SUZANNE CARTE, et al.

Grievants,

v.

DOCKET NO. 99-20-029

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, professional employees at Hayes Junior High School, employed by the Kanawha County Board of Education ("Board"), filed the following grievance on June 9, 1998:

> The employees at Hayes Jr. High School were treated differently from the employees at McKinley Jr. High. The Hayes Jr. High employees were paid $100/day for attending Tools for Schools training while the McKinley Jr. High employees were paid their daily rate of pay.
>
> Relief requested: Grievants be paid the difference between the $100/day salary they received and their normal daily rate of pay plus interest on this additional money from the time that they should have received their normal rate of pay.

The level one supervisor was without authority to grant the grievance, and a level two hearing was conducted on December 9, 1998. The grievance was denied on December 30, 1998, by Grievance Evaluator George Beckett. The grievance was waived at level three, and Grievants appealed to level four on January 20, 1999. (See footnote 1) The partiessubmitted this grievance on the record below, as well as a stipulation of fact. Proposed findings of fact and conclusions of law were filed on March 22, 1999, at which time this grievance became mature for decision. This grievance involves the professional employees of Hayes Junior High School. Grievants were represented by Perry Bryant and Steve Angel, West Virginia Education Association, and the Board was represented by its counsel, James Withrow, Esq.

SUMMARY OF EVIDENCE

Level Two Evaluator's Exhibits

Ex. 1 -

Grievance forms.

Level Two Grievants' Exhibits

Ex. 1 -

Staff Development Resource Director 1995-2000.

Testimony

Grievants presented the testimony of Harold Carvey, Kathy Brown, John Barton, Roy Petry, Jr., William Heatherly, Dave Gillespie, Suzanne Carte, Leo Stamm, Alvin A. Anderson, and David Ashley. The Board presented no additional testimony.

FINDINGS OF FACT

The facts are not in dispute, and are set forth as follows.

1. Grievants are all professional employees of the Board, assigned to Hayes Junior High School.

2. In August 1997, Grievants attended “Tools for Schools” training at Capital High School, sponsored by the Board. The training lasted for five days and Grievants were paid $100.00 per day. 3. It has been stipulated that Walter Hillenbrand, a professional employee of McKinley Junior High School, attended the “Tools for Schools” training with Grievants in August 1997.

3. From July 7 through 11, 1997, the professional staff of McKinley Junior High School also attended “Tools for Schools” training at Capital High School. They were also paid $100.00 per day.

4. Subsequent to the training, Principal David Gillespie of McKinley Junior High School, filed a grievance on July 14, 1997, on behalf of himself and the employees of McKinley Junior High, asserting they should have been paid their regular daily rate of pay rather than $100.00 per day. Only Mr. Gillespie was a signatory to the grievance form.

5. At level three of the grievance process, on May 18, 1998, the Board granted Mr. Gillespie's

grievance and awarded the McKinley staff their regular daily rate of pay for attending the training.

6. Grievants filed this grievance on June 10, 1998, within fifteen days of learning about the Board's level three decision, alleging discrimination, and requesting they be paid their daily rate of pay for attending the “Tools for Schools” training.

DISCUSSION

In a non-disciplinary matter, Grievants bear the burden of proving their case by a preponderance of the evidence. The Board raised the affirmative defense of timeliness at level two, and reasserted that defense at level four. Since a timeliness ruling is dispositive of the grievance, that issue will be addressed first.

W. Va. Code § 18-29-4(a)(1) requires a grievance to be filed within fifteen days following the occurrence of the event upon which the grievance is based. A grievant willnot be allowed to overcome a timeliness defense by basing his current claim on another employee's successful grievance decision, if the events giving rise to the grievance were known to the grievant, but he delayed filing until the other employee received a successful outcome. See Haynes v. Kanawha County Bd. of Educ., Docket No. 94-20-337 (Dec. 16, 1994), and the cases cited therein. Cf., Short v. W. Va. Dep't of Health and Human Resources, Docket No. 99-HHR-038 (Mar. 24, 1999), where grievant prevailed on her claim of discrimination resulting from an award of different rate of pay, because employer failed to properly raise timeliness defense.

There is no dispute that the Hayes Junior High employees did not file their grievance until after the McKinley Junior High School employees were granted their grievance on May 18, 1998. There is also no dispute that the event giving rise to this grievance was receiving $100.00 per day as opposed to their daily rate of pay for attending the “Tools for Schools” seminar in August 1997. Thus, the filing of this grievance was untimely.

CONCLUSIONS OF LAW

1. W. Va. Code § 18-29-4(a)(1) requires a grievance to be filed within fifteen days following the occurrence of the event upon which the grievance is based.

2. A grievant will not be allowed to overcome a timeliness defense by basing his current claim on another employee's successful grievance decision, if the events giving rise to the grievance were

known to the grievant, but he delayed filing until the other employee received a successful outcome. Haynes v. Kanawha County Bd. of Educ., Docket No. 94- 20-337 (Dec. 16, 1994).

3. The Board has proven that the Hayes Junior High School grievants were aware in August 1997 that they had been paid $100.00 per day for attending the "Tools forSchools" training. They did not file this grievance until June 10, 1998, after the McKinley Junior High School employees were awarded their daily rate of pay for the same training by the Board on May 18, 1998, in response to an earlier grievance.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any 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. However, the appealing party is required by W. Va. Code § 29-A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: March 31, 1999

Footnote: 1

The employees of four schools, Cedar Grove, Hayes Junior High, DuPont Junior High, and St. Albans High School, all filed similar grievances after the Board awarded the McKinley employees their daily rate of pay. Those grievances were consolidated at leveltwo for hearing purposes only.