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**RICHARD O'CONNOR and
JAMES ROBINSON**

v.

**Docket Nos. 24-86-202-2
24-86-203-2**

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievants, Richard O'Connor and James Robinson, are employed as bus operators by the Marion County Board of Education. On November 1, 1985 they filed a grievance alleging the improper posting and assignment of extracurricular trips in violation of W. Va. Code, 18A-4-8b, State Board of Education Policy No. 5300 and Marion County Board of Education Policy 5.3. The grievance was denied at levels one through three and both parties agreed that the matter could be submitted to level four for a decision based on the record to be supplemented with oral closing statements, which were heard on February 16, 1987.

The grievance involved two extracurricular trips scheduled in October, 1985. The first trip was a split trip to Camp

Mountaineer on October 2, 1985. A split trip is one in which the students are transported to their destination with the driver returning to his assigned area until such time that he returns to transport the children back to school. Grievant Robinson, ranked second in seniority, was awarded one of the two assignments for this trip but rejected the offer. Grievant O'Connor ranked fourth in seniority, states that he was not contacted regarding this trip. The assignments were ultimately accepted by Ms. Zandera Jewell, ranked thirty-eighth and Mr. Brazz Evans ranked fifty-sixth. Due to a change in circumstances Ms. Jewell's assignment was later cancelled.

The second trip was to the Football Hall of Fame in Canton, Ohio. This trip was scheduled on a Sunday and lasted approximately thirteen hours. Grievant Robinson indicated that he was not interested in this assignment based on his understanding that his refusal of the Camp Mountaineer trip made him ineligible for the Ohio trip. Grievant O'Connor submitted a bid slip two and one-half days after the deadline because he had not seen the assignment memorandum posted in the garage. The Ohio assignments were awarded to Ms. Jewell, to compensate for the cancellation of the Camp Mountaineer trip, and to Mr. Fred Park, the employee immediately following Mr. Evans on the seniority list.

Grievant Robinson alleges that both trips should have been posted simultaneously, allowing him the opportunity to choose the one he wanted. He also argues that Ms. Jewell should not have been given the Ohio trip as it was not equivalent to the five hour trip to Camp Mountaineer. Both grievants indicate that the procedure used to assign extracurricular trips to be in statutory and state/county policy violations. Both state that they would have accepted the Ohio assignment and request the compensation which they would have received for that trip.

Carl Carpenter, Transportation Director, testified that extracurricular assignments are generally posted in the form of a memorandum which is placed in the garage but when trips are scheduled with little advance notice the bus operators are contacted by telephone.¹ Extracurricular assignments are made in rotation and according to seniority. Mr. Carpenter testified that the two trips were not posted simultaneously as he did not receive the Ohio request until after the Camp Mountaineer assignments had been made. The Ohio trip was assigned to Mr.

¹Mr. Carpenter indicated that he and his assistant attempted to contact each employee three times before going to the next name on the list.

Fred Park, who followed Mr. Evans on the seniority list and was therefore the next driver in rotation and Ms. Jewell because at that time Mr. Carpenter understood the Ohio trip to be comparable to the Camp Mountaineer trip and was unaware that it was to be a split trip. (T. Level II p.29).

In addition to the foregoing, the following specific findings of fact are appropriate.

Findings of Fact

1. Grievant Richard O'Connor has been employed as a bus operator by the Marion County Board of Education since October, 1956. Grievant James Robinson has been employed as a bus operator by the board since September, 1962.

2. Grievant Robinson refused an extracurricular assignment to Camp Mountaineer in early October, 1985. Grievant O'Connor states that he was not contacted regarding that trip.

3. Transportation Director Carl Carpenter testified that he received little notice for the Camp Mountaineer trip and that the the drivers were contacted by telephone. His staff attempted three times to contact each driver before the next employee was contacted.

4. The next trip was scheduled for October 20, 1985 to Canton, Ohio and was assigned to the employee who was next on the seniority rotation list and to the employee whose assignment to the Camp Mountaineer trip had been cancelled.

5. Grievant Robinson returned the assignment memorandum indicating that he was not interested in the trip. Mr. Robinson indicated at the level two hearing that his response had been based on his ineligibility for the assignment following his refusal of the preceding trip.

6. Grievant O'Connor indicated that he was interested in the position but submitted the memorandum two and one-half days after the due date of return. Mr. O'Connor explains the late submission was due to the fact that he went into the garage only when he needed mechanical work done and therefore he had not seen the posting.

7. Director Carpenter testified that the Ohio trip was given as a substitute to the employee assigned to the cancelled Camp Mountaineer trip based on his understanding at that time that the trips were comparable.

8. The Ohio trip was thirteen hours in duration while the Camp Mountaineer trip required only five hours.

9. The travel request for the Ohio trip was received after the Camp Mountaineer assignments had been made; therefore simultaneous posting was impossible.

10. Even had the Ohio trip not been assigned to the employee bumped from the previous assignment, fourteen drivers on the rotation seniority list would have been contacted before Mr. O'Connor could have been offered the assignment.

Conclusions of Law

1. W. Va. Code, 18A-4-8b requires that extra duty assignments be made on the basis of seniority and in rotating order.

2. W. Va. State Board of Education Policy No. 5300 (7) requires that all official and enforceable personnel policies must be written and made available to all employees.

3. Marion County Board of Education Policy 5.3 "Extra-Duty Bus Assignments" provides that when an extra-duty trip is cancelled the employee shall be given a comparable (if possible) replacement assignment as quickly as possible.

4. Grievants have failed to show any violation of statute, state or county policy by the board of education in making the extracurricular assignments.

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: March 24, 1987

Sue Keller

SUE KELLER
Hearing Examiner