



**REPLY TO:**  
401 Davis Avenue  
Suite 315  
Elkins, WV 26241  
Telephone: 636-1123

**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

JEFFREY L. CATLETT

v.

DOCKET NO. 02-87-162-2

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jeffery L. Catlett, is presently employed by the Berkeley County Board of Education as a bus operator. He filed a level one grievance on April 2, 1987 in which he alleged violations of W.Va. Code, 18A-4-8b and 18A-4-15 as three other substitutes with less seniority were placed into regular positions prior to his being assigned as a regular bus operator before the 1987-88 school year. A level two hearing was conducted on April 13 and by agreement of both parties was appealed to level three on that same date. No written responses at any level have been made a part of the record. The grievance was appealed to level four on May 29 by grievant's counsel who advised that he would later determine whether an evidentiary hearing would be necessary. By letter of August 31 the grievant requested a hearing which was conducted on September 16, 1987.

The level two transcript indicates in the fall of 1985 approximately ten substitute drivers were hired and that a drawing was conducted to determine the order in which they would be called to work. As a result of this drawing both Ms. Peggs and Ms. Noll were listed prior to and were awarded regular positions before the grievant. At the level four hearing the grievant provided evidence indicating that he had worked as a substitute bus operator on November 5, 1986. Grievant's Exhibit No. 1, the November substitute schedule, shows that two other substitutes, Nelda Peggs and Connie Noll, did not work until November 6. The grievant's contention that his seniority dates back one day prior to the two individuals is undisputed by the board.

As a result of the error in calculating seniority the grievant contends that he was improperly denied the regular position awarded to Ms. Peggs in January or February 1987 and the opportunity to accept certain extracurricular assignments. While he worked every day from the time Ms. Peggs was hired as a regular driver until he was awarded a regular position, the grievant requests that the date of his seniority be established as November 5, 1986 and that he be awarded compensation for extracurricular assignments which he could have accepted during this time.

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

Findings of Fact

1. The grievant along with nine other individuals was employed as a substitute bus operator in the fall of 1986.

2. A drawing was held to determine the order in which the ten new employees would be called to substitute. Ms. Peggs and Ms. Noll were both scheduled to be called before the grievant.

3. The November 1986 substitute schedule produced by the grievant indicates that he worked on November 5 while Ms. Peggs and Ms. Noll did not work until November 6.

4. No evidence was produced to show that Ms. Peggs or Ms. Noll worked prior to November 6.

5. Ms. Peggs was awarded a regular position in either January or February 1987 while the grievant did not receive a regular position until sometime prior to the 1987-88 school year.

6. The grievant worked every day from the time Ms. Peggs was given a regular position until the time he was awarded a regular position and did not suffer any loss of wages. During the same time period the grievant was called for extracurricular

assignments but lost those opportunities offered to Ms. Peggs which would have been his had he been properly awarded that position in January or February.

#### Conclusions of Law

1. Seniority for service personnel shall be computed from the date they enter into their assigned duties. W.Va. Code, 18A-4-8b.

2. Extra duty assignments shall be made in rotating order on the basis of seniority until all employees in that particular classification have been given an opportunity to perform similar assignments. W.Va. Code, 18A-4-8b.

3. A grievant must prove entitlement to a monetary award. This grievant has failed to establish specifically which extra-curricular assignments he would have had been offered and his acceptance of them would be speculative at this time. It is incumbent upon the grievant to prove all allegations by a preponderance of the evidence. Zban v. Cabell County Board of Education, Docket No. 06-87-010, Marling v. Marshall County Board of Education, 26-86-368-3; Yoho v. Marshall County Board of Education, Docket No. 25-86-073-2.

Accordingly, the grievance is **GRANTED** as to establishing the grievant's date of seniority as November 5, 1986 and **DENIED** regarding reimbursement for any lost extracurricular assignments.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley 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 December 10, 1987

Sue Keller

SUE KELLER  
Hearing Examiner