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GARY BOYD

v.

Docket No. 91-PEDTA-116

WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT
AND TOURISM AUTHORITY

DECISION

The grievant, Gary Boyd, is employed by the West Virginia Parkways, Economic Development and Tourism Authority (PEDTA) as an electrician assigned to its Beckley maintenance garage. He initiated a grievance at Level I January 11, 1991, alleging PEDTA had been inconsistent in certain disciplinary matters. The grievance was denied at all lower levels and appeal to Level IV was made March 26, 1991, where a hearing was held June 11, 1991. The parties submitted proposed findings of fact and conclusions of law by July 15, 1991.

There is essentially no dispute over the facts surrounding the case. As part of his duties the grievant drives a truck to certain facilities along the West Virginia Turnpike to make a variety of repairs. His regularly assigned truck, like others, is equipped with a number of tools and he must keep it secure at all times.

On December 10, 1990, the grievant completed his shift and delivered his truck to a fenced-in outer area adjacent to the garage. The grievant was aware that the truck's rear hasp and/or lock were broken but nevertheless departed the garage leaving the vehicle's tool storage area unsecured. Approximately one hour later the grievant's supervisor, Don Richmond, discovered the condition of the truck and had it repaired and secured. He subsequently determined that the grievant had no good reason for not seeing to the repairs himself and issued him a written warning in which he so advised him. The grievant conceded his negligence and did not protest the placement of the warning in his personnel file.

On January 4, 1991, the grievant was advised by a co-worker that another vehicle, truck 17, had been left in the same area unlocked for perhaps as long as sixteen hours. The grievant approached foreman Roger Johnson and advised him of the situation. He also advised Mr. Johnson that the employee responsible should be given a written warning or the one issued him should be withdrawn. It is not entirely clear as to what immediate response Mr. Johnson made but the grievant was ultimately informed that no warning would be issued and his would remain in his personnel file. It is undisputed that PEDTA never made a determination as to who was responsible for leaving truck 17 unlocked.

The grievant maintains that PEDTA did not make any investigation of the incident involving truck 17 and it, therefore, ignored or condoned an act identical to the one for which he was disciplined. He asserts that such disparate treatment is

contrary to PEDTA personnel policy. As relief the grievant requests that the written warning be removed from his personnel file.

PEDTA contends a reasonable investigation was conducted but the identity of the employee responsible for leaving the truck unsecured could nevertheless not be determined. The agency denies any violation of policy and asserts that its inability to identify the responsible party was the sole reason why disciplinary action was not taken for the unsecured condition of the truck. For reasons hereinafter discussed, the undersigned concludes that the grievant must prevail.

PEDTA's personnel policy on discipline contains the rather clear directive, "Discipline will be administered in a consistent manner throughout the organization." Since employers must abide by the policies they establish, see Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977), this directive must be deemed applicable to the inquiry herein. Further, while the personnel policy contains little elaboration on the directive, it must be concluded that implicit therein is a requirement that reasonable investigations of the circumstances surrounding all offenses must be conducted. To hold otherwise would render the provision rather meaningless. Certainly, disciplinary measures cannot be "administered" consistently if the investigations leading thereto are not performed in a uniform manner.

It is not necessary to set forth in any great detail the evidence regarding the depth of PEDTA's inquiry into the situation involving truck 17. It is sufficient to state that the

evidence establishes that Mr. Richmond, upon being advised of the situation, merely asked electrician James Kirk if he had driven the truck during the time in question and received a negative reply. While Mr. Richmond testified that Mr. Johnson, at his direction, conducted a further investigation, Mr. Johnson's testimony reveals that he did not.

Certain documents, including shift reports and employee logs submitted by the grievant, rather clearly show that Mr. Kirk and electrician Richard Patterson used truck 17 on part of their 3:00 p.m. to 11:00 p.m. shift on January 3, 1991. Mr. Patterson's testimony established that he and Mr. Kirk returned the truck to the garage because it was having mechanical problems. While this evidence does not, with any degree of certainty, prove that either Mr. Kirk, Mr. Patterson or other employees left the vehicle unlocked, it does aptly illustrate that, had some semblance of an investigation been conducted, it is likely that the responsible person would have been identified. It can only be concluded that, by failing to see that sufficient inquiry was made, Mr. Richmond and Mr. Johnson were ignoring the matter and, by doing so, they were not following PEDTA's personnel policy.

In addition to the recitation of facts and conclusions in the foregoing narrative, the following conclusions are made.

CONCLUSIONS OF LAW

1. An agency must abide by the remedies and procedures it properly establishes to conduct its affairs. Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977).

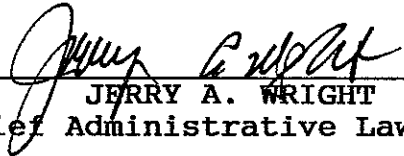
2. PEDTA has adopted a policy by which discipline of its employees must be administered consistently. Inherent in this policy is a requirement that investigations into alleged offenses be conducted in a consistent manner and in such a way as to insure that employees committing like offenses receive the same discipline.

3. By failing to adequately investigate the situation involving truck 17 PEDTA, in effect, ignored the situation. The result of this failure was that the grievant and the person responsible for leaving the truck unsecured were not treated consistently in violation by PEDTA's personnel policy.

Accordingly, the grievance is **GRANTED** and the West Virginia Parkways, Economic Development and Tourism Authority is hereby **ORDERED** to remove the grievant's December 12, 1990 written warning from his personnel file.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a

party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.



JERRY A. WRIGHT
Chief Administrative Law Judge

Dated: March 3, 1992