No. 30120 - Joy G. Butts v. Higher Education Interim Governing Board/Shepherd College

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Maynard, Justice, dissenting:

I respectfully dissent from the majority opinion because I believe that Professor Butts' willful refusal to comply with a reasonable request from her supervisor constitutes insubordination.

"Insubordination" is defined as "a refusal to obey an order that a superior officer is authorized to give." Black's Law Dictionary 802 (7th ed.1999). *See also Nelson v. Los Angeles County*, 362 U.S. 1, 7, 80 S. Ct. 527, 531, 4 L. Ed.2d 494, 499 (1960) (concluding, in case where county social workers were terminated for refusing to answer security questions put to them by congressional subcommittee, that the employees were discharged based "solely on employee insubordination for failure to give information which we have held that the State has a legitimate interest in securing" (citations omitted)); *Heath v. Alabama State Tenure Commission*, 401 So.2d 68, 70 (Ala.Civ.App. 1981) (commenting that "[i]nsubordination has . . . been defined as the refusal to obey some order which a superior officer is entitled to give and entitled to have obeyed so long as such order is reasonably related to the duties of the employee" (citations omitted)); *Morris v. Clarksville-Montgomery County Consol. Bd. of Educ.*, 867 S.W.2d 324, 327 (Tenn.Ct. App. 1993) (describing "insubordination" as "disobedience to constituted authority; refusal to obey some order which a superior officer

is entitled to give and have obeyed" (citing Black's Law Dictionary, fourth edition)). In light of the foregoing definition, it is clear that this case presents two simple questions: (1) whether Ethel Cameron, the appellant's supervisor, was authorized to give the order; and (2) whether the appellant refused to obey the order. There is no dispute that the appellant refused to obey the order. Therefore, my discussion is directed only to the first question, whether Ethel Cameron was authorized to request student grades from her subordinates.

Unlike the majority, I believe Ms. Cameron was absolutely authorized to give the order. The 1999-2000 Shepherd College Handbook clearly states that "[m]embers of the faculty may have access to academic records and files for internal educational purposes." The majority does not question Ms. Cameron's reason for requesting copies of student grades. In fact, the majority states that Ms. Cameron requested the grades so she "could resolve various questions relating to the program." Instead, the majority finds that this unambiguous directive conflicts with another provision in the policy specifying that only the registrar could release grades and grade point averages without written permission from the students. Finding that this conflict makes the faculty access policy ambiguous, the majority then holds that the appellant's willful failure to comply with her supervisor's directive is, therefore, not insubordination.

The holding in this case is actually dependent upon what is meant by the phrase "releasing grades." The privacy policy in question in this case grants sole authority to the Registrar to *release* grades and grade point averages. For ease of discussion, I will refer to this provision as the "Registrar provision." The college explains that it has traditionally applied

the Registrar provision only to the release of grades to parents and other third persons such as employers and graduate schools. It has not applied the provision to the internal *sharing* of grades and grade point averages among its staff for educational purposes. When grades are "released" externally, authenticity is achieved through certification methods routinely exercised by the Registrar. Thus, the clear purpose of the Registrar provision is simply to inform students that transmission of their grades to third persons or agencies must come from the Registrar. It is clearly *not* the purpose of the Registrar provision to inform members of the faculty that they must obtain official transcripts of student grades through the college Registrar in order to perform necessary functions such as counseling students or determining program development.[1] Thus, the college's explanation of its policy makes perfect sense to me. The majority, nonetheless, finds that reasonable minds may differ over the meaning of the policy.

Furthermore, the college instituted disciplinary sanctions by simply reprimanding the appellant. By so doing, it appears that the college has laid the foundation for "progressive disciplinary sanctions in an attempt to correct the teacher's insubordinate conduct" as was previously prescribed by this Court in Syllabus Point 6 of *Trimble v. West Virginia Bd. of Directors*, 209 W. Va. 420, 549 S.E.2d 294 (2001). I also believe the

[1]As stated above, there has been no challenge to Ms. Cameron's motives for seeking student grades.

disciplinary action taken in this case matched the infraction, and, therefore, meets the requirement set forth in Syllabus Point 5 of *Trimble*.

Once again, the majority insists on micromanaging higher education disciplinary decisions. Decisions such as this make it nearly impossible for the people who run our higher institutions of learning to do their jobs. I cannot say it better than Justice Neely said it in his dissent to *Beverlin v. Board of Ed. of Lewis County*, 158 W. Va. 1067, 1076, 216 S.E.2d 554, 559 (1975). Therefore, I quote:

> The majority's opinion is yet one more example of the increasing tendency of courts to undermine the ability of those charged with responsibility to discharge their duties in a competent manner. The increasing substitution of court judgment for the judgments of all other decision-makers causes administration to become increasingly chaotic because of paralysis prompted by a surplusage of procedural and substantive due process which leads not to justice but to total incompetence and inability to govern.

For the foregoing reasons, I respectfully dissent and accordingly would affirm the order of the circuit court. I am authorized to state that Chief Justice Davis joins me in this dissent.