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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES POSTAL SERVICE v. GREGORY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 00-758. Argued October 9, 2001—Decided November 13, 2001

While three disciplinary actions that petitioner Postal Service took against respondent were pending in grievance proceedings pursuant to the Postal Service's collective bargaining agreement with respondent's union, the Postal Service terminated respondent's employment after a fourth violation. The Civil Service Reform Act of 1978 (CSRA) permits covered employees, such as respondent, to appeal removals and other serious disciplinary actions to the Merit Systems Protection Board (Board) or through the negotiated grievance procedure, but not both. Respondent appealed to the Board, where an agency must prove its charge by a preponderance of the evidence, 5 U.S.C. §7701(c)(1)(B), proving not only that the misconduct occurred, but also that the penalty assessed is reasonable in relation to it. An Administrative Law Judge (ALJ) concluded that respondent's termination was reasonable in light of her four violations. Although the three prior disciplinary actions were the subject of pending grievances, the ALJ analyzed them independently, under the approach set forth in Bolling v. Department of Air Force, 8 M. S. P. B. 658, and found that they were not clearly erroneous. While respondent's petition for review of the ALJ's decision was pending before the Board, an arbitrator overturned the first disciplinary action. Respondent did not inform the Board, which denied her petition. The Federal Circuit vacated in part and remanded, holding that prior disciplinary actions subject to ongoing proceedings may not be used to support a penalty's reasonableness.

Held:

1. The Board may review independently prior disciplinary actions pending in grievance proceedings when reviewing termination and other serious disciplinary actions. The Federal Circuit reviews a

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Board decision's substance under the extremely narrow arbitrary and capricious standard, which allows the Board wide latitude in fulfilling its obligation to review agency disciplinary actions. The role of judicial review is only to ascertain if the Board has met the CSRA's minimum standards. There is nothing arbitrary about the Board's decision to independently review prior violations. Neither the Federal Circuit nor respondent has suggested that the Board has applied its policy inconsistently or that it lacks reasons for its approach. Nor is independent Board review contrary to any law. The Federal Circuit's reference to Douglas v. Veterans Admin., 5 M. S. P. B. 313, which sets out the framework for reviewing disciplinary actions, is a way of describing the Board's review process, not, as respondent suggests, an indication that the Board violated §7701(c)(1)(B). More important, any suggestion that independent review by the Board violates that section's preponderance of the evidence standard would be incorrect. The Board has its own mechanism for allowing agencies to meet their statutory burden of justifying all violations supporting a penalty. Insofar as Bolling review is adequate, an agency may meet its burden by prevailing either in grievance or before the Board. Independent review also does not violate the CSRA's general statutory scheme, which allows Board review of serious, but not minor, disciplinary actions. Where a termination is based on a series of disciplinary actions, some of which are minor, the Board's authority to review the termination must also include the authority to review each of the prior disciplinary actions to establish the penalty's reasonableness. Any effects of such review on pending grievance procedures result from the CSRA's parallel review structures. If the Board's independent review procedure is adequate, the review that an employee receives is fair. Although that procedure's fairness is not before this Court, a presumption of regularity attaches to government agencies' actions, and some deference to agency disciplinary actions is appropriate. Pp. 4-8.

2. Because the Board does not rely upon disciplinary actions that were overturned in grievance proceedings at the time of its review, a remand to the Federal Circuit is necessary to determine the effect that the reversal of one of respondent's disciplinary actions had on her termination. Pp. 8–9.

212 F. 3d 1296, vacated and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Stevens, Scalia, Kennedy, Souter, Thomas, and Breyer, JJ., joined. Thomas, J., filed a concurring opinion. GINSBURG, J., filed an opinion concurring in the judgment.