SHARON ANNE STOVER, .

Grievant, .

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v. . Docket Number: 94-26-640

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MASON COUNTY BOARD OF EDUCATION, .

Respondent. .

D E C I S I O N

Sharon Stover (hereinafter Grievant) is employed as a Bus Operator by the Mason County Board of Education (hereinafter Board). She was suspended for three days without pay on October 12, 1994, and she challenges this discipline pursuant to West Virginia Code §§18A-29-1, et seq. Her claim was initially filed at level one on October 17, 1994, and proceeded through the lower levels until appeal was made to level four on October 27, 1994. An evidentiary hearing was held at the Grievance Board's Charleston office on December 9, 1994, and the case became mature for decision on that date.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. At the Board's meeting in August 1993, it decided to make various changes regarding where buses were to be parked for the upcoming school year. The Board made these changes to avoid

what is called "deadheading," the driving of buses from one location to another after the children have been dropped off.

2. Prior to the 1993-1994 school year, Grievant was required to park her bus at an area designated as "Thomas ridge on ten mile." After the Board meeting, Grievant was instructed, by letter dated August 26, 1993, to park at an area called "Allen Hart's farm." Grievant was also told by the Board at a Board meeting on September 7, 1993, to discontinue parking her bus at home and to park it at the designated spot.

3. Grievant has never agreed that the change in her bus parking assignment was consistent with the purpose of alleviating "deadheading".

4. During the winter of 1993, Grievant was temporarily allowed to park her bus at home due to inclement weather.

5. During the beginning of the 1994-1995 school year, Superintendent of Schools Michael Whalen was informed by Transportation Supervisor Michael Haer that Grievant was continuing to park her bus at her home. Mr. Whalen requested that Mr. Haer send a memorandum to Grievant requesting that she meet with him (Mr. Whalen) to discuss the issue.

6. Grievant met with Mr. Whalen on October 3, 1994 to discuss the parking of her bus. At this meeting, Grievant admittedthat she was parking her bus at her home. Mr. Whalen told Grievant to begin to park at the Board's designated spot for her bus.

7. Grievant continued to park her bus at her home even after the October 3, 1994 meeting with Mr. Whalen.

8. By letter dated October 12, 1994, Grievant was suspended without pay for a period of three days for insubordination relating to her refusal to park her bus at the designated spot.

9. The Board approved Grievant's suspension on October 25, 1994.

10. Grievant had discussed with Mr. Haer, on more than one occasion, the possibility that the decision to park her bus at "Allen Hart's farm" might be reconsidered.

Discussion

The Board maintains that Grievant admits to parking the bus at her home when she knew that it was improper; therefore, it contends that it has proven the charges upon which Grievant's suspension was based. The Board asserts that W. Va. Code §18A-2-7 was complied with when the

Superintendent suspended Grievant followed by the Board's approval of that action. Grievant alleges a violation of Code §18A-2-7 based upon the fact that she had served her suspension prior to the time the Board actually approved the action. Further, she contends that she had approval to park her bus at home and, therefore, she was not insubordinate. She also offered numerous justifications as to why she should be allowed to park her bus at her home.

Insubordination is usually defined by this Grievance Board as "a deliberate, willful or intentional refusal or failure to comply with a reasonable order of a supervisor." Reynolds v. Kanawha-Charleston Health Department, Docket No. 90-H-128 (Aug, 8, 1990), citing Gill v. West Virginia Dep't of Commerce, Docket No. COMM-88-031 (Dec. 23, 1988). "Generally, an employee must obey a supervisor's order and take appropriate action to challenge the validity of the supervisor's order. Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." Reynolds, citing Meads v. Veterans Admin., 36 M.S.P.R. 574 (1988); Daniel v. United States Postal Serv., 16 M.S.P.R. 486 (1983); and Davis v. Smithsonian Inst., 13 M.S.P.R. 77 (1983). Further, it has also been stated that insubordination "encompasses more than an explicit order and subsequent refusal to carry it out. It may also involve a flagrant or willful disregard for implied directions of an employer." Sexton v. Marshall University, Docket No. BOR2-88-029-4 (May 25, 1988), (See footnote 1) citing Weber v. Buncombe County Board of Education, 266 S.E.2d 42 (N.C. 1980).

In the instant case, Grievant was insubordinate on more than one occasion. Grievant does not even deny that she parked her bus at her house after having been told not to do so. There is no question that she was formally told by the Board at its meetingthat she was to park her bus at "Allen Hart's farm." In fact, it is noted in the Board's minutes that Grievant was told her failure to park at "Allen Hart's farm" would be considered "flagrantly defiant." Further, Grievant was told by Superintendent Whalen to discontinue parking her bus at her house and she did not obey his request. The record cannot support a finding that Grievant was given permission to park her bus at home on a full-time basis.

The fact that Grievant may have had justifiable concerns about why she was required to park at "Allen Hart's farm" cannot operate to excuse her from her obligation to comply with the reasonable requests of both the Board and Mr. Whalen. Grievant was given the opportunity to address the Board about the concerns she had but she was not able to change the decision. Therefore, she was

required to live with the results. An employee is not justified is disobeying a reasonable order simply because he/she does not agree with it. Grievant has not demonstrated that the Board's request was unreasonable. Further, the fact that Mr. Haer may have been trying to work with Grievant to gain permission for her to park at someplace other than "Allen Hart's farm," still cannot excuse her noncompliance. The Board has proven by a preponderance of the evidence that Grievant was insubordinate.

Grievant's argument that her suspension should be overturned pursuant to Code §18A-2-7 because the Board did not approve her suspension prior to the time she served it is not persuasive. To make such a finding would be to apply form over substance. Further, as already noted, the Board implied in its September 7,1994 Board minutes that Grievant's failure to comply with its request would be considered insubordination. Assuming arguendo, a technical violation of this Code section herein did occur, said violation is deemed to be harmless error because the Board ultimately approved the suspension; therefore, Grievant suffered no harm.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. The Board has the burden of proving the facts supporting Grievant's suspension by a preponderance of the evidence. W. Va. Code §18-29-6.

2. Insubordination is usually defined by this Grievance Board as "a deliberate, willful or intentional refusal or failure to comply with a reasonable order of a supervisor." Reynolds v. Kanawha-Charleston Health Department, Docket No. 90-H-128 (Aug 8, 1990), citing Gill v. West Virginia Dep't of Commerce, Docket No. COMM-88-031 (Dec. 23, 1988).

3. The Board has proven by a preponderance of the evidence that Grievant was insubordinate.

4. Grievant has not established a meaningful violation of W. Va. Code §18A-2-7.

Therefore, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any

appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

February 23, 1995

Footnote: 1 *Sexton was affirmed in part and reversed in part by the Kanawha County Circuit Court, Docket No. 88-AA-154. It was then appealed to the Supreme Court of Appeals which reversed the circuit court's ruling. The cite to that Supreme Court case is Sexton v. Marshall University, 387 S.E.2d 529 (W.Va. 1989).*