THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

GRIEVANCE BOARD

ROBERT TAYLOR,

Grievant,

v. **Docket No. 06-09-441**

Denise M. Spatafore

Administrative Law Judge

DODDRIDGE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Robert Taylor ("Grievant") initiated this proceeding on October 13, 2006, due to a change in Respondent's policy which used to allow him to use his regular bus for an evening activities run. He seeks "reinstatement of my regular bus . . . on my activity run" and "back pay for additional time spent on my activity run, as well as reimbursement for additional expenses [as a result of the change]." After denials at the lower levels, Grievant appealed to level four on November 26, 2006. A hearing was conducted in Westover, West Virginia, on March 21, 2007. Grievant was represented by Owens Brown of the West Virginia Education Association, and Respondent was represented by counsel, Ashley Hardesty. This matter became mature for consideration upon receipt of the parties' fact/law proposals on April 18, 2007.

Synopsis

Grievant, who has held an extra contract for an evening "activity" run for many years, objected

when the Board changed its practice of allowing him to use his regular bus for the extra run. Because allowing Grievant to return to his domicile with his regular busprior to performing the activity run resulted in “empty” miles incurred on the bus, he was directed to return to the bus garage and use a spare bus for the activity run. This was a business decision within Respondent's discretion. Bus operators have no right to use any particular bus, nor is Grievant entitled to any extra compensation or expense reimbursement for travel to and from the location where he begins his job duties.

Findings of Fact

1. Grievant has been regularly employed by Respondent as a bus operator for approximately 33 years.

2. For the past 16 years, Grievant has also driven an after-school “activity” run, for which he receives additional compensation.

3. Prior to the fall of 2006, Grievant used the same bus that he used for his morning and afternoon “regular” bus runs for his activity run. Grievant has, for many years, parked his regular bus at his residence. He would complete his normal afternoon run, return to his residence, then perform the activity run starting from there each evening.

4. Grievant lives approximately 18 miles from the bus garage.

5. At the beginning of the 2006-2007 school year, there were three evening activity runs, including Grievant's. In order to determine how efficiently resources were being used for these runs, the Board asked Edward Cumpston, Director of Support Services, to perform an efficiency study. Mr. Cumpston drove each one of the routes in two ways: first, assuming that the driver would use the same bus he used for his regular runs, and second, as if the driver would return to the garage after his regular runs and use a spare bus for the activity run. 6. The results of Mr. Cumpston's study indicated that, if Grievant were to return to the bus garage and perform the activity run with a spare bus, it would save a total of 10.4 miles per day, which would merely be unnecessary “empty” miles put on his regular bus, if it were used.

7. At the time of Mr. Cumpston's efficiency study, one of the activity runs was unassigned, and it was determined that the other driver would actually save mileage by using his regular bus.

8. Beginning in October of 2006, Grievant was required to return to the bus garage in the evening (using his personal vehicle), perform the activity run with a spare bus, and then return that

bus to the garage before going home.

9. Sometime in the fall of 2006, after filing this grievance, Grievant bid upon and received a new activity run. However, the same issues remained, in that Grievant is still required to pick up a different bus at the garage to perform the activity run.

10. By returning to the bus garage and using a spare bus for his current activity run, Grievant saves 5.7 miles per day. Another activity driver is also required to use a spare bus in order to save unnecessary mileage.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving 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 (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. "Thepreponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant contends that it is discriminatory for him to be required to use a spare bus for his activity run, when another driver does not. A grievant must establish a case of discrimination, as defined by W. Va. Code § 18-29-2(m), by showing:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
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> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

Board of Education v. White, 216 W. Va. 242, 605 S.E.2d 814 (2004); *Chaddock v. Div. of Corrections*, Docket No. 04-CORR-278 (2005); *Frymier v. Glenville State College*, Docket No. 03-HE-217R (2004).

Clearly, Grievant has failed to establish a *prima facie* case of discrimination, because the difference in treatment here is a direct result of differences in job duties. While Grievant's use of his regular bus resulted in the bus incurring unnecessary “empty” miles (when students are not being transported), the other driver's use of his regular bus to perform the activity run actually saved unnecessary miles, due to the location of his home in relation to the bus garage and the students on his runs. Moreover, under the current state of affairs, Grievant and another driver are both required to use spare buses, so he is receiving the same treatment as that other driver. As this Grievance Board has previously discussed, “[a] bus operator does not have an entitlement to be assigned to a particular bus.” *Ward v. Raleigh County Bd. of Educ.*, Docket No. 06-41-104 (Aug. 21, 2006). In this situation, Respondent made a business decision which was designed to more efficiently utilize resources and save money, which is its prerogative and responsibility. “'A grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety.' *Rice v. Div. of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997).” *Viski v. Preston County Bd. of Educ.,* Docket No. 99-39-271 (Nov. 30, 1999).

Similarly, Grievant has failed to establish any entitlement to reimbursement for his alleged “expenses” which he believes he has incurred as a result of this change in practice. While Grievant has not stated in his post-hearing submission whether he is seeking mileage reimbursement, compensation, or expenses, it is well-settled that employees are not entitled to compensation for traveling to and from the location where the performance of their job activities actually begin. *See* 29 U.S.C. § 254(a); *Dillon v. Mingo County Bd. of Educ.*, Docket No. 05-29-413 (Apr. 28, 2006). Although it is understandable that Grievant would rather not have to make the extra trip to the bus garage to pick up the spare bus for his activity run, this is a normal, expected situation for most bus drivers, who normally do not park their buses at their homes. Therefore, Grievant's travel to and from the garage to pick up the bus is considered travel to and from his work location, prior to and after performance of his actual job duties. Accordingly, Grievant is not entitled to the relief requested. The following conclusions of law support this Decision.

Conclusions of Law

1. Grievant has the burden of proving 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 (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. A grievant must establish a case of discrimination, as defined by W. Va. Code § 18-29-2(m), by showing:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
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> (c) that the difference in treatment was not agreed to in writing by the employee.

Board of Education v. White, 216 W. Va. 242, 605 S.E.2d 814 (2004); *Chaddock v. Div. of Corrections*, Docket No. 04-CORR-278 (2005); *Frymier v. Glenville State College*, Docket No. 03-HE-217R (2004).

3. Grievant has failed to establish a *prima facie* case of discrimination.

4. "A bus operator does not have an entitlement to be assigned to a particular bus." *Ward v. Raleigh County Bd. of Educ.*, Docket No. 06-41-104 (Aug. 21, 2006).

5. "'A grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performanceor health and safety.' *Rice v. Div. of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997)." *Viski v. Preston County Bd. of Educ.,* Docket No. 99-39-271 (Nov. 30, 1999).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Doddridge 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: June 26, 2007

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DENISE M. SPATAFORE

Administrative Law Judge