

Final



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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OPAL A. MCGINNIS

v:

DOCKET NO: 23-86-077

LOGAN COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level two decision and a subsequent waiver of consideration by the Logan County Board of Education. On September 17, 1986, by agreement of the parties, the grievance was submitted for decision on the record. Thereafter, it was ascertained that portions of the record were incomplete and were ultimately submitted by the grievant on November 26, 1986.

The grievant, Opal A. McGinnis, a bus operator employed by the respondent, the Logan County Board of Education, complains that due to a work related injury, she was off work from November 11, 1981 till August 25, 1985. During the period from November 25, 1981 to December 20, 1983, she was compensated through Workers' Compensation. However, during the period from December 20, 1983 through August 26, 1985, she was not compensated for holidays and snow days. The grievant contends she was not on approved leave even though she did

not work during the period from December 20, 1983 to August 26, 1985. The grievant contends that even though she did not work, the provisions of WV Code §18A-5-2 provide, in essence, that school closings for holidays, snow days, etc., shall be considered as employment days and employees shall receive pay as if school were in session.

The respondent asserts that the grievant was on medical leave during the period from December 20, 1983 to August 26, 1985, and submitted medical excuses stating that she was unable to work. In addition, the respondent states that the grievant was on inactive pay status because she was not working and had no remaining personal leave and therefore was not eligible for compensation for snow days and holidays.

In support of its position, the respondent relied on a State Superintendent of Schools opinion dated September 4, 1985, wherein the State Superintendent of Schools opined that when an employee was:

- (a) on a board approved, suspended contract, or on
- (b) a board approved leave of absence, or on
- (c) medically certified disability yet had used up
your personal leave. . .

then you were not entitled to be paid salary. . .

when your school was closed in pursuance of WV
Code §18A-5-2

The evidence reveals that the grievant was injured in a work related bus accident in November, 1981 and received Workers' Compensation benefits until December, 1983. Thereafter, the grievant continued to send regular medical excuses to the respondent until

August 1985. The respondent did not question the grievants' medical excuses which were forthcoming from the grievants' doctor, and under the circumstances, had no reason to look further into the grievant's alleged medical disability causing her to be absent from work. It is uncontested that grievant was unable to return to work until August, 1985 and that she was absent from work continuously from November, 1981 until August, 1985.

In pertinent part, WV Code §18A-4-10 provides:

A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or other causes authorized or approved by the board, shall be paid his full salary from his regular budgeted salary appropriation during the period which he is absent, but not to exceed the total amount of leave to which he is entitled. . .

Since there was no question that the grievant's absence was for cause, namely, medical disability, it is apparent that paragraph (c) of the opinion of the State Superintendent of Schools, supra, is applicable.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. The grievant, Opal A. McGinnis, was injured in a work related accident in November, 1981.

2. During the period from November, 1981 until December, 1983, the grievant received compensation from the Workers' Compensation fund.

3. The grievant was absent from work continuously from November, 1981 until August, 1985.

4. From December, 1983 until August, 1985, the grievant caused to be sent to the respondent regular medical excuses for not reporting to work.

5. The grievant was not paid for 9 holidays or 19½ snow days during the period from December, 1983 to August, 1985.

6. The grievant was medically disabled from November, 1981 to August, 1985. During this period, the grievant was unable to work and did not report for work.

7. The grievant had used up all accrued leave prior to filing her grievance.

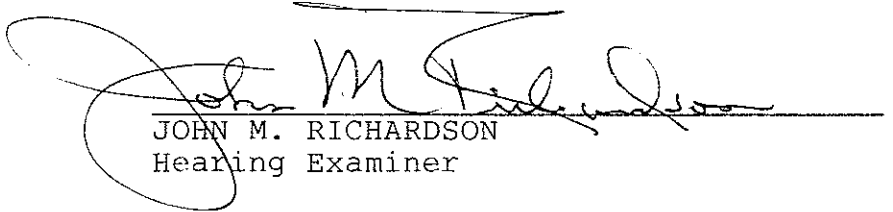
CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-4-10, an employee. . who is absent.. due to accident, sickness, . . shall be paid his full salary . . but not to exceed the total amount of leave to which he is entitled . .

2. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous. Smith v. Logan County Board of Education, 341 S.E.2d 685, (W.Va. 1985).

For all of the foregoing reasons, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Logan County or Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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:

Dec. 11, 1986