

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**CHRIS A. JENEY,
Grievant,**

v.

Docket No. 2019-0301-UTC

**UNITED TECHNICAL CENTER,
Respondent.**

DECISION

Grievant, Chris A. Jeney, employed by the United Technical Center as an instructor, filed a Level Three grievance form dated August 24, 2018, stating as follows:

Grievance Board,

My name is Chris A. Jeney. I am the Carpentry Instructor at United Technical Center working on my 7th year. I am filing this appeal because I feel that I was given, unfairly, a 2 day suspension.

On May 24, 2017, I had a disagreement with an instructor, Mr. Patsy Conch, about something that one of his students said. The complaint went to our director and we both received a letter in our files stating we were not to speak to each other nor are we allowed to enter each other's classroom or to speak with each other's students

On May 31, 2018, one of my second year students came to me to tell me that it was lightening and getting ready to storm outside and two of Mr. Conch's students were on the climbing poles. Mr. Conch is the Electrical Instructor and uses the poles for climbing exercise. When I looked outside my garage door, located beside the electrical classroom, I saw two students unattended on the poles and Mr. Conch was nowhere in sight. Again there was thunder in the background and I immediately told the students that they needed to get down from the poles because of the storm. Mr. Conch heard me and immediately came outside. He then told me, in front of my students and his, that I needed to mind my own F----- business (he said the actual word). I have several witnesses that can testify to the events. Realizing that there was going to be an issue, I immediately snapped a photo of the poles

with the black clouds in the background and proceeded to the office to explain the incident with the assistant director.

According to the WV State Code 126-162-4, we as teachers are held accountable for the safety and well-being of our students. I feel that it was my responsibility as a teacher, above anything else, to ensure the safety of those students.

I received the attached letter via certified mail on August 18, 2018 and feel that ensuring the immediate safety of the students was more important than the subsequent formality of not talking to Mr. Conch's students. Mr. Conch received 3 days suspension for his unprofessional conduct, talking to me, and leaving his students on the climbing poles unattended. I received 2 days suspension for telling his students they needed to get down from the poles due to the storm. This does not seem fair in any sense of the word.

Thank you for your time and consideration,

Chris A. Jeney

Relief Sought:

2 days of my contract reinstated any time involved in settlement compensated and, my permanent record cleared of any wrong doing!

A Level Three hearing was conducted before the undersigned on October 30, 2018, at the Grievance Board's Westover office. Grievant appeared in person and by his counsel, Jenna L. Robey. Respondent appeared by Matthew Call and its counsel, Richard S. Boothby, Bowles Rice LLP. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on December 11, 2018.

Synopsis

Grievant is an instructor at United Technical Center with a long history of interference in other teachers' classroom activity. Grievant was warned against such conduct by the director on numerous occasions prior to being disciplined. Notwithstanding these orders, Grievant engaged in similar behavior on May 31, 2018, involving another teacher's students. Grievant was suspended for two days without pay.

Record established by a preponderance of the evidence that Grievant knowingly, willfully, and intentionally disobeyed a direct written order from his supervisor.

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

Findings of Fact

1. Respondent, United Technical Center, is a vocational center which provides education to both traditional high school students and adult students. United Technical Center is operated by an administrative council composed of county superintendents and board members from the county boards of education whose students attend United Technical Center.

2. Grievant is employed by Respondent as a carpentry instructor. Matthew Call is the executive director of United Technical Center. The Electrical Technician program at United Technical Center is taught by Ed Conch.

3. The record demonstrated that Grievant has a history of entering other teachers' classrooms and inserting himself into situations that do not concern him. During such conduct, Grievant has directed off-colored language at staff, left his own students unsupervised, and acted unprofessionally.

4. In November of 2014, Grievant violated the Employee Code of Conduct by entering another teacher's classroom without permission to do so, left his own students unsupervised, and then used foul language in the presence of students. Grievant was warned, in writing, by Mr. Call that he would be subject to disciplinary action if similar misconduct issues arose again.

5. In September of 2015, Grievant engaged in similar misconduct. Grievant entered another teacher's classroom and engaged in unprofessional behavior. Grievant was instructed to have no contact with the other teachers at the center. Once again, Grievant was informed that any future misconduct would likely result in disciplinary action.

6. In May of 2017, Grievant again engaged in similar misconduct. Grievant was once again warned about this type of behavior and instructed to not have any contact with Mr. Conch. Grievant was instructed to not enter the educational/instructional areas of Mr. Conch for any reasons. Grievant was instructed to not address the Electrical Technician students for any reason.

7. On May 31, 2018, Grievant came out of his work area and into the instructional area for Electrical Technician students and told two students to get down from two practice utility poles on which they were practicing climbing. Grievant explained that he did this because he was concerned about the weather and the possibility that the students might get injured by lighting if they remained on the poles.

8. Joey Holmes and Nicholas Stire were the two Electrical Technician adult students practicing climbing on the poles on May 31, 2018.

9. Mr. Holmes indicated that he and Mr. Stire sought Mr. Conch's permission to climb the practice poles and then, after Mr. Conch unlocked the cabinet in which the safety gear was stored, put on the climbing safety equipment.

10. Mr. Holmes and Mr. Stire waited until about 10 minutes after the break bell rang to begin climbing the poles. They only ascended the poles part way when Grievant came out of his area and instructed them to climb down off the poles due to the weather.

Mr. Holmes indicated that Mr. Conch could see him and Mr. Stire on the pole from his location near the entrance of the school building.

11. According to Grievant, the weather at the time on May 31, 2018, was unsafe for pole climbing, and he believed that Mr. Conch's decision to allow the students to climb the poles was unacceptable.

12. The record established that Mr. Conch was monitoring the weather radar to ensure that there was no lightning in the area. Mr. Conch was aware that his students were climbing the wooden practice poles on May 31, 2018. After a short period of time during which his students were on the poles, Mr. Conch instructed the students to come down off the poles.

Discussion

As this grievance involves a disciplinary matter, the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. *Nicholson v. Logan County Bd. of Educ.*, Docket No. 95-23-129 (Oct. 18, 1995); *Landy v. Raleigh County Bd. of Educ.*, Docket No. 89-41-232 (Dec. 14, 1989). "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. It may not be determined by the number of the witnesses, but by the greater weight of the evidence, which does not necessarily mean the greater number of witnesses, but the opportunity for knowledge, information possessed, and manner of testifying determines the weight of the testimony." *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). Where the evidence equally supports both sides, the employer has not met its burden. *Id.*

Grievant was issued a two-day suspension for the conduct on May 31, 2018, and other similar issues of misconduct for about a year before this incident. The record reflected that Grievant had received admonitions from Mr. Call to avoid contact with Mr. Conch and his students for any reason. In direct violations of those prior orders, Grievant chose to intervene in Mr. Conch’s classroom and tell the students to climb down off the poles on May 31, 2018.

Grievant was disciplined for failure to obey the order of his supervisor. 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*.

The record established that Grievant had three letters of what can be considered reprimands to stop intervening in the matters of other teachers. As a matter of law, personnel actions become final upon the expiration of an employee's time limit for challenging them through the grievance process. Thereafter, they are presumed valid.¹ The record further established that the May 17, 2017, order to avoid this type of conduct from the director was not unreasonable or unlawful in any way.

The Electrical Technician classroom teacher, Mr. Conch, was well aware that his students were climbing the practice poles on May 31, 2018. Mr. Conch was able to observe them and the weather. Grievant acknowledged that he knew Mr. Conch was present. Grievant intentionally chose to intervene in Mr. Conch's classroom and address Mr. Conch's students. The Electrical Technician students had a teacher on May 31, 2018, who was capable of addressing their safety needs. Mr. Conch did so. The record established that Mr. Conch was monitoring the weather radar to ensure that there was no lightning in the area. Mr. Conch was aware that his students were climbing the wooden practice poles on May 31, 2018. After a short period of time during which his students were on the poles, Mr. Conch instructed the students to come down off the poles.

The above findings support the undersigned's conclusion that the controlling issue in this case is not the weather on the day in question, but Grievant's conduct, which amounted to insubordination given the totality of the circumstances. The Grievant's interference with other teachers' classrooms had gone on long enough. Respondent

¹*Cochran v. Mercer County Bd. of Educ.*, Docket No. 05-27-307 (Dec. 21, 2005).

acted reasonably and appropriately in addressing Grievant's continuing pattern of misconduct.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance involves a disciplinary matter, the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. *Nicholson v. Logan County Bd. of Educ.*, Docket No. 95-23-129 (Oct. 18, 1995); *Landy v. Raleigh County Bd. of Educ.*, Docket No. 89-41-232 (Dec. 14, 1989).

2. 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*.

3. Respondent has proven by a preponderance of the evidence that Grievant engaged in conduct constituting insubordination.

Accordingly, the grievance is **DENIED**.

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 (eff. July 7, 2018).

Date: January 11, 2019

Ronald L. Reece
Administrative Law Judge