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PAUL NELSON

v.

DOCKET NO. 24-87-305-2

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievant, Paul Nelson, has been employed by the Marion County Board of Education as a bus operator for eight years. Mr. Nelson filed a level one grievance on October 21, 1987 in which he alleged violations of the West Virginia School Transportation Regulations and W.Va. Code, 18-29-3(m) as a result of the board requiring that his blood pressure be monitored weekly for a period of three months. The grievance was denied at levels one and two, waived at level three and appealed to level four on November 19, 1987. Grievant's representative requested that a decision be based upon the record with proposed findings and conclusions received on November 30. The board declined to submit any further written documentation.

The grievant failed a physical examination on September 1, 1987 when his blood pressure readings were above the acceptable level. At that time he was relieved of his duties until three consecutive acceptable readings were attained. The grievant was permitted to return to work on October 9, 1987 after readings taken on September 18 and 25 and October 2 were within the guidelines established by the "Transportation Regulations". By memorandum dated October 15 Assistant Superintendent Dennis Edge directed the grievant to report to the county health department every Friday for a weekly monitoring of his blood pressure for a period of three months (October through December).

The grievant argues that the prolonged monitoring exceeds the authority of the board as his blood pressure has not been persistently above the acceptable level and the regulations provide only for another examination not seventeen examinations.

In support of his argument that he has been treated in a discriminatory manner the grievant offered the testimony of another operator who had also failed a physical examination due to high blood pressure. The witness testified that after bringing his blood pressure under control he returned to work with no further testing being required.

The board asserts that the grievant had failed a mid-year examination in March, 1987 due to unacceptable blood pressure readings and that following the recurrence of the problem in October, Paul Stewart, State Director of School Transportation, recommended the weekly monitoring and requested copies of the results. The board cites the "School Transportation Regulations" in support of the action which it argues to be necessary for the health and safety of the students and the grievant.

In addition to the foregoing the following shall serve as specific findings of facts and conclusions of law.

Findings of Fact

1. The grievant has been employed by the Marion County Board of Education as a bus operator for eight years. He is fifty-five years old and has failed two physical examinations within six months due to blood pressure readings above the acceptable level set forth in the "West Virginia School Transportation Regulations".

2. Following the unacceptable blood pressure reading in September the grievant was relieved of his duties until three consecutive acceptable readings (maximum of one per week) were attained.

3. By letter dated October 27 to the Superintendent of

the Transportation Department, Paul Stewart, the State Director of School Transportation, recommended that the grievant's blood pressure be monitored weekly for at least three months with the results to be submitted to his office. Mr. Stewart based this decision on the fact that the grievant had previously experienced trouble with high blood pressure which would warrant a closer observation than would otherwise be necessary for the benefit of the grievant's health and retaining his certification as a bus operator as well as insuring safe school transportation.

4. Another bus operator employed by the board testified that he had failed a physical examination due to high blood pressure readings and was reinstated to his duties with no additional monitoring after three consecutive tests were acceptable. The witness did not indicate that he had previously failed examinations and it appears to have been a one time occurrence.

Conclusions of Law

1. W.Va. Code, 17C-14-12 provides that the West Virginia Board of Education, by and with the advice of the Motor Vehicles Commissioner, shall adopt and enforce regulations to govern the design and operation of all school buses used for the transportation of school children. Lucas v. Berkeley County Board of Education, Docket No. 02-87-069-2; Cecil Casto v. Jackson County Board of Education, Docket No. 18-87-057.

2. In compliance with W.Va. Code, 17C-14-12 the West Virginia Department of Education has developed the "School Transportation Regulations" which govern the certification of bus operators employed by county boards of education.

3. The three month monitoring of a bus operator's blood pressure which has exceeded the maximum level established by regulations twice within a period of six months is permitted by the "West Virginia School Transportation Regulations" as it is necessary to determine the individual's continued eligibility for employment as a bus operator.

4. The grievant has failed to show that he has been treated differently than any other bus operator who has been diagnosed as exceeding the maximum permitted blood pressure levels on consecutive examinations.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marion County and such appeal must be filed within thirty (30) 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.

DATED

December 22, 1987

Sue Keller

SUE KELLER

Hearing Examiner