

MARIE CARR

v. Docket No. 96-31-102

MONROE COUNTY BOARD OF EDUCATION

DECISION

The grievant, Marie Carr, is employed by the Monroe County Board of Education (Board) as a bus operator. She filed a grievance at Level IV March 8, 1996, protesting her eight-day suspension for making unauthorized trips with her bus and permitting an unauthorized driver to operate the bus. A hearing was held July 15, 1996, and the parties submitted proposed findings of fact and conclusions of law by August 27, 1996.

Background

Much of what precipitated the suspension is not in dispute. In July 1995, Homer Carr, the grievant's husband and fellow bus operator, came under investigation for sexual assault of a minor female. [\(See footnote 1\)](#) At his request, Mr. Carr was placed on an indefinite paid leave of absence effective August 28, 1995.

On September 12, 1995, Mr. Carr was indicted on one count of first degree sexual assault. The indictment attracted a great deal of local publicity and parents voiced concerns to Superintendent of Schools Lyn Guy and other Board officials over Mr. Carr's continued employment. The Board declined to take any action until the criminal charge was resolved. On November 2, 1995, Mr. Carr was acquitted.

Unswayed by the acquittal, parents continued to seek his dismissal. On November 6, 1995, a group of individuals appeared at a Board meeting to air their concerns; some threatened physical assault on Mr. Carr if he resumed his duties. In order to insure his safety and that of the students on his bus route, the Board elected to continue the leave of absence. Mr. Carr agreed to the extension.

On the evening of Saturday, February 17, 1996, the grievant transported the Peterstown Middle

School girls basketball team from Peterstown to Hinton, West Virginia, for a game against Hinton High School. Mr. Carr accompanied his wife on the trip. [\(See footnote 2\)](#)

Shortly after the group's arrival in Hinton it began snowing. According to the grievant, she became ill during the basketball game and, at her request, her husband drove the bus on the return trip to Monroe County. Later that night, Superintendent Guy and Director of Transportation Bennie Comer received complaints from angry parents; Ms. Guy directed Mr. Comer to investigate the matter.

On Monday, February 19, 1996, at approximately 8:30 a.m., Mr. Comer went to Peterstown Middle School, the designated parking site for the grievant's bus following completion of her morning run. The bus was not there. Aware that the grievant sometimes parked her private vehicle in an area several miles from the school, Mr. Comer proceeded in that direction. On the way, he saw the bus parked at a church; he subsequently found the grievant and her husband inside painting a room.

[\(See footnote 3\)](#)

The grievant readily admitted that her husband had driven her bus on the return trip from the basketball game. According to the grievant, she advised Mr. Comer that illness had prevented her from driving. The grievant also conceded that she had driven the bus from Peterstown Middle School to the church, a distance of approximately three miles; she indicated that she had done so on two previous occasions.

Ms. Guy and Mr. Comer met with the grievant and her husband on February 23, 1996. At the conclusion of their discussion or shortly thereafter, Superintendent Guy provided the grievant the following letter:

After an investigation into your actions on Saturday, February 17; Wednesday, February 14, and Monday, February 19, I am hereby suspending you from work for eight days without pay for disciplinary measures, effective immediately.

This suspension is for willful neglect of duty and is pursuant to West Virginia School Code §18A-2-8. As I understand the situation, you have neglected your responsibilities in the following manner:

- 1) Allowed an unauthorized driver to drive the bus on the return trip from the game on Saturday. As a point of fact, this individual was on administrative leave and therefore not authorized to drive for the Monroe County Board of Education. Once you accept the responsibility of an extracurricular assignment, you are to fulfill those responsibilities. If you are unable to do so, you are to contact the transportation director for further instructions. **I am assigning five days suspension for this**

failure to carry out your responsibility to make the run.

2)

Made at least three unauthorized trips with the school bus. On February 19, Bennie Comer observed you driving the school bus to your home from the school that morning. You admitted that you had also done this the previous Wednesday (2/14) and on another occasion. **I am assigning one day suspension for each of the three violations.**

(Emphasis in original.)

Superintendent Guy sought approval of the suspension in a March 5, 1996 Board meeting. The grievant and her counsel appeared and presented rebuttal evidence and legal argument. At the conclusion of the hearing, the Board approved the suspension.

Argument

The grievant asserts that the Board acted arbitrarily in ignoring that it was her illness which prevented her from making the return trip from Hinton. She concedes that Board policy requires an operator who becomes sick on any run to contact Mr. Comer for an alternate driver; she avers that she declined to take this approach because of the delay it would have caused in the students' return home. The grievant further contends she was unaware that using her bus for occasional short personal trips was contrary to Board policy. She implies that other bus operators have done so with impunity, but does not identify any particular driver or instance. Finally, the grievant makes the broader assertion that implicit in the provisions of W.Va. Code §18A-2-7, the source of a superintendent's authority to suspend, is that the authority should not be exercised unless there is some compelling reason to immediately separate the employee from the worksite. The grievant suggests that once an employee has been suspended without pay and a substitute has been paid to perform his or her duties, the Board is under subtle "financial" pressure to sanction the superintendent's decision. According to the grievant, the fairer approach would be to seek Board approval in "non-emergency" cases before imposing the suspension; she avers that there was no need for urgency in her case.

