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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JOSEPHINE COBURN

v.

Docket No. 20-86-087

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Josephine Coburn, has been employed by the Kanawha County Board of Education as a school bus operator since 1970 and assigned to the Dickenson Bus Terminal. She had been off work for back surgery and when she returned her bus run had been eliminated. Grievant "bumped" a less senior driver and accepted a run which she contends was changed later without her written permission; she filed a grievance alleging a violation of Code, 18A-4-8a and Code, 18-29-2(n) and the grievance was denied at level two on December 6, 1985.¹

¹ Code, 18A-4-8a provides that no service employee shall have his daily work schedule changed during the school year without his written consent; Code, 18-29-2(n) defines "harassment" as repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy, or profession.
(footnote continued)

On January 16, 1986 the board of education adopted the findings and conclusions of the level two evaluator and denied the grievance requiring that:

"...the administration work on improving the transportation process, routes, etc, to more evenly distribute the workload at the Dickinson Terminal and to present the Board with those alternatives and improved or suggested alternatives within sixty days."²

Grievant contends that upon her return to work she was told that she had three days to decide to take a new run or stay in the office as a substitute for one year. (T. 9). She rode with Delores Young for one day and decided to take that run. However, after she took over the bus run it was changed to add 258 miles in a twenty day period and grievant contends she did not consent to the change (T. 11, 13, 16).

(footnote continued)

Code, 18A-4-8a was amended by the 1985 Legislature and the amendment added the above sentence, effective July 1, 1985. The amendment is analogous to the language in Code, 18A-2-6 and Code, 18A-4-8. See Board of Education of Fayette County v. Hunley, 288 S.E.2d 524 (W.Va. 1982). Cf. Burley v. Wayne County Board of Education, Docket No. 50-86-118-1.

² The grievance was submitted to the hearing examiner on the basis of the level two transcript and exhibits and it is therefore not known if the directive of the board was carried out. It may be that this directive could and did, in fact, correct the situation about which grievant complains.

As to the "harassment" grievant cited the following incidents in support thereof:

1. Grievant was sent home because she did not have a first aid card and her supervisors did not assist her in obtaining a card, and,

2. During a meeting with her immediate supervisor, Mr. Mullins, another bus operator called her a "bitch" and Mr. Mullins did nothing, and,

3. Grievant was treated rudely by Mr. Mullins when he told grievant to move her bus because she was blocking a space reserved for another bus, and

4. Mr. Mullins would not assist grievant in handling a problem created by several unruly students from Dupont High School who rode grievant's bus.

Mr. George Beckett, director of pupil transportation, testified that grievant had advised him of a problem she was encountering with the transfer of a student from another driver's run on the evening run whereby twelve junior high school students were required to sit on the bus on the side of the road until grievant arrived.³ He discussed this situation with grievant and the driver of the other bus, Mrs. Shiflett and decided to have Mrs. Shiflett take the twelve students home. Grievant

³ The parents of these students had complained to the principal of Cedar Grove School about sitting on the side of the road for twenty five minutes and this information had been given to Mr. Beckett (T. 51).

complained about this arrangement and another conference was held with grievant, Mr. Mullins, the transportation supervisor at Dickenson bus terminal, Mrs. Shiflett and Mrs. Hudnall, the other driver involved. Mr. Beckett and Mr. Mullins and the other two drivers agreed upon the solution put into effect, about which grievant now complains and which altered grievant's run by 11.6 miles per day. (T. 56).⁴

Mr. Mullins testified that he had been informed by Mr. Beckett's office that grievant's first aid card had expired and he advised her to see Ann Messer, another employee who taught first aid classes and, make arrangements about the class. (T. 59)⁵; that he had, in fact, tried to assist grievant. He stated that he had asked grievant to move her bus because she was blocking the entrance to the bus garage and had already asked other drivers to move their buses on that same day (T. 61);

⁴ Mr. Beckett stated that with the changes he then had two buses running where one had previously run but it was necessary to provide efficient service and to have the students home twenty five minutes earlier. (T. 57). He stated that these were the only considerations he made in directing the change in grievant's run (T. 51). As to the incident of the first aid card he testified that he became aware that grievant did not have a card and advised her to make arrangements to take the class; that if he could help to let him know. (T. 53).

⁵ Grievant had made inquiry of Mr. Mullins about attending a first aid class while she had been off on the worker's compensation related injury and Mullins had advised her that it was his understanding that board policy prohibited it; that in any event she should not engage in that type of physical activity with her back injury. (T. 60).

he denied that he had been rude. He corroborated grievant's statement that another driver had interrupted a meeting grievant and Mr. Mullins were having and that Mullins had asked the other driver to leave; however, Mullins testified that he did not hear the other driver call grievant a "bitch". (T. 62).⁶

Mr. Mullins denied that he had refused to assist grievant with the problem she was encountering with the unruly students from Dupont High School and testified that he advised grievant he would ride her bus and would also call Mr. Deardorff, the principal of Dupont Hi, about the matter. (T. 63). He had, in fact, talked with Mr. Deardorff and received a promise that he, (Deardorff), would talk with the students. (T. 64).⁷

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

⁶ Mr. Mullins stated that it would not have been possible for him to have heard what the other driver was saying because she (grievant) "...was talking pretty strong also to me." (T. 62).

⁷ Mr. Mullins testified that he told grievant he was unable to ride with her when she wanted because his son was getting out of the hospital and he had to take him home. On another occasion he took grievant's run when she had a doctor's appointment. (T. 63).

FINDINGS OF FACT

1. Grievant is employed as a school bus operator assigned to the Dickenson bus terminal.

2. Grievant returned to work from a worker's compensation injury at the beginning of the 1985-86 school year and her bus run had been eliminated.

3. Grievant took the bus run of a less senior bus operator and complained to the supervisor that on the afternoon run another bus operator was required to wait with twelve junior high school students twenty five minutes on the side of the road until grievant arrived in order to transfer a student grievant transported to the other bus.

4. A meeting was held and the schedule was modified whereby the other driver would deliver the twelve students home and grievant would deliver the one student home.

5. The problem was not solved and after another conference with grievant, her supervisors and other affected drivers, grievant's route was amended, adding 11.6 miles to grievant's run. Grievant was willing to make an adjustment in her run to help with the problem but contends the change made by her supervisors violated Code, 18A-4-8a.

6. Grievant also alleges several instances of harassment by either the director of pupil transportation or grievant's transportation supervisor whereby:

- a. She was sent home for not having a first aid card and her supervisors would not assist her in obtaining a card, and,
- b. During a meeting with Mr. Mullins, another driver called grievant a "bitch" and Mr. Mullins did nothing, and,
- c. Mr. Mullins rudely told grievant to move her bus to make room for another bus, and,
- d. Mr. Mullins would not assist grievant with the problems grievant was having with some unruly students from Dupont High School.

7. The explanations given by Messrs. Beckett and Mullins concerning the allegations of "harassment" refute grievant's account of the incidents and grievant failed to carry the burden of proof.

CONCLUSIONS OF LAW

1. Code, 18A-4-8a provides that no service employee shall have his/her daily work schedule changed during the school year without his/her written consent.

2. The alteration of a school bus schedule which involves the addition of approximately 11.6 miles per day is a change of work schedule contemplated by Code, 18A-4-8a and requires

the written consent of the school bus operator.⁸

3. School personnel regulations and laws are to be strictly construed in favor of the employee.

4. Code, 18-29-2(n) defines "harassment" as repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy or profession.

5. A grievant who alleges incidents of "harassment" pursuant to Code, 18-29-2(n) must prove such allegations by a preponderance of the evidence. In the instant case grievant failed to prove the allegations of "harassment" by a preponderance of the evidence.

For the foregoing reasons the grievance as to the violation of Code, 18A-4-8a is granted and the board of education is ordered to reinstate grievant's bus run as it was prior to the unauthorized change. The grievance is denied as it relates to Code, 18-29-2(n).

⁸ This is not to say, however, that slight modifications of the work schedule cannot be made pursuant to Code, 18A-4-8a and each case will be decided on its own merits. See, e.g. Passaic Co. Probation Officer Assn. v. County of Passaic, 132 N.J.247, 333 A.2d 300 (1975).

Either party may appeal this decision to the Circuit Court of Kanawha 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: _____

9/10/86