TERRY RINEHART

v. Docket No. 93-BOD-514

BOARD OF DIRECTORS/FAIRMONT STATE COLLEGE

DECISION

Grievant, Terry Rinehart, employed by the Board of Directors as a Laborer at Fairmont State College (FSC or Respondent), filed a level one grievance on November 16, 1993, in which he alleged:

On October 28, 1993 the grievant was notified that he was being given a three day suspension without pay because of an accident involving the FSC trash truck that occurred on October 11, 1993. The discipline is unfair, unwarranted, not justified by the facts in the case and violates the spirit and the letter of the disciplinary procedures of Fairmont State College and the Board of Directors for the College system.

The grievance was denied at levels one and two; appeal was made to level four on December 14, 1993. An evidentiary hearing was conducted on April 25, 1994, after which both parties declined the opportunity to submit proposed findings of fact and conclusions of law.

The facts of this matter are essentially undisputed.

On the morning of October 11, 1993, Grievant and a co-worker were assigned to collect the trash from around the FSC campus. Grievant did not regularly drive this truck or pick

up trash. During this assignment Grievant parked the truck next to the Turley Center, which houses the student union. He and his assistant went into the center to use the restroom and get some coffee. In their absence the truck, equipped with a standard transmission, proceeded downhill, knocking over a light pole and a tree, crossed Locust Avenue and crashed into a parked car owned by a student, damaging the vehicle to the extent that it was deemed to be a total loss. The FSC truck incurred $50.00 of damage and no one was injured in the accident.

An investigation of the matter revealed that the truck's motor had been turned off and the key removed, the parking brake had been set (and was still on after the accident) and the wheels had been turned toward the curb; however, the truck had been left in second gear, rather than reverse. Charles Turbanic, Director of the Physical Plant, determined that the accident had not been caused by any mechanical problem with the truck, but rather, was due primarily to driver error in not placing the gear shift in reverse, compounded by Grievant's leaving the vehicle unattended while on an unauthorized break.1 Grievant was disciplined with a three day suspension, without pay.

1Respondent offered virtually no evidence relating to the allegation that Grievant was on an unauthorized break; (Footnote Continued)

Grievant states that he has been operating trucks since 1976 without an accident but that he rarely drove this or any other truck with a manual transmission. Grievant

explained that on the day of the accident he was substituting for the employee who regularly collected the garbage and that he parked the truck in what he understood to be a safe manner, that is, he pulled the emergency brake as far he could with two hands and turned the wheels towards the curb. He recalled taking an examination to secure a driver's license in 1969 but did not recollect any requirement to put a standard transmission vehicle in reverse when parked on a hill. He concedes that he has not reviewed the driver's instruction manual since the time he first received his license.

Grievant asserts that the three day suspension was improper because other employees involved in serious accidents were not so severely disciplined. He opines that Respondent is using him as an example to other employees but that in fact, as an employee with a clean record, he should only have been counseled consistent with the progressive discipline procedure.

Mr. Turbanic testified that an investigation of this matter revealed that Grievant failed to act in compliance

---

(Footnote Continued)

however, because the break was stated to be only a secondary or contributing factor, and based upon the evidence regarding driver error, a finding that Grievant was on a valid break would not affect the outcome of the grievance.

with safety regulations when he parked the truck on a hill. While Grievant did turn the wheels into the curb and pulled the emergency brake, he did not set the transmission in reverse. Mr. Turbanic opined that even though the

emergency brake was set, it likely was not implemented effectively because the emergency brakes on old trucks need pulled firmly. He also stated that after the accident the truck was parked correctly and it did not drift downhill.

Based upon these findings, Respondent argues that it imposed a mild discipline and could have levied a fifteen day suspension for this type of offense. Comparison with prior accidents is inappropriate, Respondent suggests, because Mr. Turbanic was only recently appointed Director of the Physical Plant and did not rule on the previous incidents. Due to the severity of the accident, and the realistic potential that it could have caused much more damage than actually occurred, together with Grievant's admission that he failed to properly park the truck by placing the transmission in reverse, supports the discipline, Respondent concludes.

Respondent's Classified Employees' Handbook does establish a progressive disciplinary process in Section 10, "Conduct, Discipline and Grievances." The introductory portion of that policy states in pertinent part:

The employee's immediate supervisor will outline standards of performance and conduct for each employee. If an employee does not observe these standards, his/her supervisor will counsel him/her to try to resolve the problem. If counseling is not effective, the employee may receive a series of warning letters, then a period of suspension and, finally, if the conduct does not improve, dismissal.

This is; however, but one portion of the disciplinary policy. Further reading reveals that Respondent is not required to respond to every situation by first offering the employee counseling. Suspension, even dismissal, are optional measures which may be imposed for a first offense of a significant nature. Specifically, Section 10.2.1 provides:

A supervisor may recommend suspension without pay for a period varying from one to fifteen days, depending on the gravity of the offense and the employee's previous record.

Suspension may be applied in cases of first serious offenses or repeated minor ones when, in the supervisor's judgment, proper conduct can be attained without resorting to dismissal.

Because two employees were assigned to collect refuse, it may reasonably be expected that one employee would remain with the truck at all times. Since both employees left the vehicle unattended and because Grievant was driving and failed to leave the transmission set in reverse, some negligence must be attributed to Grievant. Further consideration to the actual damage caused by the runaway truck and the potential damage which could have occurred, substantiates the measure of discipline imposed. Grievant failed to offer any evidence to support his assertion that other employees involved in vehicular accidents received milder discipline. Nine accident reports filed between September 1991 and April

1993 were made a part of the record at level two; however, no evidence was submitted to prove what, if any, discipline was imposed upon the employees involved.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant, employed by Fairmont State College as a Laborer, was assigned to collect refuse on October 28, 1993. This was not Grievant's usual assignment but assistance was provided by another employee.

2. Grievant operated the truck and they progressed around campus without incident until the stop at the Turley Center. Both men left the truck and went into the Center to use the restroom facilities and to get a cup of coffee.

3. Grievant had set the emergency brake and turned the wheels of the truck toward the curb when he parked it at the Turley Center. He did not place the transmission in reverse but left it in second gear.

4. While the employees were in the Turley Center the truck proceeded downhill, knocked over a light pole and a tree, crossed Locust Avenue and crashed into a parked car.

CONCLUSIONS OF LAW

1. Pursuant to W.Va. Code 18-29-6 [1992], the burden of proof in disciplinary or discharge actions

rests with the employer and the employer must meet that burden of proving the charges against an employee by a preponderance of the evidence. George v. West Virginia University, Docket No. 91-BOT-421 (March 25, 1994).

2. Respondent has proven by a preponderance of the evidence that Grievant was negligent in the operation of a truck which resulted in considerable damage to property and that the three day suspension was appropriate and in compliance with the disciplinary policy as set forth in the Classified Employees' Handbook.

Accordingly, the grievance is DENIED.

DATED 9/22/94 SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE