



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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WANDA SCARBERRY

v

Docket No. 26-86-291-1

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Wanda Scarberry, is employed by the Mason County Board of Education as a substitute teacher's aide. On September 12, 1986, she filed a grievance alleging a violation of W.Va. Code, 18A-4-15 because the board of education selected another employee to continue in a substitute position for a regular aide who was off work ill. A level two hearing was conducted on September 29, 1986, and the decision was appealed to level four on October 16, 1986. On October 28, 1986, counsel for the board of education requested to submit the grievance to the hearing examiner on the record of the level two hearing and counsel for the grievant joined in the request on March 17, 1987.¹

¹ It is noted that the record of this grievance is incomplete in that a written decision containing findings of fact and conclusions of law is not included; but for the disposition of this grievance on the untimeliness issue the grievance would be remanded for compliance with W.Va. Code, 18-29-6. Mooney v. Marshall University, Docket No. 06-86-150-1. Cf. Cline v. Mingo County Board of Education, Docket No. 29-86-287-4.

Grievant has been employed as a substitute teacher's aide since the fall of 1982 and during the 1984-85 school year was called to substitute for Vivian Boston, a regular teacher's aide at Hartford School. Ms. Boston had become ill in November, 1984, and the extent of her illness or the time required to be off work was apparently unknown at that time. (T. 49).² In fact, at the time of the grievance Ms. Boston had not returned to work.

Sometime in 1985 Linda Austin, a teacher's aide, was called in to substitute for Ms. Boston and apparently continued to work that position during the 1985-86 school year. Ms. Austin was a full time aide and had been laid off (RIF) from her position at Hannan School at the end of the 1984-85 school year; she was the most senior RIF employee on the staff and had been placed on a preferred recall list. (T. 12, 49).

Counsel for the grievant contends that W.Va. Code, 18A-4-15 requires that once a substitute is assigned to a position the substitute retains it until the regular employee returns to work or until the position is posted. (T. 5, 55).

² Grievant testified that she worked twelve days at the beginning of the 1985 school year but was not sure of the dates. (T. 9,10). She stopped substituting on June 11, 1985. (T. 25).

The dates referred to in the transcript are not consistent with the testimony and renders a chronological recitation difficult, if not impossible.

The position of the board of education is that the grievance was not timely filed³ and that the board acted in good faith in giving the RIF employee preferential treatment as required by W.Va. Code, 18A-4-8b. (T. 6,59).⁴

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 Mason County Board of Education as a substitute teacher's aide.

2. In November, 1984, grievant was called in to substitute for an employee who had become ill. It is not clear how many days grievant worked in the 1984-85 school year but the evidence suggests twelve days. Apparently, grievant stopped substituting on June 11, 1985. (T. 25).

³ Grievant's response to the timeliness issue was that she was not aware that she should have had the job until she began talking with people, (T. 35), or that she was convinced initially the board had acted properly but changed her opinion. (T. 57). The board contends that the grievance was untimely under either of grievant's contentions. (T. 59).

⁴ The pertinent provision of W.Va. Code, 18A-4-8b, relied upon by the board, is that:

No position openings may be filled by the county board, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

3. Sometime in 1985 the board of education called Linda Austin to substitute for Ms. Boston. Ms. Austin was the most senior RIF'd teacher's aide on the staff and had been placed on a preferred recall list in accordance with W.Va. Code, 18A-4-8b.

4. Grievant filed a grievance on September 12, 1986, alleging a violation of W.Va. Code, 18A-4-15. Grievant contends that she did not file a grievance in 1985 or 1986 because she believed the board had been correct; that she later came to believe that the board of education had been in error. The board of education contends the grievance was untimely filed.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-29-4(a)(1) provides that before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

2. W.Va. Code, 18-29-3(a) provides that a grievance must be filed within the times specified in section 4, above, and shall be processed as rapidly as possible. Evelyn Burton v. Boone County Board of Education, Docket No. 03-86-098.

3. It is incumbent upon an employee to timely pursue their rights through the grievance process and when timeliness is questioned to demonstrate the reason for the delay and/or the applicability of W.Va. Code, 18-29-4(a)(1). Joseph Badgley v. Parkersburg Community College, Docket No. 54-86-064; Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1.

4. The grievance was not timely filed as a matter of law.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Mason 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", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: March 26, 1987