KAREN SUE BROWN,

Grievant,

v.

DOCKET NO. 97-22-407

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Karen Sue Brown, filed the following grievance against her employer, the Lincoln County Board of Education ("Board"), in August 1997:

> Grievant, a regularly employed cook, contends that the Respondent called out a substitute cook to replace an absent summer employee cook and to perform an extra-duty assignment on or about August 11 and 12, 1997 in violation of local policy and West Virginia Code § 18A-4-8b & 18A-4- 15. Grievant seeks compensation for wages lost (1.5 days) with interest. (See footnote 1)

A level two hearing was held on August 25, 1997, and a decision denying the grievance was issued by the Superintendent's designee, Charles S. McCann, on September 2, 1997. Grievant by-passed level three in accordance with W. Va. Code § 18-29-4(c), and appealed to level four on September 16, 1997. Following several continuances for good cause, a level four hearing was held on February 9, 1998, and this case became maturefor decision on March 9, 1998, the deadline for the parties' proposed findings of fact and conclusions of law. (See footnote 2)

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

Substitute Call-out sheet for Summer 1997.

Ex. 2 -

Substitute Cook list.

Testimony

Grievant testified in her own behalf and presented the testimony of Brenda Adkins. The Board presented no witnesses.

ISSUE

The issue is whether the Board violated W. Va. Code §§ 18A-4-8b and 18A-4-15 when it called out a substitute cook to replace an absent summer employee cook, and to perform an extra-duty assignment on or about August 12 and 14, 1997.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant is employed by the Board as a regularly employed 200-day Cook II, assigned to Guyan Valley High School.

2. During the Summer of 1997, Grievant worked at Griffithsville School in a summer nutritional program until August 8, 1997.

3. During the Summer of 1997, the Board employed one cook at Guyan Valley High School in the summer nutritional program. The regular cook had resigned fromemployment, and Freda Honaker was the substitute hired to fill the temporary vacancy caused by her severance in accordance with W. Va. Code § 18A-4-15(4).

4. On August 12, 1997, Ms. Honaker was absent. A substitute cook, Donna Perry, was called to work in Ms. Honaker's place for the full day.

5. On August 14, 1997, Ms. Honaker needed extra help with the nutritional program at Guyan Valley. Donna Perry was again called out to work for one-half day at Guyan Valley. Grievant happened to be at the school that day and also provided assistance to Ms. Honaker.

DISCUSSION

Grievant alleges the Board violated W. Va. Code §§ 18A-4-8b and 18A-4-15 when it called out a substitute over a regular employee to fill in for Ms. Honaker on August 12, 1997, and also to assist Ms. Honaker for a half-day on August 14, 1997. The Board denies any wrongdoing.

With regard to the August 12, 1997 absence of Ms. Honaker, Grievant specifically alleges the Board violated the "step-up" provision of Code § 18A-4-15. That provision provides as follows:

> Substitutes shall be assigned in the following manner: . . . All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position.

This provision allows an exception to the requirement in Code § 18A-4-15 that substitutes be hired to fill temporary vacancies caused by the absence of a regularemployee, and allows regular employees within the same classification and working station of an absent employee to "step up" into the place of the absent employee. Clearly, Grievant held the same classification as Ms. Honaker. However, while Grievant is assigned during the school year under her 200-day contract to Guyan Valley High School, she has not shown that she was employed in the same building or working station as Ms. Honaker in the summer of 1997. The evidence reveals that Ms. Honaker was the one cook employed during the summer at Guyan Valley High School. In fact, at the time of Ms. Honaker's absence, Grievant was not employed in any capacity with the Board.

Grievant would have the Grievance Board extend the "step up" provisions not only to employees currently working in the same building or work station as an absent employee, but also to those not employed. There is nothing in this Code Section which would support such a theory. In fact, this Board has held that regular employees on preferred recall have no priority rights over substitutes for temporary vacancies to be filled in accordance with Code § 18A-4-15. See Byers v. Marion County Bd. of Educ., Docket No. 94-24-388 (Dec. 29, 1995). Thus, Grievant has not proven any entitlement to be called out to work over the substitute employee for the August 12, 1997 absence of Ms. Honaker.

With regard to the August 14 extra-duty assignment, Grievant alleges it was also in violation of

the cited statutes to call out a substitute over a regular employee for that half- day assignment. W. Va. Code § 18A-4-8b provides that extra-duty assignments be given to regular employees within the appropriate classification in order of seniority on a rotating basis. Bays v. Putnam County Bd. of Educ., Docket No. 95-40-096 (July 21, 1995). An extra-duty assignment is defined as "irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets, and band festivaltrips." The half-time assignment on August 14, 1997, falls within the definition of "extra duty" as it was an irregular job that occurred, in this instance, on only one occasion, to provide assistance to the regularly employed Cook for a summer nutritional program.

The Board contends that the need for extra help on August 14, 1997 was unanticipated and constituted an emergency, which is why it called a substitute. However, it is apparent that the emergency could have been handled just as easily by calling regular employees in rotation order as it would have been to call substitutes in rotation order. Thus, there is nothing in the situation described by the Board which would justify calling the substitute over a regular employee for the extra-duty assignment on August 14, 1997.

Unfortunately, Grievant has not proven she would have been the next senior regular employee to be called on rotation, and therefore, she is not entitled to any compensation for the one-half day Cook assignment at Guyan Valley on August 14, 1997.

CONCLUSIONS OF LAW

1. It is incumbent upon a grievant to prove his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievanc Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code § 18-29-6.

2. Grievant failed to prove the Board violated W. Va. Code § 18A-4-15 when it called out a substitute for the one-day absence of a regular employee on August 12, 1997.

3. Grievant has proven the Board violated W. Va. Code § 18A-4-8b when it called a substitute over a regular employee to perform an extra duty assignment for a half day on August 14, 1997. 4. Grievant has not proven she would have been entitled to the extra duty assignment had the Board called out a regular employee off the seniority rotation list for extra duty assignments.

Accordingly, this grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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 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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MARY JO SWARTZ

Administrative Law Judge

Dated: April 28, 1998

Footnote: 1

The dates were corrected at the level four hearing to August 12 and 14, 1997.

Footnote: 2

Grievant was represented by West Virginia School Service Personnel Association counsel, John Roush, and the Board was represented by its counsel, Charles Damron.