



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

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
Governor

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone 348-3361

**JEFFREY A. RICHARD**

**vs.**

**Docket No. 20-86-158-1**

**WV DEPARTMENT OF EDUCATION**

**DECISION**

Grievant, Jeffrey A. Richard, is a certified teacher with a Masters degree in Severe/Profound Handicaps and is employed by the West Virginia Department of Education at the Colin Anderson Center in St. Marys, West Virginia. He completed the course work for a Masters degree in August, 1985 and on September 24, 1985 applied for advanced certification and salary adjustment; on January 10, 1986 he was advanced from BA+15 to Masters level. On February 28, 1986 he filed a grievance with his immediate supervisor seeking back pay in the amount of \$626.00.<sup>1</sup> A level two hearing was conducted on March 10, 1986 and on March 14, 1986 the

---

<sup>1</sup> His grievance was two-fold in that he alleged that his BA+15 salary increase had not been effectuated in spite of a decision by Supt. McNeel on August 20, 1985 that he was entitled to such salary reclassification effective April, 1985; that he did not receive the increase until July, 1985. The other part of the grievance was for back pay at the Masters level as of September, 1985. The immediate supervisor responded that the reclassification to Masters level had been approved by the State Board and sent to the Governor's Office; that the matter of retroactive pay was still unresolved with the State Auditor.

grievance was denied by Superintendent McNeel on the basis of a May 2, 1979 administrative ruling by State Auditor Glen Gainer that state law prohibited the payment of retroactive salary increases to state employees; that such salary increases are only payable upon the authorization and approval by all necessary persons or offices resulting in the issuance of a check which contains the salary increase.<sup>2</sup>

A level four evidentiary hearing was conducted on April 16, 1986 at which the grievant offered the additional evidence that in the middle of December, 1985, he was informed by Mr. Rice, his immediate supervisor, that he should obtain an additional transcript of his credits and send it to Mr. Sturey because his original paper work had been misplaced. He further stated that on April 9, 1986 he had a telephone conversation with the personnel office of the Department of Education wherein he was informed that his paper work

---

<sup>2</sup> Supt. McNeel held that the earlier grievance decision of August 20, 1985 was incorrect in its application of the effective date of the salary reclassification from the date of its approval by the State Board; that the Auditor refused to put that decision into effect. The Auditor did recommend that if employees were to receive the pay to which employers felt they were entitled it was incumbent upon employers to see that the necessary paper work was completed within the appropriate time frame. It is noted that the decision did not contain findings of fact and conclusions of law as required by Code, 18-29-6. Grievance evaluators are urged to include these findings and conclusions in their decisions to avoid a remand of the grievance. See, e.g. Burks v. McNeel, 264 S.E. 2d 651 (W.Va. 1980); Golden v. Harrison Co. Bd. of Educ., 285 S.E. 2d 665 (W.Va. 1981).

was received in that office in the middle of February, 1986 and sent to the Governor's Office on February 27, 1986; that his salary increase had been approved by the West Virginia Board of Education at the March, 1986 meeting.<sup>3</sup> On April 11, 1986 grievant states that he received verbal confirmation that his reclassification and salary adjustment had been approved by the Governor's office and would be reflected in the April, 1986 paycheck.

Grievant contends that he is entitled to \$201.00 for the months of April, May and June, 1985 in accordance with Superintendent McNeel's decision of August 20, 1985 and back pay from September 24, 1985, the date of application for the Masters certification and salary reclassification, to the date grievant actually begins receiving the increase. He further asserts that the ruling of the State Auditor was made at a time that there were no teachers on the State payroll and discriminates against teachers in the Department of Education in its present application. He concludes that the mishandling of his paperwork by the Department of Education necessitating double approval was responsible for the inordinate time involved and that

---

<sup>3</sup> Grievant states that this would have been the second approval for his salary increase to Masters level by the Board, the first having been given at the December, 1985 meeting. At the time of the level four hearing grievant noted that 147 working days had elapsed from the date of his application. He contends that the people at Colin Anderson were not at fault but that responsibility for the time lag between December 5, 1985 and April, 1986 must be borne by the Department of Education.

he should at least receive the increased salary from January, 1986.<sup>4</sup>

The evidence of the employer was that Mr. Sturey received the certification from Dr. Gabrys' office on January 10, 1986 and transmitted the appropriate form to the personnel division on January 31, 1986; that Superintendent McNeel approved the form on March 5, 1986 and transmitted it to the Governor's Office by transmittal letter dated February 25, 1986.<sup>5</sup> As to the time lag on the payment of the salary increase for the BA+15 reclassification until July, 1985, Mr. Sturey testified that the Governor's Office did not give approval until July, 1985. Mr. Sturey stated that it was not the policy of the Department of Education to

---

<sup>4</sup> He also tendered a copy of H.B. 1670, enacted by the 1986 Legislature, which would have amended Code, Chapter 18A, Article 4, to permit payment of increased salary to professional and service personnel at health facilities from the date the classification of training was earned. However, this legislation was vetoed by Governor Moore.

<sup>5</sup> This is all very confusing in that the level two decision recites that the reclassification was approved by the State Board at its December, 1985 meeting and sent to the Governor's Office after the meeting. This discrepancy confirms grievant's understanding that his initial paper work was lost after the December, 1985 approval, necessitating a second approval. Mr. Sturey could not adequately explain the reason for the discrepancy in dates and speculated that the paper work could have been misplaced by the people at West Virginia University. However, this does not explain that the employer believed the approval was given in December, 1985. Counsel for the State Board advised the hearing examiner that a copy of the December, 1985 minutes would be forthcoming but they were not received.

delay payment of these salary increases to employees but that the approval process was the problem.

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

1. Grievant is employed by the West Virginia Department of Education as a teacher at Colin Anderson Center and was advised in January, 1984 that he would be required to obtain a Masters degree to retain his teaching position.

2. In August, 1985 he completed the course work for a Masters degree in Severe/Profound Handicaps and applied for advanced certification on September 24, 1985.

3. The approval for reclassification and salary adjustment was given by the State Board in December, 1985 and this paper work was misplaced.

4. Grievant was required to initiate the certification process anew and the State Board gave a second approval as of March 5, 1986.

5. There is evidence that grievant's paper work was not handled in a diligent manner by the Department of Education resulting in an inordinate delay in the approval of grievant's salary adjustment.

#### CONCLUSIONS OF LAW

1. Code, 18-29-2(a) defines "grievance" as any claim by one or more affected employees of the state board of

education alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation

2. Code, 18-29-2(a) provides that pension matters, issues relating to the state teachers retirement system and any other matter in which authority to act is not vested with the employer shall not be the subject of any grievance filed in accordance with the provision of Article 29, the grievance procedure.

3. While it is not clear that grievant has raised an issue cognizable as a "grievance" as defined by Code, 18-29-2(a) or demonstrated his grievance to be a matter in which authority to act is vested with the West Virginia Department of Education, he had demonstrated a lack of diligence on the part of the Department in processing his reclassification and salary adjustment.

4. Grievant is entitled to a salary adjustment and reclassification within a reasonable time after completion by grievant of all the necessary paper work but is also subject to the same fiscal process as other employees of the Department of Education. Because of these fiscal restraints on state employees in relation to retroactive pay it is incumbent upon employers to be diligent and to expedite, when possible, the process by which teachers employed by the Department of Education obtain salary adjustment for enhancing their educational credentials.

5. Due to the lack of diligence of the Department of Education grievant is entitled to compensation for the


advanced certification to the Masters level for the period commencing January 1, 1986 until he actually began receiving such increased compensation, presumably April, 1986. However, it may be that grievant's remedy will be in the West Virginia Court of Claims.

6. The grievance is denied as it applies to the additional compensation for the months of April, May and June, 1985, for the BA+15 reclassification in that grievant has not demonstrated that the delay until July, 1985 was the fault of the Department of Education.

7. Code, 18-29-6 provides that every decision pursuant to a hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law. This is a mandatory provision with which grievance evaluators must comply.

For the foregoing reasons the grievance is denied in part and granted in part.

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

  
LEO CATSONIS  
Hearing Examiner

Dated: June 4, 1986