WEST VIRGINIA EDUCATION EMPLOYEES GRIEVANCE BOARD
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MARTHA GREEN

v. Docket No. 20-86-344-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Martha Green, is employed as a bus operator assigned to the South Charleston Bus Terminal. In September, 1986, she filed a grievance alleging that one of her bus runs had been changed after the beginning of the school year in violation of W.Va. Code, 18A-4-8a. A level two hearing was conducted on October 23, 1986, and the decision was appealed to the Education Employees Grievance Board on December 2, 1986, and submitted to the hearing examiner on January 22, 1987.[1] On February 6, 1987, counsel for the board of education moved to dismiss the grievance as moot on the basis

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[1] The level two transcript was filed in the Education Employees Grievance Board office on December 8, 1986, and references thereto will be designated (T.__). In the interim grievant had been suspended for three days and appealed the suspension to level four on December 15, 1986; an evidentiary hearing was conducted on the suspension on January 22, 1987, in a separate grievance styled Martha Green v. Kanawha County Board of Education, Docket No. 20-86-363-1.

that grievant had voluntarily transferred to another division and was no longer making the runs complained of; there has been no response to the motion.

A brief summary of the level two transcript reveals that grievant has been employed by Kanawha County Schools for ten years as a bus aide, substitute bus operator and for the past three years as a regular school bus operator working out of the South Charleston terminal. At the beginning of the 1986 school year grievant had been assigned the Holz kindergarten run on Monday, Wednesday and Friday and was thereafter switched to the Ruthlawn kindergarten run on Monday, Wednesday and Friday. (T. 14). On August 26, 1986, grievant had signed a request that she be placed on "flex" time which provided that those working on a flex time basis would be subject to rotation of assignments between morning and evening runs on certain days. (Employer's Exhibit 1).[2]

Mr. Scott Beane, South Charleston terminal supervisor, explained that a regular run consisted of a morning run (a.m.) and an evening (p.m.) run and that a school bus operator was required to drive approximately thirty hours per week, or approximately six hours per day. Grievant's regular run required approximately four hours per day and the remaining ten hours was referred to as time owed to the county, i.e., the ten hours. (T. 18). Bus operators had

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[2] Grievant indicated she didn't understand the difference between the flex time and eight hour day programs even though it had been explained to her by her supervisor at the time she signed and had also attended an inservice training seminar at the beginning of the year at which meeting the flex time program was explained. (T. 15).

been given the option of choosing flex time or remain on an eight hour day basis and on August 7, 1986, he had informed grievant that her run had been eliminated, gave her his schedule and requested that she select an alternative run; as of August 26, 1986, grievant had not made the decision. (T. 18,20).[3] Accordingly, after grievant signed the flex schedule Mr. Beane gave her the Holz kindergarten run which required one hour and twenty five minutes per day in order to fulfill the ten hours grievant owed the county. (T. 20).

John Fouts also drove the Holz run on Tuesday and Thursday and both he and grievant owed the same amount of time but Mr. Fouts had opted for the eight hour day program and had seniority over grievant; Mr. Beane allegedly could not put Mr. Fouts on Ruthlawn run because it would require overtime so he put Mr. Fouts on the Holz run five days a week and grievant on the Ruthlawn run because grievant was on flex time. (T. 21,22). Accordingly, this precluded either grievant or Mr. Fouts from being put into an overtime situation and allowed grievant the same Tuesday and Thursday mid days off that she had before the change. (T. 22).[4]

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[3] The purpose of initiating the flex time and the eight hour day election program was to equalize as far as possible the schedule and work hours of the bus operators. (T. 25,26;32). The program was apparently well received as more than fifty percent of the drivers opted for flex time. (T. 42).

[4] Mr. Beane stated that bus operators at the South Charleston terminal are aware that any mid day assignment was subject to change so there should have been no expectation that a driver would keep the same assignment permanently. (T. 23; Employer's Exhibit 3).

Counsel for the grievant contended that the change of grievant's run was contrary to the provisions of W.Va. Code, 18A-4-8a and the decision of Coburn v. Kanawha County Board of Education. Counsel for the board of education contends that to construe W.Va. Code, 18A-4-8a so as to place the decision making mechanism in the hands of the employee would render the statute unconstitutional.[5]

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 as a school bus operator assigned to the South Charleston bus terminal.

2. Grievant filed a grievance in September, 1986, alleging that one of her bus runs had been changed in violation of W.Va. Code, 18A-4-8a. A level two hearing was conducted on October 23, 1986, and the decision was appealed to the Education Employees Grievance Board on December 2, 1986. The grievance was submitted to the hearing examiner on January 22, 1987, on the transcript of evidence of the level two hearing.

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[5] The Coburn decision was rendered on September 10, 1986, and construed the 1985 amendment that no service employee should have his daily work schedule changed during the school year without his consent. The grievance evaluator at level two held W.Va. Code, 18A-4-8a violative of Article XII of the West Virginia Constitution.

3. On February 6, 1987, counsel for the board of education filed a motion to dismiss the grievance as moot on the basis that grievant had voluntarily transferred to another division and was no longer making the bus runs about which she complained. No objection or other response was made by counsel for grievant to the motion to dismiss and no findings of fact or conclusions of law were submitted.

4. The grievance has become moot and has been abandoned by the grievant.

CONCLUSIONS OF LAW

1. Moot questions or abstract positions, the decision of which would avail nothing in the determination of controverted rights, are not cognizable in the grievance procedure. Harrison v. Cabell County Board of Education, 351 S.E.2d 604 (W.Va. 1985); Harper v. Wayne County Board of Education, Docket No. 50-86-221-1.

2. On motion of either party to a grievance at level four the grievance will be dismissed when the subject of the grievance becomes moot or if it appears the grievance has been abandoned.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha 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: March 12, 1987