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**WEST VIRGINIA EDUCATION  
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**MARTHA GREEN**

**v.**

**Docket No. 20-86-363-1**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Martha Green, is a regularly employed school bus operator assigned to the South Charleston terminal. By letter dated December 4, 1986, grievant was suspended without pay for three days for willful neglect of duty and on December 15, 1986, she requested a level four hearing; an evidentiary hearing was conducted on January 22, 1987.<sup>1</sup>

Grievant has been employed by Kanawha County Schools for over ten years as a bus aide, substitute bus operator and for the past

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<sup>1</sup> Grievant had another grievance pending at the time of the suspension and that grievance was consolidated for hearing with the suspension hearing. The other grievance involved an alleged change in work schedule and was also submitted to the hearing examiner on January 22, 1987; a decision thereon was rendered on March 12, 1987. See, Martha Green v. Kanawha County Board of Education, Docket No. 20-86-344-1.

three years as a full time regular bus operator. Commencing in the fall of 1986 part of her bus run included transporting students to South Charleston High School and early in November, 1986, she had expelled three students from her bus for persisting in engaging in lewd conduct and using profanity.<sup>2</sup> One of the student's mother requested a hearing at South Charleston High School and shortly after the hearing grievant received the suspension letter from Superintendent Trumble for the following inappropriate conduct:

- (1) permitting student Lewis Saunders to steer grievant's bus on First Avenue in South Charleston in the vicinity of the Ramada Inn in late October, 1986,
- (2) crossing railroad tracks through lowered barriers when a train was approaching, at the intersection of Jefferson Road and Kanawha Turnpike in South Charleston in late October or early November, 1986,
- (3) running a stop light on MacCorkle Avenue in South Charleston in the vicinity of the Volkswagen Plant in late October, 1986,
- (4) slamming on the brakes to get students' attention on a continuing basis during the months of October and November, 1986, and
- (5) failing to take any action relative to a major fight which occurred on grievant's bus between

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<sup>2</sup> These students were sixteen and seventeen year olds whom grievant described as "problem students". Grievant felt that the students were testing her since she was a new driver on that run; on one occasion she stopped the bus and requested a motorist to call the police to evict one of these three students.

students Pat Shultz and Jimmy Beasley.<sup>3</sup>

Mr. George W. Beckett, director of pupil transportation for Kanawha County Schools, testified that these incidents were brought to his attention at the expulsion hearing in November, 1986, by the students who had been expelled from the bus by grievant. He investigated the complaints of the students and then recommended to Superintendent Trumble that grievant be disciplined.<sup>4</sup>

The evidence in this grievance concerning the charges upon which this suspension is predicated consists of the testimony of three students who rode grievant's bus, one of whom was expelled from the bus by grievant. The evidence presented by grievant consisted of her testimony and the testimony of three students who also rode the bus. The testimony was in sharp conflict and the evidence

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<sup>3</sup> The letter noted that grievant had denied any misconduct when provided with an opportunity to relate her version of the allegations.

Grievant states that when she told Mr. Beckett, the director of transportation, her story he advised her that he believed the students; that she advised him he knew that these boys were lying. Grievant had felt that Mr. Beckett and the principal and vice principal at South Charleston High School had not supported her in her efforts to control these unruly students because she had reported them earlier to no avail.

<sup>4</sup> Mr. Beckett testified that he had always had a good working relationship with grievant to this point and that grievant had a good driving record.

Grievant testified that she had been harassed by Mr. Beckett and her immediate supervisor, Mr. Beane, since she filed the other grievance and that after she expelled the three students Mr. Beckett has assumed the role of her immediate supervisor. She stated that after the expulsion the three students rode another bus and nothing was done after she reported this to the principal and vice principal.

against grievant was generally inconsistent.<sup>5</sup>

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

#### FINDINGS OF FACT

1. Grievant is a regularly employed school bus operator whose bus run includes the transportation of students to South Charleston High School. Grievant has been employed by Kanawha County Schools for over ten years as a bus aide, substitute bus operator and regular bus operator and has received good evaluations during that period.

2. Grievant was new to the South Charleston High School run and commenced having problems with some of the students on her bus whom she described as "trying" her. Early in November, 1986, grievant was constrained to expel three male students from her bus for their refusal to cease engaging in highly offensive dialogue

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<sup>5</sup> For example, Dawnell Mayfield stated that grievant refused to allow Lewis Saunders to steer the bus but that he grabbed the steering wheel; Jimmy Beasley, one of the expelled students, stated that grievant told Lewis Saunders that he could steer and that grievant had tapped her brakes on only one occasion; Anitra Jackson stated grievant stopped the bus and ejected the two students who were fighting and other students stated grievant did nothing.

The students testifying on grievant's behalf contradicted the testimony of the administration's evidence and the testimony of Martha Hodges was particularly impressive. This witness stated that the only incident whereby Lewis Saunders put his hands on the wheel was when the bus was parked and loading students. This and other portions of her testimony was corroborated by grievant.

on the bus. These three students were described by grievant as "problem students." Grievant had reported this and other incidents of misconduct to the principal and vice principal of South Charleston High School.

3. A suspension hearing was conducted at South Charleston High School on the suspensions and, unknown to grievant, the suspended students reported incidents of alleged unsafe driving practices engaged in by grievant while performing her duties as bus operator. Grievant was not informed of these accusations and an investigation was undertaken by Mr. George Beckett, director of pupil transportation, and the principal at South Charleston High School.

4. At the conclusion of the investigation Mr. Beckett recommended that grievant be disciplined and on December 4, 1986, grievant was suspended three days without pay for willful neglect of duty. The letter of suspension contained five separate incidents of alleged "inappropriate conduct" which the students had previously reported. The suspension was based entirely upon the accusations of the students and did not involve a traffic citation or infraction which had been brought to grievant's attention previously.

5. The evidence of the students relied upon by Kanawha County Schools to establish the "willful neglect of duty" charges was unreliable, contradictory and failed to substantiate the allegations.

Additionally, a portion of the testimony was highly suspect as motivated by a desire to retaliate against grievant for having expelled the three students from the bus. Accordingly, the school board failed to prove by a preponderance of the evidence the charges underlying the suspension.

6. Similarly, grievant failed to prove that the suspension was in retaliation and as harassment for a previous grievance filed by grievant styled Martha Green v. Kanawha County Board of Education, Docket No. 20-86-344-1.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-8 authorizes a county board of education to suspend an employee for stated causes but the grounds must be established by a preponderance of the evidence. Claude Cook v. Logan County Board of Education, Docket No. 23-86-112.

2. The evidence against grievant to substantiate the charges upon which grievant was suspended was insufficient as a matter of law.

The grievance is accordingly GRANTED and the Kanawha County Board of Education is Ordered to remove the letter of suspension from grievant's personnel file and restore the three days pay wrongfully withheld.

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.



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LEO CATSONIS

Chief Hearing Examiner

Dated: March 20, 1987