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HENRY BAISDEN

v.

DOCKET NO. 29-87-207

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Henry Baisden, has been employed as a substitute custodian with the Mingo County Board of Education since August 30, 1985. Sharon Brinegar is a regular custodian employed at Dingess Grade School and Linda Meade is a regular custodian employed at Lenore Grade School. In May 1987 Ms. Brinegar and Ms. Meade were allowed to trade positions for the remainder of the 1986-87 school term. Mr. Baisden filed a grievance alleging this action was an improper transfer. A Level II hearing was held on June 30, 1987 and after a decision adverse to the grievant, the Board waived its right to a Level III hearing. In October 1987 the parties agreed to submit the case for decision at Level IV on the record and briefs.¹

¹Grievant's brief was submitted on October 21, 1987 but the Mingo County Board of Education provided no brief and their position in this case is made in the Level II hearing examiner's response to the grievance.

The record indicates Ms. Brinegar's house burned in May 1987 and because of an apparent relocation, she was having difficulty in getting to work at Dingess Grade School and she approached her principal, Mr. Harper, to request some help. (T.3) After a conversation between Mr. Harper and Mr. W. L. Bostic, Administrative Assistant, and consultation with a Mr. Gary Archer, a representative of the West Virginia Education Association, the Superintendent of Schools, Mr. Cline, allowed Ms. Brinegar to trade positions with Ms. Meade for the remainder of the 1986-87 school term. (T.4)

Neither party in this matter disputes any of the facts which led to the grievance and the grievant makes no serious contention that the switch in positions was allowed for any reason other than to accomodate a service employee who was having transportation problems. It is also clear the trade in positions constituted two transfers which did not conform to the provisions of W.Va. Code, 18A-2-7, which requires notice to the employee being transferred, a right to a hearing and action by the board of education. Kell v. McDowell County Board of Education, Docket No. 33-87-236; Bonfantino v. Marion County Board of Education, Docket No. 24-86-079. Neither of the employees transferred complain of the action taken by the superintendent and it is unclear from the record just what the relief the grievant in this case requests.² During the Level

²It must be noted that nowhere in the submitted record is there any written grievance form which indicates
(footnote cont.)

2. In May 1987 the Superintendent of Mingo County Schools, Harry J. Cline, allowed two custodians, namely, Linda Meade assigned to Lenore Grade School and Sherry Brinegar assigned to Dingess Grade School, to switch positions for the remainder of the 1986-87 school term.

3. No action was taken by the Mingo County Board of Education on said change in assignments.

CONCLUSIONS OF LAW

1. The reassignments of custodians Linda Meade and Sherry Brinegar to Lenore and Dingess Grade Schools were transfers of school service personnel and did not conform to the requirements of W.Va. Code, 18A-2-7.

2. It is incumbent upon a grievant to prove the allegations constituting the grievance, including the allegation that he or she is entitled to relief, by a preponderance of the evidence. Wade v. Marion County Board of Education, Docket No. 24-86-248-3; Butta v. Ritchie County Board of Education, Docket No. 43-86-315-3; Harrison v. Kanawha County Board of Education, Docket No. 20-86-219.

3. The grievant, Henry Baisden, has proven by a preponderance of the evidence that the trade in assignments of the two aforementioned custodians was an improper transfer of service personnel

II hearing, grievant testified that he would have bid on the job if it had been posted (T.3), but he did not indicate which job. He also testified in response to the direct question of what relief he was seeking that he "wanted pay for every day she worked at Dingess." (T.3) Grievant has shown the transfers of the two service employees was improper but has failed to show that he was entitled to any relief and, moreover, has not demonstrated through any argument of law that it would have been necessary for the Board to post any positions if the transfers had been completed in accordance with W.Va. Code, 18A-2-7. No vacancies would have been created if the Board simultaneously approved transfers for Ms. Meade and Ms. Brinegar and W.Va. Code, 18A-4-8b requires posting only in the event of vacancies in existing or newly created positions.

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

FINDINGS OF FACT

1. The grievant, Henry Balsden, has been employed as a substitute custodian with the Mingo County Board of Education since August 30, 1985.

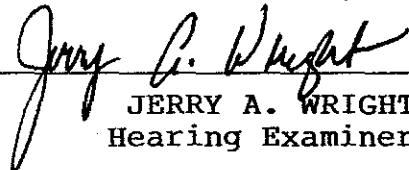
(footnote cont.)

the nature of the grievant's complaint. The form which notes grievant's appeal from Level II to Level III is blank except for his signature and a notation that the Board waives its right to a Level III hearing acknowledged by the president of the Board.

but has failed to prove his allegations that because of said transfer he is entitled to relief in the form of backpay or a requirement that the Mingo County Board of Education post either of the positions. Lilly and Moten v. Fayette County Board of Education, Docket No. 10-86-251-4.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Mingo 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: Jan 11, 1988