



STATE OF NEW JERSEY

 DECISION OF THE
 CIVIL SERVICE COMMISSION

 In the Matter of Clifford Hickman
 City of Vineland School District

 CSC DKT. NO. 2019-3674
 OAL DKT. NO. CSV 08846-19

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ISSUED: MAY 22, 2020

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The appeal of Clifford Hickman, Senior Mechanic, Diesel, City of Vineland School District, removal effective June 14, 2019, on charges, was heard by Administrative Law Judge Kathleen M. Calemmo, who rendered her initial decision on April 13, 2020. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on May 20, 2020, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision as well as her recommendation to modify the removal to a 90 working day suspension. However, in addition, considering the nature of the appellant's misconduct and his status in a supervisory position, the Commission ordered that the appellant, upon his reinstatement, be demoted to the next lower in-line title utilized by the appointing authority. The Commission notes its authority to impose such an additional penalty pursuant to *N.J.S.A. 11A:2-19* and *N.J.A.C. 4A:2-2.9(d)*.

Since the removal has been modified, the appellant is entitled to back pay, benefits and seniority following his suspension until the date of his reinstatement. *N.J.A.C. 4A:2-2.12(a)* provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In this matter, while the penalty was modified, charges were sustained and

major discipline was imposed. Therefore, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. However, under no circumstances should the appellant's reinstatement be delayed based on any dispute regarding back pay.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. Accordingly, the Commission modifies the removal to a 90 working day suspension. Pursuant to *N.J.A.C.* 4A:2-2.10, the appellant is entitled to receive mitigated back pay, benefits and seniority from the conclusion of the 90 working day suspension until the actual date of reinstatement. An affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties are encouraged to make a good faith effort to resolve any dispute as to back pay. However, under no circumstances should the appellant's reinstatement be delayed based on any dispute regarding back pay. Additionally, the Commission orders that, upon his reinstatement, the appellant be demoted to the next lower in-line title utilized by the appointing authority.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20th DAY OF MAY, 2020

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08846-19

AGENCY DKT. NO. 2019-3674

**IN THE MATTER OF CLIFFORD HICKMAN,
VINELAND SCHOOL DISTRICT**

Arthur J. Murray, Esq., for appellant Clifford Hickman, (Alterman & Associates,
L.L.C., attorneys)

Frank DiDomenico, Esq., for respondent, Vineland School District

Record Closed: February 28, 2020

Decided: April 13, 2020

BEFORE KATHLEEN M. CALEMMO, ALJ:

STATEMENT OF THE CASE

The appellant, Clifford Hickman (Hickman), appeals his removal as a senior diesel mechanic from the Vineland School District (Vineland), effective June 14, 2019, for conduct that Vineland alleged risked the safety of the students who ride the school buses. Charges presented include N.J.A.C. 4A:2-2.3(a)(6) - conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12) - other sufficient cause. Hickman maintained there was no risk of harm because the bus was not in service. He conceded that his failed attempt at a joke is a matter of utmost seriousness, but it does not warrant the ultimate discipline of removal.

PROCEDURAL HISTORY

On June 13, 2019, Vineland issued a Final Notice of Disciplinary Action¹ (FDNA) sustaining the charges in the Preliminary Notice of Disciplinary Action² (PNDA) and removing the appellant effective June 14, 2019. Hickman appealed his removal and the matter was transmitted to the Office of Administrative Law, where it was filed on July 1, 2019, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. A hearing was conducted in this matter on January 13, 2020. The record was held open to allow the parties to submit closing briefs. On February 27, 2020, after receipt of both briefs, the record closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

The following facts are not in dispute. Hickman had been employed by Vineland since 1992. In 2006, he was promoted to senior diesel mechanic, a supervisory position. Hickman supervised the other four mechanics employed by Vineland to repair and maintain Vineland's school bus transportation fleet. During the 2018-2019 school year, Vineland's entire fleet of buses consisted of 181 buses. Of that number, there were 120 full size passenger buses, 35 small buses, and 9 vans. About 10,000 students typically ride the buses each day. There were approximately 107 Vineland buses on the road each school day. The remaining buses were either not needed or out of service for repairs.

Hickman and his mechanics primarily worked from the garage. The garage consisted of five bays to work on the vehicles, an office for Hickman, and an attached space for inventory and the inventory manager's office. In addition to the garage,

¹ The FNDA referenced an attached letter in lieu of a description of the incident that gave rise to the charges, but no such letter was attached. Vineland submitted that the incident was described in the written decision from the departmental hearing and requested that the decision be moved into evidence. Given that this matter must be heard as a *de novo* hearing, evidentiary decisions from the departmental hearing are not appropriate for consideration. Consequently, I did not admit the decision from the disciplinary hearing as evidence in this matter. Therefore, the FNDA does not contain a description of the incident.

² The PNDA described the incident as "[r]isking the safety of children."

Vineland has three yards where the buses are parked and stored. Bus drivers report to one of the three yards to pick up and drop off their assigned buses after completing their assigned routes.

Each Vineland bus is inspected by the State of New Jersey, Department of Transportation, Division of Motor Vehicles (DOT) twice a year. Inspectors for the DOT come to Vineland's garage for the inspections in September, November, March, and May. Hickman determined which buses would be designated for inspection.

On May 13, 2019, Hickman pulled Bus 48 after its morning run for inspection. After Hickman's inspection, a requisition form to the vendor, D.A. Dehart & Son, was issued by Jim Hewitt, inventory manager for Vineland, for a spring assembly packet for Bus 48 for a broken spring. (R-3.) On May 14, 2019, Bus 48 failed inspection for the illumination of the Anti-Braking System (ABS) warning light and a broken leaf spring. (R-2.)

On the morning of May 14, 2019, Hickman applied silicon and black paint over the leaf spring crack on Bus 48 before it was inspected. The inspector found it and confronted Hickman. Hickman immediately told him that he was playing a joke on the inspector.

On June 3, 2019, Vineland issued a PNDA to Hickman for conduct unbecoming a public employee in violation of N.J.A.C. 4A: 2-2.3(6) and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(12) for risking the safety of children. (R-8.) On June 14, 2019, Vineland issued a FNDA that sustained the charges without detail and removed Hickman from service. (R-11.)

Hickman's removal was solely based on the conduct he exhibited on the morning of May 14, 2019. His prior evaluations were excellent, and his employment record was exemplary.

Testimony

Respondent

Damary Ferreri (Ferreri), has been employed by Vineland for seventeen years. On May 14, 2019, her job title was acting assistant coordinator for transportation. As part of her duties, Ferreri was responsible for overseeing the bus mechanics, who worked in the garage. Ferreri was familiar with Hickman because he was the acting supervisor for the mechanics.

Periodically, each bus is inspected by the DOT. On May 28, 2019, Keith Repp (Repp), a DOT inspector, called Ferreri to discuss a serious situation discovered during the routine bus inspections conducted on May 14, 2019. Repp told her that silicon and paint had been applied to cover a broken leaf spring on Bus 48. After the discovery, Repp contacted Hickman. Hickman's response to Repp was that he did it to see if the inspector was as good as he claimed. After the discovery, the inspector put the bus out of service.

Prior to May 14, 2019, Ferreri had no documentation indicating that Bus 48 was out of service. When a bus is out of service, a sign is placed on the dashboard or windshield as a warning that the bus is not operable. There was no "out of service" sign placed on the windshield of Bus 48 before its DOT inspection.

On May 28, 2019, Ferreri sent an email to Dr. Joseph Rossi, (Rossi), the director of human resources, and Gene Mercoli, (Mercoli), the Business Administrator, to advise them of her conversation with Repp. (R-4.) In the email, Ferreri wrote that this incident could have resulted in a fine of \$20,000. Ferreri stated that her concern was the safety of the students who could have been transported on that bus.

Up until this incident, Ferreri considered Hickman to be a model employee but she recommended that discipline be imposed.

On cross-examination, Ferreri stated that her conversation with Repp on May 28, 2019, occurred fourteen days after the incident with Bus 48. She had been out of the country on vacation and could not recall if she had received any voice mails from Repp.

Gene Mercoli was hired on March 15, 2019, as the school business administrator for Vineland. On May 28, 2019, Ferreri had asked Mercoli to come to her office to join the telephone call with Repp which was already in progress. She put the call on speaker phone so Mercoli could hear what Repp was saying and be part of the conversation. Repp informed them that Hickman's actions in covering up a broken leaf spring could have exposed Vineland to a \$20,000 fine. Repp indicated the situation was serious because a broken leaf spring could cause the bus driver to lose control of the bus.

Mercoli considered a report from a state inspector to be a serious concern. He had never experienced it in his twenty-one years as a school business administrator. Fortunately, there was no fine or repercussion.

On cross-examination, Mercoli stated that he did not express any concern to Repp about receiving this information two weeks after the incident. Mercoli had one telephone conversation on May 28, 2019, with Repp; he had no other contact with any member of the DOT inspection team. Further, Mercoli had no knowledge when Bus 48 was last in service prior to May 14, 2019.

On re-direct examination, Mercoli stated he does not oversee the transportation department. He believed Ferreri asked him to participate on the telephone call with Repp because Repp raised the potential of a fine.

Joseph Rossi (Rossi) is an eight-year employee with Vineland as the executive director of personnel. In his capacity as executive director of personnel, Rossi oversees all employee hiring, mentoring, training, and acts as the appointing authority for Vineland. Rossi is familiar with Hickman.

On May 28, 2019, Rossi received an email from Ferreri regarding her conversation with Repp. (R-4.) On June 5, 2019, Rossi also received an email from John Frangipani,

(Frangipani), the assistant superintendent of administration, wherein Frangipani described his conversation with Hickman about the May 14, 2019, incident. (R-5.)

Rossi made the decision to impose discipline on Hickman for the incident. His utmost concern was the safety of the students entrusted to Vineland's care and he considered Hickman's actions to be unforgivable and unimaginable. Rossi stated that there were no guarantees that Bus 48 would not have been put out on the road.

Rossi reviewed Hickman's personnel file. Within the file was a notice dated December 3, 2007, to the garage mechanics warning the mechanics not to play games or tamper with any of the equipment. (R-13.) There was also a notice authored by Rossi from 2012, advising that vulgar language, insulting humor, loud music, bullying, and smoking would not be tolerated. (R- 14.)

On cross-examination, Rossi was asked whether there was an investigation of the incident. Rossi knew that Frangipani spoke to Hickman, but in his view an investigation was not necessary. There was no dispute about what occurred. Before issuing the PNDA, Rossi reviewed the two emails (R-4 and R-5) and recalled having a conversation with Hickman. However, there was no documentation of a conversation between Rossi and Hickman.

Prior to Rossi becoming executive director of personnel, the process of conducting annual evaluations had not been a priority. Acknowledging that Hickman's past performance was not a problem, Rossi issued the PNDA solely based on the seriousness of the incident. Hickman's evaluations from 2013 to 2018, were not a factor in Rossi's decision to discipline Hickman.

Appellant

Clifford Hickman is a high school graduate with a certificate in diesel mechanics. He started working for Vineland in 1992, as a helper in the garage, before graduating from high school. Because he was not old enough to be eligible for a Commercial Driver's License (CDL), Hickman started work in building maintenance and security. In 1997,

Hickman became a mechanic in the garage and obtained his CDL license. In 2006, he was promoted to senior mechanic, a supervisory position. As a mechanic for Vineland, Hickman worked on school vehicles.

During the 2018 - 2019 school year, Vineland had approximately 181 total buses, of that number, 20 were full size 54 passenger school buses. Bus drivers were not permitted to take buses home after their shift. They were required to report to a designated yard each morning to pick up their bus for the day. There are three yards where the buses are stored. The bus drivers are assigned their bus when the driver gets his/her route. A substitute driver was required to go to the office to get his/her route and bus assignment. Whenever a bus needed replacement, Hickman designated which bus to assign.

Bus inspections occurred four times a year, September, November, March, and May. Each individual bus is inspected twice a year. DOT scheduled the days in advance, and Hickman decided which buses to pull for inspection. These inspections occur over a ten day period. Approximately ten buses are inspected per day at the garage, using all five garage bays. In anticipation of the inspection, Hickman pulled the buses after their first run on the day before the inspection. Those buses are out of service until they pass inspection. The reason for pulling the buses the day before the inspection was to give the Vineland mechanics time to fix minor issues to prevent the buses from failing inspection. While the DOT inspectors are performing the inspections, the Vineland mechanics are not involved. All buses pulled for inspection must receive new inspection stickers from DOT before they are put back in service.

