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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**  
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SHARON F. HIGGINBOTHAM

v.

Docket No. 20-87-059-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Sharon F. Higginbotham, is employed by the Kanawha County Board of Education as a substitute school bus aide assigned to the Sissonville bus terminal. She filed a grievance alleging that the school board violated W.Va. Code, 18A-4-15 when the position she was holding while the regular aide was off work on medical leave of absence was posted and filled by another aide. A level two evidentiary hearing was conducted in March 1987 and appealed to the Education Employees Grievance Board; a de novo evidentiary hearing was conducted on July 22, 1987.

In October 1985 grievant was hired as a substitute monitor aide at the Sissonville terminal and in January 1986 was called to substitute for Mrs. Darlena Hunter, the regular aide on bus 8214.

Later, Mr. Coleman, the terminal manager, informed grievant that Mrs. Hunter had been granted a medical leave of absence for one year and grievant would work the leave period. Accordingly, grievant finished out the 1985-86 school year in June 1986 on bus 8214.

When school commenced in September 1986 Mrs. Hunter remained off work and grievant, who had attained regular employee status, was informed by Mr. Coleman that she would be on bus 703, a new run, along with a substitute driver. Grievant worked that run through December and Mr. Coleman advised her that Mr. Beckett, the director of transportation, had advised him that the run had to be posted. Grievant and the driver went to talk with Mr. Beckett and he had told them that he had "fouled up", that the run should have been posted in September. The run was posted and Shirley Mullins, the most senior regular aide at the Sissonville terminal, bid upon and was awarded the run. Grievant was then returned to the modified version of bus run 8214 vacated by Ms. Mullins.

Grievant contends that bus run 703 should not have been put up for bid after twenty days because it was the same run grievant had commenced as a substitute for Mrs. Hunter; that grievant has been prejudiced by the posting and loss of bus run 703 in that she now has four days of make up time per week to serve on kindergarten runs whereas on bus run 703 she only had one day per week to do make up time.

Mr. Beckett testified that the aide position which Mrs. Hunter occupied on bus run 8214 was eliminated and a new bus schedule was made to accomodate and better serve the students of the

Sissonville area; that the new run was not the same as the one grievant previously had and complied with Kanawha County School Policy.<sup>1</sup> He acknowledged that he was holding a position for Mrs. Hunter as required by law but was not holding that particular run as asserted by grievant; that had Mrs. Hunter not have been on medical leave she would be serving in the same position as grievant. He also acknowledged that this was a new run and should have been posted but it was immaterial because the most senior aide was awarded the job when it was posted. He noted that grievant is receiving the same pay as she received previously for working the same hours and the only difference is that grievant is not working on the exact run she did earlier. It is immaterial to him who receives the position but he notes that grievant is seeking to remove the most senior regular aide at the Sissonville terminal and replace her with a substitute.

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

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<sup>1</sup> The Kanawha County Schools Policy provides, in pertinent part, that:

Operators will continue as presently assigned unless schedule changes such as school closings, diminishing attendance, etc., occur to cancel a run or make it substantially a new run.

On cross-examination grievant admitted that this was a new run and testified that on the old run there were thirty one students and the new 703 run there were fourteen students; that on the new run five of fourteen students were the same in the a.m. and six of fourteen students were the same in the p.m. run.

### FINDINGS OF FACT

1. Grievant is employed by the Kanawha County Board of Education as a substitute monitor school bus aide at the Sissonville bus terminal.

2. In January 1986 grievant was called out to substitute for Mrs. Darlena Hunter, the regular bus aide on bus 8214. Mrs. Hunter requested and was granted a one year medical leave of absence and grievant was informed that she would substitute for that period.

3. In September 1986 grievant was informed that she would be on a new run, bus 703, along with a substitute driver, Mr. Bob Stone. Grievant and Mr. Stone worked bus run 703 through December 1986.

4. In January 1987 run 703 was posted and Shirley Mullins, the most senior regular bus aide at the Sissonville terminal bid upon and was awarded the job. Grievant was then returned to an aide position on the modified version of bus 8214.

5. Grievant contends that bus run 703 was the same run as bus 8214 for which she was substituting for Mrs. Hunter and it should not have been put up for bids. However, the evidence of grievant and her own admission demonstrated that bus run 703 was, in fact, a new run and that the procedure comported with Kanawha County Schools Policy.

CONCLUSIONS OF LAW

1. In the grievance procedure it is incumbent to prove the elements of the grievance by a preponderance of the evidence.

2. Grievant failed to prove the material allegations of the grievance by a preponderance of the evidence as a matter of law.

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: September 15, 1987