

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**DAVID MCDANIEL,
Grievant,**

v.

Docket No. 2017-1404-CONS

**DIVISION OF HIGHWAYS,
Respondent.**

DECISION

David McDaniel, Grievant, is employed by Respondent, Division of Highways (“DOH”) as a Transportation Worker 2, Mechanic. He is assigned to DOH District One, Mason County facility in Point Pleasant. Mr. McDaniel filed a level one grievance form dated October 7, 2016, alleging that he received a reprimand without cause and requesting that the reprimand be removed from his record. On November 21, 2016, Mr. McDaniel filed a second grievance form at level three¹ alleging that his employment was suspended without cause and requesting that he receive back pay, interest and the restoration of all his benefits that were lost as a result of the suspension. Grievant and Respondent agreed upon a motion to consolidate the two grievances at level three and an Order of Consolidation was entered on December 19, 2016.

A level three hearing regarding the consolidated grievances was held in the Charleston office of the West Virginia Public Employees Grievance Board on March 31, 2017. Grievant personally appeared and was represented by Gordon Simmons, UE Local 170. Respondent was represented by Jason C. Workman, Esquire, DOH Legal Division.

¹ See W. VA. CODE § 6C-2-4(a) (4) for the statutory provision which allows an employee to file an expedited grievance at level three.

The grievance became mature for decision on May 8, 2017, upon receipt of the last Proposed Findings of Fact and Conclusions of Law submitted by the parties.

Synopsis

Grievant believes Respondent was not justified in disciplining him for his conduct at two meetings with his supervisors. Respondent proved that some discipline was justified for Grievant's misconduct at the meetings.

Grievant also argues that the District Engineer gave him a written reprimand and it was arbitrary and capricious for Respondent to subsequently give him a suspension for the same conduct. Grievant also claims that Respondent violated the Division of Personnel Administrative Rule by not giving him notice that a suspension was being considered prior to issuing the suspension. Grievant proved these defenses by a preponderance of the evidence.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant, David McDaniel, is employed at the Mason County Facility in Respondent's District One. His position is assigned to the Transportation Worker, Mechanic 2, ("Mechanic 2") classification.
2. Grievant has had satisfactory evaluations throughout his employment with DOH and has no history of previous disciplinary action.
3. Mr. McDaniel has previously filed a grievance in which he challenged the classification of his position because he felt the predominate work he was performing was

Mechanic 3 duties. He wanted his position to be reallocated to the Mechanic 3 classification. *McDaniel v. Div. of Highways*, Docket No. 2015-1300-DOT (July 6, 2016).

4. Among the duties Grievant alleged he was regularly performing which he believed constituted Mechanic 3 duties, were fixing and replacing hydraulic brakes on DOH trucks. It was not disputed that that Grievant was performing some of those duties. However, the Administrative Law Judge (ALJ) found that Grievant's predominate duties fit within the Mechanic 2 classification and noted:

"In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole." W. VA. CODE ST. R. § 143-1-4.4(b). . . . "[S]imply because one is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render [one] misclassified *per se*." *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1991).

McDaniel, 2015-1300-DOT, *Supra*.

5. After losing the grievance, Grievant complained and occasionally argued with the Mechanic 3 when he assigned Grievant to perform duties such as repairing and replacing hydraulic brakes because those were Mechanic 3 duties. Grievant also remained upset with the Mason County Administrator, Ernie Watterson because he believed Mr. Waterson had given false testimony during the hearing. However, there is no evidence that Grievant ultimately refused to perform any assigned duties.

6. The lead worker Mechanic 3, in the garage where Grievant works complained about Grievant's behavior to his supervisors and separate meetings were set up with the Mechanic 3 and Grievant.

7. On August 30, 2016, District One Maintenance Engineer, Travis Knighton, and District One Engineer, Aaron Gillispie, were in Mason County for a road inspection and went to the Mason County DOH facility to address the issues in the shop with the

Mechanics. Engineers Gillispie and Knighton met with the Mechanic 3 and Mason County DOH Highway Administrator, Ernie Watterson.

8. Following the meeting with the Mechanic 3, Mr. Gillispie, Mr. Knighton, and Mr. Watterson met with Grievant. Also at this meeting were Maintenance Assistant, Chris Shaffer, and District One Highway Supervisor, Gerald Smith. The goal of both meetings was to facilitate an understanding of each person's duties in the Mechanic shop and try to establish more harmonious working relationships.

9. Early in the meeting, Engineer Gillispie received an emergency telephone call related to flooding and had to leave the room. Shortly thereafter, Administrator Watterson stepped out in the hall and told Mr. Gillispie that he needed to come back into the room because Grievant was shouting at Supervisor Smith.

10. When Gillispie returned to the room, Grievant was talking loudly, being obstructive and talking over others as they tried to speak. Grievant was upset about having to work on the hydraulic brakes and being evaluated by the Mechanic 3. He was also angry because he believed the Mechanic 3 had told the supervisors the Grievant was refusing to do work.

11. After checking with other organizations, Gillispie found out that some had Mechanic 2s evaluated by the lead Mechanic 3 and others were evaluated by the Highway Administrator. Mr. Gillispie assigned the evaluations of Grievant to Administrator Watterson as Grievant requested.

12. Grievant continued to be loud and obstructive. At one point while Administrator Watterson was speaking, Grievant interrupted him to say, "I'm done with

you” and turned away from him to speak with somebody else. Subsequently, Grievant became so upset that he abruptly stood up and left the meeting.

13. Grievant eventually was allowed to leave the meeting to compose himself. Mr. Gillispie met with Grievant during this break and they discussed the issue of the Air Brakes, among other things. Mr. Gillispie told Grievant he would come back to meet with Grievant once he had an answer regarding who could be assigned to repair and replace air brakes.

14. Mr. Gillispie told Grievant he would have to come back to the meeting so they could wrap things up. Grievant initially refused to return to the meeting. Mr. Gillispie explained that he needed for everyone to get together before he left so he could be sure everyone was settled down and ready to work together. Grievant continued to resist and Mr. Gillispie told him he’d give Grievant five more minutes to collect himself. If Grievant failed to return to the meeting Mr. Gillispie would recommend discipline against him for insubordination. Grievant followed Mr. Gillispie back into the room, at which time Mr. Gillispie recapped the agreement about evaluations and that he would be returning for a second meeting once he had a definitive answer regarding the air brakes. He wanted to meet the second time so everyone was working from the same information.

15. Mr. Gillispie received an answer from the DOH Human Resources office that a Mechanic 2 or a Mechanic 3 who was trained on air brakes could be assigned to repair or replace them. In the meantime, Grievant made his own inquiries with the DOH Human Resources office and received the same answer. Neither Grievant nor the Human Resources office personnel informed Mr. Gillispie of Grievant’s independent inquiry.

16. On September 23, 2016, Mr. Gillispie and Mr. Knighton returned to Mason County to meet with Grievant and his supervisors to finalize the air brakes issue. They met with Administrator Watterson and asked him to call Grievant to the meeting. An employee was sent to get Grievant, but he refused to come. Instead he sent a text to Mr. Watterson asking, "You want me?" Mr. Watterson replied that the District Engineer was there with the answer to Grievant's question. Grievant replied, "I'm done with him." Grievant followed that text with another to the effect that the "assholes are back from Charleston for a meeting."²

17. Mr. Knighton, went to speak with Grievant and asked him to come to the meeting, and told him the purpose was to answer the air brakes question. Grievant refused to come to the meeting insisting that it was a waste of time. Mr. Knighton informed Grievant that he was telling him as his manager to come to the meeting and Grievant continued to refuse.

18. On October 6, 2016, Grievant was given a form RL-544, *Notice to Employee*, informing him that disciplinary action was being contemplated for his actions at the two meetings where he was extremely disrespectful to his supervisors and refused to comply with a directive to attend a meeting. (Respondent Exhibit 1). Aaron Gillispie specifically noted that:

It is a fundamental expectation of your employer, the West Virginia Division of Highways (WVDOH), that you, an employee of the WVDOH observe and respect the chain of

² The exact wording of the text was not available but Grievant acknowledged that this was a close approximation. Grievant also texted, "next time I talk with him it will be with a lawyer." Grievant apparently meant that he did not wish to meet with the managers without representation. However, it was clear to everyone that this meeting was not for the purpose of discussing or considering disciplinary action so the right to a representative set out in W. VA. CODE § 6C-2-3(g)(1) did not apply.

command in this organization. It is expected that you respect and comply with instructions given by your supervisor daily.

Mr. Gillispie noted that Grievant's actions violated the DOH Administrative Operating Procedures Section II, Chapter ^, *Standards of Work Performance*."

19. The disciplinary measure listed in the notice was a written reprimand. A meeting was scheduled for October 20, 2016, to give Grievant an opportunity to respond to the charges set forth in the Form RL-544 before any disciplinary action was taken. RL-544 was signed by Aaron Gillispie and Ernie Watterson. Mr. Watterson noted on the form that Grievant refused to sign it.

20. Mr. Gillispie filled out a Form RL-546, *Employee's Verification of Disciplinary Action*, on October 27, 2016, noting that Grievant did not appear at the meeting where he was given an opportunity to respond to the charges. (Respondent Exhibit 1).³

21. By letter dated November 10, 2016, Grievant was suspended without pay for one working day for his actions at the August 30 and September 23, 2016 meetings. The letter was signed by DOH, Human Resources Division Director, Kathleen Dempsey. Director Demsey noted in the letter, "While the original recommendation stated "Written Reprimand," a one (1) day suspension, in agreement with your District Engineer/Manager, is more in keeping with your action." (Respondent Exhibit 2).

22. The *DOH Administrative Operating Procedures* ("DOH-AOP"), established policies and procedures by which the agency conducts its operational functions. Section II, Chapter 6 of these operating procedures is titled *Disciplinary Action*. This chapter became effective on April 15, 2007. (Respondent Exhibit 3).

³ Respondent Exhibit 1 consisted of the Form RL-544 with attachments and the Form RL-546.

23. The DOH-AOP contains the following provisions:

Disciplinary action may be recommended or taken by authorized Managers in accordance with this Policy whenever an employee fails to conform to expected standard of work performance or conduct.

Id. Section II, Chapter 6, Subsection I (B).

A District Engineer/Manager, Division Director, or his or her designee may impose a written reprimand or recommend any other form of disciplinary action. A District Engineer/Manager, Division Director may also impose an immediate oral suspension after receiving approval from Human Resources Division.

Id. Section II, Chapter 6, Subsection III (A).

24. The DOH-AOP Section II, Chapter 6, sets forth the *Disciplinary Process* at Subsection D (3) and defines the purpose of Forms RL-544 and RL-546. This Subsection contains the following provisions:

- f. Complete the necessary paperwork

(1) RL-544, Notice to Employee of Warning/ Disciplinary Action/Criminal Investigation/ Suspension, including the facts and circumstances surrounding the employee's work performance or conduct issue; the nature, type, and severity of the issue; identification of prior disciplinary actions, if any, taken in response to similar performance or conduct issues or that suggest a persistent failure to meet the expected standards; the action or recommended disciplinary action to be taken; the date by which any response must be received by the employee's District Engineer/Manager or Division Director; time frame and mechanism for the employee's response; and the names of relevant witnesses. Attach relevant supporting documentation and reference such documentation in the RL-544.

(2) RL-546, Employee's Verification of Disciplinary Action, complete general fields.

- h. If the employee responds in person, encourage the employee to write his or her comments on Form RL-546 and to sign and date the same; in the alternative, summarize the employee's comments on the RL-546 and ask the employee to sign and date the Form.

Although Form RL-546 is not the only method by which an employee may respond, any written response should be signed and dated by the employee and by the person receiving the response. *An employee's timely response, on form RL-546 or otherwise, must be considered before a reprimand is imposed or before any other form of disciplinary action is recommended to Human Resources Division.* (Emphasis added). *Id.*

Discussion

As this grievance involves a disciplinary matter, Respondent bears the burden of establishing the charges by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008).

. . . See [*Watkins v. McDowell County Bd. of Educ.*, 229 W.Va. 500, 729 S.E.2d 822] at 833 (The applicable standard of proof in a grievance proceeding is preponderance of the evidence.); *Darby v. Kanawha County Board of Education*, 227 W.Va. 525, 530, 711 S.E.2d 595, 600 (2011) (The order of the hearing examiner properly stated that, in disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence.). See also *Hovermale v. Berkeley Springs Moose Lodge*, 165 W.Va. 689, 697 n. 4, 271 S.E.2d 335, 341 n. 4 (1980) ("Proof by a preponderance of the evidence requires only that a party satisfy the court or jury by sufficient evidence that the existence of a fact is more probable or likely than its nonexistence."). . .

W. Va. Dep't of Trans., Div. of Highways v. Litten, No. 12-0287 (W.Va. Supreme Court, June 5, 2013) (memorandum decision). Where the evidence equally supports both sides, a party has not met its burden of proof. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

The significant facts in this case are not in dispute. Grievant admitted that he raised his voice with his supervisors, turned away from his direct supervisor while that person was talking to him, was talking over supervisors who were trying to explain issues to him, refused to meet with two District Supervisors in a non-disciplinary meeting to answer

questions he had raised at an earlier meeting, and referred to these supervisors as “assholes from Charleston” in a text to the Mason County DOH Administrator. The Grievance Board has found that such behavior violates the DOH-AOP, Section II, Chapter 6, which sets out minimum standards of conduct for all DOH employees including, “Maintenance of a high standard of personal conduct and courtesy in dealing with the public, fellow employees, supervisors, and officials.” See, *Reichard v. Div. of Highways*, Docket No. 2015-1188-DOT (Oct. 15, 2015).⁴ Additionally, it has been held that:

