



Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

TRUMAN L. THOMPSON

v.

Docket No. 20-86-366-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Truman L. Thompson, is employed by the Kanawha County Board of Education as a school bus operator. His grievance alleged that he had been improperly denied a year of experience credit for salary purposes while he was off work due to an injury. Kanawha County Schools declined to conduct a level two hearing on the basis that the issue was controlled by State Board Policy 5610. Grievant appealed to the Education Employees Grievance Board and a de novo hearing was conducted on June 25, 1987.

Grievant has been employed as a school bus operator since 1977 and is assigned to the St. Albans bus garage. On January 6, 1986, he was injured when he slipped on ice and fell at the bus garage and was off work until November 1986. He applied for and received worker's compensation payments for that period for the injury; at the time of the injury he had twenty two days of

sick leave. Upon release by his physician he returned to work and was informed by the personnel office that he would not receive credit for the 1985-86 school year because he had worked or was paid for 111 days for the school year inclusive of the sick leave; that school policy required that he work or be paid for 133 days. The pay scale records indicated that had grievant received the additional year credit his salary for the 1986-87 school year would have increased \$204.00.¹

Luther Cope, director of personnel for Kanawha County Schools, testified that credit for experience is predicated upon 133 days of the school year for which an employee is paid; that Kanawha County Schools is bound by State Board Policy 5610, which provides, in pertinent part, that:

... for determining years of employment for pay purposes, each auxiliary and service employee shall be granted one year's employment credit for each year prior to July 1, 1973, in which he/she worked a minimum of 100 days and for each year subsequent to July 1, 1973, in which he/she worked a minimum of 133 days. (Employer's Exhibit 2).

¹ A 200 day service personnel employee in Kanawha County at step 8 of the salary scale for experience is \$13,564.00; at step 9 the annual rate of pay is \$13,768.00. (Grievant's Exhibit 2).

In an opinion dated May 22, 1984, upon which Kanawha County Schools relied, the State Superintendent concluded that:

... a school employee who is absent from work and is not on paid leave, but who is receiving worker's compensation, does not earn years of employment for pay increment purposes because he or she must either actually work or else be on paid leave of some sort or be on holiday in order to earn credit for incremental pay purposes. (Employer's Exhibit 1).²

Grievant's representative contends that the 133 day figure in Policy 5610 is arbitrary but that worker's compensation fund payments to the grievant should count toward fulfilling the 133 day requirement. Additionally, it is contended that W.Va. Code, 23-5A-1 provides that no employee shall be discriminated against in any manner because of receipt of worker's compensation payments and the policy is violative of that statute.

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

² The opinion noted that under these circumstances the employee could continue to earn seniority.

FINDINGS OF FACT

1. Grievant is employed as a 200 day school bus operator assigned to the St. Albans bus terminal.

2. On January 6, 1986, grievant was injured when he slipped on ice and fell at the bus garage and was off work until November 1986. At the time of the injury he had twenty two (22) days of sick leave. He applied for and received worker's compensation payments for the period he was off work.

3. Upon his return to work in November he was advised that he did not qualify for credit for incremental pay purposes because he had worked or had been paid for 111 days for the 1985-86 school year. This decision was based upon State Board of Education Policy 5610 and the opinion of the State Superintendent of Schools.

4. Grievant filed a grievance alleging that Policy 5610 was arbitrary and, as applied herein, violative of W.Va. Code, 23-5A-1, the antidiscrimination provisions of the Worker's Compensation Law.

5. Kanawha County School officials do not discriminate in the application of Policy 5610 as against worker compensation claimants and the 133 rule is applied uniformly regardless of the reason for the failure to perform the 133 work day requirement.

CONCLUSIONS OF LAW

1. An interpretation by the State Superintendent of Schools of State Board of Education Policy is considered as persuasive authority and will be applied unless clearly erroneous. Smith v. Logan County Board of Education, 341 S.E.2d 685 (W.Va. 1985); Billy A. Moore v. Fayette County Board of Education, Docket No. 10-86-137-1.

2. Grievant has failed to show that the opinion of the state superintendent is erroneous or to otherwise prove the 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 31, 1987