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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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JAMES SIZEMORE

v.

Docket No. 41-86-340-4

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a written decision at level three and a hearing and decision at level two.

A level four hearing was held on January 15, 1987, and the grievance was submitted for decision following the filing of proposed findings of fact and conclusions of law.

The grievant, James Sizemore, complains that he was wrongfully denied summer employment for the summer of 1984, 1985 and 1986. He seeks back wages for the summer of 1986.

The evidence reveals that grievant is a Custodian III employed by the Raleigh County Board of Education and assigned to Park Junior High School. He became regularly employed on a full time basis as a custodian on August 30, 1982.

The grievant alleged that he first applied for a summer painter's position for the summer of 1984. He was not hired.¹ In August of 1984, after the beginning of the regular school term the grievant learned that Silas Tedder had been hired as a painter during the 1984 summer.² At that time the grievant knew that he had greater seniority as a regular full time custodian than Mr. Tedder but did not file a grievance concerning the summer employment.

The grievant also applied for a summer painter's position in 1985 and 1986. He was not hired but Mr. Tedder was employed each of these summers.

Grievant contends that he is the more senior full time employee and that respondent's hiring of Mr. Tedder is a violation of W.Va. Code, 18A-4-8b(b).

The respondent denies that it violated W.Va. Code, 18A-4-8b(b) and asserts that Mr. Tedder had the greater "summer" seniority by having worked as a painter for three summers.

¹ The respondent board denies that grievant made such an application because they had no record and that had he applied the summer of 1984 he would have been hired.

² Silas Tedder was a substitute custodian until after the summer work in 1984. Mr. Tedder did not become a regular, full time custodian until August 30, 1984.

Pursuant to W.Va. Code, 18A-4-8b(b) this board has held in Adkins v. Logan County Board of Education, Docket No. 23-86-024 that an employee's seniority begins on the date that he enters into his assigned duties; that seniority shall be determined on the basis of the length of time the employee has been employed within a particular job classification.

Thus, it appears that Mr. Tedder held the classification of painter and was qualified whereas the grievant had never met those qualifications. In Adkins, supra, this board also held pursuant to W.Va. Code, 18A-48b(b) that, qualification shall mean that the applicant holds a classification title in the category of employment and must be given first opportunity for promotion and filling vacancies.

In the present grievance it is uncontested that the grievant has never worked for the respondent in any classification other than as a custodian. Admittedly, Mr. Tedder has less custodial seniority but has accumulated three summers of seniority in the classification of a painter.

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

FINDINGS OF FACT

1. The grievant, James Sizemore, is a Custodian III, employed by the Raleigh County Board of Education and assigned to Park Junior High School. The grievant has been regularly employed since August 30, 1982.

2. The grievant as a regularly employed full time employee applied for a summer painter's position with the Raleigh County Board of Education for the summer of 1984. He was not hired.

3. The grievant learned in August 1984 that Silas Tedder, a substitute custodian, had been hired as a summer painter for the summer of 1984. The grievant did not file a grievance at that time.

4. The grievant applied for a painter's position for the summers of 1985 and 1986. The grievant was not hired either summer while Silas Tedder was hired on both occasions. The grievant did not file a grievance until July 10, 1986.

5. Silas Tedder became a regularly employed full time custodian for the Raleigh County Board of Education on August 30, 1984.

6. Silas Tedder was qualified as a painter and held that classification for the summers of 1984, 1985 and 1986.

7. The grievant never held the classification of painter.

CONCLUSIONS OF LAW

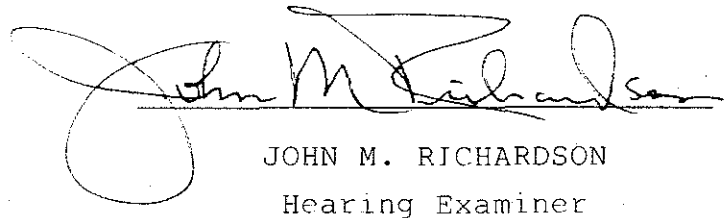
1. Insofar as the grievant asserts that he was wrongfully denied a summer painter's position for the summer of 1984 and 1985 those assertions are untimely pursuant to W.Va. Code, 18-29-4(a)(1).

2. Pursuant to W.Va. Code, 18A-4-8b(b) an employee's seniority begins on the date that he enters into his assigned duties and seniority shall be determined on the basis of the length of time the employee has been employed within a particular job classification. Adkins v. Logan County Board of Education, Docket No. 23-86-024.

3. Pursuant to W.Va. Code, 18A-4-8b(b) qualifications shall mean that the applicant holds a classification title in the category of employment and must be given first opportunity for promotion and filling of vacancies. Adkins v. Logan County Board of Education, Docket No. 23-86-024.

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

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



JOHN M. RICHARDSON
Hearing Examiner

Dated: May 22, 1987