



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

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

GEORGE S. BULFORD

v.

DOCKET NO. 39-87-203

PRESTON COUNTY BOARD OF EDUCATION

DECISION

Grievant, George S. Bulford, is employed by the Preston County Board of Education as a custodian III. Mr. Bulford filed a level one grievance on February 18, 1987 in which he alleged a violation of W. Va. Code, 18A-5-2 and discrimination in that he is required to work on snow days when other employees are not or to take a personal leave day. As a result of this policy he is exposed to hazardous driving conditions and must shovel snow for one or two hours before he can get to work even though employees within walking distance are not required to report to work or to use leave time.

The grievance was denied at level two on March 3, 1987 and the board of education waived consideration on March 25. Mr. Bulford requested that Superintendent Pritt forward the

grievance to level four in July. Additional information was requested at level four on July 15 but was not submitted until January 29, 1988. The grievance has been submitted for decision based upon the record which consists of the pleadings and the responses filed at levels one through three.¹

The board asserts that while custodians are required to work on "snow days" due to their responsibilities relating to building security, personal leave may be used whenever the employee cannot get to work due to snow or for other reasons. The level two decision states that while the grievant was on a temporary assignment which did not include supervision of a heating plant he was still required to report to work as "[t]he Board would really be discriminating if it permitted some custodians III's to stay home and required others to work." This indicates that all employees within the same class were treated uniformly although the grievant may have been treated differently from all other classifications of employees at his assigned school.²

¹Although the statement of the grievance is general in nature it appears to have been filed as a result of an occurrence on February 9, 1987. Paragraph five of the grievance appeal states "...I should have a snow day off too, like all the rest of the employees did on Monday 2/9/87."

²Neither the board nor the grievant presented any evidence to show that he was treated similarly or differently than other custodians III's on February 9, 1987.

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

Findings of Fact

1. The grievant is employed by the Preston County Board of Education as a custodian III.

2. The grievant was required to report to work on February 9, 1987 while other school employees were directed to remain home due to inclement weather.

3. The grievant has failed to show that he was treated differently than any other custodian III on February 9, 1987.

4. The level two decision indicates that the grievant was required to report to work on a snow day based upon the responsibilities of his position.

Conclusions of Law

1. Discrimination means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees. W. Va. Code, 18-29-2(m).

2. It is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Parsons v. Cabell County Board of Education, Docket No. 06-87-067-1;

Kirk v. McDowell County Board of Education, Docket No. 03-87-178.

The grievant has failed to prove said elements.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Preston 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

February 26, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER