



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

AVIS TRUMP

v.

WEBSTER COUNTY BOARD OF EDUCATION

DOCKET NO. 51-86-090-2

DECISION

On December 10, 1985, John E. Roush, representative for the grievant, notified the Education Employees Grievance Board that this matter was pending in the Kanawha County Circuit Court and that any action to be taken by this Board would be determined by that decision.

Judge Margaret Workman has issued a decision in this matter in which she denied the grievant's petition for writ of certiorari. By letter dated January 28, 1986, Mr. Roush requested that Superintendent Dean forward the grievant's file to this Board. A response was issued by Jack Alsop, representative of the Webster County Board of Education, on January 29, 1986, refusing the grievant's request based on Judge Workman's decision.

One month from the date of the last correspondence has passed and this Board has not been contacted by either party. Therefore, the record shall be closed and a decision rendered on the information which has been provided.

Based on Judge Workman's order, this examiner makes the following findings of fact which were not disputed by the parties:

1. That the grievant received a level three decision from the Webster County Board of Education on or about June 28, 1985.

2. That the grievant did not file a level four appeal with either the Superintendent of Schools under Board Policy No. 5301 or with the Education Employees Grievance Board.

3. That a petition for writ of certiorari was filed by the grievant in the Kanawha County Circuit Court on September 4, 1985.

4. That grievant's writ of certiorari was denied in a court order entered September 23, 1985 by the Honorable Margaret Workman.

The Board of Education has taken the position that this matter was not timely appealed to the State Superintendent of Schools, that the dismissal by Judge Workman was based on the grievant's untimely appeal and that the Education Employees Grievance Board is not the proper authority to review this grievance as it would be processed under grievance procedure Policy 5301.

At the time this grievance was initially filed, the procedure set forth in Board Policy No. 5301 was controlling. Ms. Trump filed her grievance under that policy and pursued it through levels one, two and three. By the time she had received a decision at level three, W.Va. Code 18-29-1 creating this Board had become effective. While some confusion during this transitional period is understandable, even expected, the grievant's complete lack of action cannot be overlooked. An appeal filed with either agency would have preserved her right to pursue an administrative remedy; however, neither agency was contacted. This matter was not raised again until September 4, 1985 in the Kanawha County Circuit Court.

Based on the foregoing, this examiner submits the following conclusions of law:

1. That while this grievance was being processed, there was a transition from the State Board of Education grievance policy to that set forth under W.Va. Code 18-29-1 and that an appeal to either the State Superintendent of Schools or to the Education Employees Grievance Board would have preserved the grievant's right to continue the appeal of her grievance.

2. That both procedures clearly state time limitations controlling the progress of a grievance and that the grievant did not timely file and appeal to level four under either procedure.

3. This matter was not remanded back to the Education Employees Grievance Board for consideration, but rather, grievant's writ of certiorari was denied and the matter dismissed from the docket of the Circuit Court.

Therefore, this grievance may not properly be heard by this Board and must be denied.

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



SUE KELLER
HEARING EXAMINER