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EMPLOYEES GRIEVANCE BOARD**

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BRENDA HAGER

VS:

DOCKET NO: 03-86-242-4

BOONE COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three evidentiary hearing and decision by the Boone County Board of Education. Thereafter, both parties waived, in writing, a level four hearing and submitted the matter for decision together with their respective proposed findings of fact and conclusions of law.

In this matter the grievant, Brenda Hager, complains that on July 12, 1985, she entered into a contract with the respondent, The Board of Education of Boone County, wherein she was placed on a list of approved day-to-day substitute teachers. At respondent's request, grievant reported to Madison Middle School on September 3, 1985, as a special education teacher. She continued to teach in this assignment for the remainder of the 1985-86 school year. On May 7, 1986, grievant filed a grievance claiming she was paid improperly. This grievance was later expanded to include failure to properly credit her with sick leave in violation of WV Code §18A-4-10. The pay portion of her grievance was mutually resolved at level two.

The application of WV Code §18A-4-10 remained unresolved and is the subject of this appeal.

The grievant contends that she is entitled to the same monthly credit for the accrual of personal leave for illness, i.e., sick leave, as a full-time employee. The respondent, however, denies that grievant was a full-time employee and asserts that pursuant to her contract, executed on July 12, 1985, she was a day-to-day substitute teacher and not entitled to sick leave provided for in WV Code §18A-4-10.

The pertinent portion of WV Code §18A-4-10 provides:

At the beginning of the employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be transferrable within the state. A change in job assignments during the school year shall in no way affect the employee's rights or benefits.

The record reveals that when the grievant signed her contract she did not believe she was going to teach every day, but, upon learning that no applicants had applied for the position, she changed her belief and felt that her assignment was going to be long term.¹

It is uncontroverted that there was an understanding whereby grievant reported regularly to work without being called, and left

¹The grievant testified that she relied upon information provided to her by the principal and Mrs. Helmick, Director of Special Education, who told her to plan on being there for the remainder of the year. Neither the principal (Joe Tagliente) nor Mrs. Helmick testified in this matter.

lesson plans in her absence.² It is also clear that grievant believed she was committed to this assignment and was not, therefore, available to take other assignments.

In resolving this controversy, another provision of the West Virginia Code must necessarily be examined. WV Code §18-1-1(i) provides:

"Regular full-time employee" shall mean any person employed by a county board of education who has a regular position or job throughout his employment term, without regard to hours or method of pay.

The grievant's dilemma now becomes more apparent, in that, it is clear that in order to accrue sick leave, an employee must have a regular position/job related to an employment term.³ In the instant case, the grievant signed a substitute teacher's contract which specifically placed her on an approved list, as a "day-to-day" substitute teacher and which carried no assurance of the number of days of employment during the 1985-86 school year.⁴

However, the grievant argues that she was led to believe she was committed to fulfilling the special education assignment and was not, therefore, available to accept other substitute employment.

²Due to illness and death in her family, grievant was absent approximately 13 days during the 1985-86 school year.

³In accordance with WV Code §18A-4-10, sick leave is computed at the beginning of the employment term for that contract. Thus, a 10 month regularly employed teacher has 15 days of sick leave which could theoretically be used during the first month of employment without loss of any salary.

⁴Paragraphs number 1 & 4 of grievant's contract provide:
(footnote cont.)

While this might arguably point towards a "regular employee" status, it still leaves the requirement of an "employment term" unfulfilled. Testimony given by Superintendent Mabe reveals that the search for a certified teacher was ongoing as late as February or March, 1986. It is, therefore, reasonable to conclude that the grievant's position could have been filled at any time, thereby negating the establishment of an "employment term" contemplated by WV Code §18-1-1(i) and WV Code §18A-4-10. (Emphasis added)

In as much as it is the responsibility of the grievant to prove by a preponderance of the evidence that her "day-to-day" contract was altered so as to become a contract with an established employment term, this Hearing Examiner concludes that this burden of responsibility has not been met by the grievant.

The following findings of fact and conclusions of law are incorporated herein.

(footnote cont.)

(1) The employee is placed on an approved list for the 1985-86 school year as a day-to-day Substitute Teacher and may serve in this position when requested by the superintendent or his designee. This contract shall terminate at the end of the school year designated above. Unless granted by Board policy, the Substitute Teacher has no substantive or procedural rights to re-employment.

(4) Appointment as a day-to-day Substitute teacher carries no assurance that any stipulated number of days of employment shall be provided.

⁵ Superintendent Mabe's testimony was to the effect that he talked with Delores Jean Davis, Director of Personnel, several times throughout the year and determined she was continually looking for a certified teacher to fill the position.

FINDINGS OF FACT

1. On July 12, 1985, the grievant, Brenda Hager, entered into a contract which placed her on an approved list of day-to-day substitute teachers, and which carried no assurance of any stipulated number of days of employment.

2. The grievant believed she was committed to a long term employment, based upon information she received from Mrs. Helmick and Joe Tagliente.

3. Neither Mrs. Helmick, Director of Special Education, nor Joe Tagliente, Principal of Madison Middle School, testified in this matter.

4. The grievant was not given any sick leave benefits during the 1985-86 school year.

5. The grievant missed 13 school days as a result of illness and death in her family.

6. The grievant offered no corroborating testimony to substantiate her belief that her written contract had been altered.

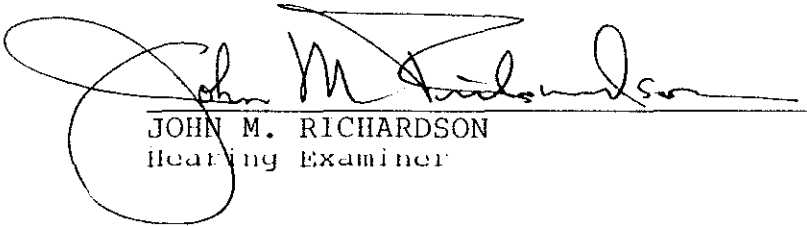
CONCLUSIONS OF LAW

1. The grievant bears the burden of proving, by a preponderance of the evidence, the essential elements of the grievance.

2. The grievant failed to prove by a preponderance of the evidence that the "day-to-day" or any provision of her contract had been altered so as to establish an employment term.

Based upon all of the foregoing reasons, the grievance is denied.

The parties are hereby notified that either party may appeal this decision to the Circuit Court of Boone County or the Circuit Coury of Kanawha County and such appeal must be filed within thirty (30) 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.



JOHN M. RICHARDSON
Hearing Examiner

DATED: O.C. 73, 1986