



**REPLY TO:**  
101 Harper Park Drive  
Suite D  
Beckley, WV 25801  
Telephone: 255-6155

**Members**  
James Paul Geary  
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

ROSIE HATFIELD

v.

DOCKET NO. 29-87-019-4

MINGO COUNTY BOARD OF EDUCATION

**DECISION**

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a written waiver of consideration at level three. A notice of hearing was duly issued setting the grievance for hearing, but upon the request and joint agreement of the parties, the hearing was continued to February 23, 1987, at which time a level four hearing was held and the requirement that a decision be rendered within thirty days was waived.

For her grievance the grievant, Rosie Hatfield, complains that she applied for a secretarial position and was not hired because the respondent board improperly calculated her seniority.

The respondent board denies that it improperly calculated the grievant's seniority, but admits that the only reason the grievant was not hired was because the successful applicant had greater seniority.

The facts as revealed by the record and by admission of

the parties were uncontested. Those essential facts are:

1. The grievant was initially employed as an aide on April 15, 1972 and resigned on March 15, 1974.
2. The grievant was re-employed as an aide on October 31, 1974 and has remained employed as an aide up to the present.
3. The successful applicant, Pamela Varney, was hired on January 25, 1974 as an aide and has been continuously employed since that date.
4. The only reason Pamela Varney was hired instead of the grievant was because the respondent did not include the grievant's initial employment from April 15, 1972 to March 15, 1974 as a portion of her accrued seniority, and therefore, Pamela Varney had the greater seniority.

In making the selection of Pamela Varney, the respondent board solicited and received from the State Superintendent, Tom McNeel, an interpretation of which candidate was the more senior.<sup>1</sup> In his interpretation, the State Superintendent reached the conclusion that a voluntary resignation extinguishes any seniority previously earned. Notably, the State Superintendent also pointed out a recent November 1985 Circuit Court decision rendered by the Circuit Court of Wayne County in the matter of Gilkerson, et al. v. Nolan, et al., Civil Action No. 85-P-116, wherein that Court declined to apply the policy of the Wayne County Board of Education denying teachers' seniority they accrued prior to their resignations.<sup>2</sup>

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<sup>1</sup> Respondent's Exhibit #1 was comprised of the request for an interpretation by the respondent board dated November 3, 1986 and the response of the State Superintendent dated November 12, 1986.

<sup>2</sup> It is noted that the final order of the Gilkerson case, supra, was entered on January 15, 1986.

Similarly, the Chief Judge of the Circuit Court of Kanawha county arrived at the same conclusion in overturning a decision of this board in the grievance of Hark v. Kanawha County Board of Education, Docket No. 20-86-225-1. Since that time this board has held that WV Code §18A-4-8b makes no reference to unbroken service (resignation) and is clear, unambiguous and will be applied. West, et al. v. Wetzel County Board of Education, Docket No. 52-86-279-3.

In the present grievance, the grievant is a service employee and a similar unambiguous portion of WV Code §18A-4-8b(b) is applicable and in pertinent part provides:

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

Under the existing circumstances, neither the grievant nor the successful applicant (Pamela Varney) had any accrued seniority in the classification of "secretary". Inasmuch as WV Code §18A-4-8b (b) requires that the regular employee(s) be considered first on the basis of seniority, qualifications and evaluations, the only applicable seniority to be applied would be that seniority which began when the grievant entered into her assigned duties, to-wit, April 15, 1972.

Inasmuch as seniority was the only question raised in this grievance by the parties, it is clear that the respondent board's calculation of the seniority of the grievant was erroneous in that those calculations excluded the grievant's seniority, which she had accrued prior to her resignation on March 15, 1974.

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

#### FINDINGS OF FACT

1. The grievant, Rosie Hatfield, was initially employed by the Mingo County Board of Education on April 15, 1972 as a teacher's aide. She voluntarily resigned on March 15, 1974.

2. The grievant was re-employed by the Mingo County Board of Education on October 31, 1974 and has been continuously employed as an aide to the present date.

3. The grievant applied for a secretarial position with the Mingo County Board of Education and was not hired because the board believed the successful applicant had greater seniority.

4. The successful applicant, Pamela Varney, was hired by the Mingo County Board of Education on January 25, 1974 as an aide and has been continuously employed by said board until the present date.

5. The grievant has greater total accrued seniority than Pamela Varney.

6. No issue was raised as to the qualifications or evaluations of either the grievant or Pamela Varney.

7. The Mingo County Board of Education did not credit the grievant with any seniority she had accrued prior to her resignation on March 15, 1974.

### CONCLUSIONS OF LAW

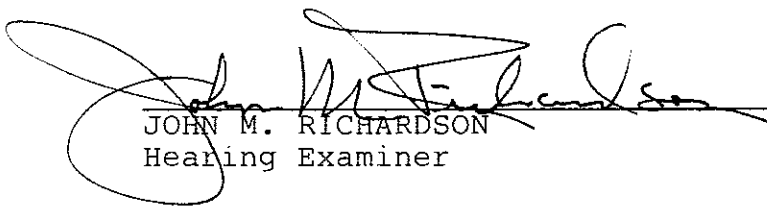
1. The provision of WV Code §18A-4-8b(b) which provides that, "For purposes of determining seniority under this section, an employee's seniority begins on the date that he enters into his assigned duties", is clear and unambiguous.

2. Where a statute is clear and unambiguous, it will be applied and not interpreted. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984); Cooper v. Greenbrier County Board of Education, Docket No. 13-86-192-4; West, et al. v. Wetzel County Board of Education, Docket No. 52-86-279-3.

For the foregoing reasons, the grievance is GRANTED.

The Mingo County Board of Education is ORDERED to instate the grievant to the secretarial position to which she was wrongfully denied beginning with the 1987-88 school year. Inasmuch as the grievant did not seek any monetary award, none is granted.

Either party may appeal this decision to the Circuit Court of Mingo 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: May 28, 1987