

ANITA GBOFFUEH,

Appellants

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-05

OPINION

INTRODUCTION

Anita Gboffueh (“Appellant”) appeals the decision of the Howard County Board of Education (“local board”) terminating her from her position as a night custodian. The local board terminated Appellant for insubordination and willful neglect of duty because she was sleeping while on duty. The local board responded to the appeal maintaining that the decision was not arbitrary, unreasonable or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant has a long history of insubordination and willful neglect of duty including sleeping while on duty and was terminated under the applicable progressive discipline policy. Appellant began working for Howard County Public Schools as a night floater custodian in 2012. In 2017, she was assigned as night custodian to Lake Elkhorn Middle School and in 2018, she was reassigned to Hollifield Station Elementary School. The Appellant has a record of well documented disciplinary problems including but not limited to the following:

- September 29, 2016 – Written oral concern form for sleeping while on duty on September 27, 2016;
- July 26, 2019 – Written warning for sleeping on duty following a due process meeting;
- November 27, 2019 – Concern form for not performing assigned duties;
- January 3, 2020 – Concern form for sleeping in the back seat of her car while on duty;
- January 9, 2020 – Concern form for sitting in a chair and not working while on duty;
- January 10, 2020 – Concern form for improperly cleaning the restroom;
- January 14, 2020 – Reprimand for misconduct, insubordination and willful misconduct;

- August 26, 2020 – Concern form for failing to perform assigned duties when Appellant left four portables unlocked overnight and shouted at staff when questioned; and
- September 15, 2020 – One-day suspension without pay for comments and behavior regarding the August 26, 2020, incident.

(Local Bd. Response, Ex.2:29-50).

On April 14, 2021, Rad Habayeb, Assistant Manager, Office of Custodial Services, observed the Appellant sitting in a chair with her shoes off, sleeping with her head against the wall in the dark while she was on duty. He called out to her but received no response. Mr. Habayeb then found the night supervisor, Marc Casborne, who confirmed that the Appellant was sleeping, and called out to her and received a response. The Appellant denied being asleep. (Local Bd. Response, Ex.2:17-18). The incident was reported to the Principal and she inquired as to the next steps in progressive discipline. (Local Board Response. Ex.2:17).

On April 20, 2021, John Miller, Assistant Manager, Office of Custodial Services, notified Appellant of her due process meeting scheduled for April 21, 2021, and her right to be represented. (Local Board Response, Ex.2:19). Mr. Habayeb and Mr. Miller met with the Appellant on April 21, 2021, and reviewed her history of insubordination and willful neglect of duty, including the numerous incidents of her sleeping on the job. (Local Bd. Response, Ex.2:20-21). The Appellant generally denied sleeping on the job and stated she was praying. *Id.* The Appellant later claimed she was under medication and not sleeping due to a medical condition. (Local Bd. Response, Ex.2:22). By letter dated May 6, 2021,¹ Melodee Phillips, Manager, Office of Custodial Services, sent notice to the Appellant that she was placing the Appellant on administrative unpaid leave and recommending that the Appellant be terminated for insubordination and willful neglect of duty for sleeping while on duty. (Local Bd. Response, Ex.2:23).

The termination hearing was held on May 6, 2021, with Bruce Gist, Executive Director of Operations, serving as the Chief of Operations Designee; Appellant; and Robert Coleman, American Federation of State, County, and Municipal Employees (“AFSCME”) President, serving as the union representative. During the hearing, the Appellant generally denied she was sleeping on the job. Mr. Gist determined that Appellant’s prior history of performance problems and her failure to improve after repeated warnings and disciplinary action coupled with the April 21, 2021, incident of sleeping while on duty warranted termination. (Local Bd. Response, Ex. 2:15-16).

On May 19, 2021, Appellant applied for a reasonable accommodation under the Americans with Disabilities Act (“ADA”). No decision was made regarding the Appellant’s termination pending the outcome of the ADA review. On June 22, 2021, Appellant was notified that her request and related appeal for an ADA accommodation was denied because her medical condition was not a disability under the ADA. (Local Bd. Response, Ex.2:26). On June 28, 2021, the Appellant received notice of her termination by the Chief of Operations Designee due

¹ The date of the letter is most likely May 5, 2021, although it is dated May 6, 2021, it states that the Appellant is being placed on unpaid administrative leave effective today, May 5, 2021. The date of the letter is not material to this dispute.

to her sleeping while on duty on April 14, 2021, based upon the discussion and review of all available documentation presented during the termination hearing. (Local Board Response, Ex.2:5).

On August 18, 2021, Appellant appealed the termination decision to the local board claiming that her dismissal was arbitrary and capricious, violated the ADA and was discriminatory based on her national origin. Appellant also objected to the inclusion of her prior disciplinary record, arguing that only the April 14, 2021, incident should be considered. The local board conducted a paper review of the Appeal on September 22, 2021. The board found that Appellant's prior work history was relevant to the appeal.

