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WILLIAM MCKINNEY

v.

DOCKET NO. BOR1-86-285-2

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, William McKinney, is employed as a warehouse attendant assigned to the West Virginia University (University) Physical Plant. Mr. McKinney filed a level one grievance in August 1986 in which he alleged that a five day suspension had been imposed in violation of University personnel policies, was without just cause and constituted harassment. Both parties agreed that the matter could be submitted for decision at level four based upon relevant parts of the level two transcript and record with supplemental testimony. A level four decision was issued June 26, 1987. Upon appeal to the Circuit Court of Monongalia County, Judge Larry V. Starcher remanded the matter to level four by Order dated January 11, 1988 for further development of the record. A complete transcript of the level two hearing was submitted on October 13, 1988 and proposed

findings of fact and conclusions of law were received by December 27, 1988.

The record establishes that the grievant was first employed as a warehouse attendant beginning August 5, 1985. Due to less than satisfactory performance the six-month probationary period was twice extended for an additional three month period. By letter dated August 7, 1986 Warehouse Supervisor Lee Goodwin advised the grievant that his probationary period had been completed but that his position remained tenuous based upon his having received a warning letter regarding vehicle security, (poor) performance progress reports and an unauthorized absence from his work area on August 4. Mr. Goodwin noted that termination could have occurred but that the grievant would be given one final opportunity to improve his performance with only a five day suspension being imposed. The grievant was advised that this would be a final warning letter and that his failure to follow policies and/or improve his performance to a satisfactory level would result in the termination of his employment.

Mr. Goodwin testified at level two that the grievant had experienced numerous problems with job performance from the time he began work. According to Mr. Goodwin the grievant failed to complete assignments, worked on chores not assigned to him, did not accurately complete tasks such as counting inventory or filling orders accurately and did not seek assistance when he could not complete a task (T.pp

40-41, 82-87). In February 1986 a vehicle which had last been used by the grievant was found unlocked. This incident resulted in the grievant's receiving formal discipline, a warning letter. In August 1986 Mr. Goodwin and Al Ingle, Assistant Director of the Physical Plant, visited the Bailey Glass Warehouse (grievant's assigned work area), which they found locked. They remained at the warehouse for approximately twenty-five minutes at which time they proceeded to the adjacent trailer. Both men testified that the trailer was also locked. Upon entering they found the grievant in the process of turning off the air conditioner (T. pp. 70-72).¹

The University asserts that the trailer was to be used by employees only during lunch and fatigue breaks and that the grievant was discovered there approximately twenty minutes after his lunch break (Grievant's Exhibit 2). The grievant states that he had been working on a tire inventory until he went to lunch at 1:45 p.m. As he did not have the proper forms he had written the information on a legal pad and at the conclusion of his lunch break, he began transferring the information to the proper forms. The grievant states that he was completing this task in the trailer as that was where the forms were stored and because it had been

¹Mr. Goodwin broadly implies his belief that the grievant was "loafing" in the trailer (T.p. 146).

his understanding that the trailer was to be used as needed (T. p. 221).

The University presented the testimony of Robert Suppa, Senior Warehouse Attendant, and William Graham, Warehouse Attendant, that the trailer was to be used only for lunch and rest breaks. The grievant offered the testimony of co-worker Jim Harvey who stated that he had occasionally completed forms in the trailer (T.p. 187).

The University argues that the suspension was imposed in compliance with the Employee Handbook which provides that disciplinary action, including suspension, may be taken whenever the conduct of an employee interferes with the operation of his unit, be it a first offense of serious nature or repeated minor offenses. It asserts that the grievant's less than satisfactory work history, which included an instance of failing to secure a Physical Plant vehicle, and the failure to adequately perform or complete his regular duties compounded with the unauthorized absence from his assigned work area established just cause for the suspension. The grievant argues that the suspension was improper as it was based upon a warning letter which had been erroneously issued and because he was not away from his assigned work area as he understood it.²

²The university concedes that it failed to prove that the grievant had previously received a verbal warning regarding vehicle security and therefore the warning letter
(Footnote Continued)

Physical Plant policy concerning use of the trailer was issued to all warehouse personnel by Mr. Goodwin in a memo dated April 10, 1986:

All warehouse personnel and others, when doing routine stocking and inventory or other work at the Bailey Warehouse have available to them the trailer for lunch breaks, scheduled fatigue breaks, and periododic (sic) recuperative (sic) breaks from the elements when necessary.

The trailer has a restroom, thermostatically controlled heat, and a cold water fountain. Please follow Physical Plant policy regarding work hours. But also utilize the trailer as needed.

While the grievant liberally interprets the last sentence of the memo to permit completion of paperwork in the trailer, his argument is not persuasive. The memo sets forth very specific examples of when and how the trailer is to be used - basically as an employee lounge. The wording of the memo does not state, or even imply, that any work could be done there. Although some forms are stored in the trailer the employees had been given a box of supplies (pencils, pens, forms, etc.) to be carried with them while on duty (T. p. 198). The grievant should have had the proper form available in his work box and if he did not, presumably he could have gone to the trailer to get one at the time he was doing the inventory. Alternatively, he could have gone back to the warehouse and copied the information after his lunch break had it not been possible to

(Footnote Continued)
issued regarding the incident of February 11, 1986 was improper.

secure a form earlier. The grievant acted unacceptably by essentially duplicating the inventory sheet which should have only been completed once and by remaining away from his assigned work area, the warehouse. This unsatisfactory performance by the grievant establishes just cause for the suspension.

In addition to the foregoing narration 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. The University concedes that the warning letter was improperly issued as a result of the February 11, 1986 incident involved an unsecured vehicle.

4. 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.

5. 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.

6. The grievant was discovered in the trailer on August 4, 1986 at a time which was neither his scheduled lunch or rest break.

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 University has failed to establish that grievant had previously received a verbal reprimand for a specific offense involving an unlocked vehicle, 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 University has established just cause for the suspension.

4. The grievant has failed to establish that the University's actions were in violation of any personnel policies or constitute harassment 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) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court

DATED: February 28, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER