

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

RAYMOND ROBERTS

Under the Grievance Procedure of

MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0073

Case Type: IHO

Grievance No. 23-026

DECISION NO. 39950

Appearances:

Attorney Nicholas Fairweather, Hawks Quindel, 409 E. Main Street, Madison, Wisconsin appearing on behalf of Raymond Roberts.

Attorney Debra Rash, 5225 W. Vliet Street, Milwaukee, Wisconsin appearing on behalf of the Milwaukee Public Schools.

DECISION OF THE IMPARTIAL HEARING OFFICER

I was jointly requested by the parties and then assigned by the Wisconsin Employment Relations Commission to serve as an impartial hearing officer as to a grievance filed by Raymond Roberts. In his grievance, Roberts asserted he had been suspended for two days without just cause by the Milwaukee Public Schools (MPS).

A zoom hearing was held on May 17, 2023. A stenographic transcript of the hearing was prepared, and the parties thereafter filed post hearing briefs by August 8, 2023.

The parties agree that the issue to be decided is:

Was there just cause for the discipline imposed? If not, what remedy is appropriate?

The MPS created grievance procedure provides that it is MPS's burden to establish that just cause exists. While just cause is not defined in the procedure itself, prior IHO proceedings between the parties reflect the application of a conventional two step just cause analysis consisting of (1) did MPS establish that misconduct occurred and, if so (2) does the level of discipline

imposed by MPS reflect the seriousness of the misconduct. As to level of discipline imposed, the MPS Employee Handbook provides in pertinent part:

[D]iscipline is progressive in nature and requires communication with employees Disciplinary action may include: written reprimand, suspension, demotion, or termination of employment. Specific disciplinary actions will depend on the behavior and frequency of occurrences.

Id., p. 9

It is undisputed that on September 1, 2022, MPS teacher Roberts allowed some students in his class to remain unsupervised in a classroom while he supervised other students who were taking a mid-class break outside the classroom. The record makes clear that MPS policy understandably prohibits leaving students unsupervised in a classroom and that Roberts was aware of the prohibition.

MPS contends that the evidence at hearing establishes that while the unsupervised students were in the classroom, one student sexually harassed another student. In this regard, MPS presented testimony from the School Principal who was approached by students about the sexual harassment as well as the Principal's contemporaneous written statement as to the content of his conversation with students. MPS also presented the written statements of students.

Roberts asserts that the MPS hearsay evidence is not sufficient to establish that sexual harassment occurred during his brief absence from the classroom. Prior IHO proceedings between these parties have not addressed whether the rules of evidence are applicable to IHO hearings. The IHO procedure itself is silent on the matter. As hearsay evidence is typically admissible in grievance arbitration procedures that are bargained by unions and employers, it seems unlikely that the procedure MPS has unilaterally created would prohibit IHO consideration of hearsay evidence. Therefore, I conclude, as I did at hearing, that the hearsay evidence is admissible. Having considered all of the evidence presented by MPS, I am persuaded that sexual harassment did occur.

Given the foregoing, there is no question that Roberts engaged in misconduct. He knowingly violated MPS policy, and his violation allowed sexual harassment to occur. While Roberts had no reason to believe that student misconduct would occur during his brief absence, the prohibition against leaving students unsupervised is obviously designed to lessen the potential for student misconduct. Thus, contrary to Roberts's view, he is accountable for the student misconduct that occurred. Had he been present in the classroom, there is no reason to believe the harassment would have occurred.

As to the level of discipline imposed, Roberts is a long-time teacher who has received a variety of awards during his 32 plus years with MPS. Such factors might normally be valid considerations as to a potential lessening of the level of discipline imposed. However, his long tenure is marred by several incidents in recent years which demonstrate a disregard of MPS policy and a lack of judgment – including his 2017 receipt of a one-day suspension for displaying a two-handed single digit salute when appearing in a student photo. While Roberts protests that those

matters do not relate to classroom supervision and thus are not relevant considerations, I conclude otherwise. It is appropriate to view Roberts' past conduct more broadly as evidencing a disregard for his obligation to honor MPS policy and to use good judgment when doing so. Therefore, after giving due consideration to the progressive disciplinary philosophy MPS has adopted, I find no persuasive basis for reducing the level of discipline imposed under a just cause standard.

Given the foregoing, I conclude MPS had just cause to suspend Roberts for two days.

Issued at Madison, Wisconsin, this 23rd day of August 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Impartial Hearing Officer