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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JOHN FOUTS

v.

Docket No. 20-86-169-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, John Fouts, is employed by the Kanawha County Board of Education as a 200 day school bus operator and is assigned to the South Charleston bus terminal. On March 3, 1986 he filed a grievance alleging that he had been wrongfully docked a day's pay and was being otherwise harassed by the transportation supervisor of the South Charleston bus terminal. A level two evidentiary hearing was conducted on March 24 and the decision denying the grievance was upheld by the board of education on April 15, 1986. A request for submission of the grievance to a hearing examiner was filed on April 21, 1986 and a hearing was scheduled on October 30, 1986.¹

¹ Upon inquiry by this office dated April 22, 1986 the parties were requested to advise of the necessity of an evidentiary hearing; counsel for the board responded on April 23, 1986 but no response was received from the grievant. Accordingly, on September 3, 1986 another inquiry was sent to grievant and on September 9, 1986 he requested an evidentiary hearing.

On October 30, 1986, prior to the introduction of evidence, grievant and his representative requested that the grievance be expanded to include a claim of possible "favoritism" which had not been developed at the level two hearing. Upon the objection of counsel for the board of education, the hearing was adjourned until November 11, 1986 to permit grievant the opportunity to obtain and serve subpoenas upon six other school bus operators to testify in support of grievant's allegations.²

The hearing was resumed on November 11, 1986 and prior to the taking of evidence grievant advised the hearing examiner that he had met with Mr. Beane and Mr. Beckett several times since the hearing on October 30 and felt that they had resolved two matters involved in the grievance; that, consequently, he was pursuing only the claim that he had been improperly docked a day's pay for not reporting to work on February 12, 1986. Accordingly, those matters were stricken from the grievance

² Grievant's representative stated that he did not pursue it at level two because he did not want to involve and jeopardize these other drivers. He observed that it would be their evidence that there had been several instances where other drivers did not report to work and had been paid. Grievant was required to give these names to counsel for the board of education so that counsel could be prepared to meet this evidence on November 11, 1986. Grievant obtained six subpoenas on November 7, 1986 but the witnesses were not served and did not appear.

and the hearing proceeded on the February 12, 1986 incident.³

The evidence is uncontradicted that Kanawha County schools were cancelled on February 11 and 12, 1986 due to inclement weather. The policy in effect at that time was that on such days school bus operators were required to report to work at 1:00 p.m. unless instructed otherwise by their supervisor.⁴ This memorandum was posted on the soft drink machine at the garage where grievant worked and he was aware of its contents. Scott Beane, transportation supervisor at the South Charleston bus garage and grievant's supervisor, testified that on February 11 the drivers had not been required to report for work but they had been so required on February 12; that grievant did not report for work on February 12 and his pay was docked for that day. He stated that the other drivers had reported to work on February 12, cleaned their buses and telephoned him with the road condition reports, which he conveyed to Mr. Beckett.

³ Grievant and his representative abandoned the allegation of "harassment" involving a trip ticket incident and also an incident whereby grievant had borrowed a tool from a mechanic in violation of rules. (Level II, T. 10-12).

⁴ This policy had been initiated by Mr. George W. Beckett, director of transportation of Kanawha County Schools, as of March 1, 1984 and required the bus operators to check their vehicles and provide information on road conditions for decision making purposes. The memorandum specified that if a decision was made that drivers were not required to report to work on those days they would be notified by their supervisor.

Grievant testified that he reported to work on February 11 and no other employees were at the garage in South Charleston; that on February 12 he took his wife to work and was not at home when his daughter received the telephone message that he was to report to work.⁵ Grievant contends that school bus aides are 200 day employees and are not required to report for work on snow days and it is unfair to require school bus operators to report on such days.

In response thereto Mr. Beckett testified that on days school is cancelled it is imperative that the transportation division commence gathering information upon which the Superintendent can make a decision to cancel some or all of the schools the following day or days. School bus drivers are required to report to work to inspect their buses, check the road conditions and turnarounds and determine if the runs can be made the following day. Conversely, bus aides, teachers, teachers aides, etc., do not report to work because their duties are dependent upon the presence of students, not upon the availability of transportation.⁶

⁵ The other drivers report to Alum Creek Elementary School and not to the South Charleston bus terminal because their bus runs originate from Alum Creek. It appears that this is at least part of grievant's complaint in that although he lives at Alum Creek he is required to report to South Charleston.

⁶ Mr. Beckett states that he has one hundred seventy one buses operating daily and it is his responsibility to gather this data and give it to the Superintendent.

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

FINDINGS OF FACT

1. Grievant is employed by the Kanawha County Board of Education as a school bus operator and is assigned to the South Charleston bus terminal.

2. On February 11 and 12, 1986 school was cancelled in Kanawha County due to inclement weather and grievant was docked a day's pay for not reporting to work on February 12, 1986.

3. The policy in effect since March 1, 1984 and on February 12, 1986 was that on snow days school bus operators were required to report to work at 1:00 p.m. unless instructed otherwise by their supervisor. This policy was posted at the bus terminal and grievant was aware of its contents.

4. Grievant reported to work on February 11, 1986 but did not report to work on February 12, 1986. Grievant was not at home on February 12, 1986 and his daughter had received the message instructing grievant to report to work.

5. The other drivers had reported to work on February 12, 1986 and reported road conditions, etc., to their supervisor, Scott Beane, who, in turn, transmitted the information to George W. Beckett, director of transportation of Kanawha County Schools. This information was then conveyed to the Superintendent of Schools who utilized it in the determination to open the schools.

6. Grievant had compromised and abandoned the allegations of "harassment" and "favoritism" at the level four hearing and those allegations were not considered by the hearing examiner.

CONCLUSIONS OF LAW

1. The Kanawha County Policy of requiring school bus operators to report to work at 1:00 p.m. on days when school is cancelled unless instructed otherwise by their supervisor in order for the drivers to check their vehicles and to collect information relating to the condition of the roads is not unreasonable per se as a violation of W. Va. Code, 18-29-2(a).

2. As a matter of law grievant has failed to demonstrate that his pay was improperly docked for failing to report on February 12, 1986.

For the foregoing reasons the grievance is denied.

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.

A handwritten signature in cursive script, reading "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: November 26, 1986