

COURT OF APPEALS DEFERS TO BOARD'S DECISION TO TERMINATE EMPLOYEE, NOT TO THE HEARING OFFICER'S NON-BINDING REPORT AFTER EVIDENTIARY HEARING

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Blancarte v. Ariz. Dep't of Transp.

Arizona Court of Appeals, Division One, July 31, 2012

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Plaintiff Blancarte was an ADOT customer service representative. ADOT dismissed her for cause after finding that she (1) behaved rudely and unprofessionally toward Native American customers; (2) improperly and without authority deleted tribal exemption codes from ADOT records for vehicles owned by Native Americans, or failed to enter the codes when required; and (3) told her supervisor that "as a private citizen" she could turn people in for failing to comply with motor vehicle laws regardless of ADOT procedures. Blancarte also accused a customer of committing fraud with no evidence to support her accusation.

Blancarte appealed her dismissal. A hearing officer appointed by the Board held an evidentiary hearing, then issued a Report stating that Blancarte had been rude and intentionally deleted tribal exemption codes, but that dismissal was grossly disproportionate to the offenses in light of mitigating factors. While finding cause for discipline, the Report recommended the Board reinstate Blancarte with back pay and impose a lesser sanction. After a hearing, the Board rejected the findings of mitigating factors, denied Blancarte's appeal, and upheld ADOT's dismissal decision. Blancarte appealed the Board's decision to the superior court. The court found that the record supported the hearing officer's Report and "affirmed" that "decision," concluding that ADOT's termination decision was arbitrary, capricious, and an abuse of discretion. The court ordered ADOT to impose the lesser sanction recommended in the Report.

ADOT and the Board appealed to the court of appeals, which reversed. The trial court erred in "affirming" the Report because the Board, not the hearing officer, decides the initial appeal. The Report was not a final Board action subject to superior court review or to which court deference was owed. See A.R.S. § 41-785; AAC R2-5.1-103(R). On the merits, the court of appeals found substantial evidence to support the Board's determination that dismissal was not disproportionate to Blancarte's offenses, and no evidence that the dismissal was arbitrary, capricious, or contrary to law. Thus, the Board did not abuse its discretion in affirming ADOT's decision to terminate Blancarte.