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ELAINE KOONTZ

v.

Docket No. 25-87-123-3

MARSHALL COUNTY BOARD OF EDUCATION

D E C I S I O N

Elaine Koontz, grievant, has been employed by the Marshall County Board of Education as a custodian for eleven years. On February 25, 1987 she filed a level one grievance alleging that the board retaliated against her for previously filed grievances when it refused to let her return to work from sick leave on light duty status. The grievance was denied at levels one through three and was appealed to level four in May 1987. After a continuance by the parties of a June hearing date, an evidentiary hearing was conducted on July 8, 1987. Briefs were filed by the parties on August 31 and September 3, 1987, respectively.

Grievant had been under a doctor's care and absent from her employment from February 5 through February 18, 1987 at which time her accumulated sick leave days became exhausted. Upon her doctor's recommendation, grievant requested to return to work on light duty status.

Grievant's principal, Richard Redd, inquired as to what duties she would be able to perform on the light duty status and requested her doctor's interpretation of light duty. Grievant responded with a note from her doctor which stated that she could not do any sweeping or heavy lifting. School officials determined that grievant could not return to work on light duty status with the restrictions the doctor identified.

During her eleven year tenure with the board grievant has more recently filed a number of grievances, some of which she has lost and some of which she has won. Grievant alleges that the board's refusal to let her return to work was in retaliation for her previously filed grievances and was contrary to its treatment of her and others in the past regarding light duty status for employees.

Grievant stated that in 1977 she had severely sprained her ankle and was off work for a time on sick leave but was allowed to return to work on light duty status. At that time, grievant

was assigned to a different school where she and another custodian divided their work between them and each cleaned one-half ends of the building. When grievant returned to work with light duty restrictions, her principal allowed her to take care of the first floor while the second custodian cleaned the upper floor and she did not have to maneuver up the steps.

Grievant claims that in the present instance the custodians' work duties could also be shifted in some manner so that she could return to work on light duty with the restrictions her doctor indicated.

Grievant concludes that the only reason she was not permitted to return to work this time was because of her previously filed grievances and that the board's action constitutes reprisal.¹ Grievant requests an award of back pay for her lost days of employment from February 18 through February 25, 1987.

¹ W.Va. Code, 18-29-3(p) states that an employer may not take any reprisal against any employee or any other interested party who has participated in the grievance procedure.

The board contends that there has been no wrong doing on its part and that grievant's present situation differs from the 1977 incident. Grievant's medical problems in February 1987 involved a suspected heart condition and the work restrictions were imposed by her doctor until she had completed stress tests. In grievant's current work assignment at McNinch School, 80% of her job entails sweeping and she must also lift and empty heavy trash cans and bags. The board asserts that there was no feasible way to allocate the work required at McNinch between grievant and other personnel without imposing an undue burden on the remaining custodian.

The board also relies on Board Policy 4.3 which requires that all custodians must have the physical capacity to perform assigned duties and be of appropriate health. Grievant agreed that sweeping comprised 80% of her duties and offered no concrete or specific ways in which her work could be assigned to the other custodian in a fair manner. The board urges that it would set a dangerous precedent to allow an employee to return to work from sick leave when the employee was only capable of performing 20% or less of her required duties and it would be a financial burden upon the board to hire others to perform the necessary work.

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

FINDINGS OF FACT

1. Grievant is employed by the board of education as a custodian at McNinch Elementary School.

2. Grievant has eleven years tenure with the board and has filed a number of grievances in recent years.

3. Grievant was on medical leave in February 1987 and had been ordered by her doctor to take stress tests, such testing commonly known to identify certain heart conditions.

4. Grievant had used up all of her sick leave time by February 18, 1987 and, pending the completion of stress tests, grievant's doctor said she could return to work on light duty.

5. Grievant's principal, Richard Redd, considered grievant's request to return to work but asked for a definition of light duty. Grievant's doctor wrote that light duty would exclude sweeping and lifting.

6. A decision was made in the administrative offices that since sweeping alone comprised 80% of grievant's duties it would not be feasible for her to return to work with those restrictions.

7. In 1977 grievant was allowed to return to work in another school on light duty status after a sick leave absence. However, at that time her disability involved a sprained ankle and she was permitted to work in the downstairs area only and was able to fulfill all of her work requirements.

8. Board policy requires that custodians must have the physical capability and appropriate physical health to perform their assigned duties.

9. Grievant presented no evidence that the board acted in retaliation or reprisal over grievant's previously filed grievances.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-29-3(p) defines reprisal as retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

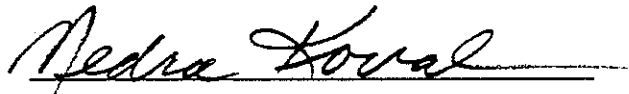
2. In this case, the school administration would have abused its responsibility to operate its schools in an efficient manner if an employee was permitted to return to work after sick leave when that employee could only perform 20% or less of her required duties.

3. It is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence and grievant has failed to prove the school board's actions constituted reprisal. Zban v. Cabell County Board of Education, Docket No. 06-87-010.

Accordingly, this grievance is DENIED.

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

DATED: November 18, 1987

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner