



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

PETE ZAIN

vs.

DOCKET NO. 52-86-151-2

WETZEL COUNTY BOARD OF EDUCATION

DECISION

Pete Zain was employed by the Kanawha County Board of Education as an office machine repairman in 1958. He remained in this position until 1970 when that board hired him to teach office machine repair at the vocational center. Mr. Zain did not possess a college degree at that time and his certification was based on prior experience as a repairman. While employed as a vocational instructor, Mr. Zain earned a bachelor's degree in 1974 and later received a graduate level degree in guidance and counseling.

In 1979 the grievant became aware of a vacancy in the Wetzel County school system for the position of vocational guidance counselor. Mr. Zain was interested in working

in the area of counseling and investigated the possibility of relocating to Wetzel County.

While Mr. Zain was interested in the position, he found the salary to be considerably below that which he was earning in Kanawha County.¹ It appears that Superintendent Johnson was also interested in Mr. Zain for the counseling position as he offered an additional inducement in the form of extra compensation which the grievant could earn by cleaning and repairing office machinery during the summer months.²

In reliance on his understanding of what his employment term and salary were to be, Mr. Zain accepted the position of counselor.

¹Kanawha County had established a special salary schedule for vocational teachers which provided their beginning salary to be at the sixth step of the salary schedule.

²There is some disparity in the testimony offered by the parties regarding this point. Superintendent Johnson recalls that he informed the grievant he would give him supplemental repair work when possible. Mr. Zain recalls a more accurate computation which indicated he would be required to do repair work for fifty-five days in order to approximate his Kanawha County salary. It was his understanding that Superintendent Johnson guaranteed this amount of repair work for as long as the grievant was employed by the Wetzel County Board of Education.

Mr. Zain states that he has since been awarded summer employment for decreasing periods of time until 1985 when he was allowed no repair work.

In May, 1985 the W. Va. State Tax Department issued an audit report of the Wetzel County Board of Education for the fiscal year ending June, 1984. In this report the Tax Commissioner determined that Mr. Zain had been improperly credited, for salary purposes, with the twelve years experience he had earned as a repairman. Relying on an opinion of the Attorney General and the definition of years of experience set forth in W. Va. Code, 18A-4- 1, the Commissioner determined Mr. Zain had been overcompensated for the 1983-84 fiscal year and would have to reimburse the board of education in the amount of \$2,022.30.

Superintendent George Johnson notified the grievant of this matter by letter dated August 28, 1985, along with optional methods of payment.

The opinion relied upon by the Commissioner deals with a teacher's aide who later becomes a teacher and requests credit for those years of experience spent as an aide.

The conclusion reached in that opinion was that the previous employment as an aide is not experience in the teaching profession and could not be used for purposes of incremental pay under the state minimum salary schedules. Mr. Zain's situation is vastly different as he was hired under special regulations governing vocational teachers. These regulations allowed individuals with actual subject area experience (in this case, office machine repair) to obtain a teaching permit based on their prior experience. While these individuals possessed zero years of teaching experience for salary or tenure purposes, many counties established beginning salary schedules for them which were in excess of the state minimum. Kanawha County, where Mr. Zain began his teaching career, had established such a salary schedule as has Wetzel County.³ Any county may fix higher salaries for teachers placed in special instructional assignments.

³ Mr. Zain offered undisputed testimony that other vocational teachers in Wetzel County are being credited for prior job related experience.

W. Va. Code 18A-4-5 a.

Superintendent Johnson now states the grievant's experience as a repairman is not directly related to his present position and should not be included in his salary classification. The Superintendent further argues that the grievant's prior experience may not be considered as he was employed by the board of education in that capacity.⁴

Both arguments are faulty as a clear correlation exists between Mr. Zain's career as a repairman and his present position of vocational guidance counselor. The grievant's prior experience is invaluable in the counseling of students who are preparing to enter occupations such as the one he once engaged in. Secondly, it would appear to make no real

⁴Superintendent Johnson asserts that credit may only be given for experience gained in the private sector.

difference who employed Mr. Zain as a repairman and Superintendent Johnson provides no authority for either argument.

