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RANDY CREIGHTON

v.

Docket No. 35-86-373-3

OHIO COUNTY BOARD OF EDUCATION

DECISION

Randy Creighton, the grievant, is employed by the Ohio County Board of Education as a bus operator. He alleges violation of W.Va. Code, 18A-4-8b(b) when his supplemental bus run was taken from him in 1983 and given to another bus driver. The grievance was appealed to level four in December, 1986 and scheduled for hearing and continued on several occasions before finally being heard April 8, 1987 in Wheeling, West Virginia. Counsel for the parties submitted proposed findings, the last of which was received June 11, 1987.¹

¹This grievance is one of several concurrent level four grievances involving the allocation of supplemental bus runs among Ohio County School bus operators.

At the onset of the level four hearing, respondent's counsel moved for dismissal; counsel argued that because the grievant failed to file his grievance within the statutory time limits, the statute of limitations would prohibit hearing the grievance. Due to the prevailing controversy regarding the supplemental bus runs, the motion was denied pending a hearing of the merits on the case. The timeliness issue will be considered and incorporated into the decision herein.²

The facts giving rise to this dispute are uncontroverted. Until the 1983-84 school term there were two supplemental bus runs serving the West Liberty area. Grievant held one 1 and 1/2 hour ECE run for which he received extra compensation beyond that of his regular 6 hour contract. In August, 1983 grievant's supplemental run was consolidated with the other West Liberty run and the driver of the other run, who was more senior, kept the entire newly created supplemental run. Grievant made no protest at the time the run was taken from him, but now makes three arguments regarding the matter.

First, in regard to untimeliness, grievant states that the law changed in June, 1983 regarding retention of previously held employment, but the board changed his schedule (removed the

² See Jalletta Moore v. Ohio County Board of Education, Docket No. 35-87-027-3 and Billick/Duvall/Hewitt v. Ohio County Board of Education, Docket No. 35-86-370,371,372-3 (consolidated) for background, historical and decisional information regarding the supplementary runs.

supplemental run) in August, 1983.³ While the grievable event occurred in 1983, grievant avers that he had no knowledge of the law until 1986 when he duly filed this grievance. Second, grievant questions the efficiency of the consolidation and says it results in the affected students spending an extended and unnecessary time on the bus. Grievant testified that as of the 1986-87 school year, some students had to spend 55 minutes on the bus traveling the back roads. Further, he maintains, they must travel 15 miles from the time they get on the bus until reaching their destination in West Liberty, whereas if he picked them up, they would be on a "straight-shot" 5-mile trip. Lastly, grievant argues he should not be denied a supplementary run when less senior drivers are allocated runs to fill their schedules and the runs exceed their 6 hour day and provide them more driving time and compensation than him.

Grievant requests reinstatement to the run he held at the end of the 1982-83 school year and back wages for his loss of income in three subsequent years for a total amount of \$6942.50, excluding the present 1986-87 school year. He claims preference to employment for a supplemental run over drivers less senior than he.

³"The county board of education may not prohibit a service employee from retaining or continuing in his employment in any position or jobs held prior to... (1983) and thereafter." W.Va. Code, 18A-4-8b(b). This provision does not preclude a board from terminating positions or assignments pursuant to lack of need, reduction in force, elimination of programs or schools, etc., and does not appear to be applicable to grievant's situation where his assignment was eliminated by consolidation.

The board of education contends that the consolidation of supplemental runs in West Liberty was necessary due to declining enrollment.⁴ In further response, respondent's counsel mistakenly cites W.Va. Code, 18A-2-2, "School Boards may always dismiss employees when there is a lack of need." ⁵ The statute refers to teacher employment, but any reduction in force of service or professional employees or extracurricular employment pursuant to W.Va. Code, 18A-4-16 must be accomplished via the procedural requirements of W.Va. Code, 18A-2-7 and W.Va. Code, 18A-2-8. In the case of grievant's extra employment and compensation, it has been determined that the extra driving was for an available supplemental run and by agreement of the affected drivers, scheduled on a year to year basis.⁶

In addition to the foregoing factual narration, the following specific findings of fact and conclusions of law are incorporated herein.

⁴ Respondent did not address grievant's concerns regarding the extended time students spend on the bus or extra driving time and distance necessitated by the consolidation.

⁵ The pertinent provision of W.Va. Code, 18A-2-2 states: "A continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation of teachers and pupil-teacher ratios."

⁶ See the Moore and Billick/Duvall/Hewitt cases referred to in Footnote 2, supra.

FINDINGS OF FACT

1. Grievant is employed by the Ohio County Board of Education as a full-time bus operator.

2. Prior to the 1983-84 school year, grievant drove one of two supplemental runs in the West Liberty area. In August, 1983, grievant's run was taken from him and consolidated with the remaining more senior driver's run. Grievant made no protest to the action at that time.

3. The school board maintains the consolidation was due to decreased student enrollments despite grievant's uncontroverted testimony that the consolidated run imposes hardship upon students who now remain on the bus for longer amounts of time and distance.

4. Grievant's request for back wages for school years 1983-84, 1984-85 and 1985-86 for a supplemental run previously held but terminated August, 1983 is untimely as a matter of law.

5. In regard to the present 1986-87 school year, grievant has not established that he would have had enough seniority for assignment to a supplemental run, notwithstanding improper assignments by the board of supplemental runs to several employees less senior than he.

6. In regard to the upcoming 1987-88 school year, grievant is entitled to consideration for a supplemental run before any other bus driver less senior than he.

CONCLUSIONS OF LAW

1. Unless just cause be shown for delay, a grievant must file his grievance within fifteen days of the grievable event, or within fifteen days on which the event became known to him pursuant to W.Va. Code, 18-29-4(a)(1). Kim Neal v. Mason County Board of Education, Docket No. 26-86-329-3.

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 applicability of W.Va. Code, 18-29-4(a)(1). Wanda Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1.

3. The grievant herein did not demonstrate just cause for a three-year delay in filing a grievance for back wages of a substantial amount nor otherwise prove entitlement to a supplementary run in the school years 1983-84 to 1986-87 as a matter of law.

4. Supplemental driving runs must be offered by the Ohio County Board of Education to its bus operators in order of descending seniority and grievant is in a preferred position for assignment over less senior bus drivers in the upcoming 1987-88 school year.

Accordingly, this grievance is **DENIED** as to grievant's request for reinstatement to a previously held supplemental run and for reimbursement of back wages from 1983-84 through 1986-87. The grievance is **GRANTED** as to grievant's preferred position over that of less senior bus drivers for a supplemental run in the 1987-88 and successive school years.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio 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:

June 30, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner