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EMPLOYEES GRIEVANCE BOARD**

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**SHIRLEY MULLINS**

**V.**

**Docket No. 20-86-222-1**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Shirley Mullins, is employed by the Kanawha County Board of Education as a special education bus aide and is assigned to the Sissonville School Bus Terminal. In June, 1985 she was offered and accepted a school bus aide position at the Elkview Terminal and filed a grievance when another employee was awarded the position for the summer of 1986. A level four evidentiary hearing was conducted on September 16, 1986 at which hearing the following evidence was adduced.

On June 4, 1985 Clifford Myers, terminal supervisor at the Elkview School Bus Terminal, posted a summer sub-aide list and removed the list on June 10, 1985. (Employer's Exhibit No. 1). He observed the name of Stella Newhouse on the list and upon inquiry was advised that Ms. Newhouse was relinquishing the bus aid position on Geraldine Mace's run she had held for eleven years because she did not want regular summer work. Ms. Newhouse was the only school bus aide who signed the list as the remainder of those employees signing were school bus

operators. Accordingly, Mr. Myers was instructed by Mr. George Beckett, director of pupil transportation, to contact another terminal for the name of the most senior bus aide because it was too late to post the position.<sup>1</sup>

Grievant contends that Mr. Meyers offered the position to her on a permanent basis in June, 1985 and that she would not have accepted it for one summer because she was required to drive twenty five miles one way from Sissonville to Elkview. She further contends that the position was wrongfully posted in May, 1986 and awarded to another employee; that she worked as a substitute out of her own terminal for four weeks during the summer of 1986 and is therefore entitled to the position on a permanent basis and pay for the seven weeks she was not employed in the summer of 1986. Several witnesses testified on behalf of grievant and there was some confusion in their testimony concerning the 1985 posting, some believing it to be for the Geraldine Mace run and others who believed it to be a general summer substitute list.<sup>2</sup> Notwithstanding, Geraldine Mace testified that she heard Mr. Myers advise grievant that

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<sup>1</sup> Mr. Beckett testified that a few years ago the transportation employees voted to post and bid these positions on a terminal basis rather than a county-wide basis because Kanawha County has seven terminals. This change then became part of the Kanawha County administrative regulations when adopted by the board of education.

<sup>2</sup> The posting was styled "Summer Sub-Aide List" and grievant did not sign. (Employer's Exhibit No. 1). It is apparent, however, that the posting was the general summer substitute list and not for the vacancy created by the relinquishment of the run by Stella Newhouse. In contrast, in May, 1986 the posting was styled "Bids For Summer Bus Aide for Jerry Mace." (Employer's Exhibit No. 3).

the "job was hers until she decided to give it up." Mr. Myers did not contradict this evidence.

Mr. Beckett testified that the posting in June, 1985 was for all employees desiring summer work and was not for the Stella Newhouse vacancy; that at the time the vacancy was discovered there were not five days remaining under the 200 day contract term within which to post and rather than go out of the aide classification to fill the Newhouse vacancy he went to the Sissonville Terminal for the most senior aide. When it was determined that the summer aide position was needed it was posted at the Elkview Terminal at the end of the 1985-86 school year and awarded to Karen Sigmon.<sup>3</sup>

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

#### FINDINGS OF FACT

1. Grievant is employed by the Kanawha County Board of Education as a 200 day school bus aide at the Sissonville bus terminal. She works as a substitute aide during the summer months.

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<sup>3</sup> Mr. Beckett testified that transportation positions are filled on a terminal basis and Kanawha County regulations require the position to be posted for five working days to permit the employees to bid before the expiration of their 200 day contracts; that if Mr. Myers advised grievant the position was permanent it was without his (Beckett's) authority. Counsel for grievant contends that Code, 18A-4-8b and 18A-4-15(4) requires all vacant school service personnel positions to be posted and filled within twenty working days of creation of the vacancy if it is by resignation and this includes summer aide  
(footnote continued)

2. In early June, 1985 Stella Newhouse, summer bus aide on the bus driven by Jerry Mace, signed a summer substitute aide list at the Elkview bus terminal and the supervisor became aware that she had resigned her summer run which she had held for eleven years. Ms. Newhouse was the only school bus aide who signed this list.

3. Mr. Myers, terminal supervisor at the Elkview Bus terminal, offered the position to the three regular bus aides at the Elkview terminal and upon their refusal went to the county-wide seniority list.

4. Grievant was the most senior bus aide on the county-wide seniority list and Mr. Myers offered the position to grievant "for as long as she wanted it." Grievant accepted and took the run for the summer of 1985; the position was posted on May 23, 1986 and grievant did not receive the position.

5. Kanawha County Schools Transportation Handbook Regulation D.4 provides that "open" positions be posted for five working days. The Newhouse position was not posted in the summer of 1985 because at the time the school officials became

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(footnote continued)

positions. Counsel for the school board contends that Code, 18A-2-5 governs. See the discussion in Dingess and Welch v. Kanawha County Board of Education, Docket No. 20-86-011.

aware of the vacancy there was not five days remaining on the 200 day employment contract.

#### CONCLUSIONS OF LAW

1. Code, 18A-4-8b requires the posting of all vacancies of school service personnel positions for at least five working days and the filling thereof within twenty working days from the posting date. It makes no provision for posting and filling vacancies only during the periods of the employment contracts.

2. Code, 18A-4-15(4) authorizes a county board to employ substitute service personnel on the basis of seniority to temporarily fill a vacancy in a permanent position caused by resignation provided that within twenty working days from commencement of the vacancy the position must be filled in the manner set out in Code, 18A-4-8b and 18A-2-5.

3. Code, 18A-4-15 provides that substitute service employees who have worked thirty days for a school system shall have all enumerated rights as is granted to regular service personnel in Code, 18A-2-6, 18A-2-7, 18A-2-8 and 18A-2-8a.

4. Code, 18A-2-5 authorizes the board of education to employ substitute service personnel but before entering upon their duties such personnel must execute a written contract setting forth the terms thereof. There is no evidence that

the board of education complied with this provision.

5. School personnel regulations and laws are to be strictly construed in favor of the employee. Smith v. Logan County Board of Education, 341 S.E.2d 685 (W.Va. 1985).

It is therefore ordered that the grievant is entitled to be reinstated to the summer bus aide position she held in the summer of 1985 and to payment of seven weeks of salary for the loss of pay for the summer of 1986.

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: November 12, 1986