

VERMONT LABOR RELATIONS BOARD

GRIEVANCES OF:)	
)	
DAVID GRISWOLD AND VERMONT)	DOCKET NO. 92-57
STATE COLLEGE STAFF FEDERATION)	DOCKET NO. 92-58
)	

FINDINGS OF FACT, OPINION, AND ORDER

Statement of Case

Involved herein are two grievances consolidated for the purpose of hearing and decision concerning disciplinary actions taken by the Vermont State Colleges ("Colleges") against David Griswold, a Johnson State College security officer ("Grievant").

On November 4, 1992, the Vermont State Colleges Staff Federation ("VSCSF") filed two grievances on behalf of Grievant, Docket Nos. 92-57 and 92-58. The grievance in Docket No. 92-57 alleged that the Colleges had violated Article 12, Section 1, of the collective bargaining agreement between the Colleges and VSCSF, effective from July, 1991 to June 30, 1993 ("Contract"), by disciplining Grievant without just cause by issuing him a letter of reprimand. The grievance in Docket No. 92-58 alleged that the Colleges had violated Article 12, Section 1, of the Contract by disciplining Grievant without just cause by suspending him without pay.

A hearing was held on May 20, 1993 in the Board hearing room in Montpelier before Board Members Charles McHugh, Chairman, Catherine Frank, and Leslie Seaver. Attorney Kimberly Rozak represented the Colleges. Shawn Flood, American Federation of Teachers Staff Representative, represented Grievant.

The parties filed post-hearing briefs.

FINDINGS OF FACT

Docket No. 92-57

1. Johnson State College ("JSC") is part of the Colleges system and is located in Johnson, Vermont.

2. During all times relevant, Grievant worked in the Department of Security and Safety ("Security Department") as a security officer on the JSC campus. Grievant worked under the supervision of Dan Cotter, Director of Security and Safety. Cotter reported to the Dean of Administration, Robert Chamberlain.

3. Joseph Grabon is a student at JSC. During all times relevant, Grabon held a workstudy job in the Security Department. Grabon had been promoted from a student security member to a position that required answering the telephones and radio, dispatching and controlling the campus.

4. Irene Archer Harvey is a student at JSC. During all times relevant, Harvey held the position of student security manager in the Security Department. Grabon worked under Harvey's supervision.

5. During the spring, 1992, the Security Department issued special shirts and/or jackets to the student security employees. The following provisions from the Johnson State College Student Security Manual security manual were in effect at that time and all time relevant:

I. Authority

A. The Director of Safety and Security and the Student Manager of security shall have the power to make any rules necessary to promote the effective and efficient performance of the duties of the department of student security....

II. Authority

...

F. Reporting for Duty

...

2. An employee will report for duty at the time and place specified by the supervisor and shall be fit to accomplish his/her duties. Employees will be properly dressed and equipped for the proper performance of the duty specified.

...

H. Identification

1. An employee will be readily identified as being a member of the Security Department at all times while on duty. Every employee will receive a shirt and/or jacket that displays the Security insignia that must be worn each time the employee reports for duty and during the entire shift the person is on duty (Colleges' Exhibit 11).

6. Grievant was aware of the above-referenced provisions which applied to student security employees. Harvey sent out a memorandum to the officers in the Security Department at the time the shirts and jackets were issued stating they had the right to send students home who arrived at work not wearing a shirt. Some students were sent home as a result of Harvey's directive.

7. In addition to his workstudy job in the Security Department, Grabon also worked at a restaurant in Johnson. On May 28, 1992, Grabon was scheduled to work in the Security Department from 4:00 to midnight but was late leaving his restaurant job. He stopped by his apartment to change into his security shirt from the tee shirt he had worn to the restaurant. He could not immediately find his security shirt and, because he did not want to be late for his workstudy job, Grabon went to work without his security uniform on.

8. Grabon spoke with student security manager Harvey when he arrived at work and explained that he had not been able to find his shirt before arriving at work. Harvey gave Grabon permission to wear his tee shirt at work. She did so because there were very few people on campus and because Grabon was working dispatch and would not be patrolling the campus. Harvey left the Security Department between 4:00 and 4:30 at the end of her shift and did not inform anyone else in the Security Department that she had given Grabon permission to work out of uniform.

9. Approximately two hours after Grabon reported for work, Grievant came through the dispatch area and noticed that Grabon did not have on the required security shirt. Grievant asked Grabon why he did not have on his security shirt, and Grabon explained that he was late getting out of his other job and had not been able to find it in time before coming to his workstudy job in the Security Department. Grievant indicated that he did not care what Grabon's reasons were for arriving at work out of uniform, and he told Grabon to go home and get his shirt. Two students, Mark Schubelka and Heather Gruen, observed this exchange.

10. Grievant left the dispatch area and Grabon called Harvey at home to tell her that Grievant had told him he had to go home and get his shirt. There were extra shirts in the security room and Harvey suggested that Grabon have Grievant open the security room so Grabon could borrow one of these shirts for the night. Grabon did not have a key to the office. He called Grievant on the Department's radio and asked him if he would let

him into the security office. Grievant asked why and Grabon explained that he had talked with Harvey and she had said he could wear one of the extra security shirts locked in the security room. Grievant, who had not known that there were extra security shirts in the security office, kept insisting that Grabon should have had his security shirt on when he arrived at work and now had to go home and get it. Grabon viewed Grievant as confrontational and belittling towards him. Grabon became upset and walked out of the dispatch area with the intention of leaving for the night because he did not want to be around Grievant. Schubelka and Gruen, who had observed and heard the exchange between Grabon and Grievant, came out and talked with Grabon in order to calm him down. They also told him that Grievant had agreed over the radio to open the security office and get a security shirt for him.

11. The next day, Grabon went to see Cotter about the incident with Grievant. Cotter was busy but another officer gave Grabon an incident report to fill out. Grabon detailed Grievant's confrontational attitude towards him the previous night. Harvey, Schubelka, Gruen also wrote incident reports (Colleges' Exhibit 7, 8, 9, 10).

12. As a result of Grabon's complaint, Cotter conducted an investigation of the incident. He spoke with Grievant, Grabon and Schubelka. Cotter also reviewed all the incident reports. Grievant denied that there had been a confrontation and did not understand why Cotter was conducting an investigation (Colleges' Exhibit 6).

13. Cotter discussed the incident with Chamberlain and reviewed Grievant's personnel file. Grievant's personnel file

contained several past disciplinary actions, as follows:

- 4/22/83 Verbal warning - based on inappropriate comments made towards female students and staff.
- 8/16/85 Written reprimand - based on acting negligently in his duties by inappropriate conduct during an emergency medical call, conducting work for the Sheriff's Department while on duty at JSC, and leaving campus while on duty.
- 9/29/88 Suspension without pay - based on poor attitude and dealings with staff and students, the handling of an incident involving drug paraphernalia, and the misuse of the telephone.
- 12/5/88 Four week suspension without pay - based on sexual harassment by Grievant against a female member of the college community.
- 3/20/89 Written reprimand - based on inappropriate conduct and comments towards a member of the college community.
- 7/10/91 Written reprimand - based on negligence of duties, threatening another officer, and insubordination to his supervisor. Such written reprimand stated that Grievant is "expected to perform all your duties and interact with your fellow officers and supervisor in a professional manner at all times" (Colleges' Exhibits 12, 13, 14, 15, 16, 17, 18, 19).

14. Grievant's personnel file also included annual performance ratings. For the rating year July 1, 1988 - June 30, 1989, Grievant received an overall rating of "Inconsistently meets standards" with notations regarding the disciplinary actions taken against Grievant that year. For the rating period January 1991 to July 1991, Grievant received an overall rating of "consistently meets standards". In the individual rating of "personal relationships" (defined as the "ability to work as a member of a group or team; cooperation; maintain harmonious work environment; deal tactfully with the public and others"), Grievant received a rating of "inconsistently meets job requirements and standards". For the rating period May 1991 - May

1992, Grievant received an overall rating of "consistently meets standards". In the individual rating of "attitude and interest", Grievant received the lowest possible rating of "unsatisfactory, performance below position standards", with a notation that Grievant "shows little self-interest in improving professional security methods and training". Grievant received this performance evaluation on May 15, 1992 (Colleges' Exhibits 20, 21, 22).

