**ORVILLE FIELDS,**

**Grievant,**

**v.** **Docket No. 04-20-395**

**KANAWHA COUNTY BOARD OF EDUCATION,**

**Respondent.**

## D E C I S I O N

Orville Fields ("Grievant"), employed by the Kanawha County Board of Education ("KCBE") as a Mechanic/Bus Operator, asserts a violation of policy occurred when an employee was allowed to forego his regular run to accept an extracurricular assignment. For relief, Grievant requests compensation for the run, with interest, and all other benefits to which he is entitled. The record does not include a level one decision. The grievance was denied following an evidentiary hearing at level two. Grievant elected to bypass consideration at level three, and advanced an appeal to level four on November 10, 2004. Grievant's representative, Anita Mitter of the West Virginia Education Association, and KCBE counsel James W. Withrow, Esq., agreed that the grievance could be submitted for decision based upon the lower-level record. Grievant filed proposed findings of fact and conclusions of law on November 23, 2004. KCBE elected not to file additional proposals. The grievance became mature for decision on December 24, 2004, when it was transferred to the undersigned for disposition.

The following facts have been derived from a preponderance of the evidence submitted at level two.

### Findings of Fact

1. Grievant has been employed as a Mechanic/Bus Operator, who works primarily as a Mechanic, assigned to the Charleston/Elkview terminal at all times pertinent to this grievance.

2. Grievant's regular work schedule as a mechanic is from 5:00 a.m. to 1:00 p.m.; however, he is frequently called upon to work as a bus operator for both morning and afternoon runs.

3. On April 16, 2004, an extra duty assignment was scheduled to take students from McKinley Middle School to Bridgeport, West Virginia. The group was originally scheduled to depart at 2:00 p.m., but the time was changed to 1:00 p.m.

4. McKinley Middle School is served by the St. Albans bus terminal.

5. The terminal supervisor was unable to locate a regular or substitute bus operator, or certified mechanic, who could take the trip. The supervisor then contacted other terminals and found there were no substitute bus operators available in the county.

6. Acting on the direction of George Beckett, Administrative Assistant for Pupil Transportation and Maintenance, the supervisor contacted the South Charleston terminal to see if any employee could take the run.

7. A regular bus operator agreed to take the trip, and a mechanic from that terminal completed the bus operator's regular night school run.

8. KCBE's usual practice is not to release bus operators from their regular runs to accept extra duty assignments.

9. It is approximately twenty-five miles from Grievant's work site to the St. Albans terminal.

Discussion

Grievant argues that he should have been allowed to accept the extra duty assignment based upon his seniority, and because he could have rearranged his schedule to be in St. Albans at the appointed time. Because he is the only employee to file a grievance, Grievant concludes that he should prevail. KCBE acknowledges a deviation from the usual practice occurred, but only because no viable alternative was available. KCBE asserts that Grievant could not have been at St. Albans on time based upon his work schedule, and that he has failed to prove any entitlement to the assignment.

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claim by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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.

Grievant cannot prevail in this matter. Mr. Beckett's testimony establishes that no substitute employees were available, and that a driver was needed on short notice. Similar situations have been addressed by the Grievance Board in Tate v. Monongalia County Board of Education, Docket No. 02-30-318D (Jan. 8, 2003), and in Sizemore/Lemley v. Monongalia County Board of Education, Docket No. 98-30-428 (Jan. 26, 1998). In those cases, it was held that, so long as the supervisor's decision

is reasonable, handling of emergency bus runs is clearly within his discretion. KCBE has demonstrated in the instant case that Mr. Beckett was clearly presented with an emergency, and made a quick, logical decision that was reasonable under the circumstances. It does not appear that there would have been adequate time to allow Grievant to rearrange his schedule in order to beavailable at the designated time and location, and KCBE is under no obligation to accommodate an employee in such a fashion.

Consistent with the foregoing, the following conclusions of law are made.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claim by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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. So long as the supervisor's decision is reasonable, handling of emergency, extra duty bus runs is clearly discretionary. Tate v. Monongalia County Bd. of Educ., Docket No. 02-30-318D (Jan. 8, 2003), Sizemore/Lemley v. Monongalia County Bd. of Educ., Docket No. 98-30-428 (Jan. 26, 1998).

3. Grievant has failed to prove that KCBE acted improperly in this emergency, or that he would have otherwise been entitled to the assignment.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the ircuit Court of Kanawha 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 ofits 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.

**JANUARY 24, 2005** _____

**SUE KELLER**

**SENIOR ADMINISTRATIVE LAW JUDGE**