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SAM BUTLER, JR.

v.

Docket No. 33-88-208

MCDOWELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Sam Butler, Jr., was employed by the McDowell County Board of Education (Board) as an automobile service instructor until his retirement on August 8, 1988. He filed a grievance at Level I on September 14, 1988<sup>1</sup> in which he alleged "worked the number of days as required...Should have been paid for 240 days - was only paid for 227 days". A decision following a Level II hearing held September 29, 1988 was adverse to the grievant. The Board voted to uphold the Level II decision on

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<sup>1</sup>The issues of standing and timeliness were not raised by the Board at any level and are therefore not addressed herein.

October 24, 1988. A Level IV hearing was held January 13, 1989.<sup>2</sup> The parties declined to submit proposed findings of fact and conclusions of law.

The facts of the case are essentially undisputed and the matter is largely the result of a misunderstanding on the grievant's part. On or about June 14, 1969 grievant, who had previously been employed as a bus operator, entered into his duties as an automobile service instructor at the McDowell County Vocational School under a 240-day contract. The Board determined his yearly salary at that time by dividing the salary of teachers with the same educational background by 200, the number of days normally worked by those teachers, to get a daily rate of pay and then multiply that rate by 240. The salary in 1969 was approximately \$7,344.00. Grievant worked as an instructor only eleven (11) days in June 1969 and on or about July 19, 1969 received a \$336.60 check (\$30.60 daily rate x 11) for those days and a check for \$612.00 for the month of July (\$30.60 daily rate x 20 days). Grievant received his paycheck on or about the twentieth (20th) day of each month for the next eighteen (18) years.<sup>3</sup>

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<sup>2</sup> The evidence at this hearing was substantially the same as that adduced at the Level II hearing and reference to transcripts herein are to Level II.

<sup>3</sup> Adjustments were made according to raises due to years of service and increases in state supplements.

By letter dated February 25, 1988 grievant notified the Board that he would be retiring on August 9, 1988.<sup>4</sup> His salary at that time was \$27,554.40 and upon receipt of his July 1988 paycheck, grievant had received that amount (T.13). Grievant then worked twenty-seven days from July 1, 1988 to August 8, 1988 and received two checks totalling \$3,099.87 (\$114.81 daily rate x 27 days) (T.13).<sup>5</sup> He contends he should have had a full paycheck for the month of August and the Board therefore owes him \$1,492.53 (\$114.81 daily rate x 13 days). The Board maintains grievant has been compensated for every day he has worked as an instructor since he began his duties as such in June 1969.

The basis for the grievant's claim is simply not discernible from the evidence presented. The Board's payroll records (Board's Exhibit No.1) show he has received twelve (12) checks per year for the last eighteen (18) years. He concedes he was compensated for his full 1987-88 salary when he received his July paycheck (T.12) and he also agrees that his daily rate of pay based on that salary was \$114.81 and that he only worked twenty-seven (27) days during the months of July and August (T.13,15).

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<sup>4</sup>Grievant's last day of employment was actually August 8, 1988.

<sup>5</sup>One check was for either twenty (20) or twenty-one (21) days in July and the other check was for either six (6) or seven (7) days in August.

It appears some confusion arose when grievant initially informed the Board's personnel office in February 1988 that he was retiring and expected a paycheck for the full month of August. Mr. Butch Dillon, Treasurer, subsequently had a conversation with grievant during which he informed him that because of the partial paycheck for June 1969, he was a calendar and not a school month employee. Grievant apparently took this to mean the Board was going to make a deduction from his salary for August and that deduction would be for thirteen (13) days at his 1988 daily rate of pay. An explanation of the Board's payroll methods for 240-day employees at the time grievant entered into his duties might well have prevented the confusion but he has not demonstrated he has been damaged by the Board's failure to do so.

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

#### FINDINGS OF FACT

1. Grievant, Sam Butler, Jr., was first employed by the McDowell County Board of Education as an automobile service instructor under a 240-day contract in June 1969 and served as such until his retirement on August 8, 1988.

2. Grievant received twelve (12) monthly paychecks each year between July 1 and June 30 and, upon his receipt of his July 20, 1988 paycheck, had been paid his full salary for the 1987-88 fiscal year.

3. Grievant worked a total of twenty-seven (27) days between July 1, 1988 and August 8, 1988 and received his daily rate of pay for those days.

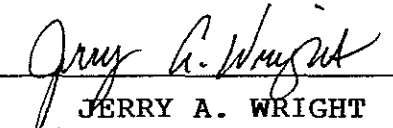
#### CONCLUSIONS OF LAW

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Lucas v. Mercer County Board of Education, Docket No. 27-88-180 (December 15, 1988); Helton v. Kanawha County Board of Education, Docket No. 20-87-028-1 (October 26, 1988); Hanshaw v. McDowell County Board of Education, Docket No. 33-88-130 (August 19, 1988).

2. Grievant has failed to prove that he has not been compensated for any days that he has worked or that the McDowell County Board of Education violated any statute or policy in the manner in which he was paid.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of McDowell 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). Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

  
JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: March 31, 1989