

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF JOHN ROSE AND)
THE VERMONT STATE COLLEGES)
STAFF FEDERATION, VFT, AFT,)
AFL-CIO)

DOCKET NO. 80-46

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On May 19, 1980, the Vermont State Colleges Staff Federation, VFT, AFT, AFL-CIO (the "Federation") filed a grievance with the Vermont Labor Relations Board on behalf of John Rose. The grievance was later amended by the Federation on June 24, 1980. John Rose ("Grievant") is a full time maintenance department employee and member of the Federation bargaining unit at Castleton State College ("CSC"), a member of the Vermont State Colleges ("VSC") System.

VSC filed an answer to the grievance on June 4, 1980, with an accompanying motion to dismiss on the grounds the grievance was untimely filed with the college grievance officer.

A hearing was held on August 21, 1980, in the Board hearing room in Montpelier. Members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown were present. The Grievant was represented by Beverly Ryan, VFT Executive Director. Counsel for VSC, Nicholas DiGiovanni, Jr., represented the employer.

Memoranda and requested findings were filed on September 4 and September 8, 1980, by Ms. Ryan and Mr. DiGiovanni, respectively.

FINDINGS OF FACT

1. John Rose, Grievant, is employed as a full time maintenance mechanic and plumber at Castleton State College and as such is a member of the staff bargaining unit.

2. Grievant's Supervisor at all times relevant to this case is Stanley Reed, employed as Director of Physical Plant at CSC for about fourteen years.

3. The instant grievance arose under the VSC Staff Handbook (Joint Exhibit No. 1), which sets forth the terms and conditions governing the employment relationship between CSC and Grievant. The negotiated collective bargaining agreement now in effect between the parties does not apply.

4. On April 10, 1980, Grievant was issued a written warning (Joint Exhibit No. 2) from Mr. Reed for events that occurred on Saturday March 22, 1980. The major charge subject to Mr. Reed's letter of warning was Grievant's failure to respond as directed in a timely manner to an emergency situation identified earlier that day, a boiler breakdown. In addition, Grievant was reprimanded for not unlocking a particular building, the Campus Center, contrary to standard operating procedures, and playing pool during normal work hours.

5. On Saturday, March 22, 1980, Mr. Reed received an early morning telephone call from the CSC night watchman informing him that the boiler in the maintenance department building was not operating, a fact which Mr. Reed confirmed personally by going to CSC about 8:00 a.m. that morning.

6. Grievant was the only maintenance employee working that day. Mr. Reed sought him out and found him at about 8:30 a.m. on a garbage truck performing routine collection duties. Mr. Reed apprised him of the situation in the maintenance building and directed him to put a new pump motor on the boiler right away, a job which would normally take about an hour.

7. Outside of normal rounds and routine maintenance, Grievant had no other special duties that day nor was he given any other duties by Mr. Reed that morning. The reactivation of the boiler was the sole priority job since extended shut down could have led to the unit freezing over with subsequent damage.

8. Not only was it important to repair the boiler as soon as possible because of the danger of freezing, but also because if the problem was caused by something other than the pump motor, any replacement parts could be more readily obtained that same Saturday in either Rutland or Albany. On Sunday these parts stores would be closed and, while there is some sharing of equipment and parts between campuses, there was no guarantee the needed part would be available from such sources.

9. After directing Grievant to put in a new motor, Mr. Reed left the campus.

10. Mr. Reed later returned to the campus around 1:15 p.m. to check to see if the boiler was operating properly. He discovered that no repairs had been made as yet, and then set out to find Grievant. He found Grievant playing pool in a recreation room of the Campus Center.

11. Mr. Reed then told Grievant to immediately replace the motor, which he did. The job took less than an hour.

12. Employee use of the Campus Center during the workday is prohibited, except from noon to 1:00 p.m., the scheduled lunch hour.

13. The written reprimand (Joint Exhibit No. 2) noted that Grievant had received a prior warning of misconduct. The basis for the prior warning involved the improper use of time cards, wrongfully recording a leave day as a sick day. He had also been generally warned about poor work performance.

14. Grievant explained the situation as follows. He first discovered the boiler was not working and called Mr. Reed about it at home, who then directed him by telephone to go to another building, Ellis Hall, to get a replacement pump motor. When Grievant checked there, he could not find it. Grievant waited until 10:00 a.m. and called Ira Maxfield, a fellow employee, who directed him to another area to find a motor. Grievant testified he then found the motor right away but did not put it in until after lunch because he thought it more important to make routine safety inspections. Grievant argued that he was free to set his own priorities, feeling that the replacement of the motor could wait.

15. Grievant explained the reason for his extended lunch hour and failure to unlock the Campus Center building on time as follows. While he normally takes his lunch at noon, as is the department rule, on this particular day a faculty member wanted to get into a building. He would not let him in without Mr. Reed's authorization and tried to get it by calling Mr. Reed. He tried for 15-20 minutes but Mr. Reed was not home. Someone then called to be let into the Campus Center. For these reasons, he claimed that his lunch hour was interrupted for a period of twenty minutes and when Mr. Reed found him at 12:20 p.m., Grievant was on a belated lunch hour.

16. Grievant testified that he was not aware of any standing order to open the Campus Center, but did admit that there are many standing orders posted on the maintenance department bulletin board and he may not have read them all. He stated that one "can't abide by all the rules" because of their number.

17. Within seven days after receiving the April 14, 1980, reprimand, Grievant approached Mr. Reed, contending the reprimand was unwarranted and asking it be repealed.

18. On May 6, 1980, Federation grievance counselor Richard Coltey filed a written grievance with CSC grievance officer Robert Bruce regarding the reprimand. Thereafter, the grievance was denied on the basis it was untimely filed at this level.

OPINION

I

TIMELINESS

The Colleges (VSC) have charged that this grievance is procedurally defective, contending the initial written grievance was filed in excess of seven days after Grievant's receipt of Mr. Reed's letter of reprimand and was therefore untimely. We have considered this argument and we decline to grant the VSC motion to dismiss the grievance on those grounds.

Part III G of the Handbook (Joint Exhibit No. 1) Resolution of Grievances, provides:

- 1) If a misunderstanding develops over wage or salary rates, job assignments, discipline, non-reappointment, discharge, employee performance or similar issues, the employee should first discuss the issue with his/her immediate supervisor.

- 2) If this initial approach does not resolve the problem, within 7 calendar days, the employee may submit the issue in writing to the officer designated in the College Handbook....

We believe the prescribed time limits in part two above are ambiguous. In our opinion, however, one could reasonably infer from this language that an aggrieved employee has seven days after some disposition of the complaint from his immediate supervisor, whenever that occurs, to file a written step one grievance. Here, Grievant did approach Mr. Reed initially in a timely manner and after weeks without a reply, he proceeded to file a written grievance with the designated grievance officer on campus. We conclude Grievant's rights to present this grievance before us now have not been waived.

II

MERITS

Having reached the merits of this grievance, we are compelled to dismiss it for lack of proof of any discriminatory application of a rule or regulation in disciplining Grievant. As in another case involving Grievant recently decided by the Board, that is the applicable standard of review, absent a collective bargaining agreement. see Grievance of John Rose, Robert Ackors and The Vermont State Colleges Staff Federation, VFT, APT, AFL-CIO, 3 VLRB 370 (1980). We need not determine whether the discipline was appropriate under a "just cause" standard.

Part III H of the Handbook (Joint Exhibit No. 1) states that

Whenever it is apparent to the supervisor that the employee is not performing in a satisfactory manner or that policies or the generally accepted rules of conduct or performance are not being observed, disciplinary action may be expected.

And while it continues and provides that

there are four successive levels of discipline:
verbal warning, written warning, suspension, and
formal written discharge (termination)[;]

it concludes with the statement that

the level of discipline applied (including
termination) is determined by the seriousness
of the offense.

In our opinion, the last sentence of this section gives the employer the discretion to determine what level of disciplinary action is appropriate, on the facts. The reference to successive levels of disciplinary action does not prohibit the employer from imposing any other than a verbal warning for a first offense of any kind.

We believe CSC did not abuse that discretion or discriminate against Grievant with respect to the rules governing disciplinary action. No evidence of similarly situated employees who received lesser or no disciplinary action was presented by the Federation.

Grievant's testimony refuting his culpability for the charges of misconduct and unsatisfactory performance against him was not convincing. First, even if Grievant's actions delaying the boiler repair were due to exercising his own judgment, the employer has proved that was a substantial error in judgment, capable of sustaining the relatively minor disciplinary action imposed here. Second, there is no credible defense for failing to be aware of posted, standard, operating procedures, such as those on the maintenance department bulletin board. And third, while it is plausible that Grievant may have properly taken an extended lunch hour to compensate for time worked during his normal break, we are not sufficiently convinced of this fact to feel justified in sustaining this grievance. Accordingly, we find Mr. Rose's grievance without merit.

ORDER

Now, therefore, based on these facts and for the foregoing reasons the grievance of John Rose and the Vermont State Colleges Staff Federation is hereby ORDERED DISMISSED and is DISMISSED.

Dated this 26th day of September, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley Sr.


Robert H. Brown