

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-163**

JAMES TINGLE

APPELLANT

VS.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

** ** ** ** **

This matter came on for an evidentiary hearing on January 10, 2017, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Geoffrey Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, James Tingle, was present and was not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Angela Cordery.

By Interim Order dated November 22, 2016, issues for the evidentiary hearing were the involuntary transfer of the Appellant and removing language from the transfer letter as identified by the Appellant. The burden of proof was upon the Appellant on these issues and was to be by a preponderance of the evidence. An additional issue for the evidentiary hearing was the Appellant's claim he is entitled to lost wages during the period of the transfer due to the difference of a 12-hour shift at Kentucky State Reformatory and an 8-hour shift at the Roederer Correctional Complex. The burden of proof for this issue was upon the Appellant and was to be by a preponderance of the evidence.

BACKGROUND

1. The Appellant, James Tingle, filed his appeal with the Personnel Board on July 27, 2016, appealing from his involuntary transfer from his position of Correctional Lieutenant at the Kentucky State Reformatory (KSR) to Correctional Lieutenant at the Luther Lockett Correctional Complex (LLCC). It should be noted the evidence at the hearing demonstrates the Appellant was actually transferred to the Roederer Correctional Complex (RCC).

2. The first witness to testify was **Captain Michael Williams**, who is an Investigator with Internal Affairs. Captain Williams has been with the Department of Corrections for six years and has been a supervisor since November 2011. His duties include investigating Policy and Procedure issues, on up to criminal investigations, at Department of Corrections facilities.

3. Captain Williams testified that, on July 5, 2016, Aaron Smith, the Warden at KSR, informed him an altercation involving the Appellant and an inmate at KSR had occurred, with the possibility the Appellant had used excessive force. Captain Williams was tasked with investigating the same. In a nutshell, on July 5, 2016, the Appellant advised inmate Michael Coffee to roll down his leg pants, which were rolled up in violation of KSR dress code. The inmate did not comply with the directive and, after striking the Appellant two or three times about the face, was taken down to the ground by the Appellant. Pepper-spray was deployed. However, the inmate continued to struggle, forcing the Appellant to strike him about the face three or four times. During the altercation, approximately 200 inmates circled around to witness the event. Appellee's Exhibits 1, 2, and 3 were introduced through the witness.

4. Appellee's Exhibit 1 is the written Incident Report prepared by Sergeant Randy Ordway. According to the report, Sergeant Ordway came to the assistance of the Appellant during the subject altercation, and otherwise speaks for itself. Similarly, Appellee's Exhibit 2 is the written Incident Report prepared by Lieutenant Michael Wilson, who also came to the assistance of the Appellant during this altercation and, likewise, speaks for itself. Appellee's Exhibit 3 is Captain Williams' final written investigative report. Captain Williams' report found the allegation the Appellant used excessive force against inmate Michael Coffee to be unsubstantiated, and the allegation that Michael Coffee assaulted the Appellant to be substantiated. According to Captain Williams, no criminal prosecution against either inmate Michael Coffee or the Appellant resulted from the subject altercation.

5. Captain Williams testified that, based on his investigation, it appeared the crowd of inmates who gathered around the altercation had verbally threatened the well-being of the Appellant. He also testified he received anonymous letters from various inmates which threatened harm to the Appellant unless he was removed from the yard.

6. When asked if there was any reason for the Appellee to be concerned about the Appellant's safety, Captain Williams noted the prison yard had become more volatile over the previous few months, and more inmate versus inmate and inmate versus staff incidents had been occurring. He noted that an inmate was recently shot and killed by a staff member at KSR, and opined the inmates still harbored ill-will as a result. Captain Williams stated he had no role in the decision to transfer the Appellant, but did express his concern for the Appellant's safety to Warden Smith.

7. Captain Williams went on to note that a recent change in policy prevented prisoners from being placed in segregation for more than 30 days. This policy change has tied the staff's hands and emboldened the inmate population, as consequences for bad behavior are not as great. In addition, he noted that a reorganization at KSR was in the works and much of the general prisoner population will soon be transferring out of the facility.

