

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 97-43
GLEND A NYE)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 15, 1997, the Vermont State Employees' Association, Inc. ("VSEA") filed a grievance on behalf of Glenda Nye ("Grievant") against the State of Vermont Agency of Transportation ("Employer"), alleging that the Employer had violated Articles 5 and 14 of the collective bargaining agreement between VSEA and the Employer for the Non-Management Bargaining Unit effective for the period July 1, 1996 to June 30, 1997. Specifically, Grievant alleged that the Employer violated these provisions when it failed to accommodate her handicap, discriminated and harassed her on the basis of her handicap or disability, and dismissed her without just cause.

On November 12, 1997, the parties filed a Stipulation and Agreement to Hold Documents Confidential and a Joint Motion for Protective Order sealing Grievant=s medical records and government assistance applications. On December 4, 1997, the Board granted this motion. On December 5, 1997, Grievant filed a Motion to Compel Discovery.

A hearing was held on December 11, 1997, in the Board hearing room in Montpelier before Board Members Catherine Frank, Chairperson; Carroll Comstock and John Zampieri. Assistant Attorney General David Herlihy represented the Employer. VSEA Legal Counsel Samuel Palmisano represented Grievant. At the hearing, the Employer moved the Board to bifurcate the hearing in order to first determine whether Grievant resigned from employment. The Board granted the Employer's motion to bifurcate, and reserved judgment on Grievant's Motion to Compel. As a result of the hearing being bifurcated, the sole issue before the Board at the December 11 hearing was whether Grievant resigned. Grievant and the Employer filed post hearing briefs on December 30 and 31, 1997, respectively.

FINDINGS OF FACT

(The Findings of Fact in this case are not contained in the electronic version of this decision because some of the findings of fact reference exhibits which were sealed pursuant to Protective Order of the Board.)

OPINION

At issue is whether Grievant resigned from employment. The Employer contends that Grievant resigned from her position; Grievant contends that she did not resign from her position.

The employer bears the burden of proving that the employee resigned. Grievance of Wright, 16 VLRB 415, 428 (1993). Oral resignations can be valid and enforceable. The Board has concluded, and the Vermont Supreme Court has concurred, that an

employer is not precluded from accepting a resignation based on an employee's verbal representations and other actions, if that employee fails to resign in writing. Grievance of Baldwin, 13 VLRB 20, 35 (1990); *Affirmed*, 158 Vt. 644 (1992). Such representations and actions must clearly indicate, and demonstrate conclusively, that the employee has resigned. Baldwin, 13 VLRB at 37.

Relying on Baldwin, the Employer contends that the burden of proving that Grievant resigned has been met because Grievant told her supervisor in a May 12, 1997, telephone conversation that she wished to resign. The Employer further contends that Grievant's other representations and actions - not reporting for work after May 5, 1997, and telling a co-worker that she was resigning - clearly indicated and demonstrated conclusively that Grievant resigned.

We disagree. It is evident that Grievant seriously contemplated resignation. Grievant faced a personal crisis in May 1997, which resulted in her vacating her apartment and going to Canada to stay with her sister. Grievant spoke with a co-worker by telephone and told her that she was in Canada and planned to resign her position with the Employer. Grievant then informed her supervisor, Steve Lightholder, in a May 12, 1997, telephone conversation that she wished to resign. Lightholder requested that Grievant put her resignation in writing.

However, Grievant's verbal representations are not sufficient to clearly indicate, and demonstrate conclusively, that she was resigning. In Baldwin supra, the employee's verbal representations were accompanied by actions clearly indicating an intent to resign. 13 VLRB at 37-38. In this case, Grievant's verbal representations were not followed by any actions clearly indicating she was resigning. Her actions to the contrary reflected her

decision not to resign.

A written letter of resignation was contemplated, pursuant to Grievant and Lightholder's May 5 telephone conversation, to effectuate the resignation. Grievant never submitted a letter of resignation in writing. Instead, Grievant sent a letter to Lightholder requesting a one year leave of absence. It should have been apparent to the Employer upon receipt of Grievant's letter requesting a leave of absence that she was not resigning - an employee who has resigned would have no reason to request a leave of absence.

Further, Division Chief Alan Blake's response to Grievant's letter requesting a leave of absence provides no support for the Employer's contention that Grievant resigned. Blake could have responded to Grievant's request by stating that it was his understanding that Grievant had resigned, but Blake made no reference to a resignation in his response. Instead, he indicated he was denying Grievant's leave of absence request because of the heavy workload in the division. There is no logical explanation for an employer to grant, deny or consider a leave of absence request from an individual that the Employer no longer considers an employee.

In sum, Grievant's representations and actions, as well as the Employer's responses to such representations and actions, do not clearly indicate, and demonstrate conclusively, that Grievant resigned. The Employer not having met the burden of proving that Grievant resigned, we will proceed to hearing the rest of this case on the merits.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the State of Vermont Agency of Transportation's motion to dismiss this grievance on the basis that Grievant Glenda Nye

resigned from employment is DENIED, and a further merits hearing shall be scheduled.

Dated this ____ day of March, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

John J. Zampieri