MICHAEL E. KRIVAK,

Grievant,

v. Docket No. 98-BOT-427

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievant, Michael E. Krivak, employed by the Board of Trustees as a Materials Handler at West Virginia University (Respondent), filed a level one grievance on or about October 1, 1998, in which he alleged “misclassification - I am performing substantially the same duties as another person with a different job title. The relief I am seeking is the appropriate back pay plus interest and an upgrade.” Robert Suppa, Warehouse Supervisor and Grievant's immediate supervisor, denied the grievance at level one, noting that Grievant's job description had been recently reviewed by Compensation and Classification, and that no change had been recommended. Following an evidentiary hearing conducted at level two on October 19, 1998, the grievance was denied based upon a finding that it had been previously ruled upon in a prior grievance action. Grievant elected to bypass consideration at level three, as permitted by W. Va. Code §18-29-4(c), and advanced the matter to level four on October 30, 1998.

At level four, Respondent's counsel, Assistant Attorney General Samuel R. Spatafore, filed a “Motion To Dismiss”, noting that the complaint involved the same issues previously litigated and decided by the Grievance Board in Krivak v. Bd. of Trustees/ W. Va. Univ., Docket No. 97-BOT-378/393 (July 7, 1998). Representing himself, Grievant filed a “Motion to Dismiss Respondent's Motion”, in which he asserted that he had not asserted misclassification in his prior grievance. He indicated that his earlier claim was acomparison of himself with a co-worker, whose title had not yet been finalized, and that the present matter was his first request to be reclassified as a Tool Crib Attendant.

A conference call was conducted to address the Motions and clarify the issues. After reviewing Grievant's statement of the grievance, Respondent's Motion was granted to the extent that Grievant was advised that his complaint comparing himself to a co-worker had been ruled upon in the July 7,

1998, decision. Grievant was advised that he could pursue a claim of misclassification, as determined by the Mercer classification system used by Respondent, but that classification was not determined by the duties or classification of another employee.

A level four hearing was convened on January 7, 1999, at which time the undersigned inquired as to what classification Grievant was seeking. Grievant could not identify any classification which better fit the duties he performs, and explained that he was only interested in obtaining an increase in salary, to pay grade eleven. (See footnote 1) Respondent's counsel renewed his Motion To Dismiss, asserting that the paygrade issue had been previously addressed. Grievant confirmed that he was not requesting reclassification toany specific classification, but sought only a salary increase.

Discussion

The doctrine of res judicata may result in the dismissal of a grievance when a party seeks to relitigate “matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated.” Liller v. W. Va. Human Rights Comm'n, 180 W. Va. 433, 376 S.E.2d 639, 646 (1988); Watts v. Lincoln County Bd. of Educ., Docket No. 98-22-375 (Jan. 12, 1999); Peters v. Raleigh County Bd. of Educ., Docket No. 95-41-035 (Mar. 15, 1995). Four conditions must be met in order to apply the doctrine of res judicata:

(1) identity in the thing sued for;

(2) identity of the cause of action;

(3) identity of persons, and of parties to the action; and,

(4) identity of the quality in the persons for against whom the claim is made.

Woodall v. W. Va. Dept. of Transp., Docket No.93-DOH-393 (Feb. 2, 1994), citing Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975). “The identicality of issues litigated is the key component to the application of administrative res judicata.” Liller, supra.

However, this Grievance Board has applied this doctrine sparingly, “as the grievance process is intended to be a fair, expeditious, and simple procedure, and not a 'procedural quagmire'”. Harmon v. Fayette County Bd. of Educ., Docket No. 98-10-111 (July 9, 1998), citing Spahr v. Preston County Bd. of Educ., 182 W. Va. 726, 393 S.E.2d 739 (1990), and Duruttya v. Bd. of Educ., 181 W. Va. 203, 382 S.E.2d 40 (1989). Generally, res judicata will be applied by the Grievance Board only when the grievance involves the same parties,cause of action, relief requested, and factual situation as that of a prior matter which has actually been decided by the board. Woodall, supra; Farley/Stover v. Mason

County Bd. of Educ., Docket No. 94-26-639 (Feb. 28, 1995).

In Krivak v. Bd. of Trustees/W. Va. Univ., Docket Nos. 97-BOT-378-393 (hereinafter Krivak I), two issues were presented and considered. The first was whether Grievant was performing the same duties as a co-worker who was compensated at pay grade ten, and the second was whether his compensation should be advanced to pay grade eleven in consideration that his duties had been expanded to include those once performed by tool crib attendants (pay grade ten). Because Grievant could not identify another classification which better fit the duties he performs, and stated that he would only establish that his duties warranted compensation at pay grade eleven, he has attempted to address the same issue in this grievance.

Respondent has proven that the issue raised in this grievance was already decided in Krivak I, supra, the parties are the same, and the requested relief is the same. Therefore, the legal doctrine of res judicata precludes the undersigned from addressing the same issue again.

In addition to the foregoing narration it is proper to make the following formal findings of fact and conclusions of law.

Findings of Fact

1. Grievant is employed by the Board of Trustees at West Virginia University, and is classified as a Materials Handler, compensated at pay grade seven.

2. On July 7, 1998, a level four decision in the matter of Krivak v. Bd. ofTrustee/W. Va. Univ., Docket Nos. 97-BOT-378/393, was issued, denying Grievant's claim that his duties supported a request for compensation at pay grade eleven.

3. Grievant did not appeal the decision to a circuit court for review.

4. On October 1, 1998, Grievant filed a complaint in which he alleged misclassification.

5. At level four, Grievant could not identify any classification which better fit the duties he performs, and claimed only that his duties warranted compensation at pay grade eleven.

Conclusions of Law

1. The doctrine of res judicata may result in the dismissal of a grievance when a party seeks to relitigate “matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated.” Liller v. W. Va. Human Rights Comm'n, 180 W. Va. 433, 376 S.E.2d 639, 646 (1988); Watts v. Lincoln County Bd. of Educ., Docket No. 98-22-375 (Jan. 12, 1999); Peters v. Raleigh County Bd. of Educ., Docket No. 95-41-035 (Mar. 15, 1995). Four conditions must be met in

order to apply the doctrine of res judicata:

(1) identity in the thing sued for;

(2) identity of the cause of action;

(3) identity of persons, and of parties to the action; and,

(4) identity of the quality in the persons for against whom the claim is made.

Woodall v. W. Va. Dept. of Transp., Docket No.93-DOH-393 (Feb. 2, 1994), citing Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975).

2. The issue presented by Grievant at the level four hearing was alreadyreviewed and decided in Krivak v. Bd. of Trustee/W. Va. Univ., Docket Nos. 97-BOT- 378/393 (July 7, 1998), the parties are the same, and the requested relief is the same. The doctrine of res judicata precludes the undersigned from addressing the very same issues again.

Accordingly this grievance is **DISMISSED** and **STRICKEN** from the docket of the Grievance Board.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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.

Date: January 19, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant did not state on his written grievance, or at level four, that he was seeking the classification of Tool Crib Attendant. Because that position is slotted at pay grade ten, and Grievant adamantly asserted that he was entitled to pay grade eleven, any claim relating to the classification of Tool Crib Attendant is deemed abandoned.