



**Members**

James Paul Geary  
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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.  
Governor

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TRAVIS H. CARRELL

v.

Docket No. 20-87-036-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

On February 11, grievant, Travis Carrell, a custodian at Dupont High School, was suspended without pay for five days beginning February 10 through February 16, 1987, for neglect of duty arising from absenteeism. He filed an appeal on February 18 with the Education Employees Grievance Board and evidentiary hearings were conducted on March 5 and 11, 1987. Findings of fact and conclusions of law were requested of the parties by March 26, 1987, but were not filed.

The suspension letter of Superintendent Trumble advised grievant that:

You have missed over thirty days of work this school year and frequently fail to notify the school of your absences. For example, you did not work from January 6 through 9, 1987. You failed to notify the school of your absence until January 8th when you called to report that you were having car trouble and could not work.



You advised Mr. Courtney and Mr. Lyons that you received a subpoena to appear as a witness in the criminal trial in Kanawha County Circuit Court on Thursday or Friday, January 29 or 30, 1987. The subpoena directed you to appear on February 3rd at 9:30 a.m. You did not work your scheduled 11:00 p.m. to 7:00 a.m. shift on Monday, February 2nd and did not notify the school until Tuesday, February 3rd about your need to be absent due to the trial. It is important to note that you were not required to be in court during your normal working hours; this case may have interfered with day time employment but was not a sufficient excuse to neglect your job at DuPont High School.

You apparently did report to work on Monday, February 9th as you signed the custodial schedule as being present from 11:00 p.m. to 7:00 a.m. However, you were not present when the head custodian arrived at 6:00 a.m.

(Employer's Exhibit No. 1)<sup>1</sup>

To substantiate these charges William R. Deardorff, principal of DuPont High School, related that he had almost daily conferences with grievant during the one year period grievant had worked at the school concerning the necessity for calling the school when he was to be absent. Mr. Deardorff had told grievant on several occasions that he was to telephone Mrs. Cochrane, the head custodian, or Mr. Watkins, the vice-principal, and if they were not available to call the school secretary or him before 3:00 so arrangements could be made to have a substitute cover grievant's shift, i.e., 11:00 to 7:00.

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<sup>1</sup> The letter also advised grievant that further incidents of misconduct or neglect would result in additional disciplinary action, including termination of employment.

The board of education approved the suspension at a meeting held on February 12, 1987.



This witness verified the absences of grievant on the dates in question and was highly dubious of grievant's sincerity concerning his job responsibilities.<sup>2</sup>

These matters had come to the attention of John W. Lyons, assistant superintendent, in the summer of 1986 and he had conducted a meeting in his office. Subsequent to the meeting Mr. Lyons sent a memorandum dated June 10, 1986, to grievant confirming the subject of the meeting and to ensure that grievant understood that henceforth he was to notify the school if he was to be absent.<sup>3</sup> In February, 1987, it again came to his attention that grievant had not been working and he learned that grievant had been subpoenaed to testify in court in Kanawha County. Mr. Lyons went to grievant's home and to the courthouse, where he found grievant. Grievant had a subpoena requiring him to be present on February 3, 1987, at 9:30 a.m. and advised Mr. Lyons that he had received it Thursday or Friday the previous week; grievant had not reported his absence to the

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<sup>2</sup> He stated that grievant would "play games" by alleging that he called either Mrs. Cochran or Mr. Watkins when he, in fact, did not so as to confuse the matter.

<sup>3</sup> Mr. Deardorff, Mr. Watkins, Mrs. Cochran and grievant attended this meeting with Mr. Lyons. This memorandum was to also serve as evidence that grievant had been warned about his conduct.

Mr. Lyons stated that he told grievant to call him as a last resort; this was confirmed by grievant.



school until Wednesday the following week.<sup>4</sup>

Thelma Cochran is the head custodian at DuPont High School and arrives at the school at 6:00 a.m.; she is responsible for the custodians. She testified that grievant had a very poor work record relative to being absent and not informing her or the office and it made it very difficult on the other custodians.<sup>5</sup> Several dates were recorded as days which grievant was absent and did not report in advance and she specifically recalled that grievant did not inform her that he had been subpoenaed to testify.

Grievant acknowledged that he had meetings with Mr. Deardorff concerning his absences and the reporting thereof and testified that he was to call the school or Mr. Watkins or Mrs. Cochran and, as a last resort, Mr. Deardorff in such cases. He stated that it was possible to contact someone at the school until 4:30 p.m. and after that time he had the home telephone number of Mr. Watkins and Mrs. Cochran; that on several occasions he had been unable

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<sup>4</sup> Mr. Lyons stated that although he was not aware of a written policy requiring employees to inform their supervisors when they were subpoenaed he expected grievant to be well aware of the necessity thereof after the meeting in June, 1986. Mr. Lyons stated that grievant worked two jobs, one during the day on construction work and at night for the board, and that if he was going to miss work on a job it should be the day time job.

