

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SYNOPSIS REPORT

Decisions Issued in March, 2020

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

<u>KEYWORDS:</u>	Termination; Annual Contract; Policy; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>Evans v. West Virginia University</u> DOCKET NO. 2019-1196-WVU (3/3/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that he had a property right in continued employment beyond the expiration of his employment contract.
<u>SUMMARY:</u>	<p>From 2010 to 2018, Grievant was employed by WVU in a non-tenure track position through annual contracts ending on June 30th of each year. On June 28, 2018, WVU placed Grievant on leave while it investigated allegations of misconduct against him. WVU never renewed Grievant's contract beyond June 30, 2018, but continued employing Grievant until his dismissal on February 25, 2019. Grievant implies he has a property right to continued employment based on his expectation of renewal. He contends WVU's non-retention decision was arbitrary and capricious. Grievant did not prove by clear and convincing evidence that he had a property right to continued employment. Therefore, WVU was not required to provide a reasonable basis for not retaining him. Accordingly, this grievance is DENIED</p>

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COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

<u>KEYWORDS:</u>	Pay; Salary; Experience Credit; Hearsay; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>Townsend v. Barbour County Board of Education</u> DOCKET NO. 2020-0238-BarED (3/17/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved by a preponderance of the evidence that she was entitled to the pay enhancement she requested.
<u>SUMMARY:</u>	Grievant is a speech pathologist employed by Respondent at Belington Elementary School. Respondent did not grant her three additional years' experience credit for salary calculation purposes. Grievant demonstrated by a preponderance of the evidence that she is a "classroom teacher," "certified in special education," and, therefore, is among the groups of employees meant to be given the pay enhancement set forth in recently enacted legislation. School laws must be strictly construed in favor of the employee, and such analysis of the relevant code sections as a whole and related caselaw mandate that Grievant be granted three additional years' experience credit for salary calculation services. Accordingly, the grievance is granted.

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COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

<u>KEYWORDS:</u>	Supplemental Pay; Classification; Hearsay
<u>CASE STYLE:</u>	<u>Baker v. Wayne County Board of Education</u> DOCKET NO. 2018-1170-WayED (3/4/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant is entitled to the pay supplement she requests.
<u>SUMMARY:</u>	Grievant Baker asserts that she as the Secretary for Transportation working out of the Bus Garage she is entitled to a Board pay supplement for "Bus Garage & Maintenance Personnel with 15+ years of experience." Respondent argues that the supplement does not apply to Grievant's position because her duties are clerical in nature and not specifically related to transportation or maintenance. In essence she is actually a secretary 3 in the central office and the fact that her workspace is conveniently located in the Bus Garage does not entitle her to the supplement. There are differing interpretations of the policy but for the reasons more fully set out herein the policy must be strictly construed in favor of the employee and Grievant is entitled to the pay supplement she requests.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Termination; Violation of Policy; Veterans database; Essential Job Duties; Mitigation
<u>CASE STYLE:</u>	<u>Smith v. Department of Veterans Assistance</u> DOCKET NO. 2020-0403-DVA (3/4/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that dismissal was clearly excessive given or disproportionate to the misconduct.
<u>SUMMARY:</u>	<p>Respondent terminated Grievant's employment as a Veteran Officer Assistant II after it was discovered that she and a United States Department of Veterans Affairs ("USDVA") employee accessed a veteran's confidential records on the USDVA database system without authorization which at some point became public. The USDVA revoked Grievant's access privileges to utilize their database rendering Grievant unable to perform the essential duties of her job. Grievant argues that she made a simple mistake without intent or malice, and there was insufficient cause to release her, a tenured civil servant, from employment. She also argues that an employee, working for the USDVA also gained access to the same information without losing access to the database or being dismissed. Respondent proved that there was sufficient reason to dismiss Grievant, that she was not subject to discrimination and that mitigation of the punishment was not required.</p>

KEYWORDS: Equipment Operation Assignments; Classification; Policy; Discrimination

CASE STYLE: James v. Division of Highways
DOCKET NO. 2019-1353-DOT (3/26/2020)

PRIMARY ISSUES: Whether Grievant established that Respondent violated any statute, regulation or policy, or that it abused its discretion, on meeting the needs of the agency by selecting certified equipment operators of a higher classification than Grievant to operate equipment.

SUMMARY: Grievant is employed as a Transportation Worker 1 Craft Worker with the Division of Highways at Cabell County in Respondent's District 2. Grievant alleges that he has been discriminated against regarding temporary upgrades to operate certain pieces of DOH equipment. The Transportation Worker classification has undergone a variety of developments in the recent years, notably an increase in various classification wages, thus increasing workers desire for higher classification. Nevertheless, management is charged with determine the best way to utilize the assigned workforce "to better serve the organization's objectives" and the "most efficient use of resources" as long as workers are performing task within their classification.

Employer are empowered to reasonably manage the duties and activities of workers. Employees do not dictate their individual assignments. Grievant failed to establish by a preponderance of the evidence that Respondent's decision regarding temporary upgrades for equipment operation to be the result of discrimination, favoritism, unlawful, unreasonable, or arbitrary and capricious reasons. This Grievance is DENIED.

KEYWORDS: Termination; Inappropriate Physical and Verbal Contact; Progressive Discipline Policy; Discriminatory Hostile Work Environment; Sexual Harassment; Mitigation

CASE STYLE: Nutter v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails
DOCKET NO. 2019-1651-MAPS (3/26/2020)

PRIMARY ISSUES: Whether Respondent had good cause to terminate Grievant.

SUMMARY: Grievant was employed as a Correctional Officer with Respondent in a supervisory position. Grievant had undergone regular and enhanced training on Equal Employment Opportunity issues and the mandatory reporting of those issues. After reported allegation of inappropriate language and deed(s) by Grievant, an investigation into Grievant's conduct was conducted. The investigation substantiated the allegations against Grievant, resulting in Respondent's disciplinary action of dismissing Grievant from employment. Grievant's irresponsible conduct of engaging in inappropriate and unwanted physical and verbal contact with a female officer under his direct supervision, is found to be justifiable grounds for discharge. Respondent established good cause for its disciplinary action. Grievant failed to demonstrate that termination was too severe a punishment, or that mitigation was warranted under the circumstances. This grievance is denied.

KEYWORDS: Suspension; Insubordination; Offensive Language; Disrespecting Chain of Command; Arbitrary and Capricious

CASE STYLE: Robinson v. Division of Highways
DOCKET NO. 2020-0471-DOT (3/30/2020)

PRIMARY ISSUES: Whether Respondent had good cause to suspend Grievant.

SUMMARY: Grievant is employed as an equipment operator for Respondent, Division of Highways. Grievant was tasked with dumping fill-dirt onto private property. Grievant's supervisors directed Grievant to stop dumping near a drainage pipe and to instead dump on a hill. Grievant refused, then unloaded ten miles away. Respondent suspended Grievant for insubordination, disrespecting the chain of command, and using offensive language with a coworker. Grievant disputes the later two allegations but contends his noncompliance was justified because the directive was unsafe and contrary to the landowner's wishes. Respondent proved discipline was justified. Grievant did not prove an affirmative defense to excuse his conduct or that mitigation was warranted. Accordingly, this grievance is Denied.