An employer has the right to expect subordinate personnel “to not manifest disrespect toward supervisory personnel which undermines their status, prestige, and authority” *McKinney v. Wyoming County Bd. of Educ.*, Docket No. 92-55-112 (Aug. 3, 1992) (citing *In re Burton Mfg. Co.*, 82 L.A. 1228 (Feb. 2, 1984)). “Certainly, an employer is entitled to expect its employees to conform to certain standards of civil behavior.” *Redfearn v. Dep’t of Labor*, 58 MSPR 307 (1993). All employees are “expected to treat each other with a modicum of courtesy in their daily contacts.” See *Fonville v. DHHS*, 30 MSPR 351 (1986) (citing *Glover v. DHEW*, 1 MSPR 660 (1980)). Abusive language and abusive, inappropriate, and disrespectful behavior are not acceptable or conducive to a stable and effective working environment. *Hubble v. Dep’t of Justice*, 6 MSPR 659, 6 MSPR 553 (1981). See *Graley v. W. Va. Parkways Economic Dev. and Tourism Auth.*, Docket No. 99-PEDTA-406 (Oct. 31, 2000).”

Cobb v. Div. of Highways, Docket No. 2012-0604-CONS (Nov. 16, 2012).

Accordingly, Respondent has proven by a preponderance of the evidence that Grievant’s lack of civility with his supervisors violates the agency’s standards of conduct and discipline was appropriate.

⁴ In *Reichard* the grievant shouted at his supervisor, kicked the trash can over and slammed the door, because the Crew Supervisor instructed him to drive a loaner snowplow when his truck was disabled.

Grievant next argues that the District Engineer exercised his discretion to issue Grievant a written reprimand utilizing the procedure set out in the DOH-AOP, and it was unreasonable for DOH Human Resources Director to issue him a one-day suspension for the same conduct, nearly two weeks after the completion of the Form RL-546, "Employee's Verification of Disciplinary Action was completed and signed.

The DOH-AOP clearly authorized District Engineer Gillispie to issue Grievant a written reprimand without consulting with anyone. The procedure specifically states:

A District Engineer/Manager, Division Director, or his or her designee may impose a written reprimand or recommend any other form of disciplinary action.

Id. Section II, Chapter 6, Subsection III (A). A District Engineer may only recommend disciplinary action higher than written reprimands. In this case, District Engineer Gillispie, issued a Form RL-544, notice to Grievant that he intended to issue him written reprimand for his conduct at the two meetings. The form specifically stated that:

For any disciplinary action, you are hereby given an opportunity to respond in writing or in person to the Agency Representative. If you desire to meet in person, an appointment has been scheduled for you on October 20, at 9:00 in the DE Conf. Room. Written comments shall be made no later than five days after receipt of this notice.

(Respondent Exhibit 1). There was no notice that a more severe disciplinary action was being contemplated by the Agency. Based upon this notice, Grievant elected to forego the meeting or submission of any written comments. District Engineer Gillespie then issued the RL-546, Employee's Verification of Discipline, on October 27, 2016.

The nature and relationship of the DOH RL-544 and RL-546 forms have has been consistently presented in testimony of DOH officials taken under oath at numerous grievance hearings and set out in findings of facts in decisions rendered in those cases.

See e.g., *Clagg and James v. Div. of Highways*, Docket No. 2015-1631-CONS (Feb. 10, 2016); *Rinehart v. Div. of Highways*, Docket No. 2014-0984-DOT (March 25, 2015); *Cobb v. Div. of Highways*, Docket No. 2012-0604-CONS (Nov. 16, 2012) *Keaton v. Div. of Highways*, Docket No. 2011-0188-DOT (May 9, 2011); *Loudermilk v. W. Va. Dep't of Transp./Div. of Highways*, Docket No. 2010-0558-DOT (Oct. 8, 2010).

They were succinctly summarized in *Loudermilk v. W. Va. Dep't of Transp./Div. of Highways*, Docket No. 2010-0558-DOT (Oct. 8, 2010) findings of fact which state:

5. The Form RL-544 is a notice to DOH employees of recommended disciplinary action to be taken against them. In this RL-544 Manager Rowan recommended that Grievant be dismissed from employment because he no longer met the minimum qualification for the position he held. The form notified Grievant that he had the opportunity to respond to the recommendation personally or in writing within two days of receiving the RL-544.

6. On September 23, 2009, Manager Rowan completed a Form RL-546 which he and Grievant signed on that date. The RL-546 is a verification of disciplinary action and this form verified that Grievant was dismissed from employment with the DOH.

Id. FOF 5 & 6. As their titles indicate, The RL-544 gives the employee notice of the discipline which is being contemplated, the reasons therefore and establishes a date for a predetermination conference where the employee may offer explanations and defenses for the alleged misconduct. The RL-546 then memorializes the comments or explanations offered by the employee and verifies the discipline taken.⁵

In this case, District Engineer Gillispie gave Grievant the RL-544 which notified Grievant that a "Written Reprimand" was being contemplated. The reasons for the action

⁵ Hence the documents title, *Employee's Verification of Disciplinary Action*.

were set out in a detailed document which was attached to the form and could be considered a written reprimand.⁶

Grievant did not attend the scheduled meeting which would have been his predetermination conference and District Engineer Gillispie issued the RL-546 which verified that the disciplinary action was taken. This was a clear and legitimate exercise of his authority set out in the DOH-AOP. The Procedures specifically state that “An employee’s timely response, on form RL-546 or otherwise, must be considered before a reprimand is imposed or before any other form of disciplinary action is recommended to Human Resources Division.” District Engineer Gillispie considered Grievant’s lack of response and imposed the reprimand. Director Dempsey testified that it is the consistent practice of the Agency that District Engineers must seek approval from the Human Resources Division before issuing a written reprimand. However, in this instance the practice of the Agency is of no import. The DOP written policy clearly gives the District Engineer the discretion to implement a written reprimand without further approval or permission. It has been consistently held that “An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs.” *Powell v. Brown*, 160 W. Va. 723; 238 S.E.2d 220 (1977); *Layne v. Dep’t of Health & Human Res.*, Docket No. 2008-0172-DHHR (Jan. 8, 2009).

Generally, an agency’s action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision

⁶ The attached document appeared to be a written reprimand in all respects except that it was not titled as such.

that is so implausible that it cannot be ascribed to a difference of view. *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996).

In this case, District Engineer Gillispie exercised his discretion to issue Grievant a Written Reprimand. No intervening factors occurred between the time of the Written Reprimand and the issuance of a suspension which would justify giving Grievant a one-day suspension of the same misconduct. Accordingly, that action was arbitrary and capricious.

Finally, the issuance of a one-day suspension in this case does not comply with The Division of Personnel Administrative Rule which states that prior to implementing a suspension the designated authority must “meet with the employee in a predetermination conference and advise the employee of the contemplated suspension.” W. VA. CODE ST. R. § 143.1.12.3a. Grievant was never given notice that suspension was being contemplated thus the suspension violated the Division of Personnel’s Legislative Rule and was invalid. Accordingly, the grievance is GRANTED with regard to the suspension, and DENIED with regard to the written reprimand.

Conclusions of Law

1. As this grievance involves a disciplinary matter, Respondent bears the burden of establishing the charges by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008). *W. Va. Dep’t of Trans., Div. of Highways v. Litten*, No. 12-0287 (W.Va. Supreme Court, June 5, 2013) (memorandum decision). Where the evidence equally supports both sides, a party

has not met its burden of proof. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. Respondent proved by a preponderance of the evidence that discipline was justified for Grievant's misconduct. See, *Reichard v. Div. of Highways*, Docket No. 2015-1188-DOT (Oct. 15, 2015); and *Cobb v. Div. of Highways*, Docket No, 2012-0604-CONS (Nov. 16, 2012).

3. District Engineer Gillispie exercised his independent authority to issue Grievant a Written Reprimand as discipline for his misconduct.

4. Generally, an agency's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996).

5. Grievant proved by a preponderance of the evidence that in this specific instance, it was arbitrary and capricious for Respondent to suspend Grievant for one day for the same misconduct for which he had previously received a Written Reprimand.

6. The Division of Personnel Administrative Rule which requires that prior to implementing a suspension the designated authority must "meet with the employee in a predetermination conference and advise the employee of the contemplated suspension." W. VA. CODE ST. R. § 143.1.12.3a. Grievant was never given notice that suspension was

being contemplated thus the suspension violated the Division of Personnel's Procedural Rule and was invalid.

Accordingly, the grievance is **Granted, in part, and Denied, in part**. Respondent is **Ordered**, to remove the one-day suspension from all records related to Grievant and reimburse Grievant one day of pay plus statutory interest from the date of the suspension to the date of the reimbursement, as well as any benefits he may have earned.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (2008).

DATE: June 30, 2017.

**WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE**