BEFORE THE ARBITRATOR

In the Matter of

the Arbitration of a Dispute Between

PARK FALLS SCHOOL DISTRICT

and

PARK FALLS EDUCATION ASSOCIATION

Case 23
No. 55255
MA-9952

(Joan Pond Grievance)

ARBITRATION AWARD

Appearances:

O'Brien, Anderson, Burgy & Garbowicz, Law Offices, by **Mr. Steven C. Garbowicz,** Arbutus Court**,** Box 639, Eagle River, Wisconsin 54521, for the District.

Mr. Gene Degner, Director, Northern Tier UniServ-Central, 1901 West River Street, P.O. Box 1400, Rhinelander, Wisconsin 54501, for the Association.

Pursuant to a request by Park Falls Education Association, herein the Association, and the subsequent concurrence by Park Falls School District, herein the District, Dennis P. McGilligan was appointed Arbitrator by the Wisconsin Employment Relations Commission on July 9, 1997 pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. The hearing was held in Park Falls, Wisconsin on August 29, 1997. The hearing was transcribed, and the parties completed their briefing schedule on November 19, 1997.

After considering the entire record, I issue the following decision and Award.

STIPULATED ISSUE

Did the Administration violate the contract, particularly Article 6, paragraph C, when it suspended Joan Pond without pay for two days on May 6th and 7th of 1997?

If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISION

VI. ASSOCIATION AND TEACHER RIGHTS

. . .

C. No teacher shall be discharged, suspended or disciplined without just cause.

DISCUSSION

At issue is whether the grievant, Joan Pond, was suspended for two (2) days without pay for just cause under the terms of the parties' collective bargaining agreement.

On Tuesday, May 6, 1997, the grievant arrived at her classroom shortly after 8:00 a.m. with Sandy Vincent, an aide for the visually impaired. The room was cold, and the grievant became "chilled." The grievant then called the high school office. She spoke with Brigette Jeske, the high school secretary, and informed her "that she refused to work under these conditions and that she was going home." Thereafter, the grievant went to the teachers' lounge to have a cup of coffee and warm up prior to leaving the school.

Thereafter, by letter dated May 6, 1997, the District suspended the grievant as follows:

> It is my belief that you left the school building and school grounds without just cause. Your absence from class ignored both professional practices and personal responsibilities, and it has therefore become necessary for me to take the following administrative position.
>
> My conclusion is that your absence from class was improper and neglectful. You will be held liable for this action. As a result of this incident, you are hereby reprimanded for suspension with loss of pay on Tuesday and Wednesday, May 6 and May 7, 1997.

The District argues that there was just cause for its action while the Association takes the opposite position.

The Association initially makes a number of arguments in support of its principal claim that this is a sick leave dispute, not an improper job action as argued by the District. The record, however, does not support a finding regarding same. In this regard, the Arbitrator

points out that it is undisputed that the grievant left school on the day in question without explaining that she was sick instead simply informing the high school secretary that "she refused to work under these conditions and that she was going home." 1/ The grievant did testify that she "assumed" the high school secretary knew that she was sick "because I had called so many times about the lack of heat in my room." 2/ However, the grievant admitted that she didn't say that she didn't feel well to the secretary. 3/ In addition, the record contains no evidence that the grievant told anyone material herein that she was sick prior to leaving school on the date in question. Based on the foregoing, the Arbitrator finds nothing in the record to support a finding that the District could have reasonably known that the grievant was ill when she left school on May 6, 1997.

To the contrary, based on the grievant's past complaints regarding the cold temperatures in her classroom it was more likely for the District to assume that the grievant was protesting her cold classroom when she informed them that she was leaving the school and would not tolerate those conditions. Therefore, it was proper in the Arbitrator's opinion for the District to take the steps that it did as a result of the grievant's action; namely, send the maintenance supervisor to see if there was a problem and correct it. Since the problem (a cold classroom) 4/ was resolved prior to the grievant's first class, 5/ it was reasonable at the time for the District to "assume" that the grievant had left the school grounds without a proper reason, especially given her aforesaid stated reasons for leaving. 6/

The grievant testified contrary to the above that she came to work on the date in question not feeling well, and that the "chill" in the room made her sick. 7/ However, as noted above, she informed no one from the District of this fact at any time material herein. 8/ Nor did Sandy Vincent, an aide who was with her during her short stay at school on May 6th, corroborate this claim. Finally, the grievant did not submit any written documentation from a doctor or pharmacy to support her claim. In the absence of same, and in light of the grievant's past practice of protesting the cold temperatures in her classroom, the Arbitrator finds that the District acted reasonably in treating her actions on the date in question as unprofessional conduct as outlined in the aforesaid suspension letter. Based on all of the foregoing, and the record as a whole, the Arbitrator finds that the grievant left school on the aforesaid date because she was upset over cold temperatures in her classroom not because she was sick. Therefore, the Arbitrator finds it reasonable to conclude that the District has proven that the grievant is guilty of the actions complained of.

