

FILED

May 7, 2003

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

Starcher, C. J., dissenting:

I dissent because the jury, after hearing all of the evidence, had every opportunity to rule for Mr. Wounaris — if they thought he had been treated illegally or unfairly.

The judge in this case told the jury that they could find that firing Mr. Wounaris a second time, while his appeal of the first grievance was pending, was grounds for Mr. Wounaris winning the lawsuit. Therefore, if the jury had thought that the College did not have good grounds for the second firing, the jury would have ruled for Mr. Wounaris.

But instead, the jury found for the College — and found that the second firing was permissible.

Why? The obvious reason (a reason that is not mentioned in the majority opinion) is that several members of the College staff came forward after the first firing, and reported new facts about Mr. Wounaris. These new facts showed the College — and the jury — that there were other good reasons for firing Mr. Wounaris, in addition to the rather outrageous job demands that led to his first firing.

These new facts included Mr. Wounaris’ frequently leaving his office for hours at a time. During these excursions, Mr. Wounaris would give his assistants phone numbers where he could be reached. The phone numbers turned out to be for “The Plaza Colonial Room,” “J.J.’s Lounge & Billiards,” and “The Goal Line.”

In other words, Mr. Wounaris was leaving work during the day and hanging out at bars.

(His car was also seen parked outside a bar during work hours.)

When the jury heard about this behavior, they — like the College — had a good reason to conclude that Mr. Wounaris was a man who had no right to claim he had been treated unfairly, and that he deserved to be fired a second time.

The majority opinion is correct in saying that we need to encourage people to follow grievance procedures, and the majority thankfully does not create a class of “super-protected” employees who simply cannot be fired while a grievance procedure is pending, even on appeal.

But a retrial of this case is not needed. The next jury will also have the right to find for the College — even though Mr. Wounaris was fired “on the same day” he was supposed to be reinstated — if that second jury concludes that the “presumption” of a motive that violates public policy has been rebutted.

That is exactly the option that the first jury had. So there is no need for a retrial for Mr. Wounaris to have a fair trial. He already had a fair trial, and he lost.

To summarize: this case was well-tried. The College took on the challenge of showing a jury why they fired a man twice, even after he was reinstated. The College was successful before a jury. Mr. Wounaris had a fair chance to present his side of events, and he was not successful.

I would affirm the jury’s verdict. I am authorized to say that Justice Davis joins in this dissenting opinion.