<sup>5</sup> She stated that grievant has called her at home at 7:00 p.m. and on one occasion at 1:30 a.m. to inform her he was going to be absent. She had told him on several occasions to call the school as soon as he learned he would be absent and stated that she had been present when Mr. Deardorff also instructed him.

She testified that she and the other custodians call in on a day to day basis if they were going to be absent more than one day.



to contact any one of the individuals he was instructed to contact because the line had been busy, etc. He could not recall an absence of November 13, 1986, and stated that his absences of January 29 through February 6 were due to plumbing problems; that he had called the secretary at the school and reported the plumbing problems.<sup>6</sup>

Grievant stated that he had not worked from January 6 through 9 because he had to take his son to Romney but that it could have been because of car trouble.<sup>7</sup> As to the February 2 through 5 absences he stated that he had been asked to be at the courthouse at 8:30 a.m.

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<sup>6</sup> On cross-examination he identified the secretary as Mrs. White and stated he had called on the first and second days he was absent and probably on the fourth day.

On rebuttal, Brenda White, clerk at DuPont High School, testified that she had no recollection that grievant telephoned her of his plumbing problems but did recall that he called once about car problems; that his usual procedure was to ask for Mr. Deardorff or for Mr. Watkins and if they were not there he would ask for the secretary. She generally took the calls at the school and the students always made a memo when someone called in; that there was no memo as to grievant's call.

<sup>7</sup> On cross-examination he stated that he called on January 6 and told someone that he was having car trouble and would be absent; on January 7 he talked to one of the kids in the office; on January 8 he was getting the insurance straightened out and called someone in the office; on January 9 he either called the school or Mr. Watkins at home. However, the January 9 absence was not car trouble but was either illness or another reason he could not recall.

He testified that the February 9 incident occurred because when he arrived at work the Custodian III, Llouise Eary, told him that a substitute had been called. Grievant left but did not sign out because he wanted to prove that he attempted to work. Ms. Eary corroborated part of this testimony and this charge was not considered in arriving at the decision in this grievance.



and was required to stay there; that he had not reported to the school on a day to day basis because they were picking a jury and had all of the witnesses in briefing sessions.<sup>8</sup> He concluded that he made every effort to inform the school when he was going to be unable to work and understood the procedure he was required to follow.

W.Va. Code, 18A-2-8 provides that a board may suspend or dismiss any person in its employment for willful neglect of duty and the Education Employees Grievance Board has decided that failure of a custodian to report for work and to report the absence to the school as previously directed amounts to insubordination or willful neglect of duty justifying disciplinary action. William Kidd v. Kanawha County Board of Education, Docket No. 20-86-096.<sup>9</sup>

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<sup>8</sup> On cross-examination he stated the reason he didn't tell anyone about the subpoena was because he didn't know when the trial was going to begin; that he called Mr. Watkins on Monday, February 2 and advised him he would not be at school the entire week.

On rebuttal Mr. Watkins testified that grievant called on Wednesday, February 4, and advised him that he had been subpoenaed; denied that he had received a call on February 2nd and that grievant told him he would be absent the rest of the week.

<sup>9</sup> The Kidd case was decided on April 23, 1986, and involves an analogous factual situation with the exception that there the custodian grievant had been dismissed for his absences and refusal to report as directed. See also, Vosberg v. Civil Service Commission, 275 S.E.2d 640 (W.Va. 1981); Waugh v. Cabell County Board of Education, 350 S.E.2d 17 (W.Va. 1986).



In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

#### FINDINGS OF FACT

1. Grievant is employed as a custodian at DuPont High School and works the 11:00 p.m. to 7:00 a.m. shift; he has been so employed for about one year.

2. In the summer of 1986 and previous thereto grievant had been directed to report any anticipated absences to the school officials during school hours and to the vice principal, head custodian and principal after school hours in order that a substitute could be obtained to complete grievant's work assignment.

3. By letter dated February 11, 1987, grievant was suspended five days without pay for missing work from January 6 through January 9, 1987, and failing to notify the school until January 8 and for failing to report his anticipated absences from January 29 through February 5, 1987.

4. The evidence substantiated the school board's contention that grievant consistently failed and/or refused to notify the school officials of his anticipated absences even when such absences were known well in advance and that there was a consistent pattern



in his failure to follow instructions as to the reporting thereof. There is evidence that these absences disrupted the custodial staff in their functions at the school as well as the school administrators.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-8 authorizes a school board to suspend or dismiss a custodian who knowingly fails or refuses to report for work and to report such anticipated absences to school authorities after being repeatedly instructed to do so. Kidd v. Kanawha County Board of Education, Docket No. 20-86-096.

2. On several occasions grievant failed to properly report off from work and in so doing was properly suspended for willful neglect of duty. Vosberg v. Civil Service Commission, 275 S.E.2d 640 (W.Va. 1981). Cf. Robertson v. Truby, 289 S.E.2d 736 (W.Va. 1982).

It is accordingly Ordered that the grievance is DENIED and the action of the school board suspending grievant for five days without pay is affirmed.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. 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

Dated April 8, 1987

Chief Hearing Examiner