



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

DR. THOMAS L. BEAN

v.

DOCKET NO. 30-86-185-2

WEST VIRGINIA UNIVERSITY

DISMISSAL ORDER

Grievant, Dr. Thomas L. Bean, is employed by the West Virginia Board of Regents and holds the position of Associate Professor assigned to the Center for Extension and Continuing Education (CECE). In December, 1984, Dr. Bean requested that he be promoted to full professor effective July, 1985. This request was denied by President Gordon Gee and Dr. Bean appealed that decision to the Institutional Hearing Committee in accordance with Board of Regents' Policy Bulletin Number 36. The committee determined President Gee's promotion denial to be arbitrary and without factual basis and recommended promotion for Dr. Bean. This recommendation was submitted to Interim President Diane Reinhard who also denied Dr. Bean's request for promotion.

Dr. Bean subsequently filed a grievance with the Education Employees Grievance Board in which he alleges President Reinhard's decision to be arbitrary, capricious and without

factual basis. The grievant has submitted this matter for decision based on the record and asks that he be promoted to full professor.

The respondent has raised the issue of whether this matter has been properly brought before the Education Employees Grievance Board inasmuch as Dr. Bean has previously sought an administrative remedy under Board of Regents' Policy Bulletin Number 36. Counsel for the respondent cites the matter of Thomas A. Braun v. West Virginia University Hospitals, Inc., Docket No. 38-86-043 decided by on February 21, 1986 as precedent for his motion to dismiss this matter from the docket of the Education Employees Grievance Board.

In response, the grievant argues that at the time of his request for a hearing before the Institutional Hearing Committee in May, 1985, there was no other appeal process available to him and that it would be unfair to deny him his statutory rights when such rights did not exist at the time he initiated his appeal. Further, Dr. Bean asserts this to be his first action which would meet the statutory definition of a grievance and that the present matter includes several issues not presented to the Institutional Hearing Committee.

In addition to the foregoing, it is appropriate to make the following findings and conclusions.

Findings of Fact

1. Dr. Thomas L. Bean was initially employed at West Virginia University in 1976 as an Agricultural Safety Specialist assigned to the Center for Extension and Continuing Education.

2. In 1981, Dr. Bean was promoted to Associate Professor and awarded tenure in the College of Agriculture and Forestry.

3. In December, 1984, Dr. Bean requested promotion to full professor.

4. Gordon Gee, President of West Virginia University, denied the request for promotion at which time Dr. Bean requested a hearing before the Institutional Hearing Committee in accordance with Board of Regents Policy Bulletin Number 36.

5. Subsequent to a hearing, the Institutional Hearing Committee recommended that Dr. Bean's request for promotion be approved.

6. Interim President Diane Reinhard rejected the committee's recommendation and denied Dr. Bean's request for promotion, by letter dated March 11, 1986, prompting his filing of a grievance under W. Va. Code, 18-29-1, et seq.

7. The effective date of W. Va. Code, 18-29-1 et seq. was July 1, 1985.

Conclusions of Law

1. Employees of the state institutions of higher education shall have the option of filing grievances in accordance with

the provisions of W. Va. Code, Chapter 18, Article 29 or in accordance with the provisions of policies, rules and regulations of the Board of Regents regarding such employees. W. Va. Code, 18-29-1.

2. A statute is presumed to operate prospectively unless the intent that it shall operate retroactively is clearly expressed by its terms or is necessarily implied from the language of the Statute. State ex rel. Glauser v. Board of Education of the County of Ohio, 318 S.E. 2d 424 (W. Va. (1984.))

Dr. Bean requested a hearing before the Institutional Hearing Committee by letter dated May 10, 1985. That hearing was conducted and a decision rendered by West Virginia University President Diane Reinhard. As the 'grievant has pursued an administrative remedy under Board of Regents' Policy Bulletin Number 36 he is foreclosed from seeking a second administrative remedy, or a review of the Board of Regents' grievance procedure, from the Education Employees Grievance Board. The appropriate forum for this matter now is circuit court or other court of competent jurisdiction. Therefore, the respondent's motion to dismiss is hereby GRANTED and the matter stricken from the docket.

DATE December 15, 1986

Sue Keller
SUE KELLER
Hearing Examiner