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KAREN YEAGER

v.

Docket No. 20-88-050

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Karen Yeager, is employed by the Kanawha County Board of Education as a bus operator assigned to the Dickinson Terminal. She filed a grievance in January 1988 alleging she was improperly denied a position for which she applied. A decision at Level II dated March 2, 1988 was adverse to the grievant. The Board waived Level III proceedings and a Level IV hearing was held July 25, 1988.¹

¹At this hearing the parties entered into an agreement to submit the case for decision on a list of factual stipulations and supplemental briefs.

The parties do not disagree over the sequence of events giving rise to the grievance and stipulate to the following facts:

1. Grievant is employed as a regular bus operator assigned to the Dickinson Terminal.
2. On or about June 5, 1987, the grievant became disabled and has remained disabled at all relevant times in connection with the present grievance.
3. During the month of January 1988 an open run was posted at the Dickinson Terminal.
4. The grievant, along with another bus operator, bid on the run.
5. It was determined that the grievant lacked valid certification.
6. Based on such lack of certification, the terminal supervisor awarded the run in question to the applicant other than the grievant.
7. The Kanawha County Schools Pupil Administrative Regulations and Personnel manual expressly provides that valid certification is required to bid on runs.

Grievant asserts the policy of prohibiting persons without bus operator certification from bidding on and receiving bus runs in a direct violation of W.Va. Code, 18A-4-8b(b), which in pertinent part provides:

A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [§18A-4-8], article four of this chapter, on the basis of seniority, qualifications and evaluation of past service.

Qualifications shall mean that the applicant

holds a classification title in his category as provided in this section and must be given first opportunity for promotion and filling vacancies.

Ms. Yeager contends she possesses the qualifications for the position since she holds the classification title bus operator and should have been awarded the posted run despite the fact that she has lost her certification.² The Board takes the position that since any one hired for a bus operator position must ultimately attain certification to drive a school bus from the West Virginia Board of Education, its policy of only considering certified operators for vacant positions is consistent with the above-cited portion of W.Va. Code, 18A-4-8b(b).

Grievant is correct in her assertion that W.Va. Code, 18A-4-8b(b) provides the criteria by which vacancies in service personnel positions are filled but those provisions must be read in conjunction with those of W.Va. Code, 18A-4-8. The definition of

²In grievant's brief the additional argument was made that since the beginning of her disability the Board has held her former position open for her even though she had lost her certification and it was therefore precluded from raising the issue when she applied for a different run. There was no documentation presented to show the Board is indeed holding grievant's run open for her nor was this fact made part of the stipulations and it cannot be considered a part of the record.

bus operator is contained therein:

"Bus operator" means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

The West Virginia School Transportation Regulations promulgated by the West Virginia Board of Education, pursuant to W.Va. Code, 17C-14-12, provide:

No person shall be qualified for employment by any county board of education to drive any school bus or motor vehicle used in the transportation of school children who has not been certified by the Department of Public Safety and State Department of Education. "School Bus Operator's Certification" is obtained through satisfactorily passing special examinations which include a physical examination and also a written examination. All school bus operator applicants (new and/or experienced) shall complete these examinations prior to the time they report for the performance of such service.

It is clear that any person hired to operate a school bus must achieve certification before assuming the duties of the position and once that certification is lost, the person is ineligible to continue in the position. In those circumstances the employee no longer fits the definition of bus operator contained in W.Va. Code, 18A-4-8 and therefore does not have the qualifications upon which the decision to fill positions is based pursuant to W.Va. Code, 18A-4-8b(b). A county board of education may, of course, retain the employee until certification is regained but

it may refuse to consider his or her application for bus operator positions until that time. This is the policy of the Kanawha County Schools Transportation Administrative Regulations and Personnel Manual and it is not inconsistent with the provisions of W.Va. Code, 18A-4-8b(b) or an arbitrary or capricious requirement.

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

FINDINGS OF FACT

1. Grievant, Karen Yeager, is employed by the Kanawha County Board of Education as a bus operator assigned to the Dickinson Terminal.

2. Grievant became disabled in June 1987 and subsequently lost her certification as a bus operator but was retained by the Board.

3. In January 1988 grievant applied for a posted bus run and was denied the position due to her lack of certification.

CONCLUSIONS OF LAW

1. Transportation regulations adopted by the Kanawha County Board of Education prohibit consideration of applicants for vacancies in bus operator positions who do not possess valid bus operator certifications.

2. The Board's regulations are consistent with the provisions of W.Va. Code, 18A-4-8, the West Virginia School Transportation Regulations promulgated by the State Board of Education and W.Va. Code, 18A-4-8b(b) and are not otherwise arbitrary or capricious.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said 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

JERRY A. WRIGHT
Hearing Examiner

Dated: October 3, 1988