BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

LARRY DITTLOFF, Appellant, vs. DEPARTMENT OF TRANSPORTATION, Respondent.	CASE NO. R-SUSP-10-002 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Vice Chair, and JOSEPH PINZONE, Member. The hearing was held on February 3, 2011, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Larry Dittloff was present and was represented by Dennis Bolton, Labor Relations Specialist. Andrew Scott, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Nature of Appeal.** This is an appeal from a one-day suspension for failure to immediately report the theft of a set of master keys.

II. FINDINGS OF FACT

2.1 Appellant Larry Dittloff is a permanent employee for Respondent Department of Transportation (DOT). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on August 4, 2010.

2.2 Appellant has been employed by the State of Washington DOT since July 2007. Prior to coming to the State of Washington, Appellant had about 35 years of experience in the convention management business. At the time of the action giving rise to this appeal, Appellant was the

Space and Lease Manager for DOT. His position was in the Washington Management Service (WMS). His responsibilities included, in part, managing the physical security of the Transportation Building Headquarters facilities.

2.3 On June 9, 2010, Appellant's personal vehicle was broken into and his briefcase was stolen. The following morning, June 10, 2010, Appellant realized that his set of master keys to DOT facilities had been in the briefcase. In addition, the briefcase contained five checkbooks that identified Appellant. After Appellant reported to work on June 10, he reported the theft of the keys to James Sexton, the Security Guard. Mr. Sexton was one of Appellant's subordinates. Appellant also told others in his work group. But, he did not report the theft to his supervisor.

2.4 After discussing the missing keys, Mr. Sexton and Appellant determined that there was no immediate threat to the security of the DOT building. Appellant testified that the theft occurred in Tacoma and that while the keys were stamped with the silhouette of the State of Washington and the words "Do Not Duplicate," he did not believe the keys identified the DOT facility to which they belonged. After his discussion with Appellant, Mr. Sexton contacted the Department of General Administration (GA) locksmith and asked that a duplicate set of keys be made.

2.5 At 3:30 p.m. on June 10, 2010, Appellant met with his supervisor, Rick Phillips for a regularly scheduled one-on-one meeting. During the meeting, they discussed the break-in of Appellant's vehicle and the theft of his briefcase and checkbooks. Appellant did not tell Mr. Phillips that the DOT master keys were in the briefcase and had been stolen.

2.6 On June 11, 2010, Appellant was not at work. At 12:05 p.m. Gerald Gadberry, Deputy Assistant Director for Facilities at GA, attempted to contact Appellant by email about the stolen keys and expressed that this was a major security breach for the facility. Mr. Gadberry indicated that he had heard about the breach from the GA locksmith late the day before. Mr. Gadberry

forwarded the email to Bill Ford, Assistant Secretary for Administrative Operations at DOT. Mr. Ford was Mr. Phillips' supervisor. Mr. Ford then contacted Mr. Phillips to inquire about the stolen keys. This was the first time that Mr. Phillips heard that the keys had been stolen. Mr. Phillips contacted Tony Trask, who worked in Appellant's shop, and Mr. Trask confirmed that the keys had been stolen when someone broke into Appellant's vehicle.

2.7 Mr. Phillips asked Mr. Trask to contact Capital Campus Security to arrange for additional security patrols for the DOT facility. Subsequently, Ron Noble, GA's Building Manager for the DOT headquarters building, contacted Mr. Phillips and said that the Washington State Patrol would station a trooper to provide security over the weekend as long as DOT paid for the expense. Mr. Noble also indicated that building would have to be re-keyed and that DOT would be billed for that cost as well. Mr. Phillips agreed that DOT would pay for the extra security and the cost of rekeying the facility.

2.8 During the course of the events on June 11th, Mr. Phillips left a phone message for Appellant. Appellant returned his call at approximately 5 p.m. Mr. Phillips asked Appellant why he had not told him about the theft of the master keys and Appellant responded that he did not think about it.

2.9 The following Monday, Appellant met with Mr. Phillips. Appellant apologized for not informing Mr. Phillips about the theft of the keys and indicated that the omission was not intentional. Appellant further indicated that he had been preoccupied with other matters.

2.10 In June 2010, DOT did not have a specific key policy. But, DOT did have a policy that addressed the security of DOT buildings and facilities, including tools and cardkeys. Chapter 1 of the WSDOT Administrative Services Manual states, in relevant part, ". . . [e]mployees are responsible for the retention and proper use of all security tools as well as the immediate reporting of lost or stolen items."

