

VERMONT LABOR RELATIONS BOARD

Grievance of:)	
)	
NAOMI ALLEN and the VERMONT STATE COLLEGES)	DOCKET NO. 79-63S
FACULTY FEDERATION, AFT Local 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On September 11, 1979, the Vermont State Colleges Faculty Federation (hereinafter the "Federation") filed a petition with the Vermont Labor Relations Board. In that petition, the Federation alleged that Johnson State College, a member of the Vermont State Colleges (hereinafter "VSC") system, had acted without sufficient cause in suspending faculty member Naomi Allen for thirty days without pay.

VSC filed an answer on September 18, 1979, denying any contract violation in disciplining Ms. Allen. VSC also moved to dismiss the Federation's grievance as untimely, claiming the action grieved by Ms. Allen occurred on April 19, 1979, while her step one grievance was not filed until May 24, 1979.

A hearing on this matter was held before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown on February 28, 1980. VSC was represented by Attorney Nicholas DiGiovanni, Jr. Stephen T. Butterfield, Grievance Chairman, represented the Federation.

Requests for findings of fact and memoranda were filed by both parties on March 13, 1980.

FINDINGS OF FACT

1. Ms. Naomi Allen was first employed by Johnson State College (hereinafter "JSC") as a full-time faculty member in September, 1976. At that time, and at all times material to this grievance, Ms. Allen reported to Dr. Fred Stahuber.

2. During the 1977-1978 academic year, Ms. Allen was granted a leave of absence without pay from JSC to pursue her doctoral degree.

3. Ms. Allen returned to full-time duty at JSC in September, 1978, for the 1978-1979 academic year.

4. On January 9, 1979, in the course of college-related duties, Ms. Allen was involved in an automobile accident. As a result of that accident, she sustained injuries to her back and spine.

5. Because of the pain and disability resulting from her injuries and upon advisement by her physician, Ms. Allen and JSC mutually agreed to reduce her workload for the second semester. Specifically, Ms. Allen, who would have been expected to teach four courses, was allowed to carry only two courses, thereby reducing the amount of time she was required to drive and stand during instruction. Each of the two courses she continued to teach met once a week for two and a half hours. (Grievant's Exs. 9 and 10) Her other duties and responsibilities as a full-time faculty member, including student advising, office hours and faculty committee work remained the same, and were only reduced insofar as they related to her reduced instructional workload. While it is not clear how many days a week she was expected to be on campus, Ms. Allen was expected to be available on campus to the extent necessary to carry out her responsibilities listed above.

6. On April 19, 1979, Ms. Allen personally received from JSC Academic Dean, Gary Confessore, a written reprimand citing her for gross neglect of duty. In that letter she was informed that as a result of her unauthorized absences of April 10 and 13, 1979, Dean Confessore would be recommending that she be suspended for thirty days without pay. (Employer's Exhibit #2)

7. By letter dated and receipted by Ms. Allen on April 20, 1979, JSC President Edward Elmendorf did take disciplinary action against Ms. Allen, inserting Dean Confessor's April 19 letter of reprimand (Employer's Exhibit #3) in her personnel file and suspending her for thirty days without pay for the period April 24 through May 23, 1979. (Employer's Exhibit #3)

8. By letter dated May 9, 1979, (Joint Exhibit #2) to Dean Confessore, Ms. Allen registered an informal complaint regarding her suspension imposed by Dean Confessore's letter of April 19.

9. The events leading to Ms. Allen's suspension, the subject of this grievance, began during the week of April 9, 1979. On Wednesday of that week, April 11, Ms. Allen called the Division of Education and Social Science and indicated to the administrative assistant of the Division, Helen Minaert, that she was home sick with a fever. She asked Ms. Minaert to arrange for Ms. Jane Root to cover her class that afternoon. Ms. Root did cover the class.

10. When Ms. Allen called that day, Dr. Stahuber did not speak with her. However, around 3:00 p.m. that same day, Dr. Stahuber called her at home because he needed information from her relative to a workload report he was compiling on the Division for the Dean (Employer's Exhibit #1). He had data from all other faculty except Ms. Allen and needed her input to complete the report.

11. Dr. Stahuber testified that calling faculty at home when they are sick is not an unusual practice. He has often called faculty when he needed information or had to have a question answered that could not wait until the faculty member's return.

12. Unable to contact Ms. Allen at home on April 11, Dr. Stahuber directed his assistant, Ms. Minaert, to ask Ms. Allen for the workload information he needed if she called in sick on Thursday, as well.

13. On Thursday, April 12, Ms. Allen called again, claiming that she was still home sick and requesting that her Thursday class be cancelled. Ms. Minaert, however, forgot to ask about the workload information, and Dr. Stahuber immediately told her to call Ms. Allen back. Once again, there was no answer at Ms. Allen's home.

14. Each of the single classes missed by Ms. Allen on Wednesday and Thursday, April 11 and 12, constituted a full week of classes for each course.

15. Puzzled as to Ms. Allen's whereabouts when he learned Ms. Minaert was still unable to contact Ms. Allen by telephone so soon after speaking with her, he learned from the office receptionist that Ms. Allen's call sounded to her like a long distance call.

16. At that point, Dr. Stahuber remembered that Ms. Allen had family in New York and that she had once given him their phone number. At this time, however, he could not find the phone number. He then decided he would drive over to her house since she lived near to the campus area. Upon arriving at the house, he observed that the car was missing, and when he knocked on the door, no one answered.

17. At this point, Dr. Stahuber testified that given his inability to reach her by phone on Wednesday and Thursday, his speculation that her call

on Thursday had been long distance, and the fact that no one was home when he stopped by, he concluded that she must have left the area. Since she was heavily restricted from automobile driving due to her accident, he concluded that she might have flown somewhere. He then called the Burlington Airport parking lot, and was told that Ms. Allen's car had, in fact, been there since Monday night, April 9.

18. On Friday, April 13, Dr. Stahuber tried telephoning Ms. Allen at her home, again without success. He then called a local travel agency to see if she had arranged a trip through them. The Stowe Travel Agency told him that she and her husband had indeed made travel arrangements with them the week before and had booked flight to Nashville, Tennessee, planning to return on the 16th.

19. In early April, 1979, Ms. Allen did make arrangements to leave for a flight to Nashville, Tennessee. She departed the Johnson area on Monday evening, April 9, 1979, and returned home on Saturday, April 14.

20. Ms. Allen returned to work on Monday, April 16, 1979. At 1:30 in the afternoon, she reported to Dr. Stahuber who had contacted her earlier that same day and had set up a meeting with her, Dean Confessore and himself in attendance.

21. Prior to meeting with Dr. Stahuber and Dean Confessore on April 16, Ms. Allen was not informed as to the purpose or subject matter of the meeting, nor was she accompanied by a Federation representative.

22. At that meeting, Dean Confessore inquired of Ms. Allen as to her whereabouts the week before. Ms. Allen replied that she was "home sick." When Dean Confessore specifically asked her if she in fact was "home, in Johnson?", she replied "yes."

23. Upon being confronted with the college's investigative efforts and resulting conclusions as to her whereabouts the previous week, Ms. Allen admitted that she had left Johnson at that time to be with her family in Nashville and that she felt it was very important for her to do so at that time. When asked why she had not requested personal leave for that purpose, Ms. Allen replied that she did not think it would have been granted.

24. At 1 p.m., April 16, 1979, immediately prior to attending the meeting set up by Dr. Stahuber, Ms. Allen received medical confirmation of pregnancy. Ms. Allen testified that this information caused her a great deal of emotional distress and anxiety. Ms. Allen feared that a medically prescribed drug she had taken in treating her injury might endanger her unborn child. At that time, she also feared her injuries would prevent her from carrying the baby full term.

25. The meeting closed with Dean Confessore indicating he would let her know of his recommendations to President Elmendorf on the matter.

26. On Friday, April 20, upon receiving Dr. Confessore's letter of reprimand and recommendation for suspension (Finding 7, infra), Ms. Allen met with Dean Confessore. At this time she stated to him that she needed to be with her family because she suspected she was pregnant and was greatly troubled with the decision to continue or terminate the pregnancy. She did not wish to discuss such a personal matter with anyone at JSC, and felt she would have had to disclose the details surrounding her request for personal leave. Moreover, she had already requested and been granted her allotment of personal leave days earlier in the year.

27. The collective bargaining agreement currently in effect, the Agreement between Vermont State Colleges and Vermont State Colleges Faculty Federation for the period May 1, 1979, through September 1, 1980, has been

filed with this Board and is incorporated herein for the purpose of findings of fact. (Joint Exhibit #1)

28. Article XVII, section 1, of the contract, "Sick Leave," provides in pertinent part that

Sick leave may be used if a faculty member must be absent from his duties because of disability, illness or accident. In addition, a faculty member may use up to three (3) days of sick leave per year for personal reasons.

Section 9 of that same article states:

Faculty shall make every effort to arrange for satisfactory coverage of their duties while absent for disability, illness or accident. Where leave is for personal reasons, satisfactory coverage or other alternative arrangements may be required by the designated administrator. Notice for need of absence shall be given, as soon as possible, to said administrator.

29. Dean Confessore did not treat Ms. Allen's written notice to JSC dated May 9, 1979 (Joint Exhibit #2), as a "complaint," but rather an attempt to submit a step one grievance. In a letter dated May 17, 1979, he directed Ms. Allen to submit a proper grievance to President Elmendorf. (Grievant's Exhibit #15)

30. On May 21, 1979, Ms. Allen filed a step one grievance on this matter to President Elmendorf, stating the action being grieved, alleged contract violations and the remedy she sought. (Grievant's Exhibit #16)

31. By letter dated May 25, 1979, President Elmendorf informed Ms. Allen that it was the position of the College that her May 21 step one grievance was filed too late to comply with the grievance procedure, 30 day, timeliness requirements (Article XIX, section 1, Joint Exhibit #1).

32. The step one grievance was denied by letter dated June 14, 1979, from Phillip Allen, step one grievance officer.

33. Ms. Allen filed a step two grievance on June 18, 1979, (Grievant's Exhibit #18) which was denied by letter dated August 20, 1979, from Dean Confessore (Grievant's Exhibit #23).

OPINION

In this grievance, we are required to decide two issues. The first issue is a procedural one. Did Ms. Allen comply with the timeliness requirements set forth in Article XIX of the Agreement in registering the instant grievance? If so, did Johnson State College (JSC) have "proper cause" to suspend Ms. Allen for thirty days without pay, April 24, 1979, through May 23, 1979.

I

Timeliness

JSC maintains Ms. Allen failed to submit her grievance within fifteen days following the College's answer to her complaint. The College claims this complaint was made orally by Ms. Allen and answered orally by JSC at the conclusion of her April 20, 1979, meeting with Dean Confessore. Ms. Allen's grievance was not filed until May 21, 1979 (Joint Exhibit #4). The College claims Ms. Allen was aware of her pending suspension on April 20, thirty-two days before. Therefore, her grievance was filed out of the prescribed time limits.

We disagree. Ms. Allen's complaint and step one grievance were timely filed. We concur with the Federation and find that while Ms. Allen did object to her suspension as unwarranted and harsh in her April 20 meeting with Dean Confessore, she did not complain in the contractual sense until May 9, 1979 (Joint Exhibit #2). We do not mean to say, nor does the Agreement require, that complaints must be in writing to be considered. But, we view Ms. Allen's motives and communications to Dean Confessore (See Finding #26) on April 20, as an attempt to explain her conduct and provoke a review of the facts, rather than to complain of the suspension. This was the

first time she had divulged the personal, and embarrassing to her, reasons for her conduct. In this context, we regard Ms. Allen's May 9, 1979, letter of complaint to Dean Confessore (Joint Exhibit #2) as the complaint which initiated the time limits in processing this grievance.

JSC did not answer the substance of Ms. Allen's May 9, complaint by either arranging for a meeting or informing her that they believed her complaint had already been answered on April 20, 1979, (as they now assert). JSC's reply dated May 17, 1979 (Grievant's Exhibit #14), only indicated the College's position that Ms. Allen's complaint was an improperly submitted step one grievance, and directed her to the required format for submitting grievances. Taking this as JSC's response to her informal complaint, Ms. Allen then filed a proper step one grievance on May 21, 1979 (Grievant's Exhibit #16), four days after the College's response to her informal complaint. We conclude that Ms. Allen has met the contractual timeliness requirements to file a grievance.

II

Proper Cause for the Suspension

Did JSC have "proper cause" under the Agreement to suspend Ms. Allen for thirty days without pay?

The right of management (VSC and its agents)

... to suspend or discharge a faculty member for proper cause subject to other provisions of this Agreement ...

is stated in Article VI(B) of the Agreement (Joint Exhibit #1 at 6, 7).

"Cause" in relation to reasons for discipline is defined in only one other section of the Agreement, in Article XXIV on Tenure (Joint Exhibit #1 at

29). In that section, cause sufficient to warrant dismissal is defined as:

1. Incompetence
2. Prolonged mental or physical incapacity
3. Gross misconduct
4. Repeated and serious neglect of duty
5. Conviction of a serious crime

The Federation maintains the position that although the above-listed causes are referenced with respect to dismissal of tenured faculty, they can be used as a guide in determining what might be "proper cause" for suspension. We think this position is reasonable where the Agreement clearly requires "proper cause" for suspension as well as dismissal (and says so in the same sentence). Certainly, however, in being guided by this list of misconduct, we are mindful that those factors need not be present to the extent necessary to sustain dismissal for cause. For example, while "gross misconduct" may be cause for dismissal, lesser misconduct may warrant suspension without pay. That is to say, the same seriousness of misconduct which constitutes cause for dismissal need not exist for VSC to suspend faculty.

In suspending Ms. Allen, JSC cited gross neglect of duty. The specific charges were absence from duties without prior authorization, abuse of sick leave, and a deceitful attempt at covering up her misconduct.

The pertinent facts regarding Ms. Allen's actions at the time material to this grievance are uncontroverted.

1. Ms. Allen planned a trip to Nashville several days prior to her departure on April 9. At that time, she suspected she was pregnant, and was fearful of the implications for herself and the child in view of her poor physical condition after the accident.
2. Ms. Allen did not notify any JSC official of her plans and intentions.
3. Ms. Allen did not seek or attain authorization to be absent from her duties April 10-13, 1979; nor did she make arrangements for coverage of her classes for that week.

4. Ms. Allen called-in "sick" on Wednesday, April 11 and Thursday, April 12, asking the Division Administrative Assistant to make arrangements to have a colleague cover her class on the 11th. She asked that her class on April 12 be cancelled.

5. Ms. Allen admitted upon her return to JSC, when faced with the College's investigative information, that she had not, in fact, been sick at "home in Johnson" during that period, but instead was in Nashville for personal reasons.

6. The possibility that she was pregnant at this time caused Ms. Allen a great deal of anxiety.

7. Ms. Allen went to Nashville because she felt she needed the supportive and comforting company of her family during what she perceived was a personal crisis.

On these facts, we conclude Ms. Allen failed to meet her contractual obligations. Even though Ms. Allen's absence in Nashville was related to her health, it was nonetheless, anticipated. Once Ms. Allen had foreknowledge of her need for an absence from JSC for the period April 10-13, she had a contractual obligation to notify her Division supervisor of her plans as soon as possible. See: Southwestern Ohio Steel, 58 LA 501 (Stouffer, 1972) (Notwithstanding a family emergency, an employee should still contact his employer when he expects to absent himself from his job.) American Museum of Natural History, 73 LA 1159 (Turkus, 1979) (Arbitrator found just cause for dismissing an employee who absented herself from her teaching duties without advising her department chairman.) Article XVII(9) (Joint Exhibit #1 at 16) provides that:

Faculty shall make every effort to arrange for satisfactory coverage of their duties while absent for disability, illness, or accident. Where leave is for personal reasons, satisfactory coverage or other alternative arrangement may be required by the designated administrator. Notice for need of absence shall be given, as soon as possible, to said administrator. Upon return, the faculty member shall complete and submit to said administrator a "Sick Leave Absence" form (see Appendix).

Ms. Allen did absent herself without authorization, and did abuse sick leave privileges by pre-planning call-ins for April 11 and 12. We do not find Ms. Allen's assertion that she actually was feverish and suffered a headache on those days mitigates her admitted attempt to deceive her superiors. Such an after the fact justification is both suspicious in fact and specious in logic. This is particularly true where she testified that she would have asked for personal leave if she thought it would have been approved without extensive interrogation by her department head.

In addition to her troubled state of mind and health, Ms. Allen defended her conduct by arguing that she had already used her allotment of personal leave for the year and that requesting more would have necessitated detailing the circumstances of her need for personal leave. These circumstances included the need to consider an abortion because of her poor physical condition. She feared discussion of such a highly personal, political, and moral issue with her superiors, feeling that even if permission were granted, her reputation would be adversely affected. There is no evidence which supports Ms. Allen's contention that she needed to disclose these personal matters in which she had a legitimate expectation of privacy as a condition of being permitted personal leave. The fact that she had already been granted personal leave that year may not have precluded JSC from advancing her more leave, if necessary. However, she did not ask for it, and what might have happened is speculative. What evidence there is on the point leads us to conclude disclosure would not have been required: (1) JSC had made a co-operative workload arrangement with Ms. Allen on account of her back injury; (2) a generally positive working relationship with the College existed; (3) Ms. Allen had been granted personal time when requested prior that year.

We conclude that in all likelihood, she would have been granted the personal leave she needed, without extensive interrogation.

When everything is considered, misconduct sufficient to warrant suspension occurred: abuse of sick leave, unauthorized absence, and deception.

Ms. Allen's action did constitute serious neglect of duty.

The hard and inescapable fact is that grievant made no attempt to discuss her decision to absent herself from work and/or reveal her fears to her supervisors ... Instead, she callously elected to abandon her job duties and responsibilities without securing prior authorization for her absence ... (American Museum of Natural History, supra at 1160)

In assessing the severity of the penalty imposed here, we note that the thirty-day suspension without pay imposed in Ms. Allen's case, represents an actual loss of approximately fifteen days pay, as Ms. Allen at the time was on half-salary commensurate with her reduced workload.

III

Other Contractual Violations Alleged

The Federation has claimed that a number of articles were violated in this case, beyond the denial of sick leave for Ms. Allen's absences of April 11 and 12, 1979. These include the Personnel Files, Evaluation, Workload, and Grievance Procedure articles. In citing violations of the Grievance Procedure article, the Federation charges that JSC violated Ms. Allen's right to union representation at her initial meeting with JSC officials regarding her absence. While we do not interpret the Agreement as requiring union representation at this level, neither do we see any need on the part of the employer to conceal the purpose and subject of such meetings from its employees. In the future, we believe the employer should advise employees that a contemplated meeting concerns possible disciplinary action and the

employee may wish Union representation there. This procedure is more conducive to harmonious labor relations and our traditional values of fair play than that which was followed here.

The remainder of the articles cited, either individually or collectively, do not prevent the College from disciplining faculty. The only issue here was whether "proper cause" existed for suspending Ms. Allen. The other articles cited are irrelevant.

There was no evidence supportive of Ms. Allen's claim of sex discrimination here. Similar violations of the Sick Leave article may very well occur. Whether specific incidents of that fact are within the knowledge of the College, we do not know. But Ms. Allen presented no evidence here which would support differential treatments as to these requirements as they were applied to her on account of sex.


ORDER

Now, therefore, for all the foregoing reasons, the grievance of NAOMI ALLEN and the Vermont State Colleges Faculty Federation is ordered DISMISSED and is DISMISSED.

Dated this 25th day of April, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


Robert H. Brown