DAVID MORGAN,

Grievant,

v. Docket No. 01-52-432

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

David Morgan ("Grievant"), employed by the Wetzel County Board of Education ("WCBE") as a teacher, filed an undated level one grievance in which he alleged violations of W. Va. Code §§ 18-29-2(a) and 18A-4-5a, when he was no longer compensated for mileage. For relief, Grievant requests that his travel reimbursement be reinstated to that of January 2001, and back pay. The record does not include any lower-level decisions; however, the matter was apparently denied at level two on May 25, 2001, and at level three on June 26, 2001. (See footnote 1) **Appeal to level four was made on July 9, 2001, and the matter has been held in abeyance while Grievant was on active military duty. In September 2003, Grievant was home for a period of time, and efforts were made by the Grievance Board to conduct a hearing before he was scheduled to return to military duty. Grievant's WVEA representative, Owens Brown, and WCBE counsel, Larry Blalock, then determined the matter could be decided based upon the lower-level record. The matter became mature for decision on October 1, 2003, the due date for submission of proposed findings of fact and conclusions of law.**

The following facts have been derived from the record developed at levels two and three, as submitted to level four.

Findings of Fact

1. Grievant has been employed by WCBE since 1986, and has been assigned to teach Music at Short Line School and Valley High School since 1993.

2. Grievant's split assignment requires that he travel from Short Line School to Valley High School each day, a distance of four miles. Grievant is not required by WCBE to return to Short Line School at the end of the day; however, he chooses to do so.

3. From 1993 through January 2001, Grievant was paid at a rate of thirty cents per mile

for his travel from Short Line School to Valley High School, and back, for a total of eight miles per day.

4. In February 2001, then-Superintendent, Dr. Martha Dean learned that a teacher, Kristina Earley, was submitting expense reports for round-trip mileage, which she found to be contrary to WCBE's reimbursement policy. This discovery led to a review of other expense reports filed by traveling teachers. Only Ms. Earley and Grievant were found to be requesting reimbursement for round-trip mileage **(See footnote 2)** **.**

5. Thereafter, Grievant was compensated only for the four miles from Short Line School to Valley High School.

Discussion

___In non-disciplinary matters, a grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. ofEduc., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

Grievant's argument is not entirely clear, but seems to be that WCBE has violated its travel expense policy, acted contrary to past practice, and failed to compensate employees uniformly. WCBE argues that Grievant is not required to travel back to Short Line at the end of the day, and it has simply corrected a mistake.

WCBE Policy DLC "Travel Expenses" states as follows:

The rate of reimbursement for travel by employees of the Wetzel County Board of Education in privately owned automobiles while pursuing school business is thirty (.30) cents per mile.

Upon receipt of an itemized expense report, employees will be reimbursed for all reasonable and approved travel expenses actually incurred in the performance of their official duties.

Because Grievant is not required by WCBE to return to Short Line School, his travel from

Valley High School to that point is not an approved travel expense. Additionally, Dr. Dean testified at both levels two and three, that no other traveling teachers were compensated for "round trip" mileage. Grievant offered no evidence to the contrary. Therefore, there is no violation of the W. Va. Code § 18A-4-5a requirement that "[u]niformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county . . . ."

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. In non-disciplinary matters, a grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ.& State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000);Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. Grievant has failed to prove a violation of the W. Va. Code § 18A-4-5a requirement that "[u]niformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county . . . ", or that he is otherwise entitled to reimbursement for the travel requested.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wetzel County. 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 § 29A-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.

DATE: OCTOBER 21, 2003 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 ***These dates were provided on the level four appeal form.***

Footnote: 2 ***Ms. Earley was originally a Grievant in this matter, but withdrew her claim at level four.***