice complaint against the Agency in December 2001, specifically charging the Director of the Agency Earl A. Powell. The Appellant also filed a complaint against the Director in March 2002. This complaint was filed with the Appellants Senators and Congressmen. At the time this complaint was filed with the Senators and Congressmen the Agency Director Mr. Earl A. Powell was up for a presidential appointment with the National Council of the Arts. In May 2002, the Union requested information from the Agency pertaining to the number of disciplinary actions taken against non-bargaining unit employees, broken down by department and race. As of this date the Agency has refused to provide the requested information, because the Agency is fully aware that the Appellant and other Union representatives will use this information to file a discrimination complaint against the Director and the Agency.

Agency officials Director, Earl A. Powell, Administrator, Darrell Willson, Deputy Chief or Personnel, Meredith Weiser, Labor Relations Representative, Luis Baquedano, Deputy of Facilities Management and Second Line Supervisor, Michael Giamber, all whom filled positions that would have given them the opportunity and authority to retaliate.

Motive for retaliation: The letter writing campaign by the Appellant had the potential of seriously damaging the possibility of Director Powell of being confirmed by the Senate to the appointment of the National Council of the Arts. See Tab

As a high level official of the Union, the Appellant, was often engaged in hostile negotiations with Agency representatives. In addition to above the Appellant, filed a number of complaints and unfair labor practices charges against the Agency. As an electrician, the Appellant brought numerous violations of electrical codes and numerous building codes to the attention of the appropriate officials.

Clearly, all of the aforementioned establishes numerous motives for the Agency to retaliate against the Appellant.

Affirmative Defense No. 4, Retaliation for Union Activity

During the month of July 2002 the Management of the Agency ordered the lock smith shop to change the lock on the Union office, in spite of the objection by the Union. The lock was change and Management refused to issue a new key to me Mr. Fred Dodge the appellant. The changing of the lock to the Union office was done solely to interfere with the Union activities of myself and to prevent me from having access to the Union office.

WITNESS LIST

Darrell Willson

Mr. Willson is expected to testify as to his knowledge concerning David Schott the deputy chief of security unauthorized taking of Gallery electrical fixtures.

Earl Powell

Mr. Powell is expected to testify as to knowledge concerning the invasion of privacy with regards to Mr. Dodge and his son, and providing testimony regarding the Agency's handling of FMLA information. Also, Mr. Powell is expected to testify the Senators letters and his presidential appointment.

George-Ann Tobin

Ms. Tobin is expected to testify as to her reasoning for up-holding the proposed removal of Mr. Fred Dodge, and her investigation of the proposed removal.

Mark Teed

Mr. Teed is expected to testify as to whether or not he held a conversation with Mr. Dodge pertaining to Mr. Brian Thomas and or a Gallery key ring.

Brannock Reilly

Mr. Reilly is expected to testify as to his conversation with Mr. Dodge regarding a defective ID card.

Michael Giamber

Mr. Giamber is expected to testify as to his reasoning for proposing the removal of Mr. Fred Dodge and to his interviewing of the Appellant and other witnesses.

Lieutenant Harry Groce

Mr. Groce is expected to testify as to his knowledge regarding Deputy Chief David Schott losing his Gallery key ring.

Commander Cleve Brown

Mr. Brown is expected to testify as to his knowledge as to whether or not any disciplinary action was ever taken in the matter regarding Deputy Chief David Schott losing his Gallery keys.

Daniel Smith

Mr. Smith is expected to testify as to his knowledge of conversations and interviews with management.

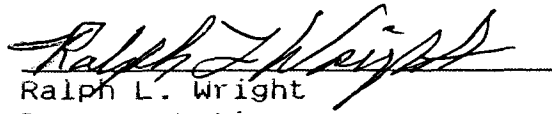
CC: Luis Baquedano

CERTIFICATE OF SERVICE

I Ralph L. Wright certify that a copy of the Appellant Fred Dodge MSPB pre-hearing submissions were sent by fax on December 11, 2002 to Administrative Judge Edward F. Manning at the Merit Systems Protection Board.

I Ralph L. Wright certify that a copy of the Appellant Fred Dodge MSPB pre-hearing submissions were hand delivered to the office of the Agency Representative Luis Baquedano on December 11, 2002.

December 11, 2002
Date:


Ralph L. Wright
Representative

I, Mark Teed, Sheet Metal Mechanic, attended a Management held meeting on July 19, 2002, in which Kurt Sisson, AFM Department Head, informed employees that he was working to get the Medeco elevator key removed from the standard Gallery Ring , as he did not see having a separate Medeco elevator key as a security issue and that he knew this was a problem for employees.



Mark Teed
Sheet Metal Mechanic

12-11-02

Date

EXHIBIT A

In reference to the ID badge, I believed and still believe I had permission to take the defective badge on March 1, 2002.

I openly displayed the defective badge to my co-workers and even showed my supervisor, THOMAS. If I had thought at any time I had been told I could not have this badge would I have showed the badge openly to so many people including someone in a Supervisor position, and two people in the Personnel Department? I never hid the badge and returned it when asked on March 5, 2002.

In fact Mr. Reilly never reported or complained about the badge missing, it was THOMAS who initiated the situation.

THOMAS's own email statement on March 13, 2002 (not even signed until July 19, 2002 - 4 days after I was charged) is a fabrication. He tells this tale of calling me into his office to ask if I had a defective badge because he thought he saw me wearing it. THOMAS already knew I had the badge because I had showed it to him directly, along with my other co-workers. THOMAS told me that Mr. Reilly had made a complaint. THOMAS asked me for the badge and I immediately retrieved it from my locker and gave it to him. I called Mr. Reilly to see what the problem could be and Mr. Reilly told me that he had never complained, it was THOMAS who came to him. REILLY said he believed the whole incident was a misunderstanding and that he just needed to get the badge back.

BACQUEDANO makes a statement July 12, 2002 that I came to him in March to say I was going to be fired over stealing the badge. I explicitly told BAQUEDANO that I felt THOMAS and other managers were trying to initiate false charges against me over the badge. I told BAQUEDANO "you know I'm no thief", and I told him I was tired of the fighting. THOMAS had been reprimanding me constantly since the first week of January when he was caught parking illegally on Gallery property and he confronted me about it. My brother had just died suddenly in February and I wanted to get away from the hostility. Within a week of my return to work THOMAS had given me a written warning for taking the 48 hours of leave to attend my brother's funeral out of town. THOMAS had also indicated he did not like me taking my approved FMLA leave to care for my son. I told BAQUEDANO I wanted to pursue a position at another agency. The date of BAQUEDANO's statement speaks for itself - July 12, 2002. If he felt this was such an important conversation over security, especially being the legal voice of the Gallery then why didn't he act on this issue in March or April or May or June? I believe my letter over what I perceived as FMLA violations to Senators MIKULSKI and SARBANES, as well as all Maryland congressmen, was an issue for the Gallery. During our conversation BAQUEDANO asked me to sign a waiver concerning the violation issues referring to it as "the letter upstairs".

I gave notice on March 15, 2002 that I was leaving my position for family reasons, subsequently I decided to stay and rescinded my resignation. If I had actually stolen the ID badge would I have ended up staying?

EXHIBIT B