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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

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Charleston, WV 25301
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ARCHIE ADAMS

v.

Docket No. 09-87-152-3

DODDRIDGE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Archie Adams, is employed as a substitute bus operator by the Doddridge County Board of Education. On March 20, 1987 he and several other substitute drivers filed a level one grievance protesting the assignment of regular bus drivers to substitute for an absent operator. The grievance was denied at levels one and two and waived by the board of education for consideration at level three. A level four evidentiary hearing was conducted in Wheeling on July 16, 1987.

Certificate of Service

I, Sue Keller, Hearing Examiner for the Education Employees Grievance Board, do hereby certify that I have this 26th day of October, 1987, served a true copy of the foregoing Decision, upon the following by mailing to them by certified mail in a properly addressed and stamped envelope to their addresses as follows:

Mr. Bobby D. Duffle
124 9th Avenue
So. Charleston, WV 25303

Mr. Robert T. Miller
Blundon Rt. Box 40A
Elkview, WV 25071

Mr. Hearold Newhouse
117 Hurricane Road
Elkview, WV 25071

Mr. Richard O. Williams
Brounland, Star Rt. Box 7-A
Charleston, WV 25314

Mr. Robert A. Young
Box 319
Winifrede, WV 25214

Mr. Gleston Seabolt
Route 6 Box 279-B
Charleston, WV 25311

The grievant testified that he was losing income as a result of the respondent's failure to assign substitute bus operators to temporary driving assignments when the regular driver is absent.

School officials declare that the procedure they utilize allowing regular operators to bid on and drive for an absent regular employee occasionally costs them money in overtime payments when the driver acquires the requisite overtime driving hours. To hire substitute operators would be more cost efficient; however, school officials proclaim their actions to be in compliance with laws governing the assignment of substitute employees. The administrators believe that they must offer the substitute work first to their regular employees according to law. A position is also taken that the assignments are legally correct as long as the driving times of the regular run and substitute run given to the regular employee do not overlap.

The respondent relies on W.Va. Code, 18A-4-15 and the pertinent provision is as follows:

[I]f there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. (Emphasis added).

Clearly, the statute contemplates that the procedure does not circumvent the requirement that a substitute employee be hired to fill either the vacancy of the absent regular employee or be assigned the duties of the regular employee filling in for the absent employee.

If a regular employee elects to drive the run of an absent employee, then he must give up his run to a substitute operator regardless of whether his schedule permits the accomplishment of both assignments without conflict. A regular operator has first option, on a rotating basis as provided by law, for extra duty, occasional extra-curricular driving assignments. W.Va. Code, 18A-4-8b(b). Therefore, regular drivers do have an opportunity to earn wages above and beyond their normal salary.

In addition to the foregoing narration the following findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. The grievant is a substitute bus operator employed by the Doddridge County Board of Education.

2. School officials permit regular bus operators to drive their own runs and to also drive the runs of absent regular employees when there is no conflict in the driving times. Besides paying the driver his regular day's wages, the board pays an additional amount for the substitute run; time and one-half wages must occasionally be paid when the regular driver accumulates excess driving time beyond the forty-hour work week. It would be more cost efficient for the board to employ a substitute operator to fill the temporary absence or to fill in for a regular driver who elected to do the substitute driving.

3. Due to lost wages, the grievant filed a grievance protesting the board's failure to employ substitute bus drivers when a regular employee is absent. Grievant makes no claim for back wages but asks that substitute drivers be hired as mandated by law.

4. Under the circumstances in this grievance, substitute service employees must be employed to fill in for the absence of a regular employee when the substitute work has been deemed necessary and when payment for the work has been allocated. Alternatively, a substitute must be hired to perform the duties of a regular employee who elects to substitute, for wages, for another absent regular employee as a matter of law.

CONCLUSIONS OF LAW

1. Pursuant to W.Va. Code, 18A-4-15, when an absent employee's services are deemed necessary, a substitute service employee shall be hired to fill the temporary vacancy of the absent service employee. Karen May v. Mingo County Board of Education, Docket No. 29-87-029-4.

2. Under certain circumstances, a substitute service employee may be hired to perform the duties of a regular service employee not absent from work but filling the job of an absent employee. W.Va. Code, 18A-4-15.

Accordingly, the grievance is **GRANTED**.

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

DATED: August 20, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner