



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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WILLIAM KIDD
v.
KANAWHA COUNTY BOARD OF EDUCATION

DOCKET NO. 20-86-096

DECISION

Grievant, William Kidd, was employed at Watts Elementary School as a custodian III; he has been employed by the board since 1971. On January 3, 1986 grievant was suspended with pay for failure to report for work and failure to report his absence on December 26, 27, 30 and 31, 1985. A level two hearing was conducted on January 10, 1986 at the conclusion of which Superintendent Acord recommended to the board of education that grievant be discharged from employment for insubordination and wilful neglect of duty.¹ On January 16 the board approved the suspension of the grievant and terminated his employment; grievant requested a level four hearing which was conducted on March 20, 1986.²

¹ This recommendation was predicated upon grievant's previous history of absences and failure to report these absences despite written warnings from Superintendent Acord.

² The transcript of the evidence of the January 10, 1986 level two hearing was admitted into evidence and the board admitted the testimony of two witnesses; the grievant offered no evidence other than the explanation he had offered at the level two hearing. The grievance evaluator did not make 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 the necessity of remanding the appeal for compliance with Code, 18-29-6. See, e.g., Burks v. McNeel, 264 S.E.2d 651 (W.Va. 1980). Cf. Golden v. Bd. of Educ. of Harrison Co., 285 S.E.2d 665 (W.Va. 1981).

The evidence is uncontroverted and reveals that by letter dated September 18, 1986 Joseph B. Childress, principal of Watts Elementary School, advised grievant that he would forfeit one day's pay for his absence from work on September 16 and failure to inform Mr. Childress thereof.³ By letter dated November 13, 1985 it was reported that grievant had called in ill on November 6 and 7 and informed Mr. Childress that he was taking a personal day on Friday, November 8. This was the period preceding the long weekend for Veteran's Day and on Tuesday, November 12 grievant again failed to report for work or to report his intended absence.⁴ By letter dated November 13, 1985 Superintendent Acord informed grievant that he was being suspended without pay for three working days, effective November 14 through November 18 for insubordination and wilful neglect of duty for his absence on November 12. He advised grievant if there were further problems he would recommend to the board of education that grievant's employment be terminated. On November 22, 1985 Superintendent Acord informed the grievant that the board had approved the suspension of pay and concluded:

"Your recent work record as a custodian at Watts Elementary School has been very poor. I sincerely hope that you will in the future meet your responsibilities as an employee of the Board of Education. If you fail to do so, I will have no alternative but to recommend your dismissal to the Board of Education."

³ Mr. Childress reminded grievant that he was to call him when he was to be absent from work and to not call for a substitute until he had talked with him; that this was not the first time that grievant had missed work and failed to report.

⁴ Grievant reported to work on November 13 and informed Mr. Childress that his mother had called him Tuesday morning at 12:15 a.m. and that he (grievant) did not have an opportunity to call Mr. Childress. Grievant was advised by Mr. Childress that he would again forfeit a day's pay for November 12 and that probably "...more would be done about it this time, especially in view of the (his) situation."

On December 30, 1985 Melanie Vickers, the new principal of Watts Elementary School, visited the school prior to assuming her duties and learned that grievant had not reported for work for four days and that the evening janitor had reported grievant's absence to the board office. Ms. Vickers testified that the Christmas decorations had not been removed, the floors had not been swept, the cafeteria was extremely dirty and she obtained the services of a substitute custodian to clean the building before the students returned.

On January 2, 1986 Ms. Vickers, Carl Young, associate superintendent for business, Mr. Godbey, supervisor of custodial services, and grievant met to discuss grievant's absence on December 26, 27, 30 and 31 and to determine the reason for his absence. Grievant admitted that he did not notify anyone of his absences and stated that he had been ill with a virus. Grievant advised the group that he would obtain a statement from his doctor concerning the absences and provide it the following day but did not.⁵

Grievant's justification for his absences was his own illness and in trying to assist his elderly parents who live in St. Albans; he admitted that there was no reason for failing to inform his supervisors of his inability to report for work. He concluded that if he had another chance he believed he could work with the new principal, Ms. Vickers.

West Virginia Code, Ch. 18A, Art. 2, Section 8 is, in pertinent part, as follows:

"...a board may suspend or dismiss any person in its employment at any time for:
...insubordination...or wilful neglect
of duty..."

⁵ At the hearing on March 20 grievant testified that he went to the doctor's office once and that the doctor was not in; he did not try to obtain the statement at a later time. Mr. Young testified that grievant's poor work record was not recent but spanned several years.

Under this provision, the causes for suspension are the same as those for dismissal, Totten v. Board of Education of Mingo County, 301 S.E.2d 846 (W.Va. 1983) and it is important that these sanctions be imposed only upon a showing of just cause. DeVito v. Board of Education, 317 S.E. 2d 159 (W.Va. 1984). Clearly, a charge of "insubordination" is a charge of prior misconduct and it is therefore important that such misconduct has been called to the attention of the employee so that the employee has the opportunity to correct the conduct. Holland v. Board of Education of Raleigh County, 327 S.E.2d 155 (W.Va. 1985). This was done in the instant case and the evidence supports the findings of the Kanawha County Board of Education that grievant was guilty of insubordination and/or wilful neglect of duty. West Virginia Department of Health v. Mathison, 301 S.E.2d 783 (W.Va. 1983). Cf Raines v. Jackson County Board of Education, Docket No. 20-86-080, decided March 17, 1986.

FINDINGS OF FACT

1. On September 18, 1985 grievant was disciplined for absence from work on September 16, 1985.
2. On November 13, 1985 grievant was suspended without pay for three working days for failing to report for work and failing to notify the proper authorities of his absence and advised that his employment would be terminated for further violations.
3. Grievant was absent from his work place on December 26, 27, 30 and 31, 1985 without notifying the proper authorities and offered no valid justification for the absences.

CONCLUSIONS OF LAW

1. Code, 18A-2-8 authorizes a board of education to suspend or dismiss an employee on charges of insubordination

or wilful neglect of duty.

The action of the Kanawha County Board of Education in approving the recommendation of the Superintendent of Schools of Kanawha County to terminate grievant's employment as a custodian III at Watts Elementary School on the grounds of insubordination and wilful neglect of duty is affirmed. The grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days 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
HEARING EXAMINER

Dated:

April 23, 1986