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ELEANOR SELL

V.

DOCKET NO. 01-88-019-2

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievant, Eleanor Sell, was employed by the Barbour County Board of Education in 1979 and continuously served as a regular, full-time bus operator prior to board of education action on February 2, 1988 terminating her employment. An appeal was filed directly to level four where a hearing was conducted on March ten and eleven; final written statements were submitted by April 4, 1988.

By letter of January 25, 1988 F. Edward Larry, Area Administrator, notified Superintendent William Phillips that it had been brought to his attention that the grievant had knowingly let two students off the bus on the way to the vocational

center and picked them up on the trip back to Philip Barbour High School on January 19, 1988.¹ This action resulted in the students missing all of their vocational education classes that day. Mr. Larry recommended that disciplinary action be taken against the grievant. By letter of the same date Superintendent Phillips advised the grievant that she was suspended from her duties effective that evening and that he would recommend her dismissal to the board of education based upon a charge of willful neglect of duty. At a meeting held on February 2 the board of education conducted a hearing at which time three charges of willful neglect of duty were made by the administration. In addition to the incident of January 19 she was also charged with having made an unauthorized stop on January 18 at Volga, West Virginia allowing students to disembark without parental or administrative permission and leaving said students unattended and vulnerable to potential harm, thereby aiding and abetting student truancy, violating transportation regulations and school board policies. The third charge was that on January 25 the

¹These incidents occurred during a noon run from Philip Barbour High School to the Tri-County Vocational Center and the return evening trip.

grievant condoned the disrobing of students and did not take the required disciplinary action upon the students involved or report the incident to her supervisors.

The board of education asserts that the actions upon which the charges are based were in violation of the following statutory regulations and policies:

W.Va. Code, 18-8-7 which makes any person who induces any child unlawfully to absent himself from school to be guilty of a misdemeanor.

W.Va. State Department of Education Regulations which state that a bus operator shall not stop and pick up or discharge passengers except at regularly designated stops.

Barbour County Board of Education Policy E-20 which states that the bus operator is in complete charge of the bus and students while they are on the bus and includes the discipline to be administered for student misconduct. Policy G-70 which states the duties and responsibilities of a bus operator which includes the established procedures in maintaining discipline.

(An attachment to this policy indicates that a copy was provided and explained to the grievant.) Policy J-16, the discipline

policy which includes violations committed while on a school bus. Policy E-16 which states that the board expects all employees of the transportation system to be fully acquainted with all county and state rules and regulations governing the transportation of pupils. Policy J-21 which prohibits the hazing of students and places a responsibility on school personnel to be alert to eliminate any possible infraction of this regulation.

At the level four hearing two students testified that they and a third student disembarked from the bus prior to its arrival at the vocational center and that they played pool all afternoon at the Volga store. They got back on the bus on its return trip to Philip Barbour High School.

Five students testified that on another day the grievant allowed them to leave the bus at the Volga store where they played pool until the grievant picked them up on the return trip.

Donna Shaffer who is employed as a clerk at H & A Grocery in Volga testified that the students were in the store playing pool both days. Ms. Shaffer stated that they were already there when she arrived and that she saw them get back on the bus later in the afternoon.

Numerous students appeared and testified as to their involvement in the disrobing incident of January 25. According to the students involved, most, if not all, of the clothing was removed from two of the students and thrown to the front of the bus. One of the students testified that he went to the front of the bus and retrieved his clothing. Both students who were disrobed indicated the grievant was aware of the situation as she directed the students to return the clothes of the individual who refused to walk to the front of the bus to collect them and offered the other student a rag to wipe his feet when he did reclaim his clothing.

Both Ed Larry, who serves as the Director of Transportation and Garry Tenney, principal at Philip Barbour High School testified they have worked with the grievant on discipline problems in the past but that she had not reported these incidents to them.

The grievant denies that any students were let off at the Volga store on January 18 or 19 or at any other place or time and asserts that if any disrobing occurred it was not brought to her attention. She argues that she would have nothing to gain by allowing such actions but on the contrary had a great deal to lose.

The grievant argues that her disputes with Superintendent William Phillips regarding salary and overtime pay may have led to the present action. Additionally, she attacks the testimony of the students by providing detailed information regarding past disciplinary action she has taken with nearly all of the students involved and contends that this may be retaliation on their part. She questions the students' credibility by pointing out discrepancies in the testimony as to what happened and when. Although she makes no direct allegation of impropriety by the administrators, the grievant does note that the students were instructed that their cooperation in the investigation would be a factor in the reduction of their suspension. The grievant's final argument is that the termination was in violation of State Board of Education Policy 5300 which requires that deficiencies be brought to an employee's attention through regular evaluation and that a period of improvement be granted to allow the employee the opportunity to correct the action.

The evidence offered in this matter overwhelmingly indicates that the three incidents which constituted the charges for dismissal did occur. While the compiled testimony of the students did indicate their uncertainty as to specific dates and contained

some discrepancies as to events, these details were of minor consequence. More importantly their testimony consistently indicated that the actions did occur and who was involved. They recited essentially the same series of events on the days in question.

There is no evidence to support the allegations that the students were acting in retaliation for past disciplining by the grievant or that they were lying to get a reduced suspension. Certainly the disrobed students or the store clerk had nothing to gain as they were not punished. Neither does it appear that the dismissal was the result of any retaliation by the administration for past grievances regarding salary disputes as the grievant herself confirmed that Superintendent Phillips had told her that if she were entitled to any additional salary she would receive it.

The grievant's actions of January 1988 did not constitute correctable misconduct triggering the application of State Board of Education Policy 5300. Aiding and abetting students in truancy and allowing the hazing of students under her care and control goes beyond mere improper conduct and not only allows the students

to be physically endangered but indicates a flagrant disregard for laws, rules and regulations establishing a negative example for children of impressionable years by an employee of the board of education. When an employee who is knowledgeable of the duties and responsibilities of her position and has demonstrated that knowledge by past practice willfully neglects to perform these duties resulting in harm to the students, that behavior is not simple misconduct and is not correctable.

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

Findings of Fact

1. The grievant was employed by the Barbour County Board of Education as a regular full-time bus operator.

2. The grievant was dismissed from her position by the board of education on February 2, 1988 based on three charges of willful neglect of duty.

3. The incidents upon which the charges were based occurred on January 18 and 19 when the grievant made unauthorized stops during a mid-day run from Philip Barbour High School to the Tri-County Vocational Center allowing students to play pool during the afternoon and returning them to the high school in the

evenings. The third incident consisted of several students disrobing two of their classmates.

4. The testimony of the students involved in the truancy was consistent that the grievant had let them off of the bus on the way to the vocational center, that they had played pool all afternoon and that the grievant returned them to the high school.

5. An employee of the store where the students played pool confirmed their presence during the school day.

6. The testimony of the students involved in the disrobing was consistent that it did in fact occur to two individuals.

7. The grievant did not report the incidents of January 18, 19 or 25 to her supervisors.

8. There is no evidence to indicate that the charges were made by the students in retaliation against the grievant for past discipline which she had imposed.

9. There is no evidence that the dismissal was carried out in retaliation for the grievant's involvement in past grievances or salary disputes.

10 There is no indication that the students perjured their testimony regarding the incidents in order to escape discipline as the suspensions were merely reduced and not waived.

11. The grievant was knowledgeable about administering discipline to unruly students as evidenced by her past practice.

Conclusions of Law

1. A board of education may suspend or dismiss any person in its employment at any time for willful neglect of duty if such charges are proven by a preponderance of the evidence. W.Va. Code, 18A-2-8; Shillingburg v. Mineral County Board of Education, Docket No. 28-86-135-2; Garcia v. Marshall County Board of Education, Docket No. 25-87-274-3; Hastings v. Ohio County Board of Education, Docket No. 11-88-016-3.

2. Actions contrary to laws, rules and regulations known to an employee as evidenced by his past practice and which is patently inappropriate and is conducive to harm of students in the employee's care is action beyond mere misconduct and is not subject to State Board of Education Policy 5300.

3. A public school employee may be immediately discharged for misconduct in appropriate circumstances as an improvement period applies only to conduct that is correctable. Mullins v. Kiser, 331 S.E. 2d 494 (W.Va. 1985).

4. The board of education has established by a preponderance

of the evidence that the grievant acted in willful neglect of her duty to safely transport students.

Accordingly, the grievance is DENIED.

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

May 18, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER