



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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ROGER TAYLOR

v.

Docket No. 20-87-015-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Roger Taylor, is employed by Kanawha County Schools as a school bus operator assigned to the St. Albans terminal. In October 1986 he filed a grievance alleging that he was being required to perform overtime work without compensation in violation of W.Va. Code, 21-5C-3. A level two hearing was conducted on December 16, 1986, and the grievance appealed to the Education Employees Grievance Board. A hearing at level four was conducted on June 24, 1987.¹

¹ Originally counsel for the grievant requested an evidentiary hearing at level four but it was thereafter agreed that the grievance would be submitted on the transcript of evidence of the level two hearing, additional documentary evidence and the legal memoranda of the parties. References to the transcript will be designated as (T.__).

Grievant has been operating a school bus out of the St. Albans terminal for seventeen years and commences his run at 5:50 a.m. and returns to the garage at 8:50 a.m. (T. 9, 10). On the afternoon run he departs the terminal at 2:05 p.m. and returns about 4:30 p.m. (T. 11). On Monday and Friday grievant has kindergarten runs which require approximately one hour fifty minutes per day (T. 10). In addition, grievant is allotted two hours per day, i.e., thirty minutes to clean the bus, two pretrip inspections for a total of thirty minutes, two fifteen minute breaks and a lunch break (T. 13, 14). Accordingly, grievant calculated that he worked one hour and twenty minutes a week over the prescribed forty hour week (T. 15).

On September 4 he informed Syble Anderson, terminal supervisor at St. Albans, of his overtime calculations and again on October 10, 1986 (T. 29). Ms. Anderson rode with grievant a couple of days and recorded the time, noting that grievant was driving 10 to 12 miles per hour under the speed limit. Upon inquiry, grievant informed Ms. Anderson that he was previously instructed not to exceed 35 mph (T. 18).

On October 15, 1986, grievant filed a grievance and George Beckett, director of transportation of Kanawha County Schools, instructed Ms. Anderson to have a substitute driver execute the run; on October 16 James Stone, a substitute operator, completed the entire run in four hours and fifty seven minutes (T. 31). On November 12 another substitute driver, Dennie Basham, drove the run and completed it in four hours, fifty six minutes.

On December 3 another substitute driver, Annie Eary, took the run and although she encountered an unusually heavy traffic jam at Cross Lanes, completed the run in five hours, five minutes. On December 12 another substitute driver, Gene Morrison, drove the run in four hours, fifty minutes; none of these drivers exceeded the speed limit or drove in an otherwise unsafe manner (T. 31-33). Accordingly, school officials calculated that instead of the board owing grievant overtime grievant owed the county one hour and ten minutes per week (T. 33).²

Counsel for grievant contends that grievant is driving the run at a speed he considers safe and this necessitates that he work over the forty hour time limit; that grievant is entitled to have the schedule altered so that it will not exceed the forty hours and to back overtime pay (T. 46, 47).³

² Mr. Beckett testified that about three years ago he had several complaints from parents about grievant's excessive speed and after investigating the complaints informed grievant that he expected him to maintain his bus in a safe manner; he denied, as testified by grievant, that he told grievant he "expected (him) to never go over 35 mph." (T. 41, 44). Beckett concluded that if every bus driver in the county was instructed to not exceed 35 mph there would be a serious overtime problem.

³ In the grievance of Nellie Mullins v. Kanawha County Board of Education, Docket No. 20-86-352-1, an identical situation was presented and test runs were used as an objective tool in evaluating the length of the run.

Counsel for the school board contends that grievant is attempting to manipulate the facts to arrive at an overtime figure; that the run does not require the time indicated by grievant and if he is driving overtime it is an intentional act on grievant's part (T. 48, 49).

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 Kanawha County Board of Education as a school bus operator assigned to the St. Albans terminal.

2. Grievant alleges that his school bus runs require that he work in excess of forty hours per week based, in part, on a directive he received from his superiors that he not exceed 35 mph in the operation of his school bus.

3. Grievant's supervisor, Syble Anderson, rode on grievant's bus on two occasions and observed that he consistently operated the bus 10 to 12 mph below the speed limit. Four substitute bus operators drove the grievant's run and three drivers completed the run in less than five hours; the other driver encountered an unusually severe traffic jam in Cross Lanes but completed the run in five hours and five minutes.

4. Grievant was not directed to operate his school bus to not exceed 35 mph but to operate his bus in a safe manner and not exceed the posted speed limit. The level two grievance evaluator found as a fact that grievant was intentionally taking more time than was reasonably required to execute his runs.

CONCLUSIONS OF LAW

1. It is incumbent upon the grievant to prove by a preponderance of the evidence that he/she is entitled to overtime pay as a result of underestimation of school bus runs. Nellie Mullins v. Kanawha County Board of Education, Docket No. 20-86-352-1.

2. Grievant has failed as a matter of law to prove the essential elements of the grievance.

Accordingly, the grievance is DENIED.

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



LEO CATSONIS

Chief Hearing Examiner

Dated: July 21, 1987