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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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**NELLIE MULLINS**

**v.**

**Docket No. 20-86-352-1**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Nellie Mullins, is employed by the Kanawha County Board of Education as a school bus operator. She filed a grievance alleging a right to overtime and an evidentiary hearing was conducted by the Kanawha County Board of Education on June 27, 1985. An appeal was made to the Education Employees Grievance Board on December 10, 1985 and the transcript of evidence was filed in this office on December 11, 1986.<sup>1</sup>

Grievant had been assigned to the Charleston Terminal from 1976-80 and then to the Sissonville Terminal for three and one half years. She transferred to the Charleston Terminal on September 28, 1984 and was assigned a route previously held by Jerry Mullins, with the addition of a mid-day Carver run. This run entailed

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<sup>1</sup> This grievance was one of over forty five appealed to the Education Employees Grievance Board by John Everett Roush, Esquire, legal representative of the West Virginia School Service Personnel Association, by letter dated December 10, 1985. These cases had accumulated pending the appointment of hearing examiners and other implementation of W.Va. Code, 18-29-1, et seq., the grievance procedure. An evidentiary hearing was waived at level four and the grievance was submitted to the hearing examiner on the transcript of evidence and legal argument of the parties.

grievant departing the terminal garage at 6:00 a.m., picking up junior high and high school students and transporting them to Charleston High School and Roosevelt Junior High School. Grievant then returned to Campbells Creek and picked up grade school students at the same locations as the junior high and high school students and delivered them to Valley Grove Elementary. She then went to Hillcrest and delivered those students to Ruffner Elementary, returning to the terminal at approximately 8:40 a.m.

At 10:40 a.m. grievant left the terminal to pick up students at Carver and deliver them to Charleston High School; then to Garnet and Stonewall Jackson High School arriving at the terminal at approximately 11:45.<sup>2</sup> She again left the terminal at 1:30 p.m. to Valley Grove Elementary, picked up students and delivered them to Hillcrest; then picked up students at Charleston High School and Roosevelt Junior High School and transported them to Hunter Road. She arrived at the terminal at approximately 4:30 p.m. after completion of her run for the day.

Grievant testified that she spoke with the terminal supervisor Wayne Wriston, several times about the length of the run and

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<sup>2</sup> Between 8:40 and 10:40 a.m. grievant would sweep her bus, fill it with gasoline and do any paper work that needed to be done. She testified school bus operators were given thirty minutes to perform these duties. (T. 14).

Grievant kept notes each day as to her driving time and marked it on a calendar; the calendar or other notes were not available at the hearing. (T. 27).

with George Beckett, director of transportation, shortly before Thanksgiving; Mr. Beckett advised her that he would relieve her of the run when school resumed after Thanksgiving (T. 17). Instead, she contends, after Thanksgiving Mr. Wriston gave her permission to cross the turnpike bridge once a day, which saved fifteen minutes per day. This permission was revoked after about six days and not reinstated until she filed the instant grievance on March 11, 1985. At that time she was given permission to cross the bridge three times per day for a total savings of time of forty-five minutes. Accordingly, grievant is seeking overtime pay from September 28, 1984 to March 11, 1985. (T. 26).

Mr. Wriston testified that he explained to grievant that the Carver run (mid-day run) was part of the run of bus 673 at the time grievant requested the transfer and that his records reflected that she first drove the run on October 1, 1984.<sup>3</sup> Approximately a month later grievant advised him that the run was requiring more than six hours and he gave grievant his personal money to cross the turnpike bridge once a day.<sup>4</sup> After the

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<sup>3</sup> She didn't actually drive it but rode with Jerry Mullins to learn the stops, etc. (T. 29).

<sup>4</sup> He denied the assertion by grievant that this occurred after she filed the grievance, his recollection being that it was a month or so before the grievance was filed. (T. 30).

grievance was filed a test was arranged whereby Jerry Mullins, grievant's predecessor, drove the route with Mr. Wriston and grievant. The test was conducted on a normal school day duplicating in all respects the stops, etc., except that Mr. Mullins did not use the turnpike bridge in the test run; the run took five hours and fifty two minutes, including a fourteen minute layover.<sup>5</sup>

Mr. George Beckett, director of pupil transportation for Kanawha County Schools, verified the test run after the grievance was filed and testified that five drivers who had substituted for grievant when she had been off almost a month in August confirmed that the run could be completed without problem in less than six hours. (T. 49). Mr. Beckett added that prior to the addition of the Carver run there had been another mid-day run which should have taken longer than the Carver run. (T. 46).

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

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<sup>5</sup> The layover meant to Mr. Wriston that the bus had left the terminal fourteen minutes too early. The average length of a run out of the Charleston terminal is five hours and forty five minutes. (T. 45).

Grievant had testified that she believed that Mr. Mullins had exceeded the speed limit on several occasions; this was denied by Mr. Wriston, who testified that the records kept by him and signed by Mr. Mullins reflected that the speed limit had only been reached once -- on the interstate during the noon day trip to Carver. (T. 34).

## FINDINGS OF FACT

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

2. Grievant was assigned bus No. 673 by the terminal supervisor, who explained to her that the Hunter Hollow run (bus No. 673) included a mid-day run, known as the Carver run.

3. Thereafter, grievant complained to the terminal supervisor and director of pupil transportation that the run required more than six hours of driving. Six hours is the maximum driving time permitted by the school bus operators in Kanawha County.

4. As a result thereof the terminal supervisor authorized grievant to use the interstate or turnpike bridge to facilitate the run with a resulting savings of fifteen minutes per day.

5. Grievant filed a grievance on March 11, 1985 and the terminal supervisor and director of pupil transportation arranged a test run under normal working conditions to time-test the run of bus No. 673. Without using the turnpike bridge the run took five hours and fifty two minutes, including a fourteen minute layover. The average length of a school bus run out of the Charleston terminal is five hours and forty-five minutes.

6. Five other drivers who had driven the run on a substitute basis for approximately a month had completed the run within the six hour period.

#### CONCLUSIONS OF LAW

1. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code, 18-29-1, et seq., to prove the allegations constituting the grievance by a preponderance of the evidence.

2. Grievant failed to prove the allegations constituting the grievance by a preponderance of the evidence of as a matter of law.

Accordingly, it is ORDERED that 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. (W.Va. 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: December 18, 1986