



**REPLY TO:**  
101 Harper Park Drive  
Suite D  
Beckley, WV 25801  
Telephone: 255-6155

**Members**  
James Paul Geary  
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

BALLARD KIRK

v.

DOCKET NO. 03-87-178

MCDOWELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Ballard Kirk, is employed by the McDowell County Board of Education as a regular bus driver assigned to the War area. The Board scheduled an extracurricular trip for Friday, March 13, 1987 and a bus driver was needed for 10:00 a.m. that morning. Mr. Kirk filed the present grievance when another bus driver was allowed the run, alleging he had verbally been promised the trip by a Mr. Russell Bolen, the chief bus driver in the War area. The grievance was denied at Level I and a Level II hearing was held on March 27, 1987, whereupon it was again denied and a Level IV evidentiary hearing was held November 17, 1987.<sup>1</sup>

---

<sup>1</sup>The record does not reflect whether a Level III appeal was made and it is assumed the Board waived participation at that level.

It should be noted the original Level IV hearing  
(footnote cont.)

The extracurricular trip in question was posted on a blackboard at least four days prior to March 13, 1987 in the War area bus garage in accordance with a policy adopted in that area in December 1984. The procedures in that policy were the result of a previous grievance filed by Mr. Kirk.<sup>2</sup> The policy allowed all bus drivers to sign a blackboard after the posting indicating their desire to take the trip. Drivers had to sign before 12:00 noon on the day before the trip to be eligible. The chief bus operator would then assign the most senior driver who had signed the blackboard to the trip on a rotating basis. The procedure provided that all bus drivers would eventually be afforded an opportunity to take such assignments.

---

(footnote cont.)

was scheduled for October 8, 1987 and was continued twice on the joint motion of the parties because of scheduling difficulties and a circuit court case required the presence of certain witnesses essential to the resolution of the grievance.

<sup>2</sup>The previous grievance was primarily concerned with a cut-off time for signing the blackboard as a driver with greater seniority had returned from sick leave late one day and signed the board thus bumping others who had signed up much sooner.

Grievant admits he did not sign up before the designated deadline but instead instructed his wife, another bus driver in the same area, to contact Mr. Bolen, the chief bus driver, the evening before the trip and inform him of his desire to make the run. She was told grievant could make the trip over the telephone by Mr. Bolen.<sup>3</sup> When he went to the garage the following morning and attempted to put his name on the board he was told he could not have the extra assignment since he had not signed the board according to policy. It was given to a Mr. Blevins, a driver with less seniority but next in line according to procedure.

Grievant admits he did not conform to a policy which was primarily adopted because of his own previous complaints and a formal grievance, but he contends this policy had been violated on two other occasions and therefore he shouldn't be held to its provisions.<sup>4</sup> He further argues that the policy required that the

---

<sup>3</sup> It was not contradicted that the phone conversation took place and grievant's wife was told he could make the trip, (T.\_\_), but it appears the chief bus driver was assuming grievant had signed the board.

Grievant also testified at the Level II and Level IV hearings he didn't know if he could make the trip because of automobile problems and Mr. Bolen testified at Level II that, in fact, grievant told other drivers on March 12, 1987 he would not sign up for the trip because of these problems.

<sup>4</sup> Grievant and his wife both testified at Level IV that neither filed grievances when these incidents occurred because they felt such action would be futile. (T.\_\_) Mr. Ball, Transportation Director, testified no such violations had ever been brought to his attention. (T.\_\_)

chief bus driver personally ask him if he wanted the extra trip and once he had refused another driver could be assigned.

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

#### FINDINGS OF FACT

1. Grievant, Ballard Kirk, is employed by the McDowell County Board of Education as a regular bus operator in the War area.

2. In 1984 Mr. Kirk filed a previous grievance and for the purpose of resolving that grievance a policy was initiated in the War area whereby bus operators would be notified of extra-curricular bus trips by a posting and the operators would in turn notify the chief bus operator of their desire to take the trip by signing their names to a blackboard located in the War area bus garage. According to this policy bus operators were required to sign the blackboard before 12:00 noon on the day preceding the extracurricular trip in order to be considered for assignment to said trip. (Joint Exhibit A)

3. Said policy provided that the bus operator would be assigned to the trip according to length of service followed by other employees on a rotating basis in a manner which would eventually afford all such employees an opportunity to perform

extracurricular assignments.

4. On or about March 9, 1987 there was a posting made in the War area bus garage of an extracurricular trip which would begin at 10:00 a.m. on March 13, 1987.

5. Grievant did not sign the blackboard indicating his desire to make the trip but instead directed his wife to telephone the chief bus operator on the evening of March 12, 1987 to indicate his desire to take the trip.

6. Grievant's wife was told by Mr. Bolen, chief bus operator, he could make the trip.

7. On the morning of March 13, 1987 grievant reported to the garage and attempted to sign the blackboard but was told by Mr. Bolen that he could not do so because he had not signed by 12:00 noon the previous day in accordance with policy and the trip was awarded to a Mr. Blevins, a bus operator with less seniority than grievant but next in line for such trips.

#### CONCLUSIONS OF LAW

1. The policy followed in the War area for the assignment of extracurricular trips to bus operators conforms to the provisions of W.Va. Code, 18A-4-8b(b) as it relates to such assignment of extra-duty assignments.

2. In accordance with said policy and W.Va. Code, 18A-4-8b(b), bus operators could be notified of the availability of extra-duty assignments by posting and the Board was under no obligation to personally inform any particular bus operator of such trips.

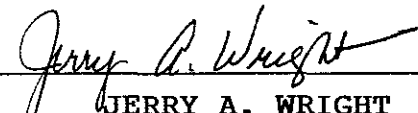
3. Grievant, in the present case, failed to follow said policy in that he did not sign his name to the blackboard indicating his desire for the March 13, 1987 trip.

4. A grievant must prove the elements of his grievance by a preponderance of the evidence. Gibson v. Logan County Board of Education, Docket No. 23-87-048-4; Wyatt v. Marshall University, Docket No. BOR2-87-044-1.

5. Grievant, in this case, failed to prove by a preponderance of the evidence that the McDowell County Board of Education has not consistently followed the extra-duty assignment policy or otherwise allowed bus operators to bypass or avoid the provisions thereof.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of McDowell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

  
JERRY A. WRIGHT  
Hearing Examiner

DATED: Feb. 3, 1988