



**Members**  
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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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**EVELYN L. BURTON**

**v.**

**Docket No. 03-86-098**

**BOONE COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Evelyn L. Burton, has been employed by the Boone County Board of Education as a kindergarten aide since October 6, 1978. From the date of her employment until September 23, 1985 she worked the mornings at Jeffrey-Spencer Grade School and the afternoons at Manila Grade School. Over this period she rode with the teacher for whom she was an aide and for which transportation she paid mileage. On September 23, 1985 she ceased commuting to Manila Grade School and remained at Jeffrey-Spencer Grade School the entire day; on October 21, 1985 she filed a grievance seeking reimbursement of the mileage fees she had paid the drivers over the seven year period. The level two grievance was denied on November 7, 1985 and a level three hearing was conducted by the board

of education on December 17, 1985.<sup>1</sup>

In a written decision dated December 17, 1985 the board of education affirmed the decision of the level two grievance evaluator and concluded that:

1. The grievant did not timely process the grievance pursuant to Code, 18-29-4(a)(1), and,
2. The board of education lacked authority to grant the requested relief, and,
3. The provisions of Code, 18-5-13(15) were not applicable to the case.<sup>2</sup>

The evidence is that when grievant was initially interviewed for the position she was aware that the position would involve travel between the two schools and was not told that she would receive mileage. (T.21). Over the seven year period she had ridden with three different teachers and none of the teachers had requested that grievant pay for her transportation, ostensibly because these teachers were receiving mileage reimbursement from the board of education. (T.20).

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<sup>1</sup> The grievance was submitted to the hearing examiner for decision on the transcript of evidence of the level three hearing and the exhibits.

<sup>2</sup> Code, 18-5-13 grants boards of education certain powers and subsection (15) specifically authorizes the board:

"To allow or disallow their designated employees to use publicly provided carriage to travel from their residence to their workplace and return: Provided, That such usage is subject to the supervision of such board and is directly connected with and required by the nature and in the performance of such employee's duties and responsibilities..."

Notwithstanding that that board of education found the grievance to be untimely it proceeded to decide the grievance on the merits.

## FINDINGS OF FACT

1. Grievant was employed as a teacher's aide on October 6, 1978 and assigned to work in the morning at Jeffrey-Spencer Grade School and in the afternoon at Manila Grade School. She so commuted until September 23, 1985, when she commenced working a full day at Jeffrey-Spencer Grade School.

2. During this period of time, i.e., October 6, 1978 to September 23, 1985, grievant was transported from Jeffrey-Spencer Grade School to Manila Grade School by the teacher(s) for whom she worked; the teacher(s) used their personal automobiles and were paid mileage by the board of education. The distance between the two schools is approximately ten miles.

3. Grievant voluntarily paid these teachers for transporting grievant and no agent or employee of the board of education authorized or directed grievant to reimburse these teachers. Grievant filed a grievance on October 21, 1985 seeking reimbursement and had a conference with her immediate supervisor on that date.

4. Grievant did not present sufficient evidence to determine the number of miles actually traveled by grievant during this period or the amount paid except that grievant paid at a rate

Grievant testified that it was ten miles from Jeffrey-Spencer Grade School to Manila Grade School and she paid the drivers fifteen cents a mile for the first two years and twenty cents a mile for the remainder of the period. (T. 12).<sup>3</sup> Grievant further testified that she first discussed the matter with Mr. Dolin, an assistant superintendent in charge of transportation, approximately two years before filing the grievance and had also discussed it with Superintendent Mabe (T. 15). Accordingly, grievant filed a grievance with Mr. Gary Bell, her principal, on October 21, 1985 and a conference was conducted on that date; she filed a level two grievance with Superintendent Mabe on October 22, 1985. (T. 17, 19).

In addition to the foregoing factual discussion the following specific findings of fact are appropriate.

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<sup>3</sup> Grievant had not calculated the amount of compensation she was claiming with any degree of certainty. At one point she stated that the figure was "around twenty-two hundred" but there was no effort to explain or corroborate the amount claimed. She also stated that the fifteen cents a mile figure would "have to be checked out". (T.12).

It is to be noted that in a grievance proceeding pursuant to Code, 18-29-1, et seq., if a money award is sought, the grievant must satisfy the burden of proving damages with a reasonable degree of certainty as in civil cases. See Mason County Board of Education v. State Superintendent, 295 S.E.2d 719 (W.Va. 1982).

of fifteen cents per mile for the first two years and at a rate of twenty cents per mile for the duration of the period.

### CONCLUSIONS OF LAW

1. Code, 18-29-4(a)(1) provides that before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

2. Code, 18-29-3(a) provides that a grievance must be filed within the times specified in section 4, above, and shall be processed as rapidly as possible.

3. Code, 18-29-2(b) provides that "days" means days of the employee's employment term or prior to or subsequent to such employment term exclusive of Saturday, Sunday, official holidays or school closings.

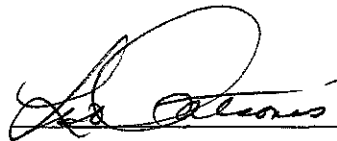
4. Administrative notice will not be taken that a grievance has been untimely filed and must be proved by the party asserting the untimeliness.

5. Code, 18-5-13(15) authorizes a board of education to allow or disallow designated employees to use publicly provided carriage to travel from the residence of the employee to their workplace and return but does not authorize the reimbursement of monies paid by an employee to a co-employee with whom such employee rode from one school assignment to another school assignment.

6. In a grievance involving a claim for monetary awards the law of damages will be applied.

For the foregoing reasons the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or Boone County and such appeal must be filed within thirty days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS

Chief Hearing Examiner

Dated: 9/18/86