

LABOR ARBITRATION

Grievance No. 4
Grievant: Mary Moon

SOMEPLACE SCHOOL SYSTEM

-and-

ASSOCIATION

SUBJECT

Reprimand for tardiness without notification or arrangement for care of students.

ISSUE

Did the Employer have just cause to issue grievant Mary Moon a written reprimand on January 17, 1992?

CHRONOLOGY

Grievance filed: February 19, 1992
Arbitration hearing: December 1, 1992
Briefs received: January 18, 1993
Award issued: February 18, 1993

APPEARANCES

For the Employer: JJ, Attorney
For the Association: S. S. Union

SUMMARY OF FINDINGS

The disciplinary letter issued to grievant on January 17, 1992 was a "written letter of reprimand," not mere confirmation of verbal warning. As such it was disproportionate to grievant's misconduct in light of the surrounding circumstances and her long service and good record and also placed her in double jeopardy. Thus the written reprimand was not for just cause, the grievance must be sustained, and the letter and reference to any other disciplinary action related to events mentioned therein must be removed from her file.

BACKGROUND

Grievant Mary Moon has been a teacher in the Someplace School District (the Employer) for twenty-three years. During the 1991-92 school year she was assigned to the Main Street Elementary School as a Chapter I teacher. As such, she did not have a grade assignment or an assigned class, but taught students with special needs who came to her room in small groups, usually a half-hour at a time, from their regular classrooms. Until January 10, 1992, she had never received discipline of any kind or for any reason.

That day she began the morning at another elementary school, Bonnie Boat Elementary, at a 7:45 meeting of Chapter I teachers. The Bonnie Boat Elementary principal, Carl Cat, also was the Employer's Chapter I coordinator and, in that capacity, grievant's supervisor. He convened such meetings once a month, typically for an hour or less. Bonnie Boat Elementary is less than five minutes driving time from the Main Street school.

Grievant received her first students each day at 8:45 a.m., but she had arranged with the teacher from whose classroom that group came (Judy Bike) not to send her students on January 10. She said she made that request in a note to Bike a note two days in advance, and reminded her of it verbally on January 9. She made no such arrangement with Joanne Sun, the teacher from whose classroom the next group of students came at about 9:15 a.m., anticipating that she would be back in the building before then. But in fact she did not return to Main Street until approximately 9:35 that day, nor did she call the school to say she would be late. As a result, Sun's students went to grievant's room and found nobody there.

One of them took that news to school secretary Joyce Chair, who so advised Principal James Lamp. He went to grievant's room and attended to the students while Chair called Bonnie Boat to locate grievant. After a few minutes, Lamp left the students in the care of the teacher's aide assigned to assist grievant, who had not been in the room when the students arrived but came shortly after he did. Lamp then returned to his office and called Post, was advised that he was in a private meeting with grievant (as Chair had learned moments before), and left word for him to call after the meeting ended.

Post was meeting privately with grievant because she had raised questions during the Chapter I meeting that were unique to her situation. He suggested they discuss them later, and when the meeting ended at 8:45 grievant asked if he had time for such a discussion then. He said he did, but would have to make the morning announcements first. That took about five minutes, and shortly after he joined her in his office he received a phone call that lasted another five to ten minutes, so it was after nine o'clock when they began their discussion, which related to grievant's aide.

Grievant said she lost track of time and did not think to call Main Street to say she would not be back in time for her 9:15 students. Upon discovering the time (shortly after 9:25) when she left Post's office, she was not particularly alarmed because she thought the aide would be in the room working with the students according to the lesson plan for that morning. When she arrived at Main Street, grievant went straight to her room and began working with the students, without stopping in the office.

Later that morning, Lamp left a note for grievant requesting that she come to his office after school. She did so, and he questioned her about her tardiness. She told him what had happened, but did not say she had assumed her aide would be there to take care of the students at 9:15. Lamp said he told her she had acted irresponsibly by not calling and thereby causing the students to be left unattended, creating an unacceptable risk of liability for potential harm to the children. Grievant recalled that Lamp "bawled her out" in a "shouting voice," after asking why she had returned without calling and whether she had planned to be late. She said he told her not to "let it happen again" and to call if she was "going to be late" in the future and thanked her for coming to his office. Grievant said when she left Lamp's office she "thought the matter was over with, closed."

Lamp did not share that sentiment, although he did not tell her so. After talking with grievant he consulted Superintendent Bradley Bell, who said he was concerned about the potential liability aspects of the situation. Bell discussed those concerns with the district's attorney and decided to express them in a disciplinary letter to grievant. Bell said the attorney drafted the letter, which was intended "to confirm a verbal warning, reduce it to writing." It was prepared for Lamp's signature, although the principal said his only role in its preparation was to provide "times and dates" and other facts to the superintendent. Lamp signed the letter and presented it to grievant in another meeting on January 17. The text of the letter, in its entirety, read as follows:

I am writing this letter as a follow-up to our conversation on Friday, January 10, 1992 regarding unsatisfactory job performance on your part.

Ms. Moon on January 10, 1992 you arrived at your teaching assignment approximately 9:35 a.m. which was approximately thirty-five minutes late. The meeting that you attended at Bonnie Boat Elementary School was adjourned at 8:45 a.m. Your failure to notify me of your pending tardiness created a deficiency of educational services to the assigned students. Furthermore, your absence of approximately thirty-five minutes created a potential liability concern for the district since students were in your classroom unattended. The possibilities are limitless when students are left unattended in this manner.

Ms. Moon, in my opinion your tardiness without informing me or my secretary so we could make adjustments, is unsatisfactory work performance on your part and a violation of Article V, "Teaching Hours and Conditions." Additionally, exposing the school dis-

strict to a large liability is a great concern and is viewed as irresponsibility on your part. Please consider this letter as your written letter of reprimand. Continued disregard of your responsibilities or unsatisfactory job performance on your part will result in disciplinary action.

Ms. Moon, I will assist you at any time if communicated with. Please don't hesitate to call upon me.

Grievant said she was "stunned" to receive the letter and asked Lamp, "How could that be?" She said Lamp replied that he did not want to talk with her about the matter any further without someone else present. No Association representative was present when he gave her the letter, nor did she ask for one. That also was the case at their January 10 meeting.

However, Superintendent Bell chaired a meeting February 4 at the Main Street School with grievant and several others, including Lamp and Post, Association Grievance Chair Art Blue, Bike (as Association Building Representative), Sun and Chair. During that meeting, grievant admitted she had "made a mistake" but still wanted the letter out of her file. Lamp recalled that grievant also accused him of being on a "power kick" and not liking her personally. He said Association representatives argued the letter should be removed from her file in light of her long service and good record, although Bike conceded that giving it to her had not violated the contract.

The Association filed a grievance on February 19 alleging the "written reprimand" violated Article V Section B and Article II Section B and asking that it be removed from grievant's file. Article V Section B requires teachers to "attend meetings called by the Administration as a regular part of their teaching duties unless otherwise excused by the Administration." Article II Section B provides, in pertinent part, that:

No bargaining unit member shall be disciplined without just cause. The term "discipline" as used in this agreement includes warnings, reprimands, suspensions with pay or without pay not covered by the Tenure Act and reduction in compensation. Any such discipline shall be subject to the grievance procedure hereinafter set forth including arbitration. Specific grounds for disciplinary actions will be presented in writing to the bargaining unit member and the Association no later than the time discipline is imposed.

Lamp gave the principal's disposition of the grievance that same day, writing: "The letter of reprimand will not be removed from teacher's file and stands as written." Bell wrote the superintendent's disposition on February 28: "Letter stands as written and in file." The Association took it to the Board on March 11, and Bell wrote the Board's disposition -- "Deny grievance" -- on March 24. The Association appealed the grievance to arbitration a week later.

The Employer contends the uncontested facts leave no doubt grievant engaged in unprofessional conduct on January 10, 1992, the effect of which was to leave students unattended in her classroom and create a significant potential liability for the district. Despite her long service and good record, the Employer asserts that such misconduct was just cause for what Superintendent Bell "considered the least amount of discipline possible," a verbal warning confirmed in writing. The Employer concedes the January 17 letter may have been "inartfully drafted" for that purpose and offers to rephrase it if necessary for clarification. But it insists that is all the letter was: written confirmation of a verbal warning, which is not prohibited under the agreement, and which it says was necessary and particularly important here because grievant refused to accept personal responsibility for her misconduct. Thus the Employer asks that the grievance be denied.

The Association contends there was not just cause for any discipline, because grievant was properly attending to school business which delayed her arrival at Main Street School and had every reason to expect her aide to be in the classroom to attend to students from Bike's class until she got there, and also because of her long service and unblemished record. But even if her failure to notify the school office of her tardiness might be considered grounds for a verbal warning, the Association insists the Employer did not have just cause for a subsequent and separate written reprimand. It points out that Article **II** Section B clearly differentiates between "warnings" and "reprimands," and that the January 17 letter, by its own explicit terms, was a "written letter of reprimand." In the Union's view, that would have been excessive discipline under the circumstances even if grievant had not already received a verbal warning, but if she had, it also constituted double jeopardy and was unjust for that reason as well. Apart from the merits, the Association contends the verbal warning was procedurally improper because Lamp failed to warn grievant that discipline was forthcoming so she could obtain representation during the January 10 meeting, as required under Article II Section D of the agreement, and should be set aside on that ground.

DISCUSSION AND FINDINGS

Whatever Superintendent Bell may have intended the January 17 letter to be, there can be no doubt that it actually was exactly what it said it was: a "written letter of reprimand," not mere confirmation of a verbal warning. The belated offer, in the course of the arbitration hearing and again in the Employer's post-hearing brief, to rephrase the letter cannot change its original content. By its own explicit terms, it was not a confirmation of

but "a follow-up to" Lamp's remarks to grievant on January 10, and grievant and the Association were entitled to take Lamp at his word (although written by somebody else) when he said, "Please consider this letter as your written letter of reprimand."

The Employer's answers to the grievance prior to arbitration provide further reason to believe the "confirmed verbal warning" theory was an arbitral afterthought. The grievance complained that the "written reprimand" violated Articles II and V of the agreement. But rather than demurring that the letter was not truly a written reprimand, Lamp disposed of the grievance with the statement that the "letter of reprimand will not be removed from teacher's file and stands as written." The superintendent's disposition repeated part of that statement, saying "Letter stands as written and in file."

As a written reprimand, the letter was issued without just cause for two reasons. First, standing alone without reference to any prior action taken by Lamp regarding the same incident, it would be disproportionate to grievant's misconduct in light of the intrinsic gravity of such misconduct, the surrounding circumstances, and her long service and good record with the district. Grievant's mistake, as she admits, was to lose track of time and neglect to call the Main Street office to advise that she would not get there in time for her 9:15 students. That was something different than simple tardiness without notification. It also must be remembered that grievant was properly attending to her duties in a discussion with her Chapter I supervisor at the time, and reasonably could have expected her aide would be in the room attending to the 9:15 students and working with them on the day's lesson until she arrived.

The latter point, while relevant, did not excuse grievant entirely from responsibility for the students being unattended, because there is no evidence she actually thought about it while in Post's office, and without calling the school she could not have been certain the aide had reported for work that morning. Nevertheless, it still deserved consideration as a mitigating factor. So did grievant's long service and exemplary employment record, as Bell seems to have realized when he testified that it was his intention to give her the "least amount of discipline possible." Article II Section B draws a distinction between "warnings" and "reprimands," making it clear that a "written reprimand" is not the mildest form of discipline; so by the Employer's own lights the discipline actually imposed upon grievant was harsher than it should have been.

If in fact Lamp had already given her a verbal warning, there was another reason the Employer lacked just cause to issue a subsequent letter of reprimand based on the same misconduct. As the Association correctly asserts, the second, separate disciplinary action then would constitute double jeopardy, and it is as well accepted in arbitration as in criminal jurisprudence that a person may not be disciplined twice for the same offense.

For these reasons, I must conclude that the January 17 letter of reprimand was issued without just cause. Accordingly, the grievance must be sustained and the letter removed from grievant's employment record. Strictly speaking, that is all the grievance asked for or addressed. However, the Employer's theory that the letter was mere confirmation of a verbal warning raises another question which must be addressed if this dispute is to be resolved completely. Did grievant actually receive a verbal warning, and if so, was it for just cause?

It seems clear that neither Lamp nor grievant understood that his January 10 warning that her conduct that morning was irresponsible and should not be repeated was disciplinary in nature. She took it as a "bawling out" and did not like Lamp's tone or manner, which she considered unfriendly. But she "thought the matter was over with, closed" when the conversation ended, which it would not have been if his remarks had constituted a disciplinary warning, because that would become part of her record and could have later consequences in terms of progressive discipline. Furthermore, during such a meeting Article II Section D requires that a bargaining unit member "be advised" of the "possibility" that "disciplinary action is likely to occur," so the employee can exercise "the right to request representation." There is no evidence that Lamp gave grievant any such advice during their after-school conversation on January 10.

On balance, Lamp's remarks in that conversation appear to have been -- and to have been perceived by both of them as -- simply words of caution, counseling or non disciplinary warning, not a disciplinary warning covered by Article II Section B. In light of the factors discussed above in connection with the letter of reprimand, that was all the situation warranted. Thus there should be no reference in grievant's file to a verbal warning or disciplinary action of any kind with respect to the events of January 10, 1992.

AWARD

Grievance No. 4 is sustained. The letter of reprimand to grievant Mary Moon on January 17, 1992 was issued without just cause. The Employer shall remove such letter and all reference to any disciplinary action whatsoever related to events mentioned therein from her employment records.

-Paul E. Glendon, Arbitrator
February 18, 1993