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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

ROSELLA DAMRON

v.

Docket No. 29-86-250-4
29-86-254-4

MINGO COUNTY BOARD OF EDUCATION

DECISION

Grievant, Rosella Damron, is employed by the Mingo County Board of Education as a substitute custodian at Dingess Grade School. On October 13, 1986, she initially filed a grievance alleging that on October 10 and November 26, 1986, principal Wellman had called another substitute, Henry Baisden, out of rotation and denied grievant the employment in violation of W.Va. Code, 18A-4-15. A level two evidentiary hearing was conducted on December 17, 1986, and appeals were received by the Education Employees Grievance Board on December 11, 1986, and February 2, 1987; the grievances were submitted to the hearing examiner on the transcript of the level two hearing.¹

¹ The parties had requested the October grievance be remanded to level two for hearing and the November grievance was then consolidated upon remand.

The transcript of the level two hearing was received by the hearing examiner on March 6, 1987; references thereto will be designated as (T.__).

There are four substitute custodians at Dingess Grade School and their names and order of seniority are as follows:

1. Pat Fleming
2. Rosella Damron (grievant)
3. Henry Baisden
4. Vena Hignite

Grievant contends that on Friday, October 10, 1986, she had been passed over by principal Wellman on the rotation list and Henry Baisden had been called in her stead; that when she confronted Mrs. Wellman about the matter she was advised that she (Mrs. Wellman) was obligated to Mr. Baisden (T. 4). According to Mrs. Wellman, on October 7, 1986, Minerva Kirk the night watchperson, informed her she would be off on October 10 and she called Mr. Baisden because grievant had been the last substitute to work and the last substitute called out (T.6).²

Grievant contends that on November 26, 1986, she again was deprived of work because Mrs. Wellman again went out of rotation order and called Mr. Baisden to work in grievant's stead; that during the period of November 21 to November 26 Mr. Baisden worked twice and grievant did not work at all (T. 6). The response of Mrs. Wellman was that she had called grievant to work three weekends

² She stated that grievant had worked on October 6 for Benny Ferguson and that Mr. Baisden had committed to work on October 10 when she called him on October 6; that she had a large school and in order to keep night watchpersons at the school it was necessary to get commitments.

for Saul Finley and grievant was therefore committed to that job for six days; that she called Mr. Baisden to work on November 26 because grievant was committed for the six days. (T. 7).³

The documentary evidence in this grievance reveals that from August 23 to December 12, 1986, a total of thirty days of substitute custodian or night watch work was done at Dingess Grade School, distributed as follows:

Rosella Damron	14 days
Henry Baisden	6 days
Vena Hignite	6 days
Patricia Fleming	4 days ⁴

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 employed by the Mingo County Board of Education as a substitute custodian at Dingess Grade School.

³ Mrs. Wellman concluded that because grievant had committed to work those three weekends she was ineligible to work as a custodian (T. 8).

⁴ In the level two decision it was also noted that the payroll records revealed that grievant's name was not out of rotation at any time.

2. There are four substitute custodians at Dingess Grade School in the following order of seniority:

1. Pat Fleming
2. Rosella Damron
3. Henry Baisden
4. Vena Hignite

3. Although the evidence is not clear it appears that on October 10, 1986, Henry Baisden was next in order of rotation after grievant had worked on October 6, 1986; that grievant was not denied work on that date.

4. Grievant had worked on November 23 and November 24, 1986, and Henry Baisden was called to work on November 26, 1986, because it appeared that it was his turn on the rotation list.

5. During the period in question grievant was given at least twice as much work as the other three substitute custodians.

CONCLUSIONS OF LAW

1. In the grievance procedure it is incumbent upon the grievant to prove 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 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 Mingo 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 22, 1987