On October 20, 2021, the local board issued its decision upholding the termination. The local board found that the record reflected a pattern of behavior that was addressed by progressive discipline and supported a finding that Appellant was sleeping while on duty on April 14, 2021, and that this final act, given her history, justified her termination. (Local Board Decision at 5). The local board also concluded that nothing in the record supported Appellant's allegations that she was discriminated against either for national origin or disability under the ADA. *Id.*

This appeal followed.

STANDARD OF REVIEW

A non-certified employee is entitled to administrative review of a termination pursuant to §4-205(c)(3) of the Education Article. *See Goines v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-16 (2017). Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

Appellant does not dispute the accuracy of her long history of performance issues; rather she argues that they are not relevant to this dispute. Appellant bases her argument on a single sentence in her due process and termination letters stating that she was being terminated as a result of Appellant's insubordination and willful neglect of duty, "specifically for sleeping on duty on April 14, 2021." She argues that this language somehow eliminates any relevance of her past transgressions even though those same letters also provide that the termination was based on meeting with the Appellant to discuss her behavior and a "review of all available documentation." *See* Local Bd. Response, Ex.2:5 & 23. The record demonstrates that Appellant's termination was based upon a pattern of behavior that was addressed by progressive discipline including oral warnings, written reprimands, and a suspension. The record further supports the conclusion that the Appellant was found sleeping while on duty on April 14, 2021, and that this final act resulted in her termination.

Arbitrary, Unreasonable or Illegal Decision.

The Appellant argues that the local board's decision is arbitrary, unreasonable and illegal because it was based on a single incident of sleeping on duty on April 14, 2021. It is Appellant's burden to prove that the local board's decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06. A local board's decision is arbitrary or unreasonable if it is (1) contrary to sound educational policy, or (2) if a reasoning mind would not have reasonably reached the conclusion the local board reached. *Id.* The Appellant's argument falls far short of meeting this burden. The Appellant's characterization of the basis for dismissal ignores the lengthy disciplinary measures enacted in an attempt to resolve Appellant's repeated problems of sleeping on the job. The very issues that were discussed during her two hearings.

Appellant argues that her termination violates Article 22 of the Master Agreement between the Board of Education of Howard County and AFSCME. Article 22 - "Employee Discipline and Discharge" provides:

No unit member will be discharged without just cause....Unit members shall be afforded due process in the handling of disciplinary actions. A policy of progressive discipline will normally be utilized; however, where the offense is deemed to be serious some steps may be waived. Normal progressive discipline. will consist of oral warning, written reprimand, suspension, demotion and discharge.

See Appellant's Response, Ex. 4. Article 22 by its terms makes the Appellants prior disciplinary record relevant. The State Board has recognized the importance of looking at the full disciplinary history of an employee when reviewing a termination. *See Jerome Nichols v. Baltimore City Bd. of School Comm'rs.*, MSBE Op. No. 20-05(2020)("Certainly, an employer may consider the full discipline history of an employee when determining consequences for continuing employer misconduct.")

The record reflects that Appellant's termination was not based on a single act, but on numerous incidents that included Appellant repeatedly being caught sleeping while at work. The April 14, 2021 incident was simply the final act that tipped the balance to termination in the progressive discipline process. We find it was reasonable for the local board to uphold the termination. The fact that the Appellant disagrees with the local board's decision does not render the decision arbitrary, unreasonable, or illegal. *See Keith Goines v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-17(2017)(Appellant's disagreement with the local board's decision does not render it arbitrary, unreasonable, or illegal).

Due Process/Notice

The Appellant further argues that she was not provided sufficient notice under the terms of the collective bargaining agreement that her termination would be based on her prior disciplinary record. Article 22 of the collective bargaining agreement requires the employee to be advised of the disciplinary action being considered, to be advised of his or her right to have a union representative at the meeting, and to be provided with any existing evidence or documentation known to the supervisor at the meeting. *See* Appellant's Response, Ex. 4. The

record reflects Appellant was afforded all requisite notice and due process consistent with the collective bargaining agreement. Prior to the April 14, 2021 incident, the Appellant received numerous warnings that any future occurrence of sleeping while on duty could warrant termination. When the Appellant was found sleeping on the job on April 14, 2021, she was notified that she was facing termination as part of a progressive disciplinary policy for insubordination and willful neglect of duty. She had union representation during her termination hearing and was fully informed of the evidence and documentation establishing the charges against her.

CONCLUSION

For the reasons stated above, we find the Appellant has failed to show by a preponderance of the evidence that the local board's decision was arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision of the local board.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:
Shawn D. Bartley
Vermelle Greene

February 22, 2022