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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**  
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**SHERRY ADKINS**

**v.**

**Docket No. 22-87-006**

**LINCOLN COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Sherry Adkins, is presently employed by the Lincoln County Board of Education as a bus aide. The basis of this grievance, however, involved a supplemental aide position she had bid upon and had been awarded on February 18, 1986, which she alleges involved incorrect pay and denial of benefits. The grievance had not been filed until October 27, 1986, and an evidentiary hearing was held on November 25, 1986. Grievant appealed to level four on January 8, 1987, and counsel for the parties moved to submit the grievance to the hearing examiner on the transcript of the level two hearing and the briefs of counsel.<sup>1</sup>

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<sup>1</sup> This grievance had been set for evidentiary hearing on February 5, 1987, and continued on motion of counsel for the school board without objection by counsel for grievant. The transcript of evidence was received by the Education Employees Grievance Board on February 5, 1987, and the brief of counsel for the grievant on March 10, 1987.

The evidence in this case is not in dispute and reveals that on February 4, 1986, a supplemental service position was advertised and posted to provide services to a special education student at Atenville Elementary School on a contracted service basis for \$15.00 per day, effective February 20, 1986.<sup>2</sup> Grievant applied for the position and on February 18, 1986, the school board employed her, effective February 20, 1986 (T.11).<sup>3</sup> In this position grievant worked three and one half hours a day from February 18 to the end of the school year. Her sole duties involved caring for the needs of a wheelchair bound student at the school (T. 10,12).

At some point during the school year grievant telephoned Charles McCann, assistant superintendent of schools, and questioned the propriety of the characterization of the position as supplemental aide rather than as a part time aide position (T. 12,16,17) but testified that she did not become aware of her rights until October 14, 1986, after discussing the situation with counsel for the School

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<sup>2</sup> The posting was as follows:

\* Supplemental Position

Atenville - Supplemental Aide to provide service  
to special aide students - \$15.00 per  
day supplement

\* Supplemental Contract Required

<sup>3</sup> The minutes of the meeting reflect grievant was employed as a Supplemental Aide at Atenville Elementary to provide service to special ed students, \$15.00 per day supplement, effective February 20, 1986.

An undated extracurricular contract was attached to the brief of grievant filed on March 10, 1987.

Service Personnel Association, when she filed the grievance seeking back pay and benefits. At the time of filing of the grievance she was employed as a full time bus aide (T. 2,21).

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

#### FINDINGS OF FACT

1. Grievant is presently employed as a regular bus aide by the Lincoln County Board of Education.

2. Prior to February 4, 1986, she had been employed as a substitute aide for three years and on February 4, 1986, the school board caused a notice to be posted for a supplemental aide position at Atenville Elementary School to provide services to special education students. This position was to be on a contracted service basis at a rate of pay in the amount of \$15.00 per day.

3. Grievant applied for the position and on February 18, 1986, the school board employed grievant to fill the position, effective February 20, 1986.

4. Grievant commenced work in the position on or about February 20, 1986, and worked three and one half hours per day with a wheelchair bound student; grievant worked this position until the end of the 1985-86 school year.

5. While grievant was employed in the position she had reason to believe the position was misclassified and should be classified as a part time position at a higher rate of pay and other employee benefits. She expressed these concerns to assistant superintendent McCann during the school year but continued to work the position; she did not file a grievance at that time.

6. On October 14, 1986, after the termination of the supplemental aide position at Atenville Elementary and subsequent to her employment as a regular bus aide at Duval School, she filed a grievance seeking back pay and benefits from February 18, 1986.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18-29-4(a)(1) provides that before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

2. W.Va. Code, 18-29-3(a) provides that a grievance must be filed within the times specified in section 4, above, and shall be processed as rapidly as possible. Evelyn Burton v. Boone County Board of Education, Docket No. 03-86-098.

3. It is incumbent upon an employee to timely pursue their rights through the grievance process and when timeliness is questioned to demonstrate the reason for the delay and/or the applicability of W.Va. Code, 18-29-4(a)(1). Wanda Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1; Joseph Badgley v. Parkersburg Community College, Docket No. 54-86-064; Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1.

4. The grievance was not timely filed as a matter of law.

Accordingly, the grievance is DENIED.

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



LEO CATSONIS

Chief Hearing Examiner

Dated: May 21, 1987