Assuming *arguendo,* however, that the grievant was sick on the date in question, she still acted improperly as outlined in the District's suspension letter. In this regard, the Arbitrator points out that the high school principal testified unrefuted by the Association that the proper procedure for a teacher who becomes ill or sick at the beginning of the school day is to report same to the high school principal so that he can cover for the teacher. 9/ The grievant admits that she failed to do so. In addition, if a teacher needs a substitute they usually wait around until

the sub comes in so that materials can be exchanged and a smooth transition can be accomplished. 10/ The grievant failed to do this. An exception exists where the teacher is too ill to stick around. 11/ There is no evidence in the record that this was the case with the grievant on the date in question. To the contrary, the record indicates that the grievant felt well enough to go to the teachers' lounge first to have a cup of coffee before she went home. 12/

The Association also argues that just cause did not exist for suspending the grievant because the District did not conduct a proper investigation before issuing the discipline. However, the Arbitrator finds that the District made a reasonable assumption based on the grievant's statements and actions on the date in question and her past behavior protesting cold temperatures in her classroom that the grievant was leaving school in protest of the cold temperatures in her classroom; and set out to find out if this was true and take corrective action. As a result of its investigation, the District determined that the classroom would have been heated properly at least by the time the grievant's first class was scheduled. 13/ Since the grievant was not present to take her first class, and offered no explanation to the high school principal when he talked to her about it other than to explain that she "was sick of those conditions and was not going to work under those conditions and went home," 14/ the Arbitrator finds that the District conducted a reasonable investigation before taking disciplinary action against her. 15/ However, assuming *arguendo*, that the District made mistakes by the manner in which it conducted its investigation of the grievant, the Association has not shown that the grievant was prejudiced in any material way regarding same.

Based on all of the above, the Arbitrator finds that the answer to the issue as stipulated to by the parties is NO, the Administration did not violate Article VI, Section C, or any other provision of the contract, when it suspended the grievant without pay for two days on May 6th and 7th of 1997. In reaching this conclusion, the Arbitrator rejects any mitigation of the penalty imposed herein based on the grievant's long history of service to the District 16/ because the grievant was disciplined during the prior school year for acting unprofessionally by pouring hot coffee on a student during an altercation. 17/ The Arbitrator also finds that the District considered a number of different and appropriate factors, i.e. the adverse effect on her students by leaving suddenly, before imposing the two day suspension without pay on the grievant. 18/

In view of all of the foregoing, and absent any persuasive evidence or argument to the contrary, it is my

AWARD

That the grievance is hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin this 22nd day of December, 1997.

Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator

ENDNOTES

1/ Tr. at 9.

2/ Tr. at 75.

3/ Id.

4/ Tr. at 84.

5/ Tr. at 50-51.

6/ Tr. at 59.

7/ Tr. at 79.

8/ In arriving at this conclusion, the Arbitrator credits the testimony of the high school principal over that of the grievant. In this regard, the Arbitrator notes, contrary to the Association's assertion, that the high school principal wrote in his notes from the date in question (District Exhibit No. 2) that the grievant informed him "that she was sick of this," not that she was sick. Contrary to the Association's claim, this is entirely consistent with his testimony on the date of the hearing that the first time he learned that the grievant was alleging that she was sick on May 6, 1997 was when she filed a grievance. Tr. at 61. The grievant, on the other hand, offered no persuasive evidence or testimony to support her claim that she was ill on the date in question or that she informed the high school principal prior to the imposition of discipline that she was ill that morning and went home because of same. She offered no credible reason for waiting approximately two and one-half hours before calling the high school principal to explain that she was ill especially in light of her earlier testimony that she assumed that the high school office understood that she was ill because of her past protests over the temperature in her classroom. In addition, in contrast to the high school principal who testified clearly and concisely as to the sequence of events on the date in question, the grievant's testimony was unbelievable, Tr. at 79, vague, Tr. at 81, unresponsive, Tr. at 79, and unpersuasive. Based on the foregoing, the Arbitrator finds that the grievant did not inform the high school principal at 10:30 a.m. on May 6th, 1997, that she left school earlier that day because she was ill as she claimed, Tr. at 77, but instead simply told him later that morning that she left school in protest of the cold conditions in her classroom. Tr. at 57. This was the only information he had when he decided to impose a two (2) day suspension on the grievant. Tr. at 57-59.

9/ Tr. at 72.

10/ Tr. at 73.

11/ Id.

12/ Tr. at 76.

13/ Tr. at 50-51.

14/ Tr. at 57-58.

15/ Tr. at 58-64, District Exhibit No. 2

16/ Tr. at 77-78.

17/ Tr. at 62-63.

18/ Tr. at 62-66.

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