

Virgin Islands Code Annotated Currentness

Title 3. Executive

Chapter 25. Personnel Merit System, Compensation, Expenses and Miscellaneous Benefits

Subchapter IV. Tests, Appointments, Promotions, and Dismissals

3 V.I.C. § 530

§ 530 Dismissals, demotions, and suspensions; procedure

(a)

(1) Notwithstanding any other provision of law, in any case after January 1, 1977, before a head officer of an executive department, agency or instrumentality of the Government dismisses, demotes or suspends a regular employee of a department, agency or instrumentality of the Government, the head officer shall furnish the employee with a written statement of the charges against the employee. The employee shall have ten days following the date of receipt of the statement of charges to appeal the proposed action to the Public Employees Relations Board. The appeal must be in writing, and the Board must provide a copy to the head officer and the Attorney General.

(2) As used in this section:

(A) 'head officer' means the Commissioner of an executive branch department, the director of an executive branch agency or instrumentality or the director, executive director, chief executive officer, president or other titular head of an instrumentality of the Government of the Virgin Islands.

(B) Instrumentality of the Government includes

(i) the Virgin Islands Water and Power Authority;

(ii) the Virgin Islands Port Authority;

(iii) the Waste Management Authority;

(iv) the Magens Bay Authority;

(v) the Virgin Islands Housing Authority;

(vi) the University of the Virgin Islands;

(vii) the Virgin Islands Public Broadcasting Systems;

(viii) the Government Employees Retirement System;

(ix) a hospital under the jurisdiction of the Virgin Islands Hospitals and Health Facilities Corporation; and

(x) Any other entity established within the executive branch whose staff includes regular employees.

(C) 'Regular employee' means an employee who:

(i) has been appointed to a position in the classified or career service or served in a temporary position for more than two years in a department or agency of the executive branch or in an instrumentality, as defined in subparagraph (B) of this subsection or and

(ii) who is not on contract, is not on probation, and therefore subject to dismissal, demotion or suspension, only for cause.

(b) The Public Employees Relations Board shall meet within 30 days after the filing of the appeal and afford the department head and the employee an opportunity to be heard. The department head and the employee shall be entitled to call witnesses and to be represented by counsel. The hearing, including continuances thereof, shall in no event extend beyond 60 days. Notice of the hearing shall be served on the department head, employee and the Attorney General at least 10 days before the hearing. The Board shall render its decision within 14 days after the termination of the hearing. The Board's decision shall be final. In the event the Board fails to meet or render its decision within the time or in the manner prescribed herein, the employee shall be reinstated, with full pay, to the date of his original dismissal or suspension.

(c) The Board may sustain or reverse the decision of the department head or may reduce the penalty recommended by the department head from dismissal or demotion to suspension for a period not to exceed 90 days, or from suspension to a lesser period of suspension if the Board finds such action to be warranted and in the public interest.

(d) The department head, upon receiving the decision of the Public Employees Relations Board, shall forward all pertinent papers to the Director of Personnel for preparation of personnel documents in accordance with the decision of the Board.

(e) If the Board orders restoration to duty and pay, and if it does not order suspension, the employee shall receive full compensation for any period for which he did not receive compensation pending hearing of the appeal. In addition, if the Board finds that such dismissal, demotion or suspension was ordered by the department head arbitrarily, unjustly, and without reasonable cause, and the employee was represented by counsel, it shall enter an order awarding a reasonable attorney fee to the employee. Such award shall be satisfied by legislative appropriation therefor. Any award of attorney's fees to an employee of an independent instrumentality shall be satisfied by the respective instrumentality.

(f) If the employee does not appeal to the Public Employees Relations Board within the time herein prescribed, the department head shall forward his recommendation to the Governor for final action.

(g) Every policeman, fireman or prison guard shall be automatically and honorably separated from the government service, by reason of age, after such employee attains the age of 55 years; Provided, however, That any policeman, fireman, or prison guard may be continued in the government service until he attains the age of 60 years if such employee applies for, obtains, and submits to the Director of Personnel, an annual certification by the Commissioner of Health that such employee is physically and mentally able to continue in the position.

(h) No employee or applicant for employment, other than the employees or applicants for the positions identified in [subsection (g) of this section, or any other person elected to public office by the qualified voters, or any person chosen by such officer to be on such officer's personal staff, or an appointee on a policy making level or an immediate supervisor, who is at least 40 years of age, can be refused employment, discharged or otherwise discriminated against with respect to his compensation, terms, conditions, or privileges of employment because of such individual's age, unless there exists a bona fide occupational qualification reasonably necessary to the normal functions of the position held by such individual in which such individual is deficient.

