



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

Members
James Paul Geary
Glen 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

STEWART W. KING

v.

DOCKET NO. 55-87-061-4

WYOMING COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three denial of the grievance. A level four hearing was convened at which time the parties entered into a stipulation of all the facts they deemed relevant and agreed to file briefs in support of their respective positions on or before April 17, 1987. The respondent's brief was timely filed; however, the grievant's brief was not received until April 20, 1987.

For his grievance the grievant, Stewart W. King, a substitute bus operator employed by the Wyoming County Board of Education, complains that he was not called to substitute for an absent driver when it was his turn on a rotating basis to be called. Another driver was called ahead of him. The grievant complains that this caused him to lose wages and was a violation of WV Code §18A-4-15.

The parties entered into the following stipulation of the facts on the record at the level four hearing:

- (1) Gilbert Dodson and Stewart King are employed as substitute bus operators by the Board of Education of the County of Wyoming.
- (2) At the time of the grievance, they were the only two substitute bus operators in their particular area.
- (3) Mr. Stewart King informed the administration that he would be unable to work on December 15, 1986, as he had to go to Court.
- (4) Stewart King was not available on December 15, 1986, therefore, Mr. Gilbert Dodson was called to drive that particular day.
- (5) Both Stewart King and Gilbert Dodson drove on December 17, 1986.
- (6) Mr. Enoch Cook became absent on December 19 and Mr. Gilbert Dodson was called in to drive for him on that particular day.

In pertinent part, WV Code §18A-4-15 provides:

Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he began his assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b [§18A-4-8b] of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments; Provided, that if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position

of an absent employee shall be given the opportunity to hold that position throughout such absence.

Thus, it is apparent that since there were only two substitutes and Mr. Dodson was called out December 17, 1986, that on December 19, 1986 it was Mr. King's turn to be called pursuant to WV Code §18A-4-15.

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

FINDINGS OF FACT

1. The grievant, Stewart W. King, is a substitute bus operator employed by the Wyoming County Board of Education.
2. At the time of the grievance, they (Stewart King and Gilbert Dodson) were the only two substitute bus operators in their particular area.
3. Stewart King informed the administration that he would be unable to work on December 15, 1986, as he had to go to Court.
4. Stewart King was not available on December 15, 1986, therefore, Gilbert Dodson was called to drive that particular day.
5. Both Stewart King and Gilbert Dodson drove on December 17, 1986.
6. Mr. Enoch Cook became absent on December 19, 1986 and Gilbert Dodson was called on to drive for him on that particular day.
7. The grievant was next in order and should have been called instead of Mr. Dodson.

8. The grievant offered no proof as to the length of time Enoch Cook was ill or how many days of work the grievant missed as a result of the failure of the respondent board to properly call out the grievant.

CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-4-15, all substitutes shall be employed on a rotating basis beginning with the employee having the most seniority.

2. The grievant has proven by a preponderance of the evidence that he was denied his turn of employment on December 19, 1986, as a result of the respondent's failure to follow the procedure set forth in WV Code §18A-4-15.

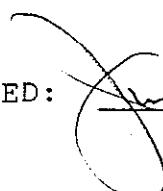
Accordingly, the grievance is GRANTED and the Wyoming County Board of Education is directed to pay the grievant his loss of pay resulting from the failure to employ the grievant on December 19, 1986.

Either party may appeal this decision to the Circuit Court of Wyoming 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:



June 12, 1987