MICHAEL SCRAGG, .

Grievant, .

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v. . Docket Number: 93-BOD-436

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WEST VIRGINIA BOARD OF DIRECTORS .

at WEST VIRGINIA STATE COLLEGE, .

Respondents. .

DECISION

Michael Scragg (hereinafter Grievant) was employed by the West Virginia Board of Directors as a Police Officer III and assigned to West Virginia State College (hereinafter College) until his dismissal on August 6, 1993. He then filed this complaint pursuant to the provisions of West Virginia Code §18-29-1 et seq., challenging his termination from employment. Based upon numerous requests for continuances by both parties and the need to address certain preliminary matters of discovery, the case became very protracted. The record consists of the evidence produced at levels two and four of the grievance procedure and the case became mature for decision on or about September 16, 1994, after the College's submission of Proposed Findings of Fact and Conclusions of Law.

Upon a thorough review of the evidentiary record in this case, the Undersigned appropriately makes the following Findings of Fact.

Findings of Fact

1. Grievant was employed at the College as a campus security officer and held the

classification title of Police Officer III.

2. Sometime in 1992, a student of the College provided the campus security with information relating to certain other students' possession of firearms on the College's campus. This information directly lead to the confiscation of the weapons and
the expulsion of the students who possessed said firearms.

3. The student who provided the information discussed in the Finding above (hereinafter Student) was also a member of the College's student newspaper.

4. At the time Student presented the information concerning the firearms to Corporal Melanie Vickers and Grievant. During at least one discussion with these two security officers, Student was led to believe that his name would not be made public in connection with the information he had provided. Grievant was aware of this assurance.

5. In July 1993, Fanny Seiler, a reporter for the Charleston Gazette who writes columns titled Affairs of the State, wrote an article containing certain facts about various officers with the College's security force. One of the facts contained therein had to do with Grievant's employment at the Kanawha County Medical Examiner's Office during a period of time when he was drawing workers' compensation benefits due to an injury suffered whileworking for the College. It was also noted in this article that Grievant was not certified as a police officer by the Governor's Office of Crime, Delinquency and Corrections.

6. Grievant believed that Student had some involvement in providing Ms. Seiler with the information upon which the facts contained in the July article were based. Grievant believed that Ms. Seiler's article inferred that he was acting inappropriately or could be interpreted in such a manner. Therefore, Grievant formed a negative opinion of Student.

7. In investigating the facts behind Grievant's dual employment, Student attempted to speak with Grievant on July 21, 1993. During this quick discussion, Grievant threatened Student. The substance of this threat was that if Grievant's employment with the College became jeopardized because of information Student either printed in the College paper or gave to Ms. Seiler, he would make it publicly known that Student had provided campus security with information relating to the firearms raid of 1992.

8. Student informed Officer Vickers of Grievant's statement later the same day. Officer Vickers related this information to Gilbert Flores, Director of the College's campus security.

9. On July 16, 1993, Grievant told a fellow officer, Woodrow Baker, about the statement he had made which was taken as a threat by Student. The substance of this statement made to Officer Baker, by Grievant, was substantially the same as related by Student.

10. Shortly thereafter, Director Flores asked Grievant about the alleged threat he had made to Student. Grievant neitheradmitted nor denied that he made such a statement but inferred that the College was trying to retaliate against him or "set him up."

11. Based upon Director Flores' recommendation, Grievant was terminated from his employment effective August 6, 1993. (See footnote 1) The College felt that pursuant to its Staff Handbook, Grievant could be immediately dismissed based upon the nature of his actions.

12. Grievant participated in an informal grievance conference with agents of the College on August 30, 1993. After which, the Acting-President of the College reaffirmed his dismissal.

13. Grievant had earlier won a grievance against the College, at a lower level of the grievance procedure, for which he was awarded a sum of money as damages.

Discussion

Grievant contends that his constitutional due process rights were violated, therefore, his dismissal should be invalidated. He avers that he was not given adequate notice of the charges against him nor was he given a meaningful hearing on the charges. This affirmative defense will be addressed prior to deciding the merits of the College's case.

It is a well-settled principle of constitutional law, under both the State and Federal Constitutions, that an employee who possesses a recognized property right in his employment may not bedeprived of that right without due process of law. (See footnote 2) "What is required to meet procedural due process under the Fourteenth Amendment is controlled by the circumstances of each case." Barker v. Hardway, 238 F.Supp. 228 (W.Va. 1968); see, Buskirk v. Civil Service Commission of W.Va., 332 S.E.2d 579 (W.Va. 1985); Edwards v. Berkeley Co. Bd. of Educ., Docket No. 89-02-234 (Nov. 28, 1989). "An essential principle of due process is that a deprivation of life, liberty or property 'be preceded by notice and an opportunity for hearing appropriate to the nature of the case.'" Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494, (1985), citing, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950). One essential ingredient of due process is that an individual facing a deprivation of his or her right to

employment must be given "some kind of hearing" on the issue before termination. Cleveland Board of Education v. Loudermill, Id., 470 U.S. at 542. (See footnote 3) "The chance to be heard, to present one's side of the story, is a fundamental requirement of any fair procedural system." Id., 470 U.S. at 546. A full-blown hearing is generally not required before an employee may be terminated but that employee has the minimum pre-deprivation right to at least have anopportunity to respond to the charges either orally or in writing. Id., 470 U.S. at 542.

Further, "[A]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them opportunity to present their objections." (See footnote 4) Vanscoy v. Neal, 322 S.E.2d 37, 40 (W.Va. 1984). Aside from all else, "due process" means fundamental fairness. Pinkerton v. Farr, 220 S.E.2d 682 (W.Va. 1975).

An exception to the requirement that a pre-termination hearing must be conducted has been recognized when it can be found that the government's interest at stake in ridding itself of an ineffective or untrustworthy public employee and its need for quick action outweighs that employee's private interests. See, Barry v. Barchi, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed.2d (1979); Hughes v. Whitmer, 714 F.2d 1407 (8th Cir. 1983), cert. denied, 465 U.S. 1023, 104 S.Ct. 1275, 79 L.Ed.2d 680 (1984). These cases dealt with pre-termination suspensions without pay, and not dismissals, and these holdings have been brought into question by the Supreme Court's statement in Loudermill that "in those situations where the employer perceives a significant hazard in keeping the employee on the job, it can avoid the problem by suspending with pay." Loudermill, p. 545. An employee has a recognized entitlement or property interest not only in the right to continued employment but also in the right to receive his or her benefits and pay. Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 20, 100 S.Ct. 2467, 56 L.E.2d 30 (1978).

The College's Staff Handbook has a section dealing with discipline. Under the section entitled Disciplinary Action, the following statement is contained:

> Disciplinary action, including suspension and dismissal, shall be taken immediately whenever the conduct of the staff member interferes with the operation of the staff member's unit or brings discredit to the College. The unit head or supervisor shall have the right to recommend discipline for "just cause."

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> Immediate dismissal - may be recommended to the President or his appointed designee when gross misconduct, willful and flagrant violations of College rules, regulations or standards occur.

Grievant's actions were classified in the dismissal letter as gross misconduct. Further, the Staff Handbook contains the following provisions dealing with Employee Response to Immediate Dismissal, Notification: "An employee may respond to immediate dismissal charges by filing a written request for a hearing through either of the grievance procedure options. . . . A request for such a hearing does not cancel the immediate dismissal."

The only evidence presented by the College concerning its attempt to afford Grievant his due process rights was that Director Flores met with him after he had reviewed the statements of Student and the other officers and staff. At this meeting, Director Floresasked Grievant whether he had threatened Student. Grievant denied that he had done so and offered no explanation for the charge. After this, Director Flores met with other officials of the College and recommended that Grievant should be dismissed. Director Flores' recommendation was accepted. Grievant then submitted his request for an informal grievance conference on August 18, 1993. This conference was held and Grievant was told on August 30, 1993, that the College's decision would stand. Thereafter, Grievant filed a written grievance and the formal grievance process was begun.

