



**Members**  
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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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ECHOLS JEFFRIES

v.

Docket No. 03-86-187-1

BOONE COUNTY BOARD OF EDUCATION

**DECISION**

Grievant, Echols Jeffries, is employed by the Boone County Board of Education and assigned to Van High School as principal, a position he has held for three years. By letter dated May 1, 1986 grievant was suspended without pay for three days for entering the ABCC store in Madison on April 15th during school hours and purchasing alcoholic beverages. On May 14 grievant requested a level four hearing from Superintendent Mabe and by letter dated May 15 from counsel for the board of education grievant was advised that the request was untimely. Thereafter, by letter dated May 20, grievant requested a level four hearing by the Education Employees Grievance Board and an evidentiary

hearing was conducted on July 8, 1986.<sup>1</sup>

At the outset of the level four hearing counsel for the board of education moved to dismiss the grievance as untimely filed on the basis of Code, 18A-2-8.<sup>2</sup> The motion was overruled at that time and the parties were permitted to develop evidence on the motion along with the evidence on the merits. The motion to dismiss was renewed at the close of the evidence and in the findings of fact and conclusions of law submitted by counsel for the board of education on July 24, 1986; no findings or conclusions were submitted by counsel for grievant.

The uncontroverted evidence is that on March 10, 1986 grievant requested approval for travel outside Boone County on April 15 - 17 to participate in a North Central evaluation of Pocahontas High School in Pocahontas County; approval was given by Manuel P. Arvon, assistant superintendent (Grievant's Exhibit No. 1). At approximately 11:00 a.m. on April 15 grievant was seen entering the ABCC store in Madison and exiting with

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<sup>1</sup> A level four evidentiary hearing had been scheduled for June 10, 1986 but was continued by counsel for the parties.

<sup>2</sup> Code, 18A-2-8 provides, in pertinent part, that: "...a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, or willful neglect of duty, but the charges shall be stated in writing served upon the employee within two days of presentation of said charges to the board. The employee so affected shall be given an opportunity, within five days of receiving such written notice, to request, in writing, a level four hearing and appeals pursuant to...(Code, 18-29-1 et seq.) "

a brown bag. This was reported to Superintendent Mabe that afternoon, who requested Mr. Arvon, grievant's supervisor, to talk with grievant when he returned from Pocahontas County. On April 18 Mr. Arvon talked with grievant about the incident and grievant acknowledged that he had purchased a fifth of bourbon at the request of another principal from Mercer County who was also to attend the meeting.<sup>3</sup>

On April 29 Superintendent Mabe presented the incident to the board of education in executive session and recommended that grievant be suspended without pay. The recommendation was adopted by the board and on May 1 grievant was suspended without pay for three days on the grounds of "...willful neglect of duty, intemperance and incompetence." The specifics were that:

"...on April 15, 1986, during school hours and while you should have been performing your duties as principal at Van Junior-Senior High School, you entered the State ABCC store in Madison and purchased alcoholic beverages. Such conduct constitutes willful neglect of duty, intemperance and incompetence. As you are aware, the Madison ABCC store is readily visible to all traffic passing through the Town of Madison, including many school buses

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<sup>3</sup> Grievant testified that the evaluation team was lodged at Bowyer, West Virginia, above Green Bank, and there were no ABCC stores in that area. Arvon testified that during this conversation grievant stated he knew he should not have done it but grievant denies the statement. Arvon told grievant that this would probably be brought up at the board meeting and grievant stated that was "Fine, let me know when."

that are delivering students during the period of time when you entered the store. As a principal you have a duty to serve as an example to your students. Your conduct was readily observable to students or other members of the public and such conduct may cause you to be an object of ridicule and could very well reflect adversely upon the school system in general.

You are hereby cautioned that during school hours you should not frequent<sup>4</sup> establishments selling or dispensing alcoholic beverages." (Employer's Exhibit No. 1).

On the afternoon of May 1 Superintendent Mabe telephoned grievant to advise him that he was being suspended; shortly thereafter Mr. Arvon informed grievant that he had a letter for him. Grievant advised Arvon that he would pick up the letter and a short time later that afternoon, i.e., 2:38 p.m., grievant went to Arvon's office. Mr. Arvon handed grievant the letter and grievant told Arvon that "I can't go along with this garbage" and that "I can't accept a letter like this." Grievant wadded up the letter and threw it in the trash can in the outer office as he departed. On May 12 grievant stated that he received the letter which had been sent certified

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<sup>4</sup> The letter concluded that:

"You have a right to request a level four hearing and appeal pursuant to the provisions of Article 29, Chapter 18 of the Code of West Virginia, 1931, as amended. You may request said hearing within five (5) days of receiving this notice."

mail, return receipt requested.<sup>5</sup>

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

#### FINDINGS OF FACT

1. Grievant is employed by the Boone County Board of Education as principal of Van Junior and Senior High School and has been in the field of education for twenty eight years.

2. On April 29, 1986 the board of education of Boone County voted to suspend grievant for three days without pay on the grounds of willful neglect of duty, intemperance and incompetence, in accordance with the provisions of Code, 18A-2-8.

3. On May 1, 1986 the Superintendent of Schools of Boone County set out the charges in letter form and advised grievant of the suspension. The letter was mailed to grievant by certified mail, return receipt requested, on May 1, 1986 at the Van High School address primarily because grievant maintained

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<sup>5</sup> Superintendent Mabe testified that to be certain that grievant would receive the letter within two days as per Code, 18A-2-8, he had arranged to have the letter hand delivered to grievant as well as delivered by certified mail. Grievant had taken off the afternoon of May 2 and all of May 5, the suspension covered May 6-8 and he took a sick day off on May 9. Accordingly, he returned to school on May 12, and testified that the custodian had signed for the letter, which was in his box.

an apartment in Madison but also listed his home address as Athens, West Virginia. The letter was also to be hand delivered to grievant on May 1, 1986 by Manuel P. Arvon, assistant superintendent and grievant's immediate supervisor.

4. On May 1, 1986 Mr. Arvon telephoned grievant concerning the letter and grievant opted for picking it up at the board office, which he did at 2:38 p.m. on May 1.

5. Grievant discussed the contents of the letter with Mr. Arvon on May 1, 1986 and advised Mr. Arvon that he could not "...go along with this garbage"; that he could not "...accept a letter like this." Grievant threw the letter in the trash can as he departed Mr. Arvon's office. The letter specifically advised grievant that he could request a level four hearing within five days of receipt of the letter.

6. Grievant received the certified letter on May 12, 1986 upon his return to Van High School and on May 14, 1986 requested a level four hearing, which request was denied by the board on May 15, 1986.

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7. On May 20, 1986 grievant requested a level four hearing by the Education Employees Grievance Board and at the hearing the board of education made a motion to dismiss the grievance as being barred by Code, 18A-2-8.

### CONCLUSIONS OF LAW

1. Code, 18A-2-8 provides that an employee who has been suspended or dismissed by a board of education has the opportunity to request, in writing, a level four hearing and appeal in accordance with Code, 18-29-1, et seq., within five days of receiving notice of the suspension or dismissal.

2. The provisions of Code, 18A-2-8 are clear and unambiguous and will be applied by the Education Employees Grievance Board in absence of evidence that the delay in requesting said hearing was attributable to the negligent or deliberate act of the employer or unavoidable accident or excusable neglect.

The motion of the board of education to dismiss the grievance as untimely filed is granted and the grievance is dismissed with prejudice.

Either party may appeal this decision to the Circuit Court of Kanawha County or Boone County and such appeal must be filed within thirty days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS

Chief Hearing Examiner

Dated: September 9, 1986