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CAROL WATSON

v.

Docket No. 47-86-376-2

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Carol Watson, is employed by the Randolph County Board of Education as a substitute teacher, a position she has held since 1985. In November, 1986 Ms. Watson filed a grievance alleging that she was improperly terminated from a long-term substitute position. A level one decision was rendered November 10, 1986 and the appeal to level two was waived to level three where, following an evidentiary hearing, the board of education issued a decision on December 22, 1986. Due to technical difficulties a complete transcript of the level three hearing was unobtainable and an evidentiary hearing was conducted at level four on February 9, 1987.

In early September, 1986 the grievant accepted a long-term

substitute teaching position at Midland Elementary School. Several days later she was contacted regarding another long-term substitute position at Harman Elementary School. As it appeared that the position at Harman School would be for a longer time period the grievant accepted the position and assumed her duties as substitute first grade teacher on September 22, 1986.

On October 7, 1986 Ronald Davies, principal at Harman School, "ordered" the grievant to rearrange the chairs from rows to the U-shape formation recommended by the reading program. On October 9, 1986 Principal Davies found the chairs were still in rows and "...informed Ms. Watson that she would put the room in the required shape, or her services would no longer be required as a first grade substitute."

Ms. Watson testified at the level four hearing that she was having some difficulty teaching with the seats in the U-shaped arrangement and found that it did not work well with that particular group of students. She attempted to discuss the matter with Principal Davies on October 9 while he was in the classroom but he refused to listen. Ms. Watson again approached him after school and he informed her that her services as a substitute teacher at Harman School were no longer required. At the level four hearing Principal Davies confirmed that he

would not listen to any explanation of the seating arrangement as the matter was not open for discussion.

Another substitute teacher was called to replace the grievant on October 10 and 13, 1986 and the board of education placed a permanent teacher in the position at a special session held on October 14, 1986. Since that time Ms. Watson has continued to function as a substitute teacher in other schools on a day-to-day basis.

The grievant argues that her dismissal from the position at Harman School was in violation of W. Va. Code, 18A-2-8 which provides that a board may dismiss an employee, a power not granted to school principals, and Randolph County Board of Education Policy EBD which permits teacher transfers only at the conclusion of a semester. The grievant further asserts that the doctrine of promissory estoppel prohibits her dismissal from the position which she accepted based upon a representation that it would be of long-term duration and which required her to forfeit another long-term position in order to accept.

The respondent argues that the grievant was working as a day-to-day substitute and had no substantive or procedural

rights to any position as there was no definite agreement regarding the length of her employment. The board acknowledges an opinion of the State Superintendent of Schools which states that the same substitute is to be used throughout a long-term vacancy but argues that in this case the grievant refused to obey an order from a superior and that insubordination is a ground for termination. In response to the charge that a principal does not have the authority to dismiss an employee, the respondent notes that Superintendent Dunn ratified and approved the principal's action and communicated that fact to the grievant personally. The respondent admits a technical violation of county policy EBD but contends that the action in this case was proper and in line with the spirit of the policy which is to expose the students to the least disruption.<sup>1</sup>

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

#### Findings of Fact

1. Grievant is employed by the Randolph County Board of Education as a substitute teacher.

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<sup>1</sup>Respondent cites two Education Employees Grievance Board decisions in support of its position: Katy Stalnaker v. Gilmer County Board of Education, Docket No. 11-86-056 and Brenda Hagar v. Boone County Board of Education, Docket No. 03-86-242-4. The first case involved a substitute service personnel employee's right to a full time position and the second was based on a substitute teacher's claim of entitlement to sick leave. Neither case is controlling in the present matter.

2. Three days after the beginning of school in September, 1986 the grievant accepted a long-term substitute teaching position at Midland Elementary School. This assignment was to last until October 24, 1986.

3. Several days later Cheryl Corley called the grievant regarding another long-term position at Harman Elementary School. The grievant was given to understand that this position would not conclude until the end of the semester in mid-January, therefore she left the position at Midland and assumed the first grade position at Harman effective September 22, 1986.

4. On September 30, 1986 the grievant was visited by the county reading specialist who noted that for the county adopted reading program the seating arrangement needed to be in a U-shape.

5. On October 7, 1986 Principal Davies discovered the chairs were not properly placed and "ordered" the grievant to properly place the chairs. Two days later he discovered the chairs were still not properly arranged and informed the grievant that the chairs were to be rearranged or that she would be replaced. The grievant attempted to explain the reason for the seating arrangement she was using to Principal Davies at two separate times that day; however, he informed the grievant that the matter was not open for discussion and that her services as substitute teacher were no longer needed at Harman School.

This decision was supported by Superintendent Dunn.

6. Another substitute was hired to replace the grievant for October 10th and 13th and the position was filled with a permanent teacher transferred to Harman High School by the board of education on October 14, 1986.

7. The grievant has continued to be employed as a substitute teacher and has worked on a day-to-day basis since October 9, 1986.

#### Conclusions of Law

1. W. Va. Code, 18A-2-8 provides only that a board of education may dismiss an employee.

2. The board's transfer of another employee to the position as a permanent teacher in October was in violation of Randolph County Board of Education Policy EBD which states that "...after the last board meeting in September, classroom teachers' transfers will be effective only at the beginning date of a new semester...".

3. County boards of education are bound by procedures they properly establish to conduct their affairs. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 908, 912 (W. Va. 1980); State ex rel. Wilson v. Truby. 281

S.E. 2d 231 (W. Va. 1981); Trimboli v. Board of Education, 163 W. Va. 1, 254 S.E. 2d 561 (1979); Dillon v. Board of Education of the County of Wyoming, etc., 351 S.E. 2d 58 (W. Va. 1986); Robert Phares v. Randolph County Board of Education, Docket No. 42-86-232-2.

4. The principal's termination of the grievant as a long-term substitute teacher for her failure to obey an order without first discussing the situation with her was arbitrary and capricious.

5. A board is estopped from the arbitrary termination of a substitute employee from a long-term assignment which had been accepted after forfeiture of another position based on the employee's reasonable reliance on an administrator's statement that she would hold the position until the end of that semester. See: Michael D. Goodwin v. Lewis County Board of Education, Docket No. 21-86-021.

Accordingly, the grievant is **GRANTED** as to the request for compensation through the end of the semester (to be offset by any days worked for the respondent during that time) but **DENIED** regarding the award of interest.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Randolph 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: March 24, 1987

Sue Keller

SUE KELLER  
Hearing Examiner