



**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

JAMES W. STOVER and RALPH D. STOVER

v.

DOCKET NO. 26-86-189-2

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievant, James W. Stover, was initially employed by the Mason County Board of Education on July 1, 1975 as a multi-classified, general maintenance employee. Grievant, Ralph D. Stover was first employed by the board of education in 1980, also as a multi-classified, general maintenance employee. The grievants allege they were misclassified from the time they began employment with the board until they were upgraded to pay grade "E" in 1983 and in 1984, respectively. The grievants request back pay and seniority credit for that period of time they were misclassified.

Level one grievances were filed in July, 1985, were denied at level two on September 3, 1985 and at level three on September 16, 1985. Grievants appealed to level four in December, 1985. Both parties agreed that a decision could be rendered based on the record supplemented by briefs. Briefs were submitted in May and June, 1986, and the record was forwarded by the grievants on November 21, 1986.

At the level two hearing the grievants testified that from the time they were first employed by the board of education the operation of heavy equipment has been a part of their duties. Both grievants offered specific examples of their use of equipment which included a tractor, backhoe, roller and bulldozer, and stated that their supervisor, Warren Keefer, could verify their claims. However, Mr. Keefer was not called by the grievants to testify on their behalf and no other corroborative evidence was introduced.

The respondent argues that the grievants were properly classified to include heavy equipment operation in 1984, that the grievants have failed to substantiate their claim by any additional evidence and that the grievants, their immediate supervisor and the Director of Maintenance all signed documents during the period of time in question indicating the grievants were properly classified. The respondent argues that the doctrine of laches bars the grievants from filing this matter more than one year after their classification had been upgraded to include heavy equipment operator.

The grievants admit they were aware of their misclassification and had discussed the situation with their supervisor, however, they offer various reasons for their delay in seeking a remedy: their supervisor did not suggest filing a grievance until 1985; they had only recently decided they were entitled to backpay for operating heavy equipment; and

there was some fear for job security. Grievants further argue that the doctrine of laches was designed to protect defendants from tardy actions which would be unfairly burdensome to remedy at a late date or would be difficult to defend or disprove because of the passage of time and unavailability of witnesses, and that neither of these situations apply to the present case.

In addition to the foregoing it is appropriate to make the following findings of fact and conclusions of law.

#### Findings of Fact

1 Grievant James W. Stover was initially employed by the Mason County Board of Education in July, 1975 as a multi-classified, general maintenance employee.

2. Grievant Ralph D. Stover was employed by the Mason County Board of Education in 1980 as a multi-classified, general maintenance employee.

3. Grievants claim that from the time they were first employed the operation of heavy equipment has been a part of their duties.

4. Both grievants signed and dated a memorandum in 1982 attesting that they were properly classified.

5. Grievants were reclassified to pay grade "E", which includes the job title of Heavy Equipment Operator, in either 1983 or 1984.

6. Grievants delayed filing a grievance regarding their classification until July, 1985.

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

3. It is incumbent upon all employees to timely pursue their rights through the grievance process.

4. Grievants have failed to timely seek a remedy as a matter of law.

According, this grievance is DENIED.

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

DATE December 29, 1986

Sue Keller

SUE KELLER  
Hearing Examiner