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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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ROY COLE

v.

Docket No. 40-86-290-1

PUTNAM COUNTY BOARD OF EDUCATION

DECISION

Grievant, Roy Cole, is employed as a bus operator by the Putnam County Board of Education. On August 8, 1986, he filed a grievance alleging that his bus route had been changed in violation of W.Va. Code, 18A-4-8b and W.Va. Code, 18A-4-8a. A level two hearing was conducted in September, 1986, and the board of education waived participation in the grievance on October 10, 1986. An appeal to level four was filed on October 15 and an evidentiary hearing was conducted on March 25, 1987.¹

¹ A hearing was to be scheduled in November, 1986, but grievant advised that he would be unavailable. The grievance was heard *de novo* at level four and the claimed violation of W.Va. Code, 18A-4-8a was abandoned inasmuch as grievant had determined that the change occurred prior to the beginning of the school term.

Counsel for the parties stipulated the accuracy of the findings of fact of the level two decision except to the extent that the students transported previously by grievant had not been required to wait.

Grievant has been employed as a bus operator by Putnam County Schools for over sixteen years and had bid upon and was awarded route No. 782 when the driver thereof, Mr. Bays, retired about four years ago.² This route involved two runs in the morning, one to Lakeside Elementary School and one to Hurricane Middle and Hurricane High School, and the reverse thereof in the afternoons.

Sometime in 1985 parents, teachers and school administrators initiated complaints to the board of education asserting that approximately 100 to 125 elementary school students were required to wait for 45 minutes to one hour after school hours for transportation to their homes. The petition requested the board to rearrange the schedules of various school buses so that the children could get home earlier and eliminate the need for teachers to supervise these children while awaiting transportation. The board directed Mr. Jack Coyner, assistant superintendent and director of transportation, to examine the problem with the goal of getting the students home earlier without causing major disruption to the existing schedules.

² Grievant stated that he had waited on that run for thirteen years because it was on Route 60, a good road, and worked out well with an extracurricular run he had in the evenings to the Vocational Center.

Mr. Coyner testified that he was familiar with the existing bus routes after eleven years in that position and his first step was to solicit the assistance of the drivers in resolving the problem. He specifically inquired of the drivers, including grievant, how the routes could be altered without hiring additional drivers but no suggestions or other assistance from the drivers was forthcoming. Accordingly, he restructured several routes, attempting thereby to direct four buses in different directions with direct routes to the student's home without the necessity of students waiting upon a return run. From his viewpoint there was no economically feasible way to exclude grievant's afternoon run to Lakeside Elementary and, accordingly, Mr. Coyner split that run between two drivers and changed this part of grievant's run to the Daniel Boone Trail. This plan resulted in reducing the number of children on grievant's bus from 65 to 9 and the elapsed time on the run from 20-25 minutes to 13 minutes.

Pursuant to the revised plan grievant was placed on the unassigned transfer list at the end of the 1985-86 school year and was then given an opportunity to bid on the three new runs. However, on advice of counsel, grievant declined to bid on the other routes and instead elected to retain the Daniel Boone Trail run from Lakeside Elementary School and file a grievance.

Counsel for the grievant contends that it was unfair for the board to restructure grievant's run when that run was not part of the problem and was violative of W.Va. Code, 18A-4-8b prohibiting a

county board of education from refusing to permit a service personnel employee to continue in any position held prior to June, 1983, and thereafter.

Counsel for the board of education contends that the sole question to be resolved in this grievance is the authority of the board to reconfigure school bus runs to achieve optimum transportation of school children and that grievant has failed to prove that the decision to alter grievant's run was arbitrary or capricious.³

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

FINDINGS OF FACT

1. Grievant has been employed by the Putnam County Board of Education for nearly seventeen years as a bus operator.

³ Both parties appear to agree that the test to be applied herein is the "arbitrary" test and grievant conceded that there was no allegation or proof of "favoritism" or "harassment", etc.

It is further agreed that the sole evidence relied upon to show "arbitrariness" is that the children grievant had been transporting had not been required to wait. Further, grievant admitted on cross-examination that he felt the board had done what it believed was necessary to resolve the problem. On the basis of that admission counsel for the board moved to dismiss the grievance at the close of the grievant's case, which motion was denied.

2. About four years ago grievant bid upon and was awarded Route No. 782, which route included two a.m. runs and two reverse p.m. runs.

3. Approximately a year and a half ago the school board received numerous complaints concerning the inordinate delay a large number of elementary students were encountering in securing transportation to the homes after school.

4. The school board directed the director of transportation to resolve the problem and his initial effort was to solicit assistance from the drivers involved. However, the drivers, including grievant, were unresponsive. Accordingly, the director restructured one of grievant's four runs and divided that run between two new drivers.

5. The restructuring plan promulgated by the director was approved by the board and grievant as thereafter notified that he was put on "transfer - unassigned" status for the 1986-87 school term; that once the bus runs were firm he would be reassigned.

6. Thereafter, grievant was given the opportunity to bid upon three new runs but declined to do so, contending that it was arbitrary to divide his run when his students were not part of the problem sought to be corrected.

7. There is no evidence or allegation of "favoritism" or "harassment" or "discrimination" and the sole basis of the grievance is the arbitrary action of the board. However, grievant has failed to prove that the action of the board, under the evidence in this case, was arbitrary.

CONCLUSIONS OF LAW

1. In the grievance procedure it is incumbent upon the grievant to establish the essential elements of the grievance by a preponderance of the evidence. Edith Harrison v. Kanawha County Board of Education, Docket No. 20-86-219.

2. Grievant has failed to prove the essential elements of the grievance as a matter of law.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Putnam 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: April 30, 1987