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JOANN BURDETTE

v.

DOCKET NO. 45-87-122-1

SUMMERS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, JoAnn Burdette, is employed by the Summers County Board of Education as a secretary presently assigned half-time to Forest Hill Elementary School and half-time to Pipestem Elementary School. Ms. Burdette initiated grievance proceedings on June 12, 1987 following her transfer from a full-time position at Sandstone Elementary and Junior High School. At that time she alleged that the transfer was in violation of W.Va. Code, 18A-27-7, 18A-4-8b and State Board of Education Policy 5300.

In the level one decision Principal James Withrow determined that he was without authority to resolve the transfer issue but inasmuch as the grievance was not filed within the statutory

timelines it was denied. Following a level two hearing which was conducted on July 20, 1987, Superintendent Demetrius Tassos concluded that the transfer and reassignment were properly executed as part of a reduction in force and that the grievance had not been timely filed. On July 30, 1987 the board of education waived consideration to level four where an evidentiary hearing was conducted on August 20, 1987.

At a meeting held on February 26, 1987 Superintendent Tassos recommended the elimination of fourteen full-time and two half-time positions as part of a reduction in force necessitated by a drop in student enrollment. Listed as one of those positions to be eliminated was the secretary at Sandstone Elementary and Junior High School. By letter dated March 6, 1987 Superintendent Tassos advised the grievant that he would recommend that she be placed on the transfer list and reassigned to Forest Hill and Pipestem Schools for the following year.

On April 9, 1987 Superintendent Tassos presented to the board a list of employees being considered for transfer and reassignment. A hearing on the grievant's proposed transfer

was conducted by the board of education on April 21, 1987. On April 23, 1987 the board approved the transfer of the grievant from full-time secretary at Sandstone to half-time positions at Forest Hill and Pipestem. On April 27, 1987 the grievant was sent a notice of employment advising her that she would be employed at Forest Hill and Sandstone schools for the 1987-88 school year. A level one grievance was not filed until June 12, 1987.

At the level four hearing the grievant testified that it was her understanding that she could file a grievance regarding the transfer within fifteen days after she returned to work. Grievant's counsel argues that the matter was timely filed as the grievable event, the change of assignment, did not become effective until the new fiscal year and/or did not cause her to suffer physical consequences until August when she reported to work.

W.Va. Code, 18-29-4 requires that grievance proceedings begin with an informal conference within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of date upon which the event became known

to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to the grievance. In this instance the event upon which the grievance is based is the board's action in approving the transfer and the statutory time guidelines would begin from the date on which the grievant became aware of the event. Counsel's argument that the grievable event was her assumption of the duties of the new assignment is not accepted as that act was simply the outcome of the grievable event.

By her own admission the grievant was aware of the impending recommendation for her transfer in early March. As a result of the letter of notification from Superintendent Tassos she contacted her local service personnel association who secured counsel from the state association for the hearing held on April 21. The notice of employment sent to the grievant on April 27 clearly states that in 1987-88 she would be employed at two schools other than Sandstone. Proceeding on the mistaken notion that she could file a grievance fifteen days after she returned to work does not constitute excusable neglect nor establish a valid reason for delay.

In addition to the foregoing the following shall serve as specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant has been employed by the Summers County Board of Education since 1970 and has been assigned as secretary at Sandstone Elementary and Junior High School since 1975.

2. On February 26, 1987 Superintendent Demetrius Tassos recommended the elimination of the position of secretary at Sandstone Elementary and Junior High School for the 1987-88 school year as part of a reduction in force.

3. On March 6 Superintendent Tassos informed the grievant that he would recommend to the board of education that she be placed on the transfer list and reassigned to Forest Hill and Pipestem Schools for the 1987-88 school year. Following a hearing conducted on April 21 the board approved the recommendation.

4. The grievant was notified on April 27 that she would be employed at Forest Hill and Pipestem Schools in 1987-88.

5. A level one grievance was filed on June 12, 1987

### 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 know 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. Wanda Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1.

2. 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 inapplicability of W.Va. Code, 18-29-4 (a) (1).

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

Accordingly, the greivance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Summers 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 October 19, 1987

Sue Keller

SUE KELLER

Hearing Examiner