

Public Employee Responsibility and The Duty of the State To Mitigate Employee Discipline Under Tennessee Code Annotated Section 8-30-330

By Larry D. Woods, Professor, Tennessee State University

Abstract: Tennessee law and the due process clause require compatibility analysis before the proper range and severity of discipline can be determined in any proceeding against a civil service employee of the state government.

Tennessee law provides for state employees to be protected by civil service after a probationary term and requires sworn testimony in any disciplinary proceedings. TCA sec. 8-30-201; TCA sec. 8-30-207; TCA sec. 8-30-325; TCA sec. 8-30-328; and Tn. Dept. of Personnel rules.

TCA sec. 8-30-330 delineates the manner in which the state may enforce its punishment under the civil service rules, as follows:

- (a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.
- (b) Any written warning or written follow-up to an oral warning which has been issued to an employee shall be automatically expunged from the employee's personnel file after a period of two (2) years; provided, that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.
- (c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a).

Accordingly, Tennessee's Civil Service statutes and rules incorporate the doctrine of progressive discipline. Thus, state supervisors are expected to administer discipline beginning at the lowest appropriate step. *Kelly v. Tennessee Civil Service Commission*, 1999 WL 1072566 (Tenn. Ct. App. 1999). Further, the Court of Appeals in expressing approval of the progressive discipline system, has stated that the legislative mandate for progressive discipline should be "scrupulously followed". *Berning v. State of Tennessee, State of Correction*, 996 S.W.2d 828, 830 (Tenn. Ct. App. 1999).

The state government has acted in an arbitrary and capricious manner, abusing their authority, if and when they failed to follow the progressive discipline law and exceeded their statutory authority. When supervisors do not properly counsel an employee or when they fail to issue the required performance evaluations, then it is all but impossible for the state to demonstrate compliance with the progressive discipline doctrine.

Further, the personnel records of other employees of the state state must be reviewed on a comparability basis to determine properly whether the progressive discipline doctrine is actually being used. A major factor in determining the appropriate level of discipline is to see how other state employees who allegedly have committed the same or similar infractions have been disciplined and whether the punishment imposed is similar or different. See *Gross v. Gilless*, 26 S.W. 3rd 488, 495 (Tenn. Ct. App.1999), Perm. to Appeal Denied (Tenn. 2000). It is arbitrary and capricious under the 14th amendment when other employees committed the same offense according to the state and those employees received a different discipline.

The state must first decide the "step appropriate to the infraction or performance." When the state simply imposes a discipline without any comparison of punishment of other employees and without any decision making process as to how to determine the appropriate level of discipline, then 14th amendment issues of both due process and equal protection are implicated.

At a minimum the state should advise and determine the specific appropriate step of discipline under TCA Section 8-30-330 in all such proceedings. The state should also make a determination as to the specific progressive steps for "Progressive Disciplinary Action" for this kind of conduct under the Tennessee State of Personnel Rule 1120-10-.07. This rule sets forth the requirements, provisions, and conditions for oral warnings, written warnings, suspensions without pay, transfer, demotion or termination comparisons that must be performed in order to provide due process of law.