The Board does not specifically address the grievant's statute-based claim but generally contends that Superintendent Guy properly exercised her authority to suspend. The Board maintains that, per policy, the grievant should have called Mr. Comer regardless of whether illness or other factors

prevented her from driving on the trip from Hinton. The Board also disputes that the grievant was unaware of the prohibition on using buses for personal trips; it maintains the policy was clearly communicated to all drivers.

Findings and Conclusions

Determinations regarding the relative credibility of the grievant and Board witnesses are dispositive of most issues in the case. Neither Superintendent Guy nor Mr. Comer recollected that the grievant reported illness as the reason she could not make the drive back from Summers County; they testified credibly that she cited the weather. Since it is clear from the suspension letter that Ms. Guy was less concerned with the reason for the grievant's inability to drive than her failure to contact Mr. Comer, it is not likely that she would have omitted mention of a reported sickness or fabricated her testimony. There is no evidence of record which even suggests that Mr. Comer or Ms. Guy had motive to misrepresent the grievant's statements.

The grievant was less persuasive in her assertion that she advised both from the outset that she had experienced a recurrence of influenza contracted some ten days earlier. In short, a preponderance of the evidence supports that the grievant most likely declined to drive because of weather conditions and/or her husband's availability. It follows that she elected not to telephone Mr. Comer because of a reluctance to report those reasons. The possibility or even probability of a delay in returning the students home did not justify a failure to adhere to established procedure.

The grievant was also unconvincing in her contention that she did not know that Board policy disallowed the use of a publicly- owned vehicle for personal trips. Again, Mr. Comer was more credible in his assertion that the policy had been "common knowledge" among staff for at least twenty years, and that all drivers were specifically advised of the restriction during their initial orientation or periodic training sessions. It is telling that the grievant presented no evidence to corroborate her assertion that other drivers routinely used their buses for other than official duties. As noted, she did not even identify a particular driver.

The undersigned agrees with the grievant's contentions regarding W.Va. Code §18A-2-7 to the extent that she maintains that a superintendent must exercise his or her authority to suspend in a manner which is not arbitrary or capricious. [\(See footnote 4\)](#) It is reasonable to infer such a proviso. See, Rovello v. Lewis County Bd. of Educ., 381 S.E.2d 237 (W.Va. 1989), (a county board must not

abuse its discretion to dismiss or suspend).

It would be an overly restrictive interpretation, however, to say that the statute or the proviso precludes a superintendent from suspending unless there is some urgent need to separate the employee from the workplace. The statute unambiguously empowers a superintendent to suspend without first seeking board approval, and the mere suggestion that county boards, when asked for approval, might be swayed by financial concerns is not a sufficient reason to hold that all “non-emergency” suspensions are arbitrary. In any event, there is no evidence in the present case that the Board had or acted on such concerns when reviewing the merits of the grievant's suspension.

In summary, the undersigned finds that the Board has met its burden to show, by a preponderance of the evidence, see, Allen v. Monroe County Bd. of Educ., Docket No. 90-31-021 (July 11, 1990), that the grievant committed the violations of policy with which she was charged. The grievant failed to substantiate her claims that the Board violated Code §18A-2-7 or otherwise acted arbitrarily and capriciously.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Monroe 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.

JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: October 15, 1996

[Footnote: 1](#)

The record contains few details on the charge. It appears that the minor was not a passenger on Mr. Carr's bus.

[Footnote: 2](#)

The record reflects that the grievant advised the girls basketball coach that her husband would be making the trip; he did not voice any objection and may have indicated that Mr. Carr could assist if the weather required that snow chains be installed on the bus. The record further reveals that it is accepted practice for bus operators to take their spouses on

weekend or other after-hours extra-duty trips. The Board does not take exception with the grievant's decision to allow her husband to accompany her on the trip in issue.

[Footnote: 3](#)

The grievant was apparently using her off-duty time for the painting project. The Board does not assert that she had any bus operator duties between her morning and afternoon runs.

[Footnote: 4](#)

It should be noted and perhaps emphasized that while the grievant alludes to portions of West Virginia Department of Education Policy 5300 which make mention of every employee's right to due process in personnel matters, her claim is not predicated on due process principles. Prior Level IV decisions hold that a tenured school employee has a right to notice of charges and an opportunity to respond to a superintendent prior to the decision to suspend. See, e.g., Wirt v. Mercer County Bd. of Educ., Docket No. 92-27-431 (April 28, 1993), aff'd, Bd. of Educ. of the County of Mercer v. Wirt, 453 S.E.2d 402 (1994). The undersigned finds that the grievant was afforded sufficient "pre-deprivation" due process in her February 23, 1996 meeting with Superintendent Guy and Director Comer.