15. After talking about the Grabon incident with his supervisor, and reviewing Grievant's personnel file, Cotter determined that it would be an appropriate discipline to issue Grievant a written reprimand based on the May 28, 1992 incident with Grabon. Such written reprimand, dated July 2, 1992 stated in pertinent part:

The purpose of this letter is to inform you that you are being formally reprimanded and disciplined because of your negligence.

You acted negligently in the performance of your duties on May 28, 1992, when you were involved in an incident with student security worker Joseph Grabon regarding his security shirt. Joe, a student who is working two jobs, could not find his shirt in time to report in uniform from his first job to his second job with the Security Department.

Instead of attempting to rectify the problem you created tension and frustration by repeatedly stating that the student would have to "get their shirt or leave". Your poor attitude and lack of professional demeanor aggravated the situation to the point where Joe almost left for the night in utter frustration rather than face another confrontation with you. This was a simple inconvenience that couldn't even be categorized as a problem until your unprofessional behavior and attitude towards your fellow workers within the department once again surfaced. A simple solution of issuing another shirt from the office had been proposed by the student manager at the onset of this incident. Had your intent been on merely getting a student worker in uniform then this remedy would have been sufficient and the matter resolved. However, your actions indicate you were more interested in forcing this student to

go home and retrieve their shirt, even after the circumstances around the incident had been clearly stated.

You will be courteous to members of the Johnson State College community, the public and to fellow employees. You will be tactful in the performance of your duties, exercise the utmost patience and discretion, and will not engage in argumentative discussions, even in the face of extreme provocation.

Any further violation of college rules, policies, or accepted practices may result in suspension or in termination of your employment. A copy of this letter will become part of your personnel file (Colleges' Exhibit 3).

Docket No. 92-58

16. On the evening of June 11, 1992, a graduate of JSC, Glen Robinson, visited the campus with a female friend, Kim Parnigoni. The purpose of the visit was to pay tribute to a former student and friend who had died two years previously. The school had planted a tree by the JSC rose garden in the student's honor. Robinson and his friend planned to sit by the tree and watch the sunset.

17. Robinson entered the main entrance of the college and drove by the visitor parking lot because it appeared full with a fire truck, security vehicle, hoses and fire officers. There was another vehicle parked along the other side of the road, not in a designated parking area, and Robinson pulled up behind this other vehicle.

18. After Robinson parked his car, Grievant came up to his vehicle and told him he could not park there. Robinson asked where he could park and Grievant responded by telling him "not there". Robinson asked several times "where?" and Grievant responded each time with "not there" or "I don't know where", or words to that effect. Grievant finally told Robinson that he could drive around campus to the designated parking lot and walk

up. Robinson said the reason he had parked where he had was because there were campus vehicles in that parking lot. Grievant responded by saying "get off campus, we don't need your kind here", or words to that effect.

19. Robinson was very angry at the way Grievant had treated him and knew that the President of JSC, Robert Hahn, was on campus. Robinson drove to President Hahn's house, and complained to the President about Grievant's treatment of him. President Hahn called security, then told Robinson that he could park in the administration parking lot and he could stay as long as he wished.

20. Robinson parked his car in the administration parking lot and he and his friend went to the memorial tree and stayed there for approximately an hour.

21. When Robinson and his friend returned to his car, Grievant was sitting in his car watching them. Grievant then issued Robinson a \$75 ticket for unauthorized parking. Robinson believed that Grievant was intentionally harassing him. He drove to President Hahn's house and again complained about Grievant's treatment of him. President Hahn told him that he would take care of the matter. Robinson later wrote and sent a written formal complaint to the President.

22. As a result of Robinson's complaint, President Hahn wrote a memorandum to Cotter and Chamberlain. In this memorandum, the President summarized the events of June 11, 1992, and directed that the incident be investigated (Colleges' Exhibit 5A).

23. Cotter conducted an investigation of the incident. He interviewed several people, including Grievant, Parnigoni, and a witness who was with the fire apparatus that evening. He also reviewed Grievant's personnel file and spoke with Chamberlain.

24. As a result of his investigation, review of Grievant's personnel file, and conference with Chamberlain, Cotter determined that it would be appropriate to suspend Grievant. His disciplinary letter of July 8, 1992, stated in pertinent part:

This letter is to inform you that you are hereby suspended without pay for five (5) working days....

The cause of this suspension is your negligence in the performance of your assigned duties. On Thursday June 11, 1992 you told Glenn [Robinson], a JSC alum to leave campus, and while doing so, made the following statement to him "we don't need your type around here." Also at the outset of this incident you were asked by Mr. [Robinson] where he could park his vehicle, your repeated reply of "well, you can't park here" did not answer this simple question and only intimidated Mr. [Robinson].

When this incident was discussed with you by your supervisor you responded by saying that the incident had only lasted 1 or 2 minutes and that you didn't think that it warranted an incident report because it "happens all the time." You also reported that it is customary for you to ask people to leave campus if they "refuse" to park in allocated spaces.

As per Johnson State College Security Manual, Officer Conduct Policy, section II - A. Unbecoming conduct. "Every employee shall at all times conduct themselves in a manner which reflects most favorably on the Department and Johnson State College". It is clear that you made the statements (as witnessed by Glenn [Robinson], Kimberly Parnigoni and Roger French) which are in violation of the above mentioned policy.

We believe that your negligence and lack of respect for a member of the Johnson State College community and their guest provide just cause for this disciplinary action.

Unfortunately, this negligence is not your first. There are several pieces of documentation in your personnel file which relate to the problem of your negligence and lack of job performance.

Any further violation of college rules, policy, or accepted practices may result in termination of your employment. A copy of this letter will become part of your personnel file (Colleges' Exhibit 3A).

25. The Contract states in pertinent part:

ARTICLE 11, PERSONNEL FILES

...

6. With respect to any document older than two (2) calendar years, which document is contained in the employee's personnel file, the Vermont Labor Relations Board shall determine what probative weight to accord the document

...

ARTICLE 12, DISCIPLINE AND DISCHARGE

1. Except for probationary employees, no employee shall be disciplined or discharged except for just cause.

...

(Joint Exhibit 1)

26. The JSC Safety and Security Manual states in pertinent part:

OFFICER CONDUCT POLICY

...

II. Procedures

A. Unbecoming conduct

1. Every employee shall at all times conduct themselves in a manner which reflects most favorably on the Department and Johnson State College.

...

3. All employees shall adhere to the policies set forth [sic] by the CODE OF CONDUCT, failure to do so may result in disciplinary action up to and including suspension or termination of employment.

...

(Joint Exhibit 2)

OPINION

At issue is whether the Board should uphold the disciplinary actions of a written reprimand and a five day suspension taken against Grievant. We will discuss each of the disciplinary actions in turn.

Docket No. 92-57

Grievant contends that the Colleges violated Article 12, Section 1, of the Contract by issuing him a letter of reprimand for his conduct in interactions with security member Joseph Grabon on the evening of May 28, 1992.

Article 12, Section 1 of the Contract provides that "no employee shall be disciplined without just cause." "Just cause" is established upon a showing that: 1) the employee's conduct was sufficiently egregious to justify discipline, and 2) the employee was on fair notice that his or her conduct could be grounds for the discipline imposed. Grievance of Gorruso, 150 Vt. 139, 146 (1988). Grievance of Griswold and VSCSF, No. 89-602, Unpublished Decision (Vermont Supreme Court, March 28, 1991). The ultimate criterion of just cause is whether the employer acted reasonably in disciplining the employee because of the misconduct. In re Brooks, 135 Vt. 563, 568 (1977). Griswold, supra.

The burden of proof on all issues of fact required to establish just cause is on the employer, and that burden must be met by a preponderance of the evidence. Colleran and Britt, 6 VLRB 235, 265 (1983). Once the underlying facts have been proven, we must determine whether the discipline imposed by the employer is within the range of its discretion given the proven

misconduct. Colleran and Britt, 6 VLRB at 266. Having determined that just cause for discipline has been established, we can overturn the employer's choice of discipline only if it was so unreasonable as to amount to an abuse of discretion. Gorruso, 150 Vt. at 146 n.4. Griswold, supra.

In issuing Grievant a written reprimand, the Employer charged Grievant with unprofessional behavior and a poor attitude towards a fellow worker by repeatedly telling Grabon that he had to leave work unless he went home and got his security shirt to put on. The Employer contended that, by his actions, Grievant aggravated a situation that had a simple solution which had been proposed by the student security manager - i.e., that Grievant open the door to the security office so that Grabon could get a security shirt.

We conclude that the Colleges has met its burden with respect to proving this charge. The evidence indicates that Grievant did demonstrate a poor attitude and unprofessional behavior during the incident with Grabon. Grievant disregarded the easy solution to the situation proposed by the student security manager, which was relayed to Grievant by Grabon, of providing Grabon with a security shirt from the security office. If Grievant questioned whether the student security manager had actually made that suggestion, the reasonable action by Grievant would have been to contact the manager himself. Instead, he acted unprofessionally and unnecessarily exacerbated relations with a coworker by insisting in a confrontational manner that Grabon needed to go home and get his shirt.

Grievant contends that the written reprimand was not justified because he was simply following established Security Department practices and policies by sending students home who showed up at work out of uniform. The evidence does indicate that some students had in fact been sent home for showing up for work out of uniform. However, Grievant was not subject to discipline as a result of his adherence to, or lack of adherence to, established practices and policies in this regard. He was disciplined for the manner in which he interacted with a coworker; specifically his confrontational, unprofessional behavior after a simple solution was presented to him. He escalated a simple workplace situation which should have been handled without incident to a confrontation.

The charge against Grievant having been proven, we now consider whether the Colleges abused its discretion in issuing a letter of reprimand based on the May 28, 1992, incident with Grabon. We look to the factors articulated in Colleran and Britt, 6 VLRB at 268-269, to determine the legitimacy of the particular disciplinary action. The pertinent factors here are: 1) the nature and seriousness of the offense, 2) the employee's past disciplinary record, 3) the clarity with which the employee was on notice that the conduct could lead to discipline, and 4) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future.

The offense by Grievant was relatively minor, but so too was the disciplinary action imposed. Grievant's unprofessional behavior towards a coworker, demonstrating his poor attitude

in personal interactions, was sufficiently egregious to justify some discipline. Grievant's past disciplinary record is relevant in demonstrating that Grievant had fair notice that inappropriate conduct towards coworkers and other members of the college community could be grounds for discipline, since several of the disciplinary actions resulted from such inappropriate conduct on Grievant's part.

Under the circumstances, a written reprimand strikes us as a reasonably measured penalty given the level of misconduct. A letter of reprimand is a relatively minor penalty and a lesser sanction would not have been adequate to deter similar conduct by Grievant in the future. In sum, we conclude that just cause for discipline existed and the College did not abuse its discretion in its choice of discipline.

Docket No. 92-58

In Docket No. 92-58, Grievant alleges that the Colleges violated Article 12, Section 1, of the Contract by suspending him for five days for his conduct in interactions with Glenn Robinson on the evening of June 11, 1992.

In suspending Grievant for five days, the Colleges charged Grievant with unbecoming conduct in violation of the JSC Safety and Security Manual by his negligence and lack of respect towards Robinson, a JSC alumnus, and Robinson's guest on their visit to the college. Specifically, the Employer charges that Grievant engaged in misconduct by not answering Robinson's simple questions where he could park on campus, and by telling Robinson to leave campus accompanied by a statement that "we don't need your type around here."

We conclude that the Colleges have met the burden of proving this charge. Grievant's actions towards Robinson did demonstrate unbecoming conduct which reflected unfavorably on the college in violation of the Safety and Security Manual. Grievant was discourteous and argumentative with Robinson when he discovered that Robinson had failed to park in a designated parking space. Robinson repeatedly tried to determine where he could park his car and, instead of responding in a courteous manner, Grievant refused to answer the question and instead kept telling him "not here". After Robinson had an opportunity to explain why he was parked where he was, Grievant became even more argumentative and discourteous, telling Robinson to leave campus and that his "kind" was not needed on campus.

Grievant contends that he was simply carrying out JSC policies and procedures by restraining Robinson from parking in an undesignated place. Once again, Grievant misses the point of the disciplinary action. The fact that Grievant was preventing Robinson from parking in an undesignated place did not exonerate him from disciplinary action. Again, Grievant was disciplined for the inappropriate manner in which he carried out his duties.

The conduct displayed by Grievant clearly was unwarranted for a member of the Security department, who has an obligation to act courteously towards persons seeking assistance on campus and to not provoke an argumentative discussion. Grievant's actions reflected unfavorably on the college, and justified some disciplinary action.

The charge against Grievant having been proven, we now consider whether the Colleges abused its discretion in issuing a

five day suspension based on the June 11, 1992, incident with Robinson. Again, we look to the factors articulated in Colleran and Britt, 6 VLRB at 268-269, to determine the legitimacy of the particular disciplinary action. The pertinent factors here are: 1) the nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities; 2) the effect of the offense upon supervisors' confidence in the employee's ability to perform assigned duties; 3) the impact of the offense upon the reputation of the college 4) the employee's past disciplinary record, 5) the clarity with which the employee was on notice that the conduct could lead to discipline, and 6) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future.

Grievant's offense demonstrated substantial misconduct in relation to his position, duties and responsibilities. As an officer of the Security Department, Grievant is charged with the responsibility of enforcing the JSC's safety and security rules. Such duties include interacting in a courteous, helpful manner with visitors to the campus. Grievant clearly did not do that here.

Grievant's actions served to undermine supervisors' confidence in Grievant's ability to perform his duties. The nature of a security officer's work requires that much of their work time is spent patrolling the campus unsupervised. A supervisor has to be able to rely on security officers to interact courteously and professionally with whomever they may meet. Grievant's actions here certainly provided his

superiors with reason to question his unsupervised dealings with the public. Also, this type of offense could only serve to damage the reputation of the college in the eyes of visitors to the campus.

Grievant's past disciplinary record is relevant in demonstrating that Grievant had fair notice that inappropriate conduct towards others could be grounds for discipline. Several of the disciplinary actions resulted from inappropriate conduct on Grievant's part towards coworkers and other members of the college community. Such disciplinary actions served to give Grievant at least implied notice that he also should not engage in inappropriate conduct towards visitors to the campus. Inappropriate conduct towards others is a recurring theme in disciplinary actions taken against Grievant, and he cannot credibly claim lack of notice that such conduct could result in discipline.

Under the circumstances, a penalty less than a suspension would not have been an adequate and effective sanction to deter such conduct by Grievant in the future. The incident involving Robinson followed closely on the heels of the similar incident involving Grabon. In both instances, Grievant demonstrated inappropriate interactions with others. The incident involving Robinson was sufficiently more egregious than the one involving Grabon, and sufficiently close in time, to justify the progressively more severe sanction of a suspension. Although we believe that the length of the suspension here - five days - reaches the outer limits of the appropriate exercise of

discretion by the Employer, we conclude that it meets the requisite standard of reasonableness. Thus, we conclude that just cause for discipline existed and the College did not abuse its discretion in suspending Grievant for five days.

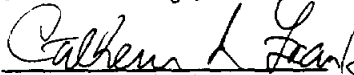
ORDER

Now, therefore, based on the foregoing findings of facts and for the foregoing reasons, it is hereby ORDERED that the Grievances of David Griswold and the Vermont State College Staff Federation in Docket No. 92-57 and Docket No. 92-58 are DISMISSED.

Dated this 12th day of August, 1993, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank


Leslie G. Seaver