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SHIRLEY CURRY

vs.

DOCKET NO. 30-86-128-2

WEST VIRGINIA UNIVERSITY

DECISION

The grievant, Shirley Curry, has been employed by the West Virginia University Alumni Association since 1970 and most recently held the job classification of Typing Clerk A. On October 24, 1985, Ms. Curry was notified personally and by letter of her dismissal effective November 7, 1985. The dismissal was based on work deficiencies; specifically, incomplete and inaccurate telephone messages and substandard productivity. Ms. Curry filed a level one grievance on or about December 5, 1985, a level two appeal on December 19, 1985 and a level four appeal dated February 26, 1986, and received by this office March 3, 1986.<sup>1</sup>

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<sup>1</sup>Although not an issue raised by the respondent, this grievance was not filed at any level within the time limitations set forth in W. Va. Code, 18-29-4. All university employees should be apprised of the requirements of this grievance procedure and thereafter this examiner will be inclined to consider motions for dismissal in those matters not timely filed.

Ms. Curry alleges her dismissal to have been arbitrary and capricious based in part on religious discrimination.<sup>2</sup> The grievant also alleges violation of her procedural due process at level two in that acting President Reinhard appointed a designee as hearing examiner and subsequently issued a decision contrary to the findings of that examiner.

The evidence presented by the parties indicates the grievant was primarily responsible for answering the telephone and processing alumni address corrections. Documentation shows that as early as November 29, 1983, a counseling session had been held for Ms. Curry by Richard Polen, Executive Director of the association. In a follow up letter Mr. Polen informed the grievant she needed to be more accurate in taking telephone messages, more careful to avoid clerical errors and should refrain from verbally expressing personal religious beliefs during regular office hours. In August, 1984 a second counseling session was held and a letter of warning was placed in the grievant's personnel file. A second warning letter was issued September 12, 1984. At this point Ms. Curry filed a grievance under the procedure outlined in Board of Regents Policy Bulletin No. 52. At a meeting held by a hearing panel on November 5, 1984, it was determined that the matter could be resolved by having the warning letters removed from Ms. Curry's file upon the withdrawal of the grievance. It was further agreed that

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<sup>2</sup>Ms. Curry notified this examiner that the religious discrimination issue will be decided in another forum; however, information regarding the issue was presented to give a more complete picture of the circumstances which led to the grievant's dismissal.

both parties would benefit if the grievant would transfer to another unit in the university. Based on these recommendations, President Gee issued a memorandum to S. Thomas Serpento, Director of Human Resources, requesting his attention to Ms. Curry's transfer.

On January 7, 1985 Mr. Polen conducted a performance appraisal for Ms. Curry. He rated the grievant's performance to be unacceptable in the quality of work quantity of work, use of time and resources, oral and written communication, dependability, initiative and resources.

In April, 1985 Mr. Serpento submitted a report to President Gee reviewing the efforts which had made to secure Ms. Curry's transfer. Mr. Serpento noted Ms. Curry's spelling and typing scores were quite low and competition for clerical positions very keen. He indicated that while the grievant had been considered for approximately sixteen positions, many were part time, with no benefits, or temporary. Ms. Curry had found these positions unacceptable or they had required skills more advanced than she possessed. Ms. Curry had been sent on one interview for a position of Bookstore Clerk II and had not been ranked as one of the top three candidates by the supervisor. Mr. Serpento stated his opinion that locating a transfer for the grievant could not be accomplished in the near future and advised that Mr. Polen should again commence the progressive discipline process.

Mr. Polen notified the grievant by letter dated June 25, 1985 that she was not to keep work related records for her own purposes contrary to his instructions and stated his expectations that she would process a minimum of 200 dues

statements per day.<sup>3</sup>

On July 11, 1985 Ms. Curry was again notified that she must be more accurate in taking of telephone messages, increase processing of due statements to a minimum of 200 per day, improve telephone communications, not keep personal office related lists and to refrain from verbally expressing religious beliefs during work time in the office setting to office staff, other building personnel, visitors and telephone callers.<sup>4</sup> Mr. Polen advised the grievant he would meet with her again in two weeks to evaluate her progress.

On July 26, 1985 Mr. Polen again met with Ms. Curry. His letter of that date indicates he asked the grievant if she could explain her deficiencies. The grievant replied that everyone makes mistakes. When asked if she had discontinued expressing personal religious beliefs to others in the workplace, she stated she did not recall. At this point the grievant refused to further participate in the discussion. Mr. Polen informed the grievant that he expected to see immediate and sustained improvement within one week, or separation of employment would occur.

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<sup>3</sup>This documentation shows the grievant kept records on the time required to slit open dues statements, the number of phone calls recieved by other personnel, the number of photocopies made, etc..

<sup>4</sup>Mr. Polen testified that he had recieved several complaints about Ms. Curry's religious discussions. Ms. Fagula, another association employee, stated Ms. Curry had raised the subject with her and that she felt uncomfortable during these discussions. She also testified that several work-study students had complained to her about Ms. Curry's religious discussions.

At a meeting held August 6, 1985 and confirmed by letter the following day, Mr. Polen indicated the grievant was still not performing at a satisfactory level, but improvement had been made in the accuracy of telephone messages and her processing of dues statements had increased to over 100 per day. Ms. Curry also assured Mr. Polen that she had improved telephone communications, no longer kept personal work lists and had discontinued expressing personal religious beliefs to others.

Mr. Polen testified that rather than continuing to improve, Ms. Curry's performance again began to decline, becoming a hinderance to the daily office functions. On October 24, 1985 Mr. Polen dismissed Ms. Curry from her duties effective November 7, 1985.

The grievant questions whether Mr. Polen's production expectations were reasonable.

Mr. Polen indicated to the grievant on several occasions that he expected two hundred address corrections be processed per day. He believed this to be a reasonable assignment and pointed out that while Ms. Curry was on a medical leave of absence a backlog of 3,000 corrections was completed by another secretary in approximately 20 hours. That secretary, Janet Fagula, testified that she believed it is possible to answer the telephone and complete 200 corrections per day. Ms. Fagula states the individual now holding this position meets those expectations.<sup>5</sup>

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<sup>5</sup>Ms. Curry had suggested that a neutral party should establish fair work standards, however, Mr. Polen did not believe that anyone unfamiliar with the office procedure could establish such standards and it was unnecessary as two other individuals have completed this assignment without difficulty.

The grievant also questions the propriety of the dismissal after the agreement to suspend further disciplinary action while a transfer was being sought.

Sandy Serpento and Gwen Marshall offered testimony indicating their activities included encouraging the grievant to complete a secretarial test, however her scores were low making a transfer more difficult; counseling her in interviewing skills, conducting follow-up conversations with interviewers regarding the grievant and sending her to six interviews between March 5, 1985 and October 16, 1985. Despite these efforts the grievant did not receive a job offer.<sup>6</sup>

Ms. Curry suggests that the President's office could have facilitated a mandatory transfer to another position.

Attempts to secure a transfer for the grievant were discontinued upon her filing of the present grievance. In consideration of these endeavors by the university, the grievant's charge of bad faith is without merit.

Mr. Polen had established criteria for Ms. Curry to meet in the performance of her duties and had discussed them with her on numerous occasions. There is no evidence that Ms. Curry did not understand Mr. Polen's expectations. The grievant's argument that the criteria was unreasonable or the criticism too harsh for the errors committed was rebutted by Mr. Polen's testimony regarding the difficulties he met when unable to return phone calls, and the backlog of statements which accumulated prior to Ms. Curry's leave of absence. Ms. Fagula stated both she and the present receptionist were able

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<sup>6</sup>It is noted by the grievant that due to her longevity at West Virginia University her salary is relatively high, impeding her ability to transfer. The grievant suggests a transfer would be more easily facilitated if the Alumni Association were required to pay half of her salary at another position for a period of two years.

to complete the assigned duties.<sup>7</sup> While Ms. Curry would sporadically show improvement, she has not performed her duties satisfactorily for quite some time.

While Ms. Curry has been a long term employee who performed satisfactorily for many years, the respondent has shown her recent performance has been unsatisfactory, that she was given an opportunity to correct the deficiencies listed, she did not improve her performance to an acceptable level, and therefore just cause existed for termination.

Finally, there appears to be no misapplication of W. Va. Code, 18-29-4 at level two. The appointment of a designee to conduct the hearing with the final decision resting with the chief administrator is common administrative practice. This allows the administrator some delegation of duty yet permits him to control and monitor the application of university policy.<sup>8</sup> This procedure in no way extends the time limitations as set forth in the statute.<sup>9</sup>

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<sup>7</sup>Ms. Curry believes this may be attributed to their more advanced job classification.

<sup>8</sup>The hearing examiner at level two had recommended the discharge be upheld but that Ms. Curry apply as a new employee with the understanding the Alumni Association would pay one-half of her salary for a period of two years. President Reinhard accepted the recommendation for dismissal and indicates the grievant may seek re-employment with the West Virginia University. Only those suggestions as to the institution's role in the grievant's re-employment was rejected by President Reinhard on the basis it was beyond the purview of the grievance.

<sup>9</sup>It is noted that the level two decision did not include findings of fact and conclusions of law as required by Code, 18-29-6. Grievance evaluators are urged to include these findings and conclusions in their decisions to avoid remand for compliance therewith. See, Burks vs. McMee; 264 S.E. 2d 561 (W. Va. Code 1980) Golden v. Harrison County Board of Education, 285 S.E. 2d 665 (W. Va. 1981).

FINDING OF FACT

1. Shirley Curry has been employed by the West Virginia University Alumni Association since 1970.

2. Beginning in late 1983 Ms. Curry's job performance had deteriorated to a level requiring counseling by her supervisor.

3. Following two letters of warning being placed in her personnel file and a grievance being filed, negotiations were withdrawn and efforts made to secure Ms. Curry a transfer within the University.

4. Individuals at the Division of Human Resources assisted Ms. Curry in screening available positions, counseling her in interviewing skills and scheduling interviews.

5. After nearly a year a transfer had not been completed.

6. A performance appraisal of January 7, 1985 indicated the grievant's performance to be unacceptable in the quality and quantity of work, use of time and resources, oral and written communications, dependability and initiative.

7. Upon recommendation of S. Thomas Serpento, Director of Human Resources, Mr. Polen again instituted the progressive discipline procedure.

8. Ms. Curry was subsequently dismissed effective November 7, 1985.

CONCLUSIONS OF LAW

1. The respondent has shown by a preponderance of the evidence, just cause for the dismissal of the grievant.

2. The grievant was deprived of no due process rights at level two of this procedure when acting President Reinhard appointed an individual to gather the evidence and subsequently issued her own decision.

For the foregoing reasons the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18297) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



SUE KELLER  
Hearing Examiner

DATED

