No. 25479 - West Virginia Alcohol Beverage Control Administration and Division of Personnel v. Sherry Hunt Scott

Workman, J., dissenting,

The majority pronounces the established principles of substantial compliance, analyzes the precedents for such doctrine, and then attempts to distinguish this case from the precedents. The Appellant was clearly a member of a section which was being obliterated.[1] Yet, the majority is now reinstating her based upon the type of mere technicality we have previously excused under the substantial compliance rule.

In Vosberg v. Civil Service Commission of West Virginia, 166 W. Va. 488, 275 S.E.2d 640 (1981), as discussed by the majority, we found "that the failure by Ms. Moore to forward a copy of her response to Ms. Carte, while clearly improper, was not a violation of the grievance procedure sufficient to grant relief to the appellant in this proceeding." Id. at 491, 275 S.E.2d at 643. Similarly, in West Virginia Department of Health v. Mathison, 171 W. Va. 693, 301 S.E.2d 783 (1983), we found substantial compliance with reduction in force regulations, despite the absence of a listing of the employee's name in the notice of reduction in force. Id. at 697, 301 S.E.2d at 787. The

[1]The Board and the lower court agreed that the Appellant was employed within the Stores Division. The majority properly affirmed that decision.

essence of the substantial compliance principle is that not all technical procedural violations merit relief where there is substantial compliance with substantive law.

In the present case, the layoff list upon which the Appellant's name appeared was submitted on April 17, 1991, almost one month after the ABCA Commissioner sent the Appellant a certified letter notifying her that her position was being eliminated. She was thereafter terminated, effective April 30, 1991. Testimony of Deputy Commissioner Louis Smith indicated that there had been ongoing conversations with the Appellant regarding the fact that she would be included in the reduction in force of the Stores Division. This fact, coupled with the listing of the Appellant's division on the reduction in force memorandum, was sufficient to notify the Appellant of the action to be taken and to substantially comply with the reduction in force regulations.

In considering the circuit court's order, which I would affirm, this Court employs the two-prong deferential standard of review, as set forth in syllabus point one of State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998), as follows:

> "When this Court reviews challenges to the findings and conclusions of the circuit court, a two-prong deferential standard of review is applied. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings

> under a clearly erroneous standard." Syl. Pt. 1, McCormick v. Allstate Insurance Company, 197 W. Va. 415, 475 S.E.2d 507 (1996).

The majority is demonstrating flagrant inconsistency with precedent and has exceeded the proper scope of review, under the guise of simply distinguishing this case factually from prior decisions. In the words of Ralph Waldo Emerson, "[a] foolish consistency is the hobgoblin of little minds." Yet, in the development of the law, consistency is the backbone of the coherent development of judicial precedent. Consistency in jurisprudential evaluations assures impartiality and provides the equilibrium essential to the congruous development of any area of the law. Mathison provided us with a roadmap, and the majority, in what appears to be a result-oriented course of action, chose to take a different route. Consequently, the law has been applied in an inconsistent and unequal manner. I therefore respectfully dissent.