SHEILA RIDDLE

v. **Docket No. 93-BOD-309**

BOARD OF DIRECTORS/SOUTHERN WEST

VIRGINIA COMMUNITY COLLEGE

D E C I S I O N

Ms. Sheila Riddle, Grievant, is an employee of Southern West Virginia Community College ("SWVCC"). She filed this grievance on July 1, 1993 citing the failure of her supervisor to approve extensive annual leave for the month of June, 1993, and the disciplinary action taken by SWVCC for her failure to report to work June 8, 9, 10, and 11, 1993. (See footnote 1) She also alleged she was being retaliated against for exercising her right under the grievance procedure, denied any subversion and insubordination on her part, and contended SWVCC cannot reject a potential doctor's excuse.

Respondent argued the granting of annual leave is discretionary, the disciplinary action was warranted, and in fact, the Grievant could have been dismissed. Further, Respondent denied all retaliation, identified what actions were seen asinsubordinate, and stated because reasons Grievant gave for not coming to work did not involve illness there was no duty to accept a doctor's excuse.

Findings of Fact

The salient facts of this case are largely undisputed.

1) The Grievant has been a long-term employee of SWVCC in the Graphics Department, and until recently was the Director of Educational Media. In February, 1993 she was officially notified that her department would be closed on June 30, 1993 because of budget cuts. She would be moved to the position of Admissions Record Officer III ("ARO III") at a lower pay grade, but with no decrease in pay. Ms. Riddle grieved that decision. (See footnote 2)

2) Grievant was directed to accept no new graphics work and to complete all work in progress by the closure date of June 30, 1993. The Grievant had annual leave that she would lose if she did

not take it by the end of June. In the past SWVCC had sent letters in the Spring notifying staff of their annual leave status. No such letters were sent in 1993. Additionally, no long-term leaves for the month of June were approved, because Dr. Boyer, President of SWVCC, found this to be detrimental to the functioning of the college.

3) Grievant, as a long-term employee, was well aware prior to Spring that if she did not take annual leave she would lose it.

4) The month of June, 1993 contained 22 working days or 165 hours.

5) On May 12, 1993 the Grievant requested sick leave for the following days of June, 1, 3, 7, 15, 23, 30. This time was equal to approximately 45 hours. Also on May 12, 1993 the Grievant requested annual leave for the following days in June, 2, 4, 8, 9, 10, 11, 14, 16, 17, 18, 21, 22, 24, 25, 28, 29, or approximately 120 hours. In essence, through a combination of these two leave requests the Grievant had asked to be off the entire month of June, the last month her department would be functioning.

6) On May 17, 1993 Ms. Joanne Tomblin, Grievant's Supervisor, granted the sick leave request and denied the annual leave request. Ms. Tomblin accompanied her response with a memo explaining the annual leave request was denied because she was needed by the institution.

7) On May 21, 1993, Grievant submitted another request for annual leave requesting leave for June 8, 9, 10, 11, 14, 16, 17, 18, 21, 22, 24, 28, 29. Grievant accompanied the second request with a memo to Ms. Tomblin stating she would lose approximate 13 days of leave if she did not take it. In the memo she stated she was willing to work on a different schedule as long as she lost no annual leave.

8) Ms. Tomblin denied Grievant's second request for annual leave on May 24, 1993, and sent another memo on May 27, 1993 reiterating that with the Graphics Department's closure, there was "much work that needed to be completed," thus annual leave couldnot be approved. Ms. Tomblin stated SWVCC would "make every effort to allow you to take a few days off in early June" and requested a revised leave slip.

9) May 27, 1993, Grievant sent a third annual leave request which had been revised to reflect summer hours. The days of annual leave requested were exactly the same as those in request two; June 8, 9, 10, 11, 14, 16, 17, 18, 21, 22, 24, 25, 28, 29. Grievant also resubmitted her prior sick leave request which had already been approved.

10) On June 1, 1993, Ms. Tomblin requested Grievant to provide a detailed list of all pending jobs and their status. She wanted to know which ones would be completed and when, as well as what jobs would not be completed and why. This information was to be to Ms. Tomblin by 5:00 p.m., June 2, 1993.

11) Due to space problems with the landlord, the Graphics Department apparently was forced to move on June 1, 1993, one of Grievant's approved sick leave days. Grievant knew about the move and was in charge of storage and location of the equipment. Upon her return the Grievant found an essential piece of equipment, the platemaker, was not in the new room "because it would not fit through the door." Grievant did not call maintenance or housekeeping and attempt to work out a solution to this problem. She did not advise her supervisor about the equipment's status.