2.11 In addition, the WSDOT Intranet provided guidance to employees on the physical security of DOT facilities including state property. The guidance states, in relevant part, "[n]otify your supervisor immediately if you notice any broken or damaged equipment/furniture or if items are missing, lost, or stolen."

2.12 On July 1, 2010, Mr. Phillips conducted a pre-disciplinary meeting with Appellant. In addition, Appellant provided Mr. Phillips with a written response. During the meeting, Appellant agreed that he should have notified Mr. Phillips about the theft of the master keys and assured Mr. Phillips that would it never happen again.

2.13 Following the meeting, Mr. Phillips summarized his conclusions in the July 12, 2010 disciplinary letter and stated, in part:

> . . . A key responsibility of your WMS-2 Space and Lease Manager position is managing the physical security of the Transportation Headquarters Building. I find you neglected your duty when, after the master keys were stolen you failed to properly report the incident to me. As a result, the security of the Transportation Headquarters Building was compromised . . . .
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> . . . you failed in your duty to communicate appropriately about the loss of the master keys. Your failure to advise me about the problem and your failure to communicate effectively with GA was unacceptable.
> . . . .
>
> Your failure to communicate with me caused a negative impact on the Division, and resulted in the agency spending additional funds which could have been prevented.

2.14 In determining whether misconduct occurred and the appropriate level of discipline to impose, Mr. Phillips considered Appellant's work history at DOT. He also reviewed Appellant's job responsibilities, his training history relevant to his position, and DOT's policies and procedures. He also considered that he had communicated to Appellant on several occasions the need for increased communications between them and that there should be "no surprises." Mr.

Phillips concluded that Appellant's failure to communicate in this instance rose to a level that warranted a disciplinary sanction, particularly because Appellant was a WMS manager and was expected to set the example for his staff. Mr. Phillips testified that for a WMS, notifying the supervisor of this type of incident and telling the truth are basic tenets of employment. Mr. Phillips concluded that a one-day suspension was appropriate and would impart to Appellant the seriousness of the misconduct.

III. ARGUMENTS OF THE PARTIES

3.1 In summary, Respondent argues that as a WMS employee, Appellant is held to a higher standard and that he failed to meet this standard when he failed to communicate to his supervisor that his keys had been stolen. Respondent contends that Mr. Phillips should not have learned about the theft from his supervisor who had heard about it from GA, but rather, that Appellant himself should have immediately and directly reported the theft to Mr. Phillips. Respondent contends that the written policies informed staff what to do when keys are lost and that it was the duty of all employees, especially the manager for security, to communicate the information appropriately. Respondent also contends that a thief using the internet and Appellant's name from his checkbooks could have easily determined that the keys, which were identified as State of Washington keys, were for the DOT headquarters building. Respondent asserts that Appellant's actions created a loss of trust and that the one-day suspension should be affirmed.

3.2 In summary, Appellant argues that the one-day suspension is excessive considering the circumstances. Appellant contends that he immediately reported the theft to the security guard which is how such incidents had been handled in the past. And, that after discussing the theft, they made a decision on how the incident should be handled. Appellant asserts that he intended to tell Mr. Phillips about the theft of the keys during the one-on-one meeting but that he was distracted and forgot to do so. Appellant further argues that at the time of this incident, DOT did not have a key policy and that by reporting the incident to the security guard, he followed the appropriate reporting procedure established by past practice.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 357-52-110.

4.3 This Board and our predecessor, the Personnel Appeals Board, have consistently held that WMS employees are held to a higher standard of conduct and professionalism. Appellant was a experienced WMS employee and as such was aware or should have been aware of his obligation to comply with DOT policies and guidelines. As a WMS employee, he should be held to a higher standard of conduct and professionalism and be expected to act as a role model for subordinate staff. A preponderance of the credible testimony proved that the theft of Appellant's set of master keys compromised the security of the DOT Transportation Building Headquarters facility and that by failing to appropriately communicate the theft of his keys to his supervisor, Appellant failed to meet the behavioral expectations and obligations of his position.

4.4 Even though DOT had no specific key policy in place at the time of this incident, the security policy and the intranet guidance clearly stated that stolen security tools must be reported immediately and that the supervisor must be notified immediately when equipment is stolen. Master keys fall within the categories of security tools and equipment.

4.5 Under the totality of the proven facts and circumstances, Appellant failed to communicate appropriately with his supervisor and thereby violated the DOT security policy. The disciplinary sanction of a one-day suspension is appropriate. The appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Larry Dittloff is denied.

DATED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Vice Chair

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JOSEPH PINZONE, Member