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RICHARD TAYLOR

v.

Docket No. BOR2-87-310-1

MARSHALL UNIVERSITY

D E C I S I O N

Grievant, Richard Taylor, is employed by Marshall University as a Building Service Worker I. On October 16, 1987 Mr. Taylor filed a request for a Level I conference with his supervisor because he had received a five day suspension. He subsequently filed another grievance alleging he had been denied representation at the Level I conference. A Level II hearing on this grievance was held on November 11, 1987 and a decision adverse to grievant was rendered on November 12, 1987 by grievance evaluator, Mr. William Shondel, Director of Purchasing and Materials Management. By letter dated November 12, 1987, Mr. Dale Nitzschke, President of Marshall University, affirmed Mr. Shondel's findings. A Level IV appeal was filed November

20, 1987 and an evidentiary hearing was held on January 22, 1988.

After grievant had received a letter of suspension dated October 13, 1987 from David Scites, Assistant Manager of Housing, his representative, Charles Sexton, forwarded a memorandum dated October 16, 1987 to grievant's supervisor, Barbara Atkins, requesting a Level I conference pursuant to W.Va. Code, 18-29-4. (Grievant's Exhibit No. 2) On the morning of October 19, 1987 Ms. Ida Connor, Assistant Supervisor, asked grievant to go to Ms. Atkins' office for a meeting. Mr. Taylor reported there and Ms. Atkins and Mr. Scites were present and a five minute meeting was held. (T.__) Grievant contends this was the Level I conference that he had requested through his representative and during this meeting he asked that he be allowed to have his representative present and this request was denied.

Marshall University takes the position that W.Va. Code, 18-29-3 does permit a grievant to have representation at all stages of the grievance procedure but Mr. Taylor was merely called to Ms. Atkins' office on October 19, 1987 so he could be informed of the choice between two processes for pursuing the grievance over his suspension and the meeting was not a Level I conference requiring representation. The University further cited communication from grievant to the effect that he was illiterate as the sole reason for the meeting in which he was verbally informed of the two options.

Nearly all the evidence presented at the Level IV hearing supported the University's position. Ms. Atkins and Mr. Scites both testified they were not sure after receiving grievant's request for a Level I conference on October 16, 1987 whether he was proceeding under Marshall University grievance procedure or the procedure provided by W.Va. Code, 18-29-4 and when they met with grievant Ms. Atkins merely read a memorandum which informed him of these two procedures. (T.___) According to Mr. Scites grievant had informed them of his difficulty reading and when the memorandum was read, Ms. Atkins furnished him a copy. (T.___) According to Ms. Atkins both she and Mr. Scites explained a representative was not necessary as they were not there to discuss the suspension and she later that day forwarded to grievant a memorandum scheduling the Level I conference for October 20, 1987 at 3:45 p.m. (Employee's Exhibit No. 2)

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant, Richard Taylor, is employed by Marshall University as a Building Service Worker I.
2. By letter dated October 13, 1987 grievant was notified he would be suspended for five (5) days.

3. By memorandum dated October 16, 1987 grievant made a request to his supervisor, Ms. Barbara Atkins, for a Level I conference on his suspension.

4. On the morning of October 19, 1987 grievant was called to the office of Ms. Atkins and he was verbally informed of the two available grievance procedures and given a memorandum to that effect.

5. The meeting of October 19, 1987 was not a Level I conference within the meaning of W.Va. Code, 18-29-4 and grievant was not entitled to have representation present.

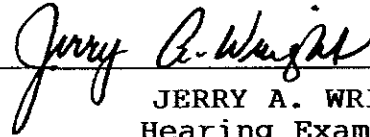
CONCLUSIONS OF LAW

1. A grievant must prove allegations contained in a grievance by a preponderance of the evidence. Wade v. Marion County Board of Education, Docket No. 24-86-248-3; Harrison v. Kanawha County Board of Education, Docket No. 17-87-082-2.

2. The grievant, Richard Taylor, has failed to prove by a preponderance of the evidence that he was denied representation at any stage of the grievance procedure relating to his five (5) day suspension.

Accordingly the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Cabell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

A handwritten signature in cursive script, reading "Jerry A. Wright", is positioned above a horizontal line.

JERRY A. WRIGHT
Hearing Examiner

DATED: May 13, 1988