12) On June 2, 1993, Grievant sent a memo to Ms. Tomblin saying no further jobs could be completed because "the platemaker was taken to storage" during the move, thus, "there is not muchwork I can do." She also stated she would be returning uncompleted jobs "after [her] attorney had a chance to review [Ms. Tomblin's] correspondence as well as [her] information." She asked that her annual leave be reconsidered and that she have a response by June 4, 1993, "[o]therwise my attorney will be contacting you." (Coll. Exh. 4 - Level II hearing.)

13) On June 3, 1993, Ms. Tomblin again approved Grievant's sick leave request and denied her annual leave request. She again accompanied her response with a memo, stating the Grievant's Department had completed its work effective June 2, 1993 and would officially close at the end of the business day on June 4, 1993. The Grievant was directed to return all work. Ms. Tomblin directed Grievant to report to Mr. J. P. Owens in the Central Admissions and Records Office to receive training prior to her transfer. (Coll. Exh. 5 - Level II hearing.)

14) On June 3, 1993, Ms. Hill, Grievant's attorney, wrote Ms. Tomblin stating Grievant would not accept the ARO III position and requesting a lay-off slip.

15) Grievant did not report to work with Mr. Owens on June 7, 1993, as this was an approved sick leave day.

16) Grievant did not report to work with Mr. Owens on June 8 or 9, 1993. She did not have prior permission to be absent from work and did not call to report her absence. On June 9, 1993, Ms. Tomblin wrote Grievant stating if she wished to resign instead of accepting the ARO III position to please do so in writing. Ms. Tomblin informed Grievant that according to the ClassifiedEmployees

Handbook §7.3.1, absence from work for three consecutive days without "valid explanation or authorization" was considered an automatic resignation, and if she did not report to work on June 10, 1993 she would be considered to have resigned. She also informed Grievant if she did return she would be docked for the days she did not work. Ms. Hank, Director of Personnel, called Grievant and read the letter to her over the phone. Since Grievant was at a friend's house she stated she could not pick up the letter, but her mother picked up the letter for her at 1:20 p.m. on June 10, 1993. The letter was also sent by certified mail and received on June 11, 1993.

18) On June 9, 1993 Ms. Hill, Grievant's attorney, wrote Mr. John Sims, SWVCC's attorney, and reported Grievant did not wish to resign her position as Director of Educational Media, stated Grievant's original contract of employment had been modified, re-requested annual leave or lay-off, and stated this letter should serve as a valid reason for not reporting to work thus countermanding the requirement of the Classified Employees Handbook §7.3.1.

19) The Grievant did not report to work on June 10, 1993, nor did she call in to report her absence.

20) Ms. Tomblin sent another certified letter to Grievant on June 10, 1993. This letter reviewed the recent history of events, advised the Grievant the grievance procedure was the correct method for resolving her new job placement, restated §7.3.1 of the Classified Employees Handbook, and gave her one more opportunity,"to reconsider [her] actions." The Grievant was directed to report to Mr. Owens on June 14, 1993 and failure to do so would be considered a resignation.

21) The Grievant did not report to work on June 11, 1993.

22) The Grievant reported to work on June 14, 1993.

23) On June 16, 1993, President Boyer wrote Grievant outlining the disciplinary action which would be taken for her failure to report to work on June 8, 9, 10, and 11. He noted Grievant's refusal to report to work was a "willful disregard of the direct order [she] was given on June 3, 1993, AND indirect violation of the three denials of annual leave for those days." President Boyer stated her behavior constituted gross insubordination. He also alleged the Grievant had either orchestrated a slow down or a work stoppage in the Graphics Department on the 1st of June. He stated the Grievant could have been dismissed for "any one of these actions," but he had decided to reduce the disciplinary action to suspension without pay. Her personnel file would reflect June 8 through 11, 1993 as a four-day suspension without pay and this letter would remain in her personnel file for

twelve months. He also stated he would not accept a doctor's excuse for the four days as her "refusal to work was obviously not due to illness."

24) The Grievant was granted annual leave for June 21, 22, 24, 25, and 29.

Discussion

As the above facts revealed, the Grievant was clearly upset about President Boyer's decision to close the Graphics Department as a cost saving measure. She was also displeased with SWVCC's decision to place her in the ARO III position and not allow her to be laid off so she could potentially "bump" into a variety of other positions at the College. She grieved these actions. However, no matter how upset or displeased the Grievant may have been, the course of action she chose, not reporting to work was one guaranteed to create problems for her and her employer.

As to the issue of refusal to accept a doctor's excuse that was never offered, the evidence demonstrated Grievant's failure to report to work was not due to illness, but due to her refusal to accept the ARO III position. SWVCCs' refusal to accept this potential excuse was not arbitrary and capricious.

President Boyer's June 16, 1993 letter stated the Grievant "deliberately orchestrated a slowdown, or more so, a work stoppage in the Graphics Department." Testimony revealed that neither President Boyer nor Ms. Tomblin knew the platemaker to the printing press would not fit through the door, and this was the reason the Grievant could not complete most of her work. The Grievant did not inform them of this problem. She only told Ms. Tomblin the needed equipment was in storage, and since Grievant was in charge of deciding which equipment went into storage, both President Boyer and Ms. Tomblin assumed dismantling the printing press was her decision. Further, it is clear the Grievant, the Director of theGraphics Department, took no action to resolve this issue herself. She, as the Director, was the individual charged with the responsibility of completing her work, and it was reasonable for her supervisors to expect the Grievant to perform her duties or notify them if there is a problem. What the evidence does demonstrate is that the Grievant assumed no responsibility in accomplishing her job duties. She neglected to advise her supervisor of the logistical problem with the equipment or, as director, to explore reasonable alternatives to completing her work. In other words, she did not orchestrate a slow down, but did stop the work of the Graphics Department. Thus, the President's accusation that the Grievant caused the work stoppage was supported by the evidence before him.

The other issues involved in this decision will be dealt with in the following Conclusions of Law.

Conclusions of Law

1) In a disciplinary action the burden of proof is on the employer to prove the charges by a preponderance of the evidence. Schmidt v. W. Va. Dept. of Highways, Docket No. DOH-88-063 (Mar. 31, 1986). In this case Respondent has the burden of proof on the issue of suspension, and the Grievant has the burden of proof on the issue of denial of annual leave.

2) "The work requirements of the institution shall take priority over the scheduling of annual leave or other leave for an employee. When operationally possible, the supervisor shall grant earned annual leave at the convenience of the employer. However, departmental needs must be met, and annual leave may not be takenwithout prior request and approval by the employee's supervisor." Rule 4.2, State College System of W. Va., BOD Procedural Rules, Series 35.

3) The Grievant has not met her burden of proof and demonstrated that SWVCC acted in an arbitrary and capricious matter when it denied extensive annual leave during the last month her department was to be functioning.

4) "An employee must notify his/her immediate supervisor and follow established procedures for absence from work. Under certain conditions disciplinary action may result when the employee provides an invalid reason for an absence." Classified Employees Handbook §3.7.

5) "Absence from work for three consecutive work days without explanation or authorization may be deemed an automatic resignation." Classified Employees Handbook §7.3.1.

6) "Disciplinary action, including suspension and dismissal, may be taken whenever an employee's conduct interferes with the operation of his/her unit or brings discredit to the work unit." Classified Employees Handbook §10.2.

7) "A supervisor may recommend suspension without pay for a period varying from one to fifteen days, depending on the gravity of offense and the employee's previous record. Suspensions may be applied in cases of serious offense or repeated minor ones when, in the supervisor's judgment, proper conduct can be obtained without resorting to dismissal." Classified Employees Handbook §10.2.1.

8) Insubordination is the "willful failure or refusal to obey reasonable orders of a superior who is entitled to give such orders." Pennington v. Mingo County Bd. of Educ., Docket No. 92-29-061

(June 6, 1992); Gill v. W. Va. Dept. of Commerce, Docket No. COM-88-031 (Dec. 23, 1988).

9) Failure to report to work because of displeasure with a new assignment is not the type of "valid reason" envisioned in §7.3 of the Classified Employees Handbook.

10) The Respondent met its burden of proof by demonstrating by a preponderance of the evidence that the Grievant was insubordinate in failing to report to work for four days as directed to do so by her supervisor.

11) Suspension is an appropriate disciplinary action for the willful failure to report to work.

12) "'Reprisal' means the retaliation of an employer or agent toward a Grievant or any other participant in the grievance procedure either for an alleged injury itself or for any lawful attempt to redress it." W. Va. Code §18-29-2(p).

13) The evidence does not support the Grievant's suspension was in retaliation for her prior grievance. In fact, the Respondent appropriately encouraged the Grievant to utilize the grievance procedure to resolve the issue of closure of her department and subsequent transfer.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: May 31, 1994

Footnote: 1At the Level IV hearing the lower level record was made a part of this appeal to Level IV at the request of the parties pursuant to W. Va. Code §18-29-6.

Footnote: 2Riddle v. Board of Directors/Southern West Virginia Community College, Docket No. 93-BOD-275 (June 14,

1994).