JAMES E. SIMMONS

v.

Docket No. 97-PEDTA-035

WEST VIRGINIA PARKWAYS ECONOMIC DEVELOPMENT and TOURISM AUTHORITY

DECISION

The grievant, James Simmons, is employed by the West Virginia Parkways Economic Development and Tourism Authority (PEDTA) as a Sign Shop Foreman assigned to its Beckley garage. He filed a grievance at Level I, October 30, 1995, alleging “Working out of classification and favoritism.” At Level III, the grievant pursued the first claim but presented no evidence or argument on what then appeared to be an unrelated charge of favoritism. At Level IV, with the parties' agreement, the undersigned remanded that portion of the complaint to Level III; the classification-related claim was subsequently denied. Simmons v. PEDTA, Docket No. 96-PEDTA-019 (July 31, 1996).

The Level III evaluator rejected the favoritism claim following a November 7, 1996 hearing and the grievant reappealed to Level IV January 24, 1997. On or about April 24,1997, the parties subsequently agreed to a decision on the Level III record.

Background

In Simmons, the grievant alleged that duties he had assumed in his supervisor's extended

absence had rendered him misclassified and entitled to the supervisor's higher rate of pay during that period. The claim was rejected for several reasons, primarily because PEDTA, a “classified-exempt” agency, was not legally bound to restrict the work of its employees to the list of duties contained in its written job specifications. The favoritism claim is essentially an attempt to obtain the additional pay under a different legal theory.

It is undisputed that certain PEDTA employees, classified as “Technician II,” are afforded slightly higher pay for periods in which they are the designated “Crew Leaders” of groups of lower-ranked employees. It appears that this service is seasonal and usually confined to projects where the authority and/or direction of a regularly-employed supervisor is not required at all times. PEDTA's job description for Technician II provides that he or she should have the “ability to train and direct other employees,” but does not otherwise indicate that there are supervisory duties assigned to the position.

Argument

The grievant sees a parallel between his service in the Sign Shop during his supervisor's absence and the work performed by a Tech II with Crew Leader status; he claims that the latter's additional pay constitutes favoritism. (See footnote 1) PEDTA responds that the holdings made in Simmons are dispositive of the grievant's claims.

Findings and Conclusions The key findings on the facts in Simmons were that the grievant's job description specifically required him “to fill in during his supervisor's absence,” and, because their duties were markedly similar in scope and authority, the grievant's job did not change during the absence, except to the extent that some duties occurred more regularly. The grievant's arguments here assume that he, like the Tech IIs, was actually required to exercise authority over employees that he did not have before. He presented no evidence which would alter the holding in Simmons, that, even if PEDTA's job descriptions constituted legally binding policy, he did not prove that his responsibilities changed to any significant degree during the period his supervisor was on leave. To the extent that the additional pay afforded the Tech IIs can properly be considered a difference in treatment, it was clearly a work-related difference and not favoritism. See, Simpkins v. Cabell County Bd. of Educ., Docket No. 90- 06-289 (Aug. 31, 1990).

Accordingly, the grievance is **DENIED**.

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.

_____

JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: April 30, 1997

Footnote: 1

W.Va. Code §29-6A-2(h), defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees."