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**WILLIAM MCKINNEY**

**v.**

**DOCKET NO. BOR1-86-285-2**

**WEST VIRGINIA UNIVERSITY**

**DECISION**

Grievant, William McKinney, is employed by the Board of Regents as a warehouse attendant assigned to the Physical Plant at West Virginia University. On August 27, 1986 Mr. McKinney filed a grievance alleging that a five day suspension had been imposed in violation of written and unwritten University personnel policies and practices and that a warning letter had been issued in violation of Physical Plant policy. The grievance was denied at levels one and two and was appealed to level four in October, 1986. Both parties agreed that the level four decision could be based on the record developed at level two with supplemental testimony heard on January 14, 1987.<sup>1</sup> After considerable delay,

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<sup>1</sup>That hearing was continued from previously scheduled dates of October 28, 1986 and December 3, 1986.

a partial transcript of the level two proceedings was forwarded by the respondent thereby providing the basis for this decision.<sup>2</sup>

The grievant began employment with the University as a warehouse attendant on August 5, 1985. By memorandum dated February 14, 1986 Lee Goodwin, Warehouse Supervisor, notified the grievant that the vehicle assigned to the warehouse was found unlocked on February 11, 1986 after the records indicated it had been used by the grievant. Mr. Goodwin went on to note that the vehicle had been found unlocked once before and that on November 22, 1985 he had discussed the security procedure at a meeting of all warehouse personnel. This was the first formal warning. Creating some confusion as to when the first verbal warning was issued is Respondent's Exhibit No. 20, which indicates that a warehouse vehicle was left unsecured on August 5, 1985 and that "Bill" had received a verbal warning.

The grievant argues that August 5 was his first day of employment and that he was not required to use the vehicle and therefore he could not have left it unlocked.<sup>3</sup> Further the dis-

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<sup>2</sup>That transcript contained the opening and closing statements of the respondent and attached exhibits. By letter dated June 2, 1987 this examiner informed both parties of the content of the record and asked if this information was what they intended for the level four decision to be based upon. Dr. Simoni called the examiner to indicate some concern and said he would investigate the matter further, however, after two weeks no further information was received and the decision was based upon the record as filed.

<sup>3</sup>James Harvey also began employment at the Physical Plant on August 5, 1985 and corroborated the grievant's testimony at the level four hearing that they were not required to use the warehouse vehicle their first day of work.

cussion of November 22, 1985 was during a group meeting and was not directed towards any individual. As such, the grievant argues that the February 11, 1986 incident was his first offense and warranted only a verbal warning as stated in Physical Plant Policy No. B5-124.

On August 7, 1986 Mr. Goodwin notified the grievant that he had completed his probationary period but that his position at the Physical Plant remained tenuous. Mr. Goodwin noted that grievant's personnel file included the warning letter relating to vehicle security and (inadequate) performance progress reports. According to Mr. Goodwin, these reports together with an unauthorized absence from his work area on August 4, 1986, provided a basis for termination proceedings. However, the disciplinary action was reduced to a five day suspension in order to allow the grievant a final opportunity to improve his work performance.

Extensive documentation was provided tracing job-related difficulties the grievant had encountered during his initial and two extended probationary periods. A performance appraisal dated November 11, 1985 indicated that the grievant was rated as performing at an unacceptable level in many areas. Attached to the appraisal was a development plan to improve the grievant's

performance to an acceptable level. Under the "Employee Comments" section the grievant requested that he be transferred to day shift in order to acquire the training needed to improve his job performance. Mr. Al Ingle, Assistant Director of Business and Administration, reminded the grievant that he had been hired specifically for the night shift and advised the grievant that improvement of performance was necessary.

In December, 1985 Mr. Goodwin notified the grievant that his probationary period would be extended in order to provide him with additional training. The grievant was directed to report to Mr. Goodwin at the end of each shift to review his work progress and discuss any problems he may have encountered.<sup>4</sup>

A probation performance review completed in February, 1986 indicated that the grievant continued to have difficulties in performance despite the assistance given by Mr. Goodwin and the other warehouse attendants. Some specific problems noted by Mr. Goodwin were that the grievant averaged a 25% error rate when counting inventory, only partially filled orders for overnight withdrawals, could not, or did not, follow written work assignments and maintained low and unacceptable productivity. A review of the grievant's progress in April, 1986 indicated many of these problems continued to exist.

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<sup>4</sup>Although the grievant was not reassigned his shift was changed to 12 midnight to 8 a.m. to allow time for this daily meeting with the supervisor.

The grievant's request that his probationary period be again extended from May 6 through August 6, 1986 was granted with the understanding that the grievant would work to achieve a satisfactory job performance. A performance review dated June 16, 1986 indicated that overall improvement had been noted, however, on July 31, 1986 the grievant was counseled for not completing his assignment. When the grievant explained that he had gone to the trailer to lie down due to illness he was advised to report to the supervisor or senior attendant in such instances.

On August 4, 1986 Mr. Goodwin arrived at the grievant's workplace (Bailey Warehouse) and found it locked. He proceeded to the trailer and also found it to be locked. Upon unlocking the door he discovered the grievant in the process of turning off the air conditioner. Mr. Goodwin noted that the grievant's lunch break was from 1:45 p.m. to 2:15 p.m. and that he was discovered in the trailer at 2:40. As no work was to be completed in the trailer he concluded that the grievant had continued to be at rest for 20 to 25 minutes past his lunch break.<sup>5</sup>

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<sup>5</sup> A memo issued by Mr. Goodwin to all warehouse personnel dated April 10, 1986 indicates that the trailer is to be utilized for lunch breaks, scheduled fatigue breaks and periodic recuperative breaks from the elements. Employees were advised to make use of the trailer when necessary but to follow Physical Plant policy regarding working hours.

The grievant asserts that he was copying a tire inventory while in the trailer and was not away from his assigned work area as charged. The grievant argues that the suspension was imposed without just cause, in violation of written and unwritten University personnel policies and practices and that it was an arbitrary and capricious act of harrassment.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

#### Findings of Fact

1. Grievant, William McKinney, has been employed at the West Virginia University Physical Plant as a warehouse attendant since August, 1985.

2. The grievant was issued a five day suspension in August, 1986 after an unauthorized absence from his assigned work area on August 4, 1986, receipt of a warning letter in February, 1986 and unacceptable performance progress reports since he began employment.

3. Respondent's Exhibit No. 20 indicates that "Bill" was spoken to regarding an unsecured vehicle found on August 5, 1985. Both the grievant and James Harvey, who also began employment on August 5, testified that they did not use the warehouse vehicle that day.

4. Lee Goodwin, Warehouse Supervisor, discussed the vehicle security procedure with all warehouse personnel at a general meeting held on November 22, 1985. Mr. Goodwin later referred to this as the grievant's first formal warning.

5. Performance appraisals and extensive supporting documentation establish ongoing performance difficulties exhibited by the grievant including excessive error rates in counting inventory, partial filling of orders, failure to follow written work assignments and low productivity.

6. Warehouse personnel were permitted to make use of a trailer located at the Bailey Warehouse for lunch breaks, scheduled fatigue breaks and recuperative breaks from the exposure to the elements. The personnel were advised to follow Physical Plant policy regarding work hours.

7. Grievant explained that he was in the trailer on August 4 while copying a tire inventory. Supervisor Goodwin indicates that copies of inventories are not required, that no work is to be completed in the trailer and that the grievant was away from his assigned work area, the warehouse.

### Conclusions of Law

1. As the respondent has failed to establish that grievant was the responsible individual for the unsecured vehicle found on August 5, 1985, that the discussion on November 22, 1985 was directed to the grievant for a specific offense or that he had received a verbal reprimand on any other occasion, Physical Plant Policy B5-124 requires that he receive only a verbal reprimand for the February 11, 1986 offense.

2. The West Virginia University Employee Handbook provides that disciplinary action, including suspension, may be taken whenever the conduct of an employee interferes with the operation of his unit or brings discredit to the University. Suspensions may be imposed in the case of a first serious offense or for repeated minor ones when, in the judgement of the supervisor, proper conduct can be attained without resorting to dismissal.

3. The respondent has established just cause for the suspension.

4. The grievant has failed to establish that the respondent's actions constitute harrassment as defined by W. Va. Code, 18-29-2(n).

Accordingly, the grievance is **GRANTED** to the extent that the warning letter be removed from his file and **DENIED** to the extent that the suspension is affirmed.



Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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

June 26, 1987

Sue Keller

SUE KELLER  
Hearing Examiner