**LINDA ROUSH, .**

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**Grievant, .**

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**.**

**v. . Docket No. 94-HHR-057**

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**WEST VIRGINIA DEPARTMENT OF .**

**HEALTH AND HUMAN RESOURCES .**

**at LAKIN STATE HOSPITAL, .**

**.**

**Employer. .**

## D E C I S I O N

Linda Roush (hereinafter Grievant) filed this complaint against the Employer on July 2, 1993, alleging that she had been "unfairly and unreasonable [sic] denied a day shift position based upon seniority." This grievance proceeded through the lower levels of the grievance procedure and an appeal was received by this Grievance Board on February 22, 1994. Prior to the March 23, 1994 hearing in this matter, the Employer filed a Motion to Dismiss contending that Grievant's cause of action became moot after she bid on and received a day time position effective November 22, 1993. At the hearing, various stipulations of fact were agreed upon by the parties and the Grievant relied upon the additionalevidence presented at the level three hearing. Based upon the record developed, the following appropriate findings of facts and conclusions of law are set forth herein.

### Findings of Fact

1. Grievant is employed at Lakin State Hospital (hereinafter Hospital) under the West Virginia

Division of Personnel classification of Health Service Worker.

2. Grievant has been an employee of the State of West Virginia for approximately ten years. She began working at the Hospital on or about May 1, 1983. She became a Health Service Worker at the Hospital on or around November 1992.

3. A Health Service Worker position for the day shift became open at the Hospital on or about June 2, 1993.

4. Grievant was assigned to work on the night shift at the time of this opening.

5. Grievant bid upon this opening but was not transferred to said position.

6. At all times pertinent hereto, it has been the Hospital's practice to transfer employees within classifications to specific areas of assignment based upon the employee's seniority within that particular civil service classification. This seniority has been recognized as "position seniority."

7. Grievant has less "position seniority" than the person who received the transfer for which Grievant bid upon.

8. On or about November 22, 1993, Grievant successfully bid upon a transfer to a Health Service Worker position for the dayshift. This position was not within the same section of the Hospital as was the earlier position upon which she bid.

Conclusions of Law

1. Grievant bears the burden to prove by a preponderance of the evidence that the Employer has violated, misinterpreted or misapplied some statute, policy, rule, regulation or written agreement under which her employment is governed, thereby, resulting in her suffering of some injury. Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. The Division of Personnel's Administrative Regulations, Series I (1993), Section 11.06(a), states, in pertinent part,

> Except as otherwise provided in Section 11.05, a transfer of an employee from a position in one sub-division of an agency to a comparable class in another organizational sub-division of the same or another agency may be made at any time by the appointing authorities concerned. . . ..

3. Grievant's claim became moot once she received the transfer to a day shift position via the Hospital's bidding process.

4. This Grievance Board has previously ruled that "moot questions . . . are not properly cognizable in the grievance procedure." Wilburn v. Kanawha Co. Bd. of Educ., Docket No. 20-88-089 (Aug. 29, 1988).

5. Grievant has failed to establish that she has suffered any injury as a result of the actions complained of in this case.

Accordingly, this grievance is hereby **DENIED** and the Employer's Motion to Dismiss is hereby **GRANTED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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**ALBERT C. DUNN, JR.**

**Administrative Law Judge**

**June 7, 1994**