

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**THOMAS RATLIFF,
Grievant,**

v.

Docket No. 2018-1158-GSC

**GLENVILLE STATE COLLEGE,
Respondent.**

DECISION

Grievant, Thomas Ratliff, was employed by Respondent, Glenville State College, as the Executive Director of the Physical Plant for the college. Mr. Ratliff filed an expedited grievance¹ dated April 27, 2018, alleging that he was dismissed without good cause. He is seeking to be reinstated with back pay and interest as well as restoration of all benefits. A Level Three hearing was initially set for August 30, 2018.

Respondent filed a Motion to Dismiss dated July 12, 2018, essentially alleging that Grievant was not dismissed from his position. Rather Respondent alleges that Grievant voluntarily resigned rendering this grievance moot. Attached to the motion was a copy of a letter from the Glenville State College President to Grievant stating in pertinent part:

The purpose of this correspondence is to formally accept your resignation from Glenville State College pursuant to your representations to John Beckvold in a meeting on April 18, 2018, wherein you declined the job offer of Special Assistant to the President and turned in your Glenville State College ID, purchasing card, and keys.

Grievant answered Respondent's motion with a Response dated July 31, 2018, asserting that he did not resign. Grievant also alleged that Respondent violated a written

¹ See W. VA. CODE § 6C-2-4(a)(4), allowing employees to file a grievance directly to Level Three under certain circumstances.

agreement that Grievant would be allowed to take a previous job if unable to perform the Executive Director position.

By Order dated August 10, 2018, the undersigned found that there were sufficient material facts in dispute regarding the resignation for the matter to go to hearing and denied the motion to dismiss. Respondent was specifically permitted to raise the issues set out in the motion at the level three hearing. After a continuance for good cause a Level Three hearing was held at the Charleston office of the West Virginia Public Employees Grievance Board on September 17, 2018. Grievant personally appeared and was represented by Jeffery G. Blaydes, Esquire. Respondent appeared through Tracy L. Pellett, President, Glenville State College and was represented by Dawn E. George, Assistant Attorney General. This matter became mature for decision on October 23, 2018, upon receipt of the last Proposed Findings of Fact and Conclusions of Law submitted by the parties.

Synopsis

Respondent asserts that Grievant voluntarily resigned his employment and Respondent accepted the same by letter dated April 19, 2018. Grievant counters that he did not resign from his employment. Alternatively, Grievant asserts that if it is found that his resignation was voluntarily given, that Grievant rescinded the same before Respondent had clearly communicated acceptance of the same or acted in good faith reliance upon the resignation. Grievant further asserts that he had contractual reversionary rights to move from his at-will position to a classified position and that these rights were denied. Given the totality of the evidence, Grievant proved that he did not

resign from his position with Glenville State College. Therefore, the grievance is **GRANTED.**

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Thomas Ratliff, Grievant, has been employed by Respondent, Glenville State College ("GSC") for eleven years. Grievant started as a Project Manager in 2007. He was promoted to Director of Maintenance in 2009, and Director, Physical Plant II in 2010. (Grievant Exhibit 4).

2. By appointment letter dated December 11, 2011, Grievant was promoted to the position of "Executive Director of Physical Plant" effective that date. The appointment letter was signed by then GSC President, Peter B. Barr, and Grievant. This type of letter is customary in establishing employment contracts in colleges.² (Grievant Exhibit 2).

3. The 2011 appointment letter contained the following provision:

In the event that you are unable to fulfill the responsibilities of this appointment, then you will be given the opportunity to retain your previous title and responsibilities as Director of Physical Plant II, a classified, 12-month, exempt position.³

The parties referred to this as "reversion rights." Such provisions are not the norm for most higher education contracts but are not uncommon.⁴ By taking this position, Grievant left a classified position for a non-classified position.

² Testimony of GSC President, Tracy L. Pellett.

³ Grievant Exhibit 2.

⁴ Testimony of GSC President, Tracy L. Pellett. President Pellett noted that any employee would love to have reversion rights.