Because the inspection buses are out of service by virtue of the inspection, there are no out of service tags placed on these buses. The out of service tags are reserved for buses that break down on the road, involved in accidents, or waiting to be repaired. The buses subject to inspection are out of service until they receive a valid inspection sticker from the DOT. The first thing the inspector does is remove the old inspection sticker. If a bus fails, it is out of service until the repairs are made and it passes inspection and receives a valid sticker. Hickman oversaw the scheduling of buses for inspection and reinspection.

In March 2019, DOT inspectors notified Hickman that they were seeing a high percentage of cracked leaf springs on the 2012 model Freightliner which are full size buses. Knowing that this would be an issue, the mechanics were advised to examine the leaf springs prior to the May inspection. A leaf spring is part of the suspension of the bus; it holds the bus to the wheels. (R-1.) Each bus had four leaf spring packs. The front two packs consist of four springs each and the back two packs consist of thirteen springs each. In 2019, Hickman was sending all leaf spring repairs to an outside facility. The outside facility only replaced the leaf spring packet. As a cost-saving measure, Hickman ordered the new leaf spring packet and sent it with the bus to the outside facility to be installed. The entire leaf spring packet must be replaced even when there is only one broken spring. Although this is a serious repair, a bus driver would not notice anything while driving, if there was only one cracked spring.

After Bus 48 made its morning run on May 13, 2019, Hickman pulled the bus from service for a pre-inspection. He discovered that Bus 48 had many issues. The most serious infraction was the illumination of the ABS light which signified a potential problem with the brakes. The illumination of the ABS light meant that Bus 48 would automatically fail, if the cause of the light could not be repaired before the inspection. Hickman also discovered the broken spring on the rear left. As a trained mechanic, Hickman could spot a broken spring with the naked eye. Hickman recalled working on the bus from 10:00 a.m. until about 6:00 p.m. He cleaned the engine, performed seat repairs, and changed the tires. He also ordered the new spring packet from Jimmy Hewitt, the inventory manager, and reviewed the order before it was placed. (R-6.) Hickman knew that Bus 48 was going to fail inspection because of the ABS light and the cracked leaf spring. He did not have the time or the parts to fix those problems before the inspection, scheduled for the next morning.

On May 14, 2019, Hickman arrived early, and an inspector named Jake was already there. Jake had been the inspector who first noticed the problem with the springs on the 2012 model freightliners. Hickman and Jake were well acquainted, so Hickman decided to play a joke on him. He quickly ducked under Bus 48 and put a little bit of silicon on the broken spring and painted it with black paint, knowing that Jake would spot

it right away. Hickman assumed Jake would get a kick out of it. The bus was parked in the bay inside the garage waiting to be inspected.

The mechanics and the inspectors were on good terms. Knowing Jake, Hickman believed his prank would be appreciated. It was not his intent to fool the inspector. Hickman specifically chose Bus 48 because he knew it would fail inspection.

Later that day, Repp called Hickman to meet him in the garage because he had something to show him. Hickman immediately knew it was the leaf spring on Bus 48 that Repp needed to show him. Repp wanted to know if Hickman was responsible. Hickman responded that he thought Jake would appreciate his attempt at humor. Hickman believed that Repp wanted to confirm that this had not been done without Hickman's knowledge. Hickman also told Repp that he ordered the new spring the previous day. There were five inspection days following the incident, and Hickman did not notice anything different about Repp's demeanor.

The parts for Bus 48 arrived on May 15, 2019. Bus 48 was towed to an outside vendor for the installation of the new spring pack. After it was towed back to the garage, the mechanics fixed the problem with the ABS light. On May 16, 2019, DOT reinspected Bus 48 and it passed inspection.

Hickman acknowledged that his joke was a bad attempt at humor. Inspection times are difficult with the mechanics and the inspectors working long hours under pressure. Hickman's only intent was to lighten the atmosphere in the garage. This was not an attempt to cover up a defective spring. Hickman knew his prank would be caught because it was obvious, especially to a trained inspector looking for a broken spring. Even assuming the worse and his prank went undetected, the bus would still have failed inspection because of the ABS light. On May 14, 2019, Bus 48 failed for ABS and broken leaf spring. (R-2.)

Hickman understood why administration was concerned. However, he did not think removal was warranted. Hickman had over twenty-five years of good service and

an unblemished safety record which should have accounted for his character and his ability to do his job.

There was never a question about this bus inadvertently or purposefully going back into service. Hickman worked on Bus 48 until 6:00 p.m. in the evening on May 13, 2019, and it was scheduled for inspection first thing the following morning, May 14, 2019.

On cross-examination, Hickman stated that on May 14, 2019, he was the senior diesel mechanic and the acting supervisor of the other four mechanics in the garage. He admitted that he was responsible for setting an example and a standard for the others to follow. When he said that he thought the inspector would get a kick out of his prank, he meant that kidding and joking were commonplace between the mechanics and the inspectors. Hickman believed that humor could be beneficial in building good working relationships but admitted that he was wrong.

Hickman explained why Bus 48 was never given an out of service tag. The tag is put on buses that are being stored in the yards while they are out of service. If a bus is already in the garage, it does not need a tag because the mechanics know why the bus is there. Bus drivers only operate assigned buses; they do not come into the garage looking for a bus to drive.

Buses assigned for inspection are automatically put out of service until the DOT puts a new sticker on the windshield. Bus 48 had a valid inspection sticker until it was removed by the DOT on May 14, 2019.

Hickman only found one cracked spring on Bus 48 but all thirteen springs in the pack had to be replaced pursuant to standard protocol. He ordered the new pack the day before the scheduled inspection. The leaf spring is part of the suspension and holds the bus to the rear axle. It is a significant component, but one broken spring would not cause the driver to lose control of the bus. When this bus was brought to the garage after the driver's morning run on May 13, 2019, the bus driver did not express any concerns about the bus. The mechanics were routinely checking the leaf springs on all 2012 model Freightliners because of the known defect.

Hickman accepted that the work he performs is serious because he is responsible for the safety of all who ride the buses. His daughter is one of those bus riders and he would never jeopardize her or any other child. He never lied about this prank or tried to cover it up. Although it was always meant as a joke, he understood it was wrong.

Hickman maintained that this prank never compromised the safety of the children riding the buses. He was certain that Bus 48 was going to fail inspection because of the ABS light and the broken leaf spring that he had not been able to fix before the inspection. After Bus 48 failed inspection, on the morning of May 14, 2019, it was automatically out of service because it no longer had a valid inspection sticker that permitted it to be operated on the road. Because it did not have a valid sticker, Bus 48 had to be towed to and from the outside facility for the leaf spring repair.

ANALYSIS AND ADDITIONAL FINDINGS OF FACT

To resolve the inconsistencies in the witness testimony, the credibility of the witnesses must be determined. Credibility contemplates an overall assessment of the story of a witness considering its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

Ferreri, Mercoli, and Rossi offered credible testimony. Their concern for the safety of the students who ride the Vineland buses was sincere and authentic. However, their testimony lacked first-hand knowledge. They were not able to articulate how Hickman's actions on the morning of May 14, 2019, created a genuine risk of harm to the students, without resorting to generalized speculation that an unwitting bus driver could have driven

this bus. Respondent did not call Repp as a witness to testify. Without Repp's testimony, this tribunal does not have any evidence from DOT to discern whether DOT viewed Hickman's actions as a cover-up to fool the inspectors or a prank that interfered with the serious nature of their work. Ferrari and Mercoli testified, based on their one telephone conversation with Repp, that Hickman's actions could have exposed Vineland to a potential fine of \$20,000, but they offered no other information.

Hickman was a credible witness, who was clearly a knowledgeable mechanic and a valuable employee for over twenty-seven years. Because of Hickman's years of service and his thirteen years as a supervisor, it was entirely plausible that Hickman and the DOT inspectors would have a rapport. His statement that he was trying to lighten the atmosphere in the garage because inspection time was stressful was not offered as an excuse of wrongdoing. Hickman admitted that he was wrong. He did not shift the blame or avoid responsibility.

At the crux of this matter is the safety of the students who ride the bus. Hickman's assertion that he picked Bus 48 because he knew it would fail inspection could be viewed as self-serving and an attempt to diminish the severity of his actions. In this instance, I am satisfied that is not the case. Hickman testified there were two major problems that would cause the bus to fail. His prank only involved one of the fatal problems, the leaf spring. Therefore, I accept as reasonable that regardless of Hickman's actions, Bus 48 would have failed inspection and been taken off the road. The DOT inspection document (R-2) supported Hickman's assertion. Bus 48 failed inspection on account of two problems, the ABS light and the broken leaf spring. Id. In addition, Hickman's action in immediately ordering the new leaf packet on May 13, 2019, showed Hickman's intention to fix this bus and undermined respondent's assertion that Hickman intended for this bus to transport students with a known broken spring.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as additional **FACTS**:

After performing a pre-inspection of Bus 48 on May 13, 2019, Hickman discovered two problems with the bus that would cause it to fail a DOT inspection. He ordered the new leaf spring packet on May 13, 2019, but it would not be delivered in time. Consequently, on the morning of May 14, 2019, Bus 48 presented to the inspectors with an illuminated ABS warning light and a broken leaf spring. Hickman applied silicon and black paint over the crack on the leaf spring as a prank on the inspector, who was known to be diligent in inspecting the leaf springs on this model bus. The silicon and paint did not fool the inspector and the crack was discovered. Hickman admitted his part and maintained it was a joke on the inspector. Bus 48 failed inspection. (R-2.) After failing inspection on May 14, 2019, Bus 48 was out of service until it was repaired and reinspected.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Here, Vineland charged Hickman with “conduct unbecoming a public employee” under N.J.A.C. 4A:2-2.3(a)(6). The charge is considered an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental

unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

In this instance, Hickman’s prank showed a lack of maturity and leadership. Whether or not it was accepted by the DOT inspectors as a prank, Repp still alerted Vineland’s administrators that Hickman’s conduct had the potential to expose Vineland to a fine. By engaging in a prank on a school bus during a busy inspection period, Hickman did not set an example for the other mechanics working under his supervision. Therefore, I **CONCLUDE** that Vineland has met its burden of proving this charge.

Hickman was also charged with violation of N.J.A.C. 4A:2-2.3(a)(12) – other sufficient cause. No specific rule, regulation, or policy were provided. The FNDA did not contain a description of the incident. Respondent had not provided any substance for this charge. Therefore, I **CONCLUDE** that Vineland did not produce sufficient evidence to support the charge of other sufficient cause under N.J.A.C. 4A:2-2.3(a)(12) by a preponderance of the credible evidence. The charge is **DISMISSED**.

PENALTY

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual’s disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Progressive discipline is not

a “fixed and immutable rule to be followed without question.” Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Id.

In the instant case, Hickman conceded that his actions on May 14, 2019, constituted conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(6). In his twenty-seven years of service, Hickman only had one major discipline that occurred in 2006 and a minor discipline in 1999. In mitigation, Hickman discovered the problems with the bus and ordered the needed part before committing the prank. While camaraderie and humor are valued in the workplace, they both have their limits. Therefore, Hickman deserved discipline for conducting a prank during DOT inspections, however, removal was not warranted. This prank did not constitute a safety risk to students, because the bus was out of service. Accordingly, I **CONCLUDE** that removal was not warranted under these circumstances. I further **CONCLUDE** that an appropriate penalty of a ninety-day suspension would serve as a deterrent that such conduct will not be tolerated in the workspace.

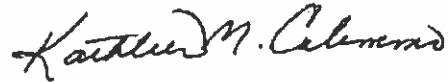
ORDER

I **ORDER** that the charge of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6) is sustained and the charge of other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12), is dismissed, and that the action of the respondent removing the appellant from his position as a senior diesel mechanic is hereby **MODIFIED** to a ninety-day suspension.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five- days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



April 13, 2020
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

WITNESSES

For Appellant:

Clifford Hickman

For Respondent:

Damary Ferreri

Gene Mercoli

Joseph Rossi

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Definition of leaf spring
- R-2 Inspection report Bus 48, dated May 14, 2019
- R-3 Photograph of broken leaf spring
- R-4 Email from Ferreri, dated May 28, 2019
- R-5 Email from Frangipani, dated June 5, 2019
- R-6 Part requisition, dated May 13, 2019
- R-7 Part price quote, dated May 13, 2019
- R-8 PNDA
- R-9 Not in evidence
- R-10 Not in evidence
- R-11 FNDA
- R-12 Not in evidence

- R-13 December 3, 2007, memorandum
 - R-14 Letter from Rossi to Hickman
 - R-15 Not in evidence
 - R-16 Not in evidence
 - R-17 Not in evidence
 - R-18 Stipulation of Settlement, dated June 4, 2009
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