

VERMONT LABOR RELATIONS BOARD

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| Grievance of: |) | |
| Priscilla Cameron and |) | |
| Vermont State Colleges |) | Docket No. 80-83 |
| Staff Federation, VFT, AFT, |) | |
| Local #4023, AFL-CIO v. |) | |
| Vermont State Colleges |) | |

FINDINGS OF FACT, OPINION, AND ORDER

Statement of the Case

On November 13, 1980, the Vermont State Colleges Staff Federation (hereinafter "Federation") filed this grievance with the Vermont Labor Relations Board on behalf of Priscilla Cameron, security officer at Vermont Technical College (hereinafter "Grievant"). The Federation alleged that the Vermont State Colleges (hereinafter "Colleges") violated Articles XII, Just Cause, and XLII, Personal Leave, of the collective bargaining agreement (hereinafter "Agreement"), past practice, college policy, and the policy of progressive discipline in its discharge of Grievant.

A hearing was held in the Board hearing room in Montpelier on February 26, 1981. Board members Kimberly B. Cheney, William G. Kemsley, Sr., and James S. Gilson were present. Beverly A. Ryan, Executive Director of the Vermont Federation of Teachers, represented Grievant. Attorney Paul K. Sutherland represented the Colleges. Requested findings of fact and memoranda were filed by the Colleges and the Federation on March 27, 1981, and March 30, 1981, respectively.

FINDINGS OF FACT

1. Grievant was a security officer at Vermont Technical College (hereinafter "VTC") from January 30, 1977, until August 13, 1980. Among her duties were campus security patrols, safety inspections, traffic control, public relations, and assigned investigations of alleged wrongdoing on campus.
2. During Grievant's entire period of employment, her immediate supervisor was Security Foreman Stanley Clogston. Mr. Clogston reported to the Director of Physical Plant at VTC. Edward Gay has been the Director since August 20, 1979. The Director is authorized to hire and fire security personnel.
3. On August 13, 1980, Mr. Gay informed Grievant that she was being terminated (Colleges' Exhibit #11). As reasons for the termination, Mr. Gay cited an incident on July 31, 1980, along with past warnings contained in Grievant's personnel file. The past warnings are dated December 10, 1979, February 8, 1980, and June 3, 1980.
4. On December 10, 1979, Grievant received a copy of a memorandum from Mr. Clogston to Mr. Gay indicating that Clogston had discussed with Grievant specific areas of her performance that required improvement (Colleges' Exhibit #9). Positive steps required of Grievant included: to be a team worker, to follow and complete legal orders as given, to eliminate the excessive amount of non-productive time during an assigned shift. The memorandum was the culmination of an investigation by Grievant of alleged misuse of campus equipment by security personnel. Grievant's supervisor felt she had handled the investigation in an "unprofessional" manner. This memorandum was marked "reviewed and agreed" by Grievant and initialled by her.

5. On December 21, 1979, Grievant neglected to patrol a high school basketball game as assigned. She was attending a staff Christmas party at the time she was supposed to be at the gym. On February 8, 1980, Grievant received written warning (Colleges' Exhibit #11) from Mr. Clogston that her failure to patrol the game as assigned constituted unacceptable conduct, and was not in keeping with the intent of the December 10, 1979, memorandum which she had agreed to. Clogston informed Grievant: "Another such situation will force me to make a recommendation to terminate your employment."
6. On January 23, 1980, Grievant's job performance was appraised (Colleges' Exhibit #10). Grievant was found unsatisfactory in one ("adherence to policy and procedure") of 32 performance areas, and **marginal** in 10 others. The performance appraisal was discussed with her.
7. Grievant was assigned to work the night of June 2, 1980, and did not work. Consequently, the campus was not patrolled or checked that night. On June 3, 1980, Grievant received a copy of a memorandum from Mr. Clogston to Mr. Gay, the substance of which informed Mr. Gay of Grievant's failure to work as assigned. No disciplinary action was taken against Grievant for this incident.
8. Grievant was scheduled to work as campus security guard from 6:00 p.m. July 31, 1980, to 1:30 a.m. August 1, 1980.
9. Grievant did report for duty that evening at 6:00 p.m. At approximately 7:15 p.m., while walking on campus, some students told her about a party at Keenan, a VTC dorm. Grievant had promised students several weeks earlier that she would attend this party as a guest. She had planned to ask for time off from work to attend the party; however, in the meantime, she had forgotten about it. When she was reminded of the party, she apologized to students for forgetting, and told them she would stop by later.

