



**REPLY TO:**  
401 Davis Avenue  
Suite 315  
Elkins, WV 26241  
Telephone: 636-1123

**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

**JESSE H. RUSH**

**v.**

**DOCKET NO. BOR1-87-126-2**

**WEST VIRGINIA UNIVERSITY**

**DECISION**

Grievant, Jesse Rush, is employed by the Board of Regents and is assigned as a mechanical maintenance helper at the West Virginia University Physical Plant. Mr. Rush filed a level one grievance on March 17, 1987 in which he alleged that Physical Plant Policy A2-106 improperly requires employees to pay a five dollar replacement fee for lost identification cards. The matter was denied at levels one and two and was appealed to level four on May 4, 1987. After numerous continuances a hearing was held on May 9, 1988. Proposed findings of fact and conclusions of law were submitted by May 31.

West Virginia University Physical Plant Policy A2-106 requires that all employees of that division wear an identification card while on duty. These cards are plastic, approximately

two by three inches in size and are attached to the employee's clothing with a metal clip. On February 11, 1987 during the course of his work the grievant lost his identification card. When he retraced his steps and could not locate the card he reported the loss to his supervisor who scheduled an appointment for him to have another picture taken for a replacement card. The grievant was charged a five dollar fee for the replacement.

The grievant asserts that it is improper to require employees to pay for replacements as they do not pay for the initial badges which are the property of the state and they are not required to pay for other state property, such as tools, which they lose. Second, he maintains that he should not be required to replace the tag when the fault for its loss lay with the institution which provided an inadequate clip to attach the tag to his clothing. Third, a replacement fee is inappropriate action under the progressive discipline policy which requires that counseling occur for a first offense. Fourth, the university did not establish that the loss was the fault of the grievant and that the application of a policy based upon an arbitrary attribution of fault is also arbitrary and constitutes misapplication of the policy.

The university asserts that it has the implied authority to charge for lost badges as the Physical Plant must be operated in a businesslike manner. The fee covers the replacement cost of the cards and acts as a means to control employees from procuring more than one. Further, the replacement fee is not unique to the Physical Plant but required by other divisions including the Medical Center, and the Office of Housing. Students at West Virginia University are also charged a replacement fee for lost identification cards.

The grievant's attempt to evade the replacement fee by placing the fault for the loss on the institution is not persuasive. Whether or not the clip was adequate to hold the card onto clothing generally or adequate to hold the card on the grievant's clothing in particular, as he engages in work which would likely cause more stress on the clip, is not controlling. The Physical Plant requires the card be worn but does not dictate in what manner. Al Ingle, Assistant Director for Business and Administration, testified that the cards could be worn on chains, be secured by safety pins or other devices so long as it was visible. As the grievant indicated that he had experienced previous problems with the card falling off his clothing, it was his responsibility to have taken the necessary

steps to attach it more securely. The grievant's argument that the progressive discipline policy should have been applied is inappropriate in this situation. The progressive discipline policy is utilized when an employee's work performance or conduct is not acceptable. As the loss of the identification card did not in any way affect the grievant's work performance, the imposition of disciplinary action reflecting on his work record would be improper.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

#### Findings of Fact

1. The grievant is employed as a mechanical equipment worker assigned to the Physical Plant at West Virginia University.

2. Physical Plant Policy A2-106 requires that its employees wear identification cards while on duty.

3. The grievant lost his identification card while on duty February 11, 1987.

4. In compliance with policy A2-106 the grievant was required to pay a \$5.00 replacement fee for a new identification card.

5. The grievant challenges whether the clips on the cards were adequate to hold the card to clothing, however, other methods of attachment could have been implemented.

6. The grievant's loss of the identification card did not affect his actual work performance and therefore was not subject to action under the institution's progressive discipline policy.

#### Conclusions of Law

1. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code, 18-29-1, et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Andrews v. Putnam County Board of Education, Docket No. 40-87-330-1; Randolph v. Harrison County Board of Education, Docket No. 17-88-001-2 and Johnson v. Cabell County Board of Education, Docket No. 06-87-248-1.

2. The grievant has failed to prove by a preponderance of the evidence that the charging of a replacement fee for a lost identification card to be a violation, misapplication or misinterpretation of the statute, policies, rules, regulations or written agreements under which he is employed.

Accordingly, the grievance is **DENIED.**

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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 29, 1988

Sue Keller  
SUE KELLER

HEARING EXAMINER