



Final

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

CARL MOTEN

v.

DOCKET NO: 10-86-303-4

FAYETTE COUNTY BOARD OF EDUCATION

DECISION

This matter comes before the West Virginia Education Employees Grievance Board on appeal from a decision at level three by the Fayette County Board of Education which affirmed the decision of the level two grievance evaluator.¹ A level four evidentiary hearing was held before John M. Richardson, Hearing Examiner, on November 20, 1986, wherein grievant appeared in person and by his counsel, John E. Roush. The respondent appeared by its Director of Services, Wayne A. Wriston, and by counsel, Erwin Conrad. Thereafter, the parties filed proposed findings of fact and conclusions of law on December 2, 1986, which were considered in arriving at this decision.

¹While a request for appeal was filed with this board and acknowledged in December 1985, the record was not submitted until October 21, 1986, at which time it was assigned to this Hearing Examiner for disposition.

The grievant, Carl Moten, a regularly employed bus operator, complains that due to illness/surgery, he was unable to report for work at the beginning of the summer employment term and was denied sick leave benefits for those days missed in violation of WV Code §18A-4-10.

The respondent, the Fayette County Board of Education, maintains that upon learning of grievant's impending surgery, the grievant was notified that his employment would not begin that summer until he presented a doctor's statement indicating he was able to return to work. Therefore, the grievant was not entitled to sick leave benefits prior to the effective date of his employment.

For the most part, the facts in this case are uncontested and the basic issue deals with the application of WV Code §18A-4-10. In light of this, the record reflects that prior to the end of the 1984-85 regular school term, the grievant developed tendonitis requiring that he miss work from May until the end of the school term on June 13, 1985.² During this period of time, three significant things happened. The first was that the grievant applied for summer employment which began on June 24, 1985; secondly, the grievant learned in early June that his tendonitis would require surgery; and thirdly, the grievant informed Wayne Wriston, Director of Services, who by letter dated June 7, 1985, informed the grievant that his employment would begin when his doctor released him and he was able

²Actually, the grievant was unable to work until July 8, 1985, but according to WV Code §18A-4-10, his sick leave benefits ceased at the end of his employment term (June 13, 1985).

to return to work.

The record further reveals that the summer work began on June 24, 1985 and that the grievant reported to work on July 8, 1985. The grievant seeks sick leave benefits for the ten days of summer work he missed due to illness.³

Specific facts of the job posting requirements of WV Code §18A-4-8b(b) were not introduced into evidence but the facts are uncontroverted that the grievant did file a written bid and that the job (grass crew foreman) commenced on June 24, 1985.

WV Code §18A-4-10, in pertinent part, provides:

At the beginning of the employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be transferable within the state. A change in job assignment during the school year shall in no way affect the employee's rights or benefits.

. . .Where the cause for leave had its origin prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. . .

The respondent does not contest that had the grievant begun his employment then he would be entitled to sick leave; however, the respondent steadfastly maintains that no such benefits are available until after the grievant started to work.

³The grievant had accrued over 100 sick days leave during his 19 years of employment and this was acknowledged by the respondent.

This position is simply not maintainable in the face of the clear language of WV Code §18A-4-10, supra. The fact that Mr. Wriston issued a letter stating that grievant's employment would not begin until he reported for work carries little weight because that letter did not originate until after the bidding for the job occurred and after the grievant reported to Mr. Wriston his impending surgery.⁴

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

FINDINGS OF FACT

1. The grievant, Carl Moten, is regularly employed by respondent, the Fayette County Board of Education, as a 200 day bus operator.
2. Prior to June 1, 1985, the grievant bid on a foreman's position for the summer grass crew, which crew began its summer work on June 24, 1985.
3. The grievant developed tendonitis and was off work during the regular school term from May until June 13, 1985.
4. The grievant, during his 19 years of employment with respondent, had accumulated over 100 days of personal/sick leave.
5. The grievant applied for summer employment in May, 1985 which was to begin on June 24, 1985. The grievant was the successful applicant for the job.

⁴While the record is silent as to the contents of the job posting, it is clear that WV Code §18A-4-8b(b) requires that the period of employment be set forth. Thus, the period of employment was established when the grievant applied for the job and not thereafter when Mr. Wriston prepared his letter.

6. The grievant learned that he was going to need surgery which would prevent him from reporting to work on June 24, 1985, and he reported this to Wayne Wriston, Director of Services.

7. Wayne Wriston, upon learning of grievant's impending surgery, wrote the grievant a letter on June 7, 1985. This letter indicated that the grievant would be employed for summer work when he was released from his doctor's care and was able to work.

8. The grievant reported for work after being released by his doctor on July 8, 1985.

9. The grievant seeks sick leave credit/payment for the ten days work he missed between June 24, 1985 and July 8, 1985.

10. Grievant, except for his illness, would have begun work with his summer crew on June 24, 1985 which was the beginning of the employment term.

CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-4-10, where the cause for leave had its origin prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term.

2. The West Virginia Supreme Court of Appeals has, since the case of Morgan v. Pizzino, 256 S.E.2d 592, (W.Va. 1979), required that school personnel regulations and laws be strictly construed in favor of the employee.

For all of the foregoing reasons, the grievance is granted.

The Fayette County Board of Education is **ORDERED** to pay the grievant for the ten days for which he has not been paid, withholding therefrom those lawful deductions and, in addition, the Board shall reduce his accumulated sick leave by ten days.

Either party may appeal this decision to the Circuit Court of Fayette County or 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.



Handwritten signature of John M. Richardson, which is a stylized cursive script.

JOHN M. RICHARDSON
Hearing Examiner

DATED:

Jan. 7, 1987