In this case, Grievant was not afforded meaningful notice of the charges against him nor was he given a meaningful pre-deprivation hearing addressing the matter. Director Flores simply asked Grievant about whether he had threatened Student during a meeting involving other issues. Grievant was not made aware prior to the discussion of this topic that any allegations of wrongdoing had been made or that he may be disciplined based upon this alleged wrongdoing and his response thereto. Accordingly, because Grievant was not given sufficient notice of the charges against him, this meeting cannot be classified as a meaningful pre-deprivation hearing. However, the inquiry does not stop here.

Loudermill has not been interpreted to stand for the blanket rule that every public employee has a right to a pre-deprivation hearing in all circumstances. See, D'Acquisto v. Washington, 640 F.Supp. 594, 613 (N.D.Ill. 1986). (A case which involved the suspension of police officers). In fact, the

Supreme Court hadupheld various administrative decisions depriving one of a property right without a pre-deprivation hearing prior to deciding Loudermill. See D'Acquisto p. 612-13, citing, Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975) (school may suspend dangerous or disruptive student without prior hearing); Phillips v. Commissioner, 283 U.S. 589, 51 S.Ct. 608, 75 L.E.2d 1289 (1931) (post-deprivation procedures for tax disputes justified by government need for revenue); Barry v. Barchi, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979) (horse trainer's license suspended after showing of probable cause that horse had been drugged). This line of cases establishes what can best be called an emergency exception to the presumption that a pre-deprivation hearing must be conducted in all circumstances before a property right may be suspended or removed.

An exception to the rule which has been recognized is that if a pre-deprivation hearing is not held then a prompt post-deprivation hearing must be held so that the employee is given his minimum procedural rights. See, Loudermill, at note 7, citing, Ewing v. Mytinger v. Casselberry, Inc., 339 U.S. 594, 70 S.Ct. 870, 94 L.Ed.2d 1008 (1950); North American Cold Storage Co. v. Chicago, 211 U.S. 306, 29 S.Ct. 101, 53 L.Ed.2d 195 (1908); See also, Barry, 443. U.S. at 66; Goss, 419 U.S. at 582-583. Further, "prompt" has been interpreted consistent with that term's common usage and a delay of only a few days has been found to be too long in order to protect one's rights. D'Acquisto, p. 614, citing Mackey v.Montrym, 443 U.S. 1, 99 S.Ct. 2612, 61 L.Ed.2d 321 (1979); Mitchell v. W.T. Grant, 416 U.S. 600, 94 S.Ct. 1895, 40 L.E.2d 406 (1974).

In essence, the College's policies contained in its Staff Handbook only provide for a post-termination hearing. Arguably, the College was justified in dismissing Grievant without the benefit of pre-termination due process by virtue of the nature of his misconduct. In any event, it is determined that the College abided by its own policy and, by complying with said policy, it did provide Grievant with a prompt post-termination notice of the charges against him and an opportunity to respond to those charges during the informal grievance conference held shortly after his meeting with Director Flores. The fact that Grievant was given a prompt and meaningful post-termination hearing satisfies the minimal standards of due process pronounced in Loudermill, albeit late, and renders the College's failure to provide Grievant with such pre-deprivation rights a mere technical violation which, in itself, cannot operate to invalidate the adverse action taken against him based upon the outcome herein.

Because of the College's denial of his rights, Grievant does have a right to recover any damages

suffered as a result of not having been provided any pre-termination notice or hearing. See, Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978); D'Acquisto, p. 627-628; Clarke v. West Virginia Board of Regents, 301 S.E.2d 618 (W. Va. 1983), (Clarke II). He would need to establish that he incurred some injury from the date of his dismissal to the date of his post-termination hearing, otherwise,he is minimally entitled to one dollar in nominal damages for the College's denial of his absolute rights.

In Carey, two students were suspended from public school without being given any pre-suspension hearing. The students brought a civil rights claim under 42 U.S.C.S §1983 against the school officials claiming that they had a right to recover exemplary and punitive damages for the violation at issue. The Supreme Court held that damages under §1983 should be awarded to compensate persons for injuries caused by the particular deprivation of rights, and that if the plaintiff's injury arises from the denial of procedural due process then it is compensable like any other damage. Carey, 435 U.S. 254, 260. The Supreme Court also agreed with the Court of Appeal's earlier ruling in relation to the students' claims that "if petitioners can prove on remand that [respondents] would have been suspended even if a proper hearing had been held, then the respondents will not be entitled to recover damages to compensate them for injuries caused by the suspensions." 435 U.S. at 260. In conclusion, the Court stated the following in regard to the awarding of damages for due process violations:

> Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, See Boddie v. Connecticut, 401 U.S. 371, 375, 91 S.Ct. 780, 784, 28 L.Ed.2d 113 (1971); Anti-Fascist Committee v. McGrath, 431 U.S. [123], at 171-172, 71 S.Ct. [624], at 648-649 [95 L.Ed. 817] (Frankfurter, J., concurring), we believe that the denial of procedural due process should be actionable for nominal damages without proof of actual injury. We therefore hold that if, upon remand, theDistrict Court determines that respondents' suspensions were justified, respondents nevertheless will be entitled to recover nominal damages not to exceed one dollar from petitioners.

Carey, 435 U.S. at 266-267, (footnotes omitted).

In Clarke, our Supreme Court relied upon the pronouncements in Carey in awarding a college professor back pay plus one dollar nominal damages for the Board of Regents' violation of his due process rights. In Clarke v. W. Va. Board of Regents, 279 S.E.2d 169 (1981), (Clarke I), the Court determined that the Board of Regents had violated Mr. Clarke's due process rights, set forth it its own

policy, by removing him from the college payroll prior to the time when it could legally do so consistent with its own requirements. Also, the professor's due process rights were found to be violated when a hearing examiner had failed to state the charges upon which his removal was based and had also failed to reference the evidence upon which his decision was based. It was determined in Clarke I, that the Board of Regents' Policy Bulletin No. 36 contained an elaborate process which the College was bound to follow in terminating the employment of its professors. The Court determined that Mr. Clarke's employment could not be terminated prior to being given all of the rights under said Policy, i.e., the employee's termination could not be considered final under Policy Bulletin No. 36. Therefore, Mr. Clarke was awarded back pay from the date of his removal from the payroll to the date when his dismissal should have become finaladministratively. (See footnote 5) In Clarke II, Mr. Clarke challenged the lower court's determination of damages due him. The Court held that the professor could not depend upon a procedural due process violation to increase his back pay award where he had suffered no actual injury due to the mistake. Clarke II, at 621.

Grievant bears the burden to establish with specificity the damages he incurred as a result of the College's violation of his due process rights. Under the College's Staff Handbook, Grievant's immediate dismissal became final on the date referred to in his dismissal letter. The provision stating that he had the right to file a grievance pursuant to the grievance procedure does not operate to prolong the process as was the case in Clarke I. Therefore, for this harm, Grievant is entitled to nominal damages only given that he has failed to establish with specificity entitlement to any other damages as a direct result of the College's error. Carey, supra. (See footnote 6) The merits of the case shall now be discussed.

In disciplinary matters, W. Va. Code §18-29-6 places the burden of proof on the employer. Broughton v. W. Va. Div. of Highways, Docket No. 92-DOH-325 (Dec. 31, 1992). Under the College's Handbook, Grievant could not have been properly dismissed absent just cause. The College maintains that it has established the facts supporting Grievant's dismissal and that these facts support a finding of just cause; therefore, it contends that it has met its burden in this case.

Grievant first asserts that he never threatened Student. He denies that he made the statements attributed to him and he asserts that the College is retaliating against him for having earlier won a grievance in which it was determined at a lower level of the grievance procedure that the College was to pay Grievant a certain sum of money.

