



**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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**SHEILA GILLENWATER**

**v.**

**Docket No. 22-86-289-1**

**LINCOLN COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Sheila Gillenwater, is employed by the Lincoln County Board of Education as a substitute cook. On September 8, 1986, she filed a grievance alleging that a less senior substitute cook, Vickie Simpkins, was employed for a full time cook position at Midway School in violation of W.Va. Code, 18A-4-8b. A level two hearing was conducted on September 23, 1986, and a level three hearing before the board of education on October 7; a level four evidentiary hearing was conducted on March 18, 1987.<sup>1</sup>

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<sup>1</sup> Originally the grievance was to be decided upon the record of the level three proceeding and the board of education requested a transcript on November 6, 1986. However, the tape of that hearing was inadvertently erased by the court reporter and, accordingly, the grievance was heard de novo at level four.

The evidence in this grievance is uncontroverted and reveals that grievant signed a contract as a substitute cook with the school board on May 18, 1982, and was not called out to work until October 3, 1983. (Joint Exhibit 1). In September, 1986, she applied for a full time cook position<sup>2</sup> at Midway School and the position was awarded to Vickie Simpkins. Upon inquiry she was informed that although Ms. Simpkins had an employment date of August 31, 1982, she had seniority because her first day of work was on September 20, 1982. Grievant had received good evaluations for her work performance and had not refused work between May 18, 1982, and October 3, 1983; she had assumed that it was the responsibility of the school board to contact her regarding work and she therefore never took any action to determine her employment status.

Assistant superintendent McCann testified that in May, 1982, it was the policy of the school board to employ substitutes and leave it to the principal at each individual school to call out substitutes of all types selected from lists prepared by the board office. In 1983 the legislature amended W.Va. Code, 18A-4-8b(b) and one of the amendments dealt with the rotation of substitute service personnel employees. Accordingly, in July, 1983, the effective date of the legislative amendment, the school board revised

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<sup>2</sup> This cook position at Midway was not, in fact, a full time, permanent position but was a long term substitute position for a one year period.

its policy and arranged rotation lists based on attendance areas.<sup>3</sup> The substitutes were then called by an employee in the board office and grievant was called in accordance with the rotation system in October, 1983, from the Duval area, where she resides.

Counsel for the grievant contends that grievant was not aware of the policy of the school board in May, 1982, whereby the principal of the school called out the substitutes and it was not her fault that she did not commence work as a substitute until October, 1983; that she was available for work and had she been aware of the existing policy would have actively pursued substitute work.

Counsel for the board agrees that grievant is qualified and does good work but concludes that in view of the previous opinion of the Superintendent and the provisions of W.Va. Code, 18A-4-8b(b) it had no choice but to calculate seniority from the first date worked; that it applied that policy uniformly to all substitute

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<sup>3</sup> This was done as a result of a meeting the superintendent had with the substitutes at which the employees voted to adopt this attendance area rotation system for substitutes. This was to accommodate the employees and was done on a uniform basis.

For a grievance involving this system as to bus drivers, see Shirley Hale v. Lincoln County Board of Education, Docket No. 22-86-2411.

The board had always counted seniority from the first day worked because the State Superintendent had issued an opinion so holding.

employees even previous to the amendment of the statute.<sup>4</sup>

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

#### FINDINGS OF FACT

1. Grievant was employed by the Lincoln County Board of Education as a substitute cook on May 18, 1982.

2. At the time of her employment it was the policy of the school board for each school principal to call substitute employees out to work from a list prepared by the office of the superintendent.

3. In 1983 the Legislature amended W.Va. Code, 18A-4-8b(b) and established a rotating call out process and the policy of the Lincoln County Board of Education was altered to conform with the amendment. Substitute employees were then assigned to high school attendance areas and their names were rotated.

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<sup>4</sup> Counsel for grievant concedes that the State Superintendent has held that seniority begins on the first day worked and not from the date of employment.

This interpretation is consistent with W.Va. Code, 18A-4-8b(b) which, in pertinent part, provides that:

For purposes of determining seniority under this section, an employee's seniority begins on the date that he enters into his assigned duties.

4. Accordingly, on October 3, 1983, grievant was called out and began employment under her contract. Grievant had not been aware of the previous policy and did not contact any of the principals to inform them of her desire to work.

5. In September, 1986, grievant bid upon a cook position at Midway School and did not get the job; the position was awarded to an employee who had been employed after grievant but who was first employed on September 20, 1982. Grievant contends she has seniority because she was employed first.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(b) provides that an employee's seniority begins on the date that the employee enters into their assigned duties.

2. The opinion of the State Superintendent of Schools is that seniority is to be calculated from the first day of performance of duties and not from the date of employment.

3. Grievant has failed to demonstrate wherein the opinion of the State Superintendent is erroneous.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Lincoln 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.

A handwritten signature in cursive script, appearing to read "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: April 30, 1987