10. Security Officer Gary Townsend was also on duty that night. At 9:00 p.m., Grievant told Townsend that she was going to the party at Keenan. Grievant remained at the party for the remainder of her shift.
11. While at the party, Grievant did not perform her assigned duties as security officer.
12. While at the party, Grievant did not maintain radio contact with her fellow security officer, Gary Townsend. She had her security radio with her, and at one point she heard Townsend trying to communicate with her. However, because of the loud music at the party, she could not return his call.
13. At no time did Grievant inform Officer Townsend that she intended to remain at the party for the balance of her shift, nor did she indicate to Townsend that she intended to go off duty.
14. Article XLII, Section 4, Agreement, states: "personal leave shall be granted at the time requested upon notice to the supervisor whenever possible."

At no time prior to her shift on July 31 and August 1, 1980, nor at any time during the shift, did Grievant request of anyone that she be permitted to take personal leave for part of her shift that night.

15. Grievant left the party at 1:30 a.m. when Officer Townsend came to pick up the security car from her. Townsend drove her back to the security office to check out. At the office, Grievant indicated on her log that she "left campus" at 2:00 a.m. She then left the campus.
16. At a later point, when is unclear, she filled out a new time card reflecting that she had left work at 9:00 p.m. the night of July 31.

17. Supervisor Clogston was on a fishing trip the night of the party. Upon his return on Monday, April 4, 1980, he received a note from Grievant explaining what had occurred that night. On Tuesday, August 5, 1980, he discussed the incident with Grievant. He suspended Grievant, and told her he was thinking of terminating her. He offered her the option to resign. Grievant declined.

18. On August 5, 1980, Mr. Clogston informed Mr. Gay by memorandum (Colleges' Exhibits #13, 14) that he was suspending Grievant for the following conduct: failure to complete or perform assigned duties, failure to obtain permission for leave taken, and failure to be a team member by the use of independent acts and lack of common courtesy. Clogston recommended that Grievant's employment be terminated. He cited the July 31 - August 1, 1980, incident, along with past disciplinary letters placed in her file.

19. On August 6, 1980, Mr. Gay met with Clogston and Grievant for two hours on the matter. Mr. Gay also spoke with the officer on duty with Grievant July 31, Gary Townsend. He subsequently reviewed Grievant's personnel file.

20. On August 13, 1980, Mr. Gay informed Grievant that her employment was terminated (Colleges' Exhibit #15). Mr. Gay cited the reasons given by Mr. Clogston, and stated: "The incident of 31 July/1 August 1980, along with past warnings, leaves me no alternative but to terminate your employment." The "past warnings" referred to the December 10, 1979, February 8, 1980, and June 3, 1980, letters in her personnel file.

21. Mr. Clogston had a progressive method of disciplining his security officers, which method he followed generally during his more than 10 years as chief of security of VTC. In most instances, Mr. Clogston

would first give an employee a verbal warning for performance deficiencies or behavior unacceptable within the security division.

Verbal warnings were followed by written warnings for subsequent related offenses. Serious offenses following written warnings normally result in a recommendation being made by Mr. Clogston for termination.

22. There are no express provisions in the Agreement between the parties providing for a policy of progressive discipline.

23. It was Mr. Clogston's practice to give employees an opportunity to resign before he recommended their termination for performance problems.

24. Security officers before Grievant had received oral and written warnings from Mr. Clogston where there were problems with their performance.

25. Security officers before Grievant had, upon recommendation of Mr. Clogston, been terminated for misconduct.

26. Security officers before Grievant had resigned in the face of possible or certain recommendations for termination.

27. We find no discriminatory treatment of Grievant in this case. We find the action by the Colleges in this case consistent with actions by them in other instances of misconduct within the security division.

OPINION

The issue before us in this case is whether the action taken by the Colleges in terminating Grievant's employment was taken without just cause. Article 12, Agreement, reads in its entirety: "No employee shall be disciplined or discharged except for just cause."

In In re Grievance of Albert Brooks, 135 Vt. 563, 382 A2d 204 (1977), the Supreme Court defined just cause as: "some substantial shortcoming detrimental to the employer's interests."

The Court further held that a discharge may be upheld if the conduct involved is serious and "that the employee has fair notice, express or fairly implied, that such conduct would be grounds for discharge."

In In re Grievance of Michael Yashko, 138 Vt. 364 (1980), the Court further held that the employer must avoid even psychological uncertainty in the employee's mind as to his employment status.

In the case before us, Grievant had actual notice that her conduct would be grounds for dismissal. The February 8, 1980, letter from Mr. Clogston, received after Grievant had failed to perform assigned duties at a basketball game, contains the statement: "another such situation will force me to make a recommendation to terminate your employment." (Colleges' Exhibit #11)

True it is that the written notice warned of dismissal, but like Yashko, the employer's conduct was not such as to firmly establish a course of incremental discipline putting Grievant on notice that her job was in jeopardy. Grievant's December 10 shortcomings were noted by her in a "written warning". The February 8th letter was also a "written warning", albeit a month and a half after the incident (which occurred on December 21, 1979). Then, on June 2, when another incident occurred, not even a specific warning was given. In short, there was marginal progressive discipline imposed by the employer. We are of the opinion

that a policy of progressive discipline is implicit in the Yashko standards and requires the employer to impose progressively severe discipline when offenses multiply. Perhaps a short suspension without pay after the December 21 incident, and a longer one after the June 2nd incident, would have brought home to Grievant the seriousness of her continuing derelictions and convinced her of the necessity of a blameless work record. This is not to say that discipline must be draconian, but only to say it should be progressively severe to warn an employee of job jeopardy and firmly fix in her mind that the next failing would be more severely dealt with. The employer should not "cry wolf". Even so, we conclude Yashko standards were met here, because the July 31st incident was virtually identical to that of December 21 for which clear notice of an intent to dismiss had been given.

In Brooks, supra, the Court held: "instances of repeated conduct insufficient of themselves may accumulate so as to provide just cause for dismissal."

We find that the Colleges acted reasonably in its discharge of Grievant, principally because her conduct on July 31st, together with previous conduct, constituted substantial shortcomings detrimental to the Colleges' interests. Moreover, the prior warnings were a clear notice of employer dissatisfaction, even if they did not amount in our view to a punctilious application of a progressive discipline policy. On three instances during her last year of employment, Grievant was guilty of seriously neglecting her assigned duties and responsibilities (see Findings of Fact #5, 7-16).

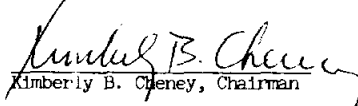
In the case before us, the repeated instances of neglect of duty by Grievant raise to the level of substantial prejudice to the Colleges' interests to warrant her termination.

ORDER

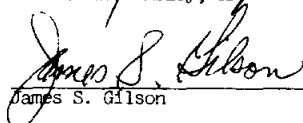
Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, the grievance of PRISCILLA CAMERON and the Vermont State Colleges Staff Federation, VFT, AFT, Local #4023, AFL-CIO, is ordered DISMISSED and is dismissed.

Dated this 11th day of April, 1981, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson