THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

CARLOS M. JARRETT,

Grievant,

v. **Docket No. 06-20-181**

KANAWHA COUNTY
BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Carlos M. Jarrett, filed a grievance on December 18, 2006, against his employer alleging:

Grievant was, at the time this grievance arose, a substitute bus operator. Respondent hired a less senior substitute to fill a posted position. Respondent alleged that it did not receive a copy of Grievant's application. Moreover, Respondent refused to reverse the employment of the less senior applicant even after Grievant provided proof of submission and receipt of his application. Grievant contends that Respondent's action violated West Virginia Code §§ 18A-4-8b & 18A-4-8g.

Relief Sought:

Grievant seeks compensation for wages lost with interest, benefits, and seniority. (Grievant has received another position since initiation of the grievance and therefore does not seek instatement [sic] into the position in question.)

The grievance was denied at Levels I and II, and Grievant bypassed Level III. A Level IV hearing was held at the Grievance Board's Charleston office on September 14, 2006. Grievant was

represented by John Roush, Esq. of the West Virginia School Service Personnel Association, and Respondent was represented by James Withrow, GeneralCounsel. This case became mature on October 13, 2006, upon the parties' submissions of findings of fact and conclusions of law.

Issues and Arguments

Grievant asserts he faxed two different applications for two bus operator vacancies to the personnel department, and received the fax confirmation sheet confirming the personnel department had received both applications. Grievant, however, was not selected to fill the vacancy at St. Albans. Instead, an employee with less seniority was chosen.

Respondent asserts it did not receive both applications from Grievant. Respondent also argues it is Grievant's responsibility to ensure his applications are received.

The following findings of fact have been proven by a preponderance of the evidence.

Findings of Fact

1. Grievant was employed as a substitute bus operator at the Elkview bus terminal at the time this grievance arose.

2. On November 8, 2005, Respondent posted two permanent school bus operator positions, one at the Sissonville terminal and the other at the St. Albans terminal.

3. Respondent permits employees to apply for positions by facsimile transmission. On November 9, 2006, Grievant faxed an application for the two vacant bus operator positions to the personnel department.

4. Grievant faxed two sheets to the personnel department. After faxing those two sheets, he received a fax confirmation sheet showing both pages had successfullybeen sent.

5. Respondent received the application for the Sissonville position with no problem. Respondent did not receive the application for the St. Albans position. Grievant was not considered for the St. Albans position.

6. Respondent filled both positions. The Sissonville position was filled by a substitute employee with more seniority than Grievant. The St. Albans position was filled by a substitute employee with less seniority than Grievant.

7. When Grievant learned that the St. Albans position had been filled by an employee with less seniority, he discussed the situation with his supervisor. Upon being told the personnel department did not receive his bid sheet for that position, Grievant then provided the fax confirmation sheet to

Respondent.

Discussion

Since this grievance is not about discipline, Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met his burden. *Id.*

W. Va. Code §§ 18A-4-8b and 18A-4-8g require all vacant school service personnel positions be posted and filled on the basis of seniority, qualification, and evaluation. First priority in filling positions is assigned to regular employees, followed by employees on the preferred recall list, substitutes and finally individuals with no contractual status with theboard of education.

It seems uncontested that had Grievant's bid sheet for the St. Albans position been received by the personnel department, he would have received the position. Respondent allows for employees to submit bid sheets via facsimile transmission. Grievant completed the bid sheets for both positions and faxed them to personnel department. After completing the fax, he received the confirmation sheet confirming both bid sheets had been transmitted. Based on the confirmation sheet, Grievant, understandably, thought both of his bid sheets were received.

It is the responsibility of the applicant who is applying for an employment position to not only completely fill out the information on the application, but also to ensure that the application is submitted to the proper person in charge of reviewing the application. *See Sickles v. Monongalia County Bd. of Educ*., Docket No. 96-30-207 (Oct. 30, 1996); *Merritt v. Kanawha County Bd. of Educ*., Docket No. 91-20-439 (Feb. 5, 1992); *Mills v. Doddridge County Bd. of Educ*., Docket No. 90-09-402 (Nov. 26, 1990); *Delaney v. Harrison County Bd. of Educ.*, Docket No. 89-17-352 (Sept. 25, 1989).

Respondent argues the confirmation sheet only confirms two sheets were sent, but it does not confirm the two sheets were received. However, Kanawha County Schools allows for faxed submissions for posted positions. Given this technology, it is not unreasonable for Grievant to rely on the confirmation sheet indicating the two bid sheets were sent to the personnel office. Therefore, Grievant has carried his burden of proof.

The following conclusions of law support this discussion.

Conclusions of Law

1. Since this grievance is not about discipline, Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met his burden. *Id.*

2. *W. Va. Code* §§ 18A-4-8b and 18A-4-8g require all vacant school service personnel positions be posted and filled on the basis of seniority, qualification, and evaluation. First priority in filling positions is assigned to regular employees, followed by employees on the preferred recall list, substitutes and finally individuals with no contractual status with the board of education.

3. It is the responsibility of the applicant who is applying for an employment position to not only completely fill out the information on the application but also to ensure that the application is submitted to the proper person in charge of reviewing the application. *See Sickles v. Monongalia County Bd. of Educ*., Docket No. 96-30-207 (Oct. 30, 1996); Merritt v. Kanawha County Bd. of Educ., Docket No. 91-20-439 (Feb. 5, 1992); *Mills v. Doddridge County Bd. of Educ*., Docket No. 90-09-402 (Nov. 26, 1990); *Delaney v. Harrison County Bd. of Educ.*, Docket No. 89-17-352 (Sept. 25, 1989).

4. Grievant established by a preponderance of the evidence that he submitted bid sheets for both positions. Accordingly, this grievance is **GRANTED**. Respondent is **ORDERED** to compensate Grievant for wages lost with interest, benefits and seniority.

Any party may appeal this decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty 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: December 14, 2006

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Wendy A. Campbell

Administrative Law Judge