

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-4573

DANNY JENKINS,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings heard this case on March 3, 2015, in Sanford, Florida.

APPEARANCES

For Petitioner: Mark Knowles Logan, Esquire
Sniffen and Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301-1509

For Respondent: Danny Jenkins
2630 South Elm Avenue
Sanford, Florida 32773-5131

STATEMENT OF THE ISSUE

Does Petitioner, Seminole County School Board (Board), have just cause to terminate the employment of Respondent, Danny Jenkins, for being absent without leave and for failing to follow proper procedures for reporting absences?

PRELIMINARY STATEMENT

On September 9, 2014, the Board accepted and approved a recommendation to suspend Mr. Jenkins, without pay, pending disposition of Superintendent Walt Griffin's recommendation to terminate Mr. Jenkins. The Board gave Mr. Jenkins written notice of the recommendation that he be terminated. He timely appealed the termination request pursuant to section 1012.40(1)(c), Florida Statutes (2014).^{1/} By Petition dated October 1, 2014, the superintendent sought termination of Mr. Jenkins' employment. The Board referred the matter to the Division of Administrative Hearings (DOAH) for conduct of a hearing.

The undersigned set the cause to be heard on December 4, 2014. The Board moved to continue the hearing in order to conduct discovery. The motion was granted, and the hearing was rescheduled for March 3, 2015. On February 27, 2015, after pre-hearing matters and submission of the parties' witness and exhibit lists, new counsel appeared on the Board's behalf.

The hearing was conducted as scheduled. The Board presented testimony of Boyd Karns, Ken Lewis, Stan McKenzie, and Julie Murphy. Board Exhibits 1 through 4, 6 through 12, 29, and 31 were admitted into evidence. Mr. Jenkins testified, called no witnesses other than himself, and offered no exhibits.

The Board ordered a Transcript which was filed March 9, 2015. The Board timely filed a proposed recommended order. Mr. Jenkins did not file a proposed recommended order.

FINDINGS OF FACT

1. The Board operates the public schools in Seminole County, Florida. It is responsible for hiring, terminating, and overseeing all employees of the school district.

2. The Board has employed Mr. Jenkins as a bus driver in the transportation services division of the school district since 2006. Their employment relationship is subject to the collective bargaining provisions between the bus drivers' union, Seminole County School Bus Drivers' Association, Inc., and the Board, as reflected in the Collective Bargaining Agreement (Agreement), dated July 1, 2013, through June 30, 2016, and the Board's Transportation Services School Bus Operations Handbook (Handbook), dated July 2014.

3. Mr. Jenkins had regular employment status as established by Article IX, Section 3 of the Agreement.

4. Article XXII, Section 14 of the Agreement requires each bus driver to call in to report an absence in advance of the driver's regular starting time. The "Absentee Procedures" on page 50 of the Handbook require the same procedures.

5. An employee is considered absent without leave (AWOL) for each day the employee is absent from work without reporting

the absence using the process agreed to in the Agreement and established by the Handbook.

6. Each day that an employee is AWOL is a separate offense for disciplinary purposes.

7. The Agreement provides for a "progressive step process" of discipline for AWOL employees. The first offense is a reprimand with a one-day suspension. The second is a five-day suspension. The third is a recommendation for termination.

8. The Handbook provisions for AWOL employees are similar to those of the Agreement. Employees who fail to notify dispatch within an hour past their report time are considered AWOL. The first AWOL incident results in a one-day suspension without pay. The second offense causes a five-day suspension. The third offense is cause for termination.

9. Regular employment class employees may be suspended without pay or discharged for reasons including, but not limited to: violation of Board policy; violation of work rules; insubordination; improper use of sick leave; failure to perform assigned duties; and other infractions as set forth by the superintendent. Just cause is required.

10. On August 11, 2014, the first day of the 2014-2015 school year, Mr. Jenkins did not show up for work. He did notify dispatch that he was not coming in. The Board took no disciplinary action for Mr. Jenkins' absence that day.

11. On August 12, 2014, Mr. Jenkins did not report for work and did not call dispatch to report his absence from work.

12. Ms. Murphy, assistant director of Transportation Services, sent Mr. Jenkins a letter notifying him that due to being AWOL on August 12, 2014, she recommended that he be suspended for one day pursuant to the Agreement.

13. On Wednesday, August 13, 2014, Mr. Jenkins did not report for work. He did not call dispatch as the Handbook required. But he did call the School Board's front desk. The Board did not take disciplinary action for that absence.

14. On Thursday, August 14, 2014, Mr. Jenkins did not report for work. He did not call dispatch or make any other form of contact with the Board concerning his failure to report for work on that day.

15. On Friday, August 15, 2014, Mr. Jenkins did not report for work. He did not call dispatch. At 12:08 a.m. that day, he sent a fax addressed to Ms. Murphy saying that he would not be able to come into work. The fax also contained a narrative disputing previous recommendations for discipline, discussing alleged poisoning from fumes on the bus, and giving reasons why he had not taken a physical to obtain a current medical certification as required.

16. On Monday, August 18, 2015, Mr. Jenkins did not report for work. He did not call dispatch or otherwise contact the Board about his failure to report for work.

17. Mr. McKenzie sent Mr. Jenkins a letter on August 18, 2014, stating that Mr. Jenkins must contact him by Thursday, August 21, 2014, to discuss his employment status. Mr. McKenzie also called Mr. Jenkins' home and cell telephone number in order to "help him as best as I can to get him to come to work." Mr. Jenkins did not respond.

18. On Tuesday, August 19, 2014, Mr. Jenkins did not report to work. He did not call dispatch. He sent Ms. Murphy a fax at 9:09 p.m., on August 18, 2014, stating that he would not be able to report for work on August 19, 2014. The fax also claimed the school was not acknowledging his telephone calls.

19. Mr. McKenzie called Mr. Jenkins four times on August 19, 2014, to discuss his absence from work and other work-related issues.

20. Mr. Jenkins did not report to work on Wednesday, August 20, 2015. He did not call dispatch or otherwise communicate with his supervisors about his failure to report for work.

21. Mr. McKenzie called Mr. Jenkins four times on that day to discuss his absence from work. Mr. McKenzie also e-mailed Mr. Jenkins.

22. On Thursday, August 21, 2015, Mr. Jenkins did not report to work. He did not call dispatch an hour before his scheduled runs. He called Mr. McKenzie via telephone later that afternoon after receiving Mr. McKenzie's August 18, 2014, letter. Mr. McKenzie offered to meet with Mr. Jenkins the following day. Mr. Jenkins said he would attend.

23. On Friday, August 22, 2014, Mr. Jenkins met with Mr. McKenzie, Mr. Lewis, and union representative Andrea Reeves. The parties discussed, among other things, the fact that Mr. Jenkins was not in compliance with the physical, medical card, training, and related commercial driver license requirements necessary for him to operate a bus.

24. Mr. Lewis also confirmed each of Mr. Jenkins' absences and AWOL status for the dates in August where he did not report for work and did not call dispatch.

25. This is a party admission admissible under the hearsay exception created by section 90.803(18)(a), Florida Statutes. The vast majority of the Board's evidence was hearsay, not subject to a hearsay exception. But Mr. Jenkins' admission to Mr. Lewis, coupled with the fact that Mr. Jenkins' testimony at the hearing basically did not dispute the charges, so much as offer reasons why he could not come to work and reciting many of his concerns, including student verbal and physical abuse on the bus, bullying of his children, and poisoning of some sort related

to his employment. To the extent that the testimony of Mr. McKenzie and Mr. Lewis conflicted with Mr. Jenkins' testimony, the undersigned found Mr. Lewis and Mr. McKenzie more credible.

26. The outcome of the meeting was that Mr. Jenkins was expected to report for work on Monday, August 25, 2014.

27. Immediately after the meeting, Mr. Lewis met privately with Mr. Jenkins. Mr. Lewis told Mr. Jenkins that he could either resign or come in the following Monday and do everything he needed to do to retain his employment.

28. Mr. Jenkins did not report for work on August 25, 2014. He did not contact dispatch or otherwise communicate with his supervisors or the Board.

29. Mr. Lewis called Mr. Jenkins on Monday after he failed to report for work and offered to pick him up and bring him to work. Mr. Jenkins declined that offer.

30. After Mr. Jenkins did not report for work on August 25, 2014, Mr. Lewis caused a letter to be mailed to Mr. Jenkins notifying him of a second AWOL offense and Mr. Lewis's recommendation that Mr. Jenkins be terminated from employment.

31. On Tuesday, August 26, 2014, Mr. Jenkins did not report for work. He did not contact dispatch or otherwise communicate with his supervisors or the Board.

32. That same day, the superintendent sent Mr. Jenkins a letter noting that Mr. Jenkins had been AWOL on August 14, 20, 21, 25 and 26, 2014. The letter also noted that Mr. Jenkins failed to follow the required notice procedures for his absences on August 15, 18, and 19, 2014.

33. The superintendent's letter notified Mr. Jenkins that he was recommending that the Board suspend Mr. Jenkins without pay at the September 9, 2014, Board meeting and that the superintendent would recommend Mr. Jenkins' termination at the October 14, 2014, board meeting.

CONCLUSIONS OF LAW

34. DOAH has jurisdiction over the parties and subject matter of the Petition pursuant to sections 1012.40(2)(c), 120.569, and 120.57, Florida Statutes (2014), and the contract between the Board and DOAH.

35. The superintendent of a school district has the authority to make recommendations for dismissal of school employees pursuant to section 1012.27(5). Sections 1012.40(2)(c) and 1012.22(1)(f) grant the Board the authority to terminate and/or suspend educational support employees without pay and benefits.

36. Article 9, Section 4 of the Agreement establishes "just cause" as the standard for regular employee discipline.

37. The Board must prove that it has just cause to terminate Mr. Jenkins. Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990). It must prove just cause by a preponderance of the evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); and Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995).

38. "Preponderance of evidence is evidence 'which as a whole shows that the fact sought to be proved is more probable than not.'" State v. Edwards, 536 So. 2d 288, 292 n.3 (Fla. 1st DCA 1988)." Dufour v. State, 69 So. 3d 235, 252 (Fla. 2011). See also Escambia Cnty. Elec. Light & Power Co. v. Sutherland, 61 Fla. 167, 193, 55 So. 83, 92 (1911).

39. The Board alleges that Mr. Jenkins was AWOL on five days with each day being a separate violation of the Agreement and the Handbook requirements. The Board also alleges that Mr. Jenkins failed to comply with the absence notification requirements of the Agreement and the Handbook on three separate dates. Each of those dates represented a separate violation of the Agreement and the Handbook.

40. The Board proved, by a preponderance of the evidence, that Mr. Jenkins was AWOL on August 14, 20, 21, 25 and 26. The Board also proved by a preponderance of the evidence that Mr. Jenkins failed to follow proper procedures for reporting absences on August 15, 18 and 19.

41. The Board has just cause for the suspension and termination of Mr. Jenkins' employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Seminole County School Board, enter a final order finding that there is just cause to terminate Respondent, Danny Jenkins', employment and dismissing him from his position as a regular employee bus driver with the Seminole County School District.

DONE AND ENTERED this 13th day of April, 2015, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of April, 2015.

ENDNOTE

^{1/} All references to Florida Statutes are to the 2014 version.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.