SANDRA J. BROOKE

v. Docket No. 93-T&P-433

DIVISION OF TOURISM AND PARKS

DECISION

Grievant, Sandra J. Brooke, employed by the Division of Tourism and Parks (Respondent), filed a complaint directly to level four on October 19, 1993, in which she alleged:

I am hereby appealing to Level 4 a notice of dismissal from my position as Audit Clerk II at Blackwater Falls State Park. This dismissal alleges that I concealed a monetary loss regarding hunting and fishing license receipts. The dismissal is effective October 22, 1993. I feel this action is unwarranted and without just cause.

Relief sought: that I be reinstated to my position with full back pay and benefits and that my personnel record be cleared of any and all references to this allegation and that I, in any other way be made whole.

The matter was set for hearing on November 1, 1993, but was continued at Grievant's request due to related "pending legal matters." By letter dated January 31, 1994, Grievant's representative advised that all charges filed against Grievant in circuit court had been dismissed and that a level four hearing should be scheduled. Further continuances were granted for good cause and the hearing was conducted on May 2, 1994. Proposed findings of fact and conclusions of law were filed by both parties on or before August 1, 1994; however, on September 21, Grievant filed a Motion To Add Additional Evidence Or Reopen Hearing To Take Additional Evidence. The basis for this Motion was that Grievant had obtained new evidence exonerating her of the charges regarding missing monies.

Respondent initially opposed the Motion, noting that Grievant was not dismissed on charges of embezzling or misplacing money; however, during a conference call on October 28, 1994, Respondent agreed to provide Grievant with additional information within ten days regarding the prior practice of filing reports. Grievant was to submit any response to this information by the November 30. By letter dated December 22, Grievant's representative advised that Respondent had provided some information but not the requested audit records. Nevertheless, Grievant requested that a level four decision be rendered based upon the evidence of record.

Grievant was first formally notified that her employment was in jeopardy by certified letter dated February 23, 1993. At that time Cordie O. Hudkins, Director of Parks and Recreation, advised in pertinent part:

It has been brought to my attention that a recent audit of hunting and fishing license monies under your direct and primary control at Blackwater Falls State Park has confirmed a very significant shortage in these funds. In addition, ithas been confirmed that regular reports accounting for license sales along with sales revenue have not been submitted for some time to the West Virginia Department of Natural Resources. These reports were your responsibility as were coin operated binocular reports which also seem to show irregularities.

Pending an investigation of these charges Grievant was reassigned to the park laundry operation.

Mr. Hudkins next contacted Grievant by letter dated September 7, 1993. At this time he advised her that the investigation had been concluded, and that based upon the findings, he would recommend that she be dismissed. He explained:

The investigation disclosed your involvement in a situation which resulted in a substantial monetary loss to Blackwater Falls State Park and the State of West Virginia and your subsequent concealment of that loss. More specifically, on January 23, 1993, an audit of the Division of Natural Resources Hunting and Fishing License Account for the Calendar Year 1992 revealed a shortage of $2,284.50. The audit revealed, by examination of register tapes, receipt during 1992 of $6,500.50 in hunting and fishing license stamps. The difference between this amount and the calculated sales amount of $6,559.50 is primarily the result of timing differences at year end in recording the sale of hunting and fishing gift certificates. The audit verified through actual account the amount of 1992 stamps on hand and cash receipts on hand. The audit, also verified stamps received and reported sold during the period by examination of Division of Natural Resources reporting documents. The results of the audit

are presented graphically as follows:

Calendar year 1992 ($ value of stamps)

Stamps received from DNR during 1992 $12,680.00

Stamps on hand 1/22/93 6,120.50

Calculated stamp sales 6,559.50

Receipts on hand 1/23/93 4,275.00

Indicated Shortage $2,284.50

The audit revealed that the monthly report of stamp sales had not been timely filed by the 10th of the following month in accordance with Division of Natural Resources regulations, nor had the actual receipts been filed in a West Virginia depository. The audit noted, also, that reports for calendar year 1991 were not timely filed, most being held until near the end of the year. Receipts, likewise, were not deposited until approximately one year after being received at the Park.

On February 22, 1993, you admitted to State Trooper R. S. Stump, of the West Virginia State Police, that you were in charge of the Division of Natural Resources Hunting and Fishing License Monthly Reports and that you had taken money from the 1992 hunting and fishing license sales to replace money missing from the 1991 hunting and fishing license sales. You admitted, furthermore, that you failed to report the missing money as "[you] thought that the money would turn back up" . . . "[you] thought that you have did [sic] something wrong in the figures."

The audit which revealed the $2,284.50 shortage was prompted by your failure to comply with your supervisors direction to perform certain assigned tasks. Despite direct, written guidance from your supervisors on December 6, 1991, from Superintendent Rob Gilligan in a staff meeting summary; on October 4, 1992, in a note from Assistant Superintendent Tom Shriver; on January 4, 1993, in a memorandum from Superintendent Gilligan; on January 10, 1992, in a note fromSuperintendent Gilligan, and repeated verbal requests by your supervisors that you complete the monthly hunting and fishing license reports and deposits in a timely fashion, you repeatedly delayed completion of these tasks. You did not complete the s until February 1992 and late 1992, respectively, and work on

the 1992 monthly reports was not begun until January 1993, and then only at Superintendent Gilligan's insistence. In addition to the loss of hunting and fishing license monies are the shortages in coin-operated binocular funds. Although shortages in these funds have not been verified at this time, you on your own initiative and without notice to or sanction by your supervisor did discontinue the agency-established practice of writing receipts to verify amounts turned in to you.

Having reviewed these facts, I come to the conclusion that your actions were characterized by a level of non- performance of duty, irresponsibility and insubordination representative of gross misconduct. A judgment on whether or not you personally profited is irrelevant to this disciplinary action and will be determined by local law enforcement efforts. It is clear that your actions were the primary contributors to a situation that resulted in a very substantial financial loss to Blackwater Falls State Park and the State of West Virginia and the concealment of that loss. The State, as an employer, has a right to expect its employees to maintain a standard of conduct and performance, particularly in a sensitive money- handling and recordkeeping position such as yours, that will not cause doubt and suspicion or otherwise discredit that individual's ability to perform their designated duties. Your actions clearly establish that doubt. Furthermore, your admitted falsification of the true nature of State accounts and records is a felony criminal offense under West Virginia Code §61-3-22. For these reasons, I amrecommending this dismissal action.

Grievant was given five days to offer an explanation of the situation or to correct any errors in the letter. By letter dated October 1, 1993, James B. Lawrence, Commissioner of the Division of Tourism & Parks, notified Grievant of her dismissal. The reason given for the dismissal was Grievant's "apparent involvement in a situation which resulted in a substantial monetary loss to Blackwater Falls State Park and the State of West Virginia and [her] subsequent concealment of that loss."

Respondent argues that it properly dismissed Grievant from employment for her failure to timely file monthly reports, failure to timely deposit actual receipts, misappropriation of funds collected in 1992 to the 1991 accounts, and the unilateral discontinuation of providing receipts for monies collected from binoculars, which collectively constitutes gross misconduct. In support of this charge Respondent offered the testimony of Park Superintendent Robert Gilligan and Assistant Superintendent Thomas Shriver.

Mr. Shriver testified that prior to 1991 he was responsible for the completion of the hunting and

fishing license reports. He recalled that Grievant had assisted him by making deposits and that she had, upon occasion, completed the reports. In May 1991, Mr. Shriver advised Grievant that, henceforth, she would be responsible for the hunting andfishing license reports. Mr. Shriver stated that he became aware of a problem with the reports at the end of 1991 when another employee advised him that the receipts were in a file drawer. At that time Grievant indicated there was no serious problem with the reports. Mr. Shriver stated that in the spring of 1992 he noticed the receipts were again accumulating and offered Grievant the assistance of another employee. He recalled that Grievant declined the offer, stating that she was just behind in her work. Audit Clerk Linda Dilly continued to advise Mr. Shriver that the reports were not being completed. By memorandum dated October 4, reports for September through December, 1991. He directed her to "please complete and turn in the year-ending report 1991 this week." Based upon a concern that the Park might lose eligibility to continue the sales, Mr. Shriver reported the problem to Superintendent Gilligan.

Mr. Gilligan stated that after Mr. Shriver first advised him in the spring of 1992 that the 1991 reports were not completed, he spoke with Grievant who assured him the paperwork had been caught up. When Mr. Shriver again mentioned the reports were not being completed in the fall of 1992, Mr. Gilligan conceded that he took no further action because ill feelings had developed between Mr. Shriver and Grievant, and because he accepted her representation that the reports were completed. Sometime thereafter, Mr. Gilliganlearned that the reports had not been filed.

In January 1993 Superintendent Gilligan worked on the 1991 and 1992 reports with Grievant. During this time he found a deposit ticket for November 1992 covering the period of September through December, 1991. Mr. Gilligan stated that this alerted him that something was wrong. His concern was confirmed when the reports did not reconcile with the deposits. When he spoke with Grievant the following week she indicated to him that she knew some money was missing but denied that she had converted it to her own use. When questioned about her failure to timely complete the reports, Mr. Gilligan recalled Grievant responding that she was too busy to complete the reports and that she was angry because Mr. Shriver had "dumped them in her lap."

Marvin Davis testified at the level four hearing in reference to the allegation that Grievant had discontinued issuing receipts for binocular money. Mr. Davis stated that as part of his duties he collected the money, usually four bags of quarters, from the binoculars. He would deliver the money to Grievant who would count it and give him a receipt. He kept a record of the date the money was

collected and the receipt. Mr. Davis stated that beginning in October 1991, Grievant no longer provided him with th, and that when he once asked Grievant, her response was that she did not have time.

Testifying on her own behalf, Grievant stated that shewas given responsibility for the hunting and fishing license reports in May 1991 when Tom Shriver told her "here, do this."
By her own admission Grievant did not begin working on these reports until late 1991 or early 1992. Her reasons for this initial delay were that she was busy at work with her other responsibilities and her personal life was in chaos. She further represented that she did not know how to complete the reports. Once she began working on the reports, Grievant stated that she found the money did not match the sales receipts for a period of time in 1991. She concedes that she simply took money from other receipts and sent it to DNR because she believed that the missing funds were "there someplace and would show up."

Grievant asserts that the Department of Natural Resources never inquired about the reports and she was never advised of any urgency in their completion. Grievant explained that her failure to timely complete the reports was not intentional but that she felt she had enough to do without this additional duty. She explained that the money was not deposited because the reports had to be completed first. Grievant denies that she ever refused to provide Mr. Davis a receipt for the binocular money but did recall that she did not have time some days, particularly at quitting time, to produce the receipt. By the following day, she would likely forget the receipt had not been written.

Grievant argues that the dismissal was improper forseveral reasons. First, her supervisors were aware of her delay in completing the reports but took no action. Despite their knowledge and participation, only she was subject to discipline. Second, the Division has failed to follow its progressive discipline policy. That policy provides for immediate dismissal only in limited situations which adversely affect a visitor or or situations involving criminal activity. Grievant asserts that there has been no showing of any adverse effects to the named parties nor has there been any evidence of criminal activity. Grievant concludes that absent any losses from the hunting and fishing license account, she would likely not have been disciplined for the late filings. Due to the lack of any formal structure and basic security in the accounting procedures at Blackwater State Park, Grievant suggests that the missing money might well be misdirected to other accounts and not lost at all. In consideration of the foregoing, Grievant argues that she is entitled to reinstatement with full back pay

and benefits.

Pursuant to the provisions of W.Va. Code §29-6A-6, the burden of proof in disciplinary matters rests with the employer and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Ramey v. W.Va. Dept. of Health, Docket No. H-88-005 (Dec. 6, 1988). Further, the dismissal of a civil service employee may be implemented only for good cause, i.e., misconduct of a substantial nature directly affecting the rights and interests of the public, rather than upon trivial or inconsequential matters or mere technical violations of statute or official duty without wrongful intention. Oakes v. W.Va. Dept. of Finance and Admin., 264 S.E.2d 151 (W.Va. 1980). In the present matter it must be concluded that Respondent has proven by a preponderance of the evidence that Grievant was dismissed for good cause.

By her own admission, Grievant failed to timely file the hunting and fishing license reports, failed to timely deposit actual receipts generated by the sale of hunting and fishing licenses, misappropriated money from 1992 sales to 1991 accounts, and discontinued providing receipts for money collected from binocular rentals. The failure to complete one's assigned duties, particularly those involving funds which have since been determined to be missing, is no mere technical or inconsequential matter, but is substantial misconduct involving public monies.

Although Grievant clearly resented the assignment of the hunting and fishing license reports, she never advised her supervisors that she was overworked and did not have time to complete the reports. Nor did she ever notify the supervisors that she lacked the time to provide receipts for money collected from the binoculars. Both of these duties were appropriately assigned to her as an Audit Clerk II. The evidence of record establishes that Grievant did not completeher assigned duties and made no effort to seek assistance; she even declined help when offered. Additionally, it appears that she was less than truthful on more than one occasion when she represented that the reports were caught up.

The evidence also establishes that a lack of organization and security regarding the money collected at the Park has been ongoing over the years. Prioverpayment for the licenses to DNR in 1989 in the amount of $401.16. Numerous references were made regarding safes and offices which were either not locked or were accessible to a number of employees. A bag of money, unidentified as to source, was found behind a piece of furniture in Grievant's office after her transfer.

Grievant is not charged with embezzlement or otherwise converting the money for her own use.

She is charged with not timely filing reports and depositing money which has resulted in an apparent loss to Respondent in excess of $2,000.00. Although Respondent did not formally implement progressive discipline in this case, the evidence reveals that the matter was brought to Grievant's attention several times, both verbally and in writing prior to the investigation. With consideration given to Grievant's willful neglect in completing her work, her lack of honesty in advising of her failure to complete her work, and the subsequent loss of public money, immediate dismissal is not prohibited or improper.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant has been employed as an Audit Clerk II at Blackwater Falls State Park since 1986.

2. In May 1991 Assistant Park Superintendent Tom Shriver advised Grievant that she would be responsible for the completion of hunting and fishing license reports.

3. In early 1992 Mr. Shriver learned that Grievant had not been completing the reports in a timely manner. When this was brought to her attention she indicated they were, or soon would be, caught up.

4. In the fall of 1992 Mr. Shriver found that Grievant was again tardy in completing the reports. She refused his offer of additional assistance and again indicated that the matter would be resolved.

5. Park Superintendent Robert Gilligan became aware of the serious nature of the situation in January 1993 when he was assisting Grievant with 1991 and 1992 reports.

6. When the receipts did not match the reports, an audit was conducted by the Division of Natural Resources. The five year review, from 1988-1992 revealed an underpayment to DNR of $2,632.00.

7. By her own admission Grievant did not timely completethe reports or deposit the money collected from the sale of hunting and fishing licenses. Grievant did not deny that beginning in 1991 she discontinued writing receipts for money collected from binoculars.

CONCLUSIONS OF LAW

1. In compliance with W.Va. Code §29-6A-6, Respondent has proven by a preponderance of the evidence the charge that Grievant failed to complete the duties of her position leading to a substantial loss of public monies.

2. Respondent has proven that Grievant engaged in misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon a trivial or inconsequential matter or mere technical violation of statute or official duty without wrongful intention. Oakes v. W.Va. Dept. of Finance and Admin., 264 S.E.2d 151 (W.Va. 1980).

3. Dismissal as a first form of discipline is not prohibited by Respondent's progressive discipline policy and is proper in this matter due to the nature and consequences of the infraction and in consideration that Grievant had been directed to complete the work both verbally and in writing.

Accordingly, the grievance is DENIED. January 31, 1995 SUE KELLER

SR ALJ