

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**LAURA C. BARRETT,
Grievant,**

v.

Docket No. 2017-2060-BerED

**BERKELEY COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Laura C. Barrett, filed this action directly to Level Three on April 13, 2017, following the termination of her employment by the Berkeley County Board of Education. Her employment as a bus operator was terminated after she was caught engaged in a violent fist fight with her sister-in-law on the stairs of her bus, and committed other safety violations. The incidents of the misconduct are generally undisputed, having been captured on video. Grievant seeks reinstatement with compensation for lost wages and all benefits. Grievant also seeks expungement of her record of all references of her termination.

The undersigned conducted a Level Three hearing on November 3, 2017, in the Grievance Board's Westover office. Grievant appeared in person and by her counsel, Joe Spradling, West Virginia School Service Personnel Association. Respondent appeared by its counsel, Kimberly S. Croyle, Bowles Rice LLP. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on December 14, 2017.

Synopsis

Grievant's bus operator contract was terminated by Respondent on April 10, 2017. The termination followed a hearing held before the Berkeley County Board of Education on multiple charges of misconduct against Grievant brought by the County Superintendent. The record established that Grievant had been involved in incidents of unprofessional conduct. Grievant used threatening and profane language directed at another adult in the presence of school aged children. Grievant engaged in a physical altercation with her sister-in-law on the bus stairwell and then, once the fight was interrupted by her husband, she resumed fighting and again attacked her sister-in-law. As a result, the Respondent proved by a preponderance of the evidence that it properly exercised its authority pursuant to W. Va. CODE § 18A-2-8 in terminating Grievant's bus operator's contract.

The following Findings of Fact are based upon the record of this case.

Findings of Fact

1. Grievant was employed as a regular bus operator with Respondent since 2006. Throughout the course of her employment, Grievant has received satisfactory evaluations.
2. Grievant knows and understands the regulations, policies and traffic laws that apply to bus operators.
3. On March 30, 2017, Grievant attempted to block a public roadway with her school bus; failed to follow emergency procedures when she exited the school bus while it was running; used threatening and profane language directed at another adult in the presence of school-aged children; Grievant engaged in a physical altercation with her

sister-in-law on the bus stairwell and then, once the fight was broken up by her husband, she resumed fighting and again attacked her sister-in-law.

4. Grievant failed to report the incident to her supervisor, Transportation Director J.R. Hollen and, when confronted by him, was not forthcoming as to what had occurred. Grievant told her supervisor that she did not report the incident because it occurred in her driveway.

5. When Director Hollen attempted to remove the hard video drive from the Grievant's bus, he had a difficult time doing so and later discovered that it was wet. Director Hollen had the bus mechanics look at and disassemble the parts of the bus that would have had to have leaked for the hard video drive to get wet. No evidence of a leak was found, leading Director Hollen and the mechanics to conclude that someone had attempted to tamper with the hard video drive.

6. In conducting his investigation, Mr. Hollen discovered that Grievant had committed numerous safety violations in the last 30 days, including that Grievant had failed to perform student safety checks or had students perform those for her.

7. With respect to the first fight in which Grievant engaged, the bus video shows that Grievant pulled her bus left of center on a public road, blocking the path of what has been identified as her sister-in-law's car.

8. The video then shows a woman approaching the bus, Grievant putting her bus in park, leaving the bus, and then physically fighting the woman. Even after Grievant is pulled off of the woman by her husband, Grievant breaks away from her husband's hold and again attacks her sister-in-law. Grievant physically battered the other woman and repeatedly cursed her in front of their children.

9. Superintendent Arvon considered a number of different disciplinary actions before concluding that termination was appropriate, given the totality of the circumstances.

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Pursuant to West Virginia Code, school personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a nolo contendere to a felony charge. W. VA. CODE § 18A-2-8; *Kanawha County Bd. of Educ. v. Sloan*, 219 W. Va. 213, 632 S.E.2d 899 (2006).

The authority of a county board of education to terminate an employee must be based on one or more of the causes listed in W. VA. CODE § 18A-2-8 and must be

exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975); *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991).

Respondent contends that Grievant's conduct on March 30, 2017, constitutes insubordination, in that Grievant used threatening and profane language directed at another adult in the presence of school-aged children. Grievant engaged in a physical altercation with her sister-in-law on the bus stairwell and then, once the fight was interrupted by her husband, she resumed fighting her sister-in-law. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002)(*per curiam*). See *Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989). "[F]or there to be 'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and (c) the order (or rule or regulation) must be reasonable and valid." *Butts, supra*.

Grievant offered no meaningful defense to the allegations against her. In fact, Grievant admitted to her unprofessional behavior toward her sister-in-law. The State Board of Education's Employee Code of Conduct directs all West Virginia school employees to exhibit professional behavior, maintain a safe and healthy environment, free from

harassment and intimidation, create a culture of caring through understanding and support, and demonstrate responsible citizenship by maintaining a high standard of conduct, and self-control. Respondent established, by a preponderance of the evidence, that Grievant failed to comply with the Employee Code of Conduct and that her failure to comply was intentional. The record of this case clearly established Grievant's conduct met the elements of insubordination.

Grievant's conduct may also be characterized as willful neglect of duty, which is conduct constituting a knowing and intentional act, rather than a negligent act. *Williams v. Cabell County Bd. of Educ.*, Docket No. 95-06-325 (Oct. 31, 1996); *Jones v. Mingo County Bd. of Educ.*, Docket No. 95-29-151 (Aug. 24, 1995); *Hoover v. Lewis County Bd. of Educ.*, Docket No. 93-21-427 (Feb. 24, 1994). Willful neglect of duty encompasses something more serious than incompetence. *Bd. of Educ. v. Chaddock*, 183 W. Va. 638, 398 S.E.2d 120, 122 (1990); *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996).

Respondent met its burden of proof by a preponderance of the evidence and demonstrated that Grievant's behavior is such that she may be disciplined, up to and including termination. The record of this case demonstrates that Respondent correctly exercised its authority pursuant to W. VA. CODE § 18A-2-8 in terminating Grievant's bus operator contract in a manner that was not arbitrary or capricious. The undersigned concludes that Respondent did not abuse its substantial discretion in disciplinary matters when it determined that Grievant's conduct outlined above warranted termination.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. Pursuant to West Virginia Code, school personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a nolo contendere to a felony charge. W. VA. CODE § 18A-2-8; *Kanawha County Bd. of Educ. v. Sloan*, 219 W. Va. 213, 632 S.E.2d 899 (2006).

3. The authority of a county board of education to terminate an employee must be based on one or more of the causes listed in W. VA. CODE § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975); *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991).

4. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002)(*per curiam*). See *Riddle v. Bd. of Directors, So. W. Va. Community College*,

Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989).

5. Willful neglect of duty encompasses conduct constituting a knowing and intentional act, rather than a negligent act. *Williams v. Cabell County Bd. of Educ.*, Docket No. 95-06-325 (Oct. 31, 1996); *Jones v. Mingo County Bd. of Educ.*, Docket No. 95-29-151 (Aug. 24, 1995); *Hoover v. Lewis County Bd. of Educ.*, Docket No. 93-21-427 (Feb. 24, 1994).

6. Respondent has proven by a preponderance of the evidence that Grievant engaged in conduct constituting insubordination and willful neglect of duty.

Accordingly, the grievance is **DENIED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Order. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *a/so* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

Date: January 16, 2018

Ronald L. Reece
Administrative Law Judge