4. Under this contract, when Grievant left a classified position in December of 2011, he received the reversion right to return to a classified position with Respondent. This contractual right has not been altered or amended.

5. In June of 2017, former President Barr amended Grievant's position and added responsibility for operational support between Respondent, as well as the dining services and bookstore. Grievant signed a new agreement as amended. The agreement included a pay raise and reiterated the reversion rights set out in the December 11, 2011 contract. (Grievant's Exhibit 1).

6. Tracy L. Pellett started his tenure as President of Glenville State College on July 1, 2017. President Pellett told Grievant that he could decline the offer extended by prior President Barr or President Pellett would dismiss Grievant and give him a new contract the next day without the additional pay and duties.⁵ Grievant declined the offer from President Barr and remained employed under the December 11, 2011 contract.

7. President Pellett initiated a meeting with Grievant on April 17, 2018. At the meeting President Pellett informed Grievant that he intended to change Grievant's job at GSC. The title of the new job was Special Assistant to the President. The position was to commence on April 17, 2018 and continue through July 31, 2018. It was a non-classified, will and pleasure, position which did not include reversion rights. (Respondent Exhibit 1).

8. In the new position Grievant would be overseeing capital improvement projects which were underway at the college that were anticipated to be completed at or

⁵ Apparently former President Barr had given a few employees similar salary increases during his final month of employment with the college. President Pellett found the action to be repugnant when the college was suffering from financial problems. He believed that Dr. Barr was rewarding favored employees on his way out.

near the end of the offered contract term. President Pellett also informed Grievant that he would no longer supervise the physical plant and staying in that position was not an option. He advised Grievant that GSC Chief Financial Officer (“CFO”), John Beckvold,⁶ and Chief Human Resources Officer (“HR Chief”), Krystal Smith, were meeting with the physical plant staff at that time to inform them that Grievant was taking a new position and would no longer be their supervisor.

9. President Pellett was expecting Grievant to make an immediate decision however, Grievant requested to have a few days so he could discuss the situation with his family. President Pellett insisted that Grievant give him an answer by 8:00 a.m. the following day notwithstanding the following provision in the appointment letter:

I ask you to confirm your acceptance by signing, dating and returning this offer to the Office of the President within fifteen days from the date shown below my signature. [April 16, 2018].

(Respondent Exhibit 1).

10. At the end of the meeting, President Pellett directed Grievant not to return to his office. Grievant went to his wife’s office. He was very emotional because he was not expecting this action and felt very committed to GSC.

11. Rather than meet with President Pellett at 8:00 a.m. the following morning, Grievant called his direct supervisor, CFO Beckvold, and requested a meeting to discuss his employment situation. CFO Beckvold agreed to meet with Grievant at CFO Beckvold’s office.

12. Grievant told CFO Beckvold that he did not think he could accept the appointment offered by Dr. Pellett. He hoped to retire from GSC and the offer did not

⁶ CFO Beckvold also holds the title of Vice President of GSC.

appear to provide a path to that outcome. He was not comfortable with being a will-and-pleasure employee under the new agreement. CFO Beckvold testified that he was not sure what to do if Grievant simply did not accept the appointment. At some point, Grievant said he was not coming back. The meaning of the comment was unclear and not explained. Since Grievant was not allowed to return to his office, he said he did not know what to do with his keys and property. CFO Beckvold told him to give them to him. Grievant complied.

13. CFO Beckvold told Grievant that Dr. Pellett expected him to accept the offer or submit a letter of resignation. Grievant said he was considering filing a grievance and was going to meet with Chief Human Resources Officer, Krystal Smith, to explore his options.⁷

14. Grievant left CFO Beckvold's office and proceeded directly to the GSC Human Resources offices. He met with HR Chief Smith who had drafted Grievant's previous appointment letters from President Barr and the one offered by President Pellett.⁸ Grievant asked for and received a copy of the contents of his personnel file. She explained to Grievant that staying in his present position was not an option. He could accept the new appointment or resign. Grievant told her that he was not resigning, they would have to fire him. Grievant was clear and unequivocal about not resigning.

15. CFO Beckvold told President Pellett that he thought Grievant was resigning. HR Chief Smith was called to a meeting with President Pellett and CFO Beckvold shortly

⁷ When asked if he had seen Grievant's existing contract with the reversion rights, CFO Beckvold testified that he had seen the contract a few times but did not remember the reversion rights. He went on to say it would not have mattered because he does not run a business "by a whole bunch of rules that don't have any day-to-day practicality."

⁸ Krystal Smith has been the Chief Human Resources Officer at GSC for eight years.

after Grievant left her office. They discussed their meetings with Grievant and CFO Beckvold's belief that Grievant had resigned. HR Chief Smith told the President and CFO that Grievant specifically stated that he was not going to resign. They told HR Chief Smith that they were going to accept Grievant's resignation and instructed her to draft a letter to that effect.

16. President Pellett signed a letter dated April 19, 2018, and sent it to Grievant.

The letter stated in pertinent part:

The purpose of this correspondence is to formally accept your resignation from Glenville State College pursuant to your representation to Mr. John Beckvold in a meeting on April 18, 2018, wherein you declined the offer of Special Assistant to the President and turned in your Glenville State College ID, purchasing card, and keys.

17. Grievant did not specifically tell CFO Beckvold that he was resigning his position and Grievant did not submit any form of written resignation to anyone at Glenville State College.

18. No document was given to Grievant saying that he was dismissed from employment or subject to any discipline whatsoever.⁹

19. Grievant has not found full-time work since his dismissal but has occasionally worked as a substitute teacher.

⁹ Respondent intended to offer evidence at the hearing to support that there was just cause for terminating Grievant from employment. Grievant objected because Grievant was not given any notice, orally or in writing that he was dismissed. Because there was no evidence of a dismissal, and no notice to Grievant that he was being dismissed for cause, or otherwise, the objection was sustained and neither party was allowed to submit evidence regarding Grievant's job performance.

Discussion

Respondent argues that Grievant voluntarily resigned his employment and the President accepted that resignation. It argues that the resignation was made verbally¹⁰ to CFO Beckvold and accepted in writing by President Pellett. Grievant alleges that he did not resign. Alternatively, if he is found to have verbally resigned he withdrew the resignation prior to acceptance. Grievant's employment has been terminated but there is no evidence of a disciplinary action.

While this situation is unusual it is not unprecedented. A Grievance Board Administrative Law Judge ("ALJ") was faced with a similar set of facts in *Hess v. Div. of Corr.*, Docket No. 2015-0080-MAPS. In *Hess* a correctional officer became very upset when he was not allowed to leave work when he had a pressing appointment. The officer made several remarks that his employer interpreted as a resignation and accepted the alleged resignation. Because of the absence of disciplinary action, the ALJ relied upon the usual rules related to burden of proof in such matters stating:

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). *Hess supra*.¹¹

¹⁰ In this matter and in decisions related to resignations, the term "verbal resignation" refers to spoken words of the employee rather than a written resignation.

¹¹ The burden of proof is not disputed by the parties.

"The 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).

Grievant did not tender a written resignation to anyone. President Pellett based his conclusion that Grievant had resigned upon his "representation to Mr. John Beckvold in a meeting on April 18, 2018, wherein you declined the offer of Special Assistant to the President and turned in your Glenville State College ID, purchasing card, and keys." (Respondent Exhibit 2). The Grievance Board has held that:

A resignation is, by definition, a voluntary act on the part of an employee seeking to end the employer-employee relationship. *Smith v. W. Va. Dept. of Corrections*, Docket No. 94-CORR-1092 (Sept. 11, 1995). See, *Welch v. W. Va. Dept. of Corrections*, Docket No. 95-CORR-261 (Jan. 31, 1996). As a general rule, an employee may be bound by her verbal representations that she is resigning when they are made to a person or persons with the authority to address such personnel matters. See, *Welch, supra*; *Copley v. Logan County Health Dept.*, Docket No. 90-LCHD-531 (May 22, 1991). The representations must be such that a reasonable person would believe that the employee intended to sever his relationship with the employer." *Hale-Smith v. Mingo County Bd. of Educ.*, Docket No. 98-29-075 (Sept. 30, 1998).

Spence v. Dep't of Health & Human Ser., Docket No. 2012-0026-DHHR (Jan. 17, 2013).

In this case, Grievant was talking to his immediate supervisor and CFO Beckvold is also a Vice President of GSC. Neither party provided any evidence related to Mr. Beckvold's authority to accept and act on Grievant's resignation. That point is unclear since he stated that he was not sure what to do, he did not state to Grievant that he was accepting his resignation and he contacted President Pellett who took the formal action of accepting what he believed to be Grievant's resignation. It has been held in other cases that the employee's immediate supervisor was authorized to accept as resignation.

Spence v. Dep't of Health & Human Ser., supra. However, that authority is largely dependent upon the policies and practices of each agency and institution. We will proceed in this matter assuming the Grievant's immediate supervisor had authority to accept Grievant's verbal resignation.

The next issue is whether the representations were "such that a reasonable person would believe that the employee intended to sever his relationship with the employer." *Hale-Smith v. Mingo County Bd. of Educ.*, Docket No. 98-29-075 (Sept. 30, 1998). Dr. Pellett based his decision that Grievant resigned upon Grievant declining the offer of Special Assistant to the President and his action of turning in his ID, keys and purchasing card. Grievant declining the offer extended by Dr. Pellett could not reasonably be interpreted as Grievant intentionally severing his relationship with the college. Grievant already had a contract with the college which remained in effect if he declined the new job.¹²

CFO Beckvold interpreted Grievant's statement that he was not coming back to mean that he was resigning. However, that conclusion is also not reasonable given the entire context of the situation. Throughout the telephone conversation with Mr. Beckvold, Grievant repeatedly stated that he wanted to keep a job with GSC and that it was his intent to retire from employment with the college. Mr. Beckvold agreed that Grievant stated that he might file a grievance to contest the actions of Respondent and that he was going to meet with the Human Resources Department to explore his options. Regardless of general statements that Grievant made about not coming back, he never said that he

¹² President Pellett had to be aware of this since he "asked" Grievant to decline the previous offer made by President Barr which left Grievant employed under his previous contract at his previous salary.

resigned or planned to quit his present job. The fact that he was exploring his options and considering filing a grievance to contest the president's action would not lead a reasonable person to believe that he intended to sever his employment relationship with the college. To the contrary, it indicated that he intended to fight to keep it.

This conclusion is bolstered by Grievant's conversation with HR Chief Smith. She indicated that his choices were to accept the offered post or resign. Grievant told her as clearly, directly, and unequivocally that he would not resign. Ms. Smith was not hesitant in any way in testifying that Grievant made his position on that point clear. Additionally, HR Chief Smith made that fact known to President Pellett and CFO Beckvold in their meeting to discuss Grievant's situation. Grievant's surrendering of his keys and ID do not indicate his resignation. He asked his supervisor what he should do with those items and was told to turn them over. Further, he was told that he could not return to his office or continue in his position. Surrendering his keys and purchase card protected him from possible allegations that he had violated those instructions.

Faced with Grievant's specific statement to Ms. Smith and the general statements made to Mr. Beckvold in an extremely emotional discussion, President Pellett decided to accept Grievant's resignation. Once again, considering all the facts, and particularly Grievant's clear statement to Ms. Smith that he was not going to resign, a reasonable person would not believe that the employee intended to sever his relationship with the employer." *Hale-Smith v. Mingo County Bd. of Educ.*, *supra*. Grievant proved by a preponderance of the evidence that he did not voluntarily resign his position.

Even if CFO Bechvold could have reasonably believed that Grievant resigned, he clearly rescinded any such resignation when he told Krystal Smith that he had no intention

of resigning. In the case of *W. Va. Dep't of Env'tl. Prot. v. Falquero*, 746, 228 W. Va. 773, 724 S.E.2d 744 (2012), the West Virginia Supreme Court of Appeals held:

Unless otherwise provided by law, a classified public employee may rescind or withdraw a tender of resignation at any time prior to its effective date as long as the withdrawal occurs before acceptance by the employing agency.

