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SANDRA PARSONS

v.

Docket No. 35-87-277-3

OHIO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Sandra Parsons, is regularly employed by the Ohio County Board of Education as a bus operator. On November 5, 1987 she filed a level four appeal alleging misapplication of statutes, rules and regulations because drivers with less seniority than she have been given supplemental driving runs to fill the six hour work day. The case was set for hearing on December 3, 1987 and January 27, 1988 but continued for cause shown. By letter dated January 25, 1988, grievant's counsel requested that matters be held in abeyance pending further research on the issues; the parties subsequently agreed to submit the matter for a decision on the record. Grievant's proposed findings of fact and conclusions of law were received July 7, and counsel for the board submitted proposals July 12, 1988.

On June 30, 1987 the Grievance Board issued two decisions involving the allocation of supplemental runs to Ohio County's bus operators, Moore v. Ohio County Board of Education, Docket No. 35-87-027-3 and Creighton v. Ohio County Board of Education, Docket No. 35-87-373-3. Basically, Moore determined that the county may no longer add or assign supplemental runs to an operator's regular driving schedule to fill the six hour work day as the county had established supplemental runs by contract and practice as separate assignments for extra pay. Creighton determined that supplemental runs must be offered to bus operators in order of descending seniority and grievant Creighton was in a preferred position over that of less senior drivers for a supplemental run in 1987-88 or successive school years. Although the Grievance Board had not received official notification that the Moore decision was appealed by the school board, grievant's spokesman conceded that an appeal to Circuit Court has in fact occurred and stated that he does not rely upon Moore in the instant grievance (T.13). However, the board concedes Creighton was not appealed to Circuit Court and grievant herein relies on Creighton and contends that the board refused to comply with the Creighton decision at the beginning of the 1987-88 school year when it did not give grievant one of the supplemental runs she characterizes as illegally held by two employees hired in

1982, Ernestine Redman and Floyd Black, who are less senior than she. She requests enforcement of Creighton and that she be given one of the supplemental runs held by either of those two employees and back wages to the beginning of the school year.¹

School officials maintain that the respondent has complied with the Creighton decision and specifically, "'Supplemental driving runs must be offered by the Ohio County Board of Education to its bus operators in order of descending seniority over less senior bus operators in the upcoming 1987-88 school year.'" It contends that three supplemental runs became available and vacant and were awarded to the three most senior bus operators in descending order and that the grievant herein was not high enough on the seniority list to receive a supplemental run "at this time." (T.9).²

¹ It must be noted that grievant Parsons and Mr. Randy Creighton filed separate level four grievance appeals at the same time. (They filed separate lower level grievances but the level two hearing was held simultaneously.) In the level four pleadings, Mr. Creighton specifically alleged the board did not honor the decision rendered in Creighton, supra. His later appeal, Creighton v. Ohio County Board of Education, Docket No. 35-87-280-3, was dismissed on the grounds that the Grievance Board lacks enforcement powers and a grievant's remedy for a board's non-compliance of an issued decision was through the courts via a mandamus action pursuant to W.Va. Code, 18-29-9.

² The status of the Moore, supra, decision and the purported appeal to Circuit Court by the school board remains uncertain since one of the three vacant supplemental runs was awarded to Jalletta Moore. Ms. Moore had grieved that employees less senior than she were given supplemental runs with resultant total driving time and compensation in excess of hers.

The board's counsel raises a timeliness issue in that the grievant herein had not at anytime previously protested the status of the two employees hired in 1982 who hold the supplemental runs. He further argues that the board cannot now take the supplemental driving runs from Redman or Black as it would violate their rights as per W.Va. Code, 18A-4-8(b) which guarantees service employees continuing employment in any position or jobs held prior to June 3, 1983, the date of the statutory amendment. Assigning grievant one of their supplemental runs, he urges, would be an unlawful retroactive impact upon existing employment.

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

FINDINGS OF FACT

1. Grievant is regularly employed by the board as a bus operator with a seniority date of 1979.

2. Ernestine Redman and Floyd Black were employed as bus operators in 1982. For several years they have each held a supplemental run which gives them more total driving hours and compensation than grievant herein.

3. Grievant did not formally protest this matter until 1987 following an uncontested decision by the Grievance Board that supplemental driving runs must be offered by the board to its bus operators in order of descending seniority.

4. For the 1987-88 school year, three supplemental bus runs became available and the transportation director posted a sign-up sheet for those interested in the supplemental runs. Three drivers more senior than grievant were awarded the vacant runs.

5. The board has substantially complied with the directives of Creighton v. Ohio County Board of Education, Docket No. 35-86-373-3, upon which grievant relies, that supplemental driving runs be offered to drivers on the basis of seniority.

6. Although the board presents strong legal argument why the assignments of Redman and Black may not now be disturbed, the board neither admits nor denies that the supplemental driving assignments given them by the former transportation director were improper or "illegal." That issue was addressed in Moore v. Ohio County Board of Education, Docket No. 35-87-027-3, a decision that has been appealed by the board and is currently before a judge in the 1st Judicial Court. See, Findings of Fact Nos. 8, 9 and the Decision/Order, that the director "may no longer assign supplemental bus runs to "fill" a bus driver's schedule...."

CONCLUSIONS OF LAW

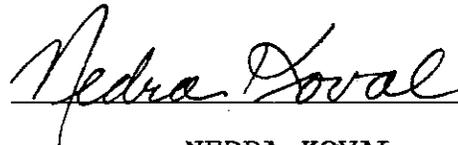
1. The Grievance Board will not address contested issues properly before a Circuit Court pursuant to W.Va. Code, 18-29-7.

2. Grievant has shown no misapplication of statutes, rules and regulations, as she alleged, nor any other legal basis for the relief she requests.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio County and such appeal must be filed within thirty (30) 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.

DATED: July 20, 1988



NEDRA KOVAL
Hearing Examiner