WILLIAM and SHARON STOVER

v. Docket No. 94-26-638

MASON COUNTY BOARD OF EDUCATION

D E C I S I O N

This grievance involves the docking of two bus operators' salaries by Respondent Mason County Board of Education (MCBE) for three days at the beginning of the 1994-95 school year due to the operators' failure to report to scheduled developmental classes for bus drivers. Grievants William and Sharon Stover, husband and wife, claim that extenuating circumstances existed at the time in question and that they should be compensated, in whole or part, for the three days they were docked. The case was heard at level four on December 15, 1994, and became mature for judgment on that day when the parties declined to file any post-hearing fact/law proposals.1

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1Adverse decisions were rendered at levels one, two and three on September 30, October 18, and 25, 1994, respectively. Although Grievants requested a record decision at level four, MCBE requested a hearing to augment the record already adduced at the October 10, 1994 level two hearing. A copy of the transcript and exhibits of the level two hearing was received on November 28, 1994.

The underlying facts of this grievance are not in conten tion. According to Grievants, on February 27, 1994, their home "burned to the ground." Due to their shock and trauma over the experience, the amount of clean-up work required, and because of Mr. Stover's heart condition, neither was able to work for a time. Both went on extended sick leave, apparently, until at

least the end of the 1993-94 school year.

Grievants' new home was not scheduled for completion until at least a week or ten days after August 23, 1994. Meantime, on June 10, 1994, Grievants participated in State testing to maintain their bus operator's certification. On Friday, August 26, 1994, the first day of work for bus operators for the 1994-95 school year, Grievants reported to the transportation office. At that time they picked up packets relative to staff training. Various meetings, continuing education classes and in-service sessions for bus operators and other staff had been scheduled for Monday through Wednesday, August 29, 30 and 31, 1994. See MCBE's Exs. 2 and 6.

Grievants were also supposed to pick up their buses and equipment on Friday, August 26, 1994. However, Mrs. Stover's bus had not yet been serviced for the new school year. This situation placed a burden upon Mrs. Stover to check back with the transportation department at a later time to see when her bus would be ready. Finally, Grievants were told on August 26 that Mr. Stover would need a doctor's release before he could drive a bus or return to work.

According to Mrs. Stover, on Monday, August 29, 1994, she was making arrangements for a doctor's release for Mr. Stover. She said she then placed a call to Transportation Director Gene Haer to see if her bus was ready. She said Mr. Haer asked why she was not attending the mandatory bus operators' meeting that morning. Mrs. Stover claimed she simply forgot about the session because of all of the confusion. Thus, neither Grievant attended the bus operators' meeting in the morning or profes sional development sessions in the afternoon.

On Tuesday, August 30, 1994, Grievants reported to the

transportation department to pick up their buses. However, because Mrs. Stover's bus was not ready on that day, she had to take a spare bus. On Wednesday, August 31, 1994, Mrs. Stover discovered that the spare bus she was given would not start. Mr. Stover worked on the bus that day in an attempt to start it, but was unsuccessful.

Grievants also learned on August 31, 1994, that the work release prepared by Mr. Stover's personal physician would not be adequate, and that he also had to be seen by his cardiologist for a release. An appointment with the cardiologist was sched uled for September 12, 1994. On September 12, the cardiologist informed Mr. Stover that he would also need a stress test. Following the stress test on September 23, 1994, Mr. Stover was released for work.

With regard to the docking of Grievants' salaries, Mr. Haer prepared payroll timesheets for August 19 through September 2, 1994. Records indicate that Grievants were compensated for August 26, 1994. However, according to Mr. Haer, Grievants were not paid for August 29 through August 31, 1994, because they neither attended the professional development sessions nor gave him personal or sick leave slips for those days. See T.12 and MCBE Ex. 1.

Mrs. Stover admits that she and her husband did not attend any meetings or in-service sessions on August 29, 1994, because, "under the circumstances, we weren't thinking straight about the 29th." T.30. Grievants also agree that they did not follow MCBE's schedules for attending professional development sessions on August 30 and 31. However, Grievants claim that they performed cleaning and mechanical work on their buses those two days and were, therefore, entitled to be paid for that work.

Mrs. Stover also noted at the level two hearing that Mr. Haer knew all about the problems she and her husband were experiencing with regard to completing their new home, getting Mr. Stover's work release and securing her a bus to drive when school began, and could have asked them if they wanted to take leave on the days in question. On Grievants' level four filing form, the specific relief requested was that Mr. Stover be paid for all three days and Mrs. Stover for two and one-half days, "either out of sick days or personal days."

MCBE's position in this case is that Grievants are not entitled to any payment for the days in question. It reasons that Grievants did not attend the scheduled meetings or follow the proper procedures set forth in W.Va. Code 18A-4-10 and MCBE's leave policy for reporting off work on August 29 through 31, 1994.2

Pertinent provisions of W.Va. Code 18A-4-10 are as fol lows:

A regular, full-time employee who is absent from assigned duties due to . . . sickness . . . or other cause authorized or approved by the board, shall be paid the full salary from his regular budgeted salary appropriation during the period which such employee is absent, but not to exceed the total amount of leave to which such employee is entitled: Provided, That each such employee shall be permitted three days of such leave annually, which may be taken without regard to the cause for the absence, except that personal leave without cause may not be taken on consecutive work days unless authorized or approved by the employee's . . . immediate supervisor[.] [N]otice of such leave

day shall be given . . . at least twenty-four hours in advance, except that in the case of sudden and unex pected circumstances, such notice shall be given as soon as reasonably practicable . . . .

MCBE's leave policy essentially mirrors the statute. Two issues are presented in this case: The first is whether MCBE was justified in docking Grievants' salaries because they neglected to formally request leave prior to August 29, 30 and 31, 1994. The second issue is whether Grievants performed any unscheduled duties for MCBE on the days in ques tion which would compel payment from MCBE for the work. After due consideration of the pertinent facts, relevant law and the parties' respective arguments, it is determined that Mr. Stover is entitled to sick leave wages for the three days in

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2Elizabeth Mattox, MCBE's Director of Personnel, noted in her opening statement at the level two hearing that "we followed all procedures to take care of the leave had it been requested." T.7.

question. Simply put, Mr. Stover was technically still on sick leave during August 29 through August 31, 1994. In fact, Mr. Stover was not able to resume his bus operator's duties until the third week of September 1994.

It appears from the record that Mr. Stover had a good faith belief that he properly began the school year on August 26, 1994. After that, he had every reason to believe that a work release from his personal physician would be acceptable. However, Mr. Haer did not notify Grievants until August 31, 1994, that a cardiologist's release was also necessary. Mr.

Haer testified that he was not even aware that another release was needed until another administrator notified his office. T.28. Thus, as far as Mr. Stover is concerned, since he had not been released by the cardiologist, he was still on sick leave during the three days in question, August 29 through 31, 1994. Moreover, Mr. Haer was well aware on September 2, 1994, when he filled out the bus operators' time sheets to authorize the payment of wages for the time period encompassing August 29 through 31, 1994, that Mr. Stover had not yet been released for work on those days.

Obviously, Mrs. Stover's situation is different. She did not state that she was ill on the days in question. Therefore, she is not entitled to sick leave wages. Moreover, she failed to notify Mr. Haer when she spoke to him on August 29, 1994, that she would need some personal leave time. Thus, Mrs. Stover is not entitled to any payment charged to her leave days, personal or otherwise. It does appear, though, that Mrs. Stover is entitled to some remuneration for services provided to MCBE during at least one of the days in question. Mrs. Stover appeared at the transportation department on the designated day, Friday, August 26, 1994, to pick up her bus and other equipment. However, through no fault of her own, the bus was not available. Because Mrs. Stover's bus was not ready on Friday, August 26, she had to place some calls to the transportation department the next week to see if her bus was ready. In addition, she had to plan a return trip to that office the next week to pick up either her own bus or a spare bus.3 Grievants reported to the transportation office on August 30, 1994, to pick up two buses. Between them, Grievants cleaned those two buses for the upcoming school year on August 30, 1994. Mrs. Stover is entitled to be

paid for her services on August 30, 1994, since she could not perform that work on August 26, 1994, due to the unavailability of her own bus.

In addition to the foregoing, the following findings of fact and conclusions of law are made:

Findings of Fact

1. Following a prolonged medically-approved leave of absence from his bus driving duties beginning February 1994, Mr. Stover was finally released for work by his cardiologist on September 23, 1994.

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3As matters turned out, Mrs. Stover's bus was not ready until September 7, 1994. T.6. She drove Mr. Stover's bus in the meantime, basically because the spare bus she had been given could not be repaired.

2. Mr. Stover was not yet released for work when the administrator for MCBE's transportation department indicated that Mr. Stover's salary should be docked for August 29 through 31, 1994, for failure to attend meetings or to request leave days.

3. Mrs. Stover forgot to attend a mandatory meeting on August 29, 1994, and failed to request leave for herself for that day or for two following work days, August 30 and 31, 1994, in which professional development sessions were offered to employees.

4. Mrs. Stover was required, through no fault of her own, to report to the transportation department on August 30, 1994, to pick up a school bus. On that day and perhaps part of the next day, Mrs. Stover readied a bus she would use temporarily to

transport students until her own bus was ready.

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. "A regular, full-time employee who is absent from assigned duties due to . . . sickness . . . or other cause authorized or approved by the board, shall be paid the full salary from his regular budgeted salary appropriation during the period which such employee is absent . . . ." W.Va. Code 18A-4-10.

3. Since Mr. Stover was not released for work by his cardiologist until September 23, 1994, he was technically on sick leave during August 29 through 31, 1994, and, therefore, entitled to his sick leave salary for those days.

4. According to Code 18A-4-10, an employee must give notice for personal leave "at least twenty-four hours in ad vance, except that in the case of sudden and unexpected circum stances, such notice shall be given as soon as reasonably practicable."

5. Employers may reasonably dock the salary of an employ ee who does not appear for work or promptly request leave. See Yevuta v. Wetzel County Bd. of Educ., Docket No. 94-52-191 (Oct. 12, 1994); Farmer v. Logan County Bd. of Educ., Docket No. 89-23-142 (Oct. 30, 1989); Davis v. Summers County Bd. of Educ., Docket No. 45-88-037-4 (Apr. 21, 1988).

6. Given the circumstances in this case, Mrs. Stover was not entitled to sick or personal leave wages for August 29

through August 31, 1994.

7. It was unreasonable for MCBE to dock Mrs. Stover's pay for August 30, 1994, because she was required to pick up and clean her bus that day as a result of her bus not being ready on August 26, 1994.

8. Because it was unreasonable for MCBE to have docked Mrs. Stover's pay for August 30, 1994, she is entitled to a day's wages for that day.

Accordingly, the grievance is GRANTED, in part, and MCBE is Ordered to pay Mr. Stover three days' sick leave for August 29, 30, and 31, 1994, and Mrs. Stover, one day's regular wages for August 30, 1994. Any other relief is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code 18-29-7. 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: March 10, 1995