SUPREME COURT OF THE UNITED STATES

No. 00–758

UNITED STATES POSTAL SERVICE, PETITIONER *v.* MARIA A. GREGORY

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

[November 13, 2001]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Civil Service Reform Act of 1978 allows eligible employees to appeal termination and other serious disciplinary actions to the Merit Systems Protection Board. 5 U. S. C. §§7512–7513. The Federal Circuit ruled that, when assessing the reasonableness of these actions, the Board may not consider prior disciplinary actions that are pending in collectively bargained grievance proceedings. 212 F. 3d 1296, 1298 (2000). Because the Board has broad discretion in determining how to review prior disciplinary actions and need not adopt the Federal Circuit's rule, we now vacate and remand for further proceedings.

I

Respondent Maria Gregory worked for petitioner United States Postal Service as a letter technician with responsibility for overseeing letter carriers on five mail routes, and serving as a replacement carrier on those routes. App. to Pet. for Cert. A–15. On April 7, 1997, respondent left work early to take her daughter to the doctor, ignoring her supervisor's instructions to sort the mail for her route before leaving. She received a letter of warning for insub-

ordination. App. 47–48. Respondent filed a grievance under the procedure established in the collective bargaining agreement between her union and her employer, see generally 1998–2001 Agreement Between National Association of Letter Carriers, AFL–CIO and U. S. Postal Service, Art. 15. App. 43.

Later that same month respondent was cited for delaying the mail, after mail from another route was found in her truck at the end of the day. *Id.,* at 45–46. The Postal Service suspended her for seven days, and respondent filed a second grievance. *Id.,* at 41–42. In August 1997, respondent was again disciplined for various violations, including failing to deliver certified mail and attempting to receive unauthorized or unnecessary overtime. *Id.,* at 38–40. She received a 14-day suspension, and again filed a grievance.

While these three disciplinary actions were pending in grievance proceedings pursuant to the collective bargaining agreement, respondent was disciplined one final time. On September 13, 1997, respondent filed a form requesting assistance in completing her route or, alternatively, 3½ hours of overtime. Considering this request excessive, respondent's supervisor accompanied her on her route and determined that she had overestimated the necessary overtime by more than an hour. *Id.,* at 31–33. In light of this violation and respondent's previous violations, her supervisor recommended that she be removed from her employment at the Postal Service. *Ibid.* On November 17, 1997, the Postal Service ordered respondent's termination effective nine days later. *Id.,* at 24–29.

Because respondent previously served in the Army, she falls into the category of "preference eligible" Postal Service employees covered by the Civil Service Reform Act of 1978 (CSRA). 5 U. S. C. §7511(a)(1)(B)(ii). The CSRA provides covered employees the opportunity to appeal removals and other serious disciplinary actions to the

Merit Systems Protection Board (the Board). §§7512–7513. Under the CSRA, respondent could appeal her termination to the Board or seek relief through the negotiated grievance procedure, but could not do both. §7121(e)(1). Respondent chose to appeal to the Board.

When an employing agency's disciplinary action is challenged before the Board, the agency bears the burden of proving its charge by a preponderance of the evidence. §7701(c)(1)(B). Under the Board's settled procedures, this requires proving not only that the misconduct actually occurred, but also that the penalty assessed was reasonable in relation to it. *Douglas* v. *Veterans Admin.*, 5 M. S. P. B. 313, 333–334 (1981).

Following these guidelines, a Board Administrative Law Judge (ALJ) upheld respondent's termination, concluding that the Postal Service had shown that respondent overestimated her overtime beyond permissible limits on September 13, App. to Pet. for Cert. A–29, and that her termination was reasonable in light of this violation and her prior violations. *Id.,* at A–36 to A–40. Although the three prior disciplinary actions were the subject of pending grievances, the ALJ analyzed them independently, following the approach set forth in *Bolling* v. *Department of Air Force*, 8 M. S. P. B. 658 (1981). *Bolling* provides for *de novo* review of prior disciplinary actions unless: "(1) [the employee] was informed of the action in writing; (2) the action is a matter of record; and (3) [the employee] was given the opportunity to dispute the charges to a higher level than the authority that imposed the discipline." *Id.,* at 660–661. If these conditions are met, Board review of prior disciplinary action is limited to determining whether the action is clearly erroneous. *Id.,* at 660. After finding that respondent's three prior disciplinary actions met *Bolling*'s three conditions, the ALJ concluded that there was no clear evidence of error. App. to Pet. for Cert. A–37.

Respondent petitioned the Board for review of the ALJ's

decision. While this appeal was pending, an arbitrator resolved respondent's first grievance (relating to the April 7 incident) in her favor, and ordered that the letter of warning be expunged. App. 3–16. Respondent did not advise the Board of that ruling. The Board then denied her request for review of the ALJ's determination. App. to Pet. for Cert. A–9 to A–10.

Respondent petitioned for review of the Board's decision in the United States Court of Appeals for the Federal Circuit. 5 U. S. C. §7703(a). That court affirmed the Board's decision to uphold the ALJ's factual findings with respect to the September 13 incident. 212 F. 3d, at 1299. Taking judicial notice of the fact that one of the three disciplinary actions underlying respondent's termination had been overturned in arbitration, and noting that respondent's two remaining grievances were still pending, it reversed the Board's determination that the penalty was reasonable. *Ibid.* While recognizing that disciplinary history is an "important factor" in assessing any penalty, *id.,* at 1300, the Federal Circuit held that "prior disciplinary actions that are subject to ongoing proceedings may not be used to support" a penalty's reasonableness. *Id.,* at 1298. It therefore vacated the Board's decision in part and remanded for further proceedings. *Id.,* at 1300. We granted certiorari, 531 U. S. 1143 (2001).

II

The Federal Circuit's statutory review of the substance of Board decisions is limited to determining whether they are unsupported by substantial evidence or are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U. S. C. §7703(c). Like its counterpart in the Administrative Procedure Act, 5 U. S. C. §706(2), the arbitrary and capricious standard is extremely narrow, *Citizens to Preserve Overton Park, Inc.* v. *Volpe,* 401 U. S. 402, 416 (1971), and allows the Board wide

latitude in fulfilling its obligation to review agency disciplinary actions. It is not for the Federal Circuit to substitute its own judgment for that of the Board. *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.,* 463 U. S. 29, 43 (1983). The role of judicial review is only to ascertain if the Board has met the minimum standards set forth in the statute. We conclude that the Board need not adopt the Federal Circuit's rule in order to meet these standards.

The Postal Service argues that the Board's independent review of prior disciplinary actions is sufficient to meet its statutory obligations. The adequacy of the Board's particular review mechanism—*Bolling* review, see *Bolling* v. *Department of Air Force*, *supra*—is not before us. The Federal Circuit said nothing about *Bolling*, instead adopting a sweeping rule that the Board may never rely on prior disciplinary actions subject to ongoing grievance procedures, regardless of the sort of independent review the Board provides. Respondent likewise asks this Court only to uphold the Federal Circuit's rule forbidding independent Board review. She does not seek a ruling requiring a different Board review mechanism, nor did she do so before the Federal Circuit. Her brief in that court neither mentioned *Bolling* nor its standard, arguing only that the Board should hold off its review altogether pending the outcome of collectively-bargained grievance proceedings. Brief for Petitioner in No. 00–3123 (CA Fed.), p. 2. Moreover, even if the adequacy of *Bolling* review were before us, we lack sufficient briefing on its specific functioning in this case. We thus consider only whether the Board may permissibly review prior disciplinary actions subject to ongoing grievance procedures independently, not whether the particular way in which it does so meets the statutory standard.

There is certainly nothing arbitrary about the Board's decision to independently review prior disciplinary viola-

tions. Neither the Federal Circuit nor respondent has suggested that the Board has applied this policy inconsistently—indeed, the Board has taken this same approach for 19 years. See *Carr* v. *Department of Air Force*, 9 M. S. P. B. 714 (1982). Nor have they argued that the Board lacks reasons for its approach. Following the Federal Circuit's rule would require the Board either to wait until challenges to disciplinary actions pending in grievance proceedings are completed before rendering its decision, or to ignore altogether the violations being challenged in grievance in determining the reasonableness of the penalty. The former may cause undue delay. See Reply Brief for Petitioner 6–7. The latter would, in many cases, effectively preclude agencies from relying on an employee's disciplinary history, which the Federal Circuit itself acknowledged to be an "important factor" in any disciplinary decision. 212 F. 3d, at 1300.

Nor is independent review by the Board contrary to any law. The Federal Circuit cited no provision of the CSRA or any other statute to justify its new rule. *Id.,* at 1299–1300. At oral argument in this Court, respondent's counsel pointed to the Federal Circuit's statement that, if pending grievances were later overturned in arbitration, "the foundation of the Board's *Douglas* analysis would be compromised." *Id.,* at 1300 (citing *Douglas* v. *Veterans Admin.*, 5 M. S. P. B. 313 (1981)). The Board's *Douglas* decision set out a general framework for reviewing agency disciplinary actions. Because *Douglas* at one point specifically discussed 5 U. S. C. §7701(c)(1)(B), the CSRA provision placing the burden of proof on the employing agency to justify its disciplinary action, counsel claimed, the Federal Circuit must have thought the Board's policy violates that section. Tr. of Oral Arg. 49. We do not read the Federal Circuit's citation of *Douglas* as an implicit reference to §7701(c)(1)(B), particularly given that the Federal Circuit's opinion nowhere mentions that section's

standard. Rather, we interpret the Federal Circuit's reference to *Douglas* as a way of describing the entire process of Board review of disciplinary actions.

More important, any suggestion that the Board's decision to independently review prior disciplinary actions violates §7701(c)(1)(B)'s preponderance of the evidence standard would be incorrect. To the extent that that standard places the burden upon employing agencies to justify all of the violations—including those dealt with in prior disciplinary actions—that are the basis for the penalty, the Board has its own mechanism for allowing agencies to meet that burden. Insofar as *Bolling* review is adequate to meet this burden of proof, an employing agency may meet its statutory burden to justify prior actions by prevailing either in grievance or before the Board.

Amicus National Treasury Employees Union (NTEU) argues that independent Board review of prior disciplinary actions pending in grievance violates the CSRA's general statutory scheme. Brief for National Treasury Employees Union as *Amicus Curiae* 8–12. Employees covered by the CSRA may elect Board review only for disciplinary actions of a certain seriousness, such as termination, suspension for more than 14 days, or a reduction in grade or pay. 5 U. S. C. §§7512–7513. For more minor actions, workers may only seek review through negotiated grievance procedures, if they exist. §7121. According to NTEU, this scheme deprives the Board of the statutory authority to review minor disciplinary actions like the three that were pending in this case. It is true that the CSRA contemplates that at least some eligible employees (those represented by unions) will have two different forums for challenging disciplinary actions, depending in part on their seriousness. If the Board had attempted to review respondent's first disciplinary action before she was terminated, it would have exceeded its statutory authority. In

this case, however, the Board was asked to review respondent's termination, something it clearly has authority to do. §§7512–7513. Because this termination was 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 reasonableness of the penalty as a whole.

Independent Board review of disciplinary actions pending in grievance proceedings may at times result in the Board reaching a different conclusion than the arbitrator. It may also result in a terminated employee never reaching a resolution of her grievance at all, because some collective bargaining agreements require unions to withdraw grievances when an employee's termination becomes final before the Board. Brief for Respondent 10–11, 37; Reply Brief for Petitioner 14. Rather than being inconsistent with the statutory scheme, however, these possibilities are the result of the parallel structures of review set forth in the CSRA.

Such results are not necessarily unfair. Any employee who appeals a disciplinary action to the Board receives independent Board review. If the Board's mechanism for reviewing prior disciplinary actions is itself adequate, the review such an employee receives is fair. Although the fairness of the Board's own procedure is not before us, we note that a presumption of regularity attaches to the actions of government agencies, *United States* v. *Chemical Foundation, Inc.,* 272 U. S. 1, 14–15 (1926), and that some deference to agency disciplinary actions is appropriate.

III

Although the Board independently reviews prior disciplinary actions pending in grievance, it also has a policy of not relying upon disciplinary actions that have already been overturned in grievance proceedings at the time of

Board review. See *Jones* v. *Department of Air Force*, 24 M. S. P. R. 429, 431 (1984). As one of respondent's disciplinary actions was overturned in arbitration before the Board rendered its decision, the Postal Service concedes that a remand to the Federal Circuit is necessary to determine the effect of this reversal on respondent's termination. Reply Brief for Petitioner 15–16.

The judgment of the United States Court of Appeals for the Federal Circuit is therefore vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.