

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT  
CIVIL ACTION  
NO.: 2081CV0479

JOHN ADAMS

vs.

COL. CHRISTOPHER S. MASON, COMMONWEALTH OF MASSACHUSETTS,  
DEPARTMENT OF STATE POLICE & others,

MEMORANDUM OF DECISION AND ORDER ON CROSS MOTIONS FOR  
JUDGMENT ON THE PLEADINGS

The plaintiff, John Adams (“Adams”), a Massachusetts State Police Officer of former Troop E, appeals from a decision by Major David DeBuccia of the Department of State Police (“the Department”) recommending that the decision of the Duty Status Board (“the Board”) to suspend Adams without pay be sustained. For the following reasons, Adams’ motion for judgment on the pleadings ALLOWED and the Department’s cross-motion for judgment on the pleadings DENIED.

Background

This case arises from a payroll fraud investigation initiated by the Massachusetts State Police into over forty troopers who belonged to Troop E, which was disbanded after discrepancies were discovered between the troopers’ overtime pay and their actual hours worked. Adams was a Troop E member who was suspended without pay as a result of the investigation.

On August 13, 2018, Adams received a call notifying him that he was being placed on administrative leave with pay and that a Duty Status Hearing was scheduled for August 15, 2018, before the Board. The next day, Adams received a “To/From” letter authored by Captain James

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<sup>1</sup> Executive Office of Public Safety, Department of State Police.

D. O’Leary, advising him that he was the subject of an Internal Affairs investigation. Attached to the letter was a copy of a To/From letter authored by Major Brian Watson (“the Watson Letter”) and dated August 9, 2018, requesting a Personnel Investigation into Adams due to “irregularities” discovered during his audit into overtime patrols of Troop E Community Action Team members in 2015. Administrative Record (“A.R.”) at 8. The Watson Letter explained that based upon an examination of pay station entries and radio logs, it appeared that Adams was not present for six overtime patrols that he reported and received overtime pay for. *Id.* Although the Watson Letter purported to attach the pay station entries and radio logs referenced therein, they were not included in the copy of the letter given to Adams and Adams did not receive copies of the documents prior to his Duty Status Hearing. *Id.*

On August 15, 2018, at 5:15 a.m., Adams’ License to Carry was suspended. Later that morning, the Board held the Duty Status Hearing, which lasted 5-10 minutes. The Board heard no witness testimony and reviewed no documentary evidence of alleged absences. Following the hearing, the Board suspended Adams without pay.

Adams appealed the decision pursuant to G. L. c. 22c, § 43.<sup>2</sup> In November 2018, Adams was permitted to review pay station entries and radio logs that were used in the audit.

On August 29, 2019, a Section 43 internal review hearing (“Section 43 Hearing”) was conducted by Major David G. DeBuccia, as the colonel’s designee. During the hearing, counsel for the Department, Attorney Brunelli, explained how the radio affiliation logs and payroll records demonstrated that Adams was not present for six overtime patrols and introduced those documents into evidence. *Id.* at 18-24. Attorney Brunelli also questioned Detective Lieutenant

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<sup>2</sup> Adams also appealed to the Civil Service Commission. However, it does not have jurisdiction over appeals made by State Troopers from decisions from the Duty Status Board or from Section 43 Hearings. See Perez v. Department of State Police, 491 Mass. 474, 481-82 (2023).

Joseph Ballou, who had conducted an Internal Affairs investigation into Trooper Adams following the results the Troop E audit. *Id.* at 37. Detective Lieutenant Joseph Ballou explained that he spent approximately three hundred hours investigating Adams' overtime irregularities, which included examining many additional records to determine if evidence the audit relied upon was accurate. <sup>3</sup> *Id.* at 38.

During the hearing, counsel for Adams, Attorney Moynihan, focused on alleged procedural irregularities before and during the Duty Status Hearing. He questioned Attorney Brunelli and Detective Lieutenant Ballou about the fact that Adams had not received the radio affiliation logs and payroll records prior to the Duty Status Hearing. Attorney Brunelli conceded that the Department was unable to initially provide records to "individuals in ... the Troop E audit" because of "outside agencies that were investigating the Department of State Police" and because the documents were subject to state and federal criminal investigations. *Id.* at 25-26. Attorney Moynihan further questioned Detective Lieutenant Ballou about the extent of his investigation into Adams. *Id.* at 38-41. Attorney Moynihan also questioned Trooper Sullivan, a former Troop E member who was present at the Duty Status Hearing. He stated that the Watson Letter was read during the Duty Status Hearing and that no other evidence was introduced. *Id.* at 53-54. He also stated that the hearing lasted only five minutes. *Id.*

In February 2020, Major DeBuccia issued a decision in which he concluded that the decision of the Board to suspend Adams without pay was supported by substantial evidence and recommended sustaining the Board's decision. *Id.* at 1-5. He explained that after hearing arguments from Attorney Moynihan and Attorney Brunelli and reviewing the radio affiliation data and PayStation entries, the Board "properly based its decision to suspend Trooper Adams

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<sup>3</sup> Detective Lieutenant Ballou stated that he reviewed transponder records, snow gate records, and portable radio records. He also considered whether Adams could have used a spare cruiser. A.R., 30-40.

without pay upon Major Watson's request for a personnel investigation letter which was supported by substantial evidence." *Id.* at 4-5. The colonel accepted the recommendation and denied Sullivan's Section 43 appeal.

### Rulings.

#### I. Due Process

The Due Process clause of the Fifth and Fourteenth Amendments "imposes constraints on governmental decisions which deprive individuals of liberty or property interests." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The "opportunity for a hearing before a person is deprived of any significant property interest [such as tenured public employment] is the root requirement of the Due Process Clause." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). "The essential requirements of due process are notice and an opportunity to be heard." *Id.* While the formality of the procedural requirements for a pretermination hearing may vary, the employee must receive "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Hall-Brewster v. Boston Police Department*, 96 Mass. App. Ct. 12, 23 (2019) quoting *Loudermill*, 470 U.S. at 546.

Adams argues that the Decision must be set aside because the Department failed to afford him adequate due process during the Duty Status Hearing. Specifically, Adams maintains that the length of the Duty Status Hearing and the fact that he was not presented with any relevant supporting documentation relied upon by the Department in their audit precluded him from being able to understand the charges against him and defend those charges at the hearing. A.R. at 15-17, 81-94. The Court finds that Adams was provided with adequate notice of the literal charges

against him, but the Duty Status Board did not provide Adams with a meaningful opportunity to be heard.

Adams was not given the supporting documents relied upon by the Watson Letter prior to the Duty Status Hearing, and the absence of these documents deprived Adams of an explanation of the evidence against him and opportunity to defend himself based upon that evidence. Adams admits that he was provided with a letter from Captain O'Leary advising him that he was subject to an Internal Affairs investigation and that a Duty Status Hearing would be held on August 15, 2018. He also concedes that he was provided with the Watson Letter, which notified Adams that he was suspected of reporting six overtime shifts on certain specified dates that he "was not present for." *Id.* at 8;12. That is essentially the sum total of Adams' knowledge about the allegations against him. That is not enough for a hearing that would affect his pay, duty status, and firearms license.

Adams was not given a meaningful opportunity to be heard before he was suspended without pay. Prior to the hearing, which took place only one day after Adams received the Watson Letter, Adams was not permitted to review any of the underlying documents that supported the Watson Letter's findings. A.R. at 24-26. Along with being provided with no underlying evidence in advance of the hearing, during the hearing itself the Board presented Adams with no evidence beyond the conclusory findings in the Watson Letter. *Id.* at 53-54. Therefore, even if Adams was given the opportunity to be heard before the Board, he was unable to dispute the Department's analysis of the documents that formed the entire basis for his suspension. Additionally, the fact that the hearing lasted only five minutes and that the Board failed to present any other evidence other than the one-page Watson Letter indicates that there was no opportunity for both sides to present evidence and that a full hearing did not take place.

Adams also asserts that the fact that his License to Carry was revoked prior to the hearing signals that Duty Status Board made their decision prior to reviewing any actual evidence. A.R. at 90. The Court agrees that the suspension of Adams' license prior to the Duty Status Hearing indicated that the Duty Status Board had already to suspend him. The revocation or suspension of such license is governed by G. L. c. 140, § 131 (d) & (f) and is a separate process from reviewing an officer's employment status. So, adding to the lack of procedural fairness was the suspension of Adams' firearms license hours *prior* to the hearing. This indicates that the hearing is a mere formality, and not a meaningful opportunity for Adams to defend himself. The Court agrees with the plaintiff that his suspension appears to have been a foregone conclusion. A.R. 53-54; *Loudermill*, 470 U.S. at 542. Accordingly, the Department failed to provide Adams with adequate due process at the Duty Status Hearing because he was not given a meaningful opportunity to be heard, defend the charges against him, and present his side of the story. *Hall-Brewster v. Boston Police Department*, 96 Mass. App. Ct. 12, 23 (2019) quoting *Loudermill*, 470 U.S. at 546.

## II. Section 43 Review

General Laws c. 22C, § 43 allows “any person aggrieved by an order approved by the colonel [to] appeal to the superior court.” G. L. c. 22C § 43; *Flaherty v. Delaney*, 24 Mass. L. Rptr. 285 (2008) (Kern, J.), 2008 WL 2875377 at \*2. Under the deferential standard of § 43, a decision of the Department “can be disturbed only if it is based on a ‘legally untenable ground ... or is ‘unreasonable, whimsical, capricious, or arbitrary.’” *Sullivan v. Superintendent, Dept. of State Police*, 92 Mass. App. Ct. 1128, 2018 WL 910940 at \*3 (2018) (Rule 1:28), quoting *Forsyth Sch. for Dental Hygienists v. Board of Registration in Dentistry*, 404 Mass. 211, 218 (1989). An agency's decision is arbitrary and capricious if it lacks “any rational explanation that reasonable persons might support.” *Hercules Chem. Co. v. Department of Env'tl. Protection*, 76

Mass. App. Ct. 639, 643 (2010) quoting *Cambridge v. Civil Serv. Commn.*, 43 Mass. App. Ct. 300, 303 (1997). Likewise, a decision is arbitrary and capricious if it is made without any evidentiary support. *Massachusetts Gen. Hosp. v. Commission of Pub. Welfare*, 350 Mass. 712, 720 (1966). Furthermore, the parties agree that the “substantial evidence” standard of review provided for under c. 30A, §14 applies. Substantial evidence is “such evidence as a reasonable mind might accept as adequate to support a conclusion, a test which takes into account the entire record, both the evidence supporting the agency’s conclusion and whatever in the record fairly detracts from that weight of evidence.” *See Covell v. Dept. of Social Services*, 439 Mass. 766, 783 (2003) (internal citations omitted). Review must be confined to the administrative record and the burden is on the plaintiff to demonstrate the invalidity of the decision. *See Massachusetts Gen. Hosp.*, 350 Mass. at 720.

To the extent Adams argues that Major DeBuccia’s decision was arbitrary and capricious and not based on substantial evidence, this argument rings true. Maj DeBuccia was able to review the results of the audit into overtime irregularities by members of Troop E as well as the Department’s payroll entries and radio logs that were used in the audit. These records can be reasonably read to indicate that Adams was not active for six overtime shifts that he reported working. The Duty Status Board’s decision, however, was based upon the Watson Letter – *not evidence*, and certainly not “substantial evidence.” This fact supports Adams’ argument that Maj DeBuccia’s decision to uphold the Board’s suspension was not based upon substantial evidence. While the Major reviewed actual evidence at his level of review, that same evidence was neither reviewed by the Board nor provided to Adams before the Duty Status Board Hearing.

Further, it was arbitrary and capricious for the Duty Status Board to suspend him without pay based solely upon the Watson Letter, even if the findings of Watson Letter were based upon

the records that were analyzed during the Troop E Audit – the same records that Major DeBuccia reviewed before upholding the decision of the Duty Status Board. A.R. at 1-5.

To the extent that Adams argues that the colonel’s decision to suspend him without pay was an error of law, the Court agrees. State law authorizes the colonel “to promulgate rules and regulations for ‘the government of the department’ and the discipline of its employees.” *See Perez*, 491 Mass. at 479, quoting G. L. c. 22C, § 3. Furthermore, G. L. c. 22C, § 10 permits the colonel to “make rules and regulations for the force, including matters pertaining to discipline, organization, government, training, compensation, equipment, rank structure, and means of swift transportation.” *See Perez*, 491 Mass. at 479, quoting G. L. c. 22C, § 10. “Any member of the State police who violates these rules and regulations shall be subject to discipline and discharge in accordance with said rules and regulations.” *Id.* Rule 6.24 of the Department’s regulations permit the colonel to suspend an officer without pay following a Duty Status Hearing. A.R. at 194. However, the colonel’s decision to uphold Adams’ suspension without pay was based upon an error of law because the original hearing was constitutionally lacking in evidence that Adams violated any rule or regulation. The authority of the colonel is established and clear, but this particular decision was based upon an error of law.

ORDER

For the foregoing reasons, plaintiff's Motion for Judgment on the Pleadings is ALLOWED. The defendants' Cross-Motion for Judgment on the Pleadings is DENIED. The decision to uphold the Duty Status Hearing determination is reversed. The matter is remanded to the Duty Status Board for further hearing. Until such further hearing, the plaintiff will be reinstated to payroll, and paid retroactive salary and benefits from August 15, 2018 to the present.

Shannon Frison  
Honorable Shannon Frison  
Justice of the Superior Court

September 28, 2023

Attest: *Mauai Penelopon*  
Assistant Clerk