In evaluating the available evidence, the Undersigned finds that the testimony of the College's witnesses and their prior written statements were substantially consistent. Moreover, their demeanor and responses under cross-examination revealed no particular animosity toward Grievant (with the exception of Student), so as to cause them to fabricate or embellish their statements. Grievant's denial that he threatened Student is not considered to be credible given the weight of the credible evidence controverting such assertion and his demeanor at the level four hearing. Accordingly, the undersigned finds that the Employer proved the facts used to support Grievant's dismissal by a preponderance of the evidence. It must now be determined if thesefacts support the particular offenses stated in the dismissal notice and, if so, whether the penalty of dismissal was appropriate.

As already noted, the College must establish the facts upon which Grievant's dismissal was based by a preponderance of the evidence. Schmidt v. W.Va. Dept. of Highways, Docket No. DOH-88-063 (March 31, 1989). However, the appropriateness of a penalty, while depending upon resolution of questions of fact, is by no means a mere factual determination. Douglass v. Veterans Administration, 5 M.S.P.B. 280 (1981) Such a decision "involves not only an ascertainment of the factual circumstances surrounding the violations but also the application of administrative judgment and discretion." Id., citing Kulkin v. Bergland, 626 F.2d 181, 185 (1st. Cir. 1980); Beall Const. Co. v. OSHRC, 507 F.2d 1041, 1046 (8th Cir. 1974). Because the imposition of a penalty results from an employer's administrative exercise of discretion, said action may be the result of arbitrary and capricious decision-making or an abuse of discretion. See, Thompson v. U.S. Postal Service, 596 F.Supp. 628 (D.C.Va. 1984).

Grievant was charged with gross misconduct. The College characterized Grievant's threat as gross misconduct because it determined that his actions showed a complete disregard for the minimal standards of performance and competency expected of those individuals employed within the field of law enforcement. Further, it avers that his action of threatening the safety of a student which he is obligated to protect and serve violated the Code ofEthics adopted by the College's Security Department and also the Department's rules and regulations setting forth its operating procedures. The question as to whether Grievant's conduct could be classified as gross misconduct is not even a close one. By the very nature of Grievant's actions, he demonstrated a contempt for his position and for the authority which his position is intended to convey to those he is to serve. It is hard to imagine that a law enforcement officer could act in a more inappropriate manner than to

threaten the safety and welfare of an individual, who the officer is sworn to protect, for personal benefit. A discussion concerning the specific policy and code sections which Grievant is said to have violated is unnecessary for purposes of this Decision. It is sufficient to find that the College has proven that Grievant engaged in misconduct of a substantial nature justifying his dismissal and that its decision to dismiss him was not arbitrary or capricious. Grievant's final affirmative defense must be dealt with.

Grievant claims that he was fired in retaliation for having earlier prevailed in a grievance against the College, therefore, his dismissal should be invalidated. "Reprisal" is defined in W.Va. Code §18-29-3(p) as "the retaliation of an employer or agent toward a grievant or other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it." In order to establish that an action which has been taken can be declared a prohibited personnel practice of reprisal, a grievant must show the following:

1) He/She engaged in a protected activity.

2) He/She was subsequently treated in an adverse fashion by the employer or agent.

3) The employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity.

4) There was a causal connection (consisting of an inference of retaliatory motive) between the protected activity and the adverse treatment.

5) The protected activity was a significant factor in the employer's decision.

If the grievant meets the above burden, the employer may still prevail if it can demonstrate that it

would have taken the same action had the protected conduct not occurred. See, Gerlach v. Federal Trade Commission, 8 MSPB 599 (1981), citing, Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 247 (1977). Further, the grievant may still prevail if the proffered reason for the adverse action is determined to be pretextual. In most cases, reprisal must be proven by circumstantial evidence and inferences drawn therefrom.

There was little evidence surrounding the nature or outcome of the grievance Grievant relies upon to establish that he engaged in a protected activity for which he argues he was ultimately dismissed. It is determined that he has met the first three prongs of the evidentiary test set forth above but he has failed to establish by a preponderance of the evidence that there exists a causal connection between his winning an earlier grievance and his dismissal, or that his winning said grievance was even a significant factor in the College's decision to dismiss him; neither conclusions can be inferred from the evidence of the case. The testimony of Director Flores made it clear that Grievant'sthreat to Student constituted an egregious act for a law enforcement officer and that said threat acted to undermine the very nature of the relationship which his officers seek to maintain with the population of the College. It is not concluded that the College's decision to dismiss Grievant was based upon the fact that he had earlier prevailed on a grievance, but in the alternative, it was based solely upon the fact that he acted contrary to the demeanor expected of all those in like positions. Therefore, Grievant has failed to establish the affirmative defense of reprisal.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. In disciplinary matters, the employer bears the burden of proving the facts upon which the discipline is based by a preponderance of the evidence. W. Va. Code §18-29-6.

2. The College has proven the facts giving rise to the charges supporting Grievant's dismissal by a preponderance of the evidence.

3. The College has established that Grievant's misconduct constituted just cause for his dismissal under its Staff Handbook and said determination was neither arbitrary or capricious nor an improper exercise of administrative discretion.

4. "An essential principle of due process is that a deprivation of life, liberty or property 'be

preceded by notice and an opportunity for hearing appropriate to the nature of the case.'" Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494, (1985), citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

5. The College did not provide Grievant with the appropriate pre-deprivation due process to which he was entitled. It did provide Grievant with a prompt post-termination hearing according to the principles prescribed in Loudermill and subsequent cases, thereby affording Grievant the minimum rights to which he was entitled. However, Grievant is entitled to damages as a result of having been denied his pre-termination due process.

6. Due to the College's violation of Grievant's procedural due process rights, he is entitled to nominal damages in the amount of one dollar. Carey, D'Acquisto, Clarke.

7. Grievant did not establish by a preponderance of the evidence the affirmative defense of reprisal as defined in W. Va. Code §18-29-3(p).

Accordingly, this Grievance is hereby **GRANTED IN PART** and **DENIED IN PART**. Grievant's dismissal is upheld, however, he is entitled to an award of nominal damages in the amount of one dollar.

Any party may appeal this decision to the Circuit Court of Kanawha 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 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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ALBERT C. DUNN, JR.

Administrative Law Judge

De cember 30, 1994

Footnote: 1 The dismissal letter contained one other reference to wrongdoing on behalf of Grievant; however, at the hearing, the parties agreed that the case could be decided on the basis of the charge associated with Grievant's alleged threat of Student. The College agreed that this charge was the sole basis for Grievant's dismissal and that the other

statements of wrongdoing were included in the dismissal letter in order to detail Grievant's work history.

Footnote: 2The parties did not raise an issue as to whether Grievant possessed a property interest in his employment. For purposes of this decision, it is assumed that Grievant was a tenured public employee.

Footnote: 3The holdings in Loudermill have been recognized and cited in West Virginia. See, Fraley v. Civil Service Commission, 356 S.E.2d 483 (W.Va. 1987).

Footnote: 4Our Supreme Court recently pronounced in Board of Education of the County of Mercer v. Wirt, No. 22117 (Dec. 21, 1994), that, consistent with Loudermill, an employee with tenure is entitled to ***written*** *notice of the charges, an explanation of the evidence, and an opportunity to respond prior to any termination.*

Footnote: 5The Court in Clarke I made this holding noting the same concerns that the Supreme Court recognized in Loudermill; that an employee should be paid during a suspension or dismissal investigation to ensure that his/her property rights are not prematurely removed prior to the adverse action becoming final. If this is done, then the employee cannot be deprived of procedural due process prior to being given notice of the charges and an opportunity for a hearing.

Footnote: 6It is recognized that this damage award is de minimis, however, such award is adequately supported by caselaw in both this State and the federal courts. The purpose of this award, in part, is to impress upon respondents that they maintain a mandatory obligation under the State and Federal Constitutions to provide adequate due process to tenured employees.