

2018 IL App (1st) 170086-U

No. 1-17-0086

June 20, 2018

Third Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ALFREDO GALLARDO,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
v.)	
)	No. 15 CH 15284
CHICAGO TRANSIT AUTHORITY, a Municipal)	
Corporation,)	
)	
Respondent-Appellee.)	Honorable
)	Celia G. Gamrath,
)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Cobbs and Justice Lavin concurred in the judgment.

ORDER

- ¶ 1 *Held:* Board of Review’s decision upholding the Chicago Transit Authority’s decision to terminate petitioner was neither against the manifest weight of evidence nor arbitrary or unreasonable.
- ¶ 2 Petitioner, Alfredo Gallardo, was discharged from his position as a rail maintenance manager with respondent, Chicago Transit Authority (CTA). After a hearing pursuant to section

28 of the Metropolitan Transit Authority Act (Act) (70 ILCS 3605/28 (West 2012)), the CTA Transit Board (Board) upheld Gallardo's termination. Gallardo filed a petition for writ of *certiorari* with the circuit court, which upheld the decision of the Board. This appeal followed. For the following reasons, we affirm the Board's decision.

¶ 3 On October 29, 2013, Gallardo received a notice of his termination from the CTA. The letter, signed by director of human resources Seth Wilson and general manager Larry O'Connell, stated that Gallardo's termination was due to his poor performance and unprofessional conduct in violation of CTA Rule 7 ("Obedience to Rules"), Rule 14, ("Personal Conduct") and Rule 24, ("Use of Best Judgment"). The notice cited three specific instances of Gallardo's poor performance and unprofessional conduct. It alleged that Gallardo performed poorly while responding to an August 10, 2013, report of southbound Blue Line trains hitting the Austin station's platform, that Gallardo was unprofessional in an August 14, 2013, email to O'Connell in which Gallardo appealed the denial of his request for compensation time, and that Gallardo's poor performance was confirmed by Gallardo himself in an August 22, 2013, email to his superiors. Gallardo invoked his right to a hearing before the Board pursuant to section 28 of the Act. A hearing was held before the three-member committee on December 3 and December 15, 2014.

¶ 4 During the hearing, the CTA presented the testimony of Wilson and Jeffrey Bell, Gallardo's manager on the Blue Line. Gallardo testified on his own behalf. The parties presented numerous exhibits to witnesses during their testimony. Those exhibits were entered into evidence and are a part of the record on appeal. For the sake of brevity, our summary of the hearing testimony will not indicate every time a witness was presented with evidence while testifying.

Where a witness's testimony relates to a specific document, including any emails, reports, letters, the CTA's disciplinary guidelines, and its executive order governing probationary employees, it should be assumed that the witness was presented with the relevant document during that testimony.

¶ 5 Bell testified that he was a senior rail maintenance manager on the Blue Line and Gallardo's supervisor. Bell was on the three-person interview panel that interviewed Gallardo for the rail maintenance manager position and had believed that Gallardo could perform the duties required because of his previous positions with the CTA. Gallardo was a railcar repairman from 1992 to 2001 and would have worked on the same series of train cars that were still used on the Blue Line. Gallardo also worked as a CTA bus maintenance manager from 2009 to 2010 and would have familiarity with CTA's Maintenance Management Information System ("MMIS") software, which stored vehicles' maintenance histories and was used to log work orders.

¶ 6 Bell described the day-to-day responsibilities of a manager. At the beginning of a shift, a manager arrives and train cars are already in the shop and ready to be worked on. The manager determines which cars can be fixed and put back in service the fastest and assigns maintenance staff to work on them. As cars are fixed, the manager has fixed cars moved out of the shop and cars needing repairs are brought in. At the end of the manager's shift, he or she must set up the shop for the next shift, check that work orders have been updated and that maintenance staff have "jobbed off" in MMIS, and complete any necessary reporting before leaving.

¶ 7 New managers receive on-the-job training. They shadow other managers to learn how to use MMIS and how to call to get cars moved in and out of the shop. When an incident requires train cars to be inspected or repaired, the CTA Control Center reports it in a Supervisory Control

and Data Acquisition (“SCADA”) report and the managers must have the cars inspected and prepare an unusual occurrence report. New manager’s do not receive formal training for writing reports, but receive reports completed by other managers and use them as examples. To complete an unusual occurrence report, a manager copies the data from the SCADA report and puts it into complete sentences.

¶ 8 Bell worked the 6 a.m. to 2:30 p.m. shift at the Rosemont shop and initially assigned Gallardo the same hours and location. Gallardo shadowed other managers for approximately two weeks and was then assigned to work the evening shift at the Rosemont shop. Bell testified that, at 3:26 p.m. on August 10, 2013, a southbound Blue Line train made contact with the Austin station’s platform and a SCADA report was generated. At approximately 3:40 p.m., Bell received a page on his cell phone notifying him of the incident. He called the manager on duty at the Des Plaines shop, Jan Padowski, and when Padowski did not answer, Bell called the manager on duty at the Rosemont shop, Gallardo.¹ Gallardo’s shift ended at 3:30 p.m. and he had already left work. Bell told Gallardo to return and respond to the train hitting the Austin platform.

¶ 9 Gallardo had the train cars involved in the SCADA report taken out of service, also known as having cars “laid up.” At 6:23 p.m., the SCADA report was updated with a second train that made contact with the Austin platform. Gallardo would have had access to the updated report, but his preliminary unusual occurrence report only addressed train cars from the initial SCADA report. After inspecting the cars from the initial SCADA, Gallardo reported no damage as a result of making contact with the Austin platform.

¹ It is undisputed that the Des Plaines manager was responsible for inspecting the train making contact with the Austin platform because it was travelling toward Des Plaines and the Austin station was closer to that shop than to the Rosemont shop.

¶ 10 Approximately 16 hours elapsed between when the initial SCADA report was generated and when Bell reviewed Gallardo's preliminary unusual occurrence report. Bell personally inspected the train cars involved in the Austin incident, both those that Gallardo reported and those in the updated SCADA report. Bell saw black and blue marks on the sides of the cars where they had hit the platform, which were not ordinary but only present because of contact with the Austin platform. He updated Gallardo's report with additional cars involved in the Austin incident and reported that the Austin platform caused marks on the sides of all of the cars involved. Bell testified that, although nothing prevented the cars involved in the Austin incident from operating appropriately, the CTA was lucky that there had not been substantial damage.

¶ 11 Bell testified that he considered Gallardo's response to the Austin incident to be poor performance. It was "alarming" because, if the CTA would have known there was an issue, it could have acted quicker and possibly prevented other cars from hitting the platform, such as those reported in the 6:23 p.m. SCADA report. Bell did not know if Padowski was disciplined in relation to the Austin incident.

¶ 12 The next day, August 11, 2013, Gallardo asked Bell for compensation time for the additional time he worked the night before. Bell, not having the authority to grant compensation time, referred the request to O'Connell, who denied it. Bell told Gallardo that O'Connell denied his request and Gallardo emailed O'Connell, copying Bell. In the last paragraph of the email, Gallardo wrote, "Mr. O'Connell, be advised, I am fully prepared to seek a fair and just resolution to this matter via the Employee Relations Department in the event a satisfactory outcome cannot be achieved through this means." Bell considered the last paragraph of Gallardo's email to be a

threat to go to employee relations, but acknowledged Gallardo had a right to contact employee relations and the email gave O'Connell a chance to resolve the situation before he did so.

¶ 13 On August 15, 2013, Bell sent an email to Blue Line maintenance employees, including Gallardo, setting out new procedures for addressing certain recurring defects. Gallardo sent an email addressed to Bell only, writing, "Jeff, I'm going to save you the embarrassment of replying to all and will simply direct this e-mail solely to you." He wrote that Bell had given him prior instructions that were inconsistent with those in Bell's recent email. Upon receiving Gallardo's email, Bell found the first sentence "rude," "disrespectful," and "belittling." On cross-examination, Bell agreed that Gallardo had a right to point out inconsistencies in Bell's instructions, that he may have saved him embarrassment that would have occurred if Gallardo had written the email to others, and that it was possible that Gallardo had good intentions.

¶ 14 On August 21, 2013, Bell was notified at approximately 8:30 p.m., two hours before the next shift, referred to as the "midnight" shift, that the Blue Line had 18 cars in service with reported defects, referred to as "bad orders," and several cars being held at the shops for various reasons, so called "hold cars."

¶ 15 Bell emailed Gallardo and the manager on duty at the Des Plaines shop, JoAnne Petty, at 8:27 p.m. on August 21, 2013, copying manager Brad Moss, Bell's counterpart at the Des Plaines shop and Petty's supervisor, and O'Connell. In the email, Bell asked both Gallardo and Petty for an action plan, including a list of bad orders, hold cars, and what each shop planned to have completed by 10 p.m. Bell needed an action plan so that he could inform his superiors what actions were being taken to resolve the situation. He also needed an action plan to determine whether he needed to have workers stay on past their scheduled end times. Otherwise, the next

shift could be overwhelmed, one Blue Line shop could be overburdened, and morning train service could be affected.

¶ 16 At 9:06 p.m., Gallardo responded to Bell with a list of bad orders and hold cars. Bell testified that this list was not an action plan because, although it included details on some of the bad orders and hold cars, it did not show details such as whether bad orders had been laid up at the shop to be fixed and which cars were expected to be fixed before the midnight shift started.

¶ 17 At 9:18 p.m., Bell responded and asked for more details about specific train cars Gallardo had listed in his email and, at 9:28 p.m., Gallardo answered those questions. At 9:32 p.m., Bell reiterated that he needed an action plan and, at 9:40 p.m., Gallardo wrote that he was overwhelmed but he would get an action plan to Bell when he could. That was the last email from Gallardo that night. Bell never received the action plan he asked for from Gallardo. Bell testified that Petty sent him an action plan and would not have been disciplined. Furthermore, he noted that Petty was not a probationary employee, unlike Gallardo. Bell testified that Gallardo's failure to provide an action plan probably burdened the midnight shift.

¶ 18 On August 22, 2013, Bell received an email that Gallardo wrote to him, O'Connell, and director of rail maintenance James Layman. Gallardo wrote that he was experiencing issues caused by "a lack of (job-related) knowledge, a lack of experience in this position, and a total lack of training & support" and that if no training or assistance was provided, he would resign. Bell responded to Gallardo, writing that Gallardo's issues did not stem from a lack of training and cited the incident involving several bad orders on the Blue Line. Bell testified that it was not a training issue, which was shown by Gallardo's failure to address the bad orders and hold cars and not even knowing whether cars with issues had been laid up or were still in service.

¶ 19 On August 26, 2013, Gallardo was placed on short-term disability leave.

¶ 20 On August 27, 2013, Bell emailed O'Connell a recommendation to terminate Gallardo. Bell testified that Gallardo was not provided progressive discipline because he was a probationary employee and CTA's progressive disciplinary policy did not apply to probationary employees. Bell's recommendation cited four incidents in support of Gallardo's termination: Gallardo's response to the August 10, 2013, incident involving cars hitting the Austin Platform, Gallardo's email to O'Connell on August 14, 2013, Gallardo's email to Bell on August 15, 2013, and Gallardo's response to bad orders and hold cars on August 21, 2013.

¶ 21 Wilson testified that O'Connell contacted him about terminating Gallardo. He reviewed the information and prepared the notice of termination. Gallardo's discharge was due to performance and behavioral issues. Gallardo had worked for CTA for less than six months and was a probationary employee. The executive order governing probationary status provided four grounds for discharging probationary employees, including where there were three instances of violating CTA rules. On October 25, 2013, Wilson telephoned Gallardo and invited him to meet in person, but Gallardo declined. Wilson then told Gallardo he was being discharged and mailed him the notice of termination.

¶ 22 Gallardo testified that, on May 28, 2013, he began working at the CTA as a rail maintenance manager on the Blue Line. He shadowed a lower-ranking employee at the Rosemont shop for the first few days of his employment. Gallardo then worked the evening shift at the Rosemont shop. Bell's shift ended 30 minutes after Gallardo's shift began, but Bell told Gallardo he could always call him if an issue arose. Bell also told Gallardo that, if an issue arose, he could contact managers at the Des Plaines shop and he should do as they say.

¶ 23 Before the end of his shift on August 10, 2013, Gallardo received a notification regarding southbound Blue Line trains striking the Austin station's platform. He called Padowski, who was on duty at the Des Plaines shop and, therefore, was responsible for addressing the issue. Padowski told Gallardo that he had already left work for the day, that the issue was the on-call manager's responsibility, and that Gallardo should leave too, which Gallardo did. As Gallardo arrived home, he received a call from Bell. Bell was angry because he could not reach Padowski. When Gallardo told him about his conversation with Padowski, Bell disagreed that the issue was the on-call manager's responsibility. Bell told Gallardo to return to Rosemont and address the cars hitting the Austin platform.