Credits

Amended Feb. 27, 1962, No. 819, § 6, Sess. L. 1962, p. 50; Mar. 14, 1967, No. 1875, § 4, Sess. L. 1967, pp. 43, 44; May 22, 1967, No. 1987, § 8, Se ss. L. 1967, p. 261; Mar. 14, 1973, No. 3429, § 4, Sess. L. 1973, p. 83; Nov. 26, 1973, No. 3501, § 1, Sess. L. 1973, p. 291; Apr. 14, 1977, No. 3960, Sess. L. 1977, p. 37; Sept. 17, 1982, No. 4741, § 16, Sess. L. 1982, p. 149;

Mar. 24, 1983, No. 4791, §§ 1, 2, Sess. L. 1983, p. 19; July 24, 1984, No. 4971, § 2, Sess. L. 1984, p. 209; Amended Sept. 2, 1994, No. 6010, § 1(g), Sess. L. 1994, p. 164; Dec. 30, 1994, No. 6064, § 23, Sess. L. 1994, p. 320; May 14, 1999, No. 6279, § 4, Sess. L. 1999, p. 15; Dec. 2, 1999, No. 6325, § 1, Sess. L. 1999, p. 155; Aug. 7, 2001, No. 6425, § 9, Sess. L. 2001, p. 138; Jan. 23, 2004, No. 6637, §§ 1, 2, Sess. L. 2003, p. 204; Nov. 10, 2005, No. 6815, § 1, Sess. L. 2005, p. 484; Jan. 27, 2010, No. 7144, § 1(a)(1)(3), Sess. L. 2009, pp. 310, 311; amended Jan. 26, 2016, No. 7832, § 10(c), Sess. L. 2015, p. .

HISTORY

Source. Based on Act Leg. Assem. app. Dec. 16, 1946 (Bill no. 2), § 25 .

Amendments 2015. Act 7832, § 10(c), substituted ‘Public Broadcasting System # for ‘Public Television Systems‘in subsection (a)(2)(B). 2009.Act 7144, § 1(a)(1), rewrote the first sentence in subsection (a). Act 7144, § 1(a)(2), substituted ‘head officer‘for ‘department head, the agency head or the chief executive officer, as the case may be‘in the third sentence in subsection (a). Act 7144, § 1(a)(3), in subsection (a), designated the existing language as paragraph (1) and added paragraph (2). 2005.Act 6815, § 1, rewrote subsection (a). 2003.Act 6637, § 1 deleted the first sentence in subsection (g). Act 6637, § 2 added subsection (h). 2001.Act 6425 deleted ‘, or employee‘following ‘regular employ ee‘near the middle of the first sentence of subsection (a). 1999.Subsection (a): Act No. 6279 amended generally. Act No. 6325 added ‘the Government Development Bank‘in two places. 1994.Subsection (a): Act No. 6010 substituted ‘Public Employees Relations Board‘for ‘Government Employees Service Commission‘following ‘a ction to the‘in the second sentence and ‘Board‘for ‘Commission‘following ‘General by the‘in the third sentence. Subsection (b): Act No. 6010 substituted ‘Public Employees Relations Board for ‘Government Employees Service Commission‘preceding ‘shall meet‘in the first sentence, ‘Board‘for ‘Commission‘preceding ‘shall render # in the fifth sentence, ‘Board’s‘for ‘Commission’s‘in the sixth sentence and ‘Board‘for ‘Commission‘preceding ‘fails to‘in the seventh sentence. Subsection (c): Act No. 6010 substituted ‘Board‘for ‘Commission‘in two places. Subsection (d): Act No. 6010 substituted ‘Public Employees Relations Board for ‘Government Employees Service Commission‘preceding ‘shall follow‘ and ‘Board‘for ‘Commission‘following ‘decision of the. Subsection (e): Act No. 6010 substituted ‘Board‘for ‘Commission‘preceding ‘orders‘in the first sentence and preceding ‘finds that‘in the second sentence. Act No. 6064 added the fourth sentence. Subsection (f): Act No. 6010 substituted ‘Public Employees Relations Board for ‘Government Employees Service Commission‘preceding ‘within the. 1984.Subsection (a): Inserted ‘and the Virgin Islands Port Authority‘preceding ‘decides‘and ‘or the Virgin Islands Port Authority‘preceding ‘for cause‘in the first sentence. 1983.Subsection (a): Added ‘and to the Attorney General by the Commission‘following ‘head‘at the end of the third sentence. Subsection (b): Added the fourth sentence and inserted ‘the‘preceding ‘termination‘in the fifth sentence. 1982.Subsection (g): Amended generally. 1977.Subsection (a): Added provisions in the first sentence which provided for inclusion of the employees of the Virgin Islands Water and Power Authority. 1973.Subsection (b): Act No. 3429 expanded section to provide for time for hearing appeals and rendering decisions. Subsection (e): Act No. 3429 added two last sentences pertaining to unjust employee dismissal, demotion or suspension and payment of reasonable attorney fee. Subsection (g): Act No. 3501 omitted the phrase ‘other than a policeman‘in the third sentence. 1967.Subsection (a): Substituted ‘In any case where‘for ‘When # at beginning, and, also in first sentence, after ‘suspend, omitted ‘for a period over 30 days. Number 1987 added subsection (g). 1962.Inserted provisions relating to demotion and suspension, divided the section into subsections, and amended the provisions generally.

Effective date of amendments -2015. Act Jan. 26, 2016, No. 7832, § 11, Sess. L. 2015, p. 165, provided that ‘Section 10 takes effect on the same day that Act 7748 takes effect [Dec. 16, 2015.‘

1999. Act May 14, 1999, No. 6279, § 7, Sess. L. 1999, p. 16, provided: ‘The provisions of this Act shall become effective ninety days after enactment , except that the provisions of Section 2 [which designated the existing language as Subchapter I and added a new Subchapter II and sections 261 and 262 of Title 19 are effective upon enactment.‘

1994, Act No. 6010. Act Sept. 2, 1994, No. 6010, § 2, Sess. L. 1994, p. 165, provided that the amendment to this section by section 1(g) of the act shall be effective Jan. 1, 1995.

1962. Amendment as effective Mar. 1, 1962, see note under section 5 of this title.

Retroactive effective date

1973 amendment. Act Nov. 26, 1973, No. 3501, § 2, Sess. L. 1973, p. 291, provided: ‘This Act [which amended subsec. (g) of this section shall be retroactive to July 1, 1973.’

Appeals in event of demotions, dismissals and suspensions. Act June 20, 1961, No. 772, § 4, Sess. L. 1961, p. 213, provided: ‘Notwithstanding the provisions of any other law, the Governor shall, within 60 days after the enactment of this Act [June 20, 1961, issue an executive order establishing a fair and reasonable procedure to permit government employees to make appeals in the event of demotions, dismissals and suspensions from the government service.’ Pursuant to the above-quoted provisions, the Governor issued [Exec. Order No. 501961](#), filed Aug. 25, 1961, File No. 159, V.I. Register, Vol. II, No. 4 (Oct. 1961), Pt. I, p. 2, relating to appeals in the event of demotions, dismissals and suspensions. The executive order was superseded by this section as amended by Act Feb. 27, 1962, No. 819, § 6, Sess. L. 1962, p. 52, which contains provisions substantially identical therewith.

CROSS REFERENCES

Virgin Islands Bill of Rights, see section 3 of the Revised Organic Act of 1954.

HISTORY

Virgin Islands Bill of Rights, see section 3 of the Revised Organic Act of 1954.

ANNOTATIONS

1.

Prior law Employee's statement.

Government Secretary could not make a recommendation to Governor regarding dismissal of an employee and Governor could not act on such recommendation until opportunity guaranteed to the employee, under former provisions of this section, to make a statement in his own defense had been afforded him. [Felix v. Government of the Virgin Islands](#), 167 F. Supp. 702, 3 V.I. 399, 1958 U.S. Dist. LEXIS 3467 (D.C.V.I. 1958).

If evidence supported finding of Government Employees Service Commission that dismissed employee was not given opportunity offered him by former provisions of this section to make a statement in his own defense, action of Governor in approving recommended dismissal and dismissing employee would have been premature and court would have had jurisdiction to entertain complaint. [Felix v. Government of the Virgin Islands](#), 167 F. Supp. 702, 3 V.I. 399, 1958 U.S. Dist. LEXIS 3467 (D.C.V.I. 1958). 2.

Vested rights.

An employee does not have vested right, title or interest in or to his position of employment, except as governing statutes may protect his tenure or regulate or limit right of appointing power to dismiss him. [Phaire v. Merwin](#), 161 F. Supp. 710, 3 V.I. 320, 1958 U.S. Dist. LEXIS 2416 (D.V.I. 1958).

An employee under the Personnel Merit System has no vested interest in his position remaining in its initial classification. 3 V.I. Op. Att'y Gen. 239. 3.

Dismissal.

The Government Employees Service Commission cannot reinstate a dismissed employee without first addressing the issue of its lack of jurisdiction based on the employee's failure to timely file an appeal. [Government of Virgin Islands Office of Management & Budget v. Government Employees Serv. Comm'n](#), 30 V.I. 26, 1994 V.I. LEXIS 4 (V.I. Terr. Ct. 1994).

The power of appointment to government service carries with it the power of removal, which is unrestricted, except as controlled by pertinent law. [Phaire v. Merwin](#), 161 F. Supp. 710, 3 V.I. 320, 1958 U.S. Dist. LEXIS 2416 (D.V.I. 1958).

Attempted discharge of a government employee is invalid if it is in violation of applicable procedural law or regulations. [Felix v. Government of the Virgin Islands](#), 167 F. Supp. 702, 3 V.I. 399, 1958 U.S. Dist. LEXIS 3467 (D.C.V.I. 1958).

It was not denial of due process of law because Governor was appointing authority who approved employee's dismissal, and who would have been called upon, if employee had appealed to Government Employees Service Commission, to review recommendations of Commission regarding her dismissal, and, as Governor, was also official who, under former section 531 of this title, was required to give final approval to his own decision as appointing authority. [Felix v. Government of the Virgin Islands](#), 167 F. Supp. 702, 3 V.I. 399, 1958 U.S. Dist. LEXIS 3467 (D.C.V.I. 1958). 4.

Demotion.

The 'cause' for which a Department Head could demote an employee was, under the Personnel Rules and Regulations, as comprehensive as that justifying dismissal and included inefficiency or incompetency not great enough to justify dismissal. 3 V.I. Op. Att'y Gen. 239. 5.

Arbitrary.

An employee of the government of the Virgin Islands, employed pursuant to the 'Personnel Rules and Regulations' and the 'Personnel Merit System Law #, is not subject to arbitrary dismissal by a department head, but is entitled to protection of applicable rules and regulations formulating procedural dismissal. 2 Govt. Compt. Dec. 17, Nov. 30, 1955.

Arbitrary dismissal of employee in contravention of proper procedure does not terminate employee's salary or wages. 2 Govt. Compt. Dec. 17, Nov. 30, 1955.

6.

Appeal to Commission.

Public Employees Relations Board had jurisdiction to hear an employee's appeal of his termination, even though his notice of personnel action listed his position as exempt, where he was a regular classified employee due to a timely election of that status pursuant to former 3 V.I.C. § 498, and the Director of Personnel had failed to respond to the election within the period provided by law. [Crooke v. Dep't of Planning Natural Res.](#), 49 V.I. 46, 2007 V.I. LEXIS 21 (Aug. 21, 2007).

Administrator of Government Employees Retirement System was not entitled to appeal his termination to Government Employees Services Commission, since he was not terminated by a commissioner or department head, but by a statutory governing board, and his position fell within statutory definition of an 'exempt or 'unclassified' position. [Molloy v. Government Emples. Servs. Comm'n](#), 42 V.I. 89, 2000 V.I. LEXIS 8 (V.I. Terr. Ct. 2000).

Government Employees Services Commission had no jurisdiction to hear appeal of retirement system administrator's termination, as commission properly concluded that he was not a 'regular employee' as contemplated in statute governing appeals to commission, but an 'exempt employee' and an officer of government. [Molloy v. Government Emples. Servs. Comm'n](#), 42 V.I. 89, 2000 V.I. LEXIS 8 (V.I. Terr. Ct. 2000).

Virgin Islands Port Authority (VIPA) dismissal from employment of permanent employee was appealable to the Government Employees Service Commission (GESC), where legislative amendments made it clear that GESC had jurisdiction over an appeal of a dismissal by such an employee. [Virgin Islands Port Auth. v. Government Employees Servs. Comm'n, 983 F.2d 548, 28 V.I. 198, 1993 U.S. App. LEXIS 359 \(3d Cir. V.I. 1993\)](#).

Plaintiff, having been accorded an opportunity to know charges against her before her dismissal and an opportunity to answer thereto, had burden diligently to assert her rights by appeal to Commission as authorized by former section 531 of this title. [Phaire v. Merwin, 161 F. Supp. 710, 3 V.I. 320, 1958 U.S. Dist. LEXIS 2416 \(D.V.I. 1958\)](#).

Although Government Employees Service Commission was not fully organized in accordance with law, court took judicial notice of fact that three members were under appointment during entire period within which employee might have appealed from action of dismissal, and were in position to hear such an appeal, as, under section 471 of this title, two members of Commission constitute a quorum. [Phaire v. Merwin, 161 F. Supp. 710, 3 V.I. 320, 1958 U.S. Dist. LEXIS 2416 \(D.V.I. 1958\)](#). 7.

Judicial review.

This chapter does not provide for judicial review of action of dismissal. [Phaire v. Merwin, 161 F. Supp. 710, 3 V.I. 320, 1958 U.S. Dist. LEXIS 2416 \(D.V.I. 1958\)](#).

Where employee received written statement of reasons for her dismissal, all other requirements of former provisions of this section were complied with, no 'order of dismissal' was required by this chapter, and she was aware of act ion of Governor in dismissing her well before expiration of thirty-day period, formerly provided for, during which she might have appealed to Government Employees Service Commission but made no such appeal, she was not entitled to seek judicial relief, as she failed to exhaust her administrative remedies. [Phaire v. Merwin, 161 F. Supp. 710, 3 V.I. 320, 1958 U.S. Dist. LEXIS 2416 \(D.V.I. 1958\)](#). 8.

Conflicts.

Provisions for appeals in employment matters in the School Law [St. Thomas applied to appeals other than those arising from dismissals and demotions by classified employees, since such appeals were regulated by the Personnel Merit System Law [3 V.I.C. § 530, which was a later enactment and superseded prior laws in conflict therewith. 2 V.I. Op. Att'y Gen. 294. 9.

Construction.

Despite a typographical error in 3 V.I.C. § 530(a), it seems clear that the legislature intended to include within the class of employees entitled to Public Employees Relations Board review, all 'regular employees' of the Government of the Virgin Islands and not just regular employees of the listed instrumentalities. [Williams-Jackson v. Public Emples. Rels. Bd., 52 V.I. 445, 2009 V.I. Supreme LEXIS 46 \(VI. 2009\)](#).

Statute governing dismissal from employment of permanent Virgin Islands Port Authority (VIPA) employee was not construed to apply only where employee was discharged by VIPA's executive director, since result of such a construction would be to effectively write VIPA employees out of provision and neither statute's plain language nor legislative history supported construction. [Virgin Islands Port Auth. v. Government Employees Servs. Comm'n, 983 F.2d 548, 28 V.I. 198, 1993 U.S. App. LEXIS 359 \(3d Cir. V.I. 1993\)](#). 10.

Common law.

In dispute over which agency governs determining validity of discharge from employment of a permanent Virgin Islands Port Authority employee, earlier case law had to be looked at to understand relevant statutory scheme, because that case law spawned controlling statutory provisions. [Virgin Islands Port Auth. v. Government Employees Servs. Comm'n, 983 F.2d 548, 28 V.I. 198, 1993 U.S. App. LEXIS 359 \(3d Cir. V.I. 1993\)](#). 11.

Administrative review.

A government employee is entitled to a decision by the Government Employees Service Commission on the specific charges placed against her, to which she has had an opportunity to respond. [Perry v. Government Employees Service Comm'n, 18 V.I. 524, 1981 U.S. Dist. LEXIS 9338 \(D.C.V.I. 1981\).](#)

The Government Employees Service Commission has the power under subsection (c) of this section to reduce the suspension recommended by a government employee's department head. [Perry v. Government Employees Service Comm'n, 18 V.I. 524, 1981 U.S. Dist. LEXIS 9338 \(D.C.V.I. 1981\).](#)

Where the Department of Education recommended to the Government Employees Service Commission that a teacher be suspended based on seven factual charges and the commission found six of the charges unwarranted and did not specifically address the remaining one, but ordered the teacher suspended on the ground that she 'contributed to the untenable situation and disruption of the administration,' the commission's ruling would be reversed and remanded for a decision on the sole question of whether the Department of Education had met its burden of proof of establishing reasonable grounds for suspension on the basis of the charge which the commission did not address. [Perry v. Government Employees Service Comm'n, 18 V.I. 524, 1981 U.S. Dist. LEXIS 9338 \(D.C.V.I. 1981\).](#)

Where plaintiffs, who brought suit against the government and the officials who dismissed them from their employment as juvenile corrections officers, alleged that they were denied an opportunity to appeal their dismissals to the Government Employees Service Commission, their complaint asserted a sufficient claim for relief based on a violation of their rights as regular employees. [Schuster v. Thraen, 18 V.I. 287, 1981 U.S. Dist. LEXIS 10417 \(D.C.V.I. 1981\).](#)

Since subsection (c) of this section, setting forth the powers of Government Employees Service Commission, does not include power to order expungement of personnel records, order of the commission directing expungement of all evidence of a disciplinary proceeding against a police officer from his personnel record was without authority, and that portion of the commission's order would be vacated. [Branch v. Bryan, 18 V.I. 54, 1980 U.S. Dist. LEXIS 8957 \(D.C.V.I. 1980\).](#)

Emergency, provisional and temporary employees are specifically excluded from classified service by Virgin Islands Code and Regulations, and unless discriminated against on account of non-merit factors, they are not entitled to appeal employment disciplinary proceedings against them to the 7 V.I. Op. Att'y Gen. 122. 12.

Judicial review.

No new Government Employees Service Commission (GESC) legal hearing was necessary in dispute over dismissal of permanent Virgin Islands Port Authority employee, where GESC legal advisor, whose impartiality during first hearing was questioned, did not act as a fact finder in original GESC hearing and evidence of possible bias was insufficient. [Virgin Islands Port Auth. v. Government Employees Servs. Comm'n, 983 F.2d 548, 28 V.I. 198, 1993 U.S. App. LEXIS 359 \(3d Cir. V.I. 1993\).](#)

Despite this section's language that the decision is final upon administrative hearing to decide whether a regular government employee is to be dismissed, demoted or suspended, when this section is read in conjunction with 5 V.I.C. § § 1421, 1422, allowing review of a decision of any officer, board, commission, authority or tribunal and providing that review shall be allowed where there is no appeal or other plain, speedy and adequate remedy, it is clear that the decision as to the employee may be reviewed by the court. [Samuels v. Govt. Emples. Serv. Commn., 12 V.I. 581, 1976 U.S. Dist. LEXIS 16103 \(D.C.V.I. 1976\).](#)

Though 'final, decisions of the Government Employees Service Commission are reviewable in the district court, and review extends to fact findings and conclusions as well as to the legality of the proceeding and the commission's application of the law. [Turnbull v. Holder, 11 V.I. 93, 1974 U.S. Dist. LEXIS 5659 \(D.C.V.I. 1974\).](#)

Use of extra-record psychiatric report by Police Review Board and Commissioner of Public Safety in deciding to dismiss policeman was not grounds for hearing a writ of review of Government Employees Service Commission decision upholding the decision. [Richards v. Christian, 10 V.I. 221, 1973 U.S. Dist. LEXIS 5210 \(D.C.V.I. 1973\).](#)

The provision of subsec. (b) of this section that the decision of the Government Employees' Service Commission shall be final must be reconciled with the review provisions of 5 V.I.C. § 1421 *et seq.*, so as not to foreclose to citizens the scope of review granted them by such provisions. [Donastorg v. Government Employees' Service Com.](#), 285 F. Supp. 111, 6 V.I. 368, 1968 U.S. Dist. LEXIS 9170 (D.V.I. 1968). 13.

Due process.

Plaintiff, who argued that his termination from employment and his failure to be reinstated violated due process under Fourteenth Amendment, failed to state claim, as he failed to allege that he was employed by Virgin Islands, state why he had property interest in continued employment, and state why his due process rights were violated. Even if he was regular Virgin Islands employee, he had exceeded deadline under V.I. Code Ann. tit. 3, § 530 to appeal his termination, and his incarceration alone did not excuse his failure to file a timely appeal. [Fleming v. Cruz](#), 62 V.I. 702, 2015 V.I. Supreme LEXIS 16 (VI. 2015). SUPREME COURT OF THE VIRGIN ISLANDS

This section gave regular employee of the Police Auxiliary a property interest in continued employment. [Richardson v. Felix](#), 856 F.2d 505, 1988 U.S. App. LEXIS 11241 (3d Cir. V.I. 1988).

Since this section has created a clear and legitimate expectation of continued employment for regular government employees, absent a showing of cause for discharge, a regular government employee has a claim of entitlement and thus a property interest which cannot be denied without due process in his or her position. [Schuster v. Thraen](#), 18 V.I. 287, 1981 U.S. Dist. LEXIS 10417 (D.C.V.I. 1981).

That, at hearing before Government Employees Service Commission on proposal that employee be suspended, the commission virtually goaded counsel into limiting their remarks and bringing the hearing to a speedy close because one or two members of the commission wanted to catch a plane and avoid an overnight stay on the island where the hearing took place, impinged on employee's rights, but not so gravely as to deny him a fair hearing. [Gunthorpe v. Government Employees Service Comm'n](#), 11 V.I. 103, 1974 U.S. Dist. LEXIS 5660 (D.C.V.I. 1974).

Any arbitrary and unreasonable delay depriving dismissed policeman of an adequate remedy was a clear deprivation of due process, and delays of two years between alleged wrongs and the bringing of charges, and another two years or more in awaiting decision on administrative review were grounds for the hearing, by district court, of a writ of review. [Richards v. Christian](#), 10 V.I. 221, 1973 U.S. Dist. LEXIS 5210 (D.C.V.I. 1973).

An informal understanding or expectation that temporary employee's employment will continue amounts to *de facto* tenure, which gives a property interest in further employment, making due process protections applicable to dismissal of the employee. [Simmonds v. Government Employees Service Comm'n](#), 10 V.I. 218, 1973 U.S. Dist. LEXIS 5209 (D.C.V.I. 1973).

Temporary employee dismissed after ten years' employment with government would be given opportunity to show he had *de facto* tenure requiring application of due process to dismissal. [Simmonds v. Government Employees Service Comm'n](#), 10 V.I. 218, 1973 U.S. Dist. LEXIS 5209 (D.C.V.I. 1973). 14.

Equal protection.

Statute providing for notice and hearing prior to dismissal of a 'regular' government employee did not violate equal protection by reason of fact it did not grant the same to 'temporary' employees. [Simmonds v. Government Employees Service Comm'n](#), 10 V.I. 218, 1973 U.S. Dist. LEXIS 5209 (D.C.V.I. 1973). 15.

Evidence.

The Public Employees Relations Board's conclusion that good cause existed for employee's termination was not supported by any rational basis where although after deciding that employee was a regular classified employee, the Board concluded that

she was not treated as a classified employee. [Ross v. Government of Virgin Islands, 34 V.I. 91, 1996 V.I. LEXIS 9 \(Terr. Ct. St. C. 1996\)](#).

Even if there was good cause for which employee could have been terminated, none was proffered by the Government at the hearing where the Government's sole contention at the hearing was that employee was an 'unclassified employee and thus terminable at will and nowhere in the record was there any hint by the Government that cause, much less good cause, existed for employee's termination. [Ross v. Government of Virgin Islands, 34 V.I. 91, 1996 V.I. LEXIS 9 \(Terr. Ct. St. C. 1996\)](#).

That Police Review Board had been illegally created, and that it furnished Commissioner of Public Safety with information used by him in deciding to dismiss policeman, would not be found to fatally taint dismissal process. [Richards v. Christian, 10 V.I. 221, 1973 U.S. Dist. LEXIS 5210 \(D.C.V.I. 1973\)](#). 16.

Compensation.

Since subdivision (b) of this section, setting forth the time limits within which the Government Employees Service Commission must hold a hearing and render a decision on a government employee's appeal of a suspension or dismissal, provides that if the commission fails to hold a hearing or render a decision within the prescribed time limit the employee shall be reinstated, with full pay, to the date of his original dismissal or suspension, the remedy is mandatory and inflexible. [Reefer v. Government of the Virgin Islands, 17 V.I. 373, 1980 U.S. Dist. LEXIS 8924 \(D.C.V.I. 1980\)](#).

The appropriate remedy for improper dismissal of a government employee prior to final action by the Government Employees Service Commission is, ordinarily, back pay from the date of the purported dismissal to the date of the decision of the commission finalizing the proposed dismissal; however, where the commission fails to comply with the time limits set forth in subsection (b) of this section for holding a hearing on the proposed dismissal, the right to back pay will be subsumed in the remedy provided for a violation of this section, which is reinstatement, with full pay, to the date of the original dismissal. [Reefer v. Government of the Virgin Islands, 17 V.I. 373, 1980 U.S. Dist. LEXIS 8924 \(D.C.V.I. 1980\)](#).

Where regular government employee was immediately suspended from her position without the prior, legally required, hearing and sole defect in the process through which she was suspended was that she was not permitted to work prior to hearing held following suspension, and once a hearing was held, the effect of the irregularity was corrected, back pay for the period ending with the date of decision at the hearing was the sole and appropriate remedy. [Samuels v. Govt. Emples. Serv. Commn., 12 V.I. 581, 1976 U.S. Dist. LEXIS 16103 \(D.C.V.I. 1976\)](#).

Commissioner of Property and Procurement had no power to suspend employee without pay. [Turnbull v. Holder, 11 V.I. 93, 1974 U.S. Dist. LEXIS 5659 \(D.C.V.I. 1974\)](#).

Under this section's provision that when a government department head wants to suspend a regular employee for more than 30 days for cause he shall give the employee a written statement of the charges and employee has ten days to appeal the 'proposed' action to the Government Employees Service Commission, there is no suspension of either duty status or salary unless there is no appeal or there is an appeal and the commission sustains the proposed suspension. [Gunthorpe v. Government Employees Service Comm'n, 11 V.I. 103, 1974 U.S. Dist. LEXIS 5660 \(D.C.V.I. 1974\)](#).

Suspension of government employee was a disciplinary measure and could not be with pay. 6 V.I. Op. Att'y Gen. 287. 17.

Magen's Bay Authority.

The hiring and discharging of employees by the Magen's Bay Authority must be in accordance with the procedures set forth in this chapter. 6 V.I. Op. Att'y Gen. 185. 18.

Notice.

Statutory dismissal letter to public employee need not contain notice of ten (10) day filing period for an appeal to the Government Employees Service Commission, and 10 day period is not automatically tolled if the dismissal letter does not so notify the employee. [Herbert v. Government Employees' Service Comm'n, 21 V.I. 358, 1985 U.S. Dist. LEXIS 12131 \(D.C.V.I. 1985\)](#).

Government Employees Service Commission properly held that employee did not suffer from a disability that would have necessitated tolling the statutory ten-day period to appeal his termination, since there was evidence in the record that employee was physically able to respond to his dismissal letter. [Herbert v. Government Emples. Serv. Comm'n, 21 V.I. 358, 1985 U.S. Dist. LEXIS 12131 \(D.C.V.I. 1985\)](#). [Herbert v. Government Employees' Service Comm'n, 21 V.I. 358, 1985 U.S. Dist. LEXIS 12131 \(D.C.V.I. 1985\)](#).

Where regular government employee received a letter from acting governor advising her of her immediate suspension from her position, the letter incorporated by reference an audit report containing serious charges against her and she contended that government furnished her with a deficient written statement of charges in violation of this section's provision for a written statement of the charges against a suspended regular government employee, notice was not made fatally deficient merely because the acting governor chose to incorporate the allegations by reference. [Samuels v. Govt. Emples. Serv. Commn., 12 V.I. 581, 1976 U.S. Dist. LEXIS 16103 \(D.C.V.I. 1976\)](#). 19.

Estoppel.

Where suspended government employee chose not to question merits of suspension at administrative hearing and concurred in hearing commission's repeated denial of government's attempts to proceed on the merits, employee could not successfully claim the hearing was fatally defective on ground that no evidence of wrongdoing was shown. [Samuels v. Govt. Emples. Serv. Commn., 12 V.I. 581, 1976 U.S. Dist. LEXIS 16103 \(D.C.V.I. 1976\)](#).

Where regular government employee received a letter from acting governor immediately suspending her from her position on serious charges and failed to raise, at administrative hearing, the issue of government's alleged failure to furnish her with a written statement of charges in violation of this section, she was estopped from asserting alleged failure upon court review. [Samuels v. Govt. Emples. Serv. Commn., 12 V.I. 581, 1976 U.S. Dist. LEXIS 16103 \(D.C.V.I. 1976\)](#). 20.

Burden of proof.

Where the Public Employees Relations Board undertook to satisfy Government's burden of establishing reasonable grounds for dismissal itself by presuming a cause for dismissal not asserted by the Government, the Board exceeded its statutory authority and acted arbitrarily and capriciously. [Ross v. Government of Virgin Islands, 34 V.I. 91, 1996 V.I. LEXIS 9 \(Terr. Ct. St. C. 1996\)](#).

Government has the burden, at an administrative hearing, of establishing reasonable grounds for a proposed suspension or dismissal under this section's provision that, 'In any case where a department head decides to dismiss, demote, or suspend a regular employee, for cause, he shall furnish the employee with a written statement of the charges against him.' [Samuels v. Govt. Emples. Serv. Commn., 12 V.I. 581, 1976 U.S. Dist. LEXIS 16103 \(D.C.V.I. 1976\)](#). 21.

Authority to dismiss.

Pursuant to 3 V.I.C. 530, a department head, or even the Governor, may only recommend the dismissal of a regular employee; the power to dismiss rests solely with the Public Employees Relations Board. [Ross v. Government of Virgin Islands, 34 V.I. 91, 1996 V.I. LEXIS 9 \(Terr. Ct. St. C. 1996\)](#).

Where employee was unilaterally dismissed by the Governor without any statement of charges or hearing and where, as a regular classified employee, she was not terminable at will, her dismissal was in violation of 3 V.I.C. 530. [Ross v. Government of Virgin Islands, 34 V.I. 91, 1996 V.I. LEXIS 9 \(Terr. Ct. St. C. 1996\)](#).

The actual power to dismiss a government employee rests only with the Government Employees Service Commission; the commissioner of a department has only the power to propose a dismissal. [Reefer v. Government of the Virgin Islands, 17 V.I. 373, 1980 U.S. Dist. LEXIS 8924 \(D.C.V.I. 1980\)](#).

Where employee of Department of Public Safety was notified by the Commissioner of Public Safety by a letter dated November 29, 1978, that she was being dismissed effective December 1, 1978, and was not allowed to work and was not being paid after December 1, 1978, employee was terminated in violation of subsection (a) of this section. [Reefer v. Government of the Virgin Islands, 17 V.I. 373, 1980 U.S. Dist. LEXIS 8924 \(D.C.V.I. 1980\)](#). 22.

Grounds for dismissal.

The plain meaning of this section is that regular employees may be terminated only for cause. [Richardson v. Felix, 856 F.2d 505, 1988 U.S. App. LEXIS 11241 \(3d Cir. V.I. 1988\)](#). 23.

Suspension.

The Commissioner of Public Safety does not have the authority to suspend an employee, but he may recommend that the employee be suspended. [23 V.I. 21, 1987 V.I. LEXIS 14](#). 24.

Written statement of charges.

Requirement, of subsection (a) of this section, that a department head who decides to suspend a regular government employee for cause shall furnish the employee with a written statement of the charges against him, allows the employee to prepare a defense against the charges alleged. [Perry v. Government Employees Service Comm'n, 18 V.I. 524, 1981 U.S. Dist. LEXIS 9338 \(D.C.V.I. 1981\)](#). 25.

Hearing.

The Public Employees Relations Board violated the provisions of subsection (b) by failing to meet at least initially, within 30 days to afford the employee and the department head an opportunity to be heard; such violation required mandatory reinstatement with full pay from the date of employee's dismissal. [Ross v. Government of Virgin Islands, 34 V.I. 91, 1996 V.I. LEXIS 9 \(Terr. Ct. St. C. 1996\)](#).

A regular government employee may be dismissed from his employment only after a hearing by the Government Employees Service Commission if, within ten days of receipt of a written statement of the charges against him, the employee appeals the proposed dismissal to the commission. [Schuster v. Thraen, 18 V.I. 287, 1981 U.S. Dist. LEXIS 10417 \(D.C.V.I. 1981\)](#).

Holidays and weekends which fall between the date of an appeal to the Government Employees Service Commission and the date of a hearing on that appeal may not be excluded in calculating the thirty-day time limit of subsection (b) of this section within which a hearing must be held. [Reefer v. Government of the Virgin Islands, 17 V.I. 373, 1980 U.S. Dist. LEXIS 8924 \(D.C.V.I. 1980\)](#).

Subsection (b) of this section clearly requires that the Government Employees Service Commission meet within thirty days of the appeal of a proposed action and within the same thirty days provide the department head and the employee an opportunity to be heard; this requirement is not satisfied by the scheduling of a meeting within the thirty-day period, and subsequent rescheduling of the meeting for a date beyond the thirty days, or by the furnishing of notice within the thirty-day period of the opportunity to be heard. [Reefer v. Government of the Virgin Islands, 17 V.I. 373, 1980 U.S. Dist. LEXIS 8924 \(D.C.V.I. 1980\)](#). 26.

Regular employees.

Even if a finder of fact could determine that plaintiff met the criteria for a 'regular employee' under 3 V.I.C. § 530(a), the record contained absolutely no evidence that he filed an appeal of his termination with the Public Employee Relations Board. Thus,

because plaintiff failed to exhaust his administrative remedies, he could not maintain his breach of contract action against his former employer. [Chapman v. Cornwall](#), 58 V.I. 431, 2013 V.I. Supreme LEXIS 20 (VI. 2013). SUPREME COURT OF THE VIRGIN ISLANDS

2010 amendment to 3 V.I.C. § 530 that gave a new definition of a 'regular' employee did not apply to a suit brought by two public employees, because the legislature had not expressly stated that the amendment should apply to suits arising before it was enacted and because application of the amendment would have a retroactive effect. [Iles v. De Jongh](#), 638 F.3d 169, 55 V.I. 1251, 2011 U.S. App. LEXIS 7916 (Apr. 19, 2011).

Plain reading of 3 V.I.C. § 96(a)(6) and 17 V.I.C. § 121 reveals that the legislature did not intend for Department of Education (DOE) employees to be subject to the same competitive appointment process as other employees of the Executive Branch under 3 V.I.C. ch. 25; rather, it is clear that a DOE employee may be considered a regular employee if he or she is appointed pursuant to the authority granted to the DOE and the Board of Education under the enabling statutes identified in 3 V.I.C. § 457. [Williams-Jackson v. Public Emples. Rels. Bd.](#), 52 V.I. 445, 2009 V.I. Supreme LEXIS 46 (VI. 2009).

Thus, it was error to hold that because a DOE employee's appointment did not comply with the competitive appointment process of 3 V.I.C. ch. 25, she was not a regular employee under 3 V.I.C. § 451 for purposes of 3 V.I.C. § 530(a) [Williams-Jackson v. Public Emples. Rels. Bd.](#), 52 V.I. 445, 2009 V.I. Supreme LEXIS 46 (VI. 2009).

Cited.

Cited in [Sewer v. Government of the Virgin Islands](#), 17 V.I. 597, 1980 U.S. Dist. LEXIS 8952 (D.C.V.I. 1980); [Monsanto v. Government of V.I.](#), 21 V.I. 567, 1985 V.I. LEXIS 4 (Terr. Ct. St. T. and St. J. 1985).

3 V.I.C. § 530, VI ST T. 3 § 530

Current through Act 7834 of the 2015 Regular and Special Session