Testimony offered relating to the first issue of summer employment is contradictory and, unfortunately, not substantiated by any written documentation. There appears to have been no meeting of the minds regarding summer employment, and with one exception, the work was performed on an informal basis without benefit of contract.⁵ It is impossible for this examiner to determine what actually occurred in respect to the summer employment issue, therefore this part of the grievance must be denied.

The establishment of Mr. Zain's salary to include twelve years prior experience credit was within the board's authority and had been exercised previously with other employees. This salary was determined by the administrative staff and was approved by the board of education. Superintendent

⁵This contract specifies the grievant is to provide maintenance service for forty typewriters for which he is to receive \$1100.00. It does not specify any time period during which the services are to be performed.

Johnson informed this examiner that the grievant frequently stopped by the administrative offices to confirm whether or not he was being paid the proper salary. On none of these occasions was the grievant told he had been improperly classified for salary purposes. The State Tax Commissioner incorrectly applied an Attorney General's opinion to Mr. Zain's situation and the Superintendent's present efforts to deny him prior credit are untimely and without basis.

Therefore, the Wetzel County Board of Education is ordered to reinstate Pete Zain to the twelve years prior experience credit for salary computation and to refund him the total amount deducted from his salary as a result of the audit report.

In the absence of express authority relative to the award of interest, that request shall be denied.

W. Va. Code, 18A-2-11 specifically states that if an employee should appeal to a circuit court an adverse decision of a board of education or a hearing examiner rendered in a grievance proceeding pursuant to the provisions of chapters eighteen and eighteen-a and, if that employee shall prevail, the adverse party shall be liable to such employee upon final judgement or order, for reasonable attorney's fees

for that employee's representation in all administrative hearings, not to be in excess of one thousand dollars. Thus the award of the attorney's fees lies outside the powers of this Board and that request is denied.

FINDINGS OF FACT

1. Pete Zain was employed by the Kanawha County Board of Education as an office machine repairman from 1958 through 1970.

2. In 1970 the grievant secured certification as a vocational teacher based on his prior work experience and began teaching office machine repair in Kanawha County Schools.

3. The grievant remained in this position until 1979 during which time he earned a bachelor's degree and a master's degree in guidance and counseling.

4. In 1979 the grievant became aware of and investigated the vacant position of vocational guidance counselor in Wetzel County.

5. While both parties were apparently interested in the grievant accepting the position, he was somewhat hesitant due to a considerable difference in salary.

6. As part of the employment negotiations the grievant was offered machine repair work during the summer months

to supplement his income.

7. Mr. Zain understood that he would receive fifty-five days of repair work each year, however, Superintendent Johnson recalls making only a vague offer of whatever he could arrange.

8. The grievant's summer employment term was reduced annually; one year he was required to bid on the work and in 1985 he received no summer work at all.

9. There was no formal written agreement regarding grievant's summer employment at the time he was offered the counseling position.

10. With one exception, the grievant completed the repair work on an informal basis with no contract.

11. An audit of the board of education by the State Tax Department for the fiscal year ending 1984 indicated Mr. Zain had been improperly credited for the twelve years spent as a repairman and had been overcompensated that year in the amount of \$2,022.30.

12. This determination was in reliance on the opinion of the Attorney General which stated that a teacher could not claim prior credit as a teacher's aide for computation of the state minimum salary.

13. The grievant has repaid the amount which he was allegedly overcompensated through payroll deductions.

14. Wetzel County pays other teachers for prior experience gained outside of the school system.

CONCLUSIONS OF LAW

1. A county board of education may establish special salary schedules for teachers. W. Va. Code, 18A-4-5.

2. Any salary supplements offered by a county must be awarded uniformly. W. Va. Code, 18A-4-5.

Accordingly, the grievant's request to be reinstated to fifty-five days of summer employment cleaning and repairing machinery is denied and the requests to be reinstated to his former salary classification and that he be reimbursed the money deducted by the board as a result of the audit performed by the State Tax Department is granted.

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

DATED: August 12, 1986

Sue Keller

SUE KELLER
Hearing Examiner