



Members
James Paul Geary
Chairman
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

LEONARD DUNKLE

v.

DOCKET NO. 06-87-169

CABELL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Leonard Dunkle, is employed by the Cabell County Board of Education as a mason in the maintenance department. He filed a grievance in April 1987 alleging that he was entitled to back pay for previous work experience credit with the West Virginia Vocational Rehabilitation Division and accumulated sick leave and an evidentiary hearing was conducted at level two on May 19, 1987. An appeal to the Education Employees Grievance Board was filed on June 22 and an evidentiary hearing was conducted at level four on September 29, 1987.¹

¹ Part of the grievance involved an error in the calculation of the number of years credit grievant received in 1985 and the level two grievance evaluator had recommended that grievant be paid \$1,000.50 to correct that miscalculation. At the time of the level four hearing grievant had not received the money; however, on October 13, 1987 the hearing examiner was informed by counsel for the board that grievant had been paid the \$1,000.50.
(footnote continued)

Grievant commenced work for Cabell County Schools on November 4, 1981 as a mason after being recruited by Mr. Henry Watkins, who, at the time, directed the maintenance department for the school system (T.5). He had been previously employed by the Vocational Rehabilitation Division in Institute for fourteen and a half years and had commenced talking with Mr. Watkins in September 1981 about possible change of employment (T.6,7). At the time grievant was driving eighty miles per day round trip to and from Institute and the discussions focused primarily on the transferability of retirement benefits and the driving situation. Grievant considered the move in the nature of a lateral transfer and no mention was made of prior work credit pay initially because grievant understood he would commence work with zero years experience credit (T.15).

However, apparently in October 1981, Mr. Watkins told grievant he would look into the possibility of obtaining credit for pay purposes for the number of years grievant worked at Vocational Rehabilitation. (T.9).² At the time he commenced work grievant

(footnote continued)

Accordingly, that part of the grievance and the claim for accumulated sick leave has been withdrawn by counsel for grievant.

² Actually, it is unclear but grievant testified that Mr. Watkins told him that he (Watkins) had mentioned it to Dr. Errington, the superintendent, and the response was unfavorable; however, grievant stated that Mr. Watkins told him he would continue to pursue it. (T.10).

Mr. Watkins stated that when he became familiar with the situation it was his understanding that it was up to the school board to grant or deny the credit and he never represented to grievant anything to the contrary.

was unsure that he would get the prior work credit but had "great expectations" that he would. Between 1981 and 1985 he made five or six inquiries to Mr. Watkins about the credit and finally, in May, 1985, when Mr. Watkins was appointed interim superintendent, the school board approved prior work credit for grievant.

Mr. Watkins testified that he informed grievant that he would have to commence work with zero years of experience but that he (Watkins) would check on the possibility of obtaining the credit; that, upon inquiry, superintendent Errington did not choose to present the request to the school board. At that time Mr. Watkins was not aware of any other employee in the maintenance department who was receiving pay for prior work experience credit and to his knowledge the practice in 1981 was to not award the credit.³ Thereafter, grievant brought the matter to his attention on one or two occasions and Mr. Watkins specifically advised grievant that if he (Watkins) was successful in obtaining the credit it would be paid only from the date of the award forward, not retroactively. Mr. Watkins informally discussed the matter with the school board while he was interim superintendent and, because the board reacted favorably, he thereafter presented a formal motion to the board which was approved in May 1985.

³ Mr. Thomas McCrae, treasurer of Cabell County Schools since 1966, testified that grievant was the third employee in his recollection to receive prior work experience credit prior to the formal adoption of the new Policy in 1986 and that in each of the three cases the decision had ostensibly been made on a political basis. One had been a Secretary who received the credit in 1970 and another had been a female bus operator who transferred similar work credit from Michigan.
(footnote continued)

Counsel for grievant contends that the board of education has granted employees back pay for a variety of reasons and that uniformity is required; that the lapse of time does not cancel a debt owed to an employee and that the matter had been addressed in a State Superintendent opinion and decisions of the Education Employees Grievance Board.⁴

Counsel for the school board contends that at the time he commenced work with the school board grievant was given no assurance and, in fact, understood that if he obtained prior work experience credit it would be at the discretion of the school board, that there was no policy or practice of awarding such credit and the only evidence presented of any award of prior work experience credit at the date of initial employment was a secretary and one bus driver

(footnote continued)

He also stated that the list of names presented by grievant which had been prepared by Mr. William Zban (Grievant's Exhibit 1) were not the names of employees who had received back pay awards for prior work experience credit but were employees whose pay had been the subject of a mechanical error, etc.

⁴ Saunders and Wright v. Marion County Board of Education, a decision of the State Superintendent dated April 20, 1984 involved a misclassification of secretaries who should have been classified as accountants. The thrust of the decision was that the employees were entitled to the salaries they would have received had they been properly classified; thus, the decision is inapposite.

Carl Steele v. Wayne County Board of Education, Docket No. 50-87-062 involved a vocational teacher who was denied pay increment for prior work experience although at the time he was employed there had been an express practice or policy to award such credit and seven other employees hired before and after grievant Steele had been awarded the credit; thus the grievances are inapposite.

numerous years ago and there was no evidence of any awards of back pay for prior work experience credit. Finally, counsel contends that the grievance is untimely.⁵

In addition to the foregoing factual narrative the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant commenced work as a mason in the maintenance department of Cabell County Schools in November 1981 after serving fourteen and one half years in a similar position with the Vocational Rehabilitation Division at Institute.

2. At the time of his employment with Cabell County Schools he was aware and understood that he would not receive prior work experience credit as a pay increment for the time with Vocational Rehabilitation but was advised by his supervisor, Henry Watkins, that an effort would be made to obtain the credit for him. However, at the time it was made clear to grievant that if he (Watkins) was successful there would be no retroactivity but that the pay would commence from the date it was granted by the school board.

⁵ On its face the grievance is untimely and the grievance evaluator at level two found as a fact that it was untimely. (Decision at level two, June 1, 1987. page 3). However, on the basis of Carl Steele v. Wayne County Board of Education, supra, footnote 4, that issue will be resolved in favor of grievant.

3. No inducements, promises or other assurances were given to grievant that anything other than an effort would be made to obtain the credit by anyone in authority at Cabell County Schools and, in fact, at that time, if a Policy existed in Cabell County concerning such credit it was that the credit would not be granted.

4. Mr. Watkins continued to pursue the credit on grievant's behalf and in May 1985 successfully obtained the approval of the school board to award grievant the prior work experience credit. Grievant failed to prove that other employees performing similar duties had received either prior work experience credit pay or back pay for such credit.


CONCLUSIONS OF LAW

1. In the grievance proceeding it is incumbent upon the grievant to prove the essential elements of the grievance by a preponderance of the evidence. William Blankenship v. Kanawha County Board of Education, Docket No. 20-87-202-1; Garry Tenny v. Barbour County Board of Education, Docket Nos. 01-87-172/173-2.

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 the Circuit Court of Cabell 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: December 31, 1987