WENDELL TATE, et al.,

Grievants,

v. **Docket No. 02-30-368**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants (See footnote 1) , employed as bus operators and aides, initiated this proceeding on August 1, 2002, alleging entitlement to compensation for the July 4, 2002, holiday. The grievance was denied at level one on August 13, 2002. A level two hearing was held on October 4, 2002, and the grievance was denied at that level on November 1, 2002. Level three consideration was waived, and Grievants appealed to level four on November 8, 2002. A hearing was held in the Grievance Board's office in Westover, West Virginia, on January 6, 2003. Grievants were represented by counsel, John E. Roush, and Respondent was represented by counsel, Kelly J. Kimble. This matter became mature for consideration upon receipt of the parties' fact/law proposals on March 21, 2003.

The following findings of fact are made based upon a preponderance of the credible evidence of record.

Findings of Fact

1. Grievants are employed by Respondent as bus operators and aides, and allworked in summer positions in 2002.

2. Grievants' summer contracts specifically excluded July 4 from their contract term; they did not work that day and did not receive pay for it.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving

their claims 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.

Grievants contend that they are entitled to compensation for the July 4 holiday, due to the provisions of W. Va. Code § 18A-5-2, which provides that, when holidays fall "within the employment term," all "full-time school personnel" are entitled to pay for such days. In addition, recently amended W. Va. Code § 18-5-39 provides that summer employees "are entitled to all rights, privileges and benefits provided in sections [18A-4-5b, 18A-4-8, 18A-4-8a, 18A-4-10 and 18A-4-14]". Although W. Va. Code § 18A-5-2 is not specifically mentioned as one of the sections under which summer employees are entitled to benefits, Grievants argue that W. Va. Code § 18A-5-2 is "indirectly linked" to summer positions.

The exact issue presented in this case was addressed by this Grievance Board in Johnson v. Ritchie County Board of Education, Docket No. 01-43-509 (Jan. 15, 2002). It was determined in that case that summer employees are not entitled to pay for days which are specifically excluded from their employment term by the terms of their contracts. Accordingly, the issue is not one of whether or not Grievants are entitled to the benefits ofW. Va. Code § 18A-5-2, but that their contracts specifically exclude July 4 from their employment term.

As a general rule, this Grievance Board adheres to the doctrine of *stare decisis* in adjudicating grievances that come before it. Chafin v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974). This adherence is founded upon a determination that the employees and employers whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error. Shaffer v. Kanawha County Bd. of Educ., Docket No. 00-20- 085 (June 12, 2000); Belcher v. W. Va. Dep't of Transp., Docket No. 94-DOH-341 (Apr. 27, 1995).

The undersigned finds no reason for a reversal of Johnson, supra. Grievants agreed to contracts

which specifically excluded the July 4 holiday from their employment terms. When a contract is clear and without ambiguity, it need not be construed or interpreted. "While it is true that ambiguities are resolved against the party preparing the contract, where a document is clear and unambiguous, the doctrine does not apply." Williams v. First Fed. Sav. & Loan Ass'n, 651 F.2d 910 (4th Cir. 1981), *aff*. 500 F. Supp. 307 (E.D. Va. 1980); See Orteza v. Monongalia County Gen. Hosp., 173 W. Va. 461, 318 S.E.2d 40 (1984). Grievants' contracts clearly exclude July 4, so they are not entitled tocompensation for that holiday.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievants have the burden of proving their claims 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. When a contract is clear and without ambiguity, it need not be construed or interpreted. Williams v. First Fed. Sav. & Loan Ass'n, 651 F.2d 910 (4th Cir. 1981), *aff*. 500 F. Supp. 307 (E.D. Va. 1980); See Orteza v. Monongalia County Gen. Hosp., 173 W. Va. 461, 318 S.E.2d 40 (1984).

3. July 4, 2002, was specifically excluded from Grievants' contract term, so they are not entitled compensation for that day. See Johnson v. Ritchie County Bd. of Educ., Docket No. 01-43-509 (Jan. 15, 2002).

Accordingly, this grievance is **DENIED**.

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 partyto 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: April 25, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievants include Wendell Tate, Michelle Marshall, Elaine Prickett, Jacqueline Mattern, Sheila Hixenbaugh, Patricia Statler, Elizabeth Snyder, Millard Brock, Dolores Clark, Louis Mogyoros, Charlene McMillan, Joanna Costello, Margaret Wilson, Larry Cool, and Cheryl Williams.