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MARY CARDEN

v.

DOCKET NO. 03-87-056-4

BOONE COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a notice issued on March 13, 1987, pursuant to WV Code §18A-2-8. That notice informed the grievant, Mary Carden, that she was to be suspended without pay for fifteen days for wilful neglect of duty and further that the grievant would not be permitted to organize or chaperone school sponsored extracurricular activities which required maintaining control and discipline of students away from school.

The level four hearing began on April 8, 1987 and was recessed to and concluded on April 27, 1987. At the outset of the hearing on April 8, 1987, the grievant, by counsel, moved to dismiss the suspension of the grievant for reasons relating to due process and for the reason that the disciplinary action was partially directed towards the grievant's teaching contract, which by WV Code §18A-4-16, is separate and apart from her extracurricular contract.

That motion was overruled based in part upon this Board's holding and reasoning in Luzader v. West Virginia University, Docket No. BOR1-86-345-2, which in effect provides that the procedure set forth in WV Code §18A-2-8 and WV Code §18-29-1, et seq., provides adequate protection of the grievant's due process rights by requiring a prompt hearing at level four.¹

At the hearing on April 27, 1987, the respondent board opened the proceedings understanding that it had the burden of proving by a preponderance of the evidence that it had acted in accordance with WV Code §18A-2-8.

Numerous witnesses appeared and testified on behalf of the respondent board and the grievant. In many instances, their testimony was diametrically opposed and it therefore became necessary to weigh carefully the demeanor and credibility of each witness and especially those who had witnessed the events.

On April 17, 1986, Ms. Carden, together with three chaperones, took a caravan of vehicles containing approximately eighteen students from Madison, West Virginia (Scott High School) to Morgantown, West Virginia, for the purpose of participating in an extra-curricular school drama competition.²

¹The record discloses that based upon the superintendent's information, the board met without notice to the grievant and without hearing sworn testimony, and subsequently, based upon a report from the superintendent who had not talked with any of the witnesses appearing in favor of the grievant, voted to send the grievant notice of her suspension. This suspension was understood by the board to not have effect until after five days or until the suspension was upheld at level four.

²The chaperones were Judy Foxx, Mary McClure, and Barbara Oliverio.

Upon their arrival at Morgantown, Ms. Carden, as the drama coach, gathered some of the students and proceeded to the actual place of competition to prepare for the next day's competition.³ In the meantime, the remaining students, having planned their misbehavior, were able to obtain transportation and purchased several cases of beer.⁴ Whereupon they returned to the Holiday Inn and proceeded to distribute and consume a portion of the purchased beer.⁵ While it is conceded by the students who testified that most of them drank some beer, it is evident that this consumption was not carried out openly.⁶

³Ms. Carden initially gathered the students in the Holiday Inn parking lot and explained rules of behavior and confiscated the car keys of the student drivers.

⁴The students had even arranged to have extra sets of car keys and met ex-Scott High School students who were attending West Virginia University in order to obtain altered I.D. cards.

⁵Notably the three chaperones were present and were knowledgeable of the beer drinking. They, however, did not take any steps to prevent the consumption of beer by the students. Also it is evident that students from Poca High School obtained beer from the Scott High School students.

⁶Thomas Beal was one of two security guards on duty on April 17 and 18, 1986, and his testimony was that there were a couple of hundred students staying at the Holiday Inn; that the students of Scott High School were no more noisy than the others but that Ms. Carden was obviously a good chaperone and more conscientious than others. He would let his eighteen year old daughter accompany Ms. Carden without any concern. He saw no evidence of any beer drinking during his regular trips through the Scott High School area.

Shortly after Ms. Carden returned with the students who had gone with her to the competition site, she was confronted with the problem of dealing with Sherry Foxx who had had an argument with her mother/chaperone, Judy Foxx.⁷ Ms. Carden left the premises with Sherry Foxx and counseled her for approximately two hours.⁸ Shortly after Ms. Carden returned with Sherry Foxx, the students went to bed.

The next evening (Friday) after the Scott High School team had done poorly in the competition, it was admittedly much quieter even though there was some additional beer drinking.

There was considerable conflicting testimony about the culpability of Ms. Carden's activities including allegations that she participated in the drinking itself. However, based upon the testimony of the greater number of eye witnesses and the objective non-aligned testimony of Security Officer Beal, the evidence preponderates in favor of the testimony which shows that Ms. Carden did not knowingly permit the students to drink beer and that she did not participate in any drinking.

Ms. Judy Foxx testified that she complained to Ms. Carden about the students' behavior but did not mention beer drinking; that

⁷Judy Foxx and Sherry Foxx were the two witnesses who provided the initial information to Principal Clendenin upon which the investigation was launched in October 1986.

⁸It, therefore, is apparent that during the time most of the beer drinking was going on, Ms. Carden was not on the premises. Only the three other chaperones were in the vicinity.

Ms. Carden knew what was going on but did nothing about it. Also Ms. Foxx admits she did not take any direct action to confiscate the beer or search for it and did not report anything until October 1986. In addition, Ms. McClure and Mr. Robin Woods deliberately failed to tell Ms. Carden about the beer drinking because of the consequences the students would face, and, "they felt they had it under control".⁹ Ms. Carden also denied any knowledge of the beer drinking until after the investigation began in October 1986.

It is uncontested that Ms. Carden is a very good teacher, excellent drama coach and enjoys a unique rapport with many of her students. She is active in the church, her community and her profession.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. The grievant, Mary Carden, is employed by the Boone County Board of Education as an English and Speech teacher at Scott High School in Madison, West Virginia, and has been so employed for approximately twenty years.

2. Ms. Carden has been the Drama and Thespian sponsor at the same school for more than fifteen years and was given an extra-curricular contract to organize and present three plays each year,

⁹ Mrs. Woods and her husband came to Morgantown on Friday evening to assist in chaperoning and in the competition. Mrs. Woods played some of the music needed.

including a contest play to be presented in the State High School Drama Festival contest.

3. The Drama Club of the Scott High School consisting of approximately eighteen students attended the Drama Festival held in Morgantown, West Virginia, on April 17, 18 and 19, 1986.

4. Other adult chaperones who accompanied the Drama Club on the trip to Morgantwon were Judy Foxx and Mary McClure. Ms. McClure was a part time substitute teacher for the Boone County Board of Education. Barbara Oliverio, who at the time was employed full time by the Boone County Board of Education as a teacher at Scott High School, also accompanied the group on the trip, although she was not placed on the chaperone list by Ms. Carden. Two other adults, Bill and Robin Woods, also joined the Scott High School group on the second night of the 1986 Drama Festival. Ms. Woods was a part time substitute teacher with the Boone County Board of Education.

5. Upon arrival at the Holiday Inn, the Scott High School students were instructed by Ms. Carden concerning rules about their stay in Morgantown. Among these rules about which the students were instructed were that they were not to drink any alcoholic beverages or drive their vehicles without her permission. In order to ensure that the students did not drive, Ms. Carden confiscated the car keys of those students who had vehicles.

6. Unknown to Ms. Carden, at least one student had brought two sets of car keys and utilized that vehicle without her permission to take other students away from the premises to obtain altered I.D. cards and purchase beer.

7. The Holiday Inn at which the Scott High School students stayed was also housing approximately two hundred other high school students attending the same Drama Festival.

8. Approximately fifteen of the eighteen students who attended the Drama Festival from Scott High School participated in drinking beer on the nights of April 17 and 18, 1986.

9. The students of Scott High School had planned their misbehavior with regard to purchasing and drinking beer and did not conduct those activities openly.

10. Thomas Beal, the Chief of Security at the Holiday Inn who was on duty on April 17 and 18, 1986, established that the conduct of the Scott High School students was not atypical of such a student group and that the Scott High School students were not behaving any differently than any of the other two hundred students staying at the Holiday Inn.

11. Mr. Beal further established that he saw no evidence of beer drinking; that Ms. Carden was more conscientious than most chaperones and that he would allow his eighteen year old daughter to accompany Ms. Carden without any reservation.

12. On the evening of April 17, 1986, about which most of the testimony was directed, Ms. Carden was attending to administrative duties and counseling Sherry Foxx which took her away from the premises for several hours during the period when most of the students' misconduct occurred.

13. At some point during the first night at the motel (April 17), students from other high schools, including Poca High School,

joined the Scott High School students in drinking in the rooms on the fourth floor of the motel. Some of the Scott High School students sold a portion of the beer that they had acquired to the Poca High School students.

14. The chaperones, Robin Woods and Mary McClure, who discovered that some of the Scott High School students had beer, admitted that they deliberately concealed that information from Ms. Carden in order to shield the students from the consequences of their acts and because they felt they had the situation under control.

15. A preponderance of the most credible evidence shows that Ms. Carden did not permit the students to drink beer and did not participate in any beer drinking.

16. No complaint was made concerning the activities of the students on this trip until October 1986, at which time Judy Foxx brought the matter to the attention of Principal Clendenin.

17. Prior to the receipt of the complaint from Judy Foxx, Principal Clendenin had in September 1986, recommended that Ms. Carden be recognized as West Virginia Teacher of the Year.

18. Ms. Carden is recognized as being a very good teacher, having received excellent evaluations, has an unusually good rapport with her students and is active in her church, community and profession.

19. When the respondent board voted to suspend the grievant, it was not aware of the testimony of those witnesses who appeared in behalf of Ms. Carden.


CONCLUSIONS OF LAW

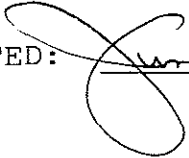
1. Pursuant to WV Code §18A-2-8, a board of education may suspend any person in its employment at any time for wilful neglect of duty upon the showing of just cause which authority must be exercised reasonably, not arbitrarily or capriciously. DeVito v. The Board of Education, 317 S.E.2d 159 (W. Va. 1984).

2. The Boone County Board of Education has failed to prove by a preponderance of the credible evidence that the grievant, Mary Carden, wilfully neglected her duties as charged by the said Board in its' notice dated March 13, 1987.

Accordingly, the grievance is GRANTED and the Boone County Board of Education is directed to withdraw its' notice of March 13, 1987.

Either party may appeal this decision to the Circuit Court of Boone County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.


JOHN M. RICHARDSON
Hearing Examiner

DATED:  June 12, 1987