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KAREN MAY

v.

Docket No. 29-87-029-4

MINGO COUNTY BOARD OF EDUCATION

DECISION

Grievant, Karen May, is employed by the Mingo County Board of Education as a substitute secretary in the Dingess, Kermit and Lenore areas. On November 21, 1986, she filed a grievance alleging that the principal at Lenore Grade School violated W.Va. Code, 18A-4-15 in failing to call in a substitute secretary during the period of October 27 through 31, 1986, when his regular secretary was absent from work. An evidentiary hearing was conducted at level two on December 17, 1986, and the school board waived consideration on January 30, 1987. The instant appeal to the Education Employees Grievance Board was filed on February 9, 1987.¹

¹ Initially, this grievance had been set for hearing on February 23, 1987, by the hearing examiner in Beckley and the hearing was continued on motion of counsel for the grievant until March 5, 1987. The parties waived an evidentiary hearing at level four and submitted the grievance to the hearing examiner on the record made at level two, referred to herein as (T.____).

The evidence of the grievant is that Mrs. Baisden, the regular secretary to Mr. John Preece, principal of Lenore Grade School, was absent from her work from October 27 - 31, 1986, and Mr. Preece did not call a substitute secretary to work and thereby deprived grievant of the pay for that period.² Grievant states that upon learning of this she and Barbara Klein had a discussion with Mr. Preece on November 10, at which time he advised them that he had been under the impression originally that Mrs. Baisden would be absent a maximum of two days and this was the reason he did not call a substitute secretary. (T. 2).

More specifically, Mr. Preece testified that Mrs. Baisden had called his home on Saturday and informed Mrs. Preece that she would be absent Monday and perhaps Tuesday due to an illness in her family. Mr. Preece did not learn of this until late Sunday night when he returned from a trip. Accordingly, he went to school Monday assuming Mrs. Baisden would be absent that day and perhaps Tuesday. On Tuesday he was informed by a teacher at the school that the condition of Mrs. Baisden's sister had not improved but that Mrs. Baisden would most probably return Tuesday night anyway. On Wednesday, however, Mr. Preece was informed that Mrs. Baisden's sister had undergone emergency surgery in a clinic in Columbus

² A written stipulation entered into on March 13, 1987, between John Preece and John Fullen, director of personnel, and John Everett Roush, counsel for grievant, notes that Mr. Preece has a list of thirteen substitute secretaries from which a substitute secretary is to be called and that grievant would have been the eighth person who would have been called to substitute for Mrs. Baisden in this situation.

Accordingly, there is no evidence that grievant would have received the substitute assignment and this would appear to raise a question as to her right to the pay.

and that Mrs. Baisden had returned to be with her. (T. 3). On Wednesday evening Mr. Preece talked with Mrs. Baisden's husband and he had not talked with his wife; on Thursday Mr. Preece was informed that Mrs. Baisden most probably would not return to work until Monday (T. 4).

Mr. Preece stated that had he known that Mrs. Baisden was to be absent for that length of time he would have called a substitute secretary from the substitute list (T. 5). He noted, however, that experience had demonstrated that over a short period it was easier for him to be without the services of a secretary than to attempt to train someone and he preferred to do the work himself (T. 4,5,7).³ His understanding of the law was that it is in the discretion of the principal of each school to determine if a substitute is to be called and if the absence of the employee does not interfere with the education process of that school it is not mandatory that a substitute be called (T. 6). However, he stated that had he known initially that the absence would be for five days he would have called a substitute (T. 8).⁴

³ Mr. Preece stated that a Mrs. Chafin came in and assisted him a part of two days as a volunteer as grievant had done on a previous occasion prior to becoming a substitute secretary. (T. 4). He added that Mrs. Chafin did not perform secretary duties as such but primarily answered the telephone. (T. 5).

⁴ He had been the first principal responsible for the hiring of substitute secretaries in Mingo County and testified that he had no intent to deny substitutes work; that this had been a "day to day thing" and he did not know that it would be of that duration.

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 by the Mingo County Board of Education as a substitute secretary in the Dingess, Kermit and Lenore areas. At Lenore Grade School the principal, John Preece, has a list of thirteen substitute secretaries and grievant is the eighth substitute secretary on that list to be called in the event a substitute is required.

2. Late in the evening on October 26, 1986, Mr. Preece learned that his regular secretary at Lenore Grade School, Mrs. Baisden, would be absent Monday and possibly Tuesday, October 27 and 28, due to the illness of Mrs. Baisden's sister. Mr. Preece did not call a substitute secretary to perform the duties of Mrs. Baisden for these days.

3. On Wednesday, October 29, Mr. Preece was informed that medical complications had required Mrs. Baisden's sister to undergo emergency surgery in Ohio and Mrs. Baisden had returned to be with her sister. That evening Mr. Preece talked with Mrs. Baisden's husband but was unable to learn when Mrs. Baisden would return.

4. On Thursday, October 30, Mr. Preece was informed that Mrs. Baisden most probably would not return to work until the following Monday. Throughout this period Mr. Preece had not called in a substitute secretary but did have the services of a volunteer, Mrs. Susie Chafin, for a portion of two days. Mrs. Chafin did not perform secretarial duties, as such, but primarily answered the telephone.

5. Mr. Preece had learned from experience that it was easier for him to be without the services of a secretary for a short period of time because it was too time consuming to train a substitute; that in the short run he preferred to do the essential work himself. However, had he known originally that Mrs. Baisden would be absent for five days he would have called in a substitute secretary from the substitute list. There is no evidence that Mr. Preece wrongfully intended to deprive a substitute secretary of legitimate work or that he acted arbitrarily or capriciously.

6. Grievant contends that Mr. Preece violated pertinent provisions of W.Va. Code, 18A-4-15 and that she is entitled to the compensation which should have been paid to a substitute.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-15 provides, in pertinent part, that the county board shall employ and the county superintendent shall assign substitute service personnel on the basis of seniority to:

- (a.) Fill the temporary absence of another service employee, or,
- (b.) Perform the service of a service employee who is authorized to be absent from duties without loss of pay.

This section is mandatory and must be strictly construed in favor of the employees.

2. Grievant has failed to prove as a matter of law, that she would have been employed as the substitute secretary to work in the absence of the regular secretary. Norman Lilly and Carl Moten v. Fayette County Board of Education, Docket No. 10-86-251-4.

Accordingly, the grievance is granted in part and denied in part; granted as to the necessity for calling a substitute secretary in situations involving five day absences and denied as to the grievant's claim for a monetary award.

Either party may appeal this decision to the Circuit Court of Kanawha County or Mingo 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, reading "Leo Catsonis", written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: May 22, 1987