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WARNE L. FERGUSON

v.

DOCKET NO. 86-365-1

WEST VIRGINIA STATE COLLEGE

DECISION

Grievant, Warne L. Ferguson, was employed by the West Virginia State College as director of the Upward Bound and Special Services programs until June 30, 1986 when his year-to-year contract was not renewed. Mr. Ferguson filed a level one grievance on May 14, 1986 in which he alleged harassment, unequal treatment, sex discrimination, racial discrimination, intimidation, breach of contract and termination of his employment without cause. Following a level two hearing conducted on June 18, June 23 and November 14 the grievance was denied. A level four hearing was conducted on February 13, 1988 and the grievant's final written statement was received on May 31, 1988.

Dr. Ancella Bickley, Vice-President for Academic Affairs, notified the grievant by letter dated April 11, 1986 that his appointment with West Virginia State College would not be renewed for the next fiscal year. Reasons were given by Dr. Bickley in support of this decision in a second letter of April 22. That letter indicated that the position of Director of Upward Bound/Special Services entailed a high level of responsibility which the grievant had failed to exercise appropriately in addition to his exhibition of insubordinate and other unacceptable behavior which caused unnecessary embarrassment to the college and the administration. Six specific charges were addressed by Dr. Bickley in the letter and at the level four hearing.

Those charges and the grievant's responses are as follows:

- 1) That in July 1983 the grievant cursed Dr. James Thomas, his immediate supervisor, and refused to apologize but implied that he would modify his behavior towards the supervisor in the future. The grievant admits some profanity was used in conversation with, but not directed to, Dr. Thomas. According to the grievant Dr. Thomas had informed him that a proposed tennis clinic could not be organized to which the grievant responded "hell" or "damn" in reference to the administration.

As the language was not directed to an individual he would not apologize.

2) That several meetings and counseling sessions had been held with the grievant concerning absences from his work station during the business day. As a result the grievant was directed to implement a log sheet for the Upward Bound employees to sign in and out when leaving their work area. The grievant failed to utilize this log sheet or to respond to the charge of unauthorized absences for which a fifteen day suspension was imposed. The grievant notes that at some point during this time a political columnist for the "Charleston Gazette" reported to have seen him playing golf during business hours. The grievant admits that he did play golf at various courses after attending professional meetings or recruiting when he could not get back to his office before the end of the work day and that he frequently visited a course in close proximity to campus during his lunch hour where he would practice putting. (T. 8-9) The grievant testified at the level four hearing that President Thomas Cole was aware of these activities and had advised the grievant to "cover himself" which was not his style. He also argues that his duties required him to be out of the office frequently as evidenced by travel expense forms. He did not sign the log sheet because he did not believe that it applied to him as an administrator. (T. 8-9)

3) The grievant was absent without prior approval on July 24, 1985 while the Upward Bound students were in residence. No one was formally appointed to assume his responsibilities nor had he left a telephone number where he might be reached. The grievant asserts that on the day in question he had called his office and no one had answered. He then asked the girls' counselor, whom he had left in charge, to tell his (grievant's) secretary that he would take the day off as annual leave. He later called the office and confirmed this with a student worker. His secretary then completed a leave request form and placed it in his box for his signature upon return. The grievant admits that he did not receive prior approval to take the leave as required but notes that he could have just as well taken a day of sick leave and that the point was that his office knew that he was taking the day off. (T. 12)

4) During the grievant's absence on July 24 difficulties erupted among the Upward Bound students and the grievant could not be located. The grievant asserts that the usage of his leave time is none of the administrators business and that he did not have to account for his whereabouts. He received a message that Dr. Thomas had left at his home but did not return the call. (T. 13)

5) As a result of the aforementioned incident on July 24 Dr. Thomas instructed the grievant to withdraw (with pay) the head counselor from the dormitory for the final night of the program. The grievant not only ignored that directive but invited the counselor to return to the dormitory, which she did. The grievant admits he did not expel the counselor as Dr. Thomas had not properly written up a report of the incident establishing no clear cause for her dismissal.

6) The grievant failed to attend a meeting with Dr. Thomas on July 29 regarding the July 24 incident. Dr. Thomas was required to summon the grievant by telephone at which time the meeting was held. The grievant states that he did not appear at the meeting as directed because the letter of notification was thrown on his desk with many others and he did not see it for "a couple of months ". (T. 15)

In August 1985 the grievant took an extended medical leave. By letter dated September 16, 1985 Dr. Bickley advised the grievant that the incidents of insubordination and unauthorized absence on July 24 - 25 remained unresolved and that an interim director would be appointed for the Upward Bound/Special Services programs. The grievant did not return to work until April, 1986 at which

time he was assigned as a lecturer and assistant tennis coach for the remainder of that contract year.

The respondent has shown the grievant to have acted in an insubordinate manner and in willful neglect of his duties. To a great extent the grievant has admitted to the incidents cited by the respondent. However, of greater importance is the fact that the grievant was not tenured but employed on an annual basis. While the grievant may have accrued some entitlement or interest in his continued employment, that interest only existed so long as his performance was satisfactory. The respondent determined, based upon good cause, that the grievant's performance was no longer acceptable and simply did not renew his contract.¹

In addition to the foregoing narration it is appropriate to include the following specific findings of fact and conclusion of law.

¹Due to this finding it is not necessary to address the counter-charges of the grievant. The issues of racial and sexual discrimination were previously adjudicated by the West Virginia Human Rights Commission which issued a determination of No Probable Cause to believe the respondent engaged in the alleged discrimination.

Findings of Fact

1. The grievant was employed by West Virginia State College as Director of the Upward Bound/Special Services programs for approximately twelve years.

2. The grievant's position was primarily or entirely federally-funded and was authorized on an annual basis. Accordingly, the grievant was issued a contract of employment for a period of one year at a time.

3. The grievant's behavior began deteriorating in 1983 when he used foul language during a conversation with his supervisor in which he was expressing his displeasure with the lack of progress being made regarding a tennis clinic.

4. Also in 1983 it was brought to the attention of the administration that the grievant was away from his worksite during business hours. According to the grievant, a local columnist made reference to his playing golf during the day. He admits that if he could not return to his office by the end of the day he would take advantage of a nearby golf course and that he would practice putting during his lunch hour.

5. The grievant was directed to devise a log sheet to indicate the whereabouts of Upward Bound/Special Services personnel during working hours. The log was implemented however, the grievant did not sign in and out as he believed himself exempt.

6. The grievant's failure to utilize the log sheet and his continued absences from his work station resulted in a fifteen day suspension without pay. The grievant did not accept the opportunity to discuss the situation with his supervisor prior to imposition of the suspension.

7. Travel expense forms indicate that the grievant's duties require he be out of his office at times but does not show the number of hours required to complete the duties. Many trips are local being twenty miles or less.

8. The grievant took unauthorized annual leave on July 24, 1985 while the Upward Bound students were on campus. The grievant failed to secure approval prior to taking the leave therefore his supervisors were not aware of his absence, knew of no one who had been left in charge, or how to contact the grievant.

9. An incident occurred between the students and the head counselor, who had apparently read their evaluations, was displeased and was subjecting them to verbal abuse and threats of physical violence during the grievant's absence. The grievant could not be located and a message was left at his home. The grievant admits that he received the message from his nine year old daughter but chose not to return the call because it was too late in the evening.

10. As a result of the incident of July 24 the grievant was directed to release the counselor, with pay, for the last night of the program. The grievant refused stating he had no reason for the action.

11. The grievant was directed, by letter, to appear in a supervisors's office the following Monday, July 29, to discuss the incident of July 24. He attributed his failure to appear on the fact that he did not see the letter which was "lost" among other letters on his desk.

12. The grievant took an extended medical leave from August 1985 until April 1986. An interim director of the Upward Bound/Special Service programs was appointed in September 1985.

13. Upon his return to work in April the grievant was assigned as a lecturer and assistant tennis coach. There was no change in his compensation.

14. The grievant's contract of employment expired on June 30 and was not renewed by the respondent.

Conclusion of Law

The respondent has established good and just cause in support of the decision to not renew the grievant's contract of employment after June 1986.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha 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: July 21, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER