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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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KATY STALNAKER

v.

Docket No. 11-86-065

GILMER COUNTY BOARD OF EDUCATION

DECISION

In September, 1984, Glenda M. Sims, a Cook III at Troy Elementary School, was granted a medical leave of absence. Her position was filled by Audrey Duelly, the most senior substitute cook, for a period of six days. At that time, Ms. Duelly indicated she was no longer interested in the assignment and Ms. Katy Stalnaker, the substitute cook second in seniority was then offered and accepted the position for the remainder of the school term.

In August, 1985, Ms. Sims resigned and the position was awarded to Mrs. Duelly, the senior substitute cook.

The grievant alleges a violation of W. Va. Code, 18A-2-8a in that she was not properly notified that she would not be returning to the position of cook at Troy School prior to the first Monday in May, 1985.

Mrs. Stalnaker asserts that she worked 194 days during the 1984-85 school year thereby accruing all the rights granted to regular service personnel pertaining to suspension, dismissal and contract renewal as set forth in W. Va. Code, §18A-4-15. The grievant interprets W. Va. Code, §18A-2-8a to have required the board provide her with notification if they did not intend for her to return to the position at Troy School. Due to not having been given notification or an opportunity for a hearing before the board of education, the grievant asks to be reinstated to the position of Cook III at Troy School and back wages for the 1985-86 school year.

It is the board's position that the grievant functioned under a substitute's contract for the 1984-85 school year; that her appointment to Troy School ended with the school term and that she was rehired for the 1985-86 school term for exactly the same position she held in 1984-85, substitute cook.

It is an uncontested fact that Ms. Stalnaker worked 194 consecutive days during the 1984-85 school year and thereby was granted the rights of regular service personnel pertaining to suspension, dismissal and contract renewal.

W. Va. Code, 18A-2-8a requires that on or before the first Monday in May of each year the board of education shall act upon the retention of those probationary employees who

are not teachers. Any probationary employee not rehired is to be so notified by certified mail.

Ms. Stalnaker appears to interpret Code, 18A-4-15 to mean she had gained an entitlement to the regular position and has now been deprived of the job without having been accorded her statutory due process rights.

It is correct that school laws are to be strictly construed in favor of the employee. Morgan v. Pizzino, 256 S.E.2d 109 (W.Va. 1985). However, in this instance, no construction of the applicable statutes is necessary. It is clear that the grievant had been employed by the board of education as a substitute cook for the 1984-85 school year. She was fortunate to work very nearly the entire term due to another employee's leave of absence. Had the board decided to suspend, dismiss or not renew her contract after a thirty day period, Ms. Stalnaker would have had all the rights of a regular employee, but none of these events occurred.

Ms. Stalnaker was hired as a substitute cook, functioned throughout the school year as a substitute cook and was rehired the following year as a substitute cook. There has been no change in the grievant's employment status, therefore there was no need to provide her with notification that she would not be returning to the position at Troy School or with a hearing before the board of education. In May, 1985 Ms. Sims

remained on leave and may have been expected to return to work in August. The regular position was held by Ms. Sims, not Ms. Stalnaker.

When the position became vacant prior to the 1985-86 school term it was offered to Ms. Duelly, the senior substitute cook, as is required by Code.

Accordingly, the grievance is denied.

FINDINGS OF FACT

1. In September, 1984 Glenda Sims was granted a leave of absence from her position of Cook III at Troy Elementary School.

2. The position was filled by Ms. Audra Duelly, the senior substitute cook, for a period of six days until she indicated she was no longer interested in the assignment.

3. At that point, Ms. Katy Stalnaker, the grievant and the substitute cook second in seniority, was assigned to the position for the remainder of the school term.

4. When Ms. Sims subsequently resigned, the position was awarded to Ms. Duelly, the most senior substitute cook.

CONCLUSIONS OF LAW

1. When a substitute employee fills in for a regular employee in excess of thirty days that employee acquires all of the rights granted to a regular employee relating to suspension, dismissal or non-renewal of a contract. W. Va. Code, 18A-4-15.

2. A board of education is not required to provide notification or an opportunity for a hearing to a substitute employee who is temporarily assigned to fill a vacancy created by a regular employee having been granted a leave of absence.

3. An employee hired as a substitute cook who works in excess of thirty consecutive days during a school term and is rehired the following year as a substitute cook has suffered no loss of due process rights by not having received notification prior to May 1 that she would not be returning to her present assignment.

In consideration of the evidence presented this grievance must be denied.

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

Sue Keller

SUE KELLER
Hearing Examiner

Dated: August 26, 1986