8. The next to testify was **Lieutenant Michael Wilson**. Lieutenant Wilson has been employed by the Department of Corrections for 13 years and has been stationed at KSR since 2011. On July 5, 2016, he was assigned to Unit B, and, as the sun was setting, certain inmates directed him to where a fight was occurring. Lieutenant Wilson ran over to the crowd and, after fighting his way through, found the Appellant sitting on top of inmate Michael Coffee's back. Lieutenant Wilson saw one of Michael Coffee's hands were cuffed and that the Appellant was striking him about the face with his free hand.

9. According to Lieutenant Wilson, this was the scariest day he had spent in Corrections. He noted the prison population had become more violent recently because the inmates are younger and have no respect for the older inmates, staff or others and simply do not care.

10. Lieutenant Wilson reviewed his Incident Report, marked as Appellee's Exhibit 2, and confirmed the contents thereof were accurate. He stated he could see inmate Coffee striking the Appellant from a distance while he was running to get to the incident. He also saw pepper-spray being deployed and inmates starting to circle. Once he got there, he had to fight his way through a crowd of inmates, which he estimated to be approximately 200 in number. According to Lieutenant Wilson, he had never seen inmates threaten to kill staff before, which is when he became panicky and which is why he considered this situation to be the scariest he had experienced while working in Corrections.

11. According to Lieutenant Wilson, he had nothing to do with Appellant's transfer. Appellant's Exhibits 1 and 2 were introduced into the record through the witness and speak for themselves.

12. The next to testify was **Deputy Warden James Coyne** who is the Deputy Warden of Security at KSR in charge of all security functions.

13. Deputy Warden Coyne testified he does have input into the transfers of staff and that he recalled the incident involving the Appellant. Deputy Warden Coyne stated the Appellant was transferred out of KSR for his own safety. Deputy Warden Coyne had received reports that inmates were making threatening statements towards the Appellant during the incident and afterwards several anonymous threatening letters were received. In addition, he had inmates telling him the Appellant would be harmed if he was brought back into the yard.

14. Deputy Warden Coyne testified KSR is extremely short staffed, and that the inmate population is becoming more volatile than usual. He opined the rumored reorganization at KSR is likely one of the reasons for the increase in volatility. Apparently, KSR is moving toward an all-Medical facility and the general population is being sent out to other institutions. The inmates like being at KSR because it's close to Louisville where a lot of the inmates are from. With the reorganization, the general population know they are not going to stay at KSR no matter how good they act, so there is no motivation to follow the rules. Deputy Warden Coyne also stated that plan is to bring the Appellant back to KSR after the reorganization. However, since the reorganization has not yet taken place, they have not been able to bring the Appellant back.

15. According to Deputy Warden Coyne, the Appellant was not happy about being transferred, but, due to safety concerns, it had to happen.

16. Deputy Warden Coyne testified that due to the chronic staff shortage at KSR, 12-hour shifts are mandatory. As such, the staff at KSR, including the Appellant, are required to work five 12-hour shifts each week for a total of 60 hours per week. At the Roederer Correctional Complex (RCC), where the Appellant was transferred, there is also a shortage of staff and some opportunity to work overtime. However, the staff issues at RCC are not as severe as they are at KSR. As such, at RCC, staff typically work five 8-hour shifts for a total of 40 hours per week. According to Deputy Warden Coyne, the Appellant and other staff members at KSR and RCC do not have the right to work overtime.

17. When asked if there was anywhere at KSR the Appellant could be stationed and not be threatened, Deputy Warden Coyne stated he did not feel the Appellant would be safe anywhere in the institution. Deputy Warden Coyne went on to admit the involuntary transfer of the Appellant was no guarantee he would remain safe. However, it lessened the odds he would be harmed. In addition, transferring the Appellant to RCC further lessened the odds the Appellant would be hurt, because RCC typically picks the best of the inmates and its prison yard is less volatile than KSR's. Deputy Warden Coyne also noted that had the Appellant remained stationed somewhere at KSR and been assaulted, other staff would have had to respond, and even though his immediate concern was with the Appellant's safety, the safety of other staff members was a legitimate concern, as well.

18. The next to testify was **Warden Aaron Smith**. According to Warden Smith, he has been with the Department of Corrections since 1993 and has been the Warden at KSR since May 1, 2014.

19. Appellee's Exhibit 4 was introduced into the record and is a copy of the Appellant's involuntary transfer letter. Warden Smith explained that although he was confident

the Appellant had used the appropriate amount of force against inmate Michael Coffee, he was aware it had not been perceived that way by the general prison population. He stated he received quite a few letters threatening the Appellant and had additional conversations with inmates who intimidated the Appellant could be hurt if he remained on the yard. According to Warden Smith, the announcement of KSR's reorganization (which was made prior to the subject July 5, 2016 incident) started a lot of problems at the Reformatory. Prior to the announcement, several inmates would try to stay out of trouble in order to remain at KSR for location and proximity to family purposes. After the announcement, these inmates knew it was pointless to worry about their behavior since they were going to be transferred out no matter how they acted. Also, a change was made to the inmate segregation policy and inmates could no longer be sent to segregation for more than 30 days. This reduced the effectiveness of the punishment and made it less of a deterrent. All this added up to a lot of heat on the yard to a degree that Warden Smith had never seen before. This concerned him as he did not want to lose control of the yard. In addition to this, he did not want the Appellant to get hurt.

20. Warden Smith admitted he could have placed the Appellant on an outside post at KSR, but the inmates would have known within five minutes. As such, the underlying problem would not have been solved and, although the Appellant might have been safer, the yard still could have blown. Warden Smith wanted the Appellant to remain at Roederer Correctional Complex until the reorganization at KSR was completed and the volatile inmate population had been transferred out. Warden Smith was hopeful the reorganization at KSR would be accomplished relatively quickly, thus lessening the effect on the Appellant.

21. Warden Smith testified that staff receiving overtime was not an entitlement, but KSR currently had a mandatory 12-hour shift due to chronic understaffing. This is unlike the situation at Roederer Correctional Complex where staff members work 8-hour shifts with the opportunity to be drafted into overtime. Warden Smith noted that gaining overtime at RCC meant working 16-hour shifts instead of the mandatory 12-hour shifts at KSR. The point being, although overtime is available at RCC, it is not available in the same way it is available at KSR.

22. According to Warden Smith, he did not rely strictly on Lieutenant Wilson's Incident Report regarding the threats hurled at the Appellant by the inmates while the subject altercation was occurring. He also learned of these threats by way of personal conversations with inmates on the yard and by way of several anonymous letters.

23. Finally, Warden Smith reiterated that had he placed the Appellant on an outside post at KSR, the prison population would have known about it immediately, and while the Appellant might have been safer, it would have come at the expense of the remaining staff members' safety. As such, Warden Smith wanted the Appellant to be put out of the sight of the inmates. Warden Smith also testified the overtime at KSR is mandatory and has been going on for approximately two years due to a 49% staff vacancy rate. He did not foresee any real change

soon. He also understood the Appellant's involuntary transfer resulted in a cut in his overtime hours, but stated this was an unintended consequence.

24. The last to testify was the **Appellant, James Tingle**. According to the Appellant, there are 500 inmates on the yard at a time and only two yard supervisors. On July 5, 2016, he was the only staff member physically present on the yard. As such, his safety was in jeopardy as soon as he walked into the prison. He stated there are places within KSR where threats are reduced and inmates are very few and far between. He stated his involuntary transfer resulted in an inmate perception that he had been punished for his involvement in the altercation with Michael Coffee and that this false perception had undermined his credibility.

25. This matter is governed by KRS 18A.095(1) which states:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

26. The Hearing Officer has considered the entire administrative record, including the testimony and exhibits therein.

FINDINGS OF FACT

The Hearing Officer makes the following findings by preponderance of the evidence:

1. The Appellant, James Tingle, a classified employee with status, timely filed his appeal with the Personnel Board on July 27, 2016, appealing from his involuntary transfer from his position of Correctional Lieutenant at the Kentucky State Reformatory to the position of Correctional Lieutenant at the Roederer Correctional Complex.

2. Pursuant to the Interim Order dated November 22, 2016, the issues before the Personnel Board were the involuntary transfer of the Appellant and removing language from the transfer letter (see Appellee's Exhibit 4); along with the Appellant's claim he is entitled to lost wages during the period of the transfer due to the difference of a 12-hour shift at the Kentucky State Reformatory and an 8-hour shift at the Roederer Correctional Complex.

3. On July 5, 2016, the Appellant, James Tingle, and Michael Coffee, an inmate at the Kentucky State Reformatory, were involved in a physical altercation witnessed by approximately 200 inmates, some of who made verbal threats against the Appellant. The incident ended with inmate Coffee being restrained and taken away with the assistance of Sergeant Randy Ordway and Lieutenant Michael Wilson. (See Appellee's Exhibits 1 and 2).

4. The Appellant was placed on administrative leave pending an investigation of the incident. The investigation was completed by the Department of Corrections, Internal Affairs Investigator, Captain Michael Williams, who found the allegations of excessive force leveled against the Appellant to be unsubstantiated. (See Appellee's Exhibit 3).

5. The Appellant was involuntarily transferred from his position as Correctional Lieutenant at the Kentucky State Reformatory to Correctional Lieutenant at Roederer Correctional Complex effective beginning on business July 25, 2016.

6. Prior to July 5, 2016, the reorganization of the Kentucky State Reformatory had been announced and was known to the general inmate population at KSR. The proposed reorganization, together with changes to the effectiveness of the inmate segregation policy, was thought by Warden Smith, Deputy Warden Coyne and Captain Williams to have combined to result in a more disrespectful and volatile inmate population at KSR by the time the subject incident had occurred.

7. According to Lieutenant Wilson, Captain Williams, Deputy Warden Coyne and Warden Smith, following the incident between inmate Coffee and the Appellant, anonymous letters were received threatening the Appellant's well-being if he remained on the yard at KSR. In addition to the anonymous letters, actual conversations between Warden Smith and the inmates conveyed the same threats against the Appellant's safety and well-being.

8. It is Warden Smith's duty to ensure the safety of all inmates and staff at KSR. Although the Appellant could have been moved to a safer position outside the yard at KSR, the same would not have improved the attitude or volatility of the general inmate population and the overall safety of the staff and inmate population at KSR could have been compromised.

9. The Appellant's involuntary transfer enhanced the Appellant's prospects for safety along with that of the remaining staff and prison inmate population at KSR.

10. For approximately two years, the staff vacancy rate at KSR has been at 49% and mandatory 12-hour shifts have been in place. As a result, the Appellant's regular schedule at KSR, prior to his involuntary transfer, allowed him to receive 20 hours of additional overtime per week on a regular basis. Overtime is also available at the Roederer Correctional Complex. However, the staff vacancy rate is not as severe at RCC as it is at KSR. Thus, staff at RCC work a typical five-day workweek at eight hours per day, with the opportunity to work overtime on a drafting basis.

11. Warden Smith was aware the Appellant's involuntary transfer affected the hours of overtime he could procure on a regular basis. However, procuring overtime is not an entitlement of the Appellant or any other staff member at KSR or RCC.

12. The involuntary transfer letter dated July 15, 2016, and marked as Appellee's Exhibit 4, contains general information then known to the Appellee at the time of said writing. The said information was subsequently affirmed by the investigation report marked as Appellee's exhibit 3 and is accurate based on the evidence of record.

CONCLUSIONS OF LAW

The Appellee has demonstrated by a preponderance of the evidence that the involuntary transfer of the Appellant was neither excessive nor erroneous and was taken with just cause. Further, the Appellant has failed to demonstrate by a preponderance of the evidence that he is entitled to lost wages during the period of his transfer due to the difference of a 12-hour shift at the Kentucky State Reformatory and an 8-hour shift at the Roederer Correctional Complex or that the involuntary transfer letter marked as Appellee's Exhibit 4 contained inaccurate information.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **JAMES TINGLE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2016-163)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

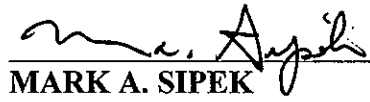
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Geoffrey Greenawalt** this 12th day of April, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Mr. James Tingle