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LINDA GIBSON
and
BETTY SPEARS

v.

DOCKET NO. 23-87-048-4

LOGAN COUNTY BOARD OF EDUCATION

DECISION

On December 12, 1986, the grievants filed a joint grievance alleging that a decision by their supervisor to add another child to the grievants' bus run caused the riding time of the children already on the bus to be increased approximately fifteen minutes. The net effect of this change caused the riding time of the handicapped children to exceed two hours and was an additional hardship on the driver and bus aide.

On February 2, 1987, a level two hearing was held and a decision denying the grievance was rendered that same day. The grievants appealed the decision to level three where the respondent board, on February 27, 1987, voted to waive a hearing. Subsequently, by letter dated March 10, 1987, the grievants appealed to level four and by notice duly issued, the grievance was set for hearing on March 26, 1987.

On motion made by the respondent board, the hearing was continued to April 20, 1987. Shortly thereafter, the grievants, by counsel, requested that the matter be submitted for decision upon the record informing this Hearing Examiner that the record below would be forwarded in the near future. Final portions of the record were received on June 9 and June 23, 1987.

The factual situation presented reveals that Linda Gibson is the bus operator for bus no. 8211. This bus carries handicapped children who are assisted on the bus run by Betty Spears, a bus aide. The afternoon bus run of bus no. 8211 begins at 1:00 o'clock p.m. and ends at 4:15 o'clock p.m. During that time some of the mentally and physically handicapped children are riding the bus for approximately two hours. Around 3:15 o'clock p.m., bus no. 8211, having students on board, passes Buffalo Grade School which normally lets out its students at 3:30 o'clock p.m. Another bus, bus no. 49, arrives empty at Buffalo Grade School around 4:00 o'clock p.m. to pick up a certain handicapped child and delivers him to his home.

Shortly prior to the filing of this grievance, the Principal of Buffalo Grade School called Mr. Joe Clark, Supervisor of Transportation, and informed him that there was no aide to stay with this child from 3:30 o'clock p.m. (when school lets out) until 4:00 o'clock p.m. when bus no. 49 arrives. Based upon this information, Mr. Clark directed the grievants to stop at Buffalo Grade School to pick up the child. Arrangements were made to let the child out fifteen minutes early, but even so the diversion of bus no. 8211 requires an additional fifteen minutes.

The grievants complain that by requiring their bus no. 8211 to stop and pick up the additional child, the children who are already riding the bus for two hours are delayed an additional fifteen minutes. On the other hand, if bus no. 49, which is empty, picks up the child, there is no inconvenience to any children. It is also noted that the grievants are not complaining that this was a change in their schedule but that the change was an arbitrary act which worked a hardship on them and the children who ride their bus in the afternoon.¹

Grievants' counsel argues that the job of the grievants was made more difficult in regard to maintaining order and further that the control of the handicapped students was extended beyond the two hour guidelines established by the West Virginia Board of Education.²

¹The allegations in the grievance form and testimony of the grievants clearly reveals that they are not objecting to the schedule change. This is summarized by grievants' counsel on page four of his Proposed Findings of Fact and Conclusions of Law.

²The guidelines were promulgated as part of a major plan developed in 1982-83 to comply with the dictates of Pauley v. Kelly, 255 S.E.2d 859 (1979). It is noted, however, that these guidelines were not converted to regulations, and thereby, lack the force and effect of law.

While it is probably true that adding fifteen minutes to a two hour ride is somewhat egregious for the handicapped children, that is a matter to be addressed by the respondent board and the parents. On the other hand, the grievants offered no evidence that their alleged hardship was factual. In addition, they clearly espoused that they were not aggrieved by the slight change in their schedule.

Some prohibited changes in schedules are more fully discussed in previous decisions by this Board where violations of WV Code §18A-4-8a have been asserted. Two such cases are May v. Grant County Board of Education, Docket No. 12-86-164-2 and Coburn v. Kanawha County Board of Education, 20-86-087.

Under the circumstances it appears that the act of adding the additional child was not arbitrary but rational even though other even more appropriate alternatives may exist.

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

FINDINGS OF FACT

1. Grievant, Linda Gibson, is a bus operator employed by the Logan County Board of Education.

2. Grievant, Betty Spears, is a bus aide employed by the Logan County Board of Education and is presently assigned to assist Linda Gibson on bus no. 8211.

3. The grievants complained that the addition of another handicapped child to their run created additional hardship on them and the children.

4. Joe Clark, Supervisor of Transportation, decided that an additional child should be added to the grievants' bus passengers. This decision was based upon information that this handicapped child would be unassisted by an aide from 3:30 o'clock p.m. till 4:00 o'clock p.m. unless picked up by the grievants.

5. The grievants specifically denied that they were aggrieved by the change of their schedule.

6. The addition of the child to the grievants' bus route delayed them approximately fifteen minutes on the days they were designated to pick the child up.

7. The decision made by Mr. Clark, Supervisor of Transportation, was factually based, rational and not arbitrary.

CONCLUSIONS OF LAW

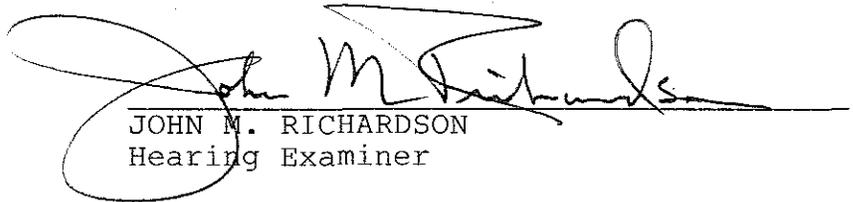
1. It is incumbent upon a grievant to prove the elements of the grievance by a preponderance of the evidence.

2. The grievants have failed to prove by a preponderance of the evidence that they are entitled to the relief requested.

3. The grievants have failed to establish by a preponderance of the evidence any basis as a matter of law upon which relief may be granted.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Logan County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.


JOHN M. RICHARDSON
Hearing Examiner

DATED: Aug 5, 1987