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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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DENVER LAMB

vs.

DOCKET NO. 09-86-088

DODDRIDGE COUNTY BOARD OF EDUCATION

DECISION

Denver Lamb, the grievant, has been employed by the Doddridge County Board of Education as a bus operator since 1975. On November 21, 1985, Mr. Lamb accepted an extracurricular run which began at 4:15 p.m.. As his evening run did not end until 5:00 p.m. it was necessary that a substitute driver be called to cover that run. From the total hours reported by Mr. Lamb for the extracurricular run, the board deducted three and one half hours credit for the afternoon run which he was unable to make.

Mr. Lamb alleges this action to be the denial of a benefit previously granted in violation of W. Va. Code, 18A-4-8b.

This section states in part: "No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal

year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years."

Mr. Lamb states that prior to 1983, a driver would be paid for a regular day plus compensation for the additional time spent on the extracurricular run after his regular quitting time. The grievant asserts that when the board amended that policy, he was deprived of a benefit without his written consent.

The board relies on an interpretation of the State Superintendent of Schools which states that a board may not pay an employee for work not performed.

While the grievant contends there was no loss of salary prior to 1983, this claim has not been substantiated by the admission of any probative evidence. It is always incumbent upon a grievant to prove his allegations by a preponderance of the evidence. Mr. Lamb has failed to offer any evidence supportive of his allegations.

The grievant explained that he had not previously filed a grievance relating to the loss of this benefit, as this was the first instance in which he had been affected.

The loss of a benefit occurs at the time it is withdrawn, not at the point it affects an individual. Therefore, to be timely, a grievance must be filed within fifteen days of the time the benefit was recinded or within fifteen days after the grievant became aware it had been recinded.

In consideration of all the evidence presented, the level three decision denying this grievance is affirmed.

FINDINGS OF FACT

1. The grievant is employed by the Doddridge County Board of Education as a regular, full time bus operator.

2. On November 21, 1985, the grievant accepted an extracurricular assignment which prohibited him from performing his afternoon run.

3. The board was required to hire a substitute driver for one half day (3 1/2 hours) to cover the grievant's afternoon run.

4. The grievant was not paid for the three and one half hours for which a substitute was hired.

5. The grievant claims that prior to 1983 it was the policy of the board to pay drivers for a regular day plus any hours beyond that time spent on an extracurricular run.

6. Mr. Lamb contends the board's revision of that policy in 1983 has improperly deprived him of a benefit to which he is entitled.

7. The board's policy is reliant on an interpretation of the State Superintendent of Schools which states a board of education may not compensate an employee for work not performed.

CONCLUSIONS OF LAW

1. A service employee may not be deprived of any benefits to which he is entitled without his written consent. W. Va. Code, 18A-4-8b.

2. The loss of a benefit occurs at the time it is withdrawn, not at the point it affects an individual employee.

3. An interpretation by the State Superintendent of Schools is entitled to great weight.

4. An employee is not entitled to compensation for duties performed by another.

Therefore, this grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Doddridge 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.

DATED August 12, 1986

Sue Keller

SUE KELLER

Hearing Examiner