¶ 24 Gallardo arrived at the Rosemont shop at approximately 5 p.m. and printed off the SCADA report. Gallardo had the train cars laid up, but it took a long time because the cars were now headed in different directions and some cars were mistakenly laid up at the Des Plaines shop. Upon inspection, the cars had no damage caused by hitting the platform at Austin. The cars had scuff marks, but Gallardo confirmed the marks were not caused by the Austin platform by walking around and noting the same marks on all of the other cars in the shop at the time. Gallardo wrote a preliminary occurrence report after inspecting the cars. It was only preliminary because Bell was responsible for producing the final unusual occurrence report because he was Gallardo's senior manager.

¶ 25 Gallardo testified that he heard Bell's testimony that the SCADA report was updated at 6:30 p.m., but Gallardo testified that, on the night of the incident, he was not aware of the updated SCADA report. He was only notified of an initial SCADA report, which he had printed off and referenced while resolving the situation. While Bell's final report had additional

information, occurrence reports were fluid documents. Sometime after that night, Bell discussed the scuff marks and their absence from Gallardo's preliminary report. Bell and Gallardo had a difference of opinion as whether the marks were caused by hitting the Austin platform on August 10, 2013. Regardless, both reports reported that there were no repairs required as a result of the August 10, 2013, incident. Gallardo testified that Padowski never wrote an unusual report after the Austin incident and was not disciplined.

¶ 26 Gallardo requested compensation time for the extra hours he worked on August 10, 2013. Bell informed Gallardo that O'Connell had denied his request. Gallardo asked for Bell's permission to email O'Connell and Bell gave it. Gallardo emailed O'Connell, asking why the request for compensation time was denied. The email was not a threat because he was giving O'Connell a chance to resolve the issue before contacting the employee relations department. Such requests were granted in Gallardo's experience working for the CTA and he only wanted a definitive answer for O'Connell's denial of his request. Gallardo never got a response but never contacted employee relations. Gallardo was not aware of an issue with his email to O'Connell before being terminated.

¶ 27 Bell wrote an email on August 15, 2013, which contradicted Bell's prior instructions that train cars with certain types of defects not be brought inside the shop but inspected outside in the yard. Gallardo emailed Bell regarding the contradictions, only addressing the email to Bell because he did not want to embarrass Bell by bringing attention to Bell's contradictory instructions. Prior to termination, Gallardo was unaware that Bell had considered his email disrespectful or that there was any other issue with it.

¶ 28 On August 21, 2013, Gallardo was working at the Rosemont shop when the Blue Line had a large number of bad orders and hold cars. Gallardo called Petty and the two were coming up with a plan to address the issues. To resolve the bad orders most efficiently, Petty and Gallardo assigned specific repair staff members to fix specific defects based on each staff member's strengths and weaknesses. While they were working on resolving the bad orders, Bell sent an email addressed to both of them. In it, Bell asked Gallardo and Petty why they had not notified him and told them to provide him with an action plan. Bell also called Gallardo, reiterated that Gallardo should have alerted him sooner and asked for an action plan. Gallardo told Bell that he was working with Petty and would send an action plan. Gallardo did not know what an action plan was, so he asked Petty, and she sent him an example. Gallardo took what Petty sent him, removed the Des Plaines cars listed therein, and inserted Rosemont cars in their place.

¶ 29 Gallardo replied to Bell's email and included his action plan. The email listed several train cars that were either bad orders or hold cars. For some bad orders, he noted such things as the type of defect at issue. For some hold cars, he noted the purpose the car was being held. The list also included two bad orders that were assigned to the midnight shift. Gallardo testified that such assignments were not out of the ordinary and two cars would not have overburdened the midnight shift. Even if there was any delay in providing Bell the action plan, it did not cause any issues and Gallardo's time was better spent working to resolve the situation. Bell never told Gallardo that his action plan was inadequate. On cross-examination, Gallardo, referencing the string of emails between him and Bell, acknowledged that Bell continued asking for an action plan after Gallardo sent the list of bad orders and hold cars, which suggested Bell did not believe

Gallardo's list constituted an action plan. The email string shows that, in response to Bell's final request for an action plan, Gallardo wrote that he was still working on an action plan and would send it as soon as possible.

¶ 30 Gallardo testified that, on August 22, 2013, he wrote an email addressed to Bell, O'Connell, and Layman asking for training and assistance and stating that he had a lack of job-related knowledge and experience in his position. At the end of August, Gallardo went on short-term disability leave. During his absence, Gallardo talked to O'Connell, Bell, and Wilson and nobody ever indicated there were any disciplinary issues involving Gallardo. On October 25, 2013, Wilson called Gallardo and informed him that he was being terminated due to a work performance issue, but Wilson would not elaborate. Gallardo was never given written warnings or otherwise disciplined before he was terminated.

¶ 31 On cross-examination, Gallardo testified that he was not aware he was a probationary employee when he was hired. Gallardo acknowledged that he had checked off a number of items on a "New Hire Checklist," signed it, and that the document indicated that he had received a probationary status document.

¶ 32 After the Section 28 hearing, the Committee unanimously sustained the discharge after it found that Gallardo's conduct constituted cause detrimental to the service of the CTA. The Board considered the committee's recommendation and enacted an ordinance sustaining Gallardo's discharge.

¶ 33 Gallardo filed a petition for writ of *certiorari* in the circuit court seeking review of the Board's ordinance sustaining his termination. On September 12, 2016, the court denied Gallardo's petition.

¶ 34 On appeal, Gallardo presents a number of arguments as to why his discharge from the CTA should be reversed. We address each argument in turn.

¶ 35 Before addressing the merits of Gallardo’s arguments, we must first establish the scope of our review. Section 28 provides, in pertinent part: “No officer or employee in regular employment shall be discharged or demoted except for cause which is detrimental to the service.” 70 ILCS 3605/28 (West 2012). Section 28 also provides a hearing procedure allowing employees that are discharged to file a complaint with the Board. Section 28, however, does not provide a method of reviewing the Board’s decision and, instead, simply states: “The decision of the Board shall be final and not subject to review.” *Id.* Generally, when a statute conferring power on an administrative agency does not expressly adopt the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)), or provide for any other form of review, a common law writ of *certiorari* serves as a method for obtaining judicial review of administrative actions. See *Arroyo v. Chicago Transit Authority*, 394 Ill. App. 3d 822, 827 (2009). This court has previously held that, despite the “not subject to review” language of the Act, a writ of *certiorari* is the appropriate method of review of a decision to terminate employment after a section 28 hearing. *Id.* at 829.

¶ 36 The standard of review of an administrative decision under a common law writ of *certiorari* is the same standard of review used under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). See *Id.* at 829 (citing *Bono v. Chicago Transit Authority*, 379 Ill. App. 3d 134, 143 (2008)). Our role is to review the decision of the administrative agency, not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). Appellate review of an administrative agency’s decision to discharge an employee

requires a two-stage analysis: a determination of whether the agency's factual findings are contrary to the manifest weight of the evidence and a determination of whether those findings provide a sufficient basis for the agency's conclusion that cause for termination does or does not exist. *Siwek v. Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 737 (2007).

¶ 37 Turning to the merits of Gallardo's arguments on appeal, we first must determine whether the Board's findings were against the manifest weight of the evidence. Gallardo argues that the Board's finding that the instances it considered as evidence of poor performance and unprofessional behavior are against the manifest weight of the evidence because, "Bell, whom the Board used to support each of these termination grounds[,] either admitted he was mistaken about the critical facts or conceded that Gallardo acted appropriately." We find that the Board's findings of fact were not against the manifest weight of the evidence where there was evidence of specific instances where Gallardo performed poorly and engaged in unprofessional conduct.

¶ 38 The findings and conclusions by the Board on questions of fact are accepted as "*prima facie* true and correct" and must be upheld on review unless they are against the manifest weight of the evidence. *Lapp v. Village of Winnetka*, 359 Ill. App. 3d 152, 167 (2005). "Administrative decisions are against the manifest weight of the evidence when the court, viewing the evidence in the light most favorable to the administrative agency, determines that no rational trier of fact could have agreed with the agency's decision and that an opposite conclusion is clearly evident." *Id.* However, it is not the function of a reviewing court to reweigh the evidence or assess the witnesses' credibility and, "if there is evidence of record that supports the agency's determination, it must be affirmed." *Bono*, 379 Ill. App. 3d at 143.

¶ 39 In regard to the Austin platform incident on August 10, 2013, Gallardo argues that the Board's finding that his preliminary unusual occurrence report was poorly completed was against the manifest weight of the evidence. However, it is undisputed that the SCADA report was updated with reports that additional train cars made contact with the Austin platform, that Gallardo had access to the updated report but was not aware of it, and that, as a result, Gallardo failed to take any actions with regard to those cars, such as taking them out of service, inspecting them for damage, or including them in his report. Furthermore, it is also undisputed that Gallardo did not report marks on the sides of the cars he inspected. While he claims that the marks were not caused by hitting the Austin platform, Bell testified that such marks would only occur as a result of hitting the platform. As noted above, as the trier of fact, the Board is charged with making credibility determinations of the witnesses. *Id.* The Board could accept Bell's testimony over Gallardo's. *Id.* Based on the record, the Board's finding that Gallardo's August 10, 2013, unusual occurrence report was incomplete was not against the manifest weight of the evidence.

¶ 40 Gallardo argues that the Board's finding that he failed to complete an action plan on August 21, 2013, is against the manifest weight of the evidence. At the section 28 hearing, Gallardo testified that he completed an action plan and referred to the email in which he listed several bad orders and hold cars. However, Bell testified that this email was not an action plan because, although it indicated some information as to the cars listed, it failed to provide information that would be required in an action plan, such as whether a car had already been taken out of service to be repaired, who was assigned to make which repairs, and whether a bad order would be resolved by the end of the current shift. Bell's testimony that Gallardo never completed an action plan is supported by the emails from that night. After Gallardo had already

sent the list which he now claims is an action plan, he acknowledged that he wrote to Bell that he was still working on an action plan and would send it when he had it. While there is a conflict between Bell and Gallardo's version of events, the Board was charged with making credibility determinations and assigning weight to testimony and other determinations and we do not substitute the trial court's determinations with our own. *Bono*, 379 Ill. App. 3d at 143. In light of this record, the Board's finding that Gallardo failed to provide an action plan is not against the manifest weight of the evidence.

¶ 41 Gallardo also argues the Board's finding that he acted unprofessionally is against the manifest weight of the evidence. Specifically, Gallardo argues Bell's testimony contradicted the Board's finding that Gallardo was threatening to O'Connell in an August 14, 2013, email and was disrespectful to Bell in an August 15, 2013, email. Bell testified that he found the emails threatening and disrespectful. Although Bell conceded the possibility that his impression of the emails might have been contrary to the impression Gallardo had intended to convey, that did not negate his testimony that the emails were threatening and disrespectful in character. Accordingly, it was not against the manifest weight of the evidence for the Board to find that Gallardo's emails to O'Connell and Bell were threatening and disrespectful. *Id.*

¶ 42 We find the evidence in the record sufficiently supports the Board's finding that there were instances where Gallardo performed his duties poorly and also where he was unprofessional while communicating with his superiors. We do not find that an opposite conclusion is clearly evident when the evidence is viewed in the light most favorable to the CTA. Therefore, we hold that the Board's findings were not against the manifest weight of the evidence.

¶ 43 We next determine whether the Board's decision to discharge Gallardo for cause, based on the factual findings, was arbitrary and unreasonable.

¶ 44 A reviewing court gives considerable deference to an administrative agency's finding that cause exists for the employee's discharge, and such a finding is only to be overturned if "arbitrary and unreasonable or unrelated to the requirements of the service." *Allman v. Police Board of Chicago*, 140 Ill. App. 3d 1038, 1040 (1986). Neither the appellate court nor the trial court may substitute its judgment for that of the administrative agency. *Davern v. Civil Service Comm'n*, 47 Ill. 2d 469, 472 (1970). Cause is defined as "some substantial shortcoming which renders the employee's continuation in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as a good cause for his no longer occupying the position." *Kreiser v. Police Board of Chicago*, 40 Ill. App. 3d 436, 441, *aff'd*, 69 Ill. 2d 27 (1977).

¶ 45 In light of the incidents of poor performance and unprofessional conduct we have already discussed in this order, we cannot find the Board's decision to terminate Gallardo was "arbitrary and unreasonable or unrelated to the requirements of service." *Allman*, 140 Ill. App. 3d at 1040. The Board's termination of Gallardo was not arbitrary or unreasonable where instances of Gallardo's poor performance on August 10 and 21, 2013, had a detrimental impact on the efficiency of the CTA. For example, his a failure to check the SCADA report for updates on August 10, 2013, meant that Gallardo did not take some cars out of service after they had reportedly hit the train platform. Bell testified that it was lucky that the cars that Gallardo failed to take out of service were not substantially damaged. Further, Gallardo's poor performance on August 21, 2013, included not notifying Bell of the increased number of bad orders and hold cars

and then not providing him with an action plan. Bell testified that these failures likely burdened the midnight shift. This is supported by the undisputed evidence that Gallardo assigned bad orders to the midnight shift. While Gallardo and Bell disagreed about whether any burden or disruption to the CTA's train service actually occurred, the Board was free to accept Bell's testimony that Gallardo's failures likely burdened the next shift. *Bono*, 379 Ill. App. 3d at 143.

¶ 46 Nevertheless, Gallardo argues that the CTA had a progressive disciplinary policy that barred his termination where he had no prior disciplinary record. The CTA responds that its progressive disciplinary policy does not apply to Gallardo because, as an exempt employee who had worked for the agency for less than six months, he fell under the disciplinary policies governing probationary employees, which did not require progressive discipline. The record contains two documents that pertain to the discipline of the CTA's employees. The Board reviewed a managerial bulletin governing progressive discipline which in its first sentence provides that it is "a guideline process when disciplining Rail Maintenance Management Personnel for work performance issues." Although the severity of punishments varies depending on how many prior violations an employee has, it states that discipline may be accelerated in some cases. The Board also reviewed an executive order that provided a probationary period for new employees, like Gallardo, who, as an exempt employee, was on probation for the first six months of his employment. The document provides that the purpose of the probationary period is for management to determine if continued employment is beneficial to the CTA and lists five grounds for the termination of probationary employees. The probationary document does not expressly include or exclude probationary employees from progressive discipline. We find that the Board's finding that Gallardo was not entitled to progressive discipline because he was a

probationary employee is not against the manifest weight of the evidence where there were separate rules governing the termination of probationary employees that did not expressly provide progressive discipline. *Bono*, 379 Ill. App. 3d at 143. Because the Board's finding that there was no right to progressive discipline for probationary employees, we find it was not arbitrary and unreasonable the CTA to discharge Gallardo without prior use of a less severe form of discipline. *Id.* at 144-45 (citing *Sanchez v. Ryan*, 315 Ill. App. 3d 1079, 1086 (2000) ("An agency action is arbitrary and unreasonable if the agency relies on factors that the legislature did not intend for the agency to consider, fails to consider an issue or offers an explanation for its decision that runs counter to the evidence, or is so implausible that it could not be the result of agency expertise.")).

¶ 47 Gallardo next contends that his termination under the probationary employee policy was arbitrary and capricious because it was against the manifest weight of the evidence that his actions qualified under any of the grounds for termination in the executive order. The Board's conclusion that Gallardo violated CTA general rules 7(a)-(c), 14(w)-(x), and 24 is not against the manifest weight of the evidence in light of the instances of poor performance and unprofessional conduct already discussed. His violation of Rule 7's requirement that all CTA rules and instructions be obeyed was supported where, for example, he ignored Bell's order to provide an action plan on August 21, 2013. His violation of Rule 14's prohibition of disrespect to supervisory personnel was supported where he sent threatening and disrespectful emails to O'Connell and Bell. Finally, the Board's finding that he violated Rule 24, which requires employees use their best judgment where prompt action is required and report to their supervisors as soon as possible, was supported by evidence that Gallardo never reported the large

number of bad orders and hold cars to Bell on August 21, 2013. Furthermore, although Gallardo cites progressive disciplinary procedures and states that CTA was required to notify him of alleged violations before he could be found in violation of any rules, we have already found it was not against the manifest weight of the evidence for the Board to determine that such procedures did not apply to him as a probationary employee. Accordingly, the Board's finding that Bell violated three CTA rules and was therefore eligible for termination under the probationary status document was not against the manifest weight of the evidence.

¶ 48 This court also notes that, even if progressive discipline had been required as Gallardo claims, the Board's termination of Gallardo was still not arbitrary or unreasonable where the Board also concluded that "[t]he level of discipline was appropriate given the severity of his conduct." The managerial bulletin setting forth the progressive disciplinary policy expressly provided that discipline could be accelerated due to the severe nature of an offense and included a list of examples, including "acts in disregard of public safety." As discussed, Gallardo's performance failures meant that train cars that required maintenance staff's attention, including some which had been reported as making contact with a station's platform, were left in service. By failing to act diligently to take these cars out of service, or, as in the case of the August 21, 2013, incident involving bad orders, to notify Bell or respond to Bell's instructions to write an action plan, his performance put the CTA's customers at risk by unnecessarily exposing them to trains that were potentially unsafe. Thus, even if the managerial bulletin provided Gallardo the right to progressive discipline, its provision allowing for accelerated discipline meant that terminating him was still not arbitrary and unreasonable.

¶ 49 To the extent that Gallardo argues that the Board cannot have acted under the acceleration exception in the CTA's rules because such a conclusion is against the manifest weight of the evidence where he was not fired immediately after any of the relevant incidents occurred, we find his argument unpersuasive. The evidence in this case shows that there was only a matter of days between the incidents in question and the decision to terminate him. The two performance incidents occurred on August 10 and 21, 2013. Gallardo's email that he was incapable of meeting the demands of his job was on August 22, 2013. Bell's recommendation to terminate Gallardo came days later on August 27, 2013. Between August 22 and August 27, 2013, Gallardo went on short-term disability and was still out in October when he was terminated. In light of this, it is not against the manifest weight of the evidence that the Board found accelerated termination could be applied in this case.

¶ 50 Finally, Gallardo argues the two incidents of poor performance "at best indicate *de minimis* issues," not warranting discharge and analogizes it to the conduct of employees whose discharge was reversed by the reviewing court in other cases. Specifically, he compares his conduct to the conduct of police officers whose actions did not warrant termination in *Basketfield v. Police Board*, 56 Ill. 2d 351 (1974) and *Kreiser v. Police Board of City of Chicago*, 40 Ill. App. 3d 436 (1976), *aff'd and remanded*, 69 Ill. 2d 27, 31 (1977). However, these cases are distinguishable.

¶ 51 In *Basketfield*, our supreme court did not decide the issue of whether termination was arbitrary or unreasonable where it found that the most serious allegations for which the officer was terminated were against the manifest weight of the evidence and remanded the case to the Board to reconsider the disciplinary proceedings on the remaining allegations. *Basketfield*, 56 Ill.

2d at 360-61. Thus, in *Basketfield*, unlike here, the appellate court never reached the question of whether termination was arbitrary or unreasonable. *Id.* Here, we found that the Board's findings were not against the manifest weight of the evidence and, proceeding to the next step, concluded that the CTA's termination of Gallardo was not arbitrary or capricious. Therefore, *Basketfield* does not apply in this case.

¶ 52 In *Kreiser*, the appellate court reviewed an employee's serious misconduct in light of his years of service and found that termination was arbitrary or unreasonable. *Kreiser*, 40 Ill. App. 3d at 441-42. The employee in *Kreiser*, unlike Gallardo, had six years of satisfactory service to the agency prior to termination. *Id.* at 441. Here, Gallardo had only been employed a matter of months and was still a probationary employee. Therefore, the holding in *Kreiser* is inapposite to this case. Neither *Basketfield* nor *Kreiser* undermine our finding that Gallardo's termination was not arbitrary and unreasonable.

¶ 53 In support of Gallardo's argument that his discharge was arbitrary and unreasonable, Gallardo also cites the disparity in the CTA's disciplinary actions in the cases of the two other managers, Padowski and Petty, whom he alleges were guilty of the same poor performance—or worse—during events on August 10 and 21, 2013, respectively. It is true that an administrative agency's finding of cause for discharge may be considered arbitrary and unreasonable when compared to the discipline imposed in a completely related case. *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 441-42 (1992). However, the absence of details regarding the other managers' alleged offenses and the CTA discipline imposed in those cases precludes us from addressing the issue on review. *Lyles v. Department of Transportation*, 183 Ill. App. 3d 901, 911 (1989).

¶ 54 We hold that the record supports the finding that Gallardo's poor performance and unprofessional behavior were "detrimental to the discipline and efficiency" of the CTA's service and, thus, were sufficient cause for discharging Gallardo. See *Bono*, 379 Ill. App. 3d at 142. Therefore, the Board's decision to discharge Gallardo was not arbitrary or capricious.

¶ 55 Accordingly, for the aforementioned reasons, the decision of the Board is affirmed.

¶ 56 Affirmed.