Id. Syl Pt. 3.

Acceptance of a tender of resignation of public employment may occur when the employer (1) clearly indicates acceptance through communication with the employee, or (2) acts in good faith reliance on the tender.

Id. Syl Pt. 4.

This decision is based upon a classified public employee's property interest in continued employment. *Id.* Syl. Pt. 2. It would seem that this ruling might not apply to Grievant since his contract of employment was a non-classified position at the will and pleasure of the college president. However, the contract has a reversion provision which allows Grievant to return to a classified position if he is released from the at-will position. This provision gives Grievant the same property interest as classified employees based upon his contractual entitlement to continued uninterrupted employment. See *Waite v. Civil Service Commission*, 161 W.Va. 154, 241 S.E.2d 164 (1977). Because of the reversion provision of Grievant's contract *Falquero* applies in this case. Consequently, even if Grievant's statements to CFO Beckvold could be construed as a resignation, his unequivocal statement to HR Chief Smith that he was not resigning, rescinded that action. Neither CFO Beckvold nor President Pellett had communicated an acceptance of the resignation or taken any action in reliance of the tender. Grievant proved by a preponderance of the evidence that even if he had resigned, which he had not, that resignation was rescinded and rendered void.

Accordingly, the grievance is **GRANTED**.

Conclusions of Law

1. Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). *Hess v. Div. of Corr.*, Docket No. 2015-0080-MAPS.

2. A resignation is, by definition, a voluntary act on the part of an employee seeking to end the employer-employee relationship. *Smith v. W. Va. Dept. of Corrections*, Docket No. 94-CORR-1092 (Sept. 11, 1995). See, *Welch v. W. Va. Dept. of Corrections*, Docket No. 95-CORR-261 (Jan. 31, 1996).

3. As a general rule, an employee may be bound by its verbal representations that he is resigning when they are made to a person or persons with the authority to address such personnel matters. See, *Welch, supra*; *Copley v. Logan County Health Dept.*, Docket No. 90-LCHD-531 (May 22, 1991).

4. The representations must be such that a reasonable person would believe that the employee intended to sever his relationship with the employer. *Hale-Smith v. Mingo County Bd. of Educ.*, Docket No. 98-29-075 (Sept. 30, 1998). *Spence v. Dep't of Health & Human Ser.*, Docket No. 2012-0026-DHHR (Jan. 17, 2013).

5. Grievant proved by a preponderance of the evidence that he did not voluntarily resign his position.

6. Unless otherwise provided by law, a classified public employee may rescind or withdraw a tender of resignation at any time prior to its effective date as long as the withdrawal occurs before acceptance by the employing agency. *Syl. Pt. 3, W. Va. Dep't of Env'tl. Prot. v. Falquero*, 746, 228 W. Va. 773, 724 S.E.2d 744 (2012).

7. Acceptance of a tender of resignation of public employment may occur when the employer (1) clearly indicates acceptance through communication with the employee, or (2) acts in good faith reliance on the tender. *Syl. Pt. 4, W. Va. Dep't of Env'tl. Prot. v. Falquero*, 746, 228 W. Va. 773, 724 S.E.2d 744 (2012).

8. Grievant proved by a preponderance of the evidence that even if he had resigned, which he had not, that resignation was rescinded and rendered void.

Accordingly, the Grievance is **GRANTED**.

Respondent is ORDERED to reinstate Grievant to his employment based upon his contract established on December 1, 2011, with all provisions therein. Respondent is also ORDERED to pay Grievant all salary or wages he would have earned had he not been released from employment, plus statutory interest and the restoration of all rights and benefits. Respondent may offset from the back pay any money Grievant has received as a substitute teacher.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. 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 *also* 156 C.S.R. 1 § 6.20 (2018).

DATE: November 27, 2018.

**WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE**